

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Big River Telephone Company, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2007-0085
	)	
Southwestern Bell Telephone, L.P.	)	
d/b/a AT&T Missouri,	)	
	)	
Respondent.	)	

**AT&T MISSOURI’S ANSWER TO THE  
COMPLAINT OF BIG RIVER**

Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”), pursuant to Rule 2.070(8) (4 CSR 240-2.070(8)), hereby files its Answer to the Complaint of Big River Telephone Company, LLC (“Big River”).

As explained in AT&T Missouri’s Motion to Dismiss the Complaint (filed contemporaneously herewith), Big River’s Complaint fails to state a claim on which relief may be granted by the Commission and seeks relief which is beyond the jurisdiction of this Commission to grant. This Answer is filed in compliance with the above-referenced rule, without prejudice to AT&T Missouri’s Motion to Dismiss, which should be granted, and without waiving AT&T Missouri’s objection to the Commission’s jurisdiction in this case.

As and for its further Answer to the Complaint, AT&T Missouri states as follows:

1. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and therefore denies same.
  
2. Paragraph 2 of the Complaint makes no factual allegations and does not require a response.

3. AT&T Missouri admits the allegations of paragraph 3 of the Complaint with the exception of the assertion that it is a non-competitive exchange carrier. AT&T Missouri notes that its services have been declared competitive in many exchanges pursuant to Section 392.245 RSMo.

4. AT&T Missouri admits that Missouri statutes confer upon the Commission limited jurisdiction over certain activities of telecommunications companies such as Big River and AT&T Missouri. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 4 of the Complaint, and further specifically denies that the Commission has requisite jurisdiction, or any substantive basis under governing law, to adjudicate Big River's claims or to grant Big River relief in this case.

5. AT&T Missouri admits that on or about August 13, 2005, in Case No. TK-2006-0073, the Commission purported to approve an interconnection agreement containing, among other things, obligations concerning Section 271 of the Act, and that on or about October 25, 2005, the Commission approved an errata to the agreement. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 5 of the Complaint.

6. AT&T Missouri admits that the term of the interconnection agreement referenced in paragraph 5 above expires on or about November 10, 2008. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 6 of the Complaint.

7. AT&T Missouri states that the terms of the interconnection agreement referred to in paragraph 5 above speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 7 of the Complaint.

8. AT&T Missouri states that the terms of the interconnection agreement referred to in paragraph 5 above speak for themselves. AT&T Missouri further admits that it received a

letter dated February 13, 2006 from Gerard J. Howe of Big River, addressed to “Contract Processing,” which letter enclosed executed signature pages of a commercial agreement (which included an Attachment Local Wholesale Complete<sup>TM</sup> with pricing schedule for a basic analog UNE-P replacement), which agreement was effective as of January 1, 2006, and which agreement by its express terms constitutes the entire agreement between the parties, and that the February 13, 2006, letter further states that Big River was working with AT&T personnel “with regards to migrating our base of UNE-P customers.” Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 8 of the Complaint.

9. AT&T Missouri states that the terms of the interconnection agreement referred to in paragraph 5 above speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 9 of the Complaint.

10. AT&T Missouri admits that on or about September 2, 2005, a Preliminary Injunction Order (“Preliminary Injunction”) was issued by the Honorable Charles A. Shaw in the federal district court case of Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission, et al., No 4:05-CV-1264 CAS, and that terms of the Preliminary Injunction speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 10 of the Complaint.

11. AT&T Missouri admits that in the fall of 2005, Big River had confirmed its intentions to transition Big River’s existing UNE-P lines as follows: approximately 80% to Big River’s facilities, approximately 10% to a negotiated commercial agreement between Big River and AT&T Missouri, and approximately 10% to resale – all by the end of February, 2006. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 11 of the Complaint.

12. AT&T Missouri admits that in February, 2006 it and Big River entered into a commercial agreement (which included an Attachment Local Wholesale Complete™ with pricing schedule for a basic analog UNE-P replacement), which agreement was effective as of January 1, 2006, and which agreement by its express terms constitutes the entire agreement between the parties. AT&T Missouri further admits that it received a letter dated February 13, 2006 from Gerard J. Howe of Big River, addressed to “Contract Processing,” which letter enclosed executed signature pages of the commercial agreement. AT&T Missouri states that the assertions made by Mr. Howe in that February 13, 2006, letter speak for themselves, though AT&T Missouri denies the efficacy of any assertions that are contrary to or that sought to modify or qualify the commercial agreement. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 12 of the Complaint.

13. AT&T Missouri states that the terms of the interconnection agreement referred to in paragraph 5 above, including the associated rates, speak for themselves. AT&T Missouri further states that the terms of the commercial agreement, including the associated rates, speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 13 of the Complaint.

14. AT&T Missouri admits that Big River has utilized local switching and loop capabilities from AT&T Missouri, but otherwise denies the allegation of paragraph 14 of the Complaint.

15. AT&T Missouri denies the allegations of paragraph 15 of the Complaint.

16. AT&T Missouri admits that Susan Kemp of AT&T Missouri sent an e-mail to Gerard J. Howe, Andrew Schwantner and John Jennings of Big River, on March 10, 2006 at approximately 2:13 p.m. AT&T Missouri states that the provisions of the e-mail speak for

themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 16 of the Complaint.

17. AT&T Missouri admits that on March 10, 2006, Susan Kemp received an e-mail from Gerard J. Howe in which Mr. Howe inquired as to whether the options which were the subject of AT&T Missouri's March 10, 2006 letter to Big River were of the kind "that we have to act on today" and that Ms. Kemp sent an e-mail the same day to Mr. Howe assuring him that "a decision is not required today." AT&T Missouri states that the provisions of the e-mail speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 17 of the Complaint.

18. AT&T Missouri admits that in or about March, 2006, it began billing Big River pursuant to the agreed-upon terms in the commercial agreement entered into between it and Big River, effective as of January 1, 2006. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 18 of the Complaint.

19. AT&T Missouri admits that on or about June 5, 2006, AT&T Missouri received an e-mail from Big River which stated, among other things, that Big River "would like to invoke our right to an informal dispute process" regarding the subject matter of Big River's Complaint. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 19 of the Complaint.

20. AT&T Missouri admits that on or about June 15, 2006, representatives of Big River and AT&T Missouri participated in a conference call. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 20 of the Complaint.

21. AT&T Missouri admits that on or about June 23, 2006, representatives of Big River and AT&T Missouri participated in a conference call. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 21 of the Complaint.

22. AT&T Missouri denies the allegations of paragraph 22 of the Complaint.

23. AT&T Missouri admits that on or about June 28, 2006, AT&T Missouri sent an e-mail to Big River attaching a letter stating, among other things: “The Preliminary Injunction Order currently in effect is directed to ‘orders for unbundled local switching or UNE-P pursuant to the Federal Telecommunications Act of 1996’ (‘the Act’). As advised on the [June 23] call, the express language of the Order prohibits the combining of 271 Switching with 251 loops, since both are ‘pursuant to’ the Act. Therefore, AT&T has no obligation to convert a portion of Big River’s embedded base of UNE-P lines to a combination of 271 and 251 elements.” AT&T Missouri further states that the provisions of the e-mail speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 23 of the Complaint.

24. AT&T Missouri admits that on or about July 6, 2006, it sent an e-mail to Big River. AT&T Missouri further admits that on or about August 1, 2006, AT&T Missouri sent an e-mail to Big River which stated, among other things: “Big River requested that AT&T exclude it from the upcoming LWC Phase II conversion. AT&T will accommodate Big River’s request by removing it from the system programming for the upcoming batch conversion.” AT&T Missouri further states that the provisions of the e-mail speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 24 of the Complaint.

25. AT&T Missouri admits that on or about July 28, 2006, it sent an e-mail to Big River. AT&T Missouri further states that the provisions of the e-mail speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 25 of the Complaint.

26. AT&T Missouri admits that the terms of the interconnection agreement referred to in paragraph 5 above speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 26 of the Complaint.

27. AT&T Missouri denies the allegations of paragraph 27 of the Complaint.

28. AT&T Missouri denies the allegations of paragraph 28 of the Complaint.

29. AT&T Missouri admits that it received a copy of the Complaint from Big River. Except as expressly admitted herein, AT&T Missouri denies the allegations of paragraph 29 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

As and for its affirmative defenses to the Complaint, AT&T Missouri states as follows:

1. The Commission is without subject matter jurisdiction with respect to Big River's Complaint inasmuch as the Commission is without requisite authority under Section 271 of the Act.

2. Big River's Complaint is barred by the terms of the Declaratory Judgment and Permanent Injunction, and Memorandum and Order, entered on or about September 15, 2006, in the federal district court case Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. The Missouri Public Service Commission, et al., No 4:05-CV-1264 CAS and/or the Preliminary Injunction Order issued in said case on or about September 2, 2005.

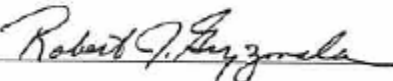
3. The Complaint, and all parts thereof, fail to state a claim on which relief may be granted.

4. Big River is not entitled to seek, nor can it be awarded, relief in connection with the facts giving rise to this matter because it does not have any basic analog commingled 271 UNE-Ps. Any basic analog UNE-Ps were converted to AT&T Missouri's commercial offering pursuant to the parties' commercial agreement. Moreover, this conversion was appropriate inasmuch as Big River's self-serving assertions as to the limits of the commercial agreement are expressly contrary to that agreement's provision that it "constitute[s] the entire agreement between the Parties" and that it "superseded[es] all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement."

5. Big River has failed to properly mitigate its damages.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on September 26, 2006.

  
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