

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-_____

COMPLAINT AND MOTION FOR EXPEDITED INTERIM RELIEF

COMES NOW Big River Telephone Company, LLC (“Big River”), pursuant to Sections 386.040, 386.230, 386.250, 386.310.1, 386.320.1, 386.330, 386.390, 386.400, 392.200.1, 392.240, and 392.400.6 RSMo.; the Telecommunications Act of 1996 (“the Act”) and FCC regulations and orders issued pursuant thereto; the Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.070; and the Commission-approved interconnection agreement between Big River and Southwestern Bell Telephone Company LP d/b/a AT&T Missouri (“AT&T”), and for its Complaint against AT&T states as follows:

Big River seeks relief from unlawful, abusive, and anticompetitive practices by AT&T regarding exchange access charges for enhanced services traffic. AT&T has imposed charges in violation of, and has asserted that it intends to ignore the provisions of, its Commission-approved interconnection agreement (ICA) with Big River that exempts enhanced services traffic from exchange access charges. AT&T has repeatedly asserted that Big River’s enhanced services traffic is subject to exchange access charges, contrary to the provisions of the ICA and federal law. In dollar terms, AT&T has sought to impose such charges going back to February 5, 2010

in an amount of \$334,557.21. AT&T has further compounded its unlawful conduct by threatening to refuse to accept requests for additional service and to suspend provision on all pending orders effective as soon as March 1, 2012, which would result in the disruption of Big River's service to its customers. Big River has been unsuccessful in its attempt to resolve this matter directly with AT&T. Accordingly, Big River herein seeks resolution of this dispute by the Commission as provided in the interconnection agreement.

PARTIES

1. Big River is a competitive facilities-based telecommunications limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to do business in the State of Missouri as a foreign corporation. Its principal place of business is located at:

24. S. Minnesota Ave.
Cape Girardeau, Missouri 63702
Telephone: (573) 651-3373
Facsimile: (573) 651-3605
E-Mail: jhowe@bigrivertelephone.com

2. Big River, pursuant to authority granted by the Commission, provides intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri. Big River is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

3. All inquiries, correspondence, communications, pleadings, notices, orders, and decisions relating to this matter should be directed to:

Brian C. Howe, #36624
Big River Telephone Company, LLC
12444 Powerscourt Drive, Suite 270
St. Louis, Missouri 63131
Telephone: (314) 225-2215
Facsimile: (314) 225-2521

Email: bhowe@bigrivertelephone.com

4. AT&T is a Texas limited partnership with its principal Missouri place of business located at One AT&T Center, Room 3520, St. Louis, Missouri 63101. AT&T is an incumbent local exchange carrier (“ILEC”), as defined in Section 251(h) of the Federal Act, and is a large local exchange carrier as defined by Sections 386.020, 392.361 and 392.245 R.S.Mo. Its address, telephone number and facsimile number are, respectively:

One AT&T Center, Room 3520
St. Louis, Missouri 63101
(314)235-4300
(314)247-0014 (FAX)

JURISDICTION

5. The Commission has general jurisdiction over both Big River and AT&T as telecommunications companies and their telecommunications facilities pursuant to Section 386.250 RSMo., including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to supervise AT&T and its facilities pursuant to Section 386.320 RSMo. The Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this one against AT&T, pursuant to Sections 386.230, 386.310, 386.320, 386.330, 386.390, 386.400, and 392.400.6 RSMo. The Commission also has jurisdiction to address this complaint regarding the terms and conditions of an interconnection agreement pursuant to the Act.

6. As described in greater detail herein below: (i) AT&T has violated Sections 392.200.1 and 392.240.2 RSMo by attempting to impose charges greater than those allowed by an approved interconnection agreement and the Commission’s orders relating thereto; (ii) AT&T

has violated Sections 392.200.6 and 392.240.3 RSMo by threatening to interrupt established connections between its facilities and those of Big River; and (iii) AT&T has violated the Act and related FCC rules and orders by attempting to impose inapplicable exchange access charges.

7. Big River is entitled to expedited interim relief on its Complaint before the Commission under Section 13.3.2 of the General Terms and Conditions of the parties' ICA, which governs dispute resolution when the dispute interrupts or threatens to interrupt service to an end-user customer. AT&T has threatened to refuse to accept requests for additional service and to suspend provision on all pending orders from Big River effective as soon as March 1, 2012. This would result in the disruption of Big River's services to its customers and poses a serious threat to the property interests of both Big River and its customers. As this dispute is customer-affecting, it qualifies for expedited dispute resolution under the ICA and interim relief pursuant to Section 386.310.1.

BACKGROUND

8. On or about August 13, 2005 in Case No. TK-2006-0073, the Commission approved an interconnection agreement made and submitted by Big River and AT&T, that was the product of an arbitration between the companies before the Commission in Case No. TO-2005-0336. On or about October 25, 2005, the Commission approved errata to the agreement. The ICA was amended again on November 2, 2009, which amendment was submitted to the Commission, Reference No. VT-2010-0011. The Commission should take notice of the agreement and its orders, which are contained in its files and incorporated herein by this reference. 9. The term of the approved ICA expired on November 10, 2011, but it is currently in effect on a month-to-month basis pursuant to paragraph 4.2 of the General Terms and Conditions of the ICA.

