

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4  
5 TRANSCRIPT OF PROCEEDINGS  
6 Evidentiary Hearing  
7 January 9, 2013  
8 Jefferson City, Missouri  
9 Volume 6  
10  
11 Big River Telephone Company, LLC, )  
12 )  
13 Complainant, )  
14 )  
15 VS. ) File No. TC-2012-0284  
16 )  
17 Southwestern Bell Telephone, L.P. )  
18 D/b/a AT&T Missouri, )  
19 )  
20 Respondent. )  
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23 MICHAEL BUSHMANN, Presiding,  
24 Regulatory LAW JUDGE.  
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1 I N D E X

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1 P R O C E E D I N G S

2 (WHEREUPON, the hearing began at  
3 1:00 p.m.)

4 JUDGE BUSHMANN: Let's go back on the  
5 record. Welcome to day two of the hearing. Where we left  
6 off yesterday, we were ready for testimony now from Mark  
7 Neinast. Mr. Neinast, if you'd come forward, and I hope  
8 I'm saying your name right.

9 MR. NEINAST: You are.

10 (Witness sworn.)

11 JUDGE BUSHMANN: Please have a seat. You  
12 may proceed.

13 MR. GERMANN: Thank you, your Honor.

14 MARK NEINAST testified as follows:

15 DIRECT EXAMINATION BY MR. GERMANN:

16 Q. Mr. Neinast, could you please state your  
17 name and your business address for the record?

18 A. Mark Neinast, 2701 North Central  
19 Expressway, Richardson, Texas 75080.

20 MR. GERMANN: And I would ask the reporter  
21 to please hand the witness what's been marked as AT&T  
22 Exhibits 1, 2 and 3.

23 BY MR. GERMANN:

24 Q. Mr. Neinast, do you have those documents?

25 A. I do.

1           Q.       Would you please identify what's been  
2 marked as AT&T Exhibit 1?

3           A.       Direct testimony of Mark Neinast on behalf  
4 of AT&T Missouri.

5           Q.       Was that testimony prepared by you or at  
6 your direction?

7           A.       Yes, it was.

8           Q.       Do you have any corrections to that  
9 testimony?

10          A.       No, I do not.

11          Q.       If I were to ask you the questions  
12 contained in that document today, would your answers be  
13 the same?

14          A.       Yes, they would.

15          Q.       Could you please identify what's been  
16 marked as AT&T Exhibit 2?

17          A.       It's rebuttal testimony of Mark Neinast on  
18 behalf of AT&T Missouri.

19          Q.       And was that testimony prepared by you or  
20 at your direction?

21          A.       Yes, it was.

22          Q.       Do you have any corrections to that  
23 testimony?

24          A.       No, I do not.

25          Q.       And if I were to ask you the questions

1 contained in that testimony today, would your answers be  
2 the same?

3 A. Yes, they would.

4 Q. And finally, could you identify what's been  
5 marked as AT&T Exhibit 3?

6 A. That's surrebuttal testimony of Mark  
7 Neinast on behalf of AT&T Missouri.

8 Q. And was that testimony prepared by you or  
9 at your direction?

10 A. Yes, it was.

11 Q. And do you have any corrections to that  
12 testimony?

13 A. No, I do not.

14 Q. And if I were to ask you the questions  
15 contained in Exhibit 3 today, would your answers be the  
16 same?

17 A. Yes, they would.

18 MR. GERMANN: Your Honor, at this time I'd  
19 like to offer into evidence AT&T Exhibits 1, 2 and 3.

20 MR. HOWE: Your Honor, I object. It's  
21 subject to the motion to strike. Actually, I'd like to  
22 voir dire the witness before the determination is made on  
23 the motion to strike.

24 JUDGE BUSHMANN: I'll allow you to ask a  
25 short number of questions.



1 MR. HOWE: Thank you, your Honor.

2 VOIR DIRE EXAMINATION BY MR. HOWE:

3 Q. Mr. Neinast, you don't work for AT&T  
4 Missouri?

5 A. No, I do not.

6 Q. You work for AT&T Services?

7 A. Yes, sir, I do.

8 Q. You did not even become aware of the  
9 dispute between Big River and AT&T Missouri until after  
10 the complaint was filed?

11 A. That's when I became aware.

12 Q. And your knowledge of the facts in this  
13 case is based upon your review of documents prepared by  
14 somebody other than yourself and discussions with others?

15 A. My review of this case is the testimony  
16 provided by Big River, cost study data that was provided  
17 to Big River, review of all the documents in the case,  
18 which is typical of any other case I may work on where I  
19 testify.

20 Q. Let me try again. All those documents that  
21 you mentioned reviewing, you didn't prepare any of those?

22 A. I didn't prepare Big River's testimony,  
23 that's correct. I prepared my testimony.

24 Q. Excuse me. You've also had discussions  
25 with people other than those who are listed as witnesses

1     **in this case as to the facts involved in this dispute?**

2             A.       I've had many discussions with people about  
3     this dispute.

4             **Q.       And those people aren't here and available**  
5     **to be cross-examined?**

6             A.       I'm not familiar with -- if you wanted to  
7     subpoena somebody, I think that's within your right. I'm  
8     not familiar enough with the legal system. That's your  
9     department.

10            **Q.       Let me ask you this: Are you aware of who**  
11     **provided testimony on behalf of AT&T Missouri in this**  
12     **case?**

13            A.       Yes, I am.

14            **Q.       And that was you, Mr. Greenlaw and**  
15     **Ms. Mullins?**

16            A.       That's correct.

17            **Q.       And that's all?**

18            A.       That's correct.

19                    MR. HOWE: I don't have any further  
20     questions, your Honor.

21                    JUDGE BUSHMANN: As far as -- there are two  
22     motions to strike that are pending right now. There's a  
23     supplemental motion to strike all of Mr. Neinast's  
24     testimony. There is the first motion to strike that was  
25     to strike certain portions of the testimony. Now, there's

1    been extensive written argument by the parties. I don't  
2    think we need to go over that again here today, but I will  
3    give counsel a chance if they want to add anything that  
4    has not already been put in writing as far as their  
5    argument, I'll give them a chance to add anything  
6    additional at this time.

7                   Mr. Howe, did you have anything additional  
8    you wanted to add besides what's in writing?

9                   MR. HOWE: Yes, your Honor. I believe it's  
10   Exhibit No. 8 of Big River's that lists the people who  
11   provided information to Mr. Neinast and Mr. Greenlaw.  
12   It's a list of 14 people. Of those 14 people, 13 of those  
13   people are not here and did not present testimony and are  
14   not available for cross-examination.

15                   I would like to make a point. Yesterday  
16   Mr. Gryzmala made an argument, and I told him to remember  
17   the line, and that line was in regard to e-mails that we  
18   tried to get in. His argument was that those people  
19   aren't here and available to be cross-examined. This man  
20   has just admitted that he's had numerous conversations  
21   with people who aren't here and available for  
22   cross-examination.

23                   JUDGE BUSHMANN: Mr. Germann, anything you  
24   wanted to add besides what's in writing?

25                   MR. GERMANN: Your Honor, just to respond

1 to that, I think it's common for witnesses to have  
2 conversations with people all the time. That doesn't make  
3 their testimony inadmissible. In fact, it doesn't even  
4 mean their testimony is based on hearsay or anything like  
5 that. The fact that they may talk to people who confirm  
6 things and see if their knowledge -- see if other people  
7 agree with what they're thinking does not render their  
8 testimony inadmissible.

9 And there certainly -- for example, they've  
10 tried to paint Mr. Neinast as not providing any factual  
11 testimony that would be based on his own knowledge, and I  
12 think that's demonstrably wrong. He's got decades of  
13 experience in network issues and working in network  
14 organizations starting with Southwestern Bell, and he  
15 presents factual testimony based on his own knowledge  
16 about, for example, differences between IPTM. He presents  
17 testimony about explaining how certain of the features  
18 that Big River describes in its testimony would never  
19 result in a telephone call to an AT&T end user, and those  
20 are things that he's perfectly competent to testify about  
21 whether or not he's had conversations with other people.

22 If I could briefly, your Honor, Mr. Howe  
23 listed the point that Mr. Neinast does not work for AT&T  
24 Missouri. If I could address that briefly. I think  
25 that's beside the point. AT&T Missouri is a corporate

1 entity and it cannot appear here and sit in a chair. It's  
2 a corporate entity, not a person. It can only appear and  
3 be heard through its agents, and in this case it has  
4 designated and selected Mr. Neinast to present testimony  
5 on its behalf and be its agent. I think that's also  
6 perfectly permissible.

7 MR. HOWE: Your Honor, if I could respond  
8 briefly, if Mr. Germann's done?

9 MR. GERMANN: Yes.

10 JUDGE BUSHMANN: Go ahead.

11 MR. HOWE: Well, his last point regarding a  
12 corporation appearing through its agent of course is true.  
13 What the issue is, apparently AT&T Missouri doesn't have  
14 any employees of its own that were actually involved in  
15 this dispute that could come and testify as to the facts  
16 of this dispute.

17 And regarding Mr. Neinast' possible  
18 expertise, he may have expertise, but AT&T Missouri has  
19 stated that they're not offering him as an expert in the  
20 strict sense of the word. I'm not aware of anything other  
21 than a fact witness or an expert witness, except now  
22 there's the non-fact witness, a category that apparently  
23 AT&T Missouri has created, is of its own creation, which  
24 it mentioned in its response to our supplemental motion to  
25 strike.

1                   And in terms of it not being based on  
2   hearsay, our interrogatory which they answered in which  
3   they listed the people that provided information, the  
4   question was provided information upon which they relied  
5   on their testimony or something to that effect, that was  
6   used to prepare their testimony. So it is based on  
7   hearsay.

8                   MR. GERMANN: If I could respond to the  
9   hearsay point, I think that's something that could be  
10   elicited in cross. Certainly there's no discovery  
11   response that said none of Mr. Neinast's testimony is  
12   based on his own personal knowledge and all of it is  
13   repeating things that other people told him. That's not  
14   what the discovery response said. It said he did consult  
15   with others, which is common, but that can be elicited on  
16   cross.

