

Big River Telephone Company, LLC,

Complainant,

v.

SOUTHWESTERN BELL  
TELEPHONE, L.P. d/b/a  
AT&T MISSOURI

Respondent.

SOUTHWESTERN BELL )  
TELEPHONE, L.P. d/b/a )  
AT&T MISSOURI )  
Respondent. )

**COME NOW**, Big River Telephone Company, LLC (“Big River”), Southwestern Bell Telephone Company, formerly known as Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (“AT&T Missouri”), and the Staff of the Missouri Public Service Commission (“Staff”), and jointly state as follows:

On August 20, 2012, the Commission issued its Order Setting Procedural Schedule (“Order”) which, *inter alia*, ordered the parties to file a Joint Stipulation of Non-Disputed Material Facts by December 14, 2012. On that date, Staff requested, and the Commission approved, an extension of time to file on December 17, 2012. In response to the Commission’s Order, the parties hereby jointly file their Stipulation Of Non-Disputed Facts, and stipulate and agree to the following non-disputed facts:

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 with its principal place of business located at 24. S. Minnesota Ave., Cape Girardeau, Missouri 63702.

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2. Southwestern Bell Telephone Company d/b/a AT&T Missouri is a corporation, is the successor in interest to Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, and is an incumbent local exchange carrier (“ILEC”).

3. 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.

4. On or about August 13, 2005 in Case No. TK-2006-0073, the Commission approved an interconnection agreement (“ICA”) made and submitted by Big River and AT&T Missouri, 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 ICA and amendments thereto, of which the Commission may take official notice, remain in effect.

5. Section 13.1 of Attachment 12 (entitled “Intercarrier Compensation”) of the parties’ ICA states:

13.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC MISSOURI’s local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party’s circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user’s premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party’s circuit switch.

Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:

- (i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;
- (ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;
- (iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or
- (iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party. Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies Big River has delivered to AT&T Missouri for termination to end users non-local traffic, commencing as early as 2005.

6. Attachment 12, section 13.3 of the ICA states as follows:

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.

7. By letter dated October 20, 2005, Big River informed AT&T Missouri that its “Percent Enhanced Usage (“PEU”) for the state of Missouri is 100% as of the effective date of the Interconnection Agreement.”

8. Big River filed suit against AT&T Missouri in St. Louis County Circuit Court on or about September 29, 2008, Cause No. 08SLCC01630, in which Big River alleged that “AT&T billed Big River \$487,779.00 for terminating Enhanced/Information Services traffic sent by Big River to AT&T,” that Big River paid these charges, that Big River was entitled to a refund of these payments and that AT&T did not refund the payments.

9. The terms of an October 31, 2009, settlement agreement between Big River and AT&T Missouri, which resolved a variety of claims and issues involved in the above-referenced lawsuit, states among other things that a dispute denominated as \*\* \_\_\_\_\_

\_\_\_\_ \*\* by the parties \*\* \_\_\_\_\_

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10. The amendment to the ICA, as approved by the Commission on November 5, 2009, states:

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.

11. Section 392.550(2) RSMo states:

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. Until January 1, 2010, this subsection shall not alter intercarrier compensation provisions specifically addressing interconnected voice over internet protocol service contained in an interconnection agreement approved by the commission pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.

12. Section 386.020 RSMo defines “Interconnected voice over Internet protocol service” 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.

13. 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....”

14. AT&T Missouri billed Big River monthly on BAN 110 401 0113 803 on or about February 5, 2010 and thereafter.

15. Big River claims that its PEU continues to be 100%, which AT&T Missouri denies.

16. Sections 9 and 13 of the General Terms and Conditions of the Commission-approved ICA govern billing dispute resolution.

17. Big River invoked the informal dispute resolution (“IDR”) process disputing 100% of the billing on BAN 110 401 0113 803 by letter dated April 19, 2011, signed by John Jennings and which indicated that Mr. Jennings would be Big River’s representative for the informal dispute resolution.

18. AT&T Missouri responded to Big River’s request for an informal dispute resolution by an e-mail sent on May 10, 2011 by Eileen Mastracchio, acknowledging Big River’s IDR request and explaining that Janice Mullins would be AT&T’s contact for handling the IDR.

19. Mr. Jennings and Ms. Mullins participated in a conference call on May 13, 2011, in an attempt to resolve the billing issue.

