

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Big River Telephone Company, LLC,)

Complainant,)

v.)

Case No. TC-2012-0284

SOUTHWESTERN BELL)

TELEPHONE, L.P. d/b/a)

AT&T MISSOURI)

Respondent.)

**BIG RIVER TELEPHONE COMPANY, LLC'S
SUPPLEMENTAL MOTION TO STRIKE**

COMES NOW, Big River Telephone Company, LLC ("Big River") and, for its Supplement Motion to Strike, states as follows:

1. On October 11, 2012, Big River filed a motion to strike portions of the testimony of AT&T Missouri witnesses, William Greenlaw and Mark Neinast.

2. To date, the Commission has not ruled on that motion.

3. AT&T Missouri's subsequent pleadings and testimony have compelled Big River to supplement its original motion to strike.

4. AT&T Missouri's witnesses, Mr. Greenlaw and Mr. Neinast, are not competent to testify in this proceeding.

5. This is not a matter for cross-examination but rather a matter of law because it is admitted by AT&T Missouri's responses to discovery requests.

6. Neither witness works for AT&T Missouri.

7. Neither witness had any involvement in the parties' dispute prior to the filing of Big River's Complaint, and were, therefore, unaware of the facts at issue until after the Complaint was filed. (See AT&T Missouri's Response to Interrogatory 5(c) attached hereto as Exhibit 1)

8. As such, they are not fact witnesses.

9. Nor are they expert witnesses as AT&T Missouri has acknowledged that Mr. Greenlaw and Mr. Neinast are not experts in "the strict technical sense used in rules applicable to court proceedings."

10. Rather, they are part of something called "witnessing support"

11. This type of pseudo-expert exists only in AT&T Missouri's universe.

12. AT&T Missouri falls back on its default position that the Commission "shall not be bound by the technical rules of evidence."

13. That does not mean, however, that AT&T Missouri can pull anybody off the street and present them as witnesses.

14. In fact, Section 4 CSR 240-2.130(8) anticipates the use of expert witnesses but makes no provision for the use of the type of pseudo-experts that AT&T Missouri is providing.

15. That section makes it clear that the Commission expects experts to be properly qualified because it requires the qualifications of expert witnesses to be attached to any expert witness's report.

16. Mr. Greenlaw and Mr. Neinast are not fact witnesses, and they are not expert witnesses.

17. As such, they are not witnesses at all but merely mouthpieces brought in from an AT&T Missouri affiliate to “explain AT&T Missouri’s position.” (See AT&T Missouri’s Response to Interrogatory 5(a) attached hereto as Exhibit 1)

18. Thus, as a matter of law, they are not competent to testify, and their testimony should be stricken.

WHEREFORE, Big River Telephone Company, LLC respectfully requests the Commission issue an Order striking the testimony of William Greenlaw and Mark Neinast and for such other relief as it deems just and reasonable.

RESPECTFULLY SUBMITTED,
BIG RIVER TELEPHONE COMPANY, LLC

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon all parties via e-mail on January 4, 2013.

/s/ Brian C. Howe