

Exhibit No.:
Issues: Network and Technical
Witness: Mark Neinast
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone
Company, d/b/a AT&T Missouri
Case No.: TC-2012-0284

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January 16, 2013
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Missouri Public
Service Commission

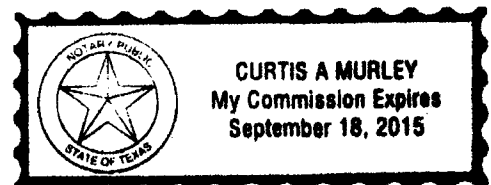
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Case No. TC-2012-0284

**Surrebuttal Testimony of Mark Neinast
On Behalf of AT&T Missouri**

November 30, 2012

AT&T Exhibit No. 3
Date 1-08-13 Reporter XF
File No. TC-2012-0284



1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Mark Neinast.

4 **Q. ARE YOU THE SAME MARK NEINAST WHO SUBMITTED DIRECT AND**
5 **REBUTTAL TESTIMONY IN THIS MATTER ON SEPTEMBER 28, 2012 AND**
6 **OCTOBER 19, 2012, RESPECTIVELY?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

9 A. I will respond to the pre-filed rebuttal testimony of the Missouri Public Service
10 Commission's Staff concerning its analysis of the Big River traffic that Big River is
11 terminating to AT&T. This traffic is the traffic on which AT&T billed the exchange
12 access charges at issue in this case.

13 **Q. DO YOU AGREE WITH STAFF THAT BIG RIVER HAS BEEN DELIVERING**
14 **INTERCONNECTED VOIP TRAFFIC TO AT&T?**

15 A. Yes.

16 **Q. DIDN'T YOU PREVIOUSLY SUGGEST THAT BIG RIVER'S TRAFFIC**
17 **ORIGINATED ON THE PUBLIC SWITCHED TELEPHONE NETWORK**
18 **("PSTN") IN TIME DIVISION MULTIPLEXING ("TDM") FORMAT?**

19 A. Yes, based largely upon a letter from Mr. Jennings (attached as Schedule MN-1 to my
20 pre-filed direct testimony) stating that Big River receives calls "in digital PCM form from
21 the PSTN" and Big River's description of its use of Internet Protocol ("IP") format in the
22 middle of the call path. However, Big River later asserted that Mr. Jennings' letter was
23 referring to traffic Big River received from AT&T (even though the parties' dispute
24 concerns only traffic going the other way, *i.e.*, traffic that Big River receives from its
25 customers and delivers to AT&T). See Howe Rebuttal, at p. 11, l. 10-13. More

1 importantly, in Mr. Howe's deposition, Big River for the first time provided details about
2 how traffic actually originates on its network and, as Staff concludes, that testimony
3 makes clear that Big River has been delivering interconnected Voice over Internet
4 Protocol (or "I-VoIP") traffic to AT&T.

5 **Q. PLEASE EXPLAIN.**

6 A. Mr. Howe explained at his deposition that most of Big River's end-user customers use
7 IP-based customer premises equipment that operates over a broadband connection. *See*
8 Howe Dep. at 14-16, 28. In particular, Big River partners with cable companies to
9 provide telephone service in IP format over the cable companies' "last mile" facilities,
10 and in some cases uses DSL (broadband service provided over "last mile" telephone
11 facilities) to provide telephone service in IP format. *See* Howe Dep. at 19-20.¹

12 Thus, when these Big River customers place a telephone call, that call originates
13 in IP format over a broadband connection, and consists of a real-time, two-way voice
14 communication. Further, this service by definition allows Big River's customers to
15 terminate calls to (and receive calls from) the PSTN – after all, the traffic at issue here
16 consists of calls placed by Big River customers that were terminated to AT&T's end-user
17 customers on the PSTN. As a result, as Staff explains, this is I-VoIP traffic. *See also*
18 Howe Dep. at 28-30 (explaining how Big River customers use IP compatible customer
19 premises equipment for telephone service that allows them to engage in real-time, two-
20 way voice communications, and to make calls to, and receive calls from, the PSTN).