17                   And as to the point, the distinction  
18   between a fact and expert witness, I think that's one of  
19   the technical rules of evidence that the Commission is not  
20   bound by. For present purposes, I don't think it matters  
21   whether he would qualify as an expert witness or not. The  
22   point is he has experience and he has knowledge and he's  
23   providing factual testimony based upon his experience and  
24   his knowledge. And for the Commission's purposes, I think  
25   he's providing relevant information to assist the

1 Commission in making an informed decision, and whether you  
2 call it fact or expert testimony, it's based on his  
3 knowledge and he's presenting that information.

4 Anything else I'd argue, anything else I  
5 think, your Honor, just goes to the weight of the  
6 evidence, which is something they can address on cross.

7 JUDGE BUSHMANN: I think I've heard enough  
8 at this point.

9 COMMISSIONER KENNEY: Can I ask a question?

10 JUDGE BUSHMANN: Go ahead.

11 COMMISSIONER KENNEY: Thanks for letting me  
12 just ask a quick question of whomever wants to answer it.  
13 I was listening yesterday, so -- but I -- by Internet. I  
14 hope I'm not asking a question that may have already been  
15 answered. You made reference just now to 14 AT&T  
16 employees, 13 of whom are not here?

17 MR. HOWE: Yes.

18 COMMISSIONER KENNEY: Was there an  
19 opportunity to depose those witnesses and/or subpoena them  
20 here, and was that opportunity taken advantage of?

21 MR. HOWE: That was produced, I believe, on  
22 December 20th, and at that point all testimony had already  
23 been submitted. So as far as we were concerned, it was  
24 beyond the time for testimony.

25 COMMISSIONER KENNEY: You said the list was

1 produced on December 20th. Was it in response to a  
2 discovery request?

3 MR. HOWE: Yes.

4 COMMISSIONER KENNEY: And so the time for  
5 submitting prefiled testimony had been passed at that  
6 point, but could they have been deposed?

7 MR. HOWE: Yes, they could have been.

8 COMMISSIONER KENNEY: All right. I don't  
9 have any other questions. Did you have anything to add?

10 MR. GERMANN: No, sir.

11 MR. HOWE: Your Honor, if I --

12 JUDGE BUSHMANN: I think I've heard enough  
13 at this point. With regard to the motion to strike all of  
14 Mr. Neinast's testimony because of his qualifications,  
15 Mr. Neinast, let me ask you, do you have any scientific,  
16 technical or other specialized knowledge that will assist  
17 the Commission to understand the evidence or to determine  
18 the facts in issue?

19 THE WITNESS: I'm not sure if I'm following  
20 exactly scientific. I mean, my --

21 JUDGE BUSHMANN: Scientific, technical or  
22 other specialized knowledge.

23 THE WITNESS: I have specialized knowledge.

24 JUDGE BUSHMANN: That would assist the  
25 Commission in determining facts?



1 THE WITNESS: I believe so, yes, sir.

2 JUDGE BUSHMANN: And in your direct  
3 testimony that you prefiled, was the information about  
4 your education and your work experience correct?

5 THE WITNESS: Yes, sir.

6 JUDGE BUSHMANN: All right. I think the  
7 witness qualifies as an expert under Section 490.065, and  
8 so I believe that the motion to strike should be denied.

9 With regard to the second -- the first  
10 motion to strike parts of your testimony because of  
11 alleged impermissible conclusions, let me ask you this:  
12 Is your direct testimony being offered as your own legal  
13 opinion?

14 THE WITNESS: No, sir. I'm offering it as  
15 my interpretation of what the FCC has said in similar  
16 types of arguments that Big River has offered with their  
17 service and how to correlate it technically to what that  
18 service is and how it would compare to, say, that FCC  
19 integration rule that they -- and I'm just as a lay  
20 individual trying to apply what their service is and how  
21 would somebody view that service as such.

22 JUDGE BUSHMANN: All right. Then I would  
23 consider that your testimony would be permissible because  
24 it would explain AT&T Missouri's case in chief, which is  
25 required by Commission rules, and it would simply be

1 putting their position in context. So for that reason,  
2 I'm going to deny the first motion to strike also.

3                   However, I think that the best practice  
4 would have been for AT&T Missouri to have filed any of the  
5 FCC orders or federal statutes as separate exhibits in the  
6 case. So I think I'm going to ask that you do that as  
7 late-filed exhibits. And I understand that the FCC orders  
8 can be quite lengthy, so when you file those, you can file  
9 relevant portions of those, anything that would be  
10 referenced in that direct testimony, and I would ask that  
11 you file that no later than Monday, January 14th. Big  
12 River will have until Friday, January 18th to file any  
13 objections if you wish to do that.

14                   So with that, I would receive into the  
15 record AT&T Exhibits 1, 2 and 3.

16                   (AT&T EXHIBIT NOS. 1, 2 AND 3 WERE RECEIVED  
17 INTO EVIDENCE.)

18                   JUDGE BUSHMANN: Cross-examination by Big  
19 River?

20                   MR. HOWE: Big River's position is that  
21 this witness has presented no competent evidence, so we  
22 have no cross-examination.

23                   JUDGE BUSHMANN: Is there any cross by  
24 Staff?

25                   MR. BORGMEYER: No, your Honor.

1 JUDGE BUSHMANN: Any questions from the  
2 Bench? Commissioner Kenney?

3 COMMISSIONER KENNEY: No, thank you.

4 JUDGE BUSHMANN: Commissioner Stoll?

5 COMMISSIONER STOLL: I have no questions,  
6 Judge. Thanks.

7 JUDGE BUSHMANN: No recross is required  
8 then, and there's been no cross-examination, so there's no  
9 requirement for redirect. Thank you, sir. You may step  
10 down at this point.

11 Next witness is William Greenlaw.

12 (Witness sworn.)

13 JUDGE BUSHMANN: You may be seated. You  
14 may proceed. You may proceed.

15 WILLIAM GREENLAW testified as follows:

16 DIRECT EXAMINATION BY MR. GRYZMALA:

17 Q. Would you state your name for the record.

18 A. Yes. William Eric Greenlaw.

19 Q. And your business address, Mr. Greenlaw?

20 A. It's 311 South Akard, Dallas, Texas 75202.

21 Q. I would like to refer your attention to the  
22 AT&T hearing exhibits that the court reporter has passed  
23 to you. I believe you'll find those marked 4, 5, 6 and 7;  
24 is that correct?

25 A. That's correct. That's correct.

1           **Q.       Please identify Exhibit 4.**

2           A.       Exhibit 4 is titled direct testimony of  
3 William E. Greenlaw on behalf of AT&T Missouri dated  
4 September 28th of 2012.

5           **Q.       And Exhibit 5?**

6           A.       Exhibit 5 is titled direct testimony of  
7 William E. Greenlaw on behalf of AT&T Missouri,  
8 September 28th, 2012. The distinction between Exhibit 4  
9 and 5 is one version is highly confidential. The other is  
10 nonproprietary.

11          **Q.       Exhibit 6?**

12          A.       Exhibit 6 is rebuttal testimony of  
13 William E. Greenlaw on behalf of AT&T Missouri dated  
14 October 19th, 2012.

15          **Q.       And Exhibit 7?**

16          A.       Finally, Exhibit 7 is titled surrebuttal  
17 testimony of William E. Greenlaw on behalf of AT&T  
18 Missouri dated November 30th, 2012.

19          **Q.       Mr. Greenlaw, were these testimonies**  
20 **prepared by you or at your direction?**

21          A.       Yes, they were.

22          **Q.       And do you have any corrections to any of**  
23 **those testimonies?**

24          A.       Yes. One correction in Exhibit 4, and I  
25 guess by extension Exhibit 5, on my direct testimony.

1                   Q.       And would you for the parties and  
2       your Honor identify the page and the line number of the  
3       direct testimony you're referring to?

4                   A.       Certainly. On page 22 of the direct  
5       testimony, beginning with the question and answer on  
6       line 16, the first sentence had stated, through the August  
7       2012 billing cycle, Big River owed AT&T Missouri  
8       \$350,637.68, I believe, in unpaid past due access charges.  
9       Subsequent to that data being received, we have updated  
10      information, and it should now read --

11                  MR. HOWE: I'm going to object, your Honor.  
12      I think I do have to object at this point. Mr. Greenlaw  
13      does not work in billing. He has admitted in his  
14      testimony that he's not a billing expert. He's not  
15      competent to testify about what the bills are due owing  
16      because the only way he could obtain that is through  
17      hearsay.

18                  JUDGE BUSHMANN: Let me hold on to that for  
19      a second. Let's let him finish his correction first.

20                  THE WITNESS: Certainly. It's just an  
21      updated correction to the amount due now through the  
22      December 2012 billing cycle. So again it would read,  
23      beginning on line 17, through the December 2012 billing  
24      cycle, Big River owed AT&T Missouri \$352,123.48 in unpaid  
25      past due access charges. That's the only correction I

1 have.

2 JUDGE BUSHMANN: I think your objection  
3 would go to the weight and not the admissibility of the  
4 evidence, so I'm going to overrule that. And I'm going to  
5 let Mr. Gryzmala finish his introductory remarks about  
6 these exhibits. Did you have anything else you wanted to  
7 ask the witness about the exhibits?

8 BY MR. GRYZMALA:

9 Q. I believe I identified the only correction  
10 you have to your testimony; is that right, Mr. Greenlaw?

11 A. That's correct.

12 Q. In all other respects, if I were to ask you  
13 the questions that are contained in those testimonies  
14 today, will your answers be the same?

15 A. They would.

16 MR. GRYZMALA: I would have no further  
17 questions, your Honor, and would then move to admit into  
18 evidence, subject to cross, Exhibits 4, 5, 6 and 7.

19 MR. HOWE: I object, your Honor. This is  
20 subject to motion to strike, and I'd like to voir dire the  
21 witness before determination is made on the admissibility  
22 of his evidence.

23 JUDGE BUSHMANN: Go ahead.

24 VOIR DIRE EXAMINATION BY MR. HOWE:

25 Q. Mr. Greenlaw, you do not work for AT&T

1     **Missouri?**

2             A.       That's correct. I also work for AT&T  
3     Services, Inc.

4             Q.       All right. You do not work for the company  
5     that handles AT&T Missouri's billing?

6             A.       From a payroll perspective, that's correct.  
7     I work on behalf of them at times, but not -- I'm not paid  
8     by them, if you will.