20. Mr. Jennings and Ms. Mullins continued the IDR through November 1, 2011, at which time Ms. Mullins informed Mr. Jennings by letter that AT&T Missouri denied the dispute.

21. On February 15, 2012, AT&T Missouri conveyed to Big River that should Big River's refusal to pay continue, Big River's requests for additional service would not be accepted and provisioning activity on all pending orders would be suspended.

22. Big River filed its Complaint in this matter on March 1, 2012.

23. Subsequent to the filing of Big River's Complaint, AT&T Missouri has not suspended or refused to accept a request for additional service from Big River.

24. Since January 1, 2010, the traffic that Big River delivered to AT&T Missouri over the interconnection trunks established pursuant to the parties' ICA originated in Internet Protocol ("IP") format.

25. Since January 1, 2010, the traffic that Big River delivered to AT&T Missouri over the interconnection trunks established pursuant to the parties' ICA was Voice over Internet Protocol ("VoIP") traffic.

26. Since January 1, 2010, the traffic that Big River delivered to AT&T Missouri over the interconnection trunks established pursuant to the parties' ICA originated with Big River telephone service customers using IP-enabled customer premises equipment.

27. Since January 1, 2010, Big River's telephone service has (among other things) allowed Big River's customers to make voice telephone calls to, and receive voice telephone calls from, the public switched telephone network (PSTN).

28. Since January 1, 2010, Big River's telephone service has (among other things) allowed Big River's customers to make voice telephone calls to, and receive voice telephone calls from, customers of AT&T Missouri.

29. Since January 1, 2010, Big River's telephone service has (among other things) allowed Big River's customers to engage in real-time, two-way voice communications with customers served via the PSTN.

30. Big River partners with cable companies to provide telephone service in IP format over the cable companies' "last mile" facilities, and in some cases uses DSL (broadband service provided over "last mile" telephone facilities) to provide telephone service in IP format.

31. Big River submitted a sworn application to the Minnesota commission explaining that to provide telephone service, "[c]ustomers will be accessed through the broadband connections of local Cable TV operators," and Big River provides service in other states in the same manner.

32. Big River provides voice telephone service to some customers in Missouri, who originate telephone calls in IP format over IP-enabled customer premises equipment, pursuant to tariffs filed with the Commission.

33. Sections 9.2 and 9.3 of the General Terms and Conditions of the parties' ICA state:

9.2. All billing disputes between the Parties shall be governed by this Section and Section 13.

9.3. If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item that is listed in Section 13.4.1. The Non-Paying Party should utilize any existing and preferred form provided by the Billing Party to provide written notice of disputes to the Billing Party. The Non-Paying Party must pay when due: (i) all undisputed amounts to the Billing Party.



34. Section 13.4 of the General Terms and Conditions of the parties' ICA provides:

In order to resolve a billing dispute, the disputing Party shall furnish written notice which shall include sufficient detail of and rationale for the dispute, including to the extent available, the (i) date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number(s) in question, (iv) circuit ID number or trunk number in question, (v) any USOC information relating to the item(s) questioned, (vi) amount billed, (vii) amount disputed, (viii) the reason the disputing Party disputes the billed amount, (ix) minutes of use disputed by jurisdictional category, and (x) the contact name, email address and telephone number.

**WHEREFORE**, the signatory parties submit their Joint Stipulation of Non-Disputed Facts for consideration by the Commission.

Respectfully Submitted,

**STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION**

/s/ *John D. Borgmeyer*  
John D. Borgmeyer No. 61992

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
Telephone: (573) 751-5472  
Fax: (573) 751-9285  
Email: john.borgmeyer@psc.mo.gov

**SOUTHWESTERN BELL  
TELEPHONE COMPANY**

/s/ **Robert J. Gryzmala**

Robert J. Gryzmala No. 32454  
Leo J. Bub No. 34326

Attorneys for Southwestern Bell  
Telephone Company,  
d/b/a AT&T Missouri  
One AT&T Center, Room 3516  
St. Louis, Missouri 63101  
Telephone: (314) 235-6060  
Fax: (314) 247-0014  
Email: [robert.gryzmala@att.com](mailto:robert.gryzmala@att.com)

**BIG RIVER TELEPHONE  
COMPANY, LLC**

/s/ **Brian C. Howe**

Brian C. Howe No. 36624

Attorney for 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](mailto:bhowe@bigrivertelephone.com)

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 17<sup>th</sup> day of December, 2012.

/s/ **John D. Borgmeyer**