¹ I am attaching to my testimony the pertinent portions of Mr. Howe's deposition testimony to which I refer, as Schedule MN-1.

1 **Q. DO YOU AGREE WITH STAFF THAT THE COMMISSION NEED NOT RULE**
2 **UPON WHETHER BIG RIVER'S TRAFFIC IS ENHANCED?**

3 A. To the extent Big River's traffic is I-VoIP traffic, I agree that the Commission need not
4 rule upon whether that traffic is enhanced. That is because paragraph 6 of the parties'
5 amendment to their interconnection agreement (approved in VT-2010-0011), attached to
6 my testimony as Schedule MN-2, expressly makes I-VoIP traffic subject to access
7 charges. As a consequence, the classification of I-VoIP traffic as enhanced or non-
8 enhanced is immaterial.

9 **Q. IS ALL OF BIG RIVER'S TRAFFIC I-VOIP TRAFFIC, AS STAFF SUGGESTS?**

10 A. It appears that all of the traffic at issue here – *i.e.*, traffic that Big River delivered to
11 AT&T for termination – is I-VoIP traffic, though not all of Big River's traffic more
12 generally is I-VoIP traffic. According to Mr. Howe's deposition testimony, while most
13 of Big River's customers receive voice service using a broadband connection and IP-
14 compatible customer premises equipment (and hence, as Staff correctly concludes,
15 receive I-VoIP service), a smaller number of customers are served via resale of a local
16 exchange carrier's local telephone service (including AT&T Missouri's local service) or
17 an equivalent of resale, such as AT&T's Local Wholesale Complete service. *See* Howe
18 Dep. at 16-17. In these cases, the customers originate traffic on the PSTN in TDM
19 format, as described in my prior testimony. Traffic that originates in this manner is not I-
20 VoIP traffic. However, Mr. Howe stated that calls from these customers "really don't go
21 in our network," and could be carried instead by other long distance carriers who carry
22 long distance traffic for Big River. Howe Dep. at 16-17, 23-24. This kind of traffic is
23 not at issue here, because the traffic at issue in this complaint, for which AT&T billed

1 Big River access charges, is traffic that Big River directly handed-off to AT&T, not
2 traffic which was delivered to AT&T by other long distance carriers.

3 **Q. TO THE EXTENT SOME OF BIG RIVER'S TRAFFIC IS NOT I-VOIP, IS THAT**
4 **TRAFFIC "ENHANCED"?**

5 No. Even if some of the long distance traffic Big River delivered to AT&T was not I-
6 VoIP traffic, it would still be subject to access charges because it is not enhanced services
7 traffic. As an initial matter, Mr. Howe explained at his deposition that some traffic from
8 Big River's customers does not even touch Big River's network. *See* Howe Dep. at 17,
9 23. Thus, the network functions Big River contends it uses to make its traffic "enhanced"
10 do not even come into play. Mr. Howe conceded at his deposition that in such cases,
11 where Big River provides telephone service that is not actually carried on Big River's
12 network, it provides a telecommunications service without any enhancement. Howe Dep.
13 at 50-51.

14 In any event, as Staff concludes, the kinds of quality or efficiency enhancements
15 that Big River purports to make do not fit the definition of an "enhanced" service, much
16 less show that 100% of Big River's traffic is "enhanced." *See* Staff Rebuttal at 12-13.
17 Indeed, Mr. Howe conceded at his deposition that Big River provides its retail telephone
18 customers telecommunications services *without* enhanced capabilities (Howe Dep. at 47),
19 including customers that purchase intrastate interexchange telecommunications services
20 from Big River's Missouri tariff who are not required to also purchase any enhanced
21 service (*id.* at 49-50). As a result, Big River's traffic could not possibly be 100%
22 enhanced, as Big River contends.

1 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

2 **A. Yes.**

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BIG RIVER TELEPHONE)	
COMPANY, LLC,)	
)	
Complainant,)	
)	
vs.)	Case No. TC-2012-0284
)	
SOUTHWESTERN BELL TELEPHONE,)	
d/b/a AT&T MOBILE,)	
)	
Respondent.)	

