

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 8, 2013

Jefferson City, Missouri

Volume 4

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
VS.)	File No. TC-2012-0284
)	
Southwestern Bell Telephone, L.P.)	
D/b/a AT&T Missouri,)	
)	
Respondent.)	

MICHAEL BUSHMANN, Presiding,
Regulatory LAW JUDGE.

TERRY M. JARRETT,
STEPHEN M. STOLL,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 BRIAN C. HOWE

3 Attorney at Law
4 12444 Powerscourt Dr., Suite 270
5 St. Louis, MO 63131
6 (314)225-2215
7 bhowe@bigrivertelephone.com

8 FOR: Big River Telephone Company.

9 ROBERT J. GRYZMALA, Senior Counsel

10 909 Chestnut Street, Room 3520
11 St. Louis, MO 63101
12 (314)235-6060
13 robert.gryzmala@att.com

14 HANS J. GERMANN

15 Attorney at Law
16 71 S. Wacker Drive
17 Chicago, IL 60606
18 (312)701-8792
19 hgermann@mayesbrown.com

20 For: Southwestern Bell Telephone, LP
21 d/b/a SBC Missouri.

22 CULLY DALE, Senior Counsel

23 JOHN BORGMEYER, Legal Counsel

24 P.O. Box 360
25 200 Madison Street
Jefferson City, MO 65102
(573)751-3234

FOR: Staff of the Missouri Public
Service Commission.

P R O C E E D I N G S

(WHEREUPON, the hearing began at 1:00 p.m.)

(BIG RIVER EXHIBIT NOS. 1 THROUGH 11 WERE
MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE BUSHMANN: Let's bring the proceeding
to order. Today is January 8, 2013. The Commission has
set this time for an evidentiary hearing in Big River
Telephone Company, LLC versus Southwestern Bell Telephone,
L.P., doing business as AT&T Missouri, File
No. TC-2012-0284.

My name is Michael Bushmann. I'm the
Regulatory Law Judge that's been assigned to this matter.
Let's start with counsel making their entries of
appearance. For Big River Telephone Company?

MR. HOWE: Brian Howe.

JUDGE BUSHMANN: For AT&T Missouri?

MR. GRYZMALA: Good morning, your Honor.
Bob Gryzmala, G-r-y-z-m-a-l-a.

MR. GERMANN: And Hans Germann,
G-e-r-m-a-n-n.

JUDGE BUSHMANN: Staff of the Public
Service Commission?

MR. BORGMAYER: John Borgmeyer,
B-o-r-g-m-e-y-e-r, and Cully Dale.

JUDGE BUSHMANN: I don't see anybody from

1 Public Counsel. I'd like to advise everybody here,
2 including those in the audience, to please silence your
3 cell phones so it doesn't interfere with the video
4 streaming devices.

5 As far as preliminary matters, there are
6 two pending motions to strike, but I would like to take
7 those up, Mr. Howe, at the time that the witnesses are
8 actually up on the stand and their testimony is being
9 offered. So if you could renew those at that time, we can
10 discuss it then.

11 MR. HOWE: Thank you, your Honor.

12 JUDGE BUSHMANN: As far as the witnesses, I
13 have six witnesses, Gerard Howe, John Jennings, Mark
14 Neinast, William Greenlaw, Janice Mullins, William Voight,
15 in that order.

16 As far as scheduling, we have -- right now
17 we have scheduled for this afternoon, and we'll need to
18 stop today at five because there's a conflict with a
19 couple of people here that need to leave, so we'll need to
20 stop about then. And then we also have scheduled tomorrow
21 beginning at one. We'll have to see how we're doing later
22 this afternoon and how far along we're moving.

23 I would maybe ask counsel to move
24 expeditiously during your questioning so we can try and
25 get finished tomorrow afternoon. I don't really want to

1 go into Thursday. I understand there's problems with
2 staying over. So if we can get finished tomorrow, I
3 certainly want to try to do that.

4 If anybody has any exhibits that need to be
5 marked, now would be a good time to do that. You can
6 bring them forward and have the court reporter mark them
7 and we can take care of that before we start with opening
8 statements.

9 MR. GRYZMALA: Your Honor, may I ask, has
10 the reporter already received the parties' prefiled
11 exhibits?

12 JUDGE BUSHMANN: No.

13 MR. GRYZMALA: Then would your Honor have a
14 preference as to how parties would want to mark any cross
15 exhibits they'd like to use, in other words, build on the
16 numbering of the hearing exhibits or start Cross Exhibit 1
17 AT&T or Big River Cross Exhibit 1?

18 JUDGE BUSHMANN: I would just use your
19 party designation and continue on. You've got -- I've got
20 your exhibit list, but if you want to add additional
21 exhibits beyond that, then just keep on going with the
22 sequential numbering past that.

23 MR. GRYZMALA: Okay.

24 (AT&T EXHIBIT NOS. 1 THROUGH 19 AND STAFF
25 EXHIBIT NOS. 4, 5 AND 6 WERE MARKED FOR IDENTIFICATION BY

1 THE REPORTER.)

2 MR. GRYZMALA: For AT&T, and speaking
3 perhaps on behalf of Mr. Howe, we thought it would be more
4 helpful if we could square away the status of pretrial
5 hearing exhibits that we filed. Our thought was that we
6 would make our points with regard to moving them into
7 evidence at this point and maybe hopefully resolve things
8 earlier than later. I don't think there's too much to
9 resolve, but --

10 MR. HOWE: Or we go ahead and stipulate to
11 the ones that we agree upon and then present the ones with
12 the witnesses where there is disagreement.

13 JUDGE BUSHMANN: So you're saying you want
14 to stipulate to the admission of certain documents now
15 into the record?

16 MR. GRYZMALA: Yes.

17 JUDGE BUSHMANN: Those were exhibits that
18 you identified on your exhibit list?

19 MR. GRYZMALA: Yes, your Honor. For
20 purposes of AT&T, we would ask that there be a stipulation
21 or that the record would admit Exhibits 1 through 19.

22 JUDGE BUSHMANN: So with AT&T exhibits,
23 you're talking about your hearing Exhibits 1 through 19?

24 MR. GRYZMALA: Yes, your Honor.

25 JUDGE BUSHMANN: And is there any objection

1 to any of those on behalf of any of the other parties?

2 MR. HOWE: I have objections to, it looks
3 like, just the last two, your Honor, the arbitration
4 decision from Illinois and the affidavit of Claude Rich.

5 JUDGE BUSHMANN: You had no objection to 1
6 through 17?

7 MR. HOWE: That's correct, your Honor.

8 JUDGE BUSHMANN: Did you -- you had filed
9 earlier your motions to strike regarding Mr. Neinast and
10 Mr. Greenlaw.

11 MR. HOWE: Right.

12 JUDGE BUSHMANN: So that would be -- that
13 would be Exhibits 1 and -- well, I guess that's all 1
14 through 7.

15 MR. HOWE: 1 through 6, I believe, but
16 you're right, your Honor. Subject to --

17 JUDGE BUSHMANN: All right. So then you
18 have no objection to 8 through 17?

19 MR. HOWE: 17.

20 MR. GRYZMALA: And I have one comment I
21 would add, your Honor, if I may. I would only ask to
22 supplement Exhibit 16 and 17. We'll call them the AT&T
23 Indiana exhibits. I would like to add the e-mail
24 transmitting those data responses to Big River's counsel.
25 So for each exhibit it would be a single page.

1 JUDGE BUSHMANN: Anybody have any objection
2 to that?

3 MR. HOWE: No, your Honor.

4 JUDGE BUSHMANN: Staff have any objection
5 to AT&T Exhibits 8 through 17 with the additional
6 supplement on 16 and 17?

7 MR. BORGMEYER: No.

8 JUDGE BUSHMANN: Then AT&T Exhibits 8
9 through 17 will be received into the record subject to the
10 supplement for 16 and 17.

11 (AT&T EXHIBIT NOS. 8 THROUGH 17 WERE
12 RECEIVED INTO EVIDENCE.)

13 MR. GRYZMALA: I will distribute those
14 right now so the court reporter has copies.

15 JUDGE BUSHMANN: Were there any other
16 exhibits that you wanted to stipulate to for any of the
17 other parties?

18 MR. BORGMEYER: Staff has a couple extra
19 exhibits. I don't know if the parties want to stipulate
20 to those at this time.

21 JUDGE BUSHMANN: On your exhibit list,
22 there's three.

23 MR. BORGMEYER: And then we have three
24 more, yeah.

25 JUDGE BUSHMANN: Okay.

1 MR. GRYZMALA: AT&T would have no objection
2 to Exhibits 1 through 3. Those we are aware of. We
3 haven't seen 4, 5 and 6 yet.

4 MR. HOWE: We don't have any objection
5 either to the first three.

6 MR. BORGMAYER: The first one's just a copy
7 of the statute.

8 MR. GRYZMALA: That's Exhibit 4?

9 MR. BORGMAYER: Yes, Exhibit 4.

10 MR. GRYZMALA: AT&T would have no objection
11 to Exhibit 4.

12 MR. BORGMAYER: Staff Exhibit 5 is just a
13 copy of a web page from Big River.

14 MR. GRYZMALA: AT&T would have no objection
15 to Staff Exhibit 5.

16 MR. HOWE: Big River has no objection to
17 Staff Exhibit 4.

18 JUDGE BUSHMANN: Can I see copies of those?

19 MR. BORGMAYER: Yes.

20 JUDGE BUSHMANN: We need a copy for the
21 Commissioners also. What did you say Exhibit 5 was?

22 MR. BORGMAYER: Exhibit 5 is a printout of
23 Big River's web page, website I guess.

24 JUDGE BUSHMANN: And I don't have No. 6.

25 MR. BORGMAYER: Yeah. 6 we're still --

1 MR. GRYZMALA: Your Honor, this is 16 for
2 AT&T, tacking on to the Indiana, and 17, that's the e-mail
3 transmitting.

4 JUDGE BUSHMANN: Mr. Gryzmala, could you
5 give me an extra copy of the supplemental sheets or two
6 extra copies for 16 and 17 for the Commissioners?

7 MR. GRYZMALA: Yes, your Honor. AT&T has
8 no objection to Staff Exhibit 6.

9 MR. HOWE: Big River has no objection to
10 Staff Exhibit 5 or 6.

11 MR. BORGMEYER: Do you want me to give you
12 a couple extra copies for the other Commissioners?

13 JUDGE BUSHMANN: That would be fine. Tell
14 me again what Staff Exhibit 6 is.

15 MR. BORGMEYER: Big River's 2011 annual
16 report.

17 JUDGE BUSHMANN: So I don't hear any
18 objections to Staff Exhibits 1 through 6; is that correct?

19 MR. HOWE: That's correct, your Honor.

20 JUDGE BUSHMANN: Is that correct,
21 Mr. Gryzmala?

22 MR. GRYZMALA: That's correct.

23 JUDGE BUSHMANN: Staff Exhibits 1 through 6
24 will be received into the record.

25 (STAFF EXHIBIT NOS. 1 THROUGH 6 WERE

1 RECEIVED INTO EVIDENCE.)

2 JUDGE BUSHMANN: Were there stipulated
3 exhibits for Big River?

4 MR. GRYZMALA: Your Honor, AT&T would have
5 no objection to any of the exhibits, with the exception of
6 Exhibit No. 7. We can address that objection now along
7 with Big River's objections to our two or we can defer
8 them, however would best accommodate your Honor.

9 JUDGE BUSHMANN: Why don't we take that up
10 during the case when there's a witness on the stand. We
11 can deal with that with a witness.

12 Did Staff have any objections to Big River
13 Exhibits 1 through 11, with the exception of No. 7?

14 MR. BORGMAYER: Staff has no objection.

15 JUDGE BUSHMANN: Then Big River Exhibit --
16 I'm sorry. Go ahead.

17 MR. HOWE: Just to clarify something, your
18 Honor, when we filed Exhibit 7 on EFIS, it doesn't look
19 like we attached the actual e-mails. So I didn't want
20 there to be any confusion on that, but you were both
21 provided those in response to discovery.

22 MR. GRYZMALA: So the only reference to
23 Exhibit 7 in the EFIS filing is on the exhibit list?

24 MR. HOWE: Yes.

25 MR. GRYZMALA: But there's no documents in

1 EFIS?

2 MR. HOWE: Well, there's the interrogatory
3 answer referring to the e-mails and saying see attached.

4 MR. GRYZMALA: But no e-mails?

5 MR. HOWE: It looks like we may have filed
6 it without.

7 JUDGE BUSHMANN: I seem to remember that
8 there was a separate attachment with e-mails.

9 MR. HOWE: That's what -- I wasn't sure. I
10 wasn't able to check that on the way down here, but I
11 think we may have done it that way. There may not be any
12 confusion except on my part right now.

13 JUDGE BUSHMANN: Well, leaving aside No. 7,
14 Big River Exhibits 1 through 6 and 8 through 11 will be
15 received into the record. And you can take up No. 7 when
16 you have a witness on the stand.

17 (BIG RIVER EXHIBIT NOS. 1 - 6 AND 8 - 11
18 WERE RECEIVED INTO EVIDENCE.)

19 JUDGE BUSHMANN: So I believe that takes
20 care of a lot of the exhibits for the parties. Anything
21 else we need to do preliminarily before opening
22 statements?

23 MR. GRYZMALA: Your Honor, just a
24 housekeeping matter. Throughout the course of this case
25 the complainant -- or rather the respondent has been

1 referred to Southwestern Bell Telephone, L.P. Some years
2 ago we became a domestic corporation. We are known and
3 were known and are known today as Southwestern Bell
4 Telephone Company, d/b/a AT&T Missouri. With the
5 concurrence of Big River's counsel and the Staff counsel,
6 our proposal is we substitute the parties so that
7 henceforth the limited partnership is no longer named.

8 JUDGE BUSHMANN: So the proper name of the
9 party should be Southwestern Bell Telephone Company --

10 MR. GRYZMALA: D/b/a.

11 JUDGE BUSHMANN: -- d/b/a AT&T Missouri?

12 MR. GRYZMALA: Yes, your Honor. Just as a
13 housekeeping matter.

14 JUDGE BUSHMANN: Thank you. Anything
15 further?

16 MR. HOWE: Do the Commissioners need copies
17 of exhibits other than the prefiled testimony?

18 JUDGE BUSHMANN: Would you like to receive
19 those now in paper copies? It's in EFIS now. You're
20 asking if they want paper copies?

21 MR. HOWE: Correct.

22 COMMISSIONER JARRETT: Prefiled testimony?

23 MR. HOWE: Other than the prefiled
24 testimony.

25 COMMISSIONER JARRETT: Yes.

1 JUDGE BUSHMANN: Anything further to deal
2 with exhibits?

3 All right. Why don't we start with opening
4 statements, then. The first opening statement will be Big
5 River. You may come to the podium.

6 MR. HOWE: May it please the Commission?
7 I'm Brian Howe here on behalf of Big River Telephone. I
8 would like to thank the Commission and everybody else
9 involved for allowing the short postponement to give me a
10 bit of time to recover from my illness. Good news is I'm
11 feeling better than yesterday. Bad news is, that's not a
12 whole lot to say.

13 So I'll try to keep this brief, which it
14 shouldn't be too hard because it's rather a
15 straightforward case. There are only two issues before
16 the Commission. One is whether the traffic that Big River
17 terminated to AT&T was subject to exchange access charges,
18 and Section 13.3 of Attachment 12 of the interconnection
19 agreement provides that VOIP and enhanced services traffic
20 are not subject to exchange access charges. The
21 subsequent amendment to the ICA states that interconnected
22 VOIP is subject to access charges like other
23 telecommunications services.

24 Both AT&T Missouri and Staff have taken the
25 position that the Commission really only needs to

1 determine whether Big River provides interconnected VOIP
2 services, and that's fine. It makes it pretty simple
3 because Big River doesn't provide interconnected VOIP
4 services.

5 The statute has a clear definition of what
6 constitutes interconnected VOIP services. One of the
7 elements of that definition is that it requires a
8 broadband connection from the user's location. Big
9 River's service does not require a broadband connection
10 from the user's service. We can provide our service at
11 less than dial-up speeds.

12 AT&T has argued, and I assume will continue
13 to argue, that the use of requires in that statute doesn't
14 really mean requires. But as the Commission knows, when a
15 term in a statute is not defined, you look at the plain
16 use of that word, and the plain use of the word requires I
17 think is known to everybody here.

