

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

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2012-0284</u>
)	
Southwestern Bell Telephone, L.P.,)	
d/b/a AT&T Missouri,)	
)	
Respondent.)	

ORDER DENYING MOTION FOR SUMMARY DETERMINATION

Issue Date: December 19, 2012

Effective Date: December 19, 2012

On March 1, 2012, Big River Telephone Company, LLC ("Big River") filed a complaint with the Missouri Public Service Commission ("Commission") against Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri ("AT&T"). An evidentiary hearing is scheduled for January 8-9, 2013 to take evidence on the complaint and the cross-complaint filed by AT&T against Big River. On November 9, 2012, Big River filed a pleading entitled *Motion for Summary Determination*. Both AT&T and the Commission's Staff filed responses opposing Big River's motion.

Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant motions for summary determination if the record shows that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that it is in the public interest. "[A] 'genuine issue'

exists where the record contains competent materials that evidence two plausible, but contradictory, accounts of the essential facts”.¹

In its complaint, Big River alleges that AT&T has improperly billed it for access charges. Big River states in the *Motion for Summary Determination* that AT&T has failed to produce evidence of the amount of those access charges and, therefore, AT&T has “presented no genuine issue of material fact regarding the amount of access charges”. In its complaint, Big River alleged that AT&T has asserted the amount in dispute is approximately \$335,000.00. A Big River witness submitted testimony that the amount in dispute is in excess of \$355,000.00.² However, pre-filed testimony by AT&T alleges that the amount of the unpaid access charges is \$350,637.60.³ Big River disputes that it owes any access charges to AT&T, and argues that the testimony by the AT&T witness is merely an “unsubstantiated statement”. However, this argument goes to the weight and sufficiency of the evidence, which is for the Commission to determine after hearing all the evidence. Big River’s argument demonstrates that there is a disputed fact issue. AT&T further contends that Big River is foreclosed from contesting the amount of the disputed access charges under the parties’ interconnection agreement, and this raises additional issues of fact that remain unresolved. The Commission concludes that there is a genuine issue of material fact concerning the amount of the disputed access charges.

In its motion, Big River does not address the primary issue in the case, which is whether Big River is liable to AT&T for those access charges. It is clear that genuine

¹ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 382 (Mo. 1993). That case discusses Missouri Supreme Court Rule 74.04, which is sufficiently similar to the Commission’s regulation to make cases interpreting the rule helpful in understanding the regulation. *Johnson v. Mo. Bd. of Nursing Adm’rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

² Jennings Direct, p. 3, l. 5.

³ Greenlaw Direct, p. 22, l. 17; Schedule WEG-9 (HC).

issues of material fact remain concerning the parties' actions relative to the interconnection agreement, the nature of Big River's network functions and features, and how those functions and features apply to classification of Big River's services as interconnected voice over internet protocol service, enhanced services traffic, or voice telephone traffic. These issues are not resolved by allegations in the pleadings or pre-filed testimony. Therefore, granting Big River's motion is not appropriate, and Big River is not entitled to relief as a matter of law. For that reason, the Commission will deny Big River's *Motion for Summary Determination*.

THE COMMISSION ORDERS THAT:

1. Big River Telephone Company, LLC's *Motion for Summary Determination* is denied.
2. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Michael Bushmann, Regulatory Law
Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of December, 2012.