DEPOSITION OF GERALD HOWE
TAKEN ON BEHALF OF RESPONDENT
OCTOBER 23, 2012

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I N D E X

WITNESSES

ALL WITNESSES:

PAGE:

For Respondent:

Gerald Howe:

Direct Examination by Mr. Germann

5:10

EXHIBITS

NO.: DESCRIPTION:

PAGE:

For Respondent:

1 Big River's first supplemental responses
to AT&T's first set of interrogatories:
(Retained by court reporter)

10:23

2 Rebuttal testimony:
(Retained by court reporter)

26:1

3 Article from Connected Planet:
(Retained by court reporter)

31:9

4 Big River Telephone Company, Missouri
P.S.C. Tariff No. 1:
(Retained by court reporter)

49:17

5 Big River Telephone Company Master Service
Agreement:
(Retained by court reporter)

51:9

6 Cover Letter to the Minnesota Public
Service Commission:
(Retained by court reporter)

55:23

7 Big River's annual report:
(Retained by counsel)

62:1

8 Direct Testimony:
(Retained by court reporter)

67:14

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BIG RIVER TELEPHONE)
COMPANY, LLC,)
Complainant,)
vs.) Case No. TC-2012-0284
SOUTHWESTERN BELL TELEPHONE,)
d/b/a AT&T MOBILE,)
Respondent.)

DEPOSITION OF GERALD HOWE, produced, sworn, and
examined on October 23, 2012, between the hours of
eight o'clock in the forenoon and six o'clock in the
afternoon of that day, at the office of Big River
Telephone Company, LLC, 12444 Powerscourt Drive, Suite
270, St. Louis, Missouri, before Stephanie D. Darr, a
Certified Shorthand Reporter and Notary Public within
and for the State of Missouri, in a certain cause now
pending before the Public Service Commission, State of
Missouri in re: BIG RIVER TELEPHONE COMPANY, LLC vs.
SOUTHWESTERN BELL TELEPHONE, d/b/a AT&T MOBILE; on
behalf of the Respondent.

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1 IT IS HEREBY STIPULATED AND AGREED by
2 and between counsel for the Complainant and counsel
3 for the Respondent that this deposition may be taken
4 in shorthand by Stephanie D. Darr, CCR and Notary
5 Public, and afterwards transcribed into printing, and
6 signature by the witness expressly waived.

7 * * * * *

8 (WHEREIN, deposition proceedings began
9 at 1:03 p.m.)

10 GERALD HOWE,
11 of lawful age, produced, sworn, and examined on behalf
12 of Respondent, deposes and says:

13 EXAMINATION

14 QUESTIONS MR. GERMANN:

15 Q. Good afternoon, Mr. Howe. I'm Hans
16 Germann. I'm an attorney for AT&T Missouri. Have you
17 been deposed before?

18 A. In this case?

19 Q. No. In any case?

20 A. Yes.

21 Q. When was the last time you were
22 deposed?

23 A. Sitting here I can't recall.

24 Q. Has it been a while though?

25 A. I think so.

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1 customers places a call, that call eventually goes to
2 a Big River gateway; is that correct?

3 A. No. It's not correct.

4 Q. Is that because some calls don't go
5 through the gateway?

6 A. That is correct.

7 Q. Let's talk about those calls for a
8 second then. What kind of calls would not go through
9 a Big River gateway?

10 A. Those Big River customers that are not
11 served by a gateway who call and are not a Big River
12 customer not served by a gateway. It would also
13 include Big River customers that call or make a call
14 where we interconnect with another carrier that
15 doesn't require a gateway.

16 Q. Why are some Big River customers not
17 served by a gateway?

18 A. Because as we indicated here they have
19 a device that doesn't require services of a gateway.

20 Q. Okay. So are those customers whose
21 calls are converted to internet protocol at the
22 customer's premises equipment?

23 A. Yes.

24 Q. With respect to the Big River
25 customers whose calls are converted to Internet

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1 protocol at their customer premises equipment, what
2 kind of equipment is that?