9             Q.       You testify on behalf of them?

10            A.       I'm here today.

11            Q.       I'm not sure what that means.

12            A.       I'm sorry. I didn't understand what you  
13     meant when you say I testify on behalf of AT&T Missouri.

14            Q.       No. The company that handles AT&T  
15     Missouri's billing.

16            A.       AT&T Missouri handles their billing. The  
17     bill is rendered from AT&T.

18            Q.       There's not another company that produces  
19     those for them?

20            A.       Are you speaking to the effect of a billing  
21     vendor?

22            Q.       Yes.

23            A.       Not to my knowledge.

24            Q.       You were unaware of the facts involved in  
25     this dispute until after the complaint was filed?

1 A. That's correct.

2 Q. Your knowledge of the facts in this case  
3 and any opinions you've expressed in this case is based  
4 upon your review of documents that you yourself did not  
5 prepare, except maybe for your own testimony, and from  
6 discussions with people who aren't here and available for  
7 cross-examination?

8 A. Well, as we've heard today already, yes, I  
9 consulted with many people to compile the facts of the  
10 case, both the review of Big River's testimony, documents  
11 that are publicly available, documents that were filed  
12 with this Commission, a review of the interconnection  
13 agreement that governs the relationship between the  
14 parties, lots of information.

15 Q. Let me ask you this. Wouldn't it be  
16 possible for AT&T Missouri to contact AT&T Services, say  
17 we need a witness, AT&T Services sends somebody from  
18 maintenance, have them do the same things and render their  
19 opinions?

20 MR. GRZYMALA: Your Honor, I'll object.  
21 That's speculative and it's argumentative.

22 JUDGE BUSHMANN: Sustained.

23 BY MR. HOWE:

24 Q. When you corrected your evidence, you  
25 indicated that we updated the numbers; is that correct?



1           A.       I may have said that, yes. The intent in  
2   saying that was simply that we had updated billing  
3   information through December 2012. We in the sense I was  
4   using it is simply as AT&T who I'm representing here  
5   today.

6                   MR. HOWE: Your Honor, again, this witness'  
7   knowledge of the facts and his opinions are based entirely  
8   upon hearsay and review of documents which he himself did  
9   not prepare. He's not a fact witness, and unlike  
10   Mr. Neinast, he has no relevant -- or unlike Mr. Neinast  
11   allegedly has, he has no relevant expertise.

12                  JUDGE BUSHMANN: So is the legal basis for  
13   your objections the same as for Mr. Neinast's testimony?

14                 MR. HOWE: Yes, your Honor. I would like  
15   to add one thing in terms of them being subject to  
16   cross-examination. Big River presented its case through  
17   its CEO and its CFO, both of whom have been with the  
18   company for a decade, and through their work for the  
19   company there's a significant paper trail. So they were  
20   subject to intense cross-examination based upon what  
21   they've done in terms of their work for Big River.

22                   I am effectively -- let me go one step  
23   further, particularly in terms of Mr. Jennings. When he  
24   was on the stand, when he was on the stand, Mr. Gryzmala  
25   repeatedly stated to him that you were there during these

1 negotiations, you were at that table with Mr. Howe and  
2 Mr. Noland. They have effectively by presenting people  
3 outside the company who have had no involvement in  
4 preparing any of these documents, effectively eliminated  
5 cross of that type in terms of finding the intent behind  
6 the ICA amendment, the intent behind the settlement  
7 agreement. If I asked him, he'd say I don't know, I  
8 wasn't there.

9 I don't have anything further, your Honor.

10 JUDGE BUSHMANN: Anything further,  
11 Mr. Gryzmala?

12 MR. GRYZMALA: Very briefly. This witness  
13 as well as all of AT&T's witnesses and personnel were  
14 subject to being deposed had Big River cared to. This  
15 case was filed on March 1 of 2012. We did not receive any  
16 discovery from Big River until the last day of the  
17 discovery cutoff period, December 10, 2012. That was  
18 effectively nine months. There can be no arguments that  
19 our people were not made available to Big River.

20 This is a wholly different situation than  
21 was presented with respect to Messrs. Howe and Jennings  
22 yesterday whose testimony and my questions were directed  
23 to the intent behind the parties when they entered into a  
24 settlement agreement in 2008. This is a ministerial  
25 administrative task of updating by a de minimis amount of

1     \$2,000 the amount due on an account. That is all. And he  
2     does not have to be an expert to testify as to what is due  
3     on an account stated.

4                     That's all I would have, your Honor.

5                     JUDGE BUSHMANN: Mr. Greenlaw, do you have  
6     scientific, technical or other specialized knowledge that  
7     would assist the Commission to understand the facts of  
8     this case?

9                     THE WITNESS: I would say I have  
10    specialized knowledge.

11                    JUDGE BUSHMANN: You would say you have  
12    specialized knowledge?

13                    THE WITNESS: Correct.

14                    JUDGE BUSHMANN: In your direct testimony,  
15    is the information about your education and your work  
16    experience for AT&T correct?

17                    THE WITNESS: It is correct, yes.

18                    JUDGE BUSHMANN: And in your direct  
19    testimony, were you offering that as your own legal  
20    opinion?

21                    THE WITNESS: No.

22                    JUDGE BUSHMANN: In that case, I will  
23    overrule the supplemental motion to strike and the first  
24    motion to strike. Both of those are denied. I'll ask  
25    AT&T to file, late file the same exhibits for

1 Mr. Greenlaw's testimony that would have been required for  
2 Mr. Neinast, the FCC orders or federal statutes that are  
3 referenced in that testimony.

4 MR. GRYZMALA: Very well.

5 JUDGE BUSHMANN: The same schedule. So  
6 AT&T Exhibits 4, 5, 6 and 7 are received into the record.

7 (AT&T EXHIBIT NOS. 4, 5, 6 AND 7 WERE  
8 RECEIVED INTO EVIDENCE.)

9 JUDGE BUSHMANN: Cross-examination by Big  
10 River?

11 MR. HOWE: Big River's position is that  
12 this witness has presented no competent evidence and has  
13 no cross therefore.

14 JUDGE BUSHMANN: Cross-examination by  
15 Staff?

16 MR. BORGMAYER: No, your Honor.

17 JUDGE BUSHMANN: Any questions from the  
18 Bench?

19 COMMISSIONER KENNEY: No, thank you.

20 COMMISSIONER STOLL: No, thank you.

21 JUDGE BUSHMANN: No requirement for recross  
22 or redirect. Mr. Greenlaw, you may step down, sir.

23 THE WITNESS: Thank you.

24 MR. GRYZMALA: Your Honor, if I may  
25 approach?

1 JUDGE BUSHMANN: Why don't you speak into  
2 your microphone?

3 MR. GRYZMALA: Yes. I'm sorry.  
4 Mr. Greenlaw did reference in his corrected testimony an  
5 updated Schedule 9, which I failed to present. He did  
6 correct the summary or he did correct the line in his  
7 testimony, but he referenced and I neglected to present  
8 the Schedule 9 that we would ask be added into the record  
9 as an exhibit.

10 JUDGE BUSHMANN: That's a part of his  
11 testimony and that's representation of the correction that  
12 he made to his testimony?

13 MR. GRYZMALA: The table which now appears  
14 as Schedule 9 would be substituted with this new document  
15 updated.

16 JUDGE BUSHMANN: It's the same information,  
17 just in a different location; is that correct?

18 MR. GRYZMALA: I'm sorry?

19 JUDGE BUSHMANN: Is that the same  
20 information that he updated?

21 MR. GRYZMALA: Yes, it is.

22 JUDGE BUSHMANN: It's just in a different  
23 location or additional location?

24 MR. GRYZMALA: Yes, it is. The same  
25 information which he corrected in his direct testimony is

1 reflected on the table which is his Schedule 9.

2 JUDGE BUSHMANN: Is there any objection to  
3 including that corrected schedule?

4 MR. HOWE: None other than what was already  
5 stated, your Honor.

6 JUDGE BUSHMANN: Then I'll allow the  
7 substitution of the schedule.

8 MR. GRYZMALA: Your Honor, if we may, can  
9 we refer to that, I'll mark that and refer to that as  
10 Exhibit 33?

11 JUDGE BUSHMANN: Why don't you have the  
12 court reporter mark that.

13 (AT&T EXHIBIT NO. 33 WAS MARKED FOR  
14 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

15 MR. GRYZMALA: Thank you.

16 JUDGE BUSHMANN: Next witness is Janice  
17 Mullins.

18 (Witness sworn.)

19 JUDGE BUSHMANN: You may be seated. You  
20 may proceed.

21 JANICE MULLINS testified as follows:

22 DIRECT EXAMINATION BY MR. GRYZMALA:

23 Q. Would you state your name.

24 A. Janice Mullins.

25 Q. And your business address, Ms. Mullins?

1           A.       13630 Loraine Avenue, Room 350, Cleveland,  
2 Ohio 44111.

3           Q.       And let me refer you to what the court  
4 reporter has handed you, which is marked Exhibit 8. Do  
5 you have that before you?

6           A.       Yes.

7           Q.       Would you identify that document,  
8 Ms. Mullins?

9           A.       My testimony.

10          Q.       I'm sorry?

11          A.       My testimony.

12          Q.       That would be your surrebuttal testimony?

13          A.       Correct.

14          Q.       Okay. And when did you file that?

15          A.       November 30th, 2012.

16          Q.       That was prepared by you or at your  
17 direction?

18          A.       Correct.

19          Q.       Do you have any corrections to that  
20 testimony?

21          A.       Just one. There was a typo on page 6,  
22 line 12. Instead of date, it should be data.

23          Q.       D-a-t-a instead of d-a-t-e?

24          A.       Correct.

25          Q.       Other than that limited correction, if I

1     **were to ask you the questions which are contained in this**  
2     **testimony today, would your answers be the same?**

3             A.       Yes.

4             MR. GRYZMALA:   That's all I would have at  
5     this time, your Honor, and I do believe that Ms. Mullins'  
6     testimony has already been stipulated in evidence.