18 In addition, Big River has provided
19 evidence, which is essentially uncontested, that it
20 provides services that are enhanced beyond the fact that
21 it's not interconnected VOIP, and these services undergo
22 the type of net protocol conversion required to be
23 considered an enhanced traff-- enhanced service traffic.

24 Now, the other issue I had mentioned is the
25 amount owed, and in that regard there is no evidence

1 before the Commission, no competent evidence before the
2 Commission regarding any amount owed by Big River to AT&T
3 Missouri for exchange access charges.

4 The one possible or arguable piece of
5 evidence is a statement unsubstantiated made by
6 Mr. Greenlaw. Mr. Greenlaw does not work for AT&T
7 Missouri, he does not work for a company that handles
8 billing for AT&T Missouri, and he had no involvement in
9 this dispute until after the complaint was filed. So
10 anything he knows about any alleged amount owed by Big
11 River to AT&T Missouri is logically based entirely on
12 hearsay.

13 So as I mentioned, there's no competent
14 evidence before the Commission regarding the amount of
15 alleged access charges owed.

16 As I said, it's pretty straightforward.
17 Try to keep it brief so that at the end of the hearing Big
18 River will be asking the Commission to determine that its
19 traffic is not subject to the exchange access charges. In
20 the event that the Commission finds otherwise, the
21 Commission has nothing to base any finding in terms of
22 what amount may be owed for exchange access charges.

23 Thank you.

24 JUDGE BUSHMANN: Thank you, Mr. Howe.

25 Opening by AT&T Missouri.

1 MR. GRYZMALA: Your Honor, Commissioners
2 Stoll and Jarrett, thank you for the opportunity allowing
3 AT&T to present its case. I will likewise be brief.

4 We believe that it has come time for Big
5 River to account. Big River owes, the evidence will show,
6 AT&T over approximately \$350,000 in exchange access
7 charges for services that AT&T provided to Big River,
8 namely the termination of traffic delivered by Big River
9 to AT&T to its end user customers.

10 Exchange access charges are due and owing
11 on that for several reasons. The principal reason is that
12 our evidence will show that the traffic that -- the
13 traffic that Big River delivered to AT&T is interconnected
14 voice over Internet protocol service. We are well aware
15 of what the statute says in terms of defining that
16 service. 386 -- Section 386.020 subpart 23 defines
17 interconnected VOIP over Internet protocol service.

18 Our evidence will show that Big River --
19 that the service that Big River provides its customers is
20 IVOIP, interconnected VOIP service, based upon the
21 statutory elements because the customers have Internet
22 protocol compatible CPE equipment in their homes where
23 they make their calls from, that they engage in two-way
24 conversation, that they make voice telephone calls to
25 people who are served on the public switch network and

1 they receive calls from people who are on the public
2 switch telephone network.

3 We agree with Staff that what our evidence
4 shows, based in goodly measure on what their CEO stated to
5 us in deposition, is interconnected VOIP service. That
6 being the case, Section 392.550 of the Missouri code
7 dictates that access charges are applicable to
8 interconnected VOIP traffic no less than it is applicable
9 to traditional telecom traffic, and compensation is access
10 charges as has been billed by AT&T.

11 This is not the first time we've been
12 involved in such a scrape. The evidence will show that in
13 2005 Big River stated to AT&T that our PEU is 100 percent.
14 That's a buzzword for our percent of enhanced usage is
15 100 percent. Therefore, we don't owe you access charges.
16 We didn't agree with that, and it ended up in a lawsuit
17 and a settlement agreement was formed. There will be
18 evidence about the intent of the parties in closing out
19 that settlement agreement.

20 The evidence will show that effective as of
21 January 1 of 2010, the parties intended to bill access
22 charges on Big River's interconnected VOIP service. They
23 understood that. The parties understood that. It's
24 memorialized in a settlement agreement, and it's
25 memorialized in an ICA amendment that was filed with the

1 Commission and approved by the Commission.

2 Big River complains that after that
3 settlement was cut and the amendment was approved, that we
4 continued to bill for exchange access charges. No
5 surprise given the ICA amendment which we will put into
6 evidence.

7 But then Big River says, well, wait a
8 minute, gee, we don't have interconnected service here.
9 That's because, as Mr. Howe said in his testimony when
10 asked, what is it about Big River's telephone service that
11 does not make it interconnected VOIP, and the evidence
12 will show that Big River stated through its CEO that,
13 quote, one, in the state of Missouri if you do provide
14 interconnected VOIP service, you have to register with the
15 State. We are not registered with the State to provide
16 that service. Were you done with your answer? I don't
17 want to interrupt you if you weren't, he is asked. And he
18 says, yes.

19 That's a nonsecular. You don't answer a
20 question as to whether you're providing a service by
21 saying no, you're not because we're not registered to
22 provide it as we are required to do under law.

23 Anyway, a month later Big River changes its
24 story again. The evidence will show for the first time in
25 its surrebuttal testimony of November 30th that it's not

1 interconnected VOIP because it doesn't require a broadband
2 connection. The FCC does not specifically require a
3 broadband connection, which is where the definition came
4 from, the FCC's definition. It is sufficient that, as the
5 FCC has noted, we expect that most VOIP services will be
6 used over a broadband connection. Let there be no doubt,
7 most of these services are used over a broadband
8 connection. That is exactly the way Big River, the
9 evidence will show, designs, markets and sells its
10 services.

11 But there's more in this series of excuses.
12 Big River now says, we have another argument. We don't
13 owe you anything because the bills may not be accurate.
14 Say what? There's nothing in the complaint arguing that
15 the bills are inaccurate and that's why we are not paying,
16 Big River says.

17 There's nothing in the letters to AT&T
18 invoking dispute resolution under the terms of the
19 interconnection agreement that says we are not paying your
20 bill because your bills may not be accurate. They only
21 say we're not paying your bill because we are providing
22 enhanced services traffic which is exempt from access
23 charges. Think about that when Mr. Howe and Jennings try
24 to state otherwise.

25 The evidence will show that this entire

1 series of argument late in the game, very late in the
2 game, about our bills may not be accurate is foreclosed.
3 It was not in the complaint. It was not in the informal
4 dispute resolution process brought to AT&T. It was not in
5 the affirmative defense that Big River raised to our own
6 claim that you Big River owe us money. The only specific
7 affirmative defense they raised was, is we are exempt from
8 access charges 100 percent. Billing accuracy is a red
9 herring.

10 Our evidence will also show that the
11 motions to strike our witnesses' testimony are not well
12 taken. That will be taken up with the testimony of the
13 witnesses, as you heard a few moments ago. There are
14 arguments among counsel about whether or not certain
15 pieces of testimony should be admitted.

16 The statute, the law is absolutely clear.
17 This Commission is not bound by the formal rules of
18 evidence. This Commission is entitled to listen to and
19 hear the judgment and the expertise and the knowledge of
20 the facts from AT&T's witnesses, Mr. Greenlaw and Neinast.
21 Were Mr. Greenlaw and Mr. Neinast there when the
22 settlement agreement was cut between Big River and AT&T?
23 The answer is no. We admit to that. But they bring to
24 bear knowledge on other subjects, including billing, which
25 this Commission should hear, including the significance of

1 Big River's having filed tariffs, Big River's having filed
2 for, requested and obtained a certificate of service
3 authority, AT&T's -- or I'm sorry, Big River's filing of
4 annual reports, what Big River says about its services on
5 its website. Our witnesses are entitled to speak to that,
6 too, and form the decision so you can make a rational
7 decision.

8 The question with regard to what is owed is
9 straightforward. There is no real substantial question
10 about that, and our evidence will show that. So that with
11 respect, in conclusion, to issue No. 1, the answer is, in
12 our humble view, that the traffic we are talking about
13 here is interconnected voice over Internet protocol
14 service. And in answer to No. 2, being what charges, if
15 any, should apply, it's equally simple. The charges that
16 were billed from February 5 of 2010 through today.

17 Thank you.

18 JUDGE BUSHMANN: Thank you. Opening by
19 Staff.

20 MR. BORGMEYER: May it please the
21 Commission? Your Honor, Commissioners, I have good news
22 for you. It's not often that a lawyer gets to say that
23 he's got good news, but I do, and the news is that the
24 case before you is not as complicated as some of the
25 testimony might suggest.

1 Now, this case arises from cross complaints
2 by Big River and AT&T. Big River asserts that the traffic
3 it delivers to AT&T is not subject to access charges.
4 AT&T asserts that the traffic is subject to access
5 charges. That's the only dispute that the Commission must
6 resolve in this case.

7 Now, Big River argues that this traffic is
8 classified by the FCC and by the parties' interconnection
9 agreement as enhanced service or information service, and
10 that's traffic that is not subject to access charges.
11 Now, enhanced is a term of art that federal law uses to
12 describe what we commonly think of as Internet access
13 service. Enhanced service includes things like e-mail,
14 Skype, the Worldwide Web, which are not regulated by the
15 FCC because Congress has determined that the Internet
16 should develop free of government regulation. And that's
17 not what we're talking about here.

18 We're talking about telecommunications
19 traffic that Big River has delivered to AT&T Missouri.
20 And the term is confusing because when a layperson hears
21 the word enhanced, they think made better, but that's not
22 what the word means in this context.

23 The Commission's recent Report and Order in
24 the Halo TransCom case has a nice explanation of what is
25 and what is not enhanced service, and it provides an apt

1 analogy to Big River's claims in this case. Here, as in
2 the Halo case, what happens in the middle of the transport
3 of a telephone call is irrelevant to determining what kind
4 of communication it is. Just as the little wireless
5 portion in the Halo case did not alter the nature of the
6 call, so here the use of Internet signaling protocol does
7 not make the call enhanced or information service rather
8 than telecommunications.

9 If you look at Big River's testimony, what
10 it describes as enhancements may improve call quality, may
11 improve network efficiency, but that doesn't mean that
12 that service should be classified as enhanced so that it's
13 not subject to access charges. In Staff's view, Big
14 River's traffic is interconnected voice over Internet
15 protocol or IVOIP traffic as defined by both the FCC and
16 Missouri law.

17 IVOIP is a technology that allows telephone
18 calls using broadband connection. The key feature of
19 IVOIP, the feature that makes it interconnected is that
20 customers have the ability to make and receive calls to
21 the public switch telephone network, which you'll hear us
22 refer to as the PSTN. From the user's perspective, IVOIP
23 is a phone call. It's made from a traditional telephone
24 handset, but the voice signal is transmitted using IP
25 signaling protocol.

1 Missouri has an IVOIP statute that
2 specifically provides that IVOIP traffic is subject to
3 access charges. Case closed.

4 In his rebuttal testimony, Staff witness
5 William Voight describes how Big River's traffic meets the
6 definition of IVOIP. Big River's service enables real
7 time two-way voice communication. Their customers can
8 make calls and have a telephone conversation.

9 Staff witness Bill Voight is here today to
10 answer any questions you might have. Thank you.

11 JUDGE BUSHMANN: Thank you. The first
12 witness I have is Gerard Howe. Mr. Howe, if you can come
13 forward, please.

14 (Witness sworn.)

15 JUDGE BUSHMANN: You may be seated. You
16 may proceed.

17 MR. HOWE: Thank you, your Honor.

18 GERARD HOWE testified as follows:

19 DIRECT EXAMINATION BY MR. HOWE:

20 Q. Would you state your name, please.

21 A. Gerard J. Howe.

22 Q. And by whom are you employed?

23 A. Big River Telephone Company.

24 Q. And in what position are you employed?

25 A. Chief executive officer.

1 Q. And how long have you held that position?

2 A. Eleven years.

3 MR. HOWE: May I approach, your Honor?

4 JUDGE BUSHMANN: Yes.

5 BY MR. HOWE:

6 Q. I'm handing you what's been marked as Big
7 River's Exhibit 1. Can you identify that document?

8 A. Yes. It is my direct testimony in this
9 case.

10 Q. Do you have any additions or corrections to
11 that testimony?

12 A. Yes, I have one correction.

13 Q. What is that correction?

14 A. On page 11, there's a question that's
15 asked, have any local exchange companies offered to
16 exchange access traffic in the format inherent in your
17 network? That question should be changed to ask, have any
18 local exchange companies or their affiliates offered to
19 exchange access traffic in the format inherent in your
20 network?

21 And then the beginning of the response to
22 that question should strike the first sentence that is
23 there that currently says, yes, AT&T Missouri has. That
24 sentence should be struck and instead the answer should
25 start with, while AT&T Missouri has not, an affiliate of

1 AT&T Missouri has offered to exchange access traffic in
2 the format inherent in Big River's network. The rest of
3 the response should remain the same.

4 Q. Do you have any other additions or
5 corrections to your testimony?

6 A. No.

7 MR. HOWE: Your Honor, I have no further
8 questions for this witness and tender him for cross.

9 JUDGE BUSHMANN: I believe that was -- that
10 exhibit was already received into the record. There were
11 some changes there. Mr. Gryzmala, is that okay? Do you
12 have any objection to that as corrected?

13 MR. GERMANN: This one's mine, your Honor.
14 We have no objections to that as corrected.

15 JUDGE BUSHMANN: Then cross-examination by
16 AT&T Missouri.

17 CROSS-EXAMINATION BY MR. GERMANN:

18 Q. Good afternoon, Mr. Howe. I'm Hans Germann
19 for AT&T. I know we've met before.

20 Now, if I understand your testimony
21 correctly, you say that Big River provides a VOIP service
22 but it's not interconnected VOIP; is that correct?

23 A. Can you refer me to somewhere in the
24 testimony you're talking about?

25 Q. Well, what's your understanding of a VOIP

1 service? To be clear, I'm not referring to an
2 interconnected VOIP service.

3 A. On page 6 of my testimony, I explain how we
4 make transformations to all the information that we
5 exchange with AT&T Missouri where we have to transform all
6 the data that we receive from their network and then we
7 transmit to their network, and I explain there part of
8 that change is packetizing some of the data into IP
9 datagrams.

10 But I also explain a variety of other
11 transformations that we are required to make to allow
12 people to communicate and hear, parties from AT&T's
13 network to communicate with parties on our network.

14 Q. Do you have your surrebuttal testimony in
15 front of you?

16 A. No.

17 Q. This is Big River Exhibit 6. If you could
18 turn to page 6, please. I'm looking at lines 14 and 15.
19 It says, the calls on our network originate in IP format
20 at the customer's location and are transformed to TDM at
21 Big River's switch for delivery to AT&T Missouri's
22 network; is that correct?

23 A. Yes.

24 Q. Now, is that a VOIP service?

25 A. No. It's just a transformation of data

1 that takes place at our media gateway.

2 Q. Would you agree that a VOIP service is a
3 voice telephone service that is provided using Internet
4 protocol format?

5 A. I think generally it is, yes.

6 Q. And is that a service that Big River
7 provides, a voice service that originates from the user's
8 location --

9 A. As I state --

10 Q. -- using Internet protocol format?

11 A. As I stated in my testimony, we do use
12 Internet protocol as a component of the way that we
13 deliver service to our customers.

14 Q. And that includes service that originates
15 in Internet protocol format at the user's location; is
16 that correct?

17 A. Yes.

18 Q. Now, but it's your testimony that the
19 service is not or cannot be interconnected VOIP because a
20 broadband connection is not required; is that correct?

21 A. As I read the statute and the statute
22 stated that a broadband connection is required, I believe
23 that excluded our service from meeting the definition.
24 Our service does not require broadband connection to the
25 end user customer's location.

1 Q. Now, to get a VOIP service from Big River,
2 a customer needs some kind of connection to Big River's
3 network, don't they?

4 A. What do you mean by some kind of connection
5 to our network?

6 Q. Well, if they're not connected to your
7 network, they can't receive your service or use your
8 service?

9 A. They can connect over the Internet or any
10 variety of other means to connect to our network.

11 Q. But there still has to be some connection?

12 A. Sure.

13 Q. Okay. And in the case of Big River's
14 service, that is generally a DSL line or a cable company's
15 fiber coax network; is that correct?

