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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

December 19, 2012
Jefferson City, Missouri
Volume III

Big River Telephone Company,)
LLC,)
)
Petitioner,)
)
vs.)Case No. TC-2012-0284
)
Southwestern Bell, LP, d/b/a)
AT&T Missouri,)
)
Respondent.)

Michael Bushmann, Presiding
Regulatory Law Judge

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

2 JUDGE BUSHMANN: We're on the record.

3 Today is December 19th, 2012, at 2:00 p.m., and the
4 Commission has set this time for a discovery conference
5 in the case captioned as Big River Telephone Company,
6 LLC, versus Southwestern Bell Telephone, LP, doing
7 business as AT&T Missouri. The case number is
8 TC-2012-0284.

9 My name is Michael Bushmann, and I'm the
10 Regulatory Law Judge in this matter. Let's begin with
11 counsel making their entries of appearance. For Big
12 River Telephone Company?

13 MR. HOWE: Brian Howe.

14 JUDGE BUSHMANN: AT&T Missouri?

15 MR. GRYZMALA: Bob Gryzmala.

16 MR. GERMAN: And Hans Germann.

17 JUDGE BUSHMANN: And for Commission
18 Staff?

19 MR. BORGMAYER: John Borgmeyer.

20 JUDGE BUSHMANN: Is there anyone else on
21 the telephone that hasn't already identified
22 themselves?

23 MR. BORGMAYER: Yes, Judge. Staff
24 witness Bill Deutsch just walked in, and he's here,
25 too.

1 JUDGE BUSHMANN: As far as preliminary
2 matters, I did see today that there was a motion filed
3 by Big River requesting leave to file out of time; is
4 that correct, Mr. Howe?

5 MR. HOWE: Yes, your Honor.

6 JUDGE BUSHMANN: Did you want to take
7 that up today?

8 MR. HOWE: Yes. Because it -- it deals
9 with our objections to the second set of discovery.

10 JUDGE BUSHMANN: Can you explain --

11 MR. HOWE: That would be would be
12 perfect. I'm sorry?

13 JUDGE BUSHMANN: Can you explain what the
14 basis for your motion is?

15 MR. HOWE: Yes. I simply forgot that the
16 Court had issued an order that limited the time to
17 object and respond to the last round of discovery
18 requests. And so I filed it a day later than the
19 five-day period that the Order set out.

20 JUDGE BUSHMANN: Mr. Gryzmala, do you
21 have any position on that request?

22 MR. GRYZMALA: Your Honor, I'm somewhat
23 at a disadvantage. I just received the Motion today
24 and the Objections yesterday afternoon. I have not
25 conferred with my clients.

1 In that absence, I have no real terms to
2 object to the grant of the motion. I would point out
3 that, you know, obviously, as your Honor well knows,
4 the discovery order in August was put in place and
5 we're all charged with knowledge of what it says and
6 how to abide.

7 And I would point out that when Big River
8 submitted its discovery to AT&T on December 10 --
9 because I will tell you that we submitted discovery to
10 Big River, and that's the subject of the objections
11 that Mr. Howe is talking about and Big River submitted
12 discovery on us. AT& -- AT&T provided its objections
13 to Big River's discovery on Monday in a timely fashion.

14 With regard to the discovery that
15 Mr. Howe refers to, I -- you know, I -- I mean, I
16 understand. I acknowledge his statement that he forgot
17 about the Order, but he was -- he emphasized in his
18 discovery -- in Big River's discovery directed to us
19 that the discovery request herein shall be answered
20 within ten calendar days of service with five calendar
21 days allowed for objections or requests.

22 It was not forgotten then. So we can't
23 -- I am not in a position and have not conferred with
24 my clients as yet to concur with the motion. I would
25 object -- or hear -- seek -- ask the Commission to deny

1 it on that basis.

2 You know, your Honor, having said that, I
3 do take note that Mr. Howe has indicated in those four
4 to which he objected that he will provide a response.
5 I think, generally speaking, Counsel sometimes make the
6 determination of whether to pursue an objection at all,
7 you know, made by the other party once they see what
8 the other party has answered. You see what I'm saying?

9 We all make that call. So I'm not saying
10 that my position here is locked in or set in stone
11 because I realize Big River said they would provide an
12 answer. That won't be forthcoming until tomorrow, I
13 gather, on this schedule.

14 But at this time, I simply -- for the
15 reasons I stated, I cannot agree to the Motion.

16 JUDGE BUSHMANN: Okay. Thank you. Mr.
17 Borgmeyer, does Staff have any position on this
18 request?

19 MR. BORGMEYER: No, your Honor.

20 JUDGE BUSHMANN: Okay. It seems to me
21 that Mr. Howe has stated good cause for his request. I
22 don't see any undue prejudice involved here to AT&T, so
23 I'm going to grant the request for -- that Mr. Howe
24 makes to file his objections out of time.

25 MR. HOWE: Thank you, your Honor.

1 JUDGE BUSHMANN: Are there any other
2 discovery matters that need to be brought up at this
3 point?

4 MR. GRYZMALA: There are a number of
5 objections that AT&T Missouri made to Big River's
6 discovery request.

7 JUDGE BUSHMANN: Okay. I haven't seen
8 anything on that. I'm not sure -- we don't have
9 another discovery conference scheduled, but I guess if
10 it's necessary -- if the parties want to compel
11 discovery on any of this that you would need to notify
12 me that there's a problem with that.

13 We can do that informally, like we did
14 earlier in the -- through an informal telephone
15 conference without the need to have a formal Motion to
16 Compel. That may save some time since we are running a
17 bit short of time at this point.

18 So I would suggest that if parties have
19 some disagreements that can't be resolved that may be
20 the way to go.

21 I don't know what your time frame is for
22 doing that, but we are getting into the holidays, so I
23 don't want to wait too long before we resolve these
24 matters. So there is objections on both sides, I
25 understand; is that correct?

1 MR. GRYZMALA: Yes, your Honor.

2 MR. HOWE: Correct.

3 JUDGE BUSHMANN: Well, I think if those
4 can't be resolved, then perhaps you might want to try
5 and set up some informal phone conference maybe at the
6 end of next week.

7 I'm going to be out of the office on
8 Monday and Tuesday of next week, but if you want to do
9 it after that and -- see, the week after that might be
10 more difficult for me.

11 My schedule, I'm traveling out of town
12 the first week of January for part of that week.

13 MR. GRYZMALA: Your Honor, I'll -- I'll
14 suggest that I -- I am out the entire week of next
15 week. And more problematic is that many of us and our
16 folks here at the company are out that entire week next
17 week.

18 JUDGE BUSHMANN: Okay.

19 MR. GRYZMALA: I -- this is a situation I
20 cannot control. I inherited it. You know, it's worth
21 knowing that, in our business, if you don't take your
22 vacation, you lose it, and so that there is an urgency
23 for folks to have their vacation which they haven't
24 always used, and they can't move forward into
25 January.

1 JUDGE BUSHMANN: And it's fine. It may
2 be there that if there are disagreements where parties
3 cannot resolve them and they need to get them fixed by
4 the end of the year, we may need do that in the next
5 couple of days, then, to avoid the problem that you're
6 describing.

7 MR. GRYZMALA: Uh-huh. A fair number of
8 those people are already gone, but, I mean, I'm not
9 opposed to taking them up. I just don't know how else
10 to do it at all.

11 JUDGE BUSHMANN: Right.

12 MR. HOWE: I'd be willing to talk about
13 it right now if that would that help.

14 MR. GRYZMALA: Well, you know -- this is
15 Bob. I might point out that, you know, discovery
16 responses are due tomorrow. So we may have things we
17 want to talk about as well after as we see the
18 responses tomorrow. So it might make more sense to
19 wait a day or two.

20 JUDGE BUSHMANN: And I haven't seen
21 anything about any of the objections at this point.
22 I'd like to have a chance to look at them first before
23 we talk about it and I try to make any sort of ruling
24 on it.