7             JUDGE BUSHMANN:   That's what my records  
8     reflect.   Without objection, it was received yesterday.

9             MR. GRYZMALA:   I have nothing further.

10            JUDGE BUSHMANN:   Cross-examination by Big  
11     River.

12     CROSS-EXAMINATION BY MR. HOWE:

13            Q.       **Ms. Mullins, unlike Mr. Neinast and**  
14     **Mr. Greenlaw, you were actually involved in this**  
15     **dispute --**

16            A.       That's correct.

17            Q.       **-- prior to the filing of the complaint?**

18            A.       That's correct.

19            Q.       **But like those two, you don't work for AT&T**  
20     **Missouri?**

21            A.       I work for AT&T Services, Inc., which is an  
22     affiliate of AT&T Missouri.

23            Q.       **But you don't work directly for AT&T**  
24     **Missouri?**

25            A.       No.



1 Q. Now, you've worked for, I guess, some form  
2 of AT&T affiliate for over 30 years?

3 A. That's correct, 33.

4 Q. And you're currently employed as a senior  
5 carrier account manager by AT&T Services, Inc.?

6 A. Yes.

7 Q. Part of your duties involves handling  
8 billing disputes when a CLEC invokes the informal dispute  
9 process?

10 A. Yes.

11 Q. And that involves responding to the dispute  
12 in accordance with the dispute resolution procedures and  
13 timelines established in the CLEC's ICA?

14 A. Yes.

15 Q. And you're familiar with the ICA,  
16 interconnection agreement involved in this case?

17 A. Correct. It's been a while since I've  
18 looked at it, but yes.

19 Q. And Big River initiated the informal  
20 dispute resolution procedure at issue here by written  
21 notice on April 19th, 2011?

22 A. Yes.

23 Q. Under the ICA, AT&T Missouri had five days  
24 to designate its representative for this dispute?

25 A. Yes.

1           **Q.       You were identified as AT&T Missouri's**  
2     **representative for this dispute via e-mail dated May 10th,**  
3     **2011?**

4           A.       Yes.

5           **Q.       So that was more than the five days**  
6     **prescribed by the ICA?**

7           A.       That was the first I'd heard of it. I was  
8     not aware that it was sent to the mailbox. I had just  
9     joined the group. So at that time, no, I was not aware of  
10    it until May 10th.

11          **Q.       Let me ask you this: You just joined what**  
12    **group?**

13          A.       Well, I -- the informal dispute resolution  
14    team. I've always been on the senior carrier account  
15    management team, but I took over the team lead on the  
16    informal dispute team in March of 2011.

17          **Q.       Were you involved in informal dispute**  
18    **resolution prior to that? I'm not sure I'm following.**

19          A.       Yes. I've been involved in informal  
20    disputes in some fashion for the past 15 years.

21                   MR. HOWE: Pardon me, your Honor, while I  
22    grab something. Your Honor, may I approach the witness?

23                   JUDGE BUSHMANN: You may.

24                   (BIG RIVER EXHIBIT NO. 12 WAS MARKED FOR  
25    IDENTIFICATION BY THE REPORTER.)

1 BY MR. HOWE:

2 Q. Ms. Mullins, I've handed you what's been  
3 marked as Big River's Exhibit 12, which is AT&T Missouri's  
4 response to interrogatory No. 8; is that correct?

5 A. Yes.

6 Q. And the question asked there is, state the  
7 names of every individual employed by AT&T Missouri or  
8 otherwise acting as an agent of AT&T Missouri who was  
9 involved in any attempt to resolve the current dispute  
10 with Big River prior to the filing of Big River's  
11 complaint, and for each individual identified please state  
12 by whom that individual was employed, in what capacity  
13 that individual was employed, the nature of that  
14 individual's involvement in the dispute, and the date on  
15 which that individual became involved in the dispute; is  
16 that correct?

17 A. I'm not reading -- seeing what you're  
18 reading. All I have on No. 8 doesn't say all of that.

19 JUDGE BUSHMANN: Would you be referring to  
20 Exhibit 13? My copy shows --

21 MR. HOWE: I am. I grabbed the wrong  
22 exhibit.

23 BY MR. HOWE:

24 Q. I'm sorry, Ms. Mullins. I was reading from  
25 the wrong one. It's response to interrogatory No. 8, and

1 let me correct my question. That interrogatory asks,  
2 please identify each and every witness -- or each and  
3 every written document prepared, obtained or possessed by  
4 AT&T Missouri regarding the facts and circumstances  
5 alleged in the pleadings filed herein which were provided  
6 to or reviewed by William Greenlaw, Mark Neinast and/or  
7 Janice Mullins.

8 A. Yes.

9 Q. And AT&T objected to that, but subject to  
10 the objection they listed about 40 documents. You don't  
11 have to count them. I'll tell you that it's approximately  
12 40.

13 A. Okay.

14 Q. Among those listed are e-mails between you,  
15 Carol Kenney, Lori Woodard, Theresa Cassell, and Christine  
16 Chow?

17 A. Yes.

18 Q. And those e-mails were concerning Big  
19 River's usage data request?

20 A. Correct.

21 Q. And Ms. Chow, Ms. Kenney, Ms. Woodard and  
22 Ms. Cassell are not here and subject to cross-examination  
23 in these proceedings?

24 A. Correct.

25 Q. And you relied on that information in those

1 **e-mails in preparing your testimony?**

2 A. Right. I didn't learn of any of that until  
3 after the IDR was closed, the informal dispute that I was  
4 working with Mr. Jennings.

5 **Q. Okay.**

6 A. So once I was aware of it, that's when I  
7 started to do some investigation and found that that data  
8 was requested from the service center and that Carol  
9 Kenney was involved and the other folks that were  
10 mentioned, and then afterwards I went back and checked  
11 with each one of them.

12 **Q. My question is just that you relied on the**  
13 **information in those e-mails to prepare your testimony?**

14 A. Correct.

15 **Q. As a designated representative for AT&T**  
16 **Missouri in this dispute, you're required to possess the**  
17 **knowledge necessary to resolve the dispute?**

18 A. Well, you have to understand that the CLEC  
19 can invoke informal dispute on anything in the  
20 interconnection agreement. So I'm never going to have the  
21 knowledge on every topic, service or function that we  
22 offer, but I have the experience and the knowledge to pull  
23 in the appropriate folks to resolve any dispute that's  
24 brought to me.

25 **Q. Do you have your testimony in front of you?**

1 A. Yes.

2 Q. Could you look at the footnote on page 3?

3 A. Yes.

4 Q. Could you read that footnote, please?

5 A. See Section 13.3.1 of the general terms and  
6 conditions of Big River's Commission-approved ICA with  
7 AT&T Missouri stating in pertinent part that at a written  
8 request of a party, each party will appoint a  
9 knowledgeable responsible representative with authority to  
10 resolve the dispute. To initiate the dispute process a  
11 party must provide to the other party written notice of  
12 the dispute that includes both a detailed description of  
13 the dispute and the name of an individual who will serve  
14 as the initiating party's representative. The other party  
15 shall have five business days to designate its own  
16 representatives.

17 Q. Thank you.

18 MR. HOWE: Your Honor, may I approach?

19 JUDGE BUSHMANN: You may.

20 (BIG RIVER EXHIBIT NO. 13 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. HOWE:

23 Q. I've handed you what's been marked as Big  
24 River's Exhibit 13. Could you take a look at that,  
25 please?

1 A. Yes.

2 Q. And that's AT&T Missouri's response to  
3 interrogatory No. 15?

4 A. Yes.

5 Q. And that interrogatory asks, state the  
6 names of every individual employed by AT&T Missouri or  
7 otherwise acting as an agent of AT&T Missouri who was  
8 involved in any attempt to resolve the current dispute  
9 with Big River prior to the filing of Big River's  
10 complaint, and for each individual identified please state  
11 by whom that individual is employed, in what capacity that  
12 individual was employed, the nature of that individual's  
13 involvement in the dispute, and the date on which that  
14 individual became involved in the dispute.

15 A. Correct.

16 Q. And again, AT&T Missouri objected to that  
17 interrogatory but provided an answer subject to that  
18 objection in which they listed four people, including  
19 yourself?

20 A. Yes.

21 Q. The other four people were Stanley  
22 Mensinger, Annamarie Lemoine and Paul Montee?

23 A. Correct.

24 Q. And you consulted with those people in  
25 attempting to resolve this dispute?

1           A.       Yes, as when I talked to John Jennings, at  
2     the time we both didn't have the technical knowledge, and  
3     we both agreed that we would go back internally and talk  
4     to our experts.

5           Q.       Let me stop you. I just asked whether you  
6     consulted with those people?

7           A.       I did.

8           Q.       Thank you. Now, none of those three people  
9     are here and subject to cross-examination?

10          A.       Correct.

11          Q.       According to the interconnection agreement,  
12     an informal dispute is to be resolved within 60 days of  
13     the initiation of the dispute?

14          A.       Most of the time that doesn't occur because  
15     of the subject matter, it could take a long time.

16          Q.       Excuse me, ma'am. If you would just listen  
17     to my question. According to the ICA, an informal dispute  
18     is to be resolved within 60 days of the initiation of the  
19     dispute?

20          A.       I don't specifically know what the  
21     ICA reads because it's been a while since I looked at it.

22          Q.       I don't have it in front of me, but if I  
23     represent to you that that is the time limit set out in  
24     the ICA, would you have any reason to dispute that?

25          A.       I would -- if that's what it reads, then



1 no, I would agree with it, but I don't know exactly what  
2 it is at this point.

3 MR. HOWE: Okay. Your Honor, could I  
4 approach?

5 JUDGE BUSHMANN: Yes.

6 (BIG RIVER EXHIBIT NO. 14 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)  
8 BY MR. HOWE:

9 Q. Ms. Mullins, I've handed you what's been  
10 marked as Big River's Exhibit 14. Could you identify that  
11 document, please?

12 A. It's a letter that I drafted and sent to  
13 Mr. Jennings closing out the IDR.

14 Q. So by that letter, you indicated that AT&T  
15 was denying the dispute?

16 A. Right, because we could not agree on the  
17 resolution.

18 Q. And according to your letter, you indicated  
19 that at that point both parties are free to pursue any  
20 other remedies they believe are appropriate under the  
21 interconnection agreements or otherwise?