16 A. Yes.

17 MR. GERMANN: Your Honor, may I approach?

18 JUDGE BUSHMANN: Yes.

19 (AT&T EXHIBIT NO. 20 WAS MARKED FOR

20 IDENTIFICATION BY THE REPORTER.)

21 BY MR. GERMANN:

22 Q. Mr. Howe, this a printout from Big River's
23 website, and near the top it says digital telephone
24 services. I'd like you to look at the first question
25 there under the heading Digital Telephone Service FAQ. It

1 says, what is digital telephone service or VOIP? Now, the
2 answer says, digital telephone service or VOIP, voice over
3 internet protocol, is a residential phone or business
4 phone service that uses a broadband connection rather than
5 a traditional analog line to make unlimited local and long
6 distance telephone calls.

7 Is this an accurate description of the
8 digital telephone service that Big River provides?

9 A. It's an explanation of how we would work
10 with wholesale providers in providing services over their
11 network. That's the intention of this page. It's a
12 marketing page to explain to potential wholesale partners
13 who we would work with and how they would work with us and
14 provide service to their customers, or we would provide
15 service in conjunction with their network to their
16 customers.

17 Q. So you would provide a VOIP service using a
18 broadband connection?

19 A. We would provide digital telephone service
20 using whatever connections that our partners might have.

21 Q. Do you provide a voice service that
22 originates in IP format over analog telephone lines?

23 A. I don't believe so.

24 Q. Do you know what dial-up Internet access
25 is?

1 A. Yes.

2 Q. Is that generally where somebody uses a
3 computer modem to dial the number of an ISP and establish
4 a connection between their computer and the ISP? Is that
5 a fair description?

6 A. Yes, that's a fair description.

7 Q. Do you provide voice telephone service to
8 customers over dial-up Internet access connections?

9 A. Not that I'm aware of.

10 Q. You mentioned that some of Big River's
11 voice telephone services are provided over DSL lines; is
12 that correct?

13 A. Yes.

14 Q. And that's using a DSL line is the last
15 mile connection to the customer's premises?

16 A. Most -- most of the time, yes.

17 Q. Now, a DSL line is a digital telephone line
18 configured for high speed service, isn't it?

19 A. I don't know if I'd describe it as a
20 telephone line. It's a digital carrier over a local loop
21 to a customer's premise.

22 Q. And a DSL line is generally considered a
23 broadband connection, isn't it?

24 A. It's hard to say. I believe the FCC in
25 their eighth report on broadband increased the bandwidth

1 definition of broadband to, I believe, over 4 megabits per
2 second, and a lot of DSL connections, because of the
3 condition of the loops, are not capable of operating at
4 those speeds. Some cases they're not capable of operating
5 at speeds in excess of 200 kilobits per second.

6 So DSL, whether or not -- DSL is a
7 technology. It doesn't guarantee a speed. It doesn't
8 particularly meet a definition of broadband. It's simply
9 a technology used to transmit data digitally over a
10 two-wire copper pair.

11 Q. Does Big River offer DSL service?

12 A. Yes.

13 Q. Does Big River sell any DSL service that is
14 intended to operate at less than 200 kilobits per second?

15 A. We probably do. Again, our customers are
16 looking for an improvement over dial-up speeds, and again,
17 because of the condition of the loops and the condition of
18 the copper network that exists out in the outside plant,
19 that will dictate the speeds that are obtained on a DSL
20 connection.

21 The same holds true with cable services.
22 Again, we've dealt with some of our cable partners where
23 we've had to deal with conditions that, for some periods
24 of time in some cases for a duration, where the condition
25 of the network diminishes the capability of the network to

1 carry speeds sometimes in excess of again 4 megabits.
2 Generally they can attain speeds in excess of 200
3 kilobits, though. Both cable modem service and DSL
4 service are a technology, neither of which guarantee any
5 speeds.

6 Q. DSL technology is intended to offer
7 customers speeds higher than dial-up Internet services;
8 isn't that correct?

9 A. Generally, yes.

10 MR. GERMANN: Your Honor, may I approach?

11 JUDGE BUSHMANN: Yes.

12 MR. GERMANN: Mark this as AT&T Exhibit 21.

13 (AT&T EXHIBIT NO. 21 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

15 BY MR. GERMANN:

16 Q. This is another page from Big River's
17 website regarding high speed DSL. I'd like you to look at
18 the second half of the page where it says, on the middle
19 of the page it says high speed DSL. Underneath that, if
20 you go down a paragraph, you will see the speeds that we
21 can offer today range from. Do you see where I'm reading
22 from?

23 A. Yes.

24 Q. Okay. The speeds that we can offer today
25 range from 1 megabit per second slash 128 kilobits per

1 second to 3 megabits per second slash 512 kilobits per
2 second; is that correct?

3 A. That is correct.

4 Q. Now, the 1 megabit per second, is that the
5 download speed?

6 A. That is correct.

7 Q. So that would be the speed of data from
8 basically the Internet at the server to the customer's
9 premises?

10 A. That's the speed that we are capable of
11 providing service off the port of our DSLAMs.

12 Q. Now, on this page Big River doesn't
13 advertise or offer any speed, download speed slower than
14 1 megabit per second for a DSL line, does it?

15 A. Excuse me. What's the question again?

16 Q. Well, does Big River market or advertise
17 the availability of a DSL service with a download speed
18 slower than 1 megabit per second?

19 A. Do we market it?

20 Q. Yes.

21 A. It might come up in regards to a discussion
22 with a customer. We generally don't put it on a website.
23 We generally don't put it in newspaper, radio or mass
24 communications advertising. But it most definitely could
25 come up in discussions with a customer who might be at the

1 extremity of a loop, who might be capable of getting
2 200 kilobits per second and would opt to get that service
3 versus a dial-up speed where he might only be getting
4 14.4 kilobits per second. That sales process is part of
5 marketing.

6 Q. So your testimony is that while this is the
7 speeds that we can offer today range from 1 megabit per
8 second, you actually will provide DSL service slower than
9 that?

10 A. Yes, most definitely. Again, because of
11 the condition of the loops over which the service is
12 provided will dictate the actual speeds that the customers
13 receive at their customer premise.

14 Q. How many customers in Missouri does Big
15 River have to whom it provides DSL service at 200 kilobits
16 per second or slower?

17 A. On the uplink or the downlink or either
18 direction?

19 Q. On the download.

20 A. I'm not sure.

21 Q. Do you know if there are any?

22 A. Customers that we provide download speeds
23 less than -- yes, I know we do. I don't know how many
24 there are.

25 Q. Is it a very small percentage of your DSL

1 customer base?

2 A. I would guess so. We generally restrict
3 our speeds to customers where they have had trouble paying
4 their bill. So what we do is we restrict their broadband
5 speed to 40 kilobits per second. They're still able to
6 make telephone calls and receive telephone calls, but
7 their Internet speeds are reduced to that level, which is
8 generally lower than what they expect. That will
9 generally entice our customers to pay us.

10 Q. I'm going to move on here. Now, Big River
11 in the past has represented to the FCC that it provides
12 interconnected VOIP service, hasn't it?

13 A. I'm not aware that we have.

14 MR. GERMANN: We can mark this as AT&T
15 Exhibit 22.

16 (AT&T EXHIBIT NO. 22 WAS MARKED FOR
17 IDENTIFICATION BY THE REPORTER.)

18 BY MR. GERMANN:

19 Q. This is a document from the FCC electronic
20 filing system. It's a letter to the FCC. The re line,
21 VOIP E911 compliance report, Big River Telephone Company.
22 Now, Mr. Howe, is this a letter submitted to the FCC on
23 behalf of Big River?

24 A. Yes, it appears so.

25 Q. If you turn to the very last page, there's

1 a certification there from Kevin Keaveny. Did I pronounce
2 that correctly?

3 A. Yes.

4 Q. And he's an officer at Big River, is he
5 not?

6 A. Yes.

7 Q. Can you take a look at the first paragraph
8 of the letter? Big River Telephone Company through its
9 undersigned counsel and pursuant to Commission Rule 9.5F
10 as adopted by the Commission's VOIP E911 order concerning
11 enhanced 911 or E911 service requirements and conditions
12 applicable to interconnected voice over Internet protocol
13 service providers submits this compliance report.

14 Is that -- is this letter, does that appear
15 to be suggesting to the FCC that Big River is an
16 interconnected VOIP provider?

17 A. I think it suggests that we comply with the
18 rules that apply to interconnected VOIP providers with
19 regard to 911 service requirements.

20 Q. Is it your understanding that -- well, do
21 you know whether non-interconnected VOIP providers are
22 obligated to comply with the FCC's E911 rules?

23 A. I don't know.

24 Q. If you turn a few pages in to paragraph 12.

25 A. I don't know what you mean by paragraph 12.

1 Q. It's question 12. It's numbered 12, and
2 there's a response to that in the last paragraph begins
3 with as described above. Do you see that?

4 A. Do I see what now?

5 Q. The second paragraph of the response that
6 begins with "as described above."

7 A. Yes.

8 Q. And does that paragraph not indicate that
9 Big River provides interconnected VOIP service?

10 A. It states what it states.

11 Q. It states, does it not, that Big River
12 subscribers have VOIP telephone equipment that they use to
13 access their interconnected VOIP service?

14 A. Yes.

15 Q. If we go back to the first page, the second
16 line, again, this letter indicates that it was submitted
17 pursuant to Commission Rule 9.5F; is that correct?

18 A. Yes.

19 Q. And the date of this letter is November 28,
20 2005; is that correct?

21 A. Yes.

22 MR. GERMANN: Your Honor, if I may
23 approach?

24 JUDGE BUSHMANN: Yes.

25 MR. GERMANN: Mark this as AT&T Exhibit 23.

1 (AT&T EXHIBIT NO. 23 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)
3 BY MR. GERMANN:

4 Q. This is a copy of Part 9 of the FCC's
5 rules. Could you take a look at Section 9.5A. It's on
6 the second page. And 9.5A states, does it not, that the
7 following requirements are only applicable to providers of
8 interconnected VOIP services; is that correct?

9 A. That is correct.

10 Q. And then if you look at 9.5F, the very last
11 subsection of that rule, compliance letter, and it states,
12 does it not, that all interconnected VOIP providers must
13 submit a letter to the Commission detailing their
14 compliance with this section no later than November 28,
15 2005?

16 A. Yes.

17 Q. And does this letter, Exhibit 22, appear to
18 be the compliance letter referred to in Rule 9.5F?

19 A. Yes.

20 Q. Now, Big River also submits annual reports
21 to the FCC, does it not?

22 A. I'm not -- not sure.

23 Q. You didn't -- prior to appearing today, you
24 didn't look into whether Big River had filed reports with
25 the FCC characterizing its traffic?

1 A. No.

2 Q. Mr. Howe, this is not the first time you
3 have testified before a state commission, is it?

4 A. No.

5 Q. In fact, you previously have testified,
6 among other places, in front of the Kansas Commission?

7 A. Yes.

8 MR. GERMANN: If we could mark this as 24.

9 (AT&T EXHIBIT NO. 24 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. GERMANN:

12 Q. Mr. Howe, is this testimony that you
13 submitted to the Kansas Corporation Commission in 2009?

14 A. Yes.

15 Q. And in this proceeding, among other things,
16 Big River was asking the Commission to be designated as an
17 ETC or an eligible telecommunications carrier; is that
18 correct?

19 A. That is correct.

20 Q. And ultimately the Commission granted Big
21 River ETC status; is that correct?

22 A. That is correct.

23 Q. If you could turn, please, to page 4, very
24 first line, Big River is currently providing voice over
25 Internet protocol, VOIP, or voice over IP service to

1 customers in many of AT&T exchanges; is that correct?
2 Does Big River provide voice over Internet protocol
3 service?

4 A. Yes.

5 MR. HOWE: Your Honor, I'm going to object
6 to questions regarding this document. The testimony in
7 the Kansas proceeding is totally irrelevant here.

8 MR. GERMANN: Your Honor, it's impeachment.

9 JUDGE BUSHMANN: Overruled.

10 BY MR. GERMANN:

11 Q. So my question, Mr. Howe, is, does Big
12 River provide voice over Internet protocol service?

13 A. Yes.

14 Q. But it's your testimony here that it
15 doesn't provide interconnected voice over Internet
16 protocol service; is that correct?

17 A. Yes. Again, as we read the statute and we
18 determined if we should register as an interconnected VOIP
19 provider or continue to operate under our certificate of
20 authorization, we read the statute that suggested to us
21 that we were not an interconnected VOIP provider.

22 Q. If you could turn please to page 11, the
23 question that begins on line 8 and your response on
24 line 10. The question is, does Big River intend to
25 provide its retail services under tariffs filed with the

1 Commission? And the answer is no. As a provider of
2 interconnected voice over IP, Big River will continue to
3 offer retail services via individual service agreements.

4 So he represented here to the Kansas
5 Commission that Big River provides interconnected voice
6 over IP service, did you not?

7 A. That's what I stated. Again,
8 interconnected is not defined. It's not capitalized. I
9 do use voice over IP, which we made clear to the Kansas
10 Commission. The fact that it's interconnected implies
11 that we're going to exchange traffic with the incumbents
12 where we provide service.

13 And as I advised the commission there, too,
14 we would meet the obligations that are placed upon
15 interconnected VOIP providers, such as providing 911
16 services, providing telecommunications relay services, and
17 collecting and remitting USF fees, all of which are placed
18 on interconnected VOIP providers, and I advised the
19 commission that, as part of the way that we provide
20 service, we would meet those obligations as well.

21 Q. Now, but in the first line there, line 10,
22 you say, as a provider of interconnected voice over IP.
23 Is there anywhere in here where you tell the Commission
24 actually Big River does not provide interconnected voice
25 over IP?

1 A. It never came up.

2 Q. If you could turn to page 14, please. I'm
3 looking at the sentence of your testimony that begins on
4 line 12. The very last word of line 12 is big, and it
5 goes on, Big River service offerings, and it states there
6 that Big River service offerings made in conjunction with
7 Eagle Communications are advanced information and
8 telecommunications alternatives to those services provided
9 by the incumbent and are offered over an alternative
10 network with advanced capabilities and a significant
11 amount of bandwidth to support high speed data services.

12 Is that true of Big River's IP-based voice
13 services generally, that they are offered over networks
14 with advanced capabilities and a significant amount of
15 bandwidth to support high speed data services?

16 A. Yes.

17 MR. GERMANN: If we could mark this as
18 AT&T 25.

19 (AT&T EXHIBIT NO. 25 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)
21 BY MR. GERMANN:

22 Q. And AT&T Exhibit 25 is your rebuttal
23 testimony from the same proceeding in Kansas. Do you
24 recognize this as your testimony from that proceeding?

25 A. I can't say that I recognize it. I'm --

1 I'm guessing it's my testimony.

2 Q. You recall submitting testimony in that
3 proceeding, I take it?

4 A. Yes.

5 Q. If you could turn, please, to page 6, and
6 looking at lines 20 through 22, I'll summarize, you state
7 that since Big River uses voice over IP, it's capable of
8 using any broadband Internet or data connection to a
9 customer premises and using it to support high-capacity
10 voice services; is that correct?

11 A. Yes, that's what I stated.

12 Q. And is that -- does that continue to be an
13 accurate description of Big River's voice over IP service?

14 A. Yes. We could use any broadband connection
15 to the Internet to provide service to a customer.

16 Q. If you could please look at the next page,
17 page 7, and there's a sentence that begins in the middle
18 of line 3, it says, again, by the very nature of Big
19 River's service strategy and network, our connections to
20 customers are made using high-capacity broadband
21 facilities. Is that correct?

22 A. That is correct.

23 Q. Those high-capacity broadband facilities
24 include the last mile connections of cable companies; is
25 that correct?

1 A. That is correct.

2 (AT&T EXHIBIT NO. 26 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. GERMANN:

5 Q. AT&T Exhibit 26 is a copy of Big River's
6 application to the Alabama Commission for a certificate of
7 public convenience and necessity dated in 2009. I'd like
8 to draw your attention to Section 4 of this application.
9 Unfortunately, there are no page numbers, but it's about
10 11 or 12 pages in, and at the top it says Section 4
11 Engineering. Do you see that, Mr. Howe?

12 A. Yes.

13 Q. If you look down under -- well, under
14 Section 4.1, the first question and the first response
15 indicates applicant proposes to provide local exchange and
16 switched exchange access services throughout any exchanges
17 in which it partners with a local cable TV company with
18 whom it will lease local network to gain access to
19 customers; is that correct?

