

Big River Telephone Company, LLC,)
)
Complainant,)
)
v.) **File No. TC-2012-0284**
)
Southwestern Bell Telephone Company,)
d/b/a AT&T Missouri,)
)
Respondent.)

COMES NOW the Staff of the Missouri Public Service Commission (the Staff) and files this Supplement to its Briefs in this matter and states as follows:

1

2. The language in Attachment 12, Section 13.3 of the interconnection agreement (ICA) between Big River Telephone Company, LLC (Big River) and Southwestern Bell Telephone Company d/b/a AT&T Missouri (AT&T Missouri) is ambiguous:

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 first unclear distinction in this paragraph is that there is “VOIP” traffic and “IS” traffic. The “collectively” does not include VOIP, it includes the other enhanced services traffic. To construe the language otherwise renders meaningless the separate mention and labeling of VOIP traffic. IS traffic is further defined, in an equally oblique fashion, with the “and/or” and the sentence order creating unnecessary confusion. IS traffic is traffic that accesses (etc.) information and may or may not undergo a net protocol conversion. The Staff’s reading of this paragraph means that the traffic in question, which meets the definition of IVoIP traffic under Missouri law, is not “IS traffic” because it is not used to reach, use or otherwise deal with information. The question of whether it undergoes a protocol conversion is rendered moot.

3. In addition, this language was specifically superseded in an amendment to the ICA effective January 1, 2010, which incorporated §392.550 RSMo Supp. 2011 into the document and stated that, to the extent that an ICA had specific provisions pertaining to IVoIP, those provisions would cease to apply after December 31, 2009. This means that the language parsing discussion above has no bearing on the present dispute, as all the charges in this matter are based on telecommunications activity that took place on or after January 1, 2010.

4. In Order FCC 06-94, the FCC defined “interconnected VOIP services” as:

[T]hose VoIP services that: (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permits users to receive calls from *and* terminate calls to the PSTN [public switched telephone network]. We emphasize that interconnected VoIP service offers the *capability* for users to receive calls from and terminate calls to the PSTN; The obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN. [¶36, footnotes omitted]

The FCC's inclusion of IVoIP calls that do not reach the PSTN is important, because those calls undergo no protocol conversion, but they are still included within the definition of IVoIP. Access to the Internet from a user location with digital service also undergoes no protocol conversion, but it remains an information or enhanced services call. It is noteworthy that the FCC's definition of IVoIP, like Missouri's, makes no mention of protocol conversion, net or otherwise.

5. Net protocol conversion came to the fore as companies attempted to avoid access charges by claiming that the conversion of TDM to IP then back to TDM caused the call to be converted to an IP call, because there was IP "in the middle." This Commission has recently seen a similar argument wherein Halo claimed that its traffic was wireless because of a wireless segment in the middle of a call. Both the Commission¹ and the FCC² agree that those calls that start as TDM and end as TDM are to be treated as TDM calls, irrespective of whatever convoluted call path they may take. These calls, which may undergo numerous various signaling protocol conversions along that path, undergo no "net" conversion – all the conversions along the path cancel each other out. In the case of Big River's VoIP customers reaching AT&T's TDM customers, there is a "net" conversion. The Staff argues most strenuously that this protocol conversion does not make the call an information service, because the test of whether a call is an information or enhanced services call is not whether it undergoes a net protocol conversion but

¹ *Report and Order*, August 1, 2012, File No. TC-2012-0331, EFIS Item No. 262

² *Connect America Fund Order*, FCC 11-161, ¶1005, November 18, 2011.

whether it is placed to “provide customers a capability for generating, acquiring[,] storing, transforming, processing, retrieving, utilizing, or making available information.”

6. For all these reasons, the issue of net protocol conversion is irrelevant to the Commission’s decision in this matter. The traffic in question meets the state’s and the FCC’s definition of interconnected VoIP, and is subject to the FCC’s mandated rates for IVoIP traffic set forth in the *Connect America Fund Report and Order*³ establishing mandatory access and reciprocal compensation rates for IVoIP traffic that has preempted both the access requirements of §392.550 and the ICA discussed above. The Staff asserts that the Commission need not address the question of net protocol conversion, except to dismiss the matter as irrelevant, and should base its decision on the clear law before it: that the service in question meets the definitions of interconnected VoIP under state and federal law and applicable access or reciprocal compensation charges assessed against Big River by AT&T be paid.

WHEREFORE, the Staff urges the Commission to render its decision in this matter, finding that the traffic is IVoIP and subject to payment of access or reciprocal compensation charges.

Respectfully submitted,



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³ *Id.*

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of February, 2013.

A handwritten signature in black ink, appearing to be "All Daily", written in a cursive style.