22 A. Correct.

23 Q. Just to refresh, the informal dispute  
24 resolution was initiated on April 19th, 2011?

25 A. Yes.

1                   Q.       And your denial of this dispute was dated  
2       November 1st, 2011?

3                   A.       Correct.

4                             MR. HOWE: May I approach, your Honor?

5                             JUDGE BUSHMANN: Yes.

6                             (BIG RIVER EXHIBIT NO. 15 WAS MARKED FOR  
7       IDENTIFICATION BY THE REPORTER.)

8       BY MR. HOWE:

9                   Q.       Ms. Mullins, I've handed you what's been  
10       marked as Big River's Exhibit No. 15. Could you take a  
11       moment to look at that, please.

12                   A.       Okay.

13                   Q.       And that's a letter sent by you dated  
14       September 12, 2011 to Mr. John Jennings of Big River?

15                   A.       Correct.

16                   Q.       And within that letter you set out the  
17       reasons that AT&T Missouri is denying the dispute?

18                   A.       Yes.

19                   Q.       The last sentence of that letter states,  
20       however, VOIP traffic exchanged after January 1st, 2010 is  
21       governed by House Bill 1779 and subject to the appropriate  
22       exchange access charges?

23                   A.       That's what it says, yes.

24                   Q.       And that sentence does not reference  
25       interconnected VOIP, does it?

1 A. No, I did not include that.

2 Q. And in that letter you did not refer to the  
3 Missouri statute that defines interconnected VOIP?

4 A. Repeat that question, please.

5 Q. In that letter, you did not reference the  
6 Missouri statute that defines interconnected VOIP?

7 A. No.

8 Q. And that letter was a statement of AT&T  
9 Missouri's ultimate position on this dispute?

10 A. Well, the entire dispute was based on  
11 whether the traffic was enhanced, and then including in  
12 the IDR letter they sent a letter dated from 2005. So I  
13 went back internally and pulled in the subject matter  
14 experts specifically because --

15 Q. Let me stop you. I might be able to make  
16 this simple. I'm just asking whether this letter  
17 represents AT&T's position on the dispute as of  
18 September 12, 2011?

19 A. Correct.

20 Q. Prior to making your determination as set  
21 out in the letter of September 12, 2011, you did not  
22 review the Missouri statute that defines interconnected  
23 VOIP?

24 A. I was on many, many calls with the folks --

25 Q. Excuse me, ma'am. You did not review the

1     **statute that defines interconnected VOIP?**

2             A.       I'm not an attorney or a product manager,  
3     but I pulled both parties in to go over it.

4             Q.       **Ma'am, you personally did not review --**

5             A.       I reviewed --

6             Q.       **-- the statute --**

7             A.       Yes.

8             Q.       **-- that defines interconnected VOIP?**

9             A.       Right. I would have been part of that, but  
10    being that I'm not a legal person or a product manager to  
11    interpret the language, I relied on experts to.

12            Q.       **Okay. I'm sorry. So you're saying you did**  
13    **review that statute that defines interconnected VOIP in**  
14    **Missouri?**

15            A.       Yes, but I rely on experts to explain it  
16    because I don't -- I'm not an attorney or a product  
17    manager.

18            Q.       **Who were the experts that you relied on?**

19            A.       Those that I noted here, Stan Mensinger,  
20    Annamarie Lemoine and Paul Montee.

21            Q.       **In reaching your conclusion, did you make a**  
22    **determination that Big River services require a broadband**  
23    **connection?**

24            A.       Yes.

25            Q.       **You made that determination?**

1 A. On our calls we did.

2 Q. On your calls again --

3 A. With experts.

4 Q. -- with those three people that you  
5 mentioned?

6 A. Right, because of the language in the house  
7 bill and in their -- the type of traffic that it was  
8 determined.

9 Q. Okay. But that was in consulting -- in  
10 consultation with those three people that you've  
11 mentioned?

12 A. Correct.

13 Q. Now, your letter of November 1st, 2011 was  
14 the end of the informal dispute process?

15 A. Yes.

16 Q. But it was not necessarily the end of the  
17 dispute?

18 A. Right. Both parties had -- could pursue  
19 the next steps in the interconnection agreement, which is  
20 the formal dispute which we're in now.

21 Q. Ma'am, are you familiar with Section 13.3  
22 of Attachment 12 of the interconnection agreement?

23 A. You'd have to point it out, what it is  
24 saying. Oh, the general terms and conditions?

25 MR. HOWE: May I approach, your Honor?

1 JUDGE BUSHMANN: Yes.

2 (BIG RIVER EXHIBIT NO. 16 WAS MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. HOWE:

5 Q. Have you had a moment to look at that,  
6 ma'am?

7 A. Yes.

8 Q. Okay. And looks like the beginning of the  
9 second full sentence states that IS, and IS is previously  
10 noted to be VOIP traffic and other enhanced service  
11 traffic in that section?

12 A. That's what it reads.

13 Q. Okay. And that second sentence says, that  
14 IS traffic is defined as traffic that undergoes a net  
15 protocol conversion as defined by the FCC?

16 A. That's what it reads.

17 Q. You personally don't have an understanding  
18 as to what constitutes a net protocol conversion as  
19 defined by the FCC?

20 A. Correct. I'm not an expert on the  
21 language.

22 Q. During the informal dispute process,  
23 Mr. Jennings informed you that Big River's position was  
24 that 100 percent of its traffic is enhanced?

25 A. That's what he said, yes.

1           Q.       If AT&T Missouri had accepted Big River's  
2       claim that 100 percent of its traffic was enhanced, Big  
3       River would not have owed any access charges?

4           A.       If he would have brought that up, I would  
5       have went a whole different direction in the informal  
6       dispute process.

7           Q.       I don't think you understood my question.  
8       I'm just talking about the 100 percent of enhanced traffic  
9       claim. If AT&T Missouri had accepted Big River's position  
10      that all of its traffic, 100 percent was enhanced, then  
11      Big River would have owed no access charges?

12          A.       That's something we could not agree on.

13          Q.       I'm asking you, if you had been able to  
14      agree on that?

15          A.       If we would have come to an agreement, yes.

16          Q.       Then Big River would not have owed any  
17      access charges?

18          A.       If we found their claim to be valid.

19          Q.       So assuming that had happened and Big River  
20      owed no access charges, there would have been no reason  
21      for Big River to reconcile its records with AT&T  
22      Missouri's bills --

23          A.       I was --

24          Q.       -- because nothing was owed?

25          A.       I had no idea that he needed data to

1 reconcile his bills. It was never brought to my  
2 attention.

3 MR. GRYZMALA: Your Honor, let me object.  
4 I could have been more timely. Mr. Howe is asking  
5 questions based upon facts which are not in evidence. In  
6 other words, if AT&T had accepted, those are not -- that  
7 is not in evidence. Likewise, beside the point is the  
8 call data request that Mr. -- that Ms. Mullins was not a  
9 part of. It's also irrelevant for that reason.

10 MR. HOWE: I haven't mentioned the call  
11 data response, although AT&T Missouri has made an issue of  
12 the timing of Big River's request for call data records,  
13 so I think I'm entitled to ask about the background  
14 involved in the dispute process.

15 JUDGE BUSHMANN: I'll overrule the  
16 objection.

17 BY MR. HOWE:

18 Q. Ma'am, I'll repeat my question. If Big  
19 River under the informal dispute process had been  
20 determined to owe no access charges, there would have been  
21 no need for Big River to reconcile its call records with  
22 AT&T's bills?

23 A. I would -- I don't know.

24 Q. Well, can you think of a reason why they  
25 would have to reconcile a bill when they weren't being



1     **charged anything?**

2             A.       I can't speak for why Big River would have  
3     requested that data. All I know is that I was not brought  
4     in and asked that information from me. Had he -- had  
5     Mr. Jennings asked me for it, I would have gone a whole  
6     different route, but it was never requested from me.

7             Q.       Well, let me go to that. You closed out  
8     the informal dispute resolution on November 1st --

9             A.       Correct.

10            Q.       -- 2011, correct?

11            A.       Correct.

12            Q.       An that ended your involvement because the  
13    informal dispute process was closed because of AT&T  
14    Missouri's denial?

15            A.       Mr. Jennings came back to me after the IDR  
16    was closed and wanted to reopen it. So I went back  
17    internally, and since our position was not going to  
18    change, there was no reason to reopen the IDR, and,  
19    therefore, that was the reason for the formal dispute, the  
20    next step in the process.

21            Q.       So Mr. Jennings asked that the informal  
22    dispute be reopened?

23            A.       Because a collection letter was sent. So  
24    we gave him a couple, I think -- I don't know the specific  
25    amount of time, but a couple weeks, maybe a month.

1 Q. Did he indicate why he wanted it reopened?

2 A. Because of the collection letter.

3 Q. Did he say why in terms of having received  
4 the collection letter that he wanted to reopen it? Was it  
5 just the fact that he received a collection letter?

6 A. His request was --

7 MR. GRYZMALA: I object. The question's  
8 been asked and answered. The same question was asked and  
9 answered.

10 JUDGE BUSHMANN: I'll overrule.

11 THE WITNESS: His question was can we  
12 resolve in the IDR instead of formal. That was his only  
13 reason for it. And that's when I agreed to go back  
14 internally to see if our position would change, and it  
15 didn't, so there was no reason to reopen the IDR.

16 BY MR. HOWE:

17 Q. Was he just asking you to reconsider your  
18 position on enhanced traffic?

19 A. On the IDR, if we could reopen it and  
20 settle it through the IDR process instead of going formal.

21 Q. Okay. But as -- let me -- I'm not quite  
22 following you as to did he provide you any reason other  
23 than the fact that he had received a collection letter --

24 A. No.

25 Q. -- for wanting to reopen the IDR?

1           A.       No. That's what he said. All he said in  
2 his e-mail to me was, can we resolve this through the IDR  
3 opposed to going formal? That was the whole request.

4           **Q.       And you told him no?**

5           A.       I told him I would take it back internally  
6 to see if our position had changed, and if it wasn't going  
7 to change, there was no purpose in even continuing  
8 discussions and that they would be free to go the next  
9 step, which is formal and what we're doing today.

10          **Q.       Okay. So you never responded?**

11          A.       I did.

12          **Q.       Okay. I'm just having a little trouble**  
13 **understanding. It sounded like you may have gone and**  
14 **sought information on whether the position had changed,**  
15 **and because it hadn't there was no reason to go back to**  
16 **Mr. Jennings but you did?**

17          A.       Yes. I would never not answer.

18          **Q.       Okay. I was just having trouble following**  
19 **you.**

20          A.       Okay.

21          **Q.       But you did, and you told him no?**

22          A.       Correct.

23          **Q.       Big River wasn't aware that AT&T Missouri**  
24 **had denied the dispute until your letter of November 1st,**  
25 **2011?**

1           A.       Well, the previous letter of September 12th  
2   also stated our position on it, but that we continued  
3   talks on it, and then the official letter saying  
4   November 1st we're closing the IDR.

5           Q.       So they didn't know -- Big River didn't  
6   know that the IDR was officially closed until November 1st  
7   of 2011?

8           A.       Correct.

9           Q.       And you indicated that you've done some  
10   investigation since the complaint and some testimony was  
11   filed in regard to Big River's request for call data  
12   records?

13          A.       Correct, which I was not aware of until  
14   after the formal was even brought into play.

15          Q.       Okay. But you subsequently determined that  
16   Big River had made a request for such records for one  
17   month's worth of records to substantiate AT&T's bill, I  
18   believe it was on November 30th of 2011?

19          A.       Correct. I understand the request was  
20   made.

21          Q.       And AT&T Missouri didn't provide any call  
22   detail records until February 15th of 2012?

23          A.       I believe that's the date.

24                   MR. GRYZMALA: Your Honor, just I would  
25   object for the record. This is beyond the scope of cross.

1 JUDGE BUSHMANN: It's open cross.

2 BY MR. HOWE:

3 Q. And when AT&T Missouri did provide call  
4 detail records to Big River, it provided just one week's  
5 worth of such records?

6 A. That's my understanding.

7 Q. And that was on February 15th, 2012?

8 A. Correct.

9 Q. And it is also your understanding that  
10 either on that date or the next day Big River received a  
11 letter indicating that if the access charges were not  
12 paid, the provision on orders pending and new would be  
13 denied starting on March 1st --

14 A. I'm not aware of --

15 Q. -- 2011?

16 A. I'm not aware of a collection letter in  
17 February. I'm just aware of the one back in December, I  
18 believe it was, that initiated Mr. Jennings' request to  
19 keep the IDR -- reopen the IDR.

20 Q. Okay.

21 A. So I don't know about the second one.

22 Q. But you were in here yesterday to hear  
23 Mr. Jennings testify about receiving such a letter?

24 A. That was the first I've heard of it.

25 Q. You have no reason to question his

1     **statement that he had received such a letter?**

2             A.     No, I have no reason to doubt him.

3             MR. HOWE: May I approach, your Honor?

4             JUDGE BUSHMANN: Yes.

5             (BIG RIVER EXHIBIT NO. 17 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. HOWE:

8             Q.     **Ms. Mullins, you've indicated that as part**  
9 **of your duties you had to be familiar with the**  
10 **interconnection agreement between Big River and AT&T**  
11 **Missouri?**

12            A.     Yes, if I've got a specific reference that  
13 I would pull up and look at.

14            Q.     **I'm just asking in terms of in general.**

15            A.     In general, yes, depending on what the  
16 subject is, I'd have to look it.

17            Q.     **And I've handed you what's been marked as**  
18 **Big River's Exhibit 16.**

19            A.     17.

20            Q.     **I'm sorry. 17.**

21            A.     Okay.

22            Q.     **And Section 38 is entitled verification**  
23 **reviews?**

24            A.     Yes.

25            Q.     **Have you had a moment to take a look at**

1     **that?**

2             A.       I've never read this language. I'd have to  
3     read the entire thing. Okay.

4             Q.       **And that section addresses a billed party's**  
5     **right to audit the billing party's books?**

6             A.       That's what it would indicate.

7             Q.       **In reviewing that section, did you see**  
8     **anywhere where it specified how a billed party has to**  
9     **initiate such an audit?**

10            A.       Not in this part, but if the notices  
11     section refers to anything that's of this type of  
12     magnitude, I would think that it would be a formal notice  
13     to the notice manager, and we'd have to look at that  
14     language, too.

15            Q.       **But in terms of the language in Section 38,**  
16     **you don't see anything that specifies any type of notice**  
17     **procedure?**

18            A.       Again, I'd have to say we'd have to look at  
19     the notices language to see what the notice language says  
20     in the notice section, how we get -- it's important to  
21     look at that.

22            Q.       **I understand.**

23            A.       You can't just isolate this language.

24            Q.       **I'm just asking about the language in 38**  
25     **for right now.**

1           A.       This particular section doesn't, but again,  
2     it would have to be coincided with what the notice section  
3     states.

4           Q.       And Ms. Mullins, you've been involved in  
5     informal dispute resolutions, I think you said, for at  
6     least 15 years?

7           A.       Correct.

8           Q.       How many do you think you've handled over  
9     those 15 years, approximately?

10          A.       Informal disputes in some format, probably  
11     hundreds.

12          Q.       Hundreds?

13          A.       Yeah, quite a few, that I've been involved  
14     in.

15          Q.       Approximately what percentage of those  
16     informal disputes that you've been involved in have wound  
17     up in front of state commissions?

18          A.       I would say -- I couldn't even guess. I  
19     don't know.

20          Q.       More than one?

21          A.       Probably.

22          Q.       Can you give a percentage or approximate  
23     percentage?

24          A.       No. If we can't come to a conclusion in an  
25     informal dispute and we still can't agree, both parties,



1 we have no other option but to go to the next step, which  
2 is the formal dispute.

3 Q. But you're aware that a number of informal  
4 disputes in which you've been involved have ended up in  
5 front of state commissions?

6 A. Yes.

7 Q. But this is the first time you've ever  
8 testified before a state commission?

9 A. That's correct.

10 MR. HOWE: I have nothing further.

11 JUDGE BUSHMANN: Cross-examination by  
12 Staff?

13 MR. BORGMEYER: Just briefly, your Honor.

14 CROSS-EXAMINATION BY MR. BORGMEYER:

15 Q. Good afternoon, Ms. Mullins.

16 A. Hi.

17 Q. If the Commission decides this case in  
18 AT&T's favor, has AT&T provided sufficient information for  
19 Big River to assess the accuracy of its invoices?

20 A. Well, the call detail records are usually  
21 requested by a CLEC and established and, to my  
22 understanding, Big River is not set up to receive those  
23 records. So they're asking -- to my knowledge, they're  
24 asking for data that's already available to them if they  
25 would have requested initially when they set themselves up

1 as a CLEC. So it's a process where you request access  
2 usage records and we send them to you on a regular basis,  
3 but that's not how they're established.

4 So my understanding is they're now asking  
5 for these records that would be available to them on a  
6 regular basis if they requested them.

7 **Q. So that's a no?**

8 A. We -- I'm not sure how to answer that  
9 question as far as we would have to create this data, and  
10 depending on how -- I'm not a data expert in pulling this  
11 usage, but if it's a large amount, it would take a huge  
12 project to pull this data. But had it already been  
13 requested up front, they would have had access to those  
14 records themselves.

15 **Q. And I'm just asking if -- does Big River**  
16 **need more information to assess the accuracy of the**  
17 **invoices?**

18 A. That I don't know.

19 **Q. If the Commission decides this case in**  
20 **AT&T's favor, will AT&T begin to disconnect Big River's**  
21 **line for nonpayment?**

22 A. I'm not a collection person. I would  
23 assume that if it's found in our favor and the bill's not  
24 being paid, that collections would begin, but again, I'm  
25 not a collection representative to talk about that.

1 MR. BORGMEYER: I don't have any other  
2 questions. Thank you.

3 JUDGE BUSHMANN: Questions from the Bench,  
4 Commissioner Kenney?

5 QUESTIONS BY COMMISSIONER KENNEY:

6 Q. I want to just ask -- thanks for being here  
7 and testifying. I just want to ask a quick question. You  
8 were asked earlier about how you came to the conclusion  
9 that Big River's traffic was interconnected VOIP traffic,  
10 and I just want to make sure I understand. Your response  
11 was that you reviewed the statute, but you had some  
12 assistance in interpreting the statute from legal counsel;  
13 is that correct?

14 A. Right. We had many, many internal calls to  
15 talk about the entire informal dispute.

16 Q. Okay. And it's your understanding based  
17 upon your conversations with your lawyers and interpreting  
18 the statute that Big River's traffic is enhanced -- is not  
19 enhanced services but is interconnected VOIP?

20 A. Correct.

21 COMMISSIONER KENNEY: I don't have any  
22 other questions.

23 JUDGE BUSHMANN: Commissioner Stoll?

24 COMMISSIONER STOLL: I have no questions,  
25 your Honor. Thank you.

1 JUDGE BUSHMANN: Recross based upon Bench  
2 questions, Big River?

3 MR. HOWE: No questions, your Honor.

4 JUDGE BUSHMANN: Staff?

5 MR. BORGMEYER: No, your Honor.

6 JUDGE BUSHMANN: Redirect by AT&T.

7 REDIRECT EXAMINATION BY MR. GRYZMALA:

8 Q. Just a couple of things, Ms. Mullins. Kind  
9 of to take things in reverse order, starting with Staff's  
10 questions, I think you were asked, subject to the record,  
11 about potential disconnection if AT&T should win this  
12 case. To your knowledge, is the extent to which AT&T  
13 moved forward before this case was filed limited to  
14 declining to accept orders or to work pending orders and  
15 did not include disconnection of circuits? Is that your  
16 understanding?

17 A. I'm not sure what the letter said. Usually  
18 the first collection letter gives them time to pay, and  
19 then a second collection letter suspends ordering. That's  
20 a normal, the typical process.

21 Q. In other words, an initial approach would  
22 be we will decline accepting your orders. The initial  
23 approach would not be we are proceeding to turn off your  
24 circuits?

25 A. No.

1           Q.       Are you aware of this Commission's decision  
2       in 2005 approving disconnection of circuits in certain  
3       instances?

4           A.       I'm not aware.

5           Q.       Are you aware of a ruling along those lines  
6       in the post M2A arbitration then resolved by then Judge  
7       Kevin Thompson?