20 A. That's correct.

21 MR. HOWE: Your Honor, I'm going to object
22 to any questions regarding this document as lacking
23 foundation, and it doesn't appear that it was ever
24 verified by anyone from Big River.

25 MR. GERMANN: Your Honor, I'd point out in

1 the cover page that there's a stamp that it was filed with
2 the secretary of the Alabama Commission, there's
3 Mr. Howe's signature, and attached is a searchable PDF
4 copy. I believe it's self evident.

5 JUDGE BUSHMANN: I'll overrule the
6 objection.

7 BY MR. GERMANN:

8 Q. Mr. Howe, is it true that Big River
9 generally partners with local cable television companies
10 to gain access to the last mile facilities to provide
11 voice service?

12 A. We work with a number of network providers,
13 most of which all use high speed services. That's what we
14 find is in demand in the market today. We really don't
15 find a lot of demand for people wanting narrow band
16 services. Everybody wants high speed data services, and
17 so that's generally who we partner with, both cable TV
18 companies, fiber to the home companies, satellite
19 companies, but generally they're all companies that
20 provide high speed Internet access. There's no doubt
21 about that.

22 Q. And down under Section 4.2 here on the same
23 page where it says, provide a statement that describes
24 transmission capability of applicant, it states, for
25 transmission purposes Big River Telephone, LLC leases

1 network access from cable TV companies. The next sentence
2 says, the capabilities of the underlying cable TV networks
3 are significant and can readily provide 10 to 50 megabits
4 per second of bandwidth; is that correct?

5 A. Yes, it says that.

6 Q. Now, is that generally true of the cable TV
7 companies that Big River partners with when it provides
8 voice service?

9 A. Yes. They generally have been increasing,
10 especially with the introduction of DOCSIS 3.0, they are
11 now generating regularly speeds in excess of 25 megabits
12 per second. Again, we only lease and need less than
13 100 kilobits per second of that connection, but we find
14 that packaging our service with a provider that's
15 providing speeds enhances the ability to sell our
16 services.

17 Q. 10 to 50 megabits per second, those are
18 broadband speeds, are they not?

19 A. Yes.

20 Q. You suggested just a second ago in your
21 answer that you lease 100 kilobits per second or you need
22 100 kilobits per second. Could you repeat that? I'm
23 sorry. I didn't understand that.

24 A. Yes. In our relationship with our cable
25 partners or our wholesale broadband partners, all we do is

1 work out the requirements to deliver our service to their
2 customers. It's not that we need or require the
3 50 megabits per second speeds that we mentioned here.
4 Those customers might buy that sort of bandwidth to meet
5 their data needs, but to meet the needs of the services
6 that we provide, as I suggested in my surrebuttal
7 testimony, all we need is about 40 kilobits per second.

8 And again, that's because of the
9 transformation that we make to the information that we
10 receive and we transmit over our network using the codecs
11 that I explained, we don't require broadband speeds.

12 Q. Do your cable company partners throttle
13 back the last mile facilities to 40 kilobits per second
14 when somebody -- when a Big River customer is making a
15 telephone call?

16 A. I don't -- I don't know if they throttle
17 back or --

18 Q. Do they allow --

19 A. -- when they make a telephone call.

20 Q. Do they allow --

21 A. All they do is they reserve the amount of
22 bandwidth we require for our telephone call.

23 Q. Do they allow --

24 A. The rest of the bandwidth is used for the
25 data services they provide to the customer.

1 Q. Do they allow Big River's telephone service
2 to use more than 100 kilobits per second?

3 A. Not that I'm aware.

4 Q. Do they prevent Big River from using more
5 than that?

6 A. I'm not sure. Generally in the setting on
7 the CMTS, it's a cable termination system. In their
8 network they reserve and allocate the bandwidth that's
9 required to make sure we have priority and our voice gets
10 to the customer before -- you know, if they are
11 downloading a large file, that might cause disruption if
12 you're not managing that network. We work with our cable
13 partners to manage the network to where our packets are
14 given priority. But again, no where is that demand on the
15 bandwidth greater than 40 kilobits per second.

16 Q. I believe we have an example here with your
17 surrebuttal testimony of the voice service at 40 kilobits
18 per second; is that correct?

19 A. Yes.

20 MR. GERMANN: Your Honor, could we play
21 this attachment?

22 JUDGE BUSHMANN: And this is -- can you
23 describe what the attachment is?

24 MR. GERMANN: This is an attachment to
25 Mr. Howe's surrebuttal testimony.

1 JUDGE BUSHMANN: And this was filed in --

2 MR. GERMANN: This was filed in this case.

3 JUDGE BUSHMANN: With the Commission?

4 MR. GERMANN: Yes, it was filed in this

5 case. It's on EFIS.

6 JUDGE BUSHMANN: I believe you're going to

7 need to hit the play button. You have a remote there.

8 (The following recording was played:)

9 SPEAKER ONE: J.T., where you calling from?

10 SPEAKER TWO: From Cape Girardeau using a

11 DSL line at 40 kilobits a second.

12 SPEAKER ONE: Okay. Hey, are you looking

13 at the DSLAM now to confirm that speed?

14 SPEAKER TWO: Yes. It's showing 41

15 kilobits down and 43 kilobits up.

16 SPEAKER ONE: Okay. And did you conduct a

17 speed test prior to this call?

18 SPEAKER TWO: Yes. It showed 34 kilobits

19 up and 32 kilobits down.

20 SPEAKER ONE: Okay. Just send me a copy of

21 those results if you would.

22 SPEAKER TWO: Sure.

23 SPEAKER ONE: That's all I needed. Thanks

24 for the help.

25 (Recording ended.)

1 BY MR. GERMANN:

2 Q. Mr. Howe, was that you in that recording?

3 A. Yes.

4 Q. And who were you speaking to?

5 A. One of the managers in our network
6 operations center.

7 Q. Now, it sounded like there was an echo in
8 that recording. It could be the playback equipment here.
9 Let's put that aside. Apart from the echo, when you spoke
10 to one of your employees, was there a delay in hearing his
11 response?

12 A. I don't believe so. I think the only delay
13 that you probably heard from him was his timidity in
14 talking to me and making the recording.

15 Q. Okay.

16 A. Again, we didn't set up that network and
17 measure any latency packet loss. Really what we're
18 focused on are just limiting speeds. But in talking to
19 him, I didn't experience -- I did hear an echo, probably
20 about 200 milliseconds. That's the first time I've ever
21 heard it when you played it back in this room. In the
22 file that we had, I do not believe that there was an echo
23 recorded on the call. But that was a noticeable echo in
24 this room that I hadn't heard before, and like I said,
25 it's -- it's pronounced. It's got to be at least

1 200 millisecond echo delay.

2 Q. Now, is the quality of the voice service
3 that Big River provides the same whether somebody's DSL
4 line is running at 40 kilobits per second or 2 megabits
5 per second?

6 A. Yes. The speed really isn't the limiting
7 factor. As I mentioned to you just a few minutes ago, our
8 issues are really in latency packet loss. Sometimes just
9 jitter. But because of the codec we use, we really don't
10 need that much speed.

11 Q. Packet loss can be affected by speed, can't
12 it?

13 A. If you overburden a network connection by
14 putting more data through than it's allowed to manage, the
15 end device on either end will probably discard packets.
16 But again, as I mentioned earlier, in our working with our
17 wholesale partners, we use differentiated service points
18 to serve -- it's technical. I'm sorry -- characteristic
19 and transmitting IP packets that prioritizes voice over
20 data.

21 So you might be on a 1 megabit per second
22 connection downloading 100 megabit file, and because of
23 the use of differentiated service points, we're allowed to
24 push the voice through uninterrupted with no packet loss.
25 If any packets are discarded, they'll be the data packets

1 of that 100 megabit file. Our calls with the information
2 containing the voice will be sent through without any
3 interruption or delay or loss.

4 Q. Let's talk a little bit more about the
5 cable companies you partner with, and specifically in
6 Missouri, could you name for us the cable companies in
7 Missouri that you partner with to provide voice telephone
8 service?

9 A. Telecom Management, CableAmerica, Semo
10 Communications, Boycom Communications. We do provide
11 service, what we call over the top, over Charter. We have
12 no network interconnection with Charter. We have no
13 working relationship with them, but some of our customers
14 subscribe to our service over their Internet connection
15 using a Charter connection.

16 Q. Give me one second here.

17 A. As I sit here, that's the only cable
18 companies that I can think of in Missouri.

19 Q. Did you mention NewWave?

20 A. NewWave is Telecom Management.

21 Q. That is Telecom Management. Okay. Same
22 company.

23 A. Can I ask you where we got this file? This
24 bothers me that there was this echo on this recording.

25 Q. I have no idea.

1 (AT&T EXHIBIT NO. 27 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)
3 BY MR. GERMANN:

4 Q. And Exhibit 27 is a printout from the web
5 page of NewWave Communications, which is one of the cable
6 companies that you partner with in Missouri to provide
7 voice service; is that correct?

8 A. That is correct.

9 Q. And if you look on the first page here, it
10 describes digital phone service.

11 MR. HOWE: Your Honor, if I could, I'm
12 going to object to any questions regarding this as lack of
13 foundation. This is from a company completely separate
14 from Big River. We had nothing to do with creating this
15 document.

16 MR. GERMANN: The company may be separate
17 from Big River, but Big River partners with them to
18 provide telephone service and providing services over the
19 facilities in connection with this cable company. I think
20 I'm entitled to ask Mr. Howe what he knows about that.
21 Presumably as the CEO he was involved in negotiating some
22 of these agreements. He should have some knowledge of the
23 cable company's networks.

24 JUDGE BUSHMANN: I'm having trouble
25 understanding how this creates impeachment against

1 Mr. Howe.

2 MR. GERMANN: Well, your Honor, he
3 suggested that they don't use broadband connections when
4 they partner with cable companies to provide the voice
5 service.

6 MR. HOWE: That's a misrepresentation.
7 He's never said that.

8 MR. GERMANN: Well, that was my
9 understanding of his testimony is that -- is that the
10 cable companies, I guess, may or may not be using
11 broadband connections. But here we have, for example,
12 this is NewWave, a description of the service says your
13 phone service is delivered through broadband connection.
14 And I'm entitled, I believe, to ask him if he agrees with
15 that, if he has any reason to dispute NewWave's
16 description of their service.

17 JUDGE BUSHMANN: I'll give you a little bit
18 of leeway to talk about what he may know about what
19 NewWave does, but -- so I'll let you go as far as that.

20 BY MR. GERMANN:

21 Q. Well, looking at the first page of this,
22 Mr. Howe, it states here that your phone service is
23 delivered through your broadband connection with crystal
24 clarity. Do you know whether when NewWave provides this
25 digital phone service, whether it's always delivered

1 through a broadband connection?

2 A. I don't know.

3 Q. One of the other cable companies you
4 mentioned is Boycom. You partner with Boycom to provide
5 voice service in Missouri; is that correct?

6 A. That is correct. They generally operate in
7 territories served by Windstream, and they have just
8 started to move into that service territory in conjunction
9 with us providing our telephone service over their
10 connections.

11 Q. Do you know whether all of Boycom's last
12 mile connections to their customers are broadband
13 connections?

14 A. I do not know. Again, we have worked in
15 some cases with some of our cable companies from time to
16 time, and we do know the conditions, the cold, the
17 humidity, noise picked up on the cable network sometimes
18 affects the speeds and the capabilities of the networks.

19 And so I don't know for certain what speeds
20 they're operating at, much less what they're designed to
21 operate at. Some cases they use DOCSIS 3.0, some cases
22 they use DOCSIS 2.0, some cases they use DOCSIS 1.1, all
23 of which provide varying degrees of speeds on the network,
24 again, conditioned by the actual physical condition of the
25 network itself.

1 MR. GERMANN: Can we mark this as
2 Exhibit 28.

3 (AT&T EXHIBIT NO. 28 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)
5 BY MR. GERMANN:

6 Q. This is a printout from CableAmerica, and
7 CableAmerica is another cable company that you partner
8 with in Missouri; is that correct?

9 A. That's correct.

10 Q. So if we were to see a website -- well,
11 strike that.

12 When CableAmerica offers digital phone
13 service, is that offered in partnership with Big River?

14 A. Sometimes it is. Sometimes it isn't. They
15 have another underlying telephone provider in the state of
16 Missouri in addition to Big River.

17 Q. And it's a telephone company that's not
18 affiliated with Big River?

19 A. That is correct. I believe they work in
20 partnership with Fidelity Telephone in Sullivan, Missouri.

21 Q. This document, if you look at the first
22 paragraph, it describes digital phone service as an
23 affordable, full-featured broadband telephony service.
24 When CableAmerica partners with Big River to provide
25 telephone service, is that an accurate description of the

1 service?

2 MR. HOWE: Your Honor, I'm again going to
3 object to what this document says. Big River has no
4 connection with the creation or production of this
5 document. What the cable company says really has no
6 bearing.

7 JUDGE BUSHMANN: He's not offering it yet.
8 He's just asking what Mr. Howe knows about it. I think to
9 that extent he can do that.

10 THE WITNESS: Can you restate the question?

11 BY MR. GERMANN:

12 Q. I'll ask it again. When Big River partners
13 with CableAmerica to provide digital phone service, is it
14 accurate to describe that service as an affordable,
15 full-featured broadband telephony service?

16 A. Probably not. Again, as I stated, we don't
17 require or use more than 40 kilobits of bandwidth on a
18 broadband connection. Generally what happens is that we
19 partner with providers of high speed data services, and
20 high speed communications. So they will typically
21 describe the packages of their services as broadband.

22 Q. Is it your testimony that you never use
23 more than 40 kilobits per second when you provide a voice
24 service?

25 A. We might on some instances use a G711 codec

1 to a customer. In those cases we would use 90 kilobits
2 per second. When we use the G722 high definition codec,
3 again, we use approximately 90 kilobits per second.

4 JUDGE BUSHMANN: If I could interrupt just
5 for a second. Prior to the hearing the parties agreed
6 that there would be a one-hour limit on cross, and so you
7 have about five minutes remaining.

8 MR. GERMANN: Thank you, your Honor.

9 BY MR. GERMANN:

10 Q. Mr. Howe, I'm going to refer to your
11 surrebuttal testimony, which is Big River Exhibit 3, and
12 beginning on the bottom of page 8 there and over on to
13 page 9, you reference a dispute with AT&T or an issue
14 regarding the validity of data. Do you see that?

15 A. Yes.

16 Q. And you assert there on line 6 that you
17 rebutted the validity of Mr. McPhee's data --

18 A. Yes.

19 Q. -- do you see that?

20 Now, isn't it a fact that at the end of the
21 day in that case that the Illinois Commerce Commission
22 found in AT&T Illinois' favor on that issue?

23 MR. HOWE: I object to the relevance of the
24 question.

25 JUDGE BUSHMANN: Overruled.

1 THE WITNESS: Oh, yes, they found in favor
2 of AT&T, yes.

3 BY MR. GERMANN:

4 Q. And specifically on the issue of the
5 validity of the data; is that correct?

6 A. I don't recall if they -- I know the staff
7 witness accepted the validity of the data. I don't know
8 if the commission issued an order saying that the data was
9 valid. I think my point here was that subsequent data and
10 experiences showed that the data, whether or not found
11 valid by the commission, was clearly found to be erroneous
12 and invalid.

13 MR. GERMANN: I'll just quickly offer this.

14 (AT&T EXHIBIT NO. 29 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. GERMANN:

17 Q. If you could turn quickly to page 19,
18 second paragraph to the end, the commission indicates
19 there that they found that the data provided by AT&T
20 Illinois was a more accurate measure of the traffic at
21 issue than that used by Big River; is that correct?

22 A. Yes, that is correct. We were limited to
23 trying to pull together information with limited access to
24 data because we did not record that traffic and could not
25 provide evidence.

1 Q. You do not record what?

2 A. Local call records. We do not generate
3 traffic records for local calls. So we had no evidence to
4 provide other than some information we pulled together and
5 I presented to the commission to give an indication of the
6 unreasonableness of the data that was provided by AT&T.

7 And I believe, as I state in my surrebuttal
8 testimony in this case, that the subsequent billing that
9 AT&T charged us for was more in line with the numbers that
10 I sort of predicted based upon the limited information
11 that we had as opposed to the information that was
12 provided by AT&T in their testimony.