25 So why don't we see how that goes and we

1 can kind of see how you are able to resolve matters and
2 then go from there. And we'll try and get schedules
3 worked out as best we can.

4 MR. GRYZMALA: Let me ask you, your Honor
5 -- I'm just asking information. I don't want to be
6 remiss. Did I or we miss an obligation to submit to
7 your Honor objections?

8 I don't believe I've submitted them to
9 any other than Brian Howe and John Borgmeyer.

10 JUDGE BUSHMANN: That's fine. I don't
11 think you -- you didn't -- you didn't need to submit --
12 you didn't need to submit them --

13 MR. GRYZMALA: I thought we were supposed
14 to provide the responses into EFIS. I'm not sure.

15 JUDGE BUSHMANN: I don't think you need
16 to provide me with anything. It's just a matter if it
17 reaches the point where you want to compel production.

18 MR. GRYZMALA: All right.

19 JUDGE BUSHMANN: And at that point, we
20 can try and resolve it informally to save time.

21 MR. GRYZMALA: Okay. I misspoke. I just
22 -- my understanding was neither objections or responses
23 was placed into EFIS.

24 JUDGE BUSHMANN: Right.

25 MR. GRYZMALA: Okay. All right. Thank

1 you.

2 JUDGE BUSHMANN: Anyone have any --
3 anybody else have anything else you want to bring up or
4 discuss before we go off the record?

5 MR. BORGMEYER: Just real quick, Judge, I
6 just wanted to remind the parties that whatever
7 discovery responses they provide, if they could share
8 those with Staff just to ensure that Staff's got all
9 the same facts that AT&T and Big River have.

10 MR. GRYZMALA: You had an issue to DR,
11 didn't you, John?

12 MR. BORGMEYER: We had an issue to DR.
13 I think we just had an understanding from the beginning
14 that --

15 MR. GRYZMALA: Right. I recall that.

16 MR. BORGMEYER: Yeah.

17 MR. GRYZMALA: AT&T plans to do that. We
18 had served you -- you do have our objections, correct?

19 MR. BORGMEYER: Yes. And I believe the
20 only discovery responses that have been filed so far in
21 this case were Big River's that they filed in EFIS on
22 August 20, and I don't -- I don't know that the parties
23 necessarily have to file the discovery responses in
24 EFIS so long as Staff gets a copy of everything.

25 MR. GRYZMALA: We will certainly do that.

1 MR. HOWE: All right. So, John, you
2 already have a copy of those first responses?

3 MR. BORGMEYER: And those are the ones
4 that I just mentioned that had filed you in EFIS?

5 MR. HOWE: Yes.

6 MR. BORGMEYER: Yeah. I have -- yeah.
7 we have those.

8 MR. HOWE: Okay.

9 MR. BORGMEYER: Yeah. So we're good. I
10 just wanted to make sure just to remind everybody going
11 forward to just share the discovery with Staff.

12 MR. HOWE: No problem.

13 JUDGE BUSHMANN: All right. If there
14 isn't anything else, then, we're off the record. Thank
15 you, gentlemen.

16 MR. HOWE: Thank you.

17 MR. BORGMEYER: Thank you, Judge.

18 MR. GRYZMALA: Thank you.

19 JUDGE BUSHMANN: All right.

20 (The proceedings were concluded at 2:15
21 p.m. on December 19, 2012.)

22

23

24

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)

4) ss.

5 COUNTY OF OSAGE)

6

7 I, Monnie S. Mealy, Certified Shorthand
8 Reporter, Certified Court Reporter #0538, and
9 Registered Professional Reporter, and Notary Public,
10 within and for the State of Missouri, do hereby certify
11 that I was personally present at the proceedings as set
12 forth in the caption sheet hereof; that I then and
13 there took down in stenotype the proceedings had at
14 said time and was thereafter transcribed by me, and is
15 fully and accurately set forth in the preceding pages.

16

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22 Monnie S. Mealy, CSR, CCR #0539

23 Registered Professional Reporter

24

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