10. Attachment 12, section 13.3 of the ICA distinguishes between VOIP traffic and other enhanced services traffic, and covers the exchange of both categories of “IS Traffic”, providing:

Notwithstanding any other provision of this Agreement, the Parties shall exchange enhanced/information services traffic, including without limitation Voice Over Internet Protocol (“VOIP”) traffic and other enhanced services traffic (collectively, “IS Traffic”), in accordance with this section. IS Traffic is defined as traffic that undergoes a net protocol conversion, as defined by the FCC, between the calling and called parties, and/or traffic that features enhanced services that provide customers a capability for generating, acquiring storing, transforming, processing, retrieving, utilizing, or making available information. The Parties shall exchange IS Traffic over the same interconnection trunk groups used to exchange local traffic. In addition to other jurisdictional factors the Parties may report to one another under this Agreement, the Parties shall report a Percent Enhanced Usage (“PEU”) factor on a statewide basis or as otherwise determined by CLEC at its sole discretion. The numerator of the PEU factor shall be the number of minutes of IS Traffic sent to the other Party for termination to such other Party’s customers. The denominator of the PEU factor shall be the total combined number of minutes of traffic, including IS Traffic, sent over the same trunks as IS Traffic. Either Party may audit the other Party’s PEU factors pursuant to the audit provisions of this Agreement. The Parties shall compensate each other for the exchange of IS Traffic applying the same rate elements used by the Parties for the exchange of ISP-bound traffic whose dialing patterns would otherwise indicate the traffic is local traffic. This compensation regime for IS Traffic shall apply regardless of the locations of the calling and called parties, and regardless of the originating and terminating NPA/NXXs.

11. As indicated above, an amendment to the ICA was accepted by the Commission on November 5, 2009.

12. The amendment stated, in pertinent part, “The Parties shall exchange interconnected voice over Internet Protocol (“VOIP”) served traffic, as defined in Section 386.020 RSMo. subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges; provided, however, to the extent that as of August 28, 2008, the Agreement contains intercarrier compensation provisions specifically

applicable to interconnected voice over internet protocol service traffic, those provisions shall remain in effect through December 31, 2009, and the intercarrier compensation arrangement described in the first clause of this Section shall not become effective until January 1, 2010.” This amendment implemented the provisions of Section 392.550.2 (HB 1779), and neither the statute nor the amendment purported to change the provisions of the ICA regarding other enhanced services traffic besides VOIP traffic.

13. Section 386.020 RSMo defines VOIP as service that:

- (a) Enables real-time, two-way voice communications;
- (b) Requires a broadband connection from the user’s location;
- (c) Requires Internet protocol-compatible customer premises equipment; and
- (d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

14. Section 13.3.2 of the General Terms and Conditions of the Commission approved Big River – AT&T Interconnection Agreement states, “Notwithstanding the other dispute resolution procedures set forth in this Agreement, a Party may seek emergency relief from the Commission for the resolution of any problem that interrupts or threatens to interrupt the service of either Party’s customers. In such instance, the Parties agree to provide all filings and submissions required by the Commission on an expedited basis, in accordance with the practices and rules of the Commission.” Section 386.310.1 similar authorized emergency interim relief.

15. Section 13.5.1 of the General Terms and Conditions further provides: “Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement require clarification, renegotiation, modifications or additions to this Agreement,

either party may invoke dispute resolution procedures available pursuant to the complaint process of the MO-PSC....”

16. Section 13.3.3 of the General Terms and Conditions states, “If CLEC files a dispute and seeks interim relief from the Commission, then SBC MISSOURI may not disconnect CLEC or suspend order acceptance over any open issues involved in the dispute until the Commission has finally ruled on the interim relief request.”

DISPUTE

17. At about the time the Commission approved the Big River-AT&T Interconnection Agreement, on October 20, 2005, in accordance with Attachment 12, section 13.3, Big River informed AT&T that its Percent Enhanced Usage (“PEU”) was 100%.

18. AT&T ignored the PEU provided by Big River and immediately proceeded to bill Big River for exchange access charges on its enhanced services traffic.

19. Big River disputed these charges, but AT&T denied the dispute.

20. Eventually, Big River filed suit against AT&T challenging the access charges applied to enhanced traffic among other billing disputes.

21. As part of the settlement of that lawsuit, AT&T credited Big River in full for the access charges.

22. Big River’s PEU since that time has continued to be 100% and Big River has reported that PEU to AT&T.

23. AT&T again began billing Big River for exchange access charges related to Big River’s enhanced services traffic on BAN 110 401 0113 803 as of February 5, 2010 and continues to do so. Neither the Amendment, nor HB 1779, allows the Parties to assess exchange

access charges on “Enhanced/Information Services traffic”, and such charges are still prohibited by the Big River-AT&T Interconnection Agreement.