13 Q. You didn't seek rehearing from the Illinois
14 Commission on that issue or on that basis?

15 A. No, we did not. They generally bill us
16 about -- after they corrected the billing, they're billing
17 us about \$35 a month. We didn't think it was reasonable
18 to go back in and address the issue before the commission.
19 We pay that bill on a monthly basis.

20 Q. Turning to page 10 of your testimony, you
21 refer to something that happened in an arbitration with
22 AT&T in Indiana, and you say that Stanley Mensinger stated
23 incorrectly that AT&T did not have a record of billing Big
24 River Telephone for reciprocal compensation in the state
25 of Illinois.

1 A. Yes.

2 Q. Do you see that? Isn't it a fact that,
3 while AT&T originally stated that, it corrected or it
4 submitted a corrected discovery response within hours?

5 A. Yes. In that case they had submitted their
6 response to a data request. We were trying to determine
7 how much money AT&T was actually billing us in Illinois
8 where we -- is the only other state where we have a
9 reciprocal compensation arrangement.

10 We also, simultaneously with that data
11 request, we also pursued within AT&T billing department
12 information as to what they were billing us in reciprocal
13 compensation, and we did a study on how much time it would
14 take us to do cost assurance with that information. We
15 provided that information about ten minutes after AT&T
16 provided their initial response where they said they had
17 no record of billing us.

18 Subsequent to us providing the information
19 of the records that they had billed us, they objected to
20 the question, stating that we had the information. But
21 again, when we asked the question in discovery, we did not
22 have the information.

23 Q. You didn't know whether AT&T had been
24 billing you in Illinois at the time?

25 A. No.

1 Q. Okay.

2 A. We had trouble just in discussing with the
3 AT&T billing staff people which bills were for reciprocal
4 compensation. I assume that was the same problem
5 Mr. Mensinger had. It took us some time and effort
6 talking with the staff of the billing department to
7 actually isolate, I think there were two or three bills
8 that AT&T Illinois was billing us for reciprocal
9 compensation.

10 Probably one of the problems in identifying
11 it was that the rate for reciprocal compensation per our
12 interconnection agreement in Illinois should be like
13 triple zero seven, and they were billing us at a rate of
14 4.8 cents a minute, and that probably made it a little bit
15 more difficult to identify those bills. I'm not sure.

16 Q. You're not sure?

17 A. No.

18 Q. Okay.

19 A. I don't know why AT&T had trouble
20 identifying those reciprocal compensation bills.

21 MR. GERMANN: Your Honor, I think I'm out
22 of time, so I will stop there. I will move for the
23 admission of AT&T's cross Exhibits 20 through 29.

24 JUDGE BUSHMANN: Any objections?

25 MR. HOWE: Object to lack of foundation

1 regarding 27 and 28 regarding pages pulled from companies
2 other than Big River's websites. I also object to the
3 introduction of the arbitration decision from Illinois as
4 completely irrelevant to the issues here at hand.

5 JUDGE BUSHMANN: So the objections are to
6 27, 28 and 29?

7 MR. HOWE: Yes, your Honor.

8 JUDGE BUSHMANN: Does Staff have any
9 objection to any of those?

10 MR. BORGMEYER: No.

11 JUDGE BUSHMANN: Mr. Germann, do you want
12 to respond to the objections?

13 MR. GERMANN: I'll start with the
14 arbitration decision. Frankly, it's the Illinois
15 Commission's arbitration decision. I don't think it needs
16 to be admitted into evidence because I think the
17 Commission can take judicial notice of it. It's an
18 official record of the Illinois Commerce Commission.

19 As to the relevance, Mr. Howe, Big River is
20 the one that put in testimony saying he refuted AT&T's
21 data in this proceeding. So I think it's relevant to know
22 what happened when you tried to refute it and the Illinois
23 Commission found for AT&T on the issue. I think that's
24 clearly relevant, and they opened the door by putting that
25 in their testimony.

1 objection was to foundation. I think that is sustained.
2 There was not a proper foundation laid to authenticate
3 those documents.

4 As far as Exhibit No. 29, I would agree
5 with Mr. Germann that the relevance of that was opened by
6 Big River, so that is relevant, and I would admit AT&T
7 Exhibit No. 29.

8 (AT&T EXHIBIT NO. 29 WAS RECEIVED INTO
9 EVIDENCE.)

10 JUDGE BUSHMANN: And just to make sure I'm
11 correct, Mr. Germann, is Exhibit No. 29 the same thing as
12 AT&T Exhibit No. 18 that was admitted?

13 MR. GERMANN: Yes, your Honor, it is.

14 JUDGE BUSHMANN: That was at least offered.

15 MR. GRZYMALA: Yes, it is, your Honor.

16 MR. GERMANN: That's the same.

17 JUDGE BUSHMANN: I believe that completes
18 cross for AT&T. Cross by Staff?

19 MR. BORGMEYER: Staff has no questions,
20 your Honor.

21 JUDGE BUSHMANN: Questions from the Bench,
22 Commissioner Jarrett?

23 COMMISSIONER JARRETT: Yes.

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. I just have, I think, maybe one or two

1 questions. And I know you're not an attorney, or maybe
2 you are an attorney, but you're not representing Big River
3 as an attorney in this case. I'm trying to understand Big
4 River's argument here. Is it strictly a legal argument
5 that you are making that because Missouri statute uses the
6 word required, that Big River -- it doesn't apply to Big
7 River's operations? Is that really all we're arguing
8 about from Big River's perspective?

9 A. I think it's a combination of a legal
10 argument and a technical argument. The legal argument is
11 the one as defined by the statute which we looked at when
12 we determined if we needed to file as an interconnected
13 VOIP provider a few years ago. Based upon our reading, we
14 did not believe we were an interconnected VOIP provider.
15 As we have told AT&T through our discussions, we provide
16 services pursuant to our certificate of necessity that was
17 authorized by the Commission, not as an interconnected
18 VOIP provider.

19 And basically the technical part of that
20 argument boils down to broadband, and whether or not you
21 use broadband connections or you require broadband
22 connections, we go over broadband connections, but when we
23 do so, because of the nature of data networks, you can
24 allocate. Some cases you allocate a virtual private
25 network to provide data connectivity from one business

1 location to another business location. You can provide
2 different sorts of data tunnels through the Internet using
3 encryption methods.

4 Similarly, when we work with our partners,
5 and they generally market and sell high speed data
6 because, as we all know, that's what people want in the
7 economy, to be successful in business today and to enjoy
8 life more in the residential setting as a consumer. You
9 want high speed Internet.

10 And so we have found that, yes, we will
11 partner with those people because generally we find
12 they're selling to more customers than people that are
13 providing dial-up Internet services. Dial-up Internet
14 service providers have almost disappeared in the last
15 three to five years.

16 But we never require, because of the nature
17 of the service that we provide, we never require more than
18 100 kilobits per second. As I mentioned, on a high
19 definition call or a standard TDM call we put over our
20 network, we never require more than 100 kilobits per
21 second. So we do not require a broadband connection.
22 As I said, it's both a technical and a legal issue is the
23 way that we've interpreted it.

24 Q. Now, does your company provide the same
25 types of services that you provide in Missouri to other

1 states?

2 A. Yes. We provide voice services in probably
3 20 states.

4 Q. Okay. And do any of those other states
5 have definition of interconnected VOIP providers in their
6 statutes?

7 A. Not that I'm aware of. And again, one of
8 the predecessors to the interconnected VOIP definition
9 here was an issue before the Commission probably about six
10 or seven years ago when the Commission asserted
11 jurisdiction over cable companies, and the cable companies
12 came back and said, no, we're a VOIP provider. You cannot
13 regulate us.

14 In that instance we were working with cable
15 companies and we told them, hey, that's not an issue. We
16 are providing service with -- you know, without any regard
17 to voice over IP, and the issues before the Commission, we
18 are regulated by the Commission and we're providing
19 service pursuant to our certificate and our tariffs that
20 are filed. We're providing 911 service and we always
21 have. And so we provided an entire suite of services that
22 essentially looks like the regular PSTN that was subject
23 to regulation.

24 That predated and that then drove the need
25 to establish the regulation by the Commission -- or the

1 registration I should say of interconnected voice over IP
2 providers, which we did not believe we were before that
3 registration was made a requirement and we do not believe
4 that we are now.

5 Q. And is that just because of our statute,
6 the way our statute's worded?

7 A. Most definitely. We did read the statute.

8 Q. So --

9 A. But again, even predating the statute, we
10 said we're providing telecommunications services. Yes, we
11 are using voice over IP technology. We're using a whole
12 list of technologies to provide our service, and voice
13 over IP is one of those technologies, but we were not a
14 voice over IP.

15 We -- again, going back to 2003-2004 when
16 we first introduced our own local services using our own
17 technology and our own switch, we were using voice over
18 IP, but we did so as a certificated carrier tariff -- with
19 filed tariffs in the state of Missouri.

20 Q. Is that -- is that the same way you operate
21 in the other 19 states?

22 A. Yes.

23 COMMISSIONER JARRETT: I don't have any
24 further questions. Thanks.

25 JUDGE BUSHMANN: Commissioner Stoll, any

1 questions?

2 COMMISSIONER STOLL: No, your Honor, I have
3 no questions. Thank you.

4 JUDGE BUSHMANN: Is there any recross based
5 on the questioning from the Bench for AT&T?

6 MR. GERMANN: No, your Honor.

7 JUDGE BUSHMANN: Any questions from the
8 Staff?

9 MR. BORGMEYER: No, your Honor.

10 JUDGE BUSHMANN: Mr. Howe, do you have any
11 redirect? And let me ask you real quick, do you know how
12 long that's going to take? If it's going to be a while,
13 I'll probably take a break now.

14 MR. HOWE: It won't be very long.

15 JUDGE BUSHMANN: Okay. Go ahead.

16 REDIRECT EXAMINATION BY MR. HOWE:

17 Q. Mr. Howe, do you still have all the cross
18 exhibits in front of you?

19 A. Yes. They're not numbered, and you're
20 going to have to help me if I have to sort out what's
21 what.

22 Q. Okay. Cross Exhibit No. 22 is a letter
23 from Swidler Berlin. Were you involved in preparation of
24 that letter?

25 A. Indirectly, yes.

1 Q. Did you sign off on the letter?

2 A. No.

3 Q. Do you know if Mr. Keaveny is aware of the
4 definition in Missouri regarding interconnected VOIP?

5 A. I don't know. I don't think so.

6 Q. Was interconnected VOIP at issue in the
7 case before the Kansas Commission?

8 A. No.

9 Q. Would you look at page 4 of your direct
10 testimony before the Kansas Commission?

11 A. Yes.

12 Q. The first line on that, what does it
13 indicate in terms of what type of service Big River is
14 providing?

15 JUDGE BUSHMANN: Excuse me. Just for the
16 record, is that direct testimony or rebuttal testimony?

17 MR. HOWE: Direct testimony, your Honor.

18 JUDGE BUSHMANN: Go ahead.

19 THE WITNESS: It says that Big River's
20 currently providing voice over Internet protocol service
21 to customers in many AT&T exchanges.

22 BY MR. HOWE:

23 Q. Does it say anything about interconnected
24 VOIP?

25 A. No, it does not.

1 Q. In Big River's application to the Alabama
2 Public Service Commission, which is cross Exhibit 26 --

3 A. Yes.

4 Q. -- was Big River using Missouri's
5 definition of interconnected VOIP when it made that
6 application?

7 A. No.

8 Q. Okay. Going to the arbitration decision in
9 Illinois, when was it determined that the minutes provided
10 by Mr. McPhee were actually incorrect? When did Big River
11 determine that?

12 A. After the record in that case was closed.

13 Q. Okay. And how did it determine that?

14 A. How did we determine that?

15 Q. Yes.

16 A. By subsequently getting bills and looking
17 at the number of minutes on those bills.

18 Q. Do you remember approximately the number of
19 minutes Mr. McPhee testified that AT&T Illinois was
20 billing Big River?

21 A. He indicated that Big River was passing
22 about 100 minutes a month to AT&T, whereas AT&T was
23 passing in excess of 40,000 minutes a month to Big River.

24 Q. After the record was closed and Big River
25 examined the bills, what was -- what were the amounts of

1 minutes approximately that AT&T Illinois was billing
2 Big River for?

3 A. It was approximating about 40,000 minutes a
4 month. It was a lot more than 100 minutes a month.

5 Q. In regard to the data request responses in
6 Indiana, when was the initial data response from AT&T
7 Indiana received?

8 A. I looked at it, I think it was about 4 p.m.

9 Q. And what did that data response indicate in
10 terms of billing for recip comp in Illinois?

11 A. That, according to Mr. Mensinger, that AT&T
12 had no record of billing Big River for reciprocal comp in
13 Illinois.

14 Q. And when was the corrected version of that
15 response received?

16 A. Later that evening, I think about
17 six o'clock.

18 Q. What happened between the time that Big
19 River received the first response and the time that Big
20 River received the corrected response?

21 A. We had supplemented a response of discovery
22 from AT&T providing an analysis of the amount of time and
23 effort required to do cost assurance for reciprocal
24 compensation bills, and we used an analysis of the bills
25 that we found in Illinois.

1 Again, while we submitted the request for
2 discovery in that case, we also simultaneously went to our
3 account team at AT&T to get copies of any bills that they
4 were billing us for recip comp in Illinois. And based
5 upon that information that we got from the account team,
6 we conducted our analysis and saw that they were billing
7 us in the state of Illinois despite Mr. Mensinger's
8 assertion in his initial discovery response.

9 Q. Okay. So just so I understand, AT&T
10 Indiana's initial response indicated that AT&T Illinois
11 did not bill Big River for recip comp?

12 A. Correct.

13 Q. Shortly thereafter, they almost, sounds
14 like, crossed on the Internet, Big River had provided an
15 answer to an AT&T Indiana data request actually providing
16 the bills from AT&T Illinois?

17 A. Yes. The analysis, the cost analysis that
18 we did included information about those bills.

19 Q. And did the subsequent response from AT&T
20 actually correct that?

21 A. No. They objected to the question and said
22 that Big River had the information on bills that they had
23 rendered to Big River.

24 Q. Just one final question. Does Big River
25 require a broadband connection from the user's premise to

1 provide its services?

2 A. No.

3 MR. HOWE: Thank you. I have nothing
4 further.

5 JUDGE BUSHMANN: Thank you Mr. Howe. You
6 can step down now.

7 Why don't we take about a 15-minute break.
8 We'll be in recess until about 3:25.

9 (A BREAK WAS TAKEN.)

10 JUDGE BUSHMANN: Next witness I have listed
11 is John Jennings. Mr. Jennings, you can come forward,
12 please.

13 (Witness sworn.)

14 JUDGE BUSHMANN: Please be seated.

15 THE WITNESS: Thank you.

16 JUDGE BUSHMANN: You may proceed.

17 JOHN JENNINGS testified as follows:

18 DIRECT EXAMINATION BY MR. HOWE:

19 Q. Would you state your name, please.

20 A. John Jennings.

21 Q. And by whom are you employed?

22 A. Big River Telephone Company.

23 Q. And what's your position with Big River?

24 A. Chief financial officer.

25 Q. How long have you held that position?

1 A. Ten years.

2 MR. HOWE: May I approach, your Honor?

3 JUDGE BUSHMANN: You may.

4 BY MR. HOWE:

5 Q. I'm handing you what's been marked as Big
6 River's Exhibit No. 7. Would you take a look at that,
7 please.

8 A. Yes.

9 Q. Can you identify that document?

10 A. This is -- this is Big River's responses to
11 AT&T Missouri's second set of document requests,
12 interrogatories and requests for admissions, and it says,
13 this describes all attempts made by Big River between
14 January of 2010 and AT&T Missouri's provision of week's
15 worth of traffic data referred to in Mr. Jennings'
16 rebuttal testimony to reconcile our audit of AT&T Missouri
17 bills for band 1104010113803. See attached e-mails.

18 Q. And what's attached to that response?

19 A. The first page is the summary of listing
20 all the contacts Big River Telephone had with AT&T, and
21 then subsequent to that are e-mails from Jennifer
22 Rinesmith, which is going to be all the com-- the actual
23 e-mail communications, all her notes that she had from
24 meetings with AT&T.