3 A. Some sort of analog telecommunications
4 adapter or an IP enabled telephone.

5 Q. By an IP enabled telephone you mean a
6 telephone that's designed to send signals in IP format
7 from the telephone itself?

8 A. Yes.

9 Q. And an analog adaptor would be a
10 device that you could hook up an analog telephone to
11 and it would convert that signal to IP format?

12 A. Yes.

13 Q. What proportion of Big River's retail
14 customers have that kind of customer premises
15 equipment that will convert signal to Internet
16 protocol format?

17 A. I don't have that information
18 available with me here.

19 Q. Is it the majority of customers?

20 A. That have the IP equipment?

21 Q. That have IP equipment at the
22 premises?

23 MR. HOWE: I'm just going to object to
24 the form of the question as to what you mean by the
25 majority. Simple majority or --

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1 Q. (By Mr. Germann) Well, do most of Big
2 River's retail customers have IP customer premises
3 equipment?

4 A. Yes. I think so.

5 Q. And are those customers located
6 throughout Big River's service area, or are they
7 concentrated in particular states?

8 A. They're located throughout.

9 Q. Focusing further for a second on Big
10 River's end user customers in Missouri. Do most of
11 those customers have IP customer premises equipment?

12 A. Again, I'm not sure.

13 Q. Are there residential retail customers
14 of Big River with IP customer premises equipment in
15 Missouri?

16 A. Yes.

17 Q. Are there residential retail customers
18 of Big River in Missouri who do not have IP customer
19 premises equipment?

20 A. Yes.

21 Q. And for the latter group of customers,
22 their calls are converted -- well, their calls go to a
23 Big River gateway; is that correct?

24 A. No.

25 Q. Where are they delivered to then?

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1 A. Well, some of our customers we provide
2 via local wholesale complete agreement we have with
3 AT&T. In some cases we do some end resale. Those
4 really don't go in our network.

5 Q. What if Missouri customers served via
6 local wholesale complete or resale, what if they make
7 an intrastate long distance call to an AT&T Missouri
8 end user? Would those calls be carried on --

9 A. Most of those would probably be
10 carried on our network.

11 Q. But if they made a local call it may
12 not be carried on your network?

13 A. That is correct.

14 Q. If they make an intrastate long
15 distance call does that call go to a Big River
16 gateway?

17 A. No. Not necessarily.

18 Q. Does it go to -- does it go to a Big
19 River softswitch?

20 A. Probably.

21 Q. Now for a retail customer of Missouri
22 that Big River provides service to using local
23 wholesale complete or resale, when that customer makes
24 an intrastate long distance call, that call originates
25 in time division multiplexing format, does it not?

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1 Q. I would distinguish it from lease.
2 That's a distinction I have drawn.

3 A. Yeah. In some cases we lease the
4 connection.

5 Q. Are there cases where Big River owns
6 that connection?

7 A. I can't think sitting here.

8 MR. GRYZMALA: I'm sorry?

9 THE WITNESS: I can't think sitting
10 here if there are any.

11 Q. (By Mr. Germann) In those cases where
12 a Big River retail customer has IP customer premises
13 equipment, and can I use the term CPE for that?

14 A. Uh-huh.

15 Q. Is that okay?

16 A. Yes.

17 Q. Okay. I just didn't want to use too
18 many acronyms here. Where a Big River customer has IP
19 CPE, does Big River generally use a cable company's
20 facilities to reach that customer, or to reach that
21 customer's home?

22 A. Yes. Sometimes we do use a cable
23 company's facility to reach those customers.

24 Q. Is that in the majority of cases for
25 those customers?

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1 A. Yes. I think so.

2 Q. What about -- well, can you give me an
3 example of where Big River serves an end user customer
4 that has IP CPE and Big River is not using the last
5 mile facility of a cable company?

6 A. We've used DSL or possibly wireless.

7 Q. In Missouri specifically does Big
8 River use all three of those, cable company, DSL or
9 wireless?

10 A. I'm not sure if we use wireless in
11 Missouri.

12 Q. Switching gears and going back to the
13 set of customers that does not have CPE that converts
14 signals to Internet protocol. With respect to those
15 customers, are there retail customers with respect to
16 whom Big River owns the last mile facility?

17 A. That's probably similar to the answer
18 I gave to the previous question. Not that I can sit
19 here and think of where we have ownership of the last
20 mile.

21 Q. And you mentioned local wholesale
22 complete and resale. Are there cases where Big River
23 releases a UNE loop from an incumbent carrier?

24 A. Not under those two arrangements.

25 Q. Apart from those two arrangements, are

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1 the Big River customer makes an intrastate long
2 distance call, is that call carried through the
3 incumbent's switch?

4 A. For a portion of the call.

5 Q. For a portion of the call. Including
6 the originating end office switch?

7 A. Yes.

8 Q. If Big River is the long distance
9 carrier, is the call then handed off to Big River?

10 A. I'm not sure.

11 Q. If it's not handed off to Big River,
12 would it be carried entirely on AT&T's network?

13 A. No.

14 Q. Whose network might it be carried on?

15 A. Another carrier.

16 Q. But what carrier?

17 A. Another long distance carrier
18 possibly.

19 Q. What about if the customer has chosen
20 Big River as their long distance carrier, would that
21 call -- could that call be handed off to a different
22 long distance carrier?

23 A. Yes.

24 Q. Does Big River have agreements with
25 other long distance carriers to carry some of their

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1 long distance traffic?

2 A. Yes.

3 Q. Is that in -- in Missouri is that a
4 single long distance carrier that Big River has an
5 agreement with?

6 A. I don't know.

7 Q. If you could please refer back to
8 Exhibit 1. I'm looking down at the answer to question
9 15 now. Kind of the third paragraph down it says Big
10 River denied Request 13 because its facsimile
11 functionality monitors all calls to determine if a fax
12 is being sent. Now just to clarify. That monitoring,
13 does that take place only for calls that go through --
14 or that go on to Big River's network?

15 A. Yes.

16 Q. So in the example where if a Big River
17 customers makes a long distance call that does not
18 reach Big River's network this functionality, this
19 monitoring functionality would not occur; is that
20 correct?

21 A. That's correct.

22 Q. Now with respect to calls that are
23 carried on Big River's network, in addition to --
24 well, when calls are carried on Big River's network,
25 doesn't the network also monitor the call to see if

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1 court reporter.)

2 A. I would guess that would.

3 Q. (By Mr. Germann) I'll just go on.
4 With respect to customers in Missouri served by Big
5 River who have IP customer premises equipment, if Big
6 River were registered or certificated as an
7 interconnected VoIP provider, would that service be
8 interconnected VoIP service?

9 MR. HOWE: I'm going to object again
10 as calling for speculation and legal conclusion,
11 statutory interpretation. You can answer it subject
12 to that.

13 A. Some of it could and some of it might
14 not.

15 Q. (By Mr. Germann) With respect to Big
16 River customers that have IP customer premises
17 equipment where their telephone calls are converted to
18 IP format at the customer premises, is there a
19 broadband connection to those customer's location?

20 A. I think so.

21 Q. Are those customers using IP
22 compatible customer premises equipment?

23 A. Yes. As you stated as a premise of
24 your question that would be the case.

25 Q. And the telephone service that Big

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1 River provides over that connection, does that allow
2 Big River customers to engage in two way voice
3 communications?

4 A. In some cases, yes.

5 Q. In real time as people talk? In real
6 time communication?

7 A. In some cases, yes.

8 Q. Are there cases where a Big River
9 customer does not have that capability to engage in a
10 real time two way voice communication?

11 A. Yes.

12 Q. Can you tell me in what circumstances
13 would a customer not have that capability?

14 A. Faxes, calling an information service,
15 calling messaging to replay a message, calling any
16 type of service where there is not a live person on
17 the other end to talk to.

18 Q. Let me clarify and reask the question
19 because I'm asking more broadly about the capabilities
20 provided to Big River customers. So are there cases
21 where Big River provides a customer only fax service
22 using IPC PE and the customer is unable to make voice
23 telephone calls?

24 A. There might be.

25 Q. Are you aware of any fax only

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1 customers?

2 A. Not sitting here, no.

3 Q. Are you aware of any customers, any
4 retail customers with IP CPE whose service plan does
5 not allow them to make voice telephone calls?

6 A. I'm not aware of any.

7 Q. Is it safe to say that the majority of
8 Big River retail customers with IP CPE have the
9 ability to make voice telephone calls?

10 A. Yes.

11 Q. And that voice telephone service
12 includes the ability to make telephone calls to people
13 who are served on the PSTN?

14 A. Yes.

15 Q. And to receive calls from persons
16 calling from the PSTN?

17 A. Yes.

18 Q. I'm going to come back to Exhibit 2.
19 But first I'd like to go to another exhibit, if I can
20 find it.

21 MR. HOWE: You can get that marked,
22 and I'm going to take a quick break.

23 MR. GERMANN: Can you mark that as
24 Exhibit 3.

25 (WHEREIN, Respondent's Exhibit 3 was

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1 provides both telecommunication services and enhanced
2 services?

3 A. The services we provide both have
4 telecommunications nature and an enhanced nature to
5 them. But fundamentally they are enhanced.

6 Q. Are there any instances where the two
7 can be separated or provided separately?

8 A. You mean could we provide
9 telecommunication services without enhanced services?
10 Without enhanced capabilities?

11 Q. Do you?

12 A. Yes.

13 Q. Well, you could. Do you provide any
14 telecommunication services without enhanced
15 capabilities?

16 A. Yes.

17 Q. And whom do you provide those services
18 to?

19 A. Our customers.

20 Q. Your retail telephone customers?

21 A. Yes.

22 Q. And what are the telecommunication
23 services without enhanced capabilities that you
24 provide to your telephone customers?

25 A. Telecommunication services.

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1 not enhanced?

2 A. Basic telephone service.

3 Q. And by that do you mean --

4 A. Same definition I used previously.

5 Q. Does that include local telephone
6 service?

7 A. For the LWC services provided, yes.

8 Q. What about intrastate long distance?

9 A. For those LWC customers?

10 Q. Yes.

11 A. In some cases, yes.

12 MR. GERMANN: Can we please mark this
13 as Exhibit 4.

14 (WHEREIN, Respondent's Exhibit 4 was
15 marked by court reporter.)

16 Q. (By Mr. Germann) I'm going to hand
17 you what has been marked as Exhibit 4. This states
18 Big River Telephone Company, Missouri P.S.C. Tariff
19 No. 1. On the title page it states Intrastate
20 Interexchange Telecommunications Services. Is this a
21 Big River Tariff for intrastate interexchange
22 telecommunications services in Missouri?

23 A. Yes.

24 Q. Does Big River provide service to
25 customers in Missouri pursuant to this tariff?

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1 A. Yes.

2 Q. Where a customer chooses to purchase
3 intrastate interexchange telecommunications services
4 pursuant to this tariff, is this the customer required
5 to also purchase any enhanced service?

6 A. No.

7 Q. Where an intrastate interexchange
8 telecommunication service is provided to a Big River
9 customer in Missouri under this tariff, is that
10 service an example of a telecommunication service that
11 is not enhanced?

12 A. In some cases it is and in some cases
13 it isn't.

14 Q. In what case is it enhanced?

15 A. When it's attached to a network that
16 has the capabilities of providing enhanced services.

17 Q. So if the call is carried on Big
18 River's network, in that case is -- strike that. If a
19 call is carried on Big River's network, is it
20 therefore enhanced?

21 A. Yes.

22 Q. But there may be cases where Big River
23 provides service to its customers without carrying a
24 call on Big River's network; is that correct?

25 A. Yes.

MIDWEST LITIGATION SERVICES

**AMENDMENT TO
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996
BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY d/b/a AT&T MISSOURI
AND
BIG RIVER TELEPHONE COMPANY, LLC**

The Interconnection Agreement dated August 9, 2005 by and between Southwestern Bell Telephone Company d/b/a AT&T Missouri¹ ("AT&T Missouri") and Big River Telephone Company, LLC ("CLEC") ("Agreement") effective in the State of Missouri is hereby amended as follows:

WHEREAS, the Parties filed for arbitration under Section 251 and 252 of the Act and the Missouri Public Service Commission ("Commission") issued an Arbitration Order dated July 11, 2005 ("July 11, 2005 Arbitration Order");

WHEREAS, the Parties conformed the Agreement (including the Remand Order Embedded Base Rider) to the July 11, 2005 Arbitration Order and the Commission approved the Agreement;

WHEREAS, AT&T MISSOURI filed an action seeking declaratory and injunctive relief claiming that the July 11, 2005 Arbitration Order was, among other things, contrary to federal law;

WHEREAS, AT&T MISSOURI's request for a Preliminary Injunction in Case No. 4:05-cv-01264-CAS was granted on September 1, 2005, enjoining the July 11, 2005 Arbitration Order and related orders approving the Agreement to the extent they required AT&T MISSOURI to fill new orders for unbundled local switching or UNE-P pursuant to the Federal Telecommunications Act of 1996;

WHEREAS, the Eastern Division of the United States District Court for the Eastern District of Missouri, Case Number 4:05-CV-1264 CAS, issued its Memorandum and Order and its Declaratory Judgment and Permanent Injunction on September 14, 2006, granting in part and denying in part the relief sought by AT&T MISSOURI;

WHEREAS, the United States Court of Appeals for the Eighth Circuit, Case Numbers 06-3701, 06-3726 and 06-3727 issued its Order on June 20, 2008, affirming the District Court's judgment;

WHEREAS, the Parties wish to amend the Agreement to reflect the District Court's and Eighth Circuit Court's orders; and

WHEREAS, the Parties wish to amend the Agreement to reflect the Missouri legislation in House Bill 1779 related to the appropriate compensation for voice over internet protocol (VoIP) service effective August 28, 2008.

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended:

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. On June 29, 2007, Southwestern Bell Telephone, L.P., a Texas limited partnership, was merged with and into SWBT Inc., a Missouri corporation, with SWBT Inc. as the survivor entity. Simultaneous with the merger, SWBT Inc. changed its name to Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is doing business in Missouri as "AT&T Missouri".

1. **Recitals.** The above recitals are hereby incorporated in their entirety into this Amendment.
2. **Declassified Switching and UNE-P.** In accordance with the Agreement, including the Remand Order Embedded Base Rider, AT&T MISSOURI has no obligation under this Agreement to provide CLEC with ULS, whether alone, in combination (as with "UNE-P"), or otherwise (including, without limitation, any of the items listed in Section 2.1.1 of the Embedded Base Rider). Big River agrees to submit electronic orders by means of the LEX and/or EDI ordering systems or other mutually agreed processes to convert any and all remaining UNE-P lines to the LWC Platform or other alternatives such as UNE loop or resale. Big River agrees to place the orders and to cooperate with AT&T Missouri so that the conversion will be completed in no more than 90 days from October 31, 2009. AT&T MISSOURI may disconnect such elements in the event such conversion is not completed within such 90-day period due to failure by Big River to place such orders and/or cooperate as required above.
3. **Section 271 Elements.** AT&T MISSOURI has no obligation under this Agreement to provide CLEC with any Section 271 unbundling and/or Section 271 competitive checklist items (including, without limitation, the following Section 271 elements required to be provided pursuant to the July 11, 2005 Arbitration Order: switching, UNE-P, high capacity loops, dedicated transport, OCn level dedicated transport, OCn level loops, dark fiber loops, dark fiber dedicated transport and feeder subloops)², either alone or in combination (whether new, existing, or pre-existing) ("Section 271 Elements") with any other element, service or functionality. CLEC shall be prohibited from submitting any orders for any Section 271 Elements under this Agreement. The Parties hereby acknowledge that CLEC has been enjoined from ordering any switching and UNE-Platform under Section 251 or 271 of the Act under this Agreement, and CLEC has not ordered any Section 271 switching and/or UNE-P. As of Amendment Effective Date, AT&T MISSOURI may convert, re-price, or disconnect such elements at its sole discretion, provided, however, AT&T will provide to CLEC 90-day advance written notice.
4. **Entrance Facilities.**
 - 4.1 AT&T MISSOURI shall provide CLEC access to Entrance Facilities at TELRIC rates solely for interconnection purposes within the meaning of Section 251(c)(2) of the Act for the transmission and routing of telephone exchange service and exchange access service. Entrance Facilities are transmission facilities that connect CLEC networks with ILEC networks. CLEC is not entitled to Entrance Facilities for any other purpose, including, without limitation (i) as unbundled network elements under Section 251(c)(3) of the Act, or (ii) for backhauling (e.g., to provide a final link in the dedicated transmission path between a CLEC's customer and the CLEC's switch, or to carry traffic to and from its own end users) ("Declassified Entrance Facilities").
 - 4.2 CLEC shall not submit any orders for Declassified Entrance Facilities. As of the Amendment Effective Date, AT&T MISSOURI may disconnect, convert or reprice such elements at its sole discretion, provided, however, AT&T will provide to CLEC 90-day advance written notice.
5. **Pricing Schedules.** The Parties agree to delete the schedule entitled "Section 271-Interim Rates Per the Missouri's PSC's July 11, 2005 Arbitration Order" in its entirety. In addition, the Parties agree that the reference to the header "Interconnection Dedicated Transport Entrance Facilities" in the "Schedule of Prices-Missouri" is deemed to be replaced with the header "Interconnection Facility (CLEC to AT&T Missouri)" for DS1 and DS3 Interconnection Facilities.

² The Parties disagree as to whether any or all of these elements are § 271 competitive checklist items or required to be offered under §271 of the Act.

6. **House Bill 1779, Section 392.550.** The Parties shall exchange interconnected voice over Internet protocol service traffic, as defined in Section 386.020 RSMo, subject to the 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.
7. Section 4 of the General Terms and Conditions is amended by adding the following section:
 - 4.2.1.2 Notwithstanding anything to the contrary in this Section 4, the original expiration date of this Agreement, as modified by this Amendment, will be extended for a period of three (3) years from November 10, 2008 until November 10, 2011 (the "Extended Expiration Date"). The Agreement shall expire on the Extended Expiration Date; provided, however, that during the period from the effective date of this Amendment until the Extended Expiration Date, the Agreement may be terminated earlier either by written notice from CLEC, by AT&T pursuant to the Agreement's early termination provisions, by mutual agreement of the parties, or upon the effective date of a written and signed superseding agreement between the parties.
8. The Parties acknowledge and agree that AT&T Missouri shall permit the extension of this Agreement, subject to amendment to reflect future changes of law as and when they may arise.
9. Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
10. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
11. The Parties agree that this Amendment will act to supersede, amend and modify the applicable provisions contained in the Agreement. To the extent there are any inconsistencies between the provisions of this Amendment and the Agreement, the provisions in this Amendment shall govern.
12. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
13. This Amendment shall be filed with and is subject to approval by the Missouri Public Service Commission and shall become effective ten (10) days following approval by such Commission ("Amendment Effective Date").

AMENDMENT CONFORM TO CASE NO. 4:05-CV-1264 CAS AND CASE NOS. 06-3701, 06-3726, AND 06-3727 AND EXTEND TERM DATE

SOUTHWESTERN BELL TELEPHONE COMPANY

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AT&T MISSOURI/BIG RIVER TELEPHONE COMPANY, LLC

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Big River Telephone Company, LLC

Southwestern Bell Telephone Company d/b/a AT&T
Missouri by AT&T Operations, Inc., its authorized
agent

By: Gerard J. Howe

By: Eddie A. Reed, Jr.

Name: GERARD J. HOWE
(Print or Type)

Name: Eddie A. Reed, Jr.

Title: CEO
(Print or Type)

Title: Director-Interconnection Agreements

Date: 11/2/09

Date: 11-4-09

UNE OCN # 9562

RRESALE OCN # 8768

SWITCH BASED OCN # 023B

ACNA: LGD