8           A.       No.

9           Q.       You were asked about -- you were asked a  
10      couple of questions about, the upshot of which was that  
11      under the interconnection agreement, generally speaking,  
12      the parties, the party which receives an IDR or request  
13      for an informal dispute resolution process, the party that  
14      receives that letter has five days to respond. Do you  
15      remember that kind of question?

16          A.       Correct.

17          Q.       And it is true that that is what the  
18      agreement generally says, that when a letter is submitted,  
19      the other party has five days in order to appoint a  
20      knowledgeable representative?

21          A.       Language varies from contract to contract,  
22      but something similar.

23          Q.       And in this case, the initial IDR letter as  
24      it were, the initial request letter was dated April 19 --

25          A.       Correct.

1 Q. -- from Mr. Jennings?

2 A. That's correct.

3 Q. And the e-mail from AT&T confirming you as  
4 the appointed representative was conveyed to Mr. Jennings  
5 on May 10?

6 A. Right.

7 Q. Which obviously is more than five days?

8 A. Correct. The first I heard of it was a few  
9 days prior to that, and then as soon as I was aware of it,  
10 I checked to see if this letter had been received. And  
11 once I was aware of the letter, then we responded  
12 accordingly that I would be the one assigned to it.

13 Q. Did Big River or Mr. Jennings ever express  
14 a desire to decline dispute resolution because your  
15 appointment was beyond five days?

16 A. No.

17 Q. And, in fact, you dealt with Mr. Jennings  
18 directly for a number of months through the end of 2011  
19 following his April letter; isn't that correct?

20 A. That is correct.

21 Q. You were also asked a couple of questions  
22 about your knowledge, and I believe you had mentioned  
23 briefly before in the middle of a question perhaps that  
24 you had consulted with your subject matter expert, your  
25 attorney and your product manager, Montee, Lemoine and --

1 A. Stanley Mensinger.

2 Q. -- Stan Mensinger. Is it your  
3 understanding that Mr. Jennings likewise consulted with  
4 his subject matter experts during the course of this  
5 dispute resolution?

6 A. That was my understanding.

7 Q. Tell us how you acquired that  
8 understanding.

9 A. Because when we were on a conference call  
10 together, we both agreed that we would go back internally  
11 and talk to our technical folks for further clarification  
12 because Mr. Jennings was having trouble explaining  
13 enhanced services and wanted to get some examples. So he  
14 had to go back to his technical folks, and he sent me a  
15 letter sometime in May with additional information.

16 Q. You never made the point to Mr. Jennings  
17 that you felt he was not sufficiently knowledgeable to  
18 carry on the dispute because he was turning to subject  
19 matter experts, did you?

20 A. Correct.

21 Q. And, in fact, after he turned to those  
22 subject matter experts, he created and sent to AT&T his  
23 April -- I'm sorry, his May 19 letter?

24 A. Correct.

25 Q. In which, did he not, he made additional

1     **points that previously were not made?**

2                   MR. HOWE: I'm going to object to the  
3     leading form of the question.

4                   MR. GRYZMALA: Excuse me.

5     BY MR. GRYZMALA:

6                   **Q.     After he consulted with his experts, did**  
7     **you receive a letter?**

8                   A.     Yes.

9                   **Q.     And what was the date of that letter?**

10                  A.     I believe May 19th. I don't have it in  
11     front of me. I'd have to look at my testimony to have the  
12     date of it.

13                  **Q.     Just a couple more questions. Ms. Mullins,**  
14     **you were also asked about reference or language in the**  
15     **interconnection agreement that binds the parties to**  
16     **resolve matters within 60 days. Do you remember that line**  
17     **of questioning?**

18                  A.     Yes.

19                         MR. GRYZMALA: May I approach?

20                         JUDGE BUSHMANN: Yes.

21     BY MR. GRYZMALA:

22                  **Q.     I've just handed you what's previously been**  
23     **admitted into evidence, the general terms and conditions**  
24     **of the contract between the parties, and I don't have my**  
25     **own copy in front of me, but I believe it's Section 13.4.2**



1     that deals with the 60 day reference --

2             A.       Yes.

3             Q.       -- is that correct?

4                     Would you kindly read into the record the  
5     second sentence of 13.4.2?

6             A.       The parties will endeavor to resolve the  
7     dispute within 30 to 60 calendar days after receipt of the  
8     nonpaying party's written notice.

9             Q.       Did you endeavor to resolve the dispute in  
10    a timely manner?

11            A.       Yes.

12            Q.       In fact, it was not resolved within 60  
13    days, was it?

14            A.       No.

15            Q.       As measured from the date of Mr. Jennings'  
16    letter, April 19, correct?

17            A.       Correct. But this language is more about  
18    the service center than myself.

19            Q.       But nevertheless, the language says the  
20    parties will endeavor to do that, it doesn't say it must  
21    be done?

22            A.       Correct.

23            Q.       All right. You were also asked about --  
24    that's all I have on that, Ms. Mullins.

25            A.       Okay.

1 Q. You were also asked about the November 1  
2 letter that you sent to Mr. Jennings closing the dispute?

3 A. Yes.

4 Q. Okay. And I don't want to go into that in  
5 great detail, but I want to make sure I understand your  
6 testimony here. Your testimony, and I think the record is  
7 very clear, that the dispute was formally denied on  
8 November 1 of 2012, correct?

9 A. 2011.

10 Q. I'm sorry. 2011.

11 A. Correct.

12 Q. Okay. And then you had discussions with  
13 Mr. Jennings thereafter about potentially reopening the  
14 dispute?

15 A. Yes.

16 Q. Because he had received or Big River had  
17 received or AT&T had commenced collection activity?

18 A. Correct.

19 Q. And then on November 30, is it your  
20 understanding Big River requested call detail data?

21 A. Yes.

22 Q. You were also pointed to Exhibit 15. I  
23 believe you may have it before you already, the  
24 September 12, 2011 letter you wrote to Mr. Jennings.

25 A. Okay.

1 Q. Take your time, see if you still have that.

2 A. Yes, I have Exhibit 15.

3 Q. And the point was made, if I recall your  
4 testimony, that the last paragraph on that first page --

5 A. Uh-huh.

6 Q. -- merely refers to VOIP. Do you recall  
7 that testimony?

8 A. Yes.

9 Q. And that line of questioning?

10 A. Yes.

11 Q. And the question that you were presented  
12 was, isn't it so that that paragraph does not mention  
13 interconnected VOIP. Do you remember that question?

14 A. Yes.

15 Q. Let me refer you to the second paragraph of  
16 that letter.

17 A. Okay.

18 Q. And ask if the second line, the first  
19 sentence refers specifically to interconnected voice over  
20 Internet protocol?

21 A. Yes, it does.

22 Q. And does it not then thereafter employ what  
23 we would call a parenthetical of VOIP?

24 A. Yes.

25 Q. Okay. And when Mr. Jennings asked you to

1 open up or reopen the IDR process, he did not then and  
2 there suggest to you that the reason he wanted to do so  
3 was because he had any questions about the accuracy or the  
4 completeness of the billing; is that correct?

5 A. No.

6 Q. So that is correct?

7 A. That is correct. It was never mentioned.

8 Q. He mentioned he received a collection  
9 letter, was that your testimony?

10 A. Correct.

11 Q. All right. You were asked about the audit  
12 provisions of the interconnection agreement, which is  
13 Section 38.

14 A. Yes.

15 Q. Obviously -- well, strike that.

16 Did you receive notice of any audit  
17 request?

18 A. No, I did not.

19 Q. Did Mr. Jennings ever ask you to undertake  
20 an audit?

21 A. No.

22 Q. Or wish -- or express to you a desire that  
23 Big River wanted an audit?

24 A. No, he didn't.

25 Q. Let me refer your attention -- and I think

1 the line of questioning that was proceeded upon earlier  
2 was that this particular provision doesn't specify any  
3 particular way of notifying the company about an audit  
4 request, does it?

5 A. No.

6 Q. Let me turn your attention to Section 15.3  
7 of the interconnection agreement. I'm sorry. Strike  
8 that. 15.1.

9 A. Okay.

10 Q. On the Commission's approved copy it would  
11 be page 27 on the bottom right. Are you at 15.1?

12 A. Yes, I have it here.

13 Q. Just simply read the last sentence and stop  
14 at the colon.

15 A. Unless otherwise specifically provided in  
16 this agreement, notice will be directed as follows.

17 Q. And is it fair to state that thereafter  
18 what follows is the names of those individuals by name who  
19 will be notified, and in the case of notification to the  
20 CLEC, it's Mr. John Jennings with copies to Mr. Howe and  
21 his attorney Carl Lumley?

22 A. Yes.

23 Q. And in the case of SBC Missouri, now AT&T  
24 Missouri, it goes to Contract Management?

25 A. Yes.

1 Q. Correct?

2 A. That's correct.

3 Q. Mr. Jennings is familiar with Contract  
4 Management and this notice provision, is he not?

5 A. Correct.

6 Q. In fact, his April 19, 2011 letter was  
7 directed to Contract Management, wasn't it?

8 A. Yes.

9 Q. There's no indication in the company's  
10 books or records that an audit request or any other letter  
11 under Section 38 of the general terms and conditions was  
12 directed to Contract Management in this case; is that  
13 correct?

14 A. Not to my knowledge.

15 MR. HOWE: Your Honor, I've let a lot of  
16 these leading questions go, but I'm going to object to the  
17 form.

18 JUDGE BUSHMANN: Do you want to rephrase?

19 BY MR. GRYZMALA:

20 Q. Are you aware of any notice received by  
21 Contract Management invoking Section 38 of the GTs and Cs  
22 in this case?

23 A. No.

24 Q. You're not?

25 A. No, I'm not aware of them.

1 MR. GRYZMALA: That's all I have, your  
2 Honor.

3 JUDGE BUSHMANN: Okay. Mr. Howe, just a  
4 question. On the exhibits that you referred to, 12  
5 through 17, did you want to offer those?

6 MR. HOWE: Yes, your Honor. I realize I  
7 had forgotten to ask that they be admitted into evidence.

8 JUDGE BUSHMANN: Is there any objection to  
9 those exhibits?

10 MR. GRYZMALA: Can I kindly ask just to run  
11 me through them real quick? I didn't pick up on the  
12 numbering. Exhibit 12 is?

13 JUDGE BUSHMANN: My information is that's  
14 AT&T's response to interrogatory No. 8. Correct me,  
15 Mr. Howe, if I'm making mistakes here.

16 MR. GRYZMALA: Big River 12 that is?

17 JUDGE BUSHMANN: Yes.

18 MR. GRYZMALA: No objection, your Honor.

19 JUDGE BUSHMANN: 13 would be AT&T's  
20 response to interrogatory No. 15.

21 MR. GRYZMALA: No objection.

22 JUDGE BUSHMANN: 14 would be a letter dated  
23 November 1st, 2011 from Ms. Mullins to Mr. Jennings.

24 MR. GRYZMALA: No objection.

25 JUDGE BUSHMANN: 15 is a letter dated

1 September 12, 2011 from Ms. Mullins to Mr. Jennings.

2 MR. GRYZMALA: No objection.

3 JUDGE BUSHMANN: 16 appears to be a portion  
4 of the intercarrier compensation agreement, pages 262  
5 through 3. That may already be in the record.

6 MR. GRYZMALA: Yeah, they are. They are.  
7 They are in AT&T's exhibits, but I would have no objection  
8 if you would like to --

9 JUDGE BUSHMANN: And then 17 is the general  
10 terms and conditions, pages --

11 MR. GRYZMALA: That likewise is already in  
12 the record, too.

13 JUDGE BUSHMANN: Any objections from Staff?

14 MR. GRYZMALA: No objection.

15 MR. BORGMEYER: Staff has no objections.

16 JUDGE BUSHMANN: Then Big River Exhibits 12  
17 through 17 will be received into the record.

18 (BIG RIVER EXHIBIT NOS. 12 THROUGH 17 WERE  
19 RECEIVED INTO EVIDENCE.)

20 JUDGE BUSHMANN: That completes your  
21 testimony. Why don't we take a break at this point for  
22 about 15 minutes before the final witness is called. Why  
23 don't we take a recess until 2:50.

24 (A BREAK WAS TAKEN.)

25 JUDGE BUSHMANN: Why don't we get started



1 again. Next witness or final witness today is William  
2 Voight.

3 (Witness sworn.)

4 JUDGE BUSHMANN: You may be seated.

5 WILLIAM L. VOIGHT testified as follows:

6 DIRECT EXAMINATION BY MR. BORGMEYER:

7 Q. Good afternoon, Mr. Voight.

8 A. Good afternoon.

9 Q. Will you state -- will you state your name  
10 for the record, please.

11 A. William L. (Bill) Voight.

12 Q. And how are you employed, Mr. Voight?

13 A. I'm the supervisor of telecommunications  
14 rates and tariffs section, Missouri Public Service  
15 Commission.

16 Q. And are you the same William L. Voight who  
17 filed rebuttal testimony in this case?

18 A. Yes.

19 Q. Is that testimony -- or do you have any  
20 corrections to that testimony?

21 A. No.

22 Q. Is it true and correct to the best of your  
23 knowledge and belief?

24 A. Yes.

25 Q. If I asked you the same questions today as

1     **are in this testimony, would you give the same answers?**

2             A.       Yes.

3             MR. BORGMEYER: Your Honor, I believe this  
4     testimony's already been admitted to the record, so I will  
5     tender the witness for cross-examination.

6             JUDGE BUSHMANN: That is my understanding  
7     as well. Cross-examination by Big River?

8             MR. HOWE: Big River understands that  
9     Mr. Voight intends to retire soon and that this may be his  
10    last hearing, so we're going to let him enter retirement  
11    unperturbed by our questions.

12            THE WITNESS: That's too easy.

13            JUDGE BUSHMANN: Very well.  
14    Cross-examination by AT&T?

15            MR. GRZYMALA: Always willing to join the  
16    party, your Honor. No questions by AT&T.

17            JUDGE BUSHMANN: Any questions,  
18    Commissioner Kenney?

19            COMMISSIONER KENNEY: No, thank you.

20            JUDGE BUSHMANN: I just have a couple of  
21    questions. Won't take very long.

22    QUESTIONS BY JUDGE BUSHMANN:

23            Q.       **Could you clarify for me the distinction**  
24    **between voice over Internet protocol and interconnected**  
25    **voice over Internet protocol?**

1           A.       Yes, your Honor. The interconnection --  
2   interconnected aspect, the I in front of VOIP means that  
3   the subscriber to that has the ability to make calls to  
4   and receive calls from the public switch telephone number.  
5   IVOIP subscribers have a ten-digit telephone number  
6   assigned to their service. Whereas, a VOIP would occur  
7   solely on the Internet and would utilize the IP addresses  
8   and that sort of thing. So the I means that they can have  
9   the ability to receive calls from and make calls to plain  
10  old telephone service.

11           **Q.       Based upon your personal knowledge of Big**  
12 **River's system and network, does the service that they**  
13 **provide require a broadband connection at the user's**  
14 **location?**

15           A.       Yes, your Honor. Based on my reading of  
16 their testimony, the testimony in this case, the affidavit  
17 of Big River's chief executive officer, the company's  
18 position statements, everything I can determine about Big  
19 River's digital telephone service, it does require a VOIP,  
20 IVOIP connection, broadband connection.

21           **Q.       Well, let's assume for a moment that Big**  
22 **River's traffic is not IVOIP. In that case, would you**  
23 **characterize the traffic that they deliver to AT&T as**  
24 **enhanced services traffic?**

25           A.       No, your Honor, I would not. Yesterday we

1 looked at Big River's annual report. It had telephone  
 2 lines in the back of it, in the Missouri annual report.  
 3 While we do not know categorically whether or not -- their  
 4 chief financial officer was asked, are these lines IVOIP  
 5 lines or are they essentially plain old telephone lines?  
 6 The witness didn't know.

7 But I -- based on my experience, there's  
 8 undoubtedly some of Big River's customers are plain old  
 9 telephone line subscribers, and when they make calls that  
 10 are routed, that Big River routes to AT&T, that would not  
 11 necessarily be an IVOIP call. However, under no  
 12 circumstances that I'm able to tell is Big River offering  
 13 any sort of an enhanced service.

14 JUDGE BUSHMANN: That's all the questions I  
 15 have. This will be an opportunity for recross based on  
 16 questions from the Bench. Does Big River have any recross  
 17 they'd like to make?

18 MR. HOWE: I think just one, your Honor.

19 RECROSS-EXAMINATION BY MR. HOWE:

20 Q. Mr. Voight, are you aware that the FCC in  
 21 its recent eighth order has changed the definition of  
 22 broadband to 4 megabits?

23 A. I'm aware of the -- the answer to your  
 24 question, sir, is no. I have read the sixth order and  
 25 quite possibly part of the eighth order. I'm aware that

1 the FCC has very much discussed as a matter of national  
2 policy for the purposes of that document and a report to  
3 Congress only a preference for broadband circuits in  
4 America to be a combined 5 megabits under some newer  
5 evolving standards. But I'm not aware, to answer your  
6 question directly, I'm not aware that the federal  
7 government or the FCC has mandated that as any sort of a  
8 definitive standard.

9 **Q. To your knowledge, does Big River's service**  
10 **require 4 megabits?**

11 **A.** No, it does not.

12 **MR. HOWE:** Nothing further.

13 **JUDGE BUSHMANN:** Questions by AT&T?

14 **MR. GRYZMALA:** No, your Honor. Thank you.

15 **JUDGE BUSHMANN:** Any redirect from Staff?

16 **REDIRECT EXAMINATION BY MR. BORGMEYER:**

17 **Q. Mr. Voight, just a couple quick questions.**  
18 **Even if Big River's traffic doesn't require 4 megabits,**  
19 **does it still require a broadband connection?**

20 **A.** Yes. The traffic that we're -- that's at  
21 issue in this proceeding, yes, it requires a broadband  
22 connection.

23 **Q. And then can you explain why?**

24 **A.** Well, because it meets the definition of a  
25 broadband connection by any standard that I've ever been

1 familiar with, and it's more than a dial-up service is the  
2 short answer.

3 **Q. Can Big River's traffic be sent over a**  
4 **dial-up service?**

5 A. No, it cannot, because the traffic that's  
6 at issue in this case, as I understand it, is a --  
7 involves an Internet protocol conversion to take place at  
8 the customer premise, and Big River could not offer that  
9 over a dial-up service.

10 **Q. So does an Internet protocol conversion**  
11 **require a broadband connection?**

12 A. Yes.

13 **Q. If I have a -- if I have a broadband**  
14 **connection at my house, does that mean that my computer is**  
15 **always sending information at 4 megabytes per second?**

16 A. No. It's not always transmitting  
17 necessarily any speed much less something on the  
18 neighborhood of 4, and it's megabits, not bytes, but the  
19 answer to your question is no. There may be bursts where  
20 it transmits 4 megabits. There may be other times where  
21 it's something far less than that.

22 **Q. But that doesn't mean that it's no longer**  
23 **broadband, does it?**

24 A. No. No. Not by any reasons, no. It's a  
25 broadband connection even if at times the actual speed may

1 be slow, something far less than 4 megabits.

2 MR. BORGMEYER: Thank you. I have no  
3 further questions.

4 JUDGE BUSHMANN: Thank you, Mr. Voight.

5 THE WITNESS: Thank you.

6 JUDGE BUSHMANN: Any parties have any final  
7 matters that need to be taken up at this point?

8 MR. HOWE: Your Honor, I had a question  
9 about whether there was ever a ruling in regard to the  
10 admissibility of Claude Rich's affidavit, which I believe  
11 was AT&T's Exhibit 19.

12 JUDGE BUSHMANN: My records indicate that  
13 was not offered or received.

14 MR. HOWE: Okay.

15 JUDGE BUSHMANN: The late-filed exhibits,  
16 let me remind you about that. Those would need to be  
17 filed by AT&T Missouri by January 14th, no later than  
18 January 14th, objections filed no later than January 18th.

19 The transcript will need to be expedited.  
20 That should be available on January 14th. Initial briefs  
21 are due on January 28th. Proposed orders due on  
22 January 31st, and that's optional for Staff, and reply  
23 briefs are due on February 7th.

24 I believe that's everything that we need to  
25 take care of today. The hearing is now adjourned. We're

1 off the record.

2 (WHEREUPON, the hearing concluded at

3 3:00 p.m.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI )

3 ) ss.

4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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18 \_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR

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