

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Big River Telephone Company, LLC,)
)
 Complainant,)
)
v.)
)
SOUTHWESTERN BELL)
TELEPHONE, L.P. d/b/a)
AT&T MISSOURI)
)
 Respondent.)

Case No. TC-2012-0284

**BIG RIVER TELEPHONE COMPANY, LLC’S
MOTION FOR SUMMARY DETERMINATION**

COMES NOW, Big River Telephone Company, LLC (“Big River”) and, for its Motion for Summary Determination against Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”), states as follows:

BACKGROUND

1. In the case presently before the Commission, Big River filed a Complaint wherein it challenged access charges for which it was billed by AT&T Missouri.
2. AT&T Missouri filed an Answer to Big River’s Complaint and also filed its own Complaint against Big River.
3. Big River’s Complaint asserts that AT&T Missouri incorrectly billed Big River for access charges on enhanced services traffic.
4. In both its Answer and Complaint, AT&T Missouri contends that Big River’s traffic is not enhanced, and the traffic is, therefore, subject to access charges.
5. AT&T Missouri, however, has failed to establish the amount of the access charges it claims it is owed by Big River.

UNDISPUTED FACTS

6. Big River, in its Complaint, alleges that it owes no amount of access charges because 100% of its traffic is enhanced. (Big River Complaint, ¶ 17)
7. AT&T Missouri's Answer to Big River's Complaint does not set forth a specific amount that it claims Big River owes for access charges. (See AT&T Missouri's Answer)
8. Likewise, AT&T Missouri's Complaint does not set forth a specific amount that it claims Big River owes for access charges. (See AT&T Missouri's Complaint)
9. AT&T Missouri did not attach a single copy of any bill or statement of account to its Answer or Complaint in support of its position. (See AT&T Missouri's Answer, Complaint, and Testimony)
10. Before the formal Complaint was filed, Big River had requested documentation to support AT&T Missouri's billing. (Jennings Rebuttal, p. 4, l. 10-19)
11. AT&T Missouri has never provided documentation, other than one week's worth of traffic data, to support the amount of access charges it claims to be owed. (Jennings Rebuttal, p. 4, l. 10-19)
12. AT&T Missouri has never identified the access charge rate(s) it allegedly applied or the manner in which such rates were applied. (See AT&T Missouri's Answer, Complaint and Testimony)
13. AT&T Missouri has never identified the traffic for which it claims it is owed access charges or the jurisdictional nature of such traffic. (See AT&T Missouri's Answer, Complaint and Testimony)

14. AT&T Missouri has never identified the traffic for which it claims it is owed access charges or the number of minutes, calls, or rate elements to which AT&T allegedly applied those rates. (See AT&T Missouri's Answer, Complaint and Testimony)

15. AT&T Missouri has never even provided any evidence that the BAN on which it claims access charges are due involves traffic originated by Big River. (See AT&T Missouri's Answer, Complaint and Testimony)

16. Big River, by letter dated October 20, 2005, provided AT&T Missouri with a percent enhanced usage ("PEU) which Big River claimed was 100%. (Jennings Direct, p. 5, l. 3-8)

17. AT&T Missouri did not respond to Big River with any challenge to the PEU set forth in that letter. (Jennings Rebuttal, p. 1, l. 13-15)

18. AT&T Missouri did not exercise its right to audit the percent enhanced usage ("PEU") claimed by Big River's. (Jennings Rebuttal, p. 2, l. 11-13; Greenlaw Rebuttal, p. 1, l. 21-26)

19. AT&T Missouri has never identified what PEU it used in determining the amount of access charges it claims Big River owes. (Jennings Rebuttal, p. 2, l. 8-10)

20. One week's worth of traffic data was insufficient to allow Big River to reconcile AT&T Missouri's bills, which are based on a monthly cycle, to confirm the rates used, the jurisdictional nature of the traffic, the number of minutes, the PEU factor, whether the traffic originated from Big River's network, and whether or not the traffic was billed on any other BAN. (Jennings Rebuttal, p. 4, l. 10-19)

21. This was made apparent in Big River's responses to AT&T Missouri's Request for Admissions. (See Attachment A)

22. Of Big River's fourteen denials, eight of them explained that the denial was based on the fact that Big River did not possess information sufficient to admit or deny AT&T Missouri's request since AT&T failed to provide sufficient supporting detail for its bills. (See Attachment A)

23. Despite all of the above, AT&T Missouri's witness William Greenlaw testified that "Big River has never asserted that, if its traffic were classified as telecommunications services traffic, the amounts billed by AT&T Missouri were wrongly computed or would not otherwise be due in full." (Greenlaw Direct, p. 22, l. 1-3)

24. Mr. Greenlaw's statement is in direct contradiction to Big River's denial of Request for Admission number 17. (See Attachment A)

25. Further, Mr. Greenlaw does not work in AT&T Missouri's billing department and has no experience or expertise in billing or accounting. (Greenlaw Direct, p. 1, l. 8 through p. 2, l. 8)

26. Nor was he involved in the current billing dispute prior to the filing of Big River's Complaint with the Commission. (Jennings Rebuttal, p. 5, l. 9-12)

27. An unsubstantiated statement in William Greenlaw's direct testimony is the only pleading filed thus far by AT&T Missouri that mentions an amount allegedly owed by Big River. (Greenlaw Direct, p. 22, l. 17)

CONCLUSION

28. As shown above, Big River has asserted that AT&T Missouri has improperly billed it for access charges and that Big River owes no such charges.

29. AT&T Missouri has produced no evidence in its Answer, Complaint, or Testimony to establish the amount it claims Big River owes in access charges.

30. As such, AT&T Missouri has presented no genuine issue of material fact regarding the amount of access charges allegedly owed by Big River.

WHEREFORE, Big River Telephone Company, LLC respectfully prays that the Commission grant its Motion for Summary Determination and for such other and further relief as the Commission deems just and proper.

RESPECTFULLY SUBMITTED,
BIG RIVER TELEPHONE COMPANY,
LLC

/s/ Brian C. Howe

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon all parties via e-mail on November 9, 2012.

/s/ Brian C. Howe