24. Big River disputed these charges under the informal dispute process of the terms of the ICA and stated that its traffic is Enhanced/Information traffic due to the nature of the capabilities of Big River’s network.

25. Representatives of the parties participated in a conference call on May 13, 2011, in an attempt to resolve the billing issue.

26. Pursuant to a request made by AT&T during the conference call, Big River supplied AT&T with examples of its enhanced services capabilities via correspondence dated May 19, 2011.

27. In that letter, a copy of which is attached hereto, Big River explained that its network receives communications in digital PCM form from the PSTN and packetizes the media into IP datagrams and compresses the content of the communication, i.e., from 64Kbps to 8Kbps. In addition to the calls to and from Big River’s network being converted to IP, the compression algorithms used by Big River change the format, content, code, protocol and other aspects of the subscribers’ transmitted information as specified in Federal rules defining the characteristics of Enhanced Services (47 CFR 64.702(a)).

28. Further, Big River’s network allows a subscriber to activate a program to begin recording mid-call and store the recording for later access via phone or email.

29. Big River’s switching system employs computer processing that allows a subscriber to view, configure, and manage their call-handling options. They can reject calls, forward calls, challenge callers who have withheld their number, or have the phone ring with a special tone. The subscriber can configure the incoming call manager through a Big River web

portal, essentially allowing Big River subscribers to interact with stored information on Big River's network and make real-time changes to the network as described in Federal rules specifying the characteristics of Enhanced Services (47 CFR 64.702(a)).

30. Big River's network also provides the functionality whereby a facsimile transmission is converted from raw telecommunications signals to data formatted in a standard PDF (Portable Document Format) and forwarded to the subscriber's email address, again significantly changing the format, content, code, protocol and other aspects of the subscriber's transmitted information.

31. Big River's network is also capable of direct interface to information via the web. One such service developed by Big River allows a Big River subscriber to dial a number to access the latest GoogleNews from their telephone. Big River's network responds to the subscriber's call, immediately accesses the Internet using HTTP (Hypertext Transfer Protocol), retrieves the latest headlines from GoogleNews in an XML (Extended Markup Language) format with ASCII encoded text, converts the text into a digital audio format which is then converted to audio and played back to the subscriber over their Big River connection. Again, the format, content, code, protocols and other aspects of this call are changed significantly within Big River's network to enable this functionality.

32. These capabilities are available to all subscribers and provide enhanced functionality well beyond the capabilities of VOIP.

33. AT&T has taken the position that all enhanced services traffic is now subject to exchange access charges because of Section 392.550 RSMo.

34. AT&T claims that Big River owes approximately \$335,000 in exchange access charges.

35. AT&T has threatened that, if the exchange access charges are not paid pursuant to its demands, “requests for additional service will not be accepted and provisioning activity on all pending orders will be suspended.” Big River understands AT&T intends to implement that threat as soon as March 1, 2012.

36. AT&T is attempting to force Big River to pay exchange access charges on enhanced services in violation of state and federal law.

37. Section 392.550 only provides that “Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges.”

38. AT&T wrongly interprets Section 392.550 to mean that all enhanced services traffic is subject to exchange access charges. This interpretation is contrary to federal law, the interconnection agreement, and Missouri law.

39. The FCC has held that access charges are inapplicable to “enhanced services” or “information services”.

40. Enhanced services are services “which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.” 47 C.F.R. §64.702(a)

41. The Act defines “information services” as “the offering of a capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”

42. The services available to subscribers of Big River's network are "enhanced services" or "information services", not VOIP, and are, therefore, not subject to exchange access charges.

43. Big River has already delivered a copy of this Complaint to AT&T as notice of its intent to seek formal dispute resolution.

WHEREFORE, Big River prays the Commission to:

- (1) immediately formally serve this Complaint and its notice upon AT&T, directing AT&T to answer this Complaint;
- (2) immediately issue an order directing AT&T not to refuse to accept requests for additional service or to suspend provision on pending orders from Big River;
- (3) promptly set a prehearing conference and a deadline to file a procedural schedule so this case may proceed expeditiously;
- (4) after further proceedings herein, determine that Big River does not owe any of the amounts claimed by AT&T for exchange access charges on enhanced services traffic; and
- (5) grant such other and further relief to Big River as the Commission deems just and proper.

RESPECTFULLY SUBMITTED,
BIG RIVER TELEPHONE COMPANY, LLC

/s/ Brian C. Howe

Brian C. Howe, #36624

Big River Telephone Company, LLC

12444 Powerscourt Drive, Suite 270

St. Louis, Missouri 63131

Telephone: (314) 225-2215

Facsimile: (314) 225-2521

bhowe@bigrivertelephone.com

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 1st day of March, 2012, by placing same in the U.S. Mail, postage paid and by fax or email transmission.

/s/ Brian C. Howe

Office of Public Counsel
Governor Office Building, Suite 650
P.O. Box 2230
Jefferson City, Missouri 65102
Fax 573-751-5562

Office of General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102
Fax 573-751-9285

Legal Department
AT&T Missouri
One AT&T Center, Room 3520
St. Louis, Missouri 63101-1976
Fax 314-247-0014