25 Q. Who is Jennifer --

1 MR. GRYZMALA: Your Honor, I'm sorry. I
2 have an objection after Mr. Howe finishes his question.

3 MR. HOWE: Who is Jennifer Rinesmith?

4 MR. GRYZMALA: Your Honor, at this point I
5 would like to object to any further discussion of the
6 document. If your Honor please, this is testimony which
7 could have been offered but was not in no less than three
8 rounds of earlier testimony by Mr. John Jennings. There
9 was no opportunity, therefore, since it was not presented
10 in Big River's testimony, for AT&T to respond to it.

11 This is not of the nature of an AT&T
12 interrogatory answer, in the nature of a true
13 cross-examination exhibit, or in the nature of an AT&T
14 document or in the nature of an AT&T admission of that.
15 That is not at all what we're talking about here. This is
16 supplemental testimony that is improper. We would have no
17 opportunity to cross on that because we've never seen it
18 before, unless your Honor would allow us recross.

19 But this is impermissible supplemental
20 testimony. That's what it is. There was no reason in the
21 world why this could not have been presented in
22 Mr. Jennings' direct or in his rebuttal when he raised the
23 so-called data issue, and certainly in his surrebuttal of
24 November 30. The first time we saw this was, subject to
25 correction, in Big River's responses to AT&T Missouri's

1 second data requests, and they were received December 20,
2 long after the close of testimony in this case.

3 We would object to any further questioning
4 on it as well for the same reason we object to its
5 admission into the record as Exhibit No. 7.

6 JUDGE BUSHMANN: Mr. Howe, how do you
7 respond?

8 MR. HOWE: As Mr. Gryzmala pointed out,
9 these were in response to an AT&T discovery request.
10 These were not produced in testimony prior to that because
11 at that point really nobody had made an issue of the
12 timing of the independent -- or the informal dispute
13 resolution process. And so up until the point that AT&T
14 made this data request, there was no reason to produce
15 this.

16 MR. GRYZMALA: I'd like to respond to that,
17 your Honor.

18 JUDGE BUSHMANN: Go ahead.

19 MR. GRYZMALA: Your Honor, in Mr. Jennings'
20 rebuttal, the issue came up in the context of
21 Mr. Jennings' rebuttal of October 19 in which he states
22 that he requested AT&T to provide supporting detail.

23 JUDGE BUSHMANN: Can you use the
24 microphone, please?

25 MR. GRYZMALA: And that is the context in

1 which this subject of detail and call detail records came
2 up. It came up in Mr. Jennings' October 19, 2012 rebuttal
3 testimony where he states he requested AT&T to provide
4 supporting detail. That's what this exchange, that's what
5 these e-mails is all about. Those e-mails could have been
6 referred to, relied upon and conveyed in that testimony.
7 Ergo, our witnesses would have had the opportunity, as
8 well as Staff, to have commented and to provide -- and to
9 have provided surrebuttal on it. We were not. We were
10 precluded from doing that. This is a late night entry
11 into trying to supplement testimony.

12 MR. HOWE: Again, your Honor, if I can
13 respond. Ms. Mullins in her surrebuttal testimony
14 indicates that she did investigate Big River's request for
15 documentation to supplement the bills that AT&T had sent
16 to Big River.

17 The issue of the accuracy of those bills
18 was brought up by Mr. Jennings in his surrebuttal, but the
19 timing in terms of the sequence of the questions and the
20 fact that AT&T made an issue, the fact that Big River did
21 not seek further documentation after the provision of the
22 one week's worth of data did not become an issue until
23 after surrebuttal. And so when they asked that data
24 request, that was responsive to that data request.

25 JUDGE BUSHMANN: So you're saying this

1 issue came up after surrebuttal?

2 MR. HOWE: Yes. I think it initially arose
3 in their response to our motion for summary determination.

4 JUDGE BUSHMANN: Do you have any response
5 to that, Mr. Gryzmala?

6 MR. GRYZMALA: Judge, I can only tell you
7 what I'm looking at. Again, I'm going to hang my hat on
8 Mr. Jennings' testimony of October 19. He says, I
9 requested data, and he was -- and it took -- after
10 considerable delay, they provided me with this, that and
11 the other, and I was unable to reconcile the billing.
12 That was the point in which this testimony should have
13 been fleshed out, not -- not later in the game. And that
14 is why Ms. Mullins testifies in only -- her only testimony
15 is surrebuttal to respond to that point.

16 When they come back a month later and say
17 we have more to talk about, that precludes us from making
18 any sworn testimony on the subject.

19 JUDGE BUSHMANN: Okay. The Commission
20 rules provide that it's improper to supplement prefiled
21 testimony, and it appears to me that that's at this stage
22 in the proceeding is what you're doing is supplementing
23 the prefiled testimony. So I'm going to sustain the
24 objection at least right now. It is possible that the
25 exhibit could become an issue for another purpose, but as

1 far as this stage in the proceeding, I'm going to sustain
2 the objection.

3 MR. GRYZMALA: Thank you.

4 MR. HOWE: I have no further questions for
5 Mr. Jennings. I'll tender him for cross.

6 JUDGE BUSHMANN: Cross-examination by AT&T
7 Missouri.

8 CROSS-EXAMINATION BY MR. GRYZMALA:

9 Q. Good afternoon, Mr. Jennings.

10 A. Good afternoon.

11 Q. My name is Bob Gryzmala. I have just a few
12 questions for AT&T.

13 You have been CFO for approximately how
14 long at Big River?

15 A. Ten years. I've been with Big River for
16 ten years in that capacity.

17 Q. And you were the chief financial officer of
18 Big River in 2005, were you not?

19 A. Yes.

20 Q. And do you recall what was known back then
21 was the post-M2A arbitration, which was an arbitration of
22 the interconnection amendment or interconnection agreement
23 that would succeed the interconnection agreement that was
24 approved when SBC was allowed into long distance in the
25 state of Missouri?

1 A. I'm not that familiar with that, no.

2 Q. You recall references to Section 13.3 of
3 Attachment 12, do you not?

4 A. I do.

5 Q. And you know that that attachment is a part
6 of the interconnection agreement that resulted from the
7 2005 arbitration? You know that much, correct?

8 A. I didn't know the history of it, but -- no,
9 I didn't know the history of it.

10 Q. Okay. You submitted -- let me refer you
11 to, I think it's your direct testimony, Exhibit No. --
12 excuse me, Schedule No. 1. Do you have a copy of your
13 testimony before you?

14 A. I do not.

15 Q. Okay.

16 A. I'm sorry. What exhibit was that, sir?

17 Q. That would be a copy of your direct
18 testimony filed in this matter, correct?

19 A. This is, yes.

20 Q. Okay. And Schedule 1, if you would refer
21 to that, please.

22 A. Yes.

23 Q. And Schedule 1 is the letter, am I correct,
24 the October 20, 2005 letter that you wrote to AT&T, you
25 personally wrote to AT&T stating that Big River's

1 Telephone -- Big River Telephone's PEU, which means
2 percent enhanced usage, for the state of Missouri is
3 100 percent as of the effective date of the
4 interconnection agreement; is that right?

5 A. That's correct.

6 Q. Was the import of that statement, the
7 result of that statement Big River's view that, given a
8 PEU percent factor 100 percent, it would not be billed
9 enhanced -- or it would not be billed exchange access
10 charges for that traffic, correct?

11 A. Correct. For the traffic -- the traffic
12 that's going over this facility, that's correct.

13 Q. And for which is being billed under this
14 BAN number, billing account number 803, which is referred
15 to often in the testimony, correct?

16 A. Yes.

17 Q. In other words, in this case what's at
18 issue is the PEU, if I can refresh your recollection, the
19 PEU that you submitted to AT&T in October of 2005 and the
20 dispute arises because notwithstanding your declaration of
21 a PEU of 100 percent, AT&T continued or throughout billed
22 nonetheless exchange access charges for billing account
23 number, et cetera, et cetera, 803, it ends in 803?

24 A. That's correct.

25 Q. Okay. Now, eventually, though, a dispute

1 erupted over that?

2 A. Correct.

3 Q. And that resulted in a lawsuit, did it not?

4 A. Yes.

5 Q. And in that lawsuit Big River claimed that
6 AT&T had breached the ICA, the interconnection agreement,
7 excuse me, acronym for --

8 A. Yes.

9 Q. -- interconnection agreement?

10 Big River claimed in that lawsuit that was
11 filed back in 2008 in St. Louis County that AT&T had
12 breached the interconnection agreement by billing
13 Big River almost \$500,000 for terminating enhanced
14 services traffic sent by Big River to AT&T; is that
15 correct?

16 A. I don't know the specifics of the lawsuit,
17 but that is -- that is our dispute, yes.

18 Q. I'm sorry?

19 A. That was the dispute at hand, yes.

20 Q. That was the dispute?

21 A. Yes.

22 Q. Okay. In that lawsuit, to your knowledge,
23 was there any other claim that Big River did not owe that
24 money other than that the traffic was not -- or that the
25 traffic was enhanced services and, therefore, was exempt

1 from access charges?

2 A. I don't recall if there were any other
3 claims at this point.

4 Q. None occur to you, though?

5 A. None occur to me.

6 Q. Now, the settlement -- or rather the
7 lawsuit was terminated by a settlement agreement, is that
8 correct, at the end of 2000 -- or October of 2009?

9 A. Correct.

10 Q. And you actually are very conversant with
11 the terms of that lawsuit or the terms of that agreement
12 because you helped negotiate it, did you not?

13 A. I was party to the agreement.

14 Q. You sat at the table with Mr. Howe and
15 AT&T's principals and negotiated the terms of that
16 settlement, did you not?

17 A. I sat at the table. I don't know if I
18 was -- Mr. Howe pretty much led the negotiations. I
19 wasn't a big part of the negotiations, but I did sit at
20 that table, and I did prepare some of the schedules.

21 Q. I'm sorry?

22 A. I did prepare some of the schedules.

23 Q. Thank you. Let me ask you to turn -- well,
24 let me refer you to your direct at page 2, and you state
25 at lines 11 through 13, the parties previously had a

1 dispute regarding access charges. That dispute was
2 resolved in November of 2009. AT&T continued to bill for
3 access charges after the settlement agreement was reached.
4 Do you see that?

5 A. Yes.

6 Q. And that is your recollection of what
7 occurred?

8 A. Correct.

9 Q. Let me turn your attention to Exhibit 3 --
10 I'm sorry, Schedule 3 of your direct testimony, and if I
11 can move a little quickly here, that would be a letter
12 that was -- that was written by yourself on or about
13 April 19, 2012 to the AT&T notices manager in Dallas,
14 Texas, correct?

15 A. Correct.

16 Q. And this is the letter, is it not, that
17 under the terms of the ICA kicked off the informal dispute
18 which Big River registered with the company regarding its
19 claim that its services constituted enhanced services and,
20 therefore, were exempt from access charges?

21 A. Correct.

22 Q. This was the kickoff letter?

23 A. This was the kickoff letter, yes.

24 Q. Now, prior to that, AT&T -- well, strike
25 that.

1 Later in that letter, I want to draw your
2 attention to the second page of that letter, and subject
3 to your own reading, it says here, we have continually
4 pointed out the fact that this traffic is enhanced. This
5 has been recognized by AT&T in the lawsuit settlement
6 agreement by their crediting of all charges through that
7 time period. AT&T did agree to adhere to the terms of the
8 interconnection agreement for all future dealings with
9 this enhanced traffic which plainly state that AT&T will
10 apply our PEU factor. Do you see that passage?

11 A. Yes.

12 Q. And that is your understanding as conveyed
13 in your direct testimony as to the import of that
14 settlement agreement; is that your testimony?

15 A. Can you say that one more time?

16 Q. Well, is it your testimony, then, that
17 the -- your understanding of the settlement agreement was
18 that AT&T had committed in the settlement agreement to
19 apply the PEU factor for all future traffic?

20 A. No.

21 Q. Okay. How do you square -- what do you
22 mean when you say in the letter that AT&T agreed to adhere
23 to the terms of the agreement for all future dealings with
24 this enhanced traffic which plainly states that AT&T will
25 apply our PEU factor? What did you base your

1 understanding on?

2 A. Sure. The amendment to the settlement
3 agreement did not address enhanced, and so the language in
4 our interconnection agreement that we just referred to,
5 which does address enhanced, was not modified, and so
6 that's what I'm referring to is that we -- that the
7 amendment -- in regards to enhanced is still part of our
8 interconnection agreement. It was not -- as part of the
9 settlement we did not include the word enhanced as it did
10 not address enhanced at all.

11 MR. GRYZMALA: May I approach?

12 JUDGE BUSHMANN: You may.

13 (AT&T EXHIBIT NO. 30 WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

15 BY MR. GRYZMALA:

16 Q. Mr. Jennings, have you ever heard the term
17 HB 1779?

18 A. Yes, sir.

19 Q. What does that term mean to you?

20 A. From my understanding, it's a House Bill,
21 1779.

22 Q. And do you recall that HB 1779 instituted
23 into the Missouri statutory code what some refer to as the
24 so-called VOIP statute?

25 MR. HOWE: I'm going to object to the form

1 of the question in terms of what some people would refer
2 to it as.

3 BY MR. GRYZMALA:

4 Q. Do you know whether or not HB 1779 enacted
5 into law Section 392.550 and particularly that part which
6 relates to the intercarrier compensation applicable to
7 interconnected VOIP traffic?

8 A. Am I aware of that?

9 Q. Yes.

10 A. I'm aware of it.

11 Q. Okay. The enhanced services portion of the
12 dispute that Big River had with AT&T and AT&T had with
13 Big River back in 2008, that portion was one portion of a
14 number of claims that the companies had with one another,
15 right?

16 A. Correct.

17 Q. That were resolved by the settlement?

18 A. Correct.

19 Q. And the parties came to call this
20 particular portion the so-called enhanced services
21 dispute, didn't they?

22 A. Correct.

23 Q. Okay. And let me refer your attention to
24 page 4 and ask that you confirm that page 4, paragraph B
25 sets forth the parties' arrangement with respect to the

1 resolution of the enhanced services dispute?

2 MR. HOWE: Excuse me. This is a
3 confidential settlement agreement.

4 MR. GRYZMALA: Yes, it is. I believe --
5 well --

6 MR. HOWE: Do we need to go --

7 MR. GRYZMALA: If we need to close some
8 circuits, I guess, is that where you're going?

9 MR. HOWE: Yes.

10 MR. GRYZMALA: I mean, if it's highly
11 confidential, I believe all of our folks have signed
12 nondisclosure agreements. I'm not sure --

13 JUDGE BUSHMANN: It's highly confidential.
14 Do you want to go in-camera?

15 MR. GRYZMALA: Yes.

16 (REPORTER'S NOTE: At this point an
17 in-camera session was held, which is contained in
18 Volume 5, pages 125 through 137 of the transcript.)

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1 JUDGE BUSHMANN: Okay. We're back in
2 public session. Go ahead.

3 BY MR. GRYZMALA:

4 Q. Did not the reference of January 1 have
5 specific significance with regard to VOIP compensation in
6 HB 1779?

7 MR. HOWE: I'm going to object to the vague
8 form of the question in terms of the significance and to
9 whom.

10 JUDGE BUSHMANN: Overruled. Overruled.

11 THE WITNESS: I don't know if there was
12 significance to that date.

13 BY MR. GRYZMALA:

14 Q. Let me refer --

15 A. Besides --

16 Q. I'm sorry.

17 A. I'm sorry. Besides the fact that in your
18 settlement agreement we -- going forward, that date, the
19 only importance is that going forward the new language
20 would apply.

21 Q. The new language --

22 A. Right.

23 Q. -- would apply? What new language?

24 A. The last sentence, on and after
25 January 1st, 2010 the parties' respective obligations will

1 be governed by the interconnection agreement to be amended
2 as here described.

3 Q. Now, the new language you're referring to
4 was the interconnection amendment --

5 A. Yes.

6 Q. -- right?

7 Okay. Let me refer you to page 4 of your
8 testimony. Before we talk about that, do you recall that
9 after the amendment -- or after the agreement was signed
10 around October 30th of 2009 by Messrs. Foley and Howe, the
11 parties submitted to the Missouri Public Service
12 Commission an amendment to their interconnection agreement
13 that incorporated the provisions of HB 1779 and
14 specifically a portion of Section 392.550; is that
15 correct?

16 A. 392.550? I'm not sure. I don't see that
17 in here. I'm sorry.

18 Q. You don't know?

19 A. It doesn't -- this doesn't -- I don't know.
20 I don't know what 390 -- whatever that -- I don't know
21 what that is.

22 Q. But the bottom of page 4 going over into
23 the first two lines of page 5 replicate the paragraph that
24 was implemented as a result of the interconnection
25 agreement amendment, correct? That is the paragraph?

1 A. I'd have to compare, but --

2 Q. Well, it's in your testimony, but I mean --

3 A. It is then.

4 Q. It is. And does that amendment not state
5 that provisions that -- that provisions in ICAs for
6 compensation different than access charges would remain in
7 effect until January 1 of 2010?

8 A. It says, those provisions shall remain in
9 effect through December 31st, 2009, and the intercarrier
10 compensation arrangements described in the first clause of
11 this section shall not become effective until January 1,
12 2010.

13 Q. Right. So the same date used in the
14 settlement agreement is the same date that was referred to
15 in the amendment, that is January 1, correct?

16 A. Those are the same dates.

17 Q. And the upshot of the amendment, so I'm
18 clear as to your interpretation of this amendment, is that
19 as of January 1, the parties shall exchange interconnected
20 voice over Internet protocol traffic subject to the access
21 charges to the same extent as telecommunications carriers
22 pay them, correct?

23 A. My -- my interpretation is that if we were
24 to be an interconnected VOIP provider, that this would
25 apply. Otherwise, the provisions of our interconnection

1 agreement regarding enhanced is still a viable portion of
2 the interconnection agreement.

3 Q. And without getting into the terms of the
4 settlement agreement because we're on camera, the inter --
5 the settlement agreement doesn't say that, does it?

6 A. The settlement agreement -- the settlement
7 agreement -- let me think about that. The settlement
8 agreement did not specifically address the original
9 interconnection regarding enhanced. If it had, it might
10 be -- so since it didn't, then enhanced is still a portion
11 of the interconnection per my understanding. But like I
12 said, I'm not an attorney, but that's the way I interpret
13 it.

14 Q. But if we were -- but if the upshot of the
15 settlement agreement was to apply the enhanced services
16 provisions of the ICA, then why did it refer -- what was
17 the reason to refer in a post January 1 period to an
18 interconnection agreement as amended?

19 MR. HOWE: I'm going to object as calling
20 for speculation.

21 JUDGE BUSHMANN: Overruled.

22 BY MR. GRYZMALA:

23 Q. Do you understand my question?

24 A. I do not, no.

25 Q. Let me try again. If the intent -- if your

1 understanding of the intent of the settlement agreement
2 was to apply the PEU factor that had been set forth in the
3 interconnection agreement of a few years earlier, then why
4 did the parties specifically refer to the interconnection
5 agreement as amended for post January 1, 2010?

6 A. I'm not sure why the timing was what it
7 was. I'm unclear of that. I don't know from a legal
8 perspective. I assume that it was required by law that
9 this had to be part of our interconnection agreement, and
10 it wasn't necessarily specific to Big River and enhanced,
11 but that as part of the deal we would put this in there,
12 so if we were to become an interconnected VOIP provider,
13 this provision would apply.

14 Q. Even in your letter to Mr. -- I'm sorry --
15 to the contract management folks, your Exhibit 3, the
16 April 19 letter, you refer in the fourth paragraph to the
17 prior settlement, and you say, do you not, that the prior
18 dispute resolutions mentioned VOIP traffic multiple times?
19 Do you see that reference?

20 A. I'm sorry. Which paragraph is that?

21 Q. It's Exhibit 3, the first page, the letter
22 to the AT&T notices manager, and it's the fourth
23 paragraph, first two lines. Does it not say, while the
24 prior dispute resolutions mentioned VOIP traffic multiple
25 times, the fact remains that our traffic, et cetera, is

1 enhanced. Do you see that?

2 A. I do see that.

3 Q. And isn't it a fact that during the
4 settlement negotiations, Big River mentioned VOIP traffic
5 several times; isn't that correct?

6 A. We always contended the issue was enhanced,
7 and we always were clear that it was an enhanced issue.
8 When we provided schedules, we said it was enhanced. I
9 don't -- you know --

10 MR. GRYZMALA: Your Honor, I'm going to
11 move to strike the answer. That's not responsive. I
12 asked him whether or not he, during the course of
13 negotiations, or whether Big River mentioned the term VOIP
14 traffic several times.

15 JUDGE BUSHMANN: You may answer that
16 question.

17 THE WITNESS: This doesn't say that Big
18 River mentioned it. It says, while the prior dispute
19 resolutions mentioned VOIP traffic multiple times. So I
20 don't know if AT&T referenced it multiple times. I'm not
21 saying that.

22 BY MR. GRYZMALA:

23 Q. That was not my question.

24 A. The question is --

25 Q. I didn't ask you what the letter said.

1 A. You asked me if it said --

2 Q. The letter speaks for itself.

3 A. Go ahead. Ask me again.

4 Q. My question once again was, isn't it a fact
5 that during the settlement discussions that led to the
6 agreement, the parties mentioned VOIP traffic multiple
7 times?

8 A. If you're saying the parties mentioned
9 multiple times, yes, that's what this intended.

10 Q. No. I'm not asking you about this. I'm
11 asking from your own independent recollection. Put this
12 aside, because you were at the table with Mr. Howe --

13 A. I was.

14 Q. -- and Mr. Noland and Mr. Richardson,
15 correct?

16 And isn't it a fact that during the
17 settlement discussions, the parties mentioned VOIP traffic
18 multiple times?

19 A. I don't recall exactly if it was multiple
20 times. More than once, yes.

21 Q. And do you recall that it was also Big
22 River that mentioned VOIP traffic some times, multiple
23 times?

24 MR. HOWE: I'm going to object to this line
25 of questioning as to number of times that VOIP traffic was

1 mentioned in a prior settlement negotiation in terms of it
2 being completely irrelevant to what's going on and what's
3 at issue here.

4 MR. GRYZMALA: Your Honor, I just want an
5 answer to the question. I'm about to close my questions
6 on this subject. It is not irrelevant for multiple
7 reasons that will be pointed out in briefing.

8 JUDGE BUSHMANN: On the grounds of
9 relevance, I will overrule the objection.

10 THE WITNESS: So ask me one more time.

11 BY MR. GRYZMALA:

12 Q. The question is, during the settlement
13 negotiations, isn't it a fact that Big River mentioned
14 VOIP traffic multiple times during the negotiations?

15 A. I don't recall if we did. I don't know if
16 we -- I know we've always said that the issue was an
17 enhanced issue, and we always refer to it as enhanced. If
18 we said VOIP multiple times, and we might have, I don't
19 recall.

20 Q. You recall in 2008 -- or you recall earlier
21 questioning about the St. Louis County lawsuit, and
22 because my time is limited, if I may, I want to just ask a
23 couple questions about that.

24 You recall that that lawsuit or that
25 litigation was precipitated by AT&T filing a lawsuit

1 against Big River and then Big River filing counterclaims
2 against AT&T. Do you recall that?

3 A. As I sit here now, I don't remember the
4 order of who filed when.

5 Q. Do you recall that -- do you recall any
6 allegation being made by Big River -- strike that.

7 Was there any allegation by Big River in
8 its lawsuit directed to AT&T regarding the enhanced
9 services dispute that the bills that AT&T were rendering
10 on the account were improperly calculated or incorrect in
11 any fashion?

12 MR. HOWE: I'm going to have to object.
13 This is completely irrelevant. He's talking about a
14 dispute that has already been resolved and whether the
15 accuracy of the bills were at issue in that dispute, which
16 has nothing to do with what's at dispute here in the case
17 today.

18 JUDGE BUSHMANN: How is that relevant,
19 Mr. Gryzmala?

20 MR. GRYZMALA: Your Honor, we would present
21 evidence to the effect that -- we would present evidence
22 to the effect that from the outset of the parties'
23 discussions and the parties' dealings under this account
24 number, notwithstanding an enhanced service dispute
25 between the companies, there's never been an allegation,

1 not until Mr. Jennings' rebuttal filed in October, that
2 the bill was or may have been improperly calculated.
3 That's all that is.

4 JUDGE BUSHMANN: Since these issues have
5 all been similar and running together in multiple stages,
6 I think I'm going to say that it would be relevant. So
7 I'll overrule the objection.

8 THE WITNESS: I don't remember what the
9 lawsuit said. I mean, your question was did the lawsuit
10 say that. I don't -- I would have to see a copy to let
11 you know.

12 (AT&T EXHIBIT NO. 31HC WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. GRYZMALA:

15 Q. Let me refer you, please, to page 5,
16 Count 2. I'll represent to you that that was the claim
17 made by Big River regarding the enhanced services dispute,
18 and I just would like you to confirm that there is nothing
19 in your view, nothing indicated in Count 2 in your view
20 which suggests that Big River's claim has to do with the
21 fact that the bill may not have been accurately
22 calculated?

23 MR. HOWE: I'm going to object as the
24 document speaks for itself and he's asking for a legal
25 interpretation.

1 JUDGE BUSHMANN: Mr. Gryzmala?

2 MR. GRYZMALA: I would have no further
3 questions on this document if -- we would move to admit
4 this into evidence as Exhibit No. 30.

5 JUDGE BUSHMANN: This will be Exhibit 30?

6 MR. GRYZMALA: I'm sorry. It won't be 30.
7 30 is the settlement agreement. 31 is the lawsuit.
8 Please excuse. If that Exhibit 31 be admitted, that is
9 the lawsuit, 31, then I would have no further questions of
10 this witness on that document.

11 JUDGE BUSHMANN: Exhibit 30 is going to be
12 marked as highly confidential; is that correct?

13 MR. GRYZMALA: Yes.

14 JUDGE BUSHMANN: Exhibit 31 is what appears
15 to be a court document from the Circuit Court of St. Louis
16 County; is that correct?

17 MR. GRYZMALA: Right. So we would move to
18 admit Exhibit 31 into evidence.

19 MR. HOWE: Renew my objection.

20 JUDGE BUSHMANN: Do you have an objection
21 to the admission of the document?

22 MR. HOWE: It's irrelevant.

23 JUDGE BUSHMANN: Any other objections?

24 MR. BORGMEYER: No, your Honor.

25 JUDGE BUSHMANN: Based on my prior ruling,

1 I'll overrule it and Exhibit 31 will be received into the
2 record for AT&T.

3 (AT&T EXHIBIT NO. 31 WAS RECEIVED INTO
4 EVIDENCE.)

5 BY MR. GRYZMALA:

6 Q. I want to refer you to your April 15 -- I'm
7 sorry -- your April 19 letter, Exhibit 3. Would you
8 confirm there, please, Mr. Jennings, that there is no
9 suggestion in your letter that any of the bills which had
10 been rendered since the beginning of 2010 may have been
11 inaccurately calculated or incorrect in any other way?

12 A. This letter only addresses enhanced.

13 Q. There's no suggestion in that letter that
14 the bills were inaccurately calculated or incorrectly
15 calculated, correct?

16 A. That letter doesn't say that.

17 Q. This letter does not say that, is that what
18 you said?

19 A. That's correct.

20 Q. Okay. Thank you. Let's move to the next
21 exhibit in your testimony. That is the May 19 letter.
22 That letter likewise does not suggest that AT&T's bills on
23 BAN 803 were inaccurately calculated or incorrectly
24 calculated, does it? That would be Schedule 4.

25 A. Other than the fact that the traffic is

1 enhanced.

2 Q. I'm sorry?

3 A. You didn't specifically ask --

4 Q. My question was --let me reground -- this
5 letter, Schedule 4, does not suggest your view that AT&T's
6 bills were inaccurately calculated or incorrectly
7 calculated, does it?

8 A. Besides the fact that it was enhanced.

9 Q. Right. Apart from the fact that Big River
10 maintain it's enhanced?

11 A. Correct.

12 Q. But otherwise it doesn't say that the bills
13 were inaccurately calculated or incorrectly calculated?

14 A. Right. This record, this does not.

15 Q. And that allegation was not made in the
16 complaint brought by Big River on March 1, was it?

17 A. No.

18 Q. Correct?

19 A. Correct.

20 Q. And that allegation was not made when Big
21 River submitted an affirmative defense to AT&T's
22 counterclaim here; is that likewise not correct?

23 MR. HOWE: I object. The document speaks
24 for itself.

25 MR. GRYZMALA: Do you recall?

1 JUDGE BUSHMANN: You can answer.

2 THE WITNESS: I don't know what affirmative
3 defense means, so I --

4 (AT&T EXHIBIT NO. 32 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. GRYZMALA:

7 Q. I just have one question about Exhibit
8 No. 32, which I've just provided you, Mr. Jennings. I'll
9 represent to you that that is a letter dated March 1, 2012
10 by your counsel in this matter, and does it not say that
11 the formal resolution process was necessary after our
12 informal dispute was denied by Janice Mullins on
13 November 1, 2011?

14 A. It does say that, yes.

15 Q. And is that your recollection? Is it not
16 the case that dispute resolution was denied by Janice
17 Mullins on November 1, 2011, correct?

18 A. I did receive a letter on that date.

19 Q. Right. And that letter denied the dispute,
20 did it not?

21 A. It denied the dispute, but --

22 Q. Okay. Thank you. Your suggestion, do you
23 recall -- do you recall that on or about May 10th of 2011,
24 Ms. Mullins was appointed what we call the IDR
25 representative for AT&T?

1 A. I recall that.

2 Q. And you know what that means under the
3 interconnection agreement, do you not, that being,
4 following the receipt of your letter to AT&T, the ICA
5 calls for designating representatives of the parties to
6 negotiate, and in this case AT&T designated Ms. Janice
7 Mullins. Your letter appointed yourself as the contact
8 for Big River. Is that all correct?

9 A. That's all correct.

10 Q. All right. Now, you did not suggest to
11 Ms. Mullins at any time that the billings that AT&T had
12 generated since January 1 of 2010 or at any time were
13 inaccurately calculated or incorrectly calculated, did
14 you?

15 MR. HOWE: Are you asking other than the
16 fact that the position was that they shouldn't have been
17 billed at all?

18 MR. GRYZMALA: I'm sorry?

19 MR. HOWE: Are you asking other than the
20 fact that the dispute was that they shouldn't have been
21 billed at all?

22 MR. GRYZMALA: Oh, yes. Yes.

23 BY MR. GRYZMALA:

24 Q. We understand that the dispute that was
25 brought between you and worked with Ms. Mullins had to do

1 with whether it was enhanced services or not?

2 A. Correct.

3 Q. We understand that. My question is
4 different. Did you at any time during your discussions
5 with Ms. Mullins assert or claim that the bills had
6 otherwise been calculated incorrectly or incorrectly
7 billed?

8 A. No, I hadn't.

9 Q. Did you ever convey that -- and eventually
10 you did receive -- your data -- your testimony does
11 indicate that on February 15 of 2012, you received some
12 data. Do you remember that?

13 A. We received some data, yes.

14 Q. That was on February 15, correct?

15 A. February -- February 15, 2012 was the date.

16 Q. And because my time is short, I'll just try
17 to get to the point. At any time after February 15, 2012,
18 did you express to Ms. Mullins that the data you had been
19 provided was insufficient for any reason?

20 A. I didn't, because --

21 Q. No. I just wanted the answer, yes or no,
22 please.

23 A. Say the question again.

24 Q. At any time after February 15 of 2012, did
25 you express to Ms. Mullins the view that the data you had

1 been provided was insufficient for any reason?

2 A. Not to Ms. Mullins, no.

3 Q. Did you ever convey to Ms. Mullins that you
4 were unable to reconcile AT&T's billing with Big River's
5 own billing records?

6 A. Not with Ms. Mullins, no.

7 Q. Did you ever submit to the notices manager
8 at AT&T pursuant to Section 15.3 of the ICA which provides
9 the contacts, notices manager, that Big River was
10 submitting a dispute based on the fact that its bills had
11 been incorrectly calculated or incorrectly billed?

12 A. In the notices dispute? To the notices
13 dispute? No.

14 Q. Correct.

15 A. Let me add this, if I could.

16 Q. I'm sorry?

17 A. Let me add something, if I could.

18 Q. Well, your counsel can help you on
19 redirect.

20 A. Okay.

21 Q. Thank you. When data was requested on
22 November 30 of 2011, you recall that was by an e-mail from
23 Big River to AT&T?

24 A. Yes.

25 Q. Okay. Do you at any time -- or was there

1 ever any indication as to why Big River needed that data
2 expressed by the company?

3 A. We wanted to substantiate the amounts
4 billed on the invoice.

5 Q. Do what?

6 A. We wanted to substantiate the amounts
7 billed on the invoice.

8 Q. Do you realize that under Section 38 of the
9 interconnection agreement that parties have -- or a billed
10 party has the right to audit the billing party's books and
11 records to assess the accuracy of billing?

12 A. That the billed party?

13 Q. Are you aware that right exists under
14 Section 38?

15 A. That we could audit the billing party, yes.

16 Q. Books and records.

17 A. Yes.

18 Q. You are aware of that?

19 A. I am aware of that.

20 Q. Did you ever seek to do that through the
21 notices manager at AT&T or otherwise?

22 A. Yes.

23 Q. Your testimony does not refer to any notice
24 or any notice to AT&T that you were exercising audit
25 rights under Section 38; isn't that correct?

1 A. By requesting the call records for the
2 November invoice of 2011, we were exercising our rights.

3 Q. You're saying that suffices?

4 A. That's what I'm saying, yes.

5 Q. You're saying that a request for call
6 detail records suffices to trigger an audit request to the
7 officially designated contact, Contract Management in
8 Texas, exercising your audit rights under the agreement?

9 MR. HOWE: Objection. Asked and answered.

10 JUDGE BUSHMANN: Sustained. This is your
11 five-minute warning, Mr. Gryzmala. This is your
12 five-minute warning.

13 BY MR. GRYZMALA:

14 Q. Is there any letter -- did Big River write
15 any letter to the notices manager at AT&T invoking its
16 audit rights pursuant to Section 38 of the general terms
17 and conditions?

18 A. We did not.

19 MR. GRYZMALA: Thank you, your Honor. I
20 think I have nothing further. I do believe, though, I
21 would like to move into admission Exhibit No. 30. I think
22 I did not do that, the settlement agreement.

23 JUDGE BUSHMANN: That was not offered.

24 MR. GRYZMALA: I would offer that.

25 JUDGE BUSHMANN: And 32, were you wanting

1 to offer that as well?

2 MR. GRYZMALA: That would be, yes,
3 Mr. Howe's letter. Yes, I would.

4 JUDGE BUSHMANN: Are there any objections
5 to receipt of Exhibits -- AT&T Exhibits 30 and 32?

6 MR. HOWE: No objection, your Honor.

7 JUDGE BUSHMANN: Hearing no objections,
8 those exhibits are received into the record.

9 (AT&T EXHIBIT NOS. 30 AND 32 WERE RECEIVED
10 INTO EVIDENCE.)

11 JUDGE BUSHMANN: Any cross-examination by
12 Staff?

13 MR. BORGMAYER: Just briefly, your Honor.

14 MR. BORGMAYER: May I approach?

15 JUDGE BUSHMANN: You may.

16 CROSS-EXAMINATION BY MR. BORGMAYER:

17 Q. Good afternoon, Mr. Jennings.

18 A. Good afternoon.

19 Q. My name is John Borgmeyer. I have just a
20 couple quick questions for you.

21 I've handed you Staff's Exhibit 6. Do you
22 recognize that document?

23 A. I do.

24 Q. It's Big River's 2011 annual report; is
25 that correct?

1 A. Correct.

2 Q. If you could turn to page 4A for me. And
3 this document is highly confidential. I think I'm going
4 to ask my questions in a way that won't disclose highly
5 confidential information. If I do, just let me know and
6 we'll go in-camera.

7 Now, does Big River have any affiliates or
8 partners whose local telecom or IVOIP lines are included
9 in this annual report?

10 A. Are you asking if maybe one of our cable
11 partner lines or something would be reflected here?

12 Q. Yes.

13 A. I didn't prepare this document, so I'm
14 not -- I reviewed it, but I didn't prepare it to look at
15 the details to understand exactly.

16 Q. You signed the verification on the back; is
17 that correct?

18 A. I did verify it, yes. I did verify it, but
19 I didn't accumulate the numbers. So I'm not sure exactly.
20 I mean, it's possible that they're in there, but
21 without -- we overlap in territories. Without looking at
22 it, I'm not sure.

23 Q. So in the line counts that are included in
24 this annual report as telecom or IVOIP lines, are they --
25 are they telecom loops or are they IVOIP connections?

1 A. They're telecom loops.

2 Q. There is no line listed anywhere in this
3 annual report that's an IVOIP line?

4 A. I have to look at the report. Yeah, I --
5 I'm assuming it's going to be local voice services, just
6 local lines and not IVOIP, but that's -- I'm assuming this
7 is going to be local voice services and not IVOIP,
8 because -- but I don't know for certain. I'd have to
9 look.

10 Q. So that would mean that all these lines are
11 only capable of making local calls? Is that what that
12 would mean?

13 A. It's local voice services. It's going to
14 be local, local lines, local telephone lines.

15 Q. And so it's your testimony that you don't
16 know whether any of these lines listed here include IVOIP
17 services?

18 A. I do not know. I do not.

19 MR. BORGMEYER: Nothing further.

20 JUDGE BUSHMANN: Commissioner Stoll, do you
21 have any questions?

22 COMMISSIONER STOLL: I have no questions,
23 your Honor. Thank you.

24 JUDGE BUSHMANN: Since there's no questions
25 from the Bench, there's no need for recross. Redirect by

1 Big River.

2 REDIRECT EXAMINATION BY MR. HOWE:

3 Q. Mr. Jennings, under the informal dispute
4 resolution that you participated in with Mullins, what
5 percentage of the bill was Big River disputing?

6 A. 100 percent.

7 Q. Prior to her denying the dispute regarding
8 enhanced services, was there any reason for AT&T -- I'm
9 sorry -- for Big River to challenge the accuracy of the
10 bills?

11 A. Prior to that, no.

12 MR. HOWE: Okay. Your Honor, I would seek
13 to again admit the e-mails that I'd offered earlier.
14 Mr. Gryzmala asked about one of them on his examination of
15 Mr. Jennings, so I think he's opened the door for it.

16 JUDGE BUSHMANN: Mr. Gryzmala?

17 MR. GRYZMALA: Your Honor, with all due
18 respect, I was careful to limit my examination. The only
19 basis, the only point I made --

20 JUDGE BUSHMANN: Can you speak into the
21 microphone?

22 MR. GRYZMALA: The cross-examination was
23 very -- the cross-examination was very limited, and it was
24 limited to the date on which the detail request was made
25 to the company. You don't need to rely on e-mails to

1 obtain that. That did not open the door to all of the
2 e-mail and other documents that are in Exhibit 7. It
3 remains, it remains impermissible as supplemental
4 testimony.

5 The only question asked was, is it not a
6 fact that the call detail records were requested on
7 November 30, 2011.

8 MR. HOWE: Via e-mail. That was the
9 beginning of the e-mail chain.

10 JUDGE BUSHMANN: The question was only to
11 the date, though, not to the contents?

12 MR. GRYZMALA: That's all.

13 JUDGE BUSHMANN: Do you have any response
14 to that?

15 MR. HOWE: The question was to the
16 contents. He asked him about what that e-mail said on
17 that date.

18 JUDGE BUSHMANN: I haven't got a copy of
19 those e-mails. Do you have a copy for me to review?

20 MR. GRYZMALA: Your Honor, I might add,
21 that would have been a perfectly permissible question
22 because it was simply the discovery provided to AT&T. I
23 don't need his exhibit to tell me something that was
24 already provided as to AT&T because that's what he's
25 seeking to do is submit his own discovery responses.

1 MR. HOWE: If I could add, your Honor, my
2 recollection of the question was whether that e-mail
3 included any indication of why we were requesting the
4 documentation sought.

5 MR. GRYZMALA: Your Honor, if I may
6 respond. Again, that is information I had learned in the
7 discovery responses anyway. If the resolution here be
8 that the first e-mail may be admitted into evidence as and
9 for Big River Exhibit 7, I would have no objection, but
10 thereafter, that is -- I would not agree to any of the
11 remaining.

12 JUDGE BUSHMANN: I tend to agree with that,
13 because that first e-mail occurs November 30th, but then
14 all the other -- there's a number of e-mails going all the
15 way two months after that. That does not seem to be the
16 same thing as asking for the date of a single e-mail.

17 MR. HOWE: Again, I don't think he asked
18 just the date of it. I think he asked what the -- whether
19 it stated, why we were requesting it, and then he followed
20 up as whether that was enough to initiate the audit
21 proceedings under Section 38 of the ICA.

22 JUDGE BUSHMANN: And he said that he has no
23 objection -- I would have no problem with admitting the
24 e-mail for that date to show what the e-mail was of the
25 date that you're referring to since that's what's in

1 dispute, but as far as the subsequent e-mails between
2 different people that go on for two months, I don't see
3 how that comes in as well.

4 MR. HOWE: Because they go to basically the
5 audit provision that he referenced in his follow-up
6 questions about that initial e-mail.

7 JUDGE BUSHMANN: But I think he opened the
8 door only to that single document. So I would be willing
9 to admit that document if you want to offer it, but I
10 can't admit the rest of that without any -- without any
11 indication that that's just not improper supplementation
12 unless he's -- he's only asked about the one date.

13 MR. BORGMEYER: Your Honor, Staff would
14 have to, I guess, make a similar objection. If it's a
15 data response that has been provided to AT&T Missouri, I
16 think it would be at AT&T Missouri's discretion as to
17 whether they would admit that discovery into evidence or
18 not.

19 JUDGE BUSHMANN: Correct. That's why I
20 have problems with it being improper supplementation of
21 the record. Do you want to amend your offer?

22 MR. HOWE: Not at this point, no.

23 JUDGE BUSHMANN: All right. Then in that
24 case I have to sustain the objection.

25 MR. HOWE: I would just say, is AT&T going

1 on the record now that technical rules of evidence do
2 apply to these proceedings?

3 JUDGE BUSHMANN: Technical rules do not
4 apply.

5 MR. HOWE: I'm asking if that's their
6 position now.

7 JUDGE BUSHMANN: Well, it doesn't matter
8 what their position is. The Commission's decision is
9 technical rules do not apply but basic rules of evidence
10 do.

11 BY MR. HOWE:

12 Q. Mr. Jennings, are you aware of any
13 specification in Section 38 regarding the audit procedures
14 under the ICA about how the audit is initiated?

15 A. I'm not aware about how it needs to be
16 initiated.

17 MR. HOWE: Your Honor, I'd like to go
18 in-camera, please.

19 (REPORTER'S NOTE: At this point an
20 in-camera session was held, which is contained in
21 Volume 5, page 165 of the transcript.)

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1 JUDGE BUSHMANN: We're now back in public
2 session.

3 BY MR. HOWE:

4 Q. What amount of data did Big River request
5 to supplement the bills that had been sent by AT&T?

6 A. We requested all the call detailed records
7 for the November 2011 invoice.

8 MR. GRYZMALA: Your Honor, I apologize.
9 I'm going to object to this line of questioning. I didn't
10 ask him about the nature of the detail, the nature of the
11 request. I just asked him when and what he said to this
12 or that, to Ms. Mullins. You know, I think he's
13 amplifying upon the testimony he provided in his earlier
14 testimony as to what he requested. He had an opportunity
15 to present that. This is improper redirect.

16 JUDGE BUSHMANN: You're saying it's outside
17 the scope?

18 MR. GRYZMALA: Absolutely. I merely asked
19 him the date on which he made this point about data
20 accuracy or data request to Ms. Mullins, that sort of
21 thing, timing. Never asked him about the nature or the
22 extent.

23 JUDGE BUSHMANN: And your response?

24 MR. HOWE: I think he did ask about the
25 nature of the data provided because he then followed up

1 and asked whether there was any follow-up request for
2 further data or any indication that the data provided was
3 insufficient.

4 JUDGE BUSHMANN: And that's correct. So
5 I'll overrule the objection.

6 BY MR. HOWE:

7 Q. Do you remember the question?

8 A. I do not.

9 Q. I believe you just answered that Big River
10 had requested the November call records?

11 A. Correct.

12 Q. Okay. When did Big River finally receive
13 any data from AT&T Missouri?

14 A. Big River received one week's worth of
15 traffic on December 15th of 2012.

16 Q. I'm sorry. When?

17 A. February 15, 2012. I'm sorry.

18 Q. Okay. What type of records did Big River
19 receive?

20 MR. GRYZMALA: Your Honor, again, I'm going
21 to object. This goes into the kind of testimony that
22 we're trying desperately to avoid, which is impermissible
23 supplemental testimony. I was very careful to ask him if
24 he ever made any objection to the sufficiency or -- to
25 Ms. Mullins, keeping it to the witnesses we have here

1 before we open up the door to a lot of folks that your
2 Honor recognizes are not here and who we have no
3 opportunity to speak.

4 MR. HOWE: Remember that line, please.

5 JUDGE BUSHMANN: What's your response?

6 MR. HOWE: Again, I go back to his
7 question, his follow-up questions regarding whether he
8 indicated to Ms. Mullins that the traffic data was
9 insufficient.

10 JUDGE BUSHMANN: I think that's -- I think
11 that was in the cross-examination about the sufficiency of
12 the data and the information. So I think I'll overrule
13 the objection and allow you to ask it.

14 MR. HOWE: Thank you, your Honor.

15 THE WITNESS: They provided one week's
16 worth of traffic, and they were Category 92 call records.

17 BY MR. HOWE:

18 Q. What are Category 92 records?

19 A. Category 92 records are records that SBC
20 produces that they provide to -- would provide to carriers
21 like us who would then in turn either use them to bill our
22 LWC customers, local wholesale complete customers that are
23 on their network, so we need to get those call records
24 from them to bill those customers, or we would use
25 Category 92 records to invoice AT&T or other IXCs.

1 Q. Just so I understand, Category 92 records
2 would be provided to Big River so that Big River could
3 bill AT&T for traffic?

4 A. Right.

5 Q. Okay. Was this the type of data that would
6 in any way be helpful to reconcile AT&T's bills for access
7 charges?

8 A. Typically we see Category 11 records when
9 we validate access records.

10 Q. What are those?

11 A. Category --

12 MR. GRYZMALA: I apologize. I'm going to
13 have to object again. This is testimony which could have
14 been embedded in his rebuttal testimony, an explanation as
15 to why they were insufficient. He said in his testimony
16 it was insufficient to reconcile his records. That was
17 the opportunity to do that. I did not open the door to
18 this line of questioning by the limited questions I had in
19 my cross.

20 JUDGE BUSHMANN: It does seem that you're
21 straying a little bit afield from the questions
22 Mr. Gryzmala was asking.

23 MR. HOWE: Okay. Then just one other
24 question.

25 BY MR. HOWE:

1 Q. Why didn't Big River pursue further data
2 from AT&T Missouri after receiving that one week's on
3 February 15th, 2012?

4 A. Because on that day or shortly thereafter,
5 the next day, I think it was UPS, we received the
6 collections letter from AT&T to pay this enhanced invoice
7 or they will suspend ordering of our customers within two
8 weeks.

9 Q. Okay.

10 A. So we had no choice at that point but to
11 file a formal dispute process.

12 MR. HOWE: Thank you. I have no further
13 questions.

14 MR. GRYZMALA: Your Honor, may I have
15 limited redirect on that last question?

16 JUDGE BUSHMANN: No. There's no provision
17 for that. You may step down.

18 It's ten 'til five, and it appears we won't
19 have time to start another witness today. So we're going
20 to go into recess here until tomorrow, but it's scheduled
21 for one o'clock since the Commissioners have a meeting in
22 the morning. My hope is that we'll be able to move a
23 little bit quicker tomorrow and get through. If not,
24 we'll have to decide whether to go on to Thursday or try
25 and finish up tomorrow night. My hope is we can get done

1 tomorrow by five, but we'll have to see.

2 So we'll be in recess until 1 p.m.

3 tomorrow.

4 (WHEREUPON, the hearing was recessed at

5 4:46 p.m.)

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STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified
Shorthand Reporter with the firm of Midwest Litigation
Services, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR