

Exhibit No.:
Issues: Contractual and Policy
Witness: William E. Greenlaw
Type of Exhibit: Direct
Sponsoring Party: Southwestern Bell Telephone
Company, d/b/a AT&T Missouri
Case No.: TC-2012-0284

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

Case No. TC-2012-0284

**Direct Testimony of William E. Greenlaw
On Behalf of AT&T Missouri**

September 28, 2012

NP

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

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

AFFIDAVIT OF WILLIAM E. GREENLAW

COUNTY OF DALLAS)
) SS
STATE OF TEXAS)

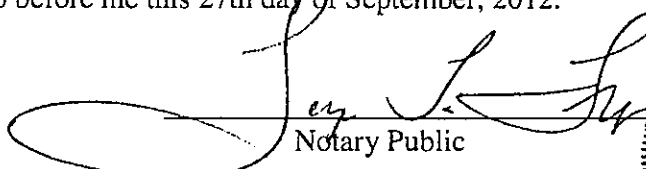
I, William E. Greenlaw, of lawful age, being duly sworn, depose and state:

1. My name is William E. Greenlaw. I am Area Manager-Wholesale Regulatory for AT&T Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



William E. Greenlaw

Sworn and subscribed to before me this 27th day of September, 2012.



Notary Public

My Commission Expires: 11-12-2015

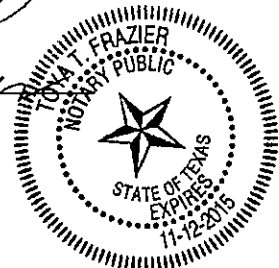


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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is William E. Greenlaw. My business address is 311 S. Akard Street, Dallas,
4 TX 75202.

5 **Q. ON WHOSE BEHALF ARE YOU PROVIDING DIRECT TESTIMONY TODAY?**

6 A. Southwestern Bell Telephone Company, d/b/a AT&T Missouri.

7 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

8 A. I am an Area Manager – Wholesale Regulatory Policy & Support, for AT&T Services,
9 Inc., an affiliate of AT&T Missouri. I work on behalf of the AT&T incumbent local
10 exchange carriers (“ILECs”) throughout AT&T’s 22-state ILEC territory, including
11 Missouri. The AT&T ILEC in Missouri is Southwestern Bell Telephone Company, d/b/a
12 AT&T Missouri, which my testimony will refer to as AT&T Missouri. I am responsible
13 for providing regulatory and witnessing support relative to various wholesale products
14 and their pricing; supporting negotiations of local interconnection agreements (“ICAs”)
15 formed pursuant to the federal Telecommunications Act of 1996 (“1996 Act” or “Act”)
16 between the AT&T ILECs and competitive local exchange carriers (“CLECs”) and
17 Commercial Mobile Radio Service (“CMRS”) providers; participating in state
18 commission and judicial proceedings; and, assisting in helping to ensure continuing
19 compliance with the requirements of the Act and its implementing rules.

20 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

21 A. I received a Bachelor of Business Administration in Marketing from the University of
22 Oklahoma.

1 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE AT AT&T.**

2 A. My career with AT&T (including Southwestern Bell Telephone Company) spans over 19
3 years, the last 15 years of which have been spent working in wholesale organizations that
4 support and interact with CLECs like the Complainant in this case, Big River Telephone
5 Company, LLC ("Big River"). In addition to my current role, I have held management
6 positions responsible for CLEC customer care, CLEC sales and sales support, local
7 switched product management, local switched policy management, and segment
8 marketing.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**
10 **COMMISSIONS?**

11 A. Yes. I have submitted written testimony to the state public utility commissions in Florida
12 and Michigan and have appeared before the Florida Public Service Commission. These
13 cases involved the arbitration of ICAs or disputes regarding the interpretation or
14 enforcement of ICAs, like the one at issue in this proceeding.

15 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

16 A. My Direct Testimony explains why the exchange access charges billed to Big River by
17 AT&T Missouri are not excused by Big River's claim that the traffic resulting in those
18 charges is "enhanced services" traffic. I will discuss AT&T Missouri's ICA, as amended,
19 with Big River and the reasons why the Commission should reject Big River's contention
20 that the traffic which originates from Big River's end users, and is delivered by Big River
21 to AT&T Missouri for termination to AT&T Missouri's end users, consists of enhanced
22 services traffic. My testimony also explains that the Commission should reject Big
23 River's contention because the parties entered into a 2009 settlement of a dispute
24 between them related to Big River's traffic, after which they executed an "interconnected

1 Voice over Internet Protocol” (or “VoIP”) amendment), which is inconsistent with Big
2 River’s assertion that its traffic is enhanced services traffic. I also convey the remedies
3 that AT&T Missouri has under the ICA for Big River’s continued breach of its payment
4 obligations.

5 **Q. EXPLAIN THE ISSUE INVOLVED IN THE BILLING DISPUTE BETWEEN BIG**
6 **RIVER AND AT&T MISSOURI?**
7

8 A. The issue, simply put, is whether Big River’s traffic delivered to AT&T Missouri is
9 enhanced services traffic. The issue has been precipitated by Big River’s failure to pay
10 AT&T Missouri’s exchange access charges billed to Big River under Billing Account
11 Number (or “BAN”) 110 401 0113 803. Big River bases its failure to pay charges on this
12 BAN on its assertion that 100% of the traffic it delivers to AT&T Missouri for
13 termination to AT&T Missouri’s customers is “enhanced services” traffic which is not
14 subject to exchange access charges under the terms of the intercarrier compensation
15 provisions of the parties’ ICA, or tariffs incorporated by reference.¹

16 AT&T Missouri contests the assertion that the traffic Big River delivers to it is
17 enhanced services traffic. To the contrary, based on what is known about Big River’s
18 services, and based upon information produced in discovery indicating that Big River has
19 a significant telecommunications services business, it appears that none of this traffic
20 should be regarded as enhanced services traffic. Instead, it is simply two-way voice
21 telecommunications service, with separate customized features which do not transform
22 the nature of the traffic from telecommunications services to enhanced services traffic.

¹ See, Complaint, para. 22 (alleging that Big River’s “Percent Enhanced Usage” has “continued to be 100%”); see also, Big River’s Affirmative Defense to AT&T Missouri’s Complaint (“Big River’s traffic is exempt from the access charges claimed by AT&T Missouri because the traffic is enhanced.”).

1 Thus, appropriate intercarrier compensation charges -- exchange access charges -- are due
2 when those calls are terminated to an AT&T Missouri end user. Failure to pay for these
3 charges constitutes a breach of the payment obligations under the parties' ICA. AT&T
4 Missouri may exercise additional remedies under the ICA if this breach is not cured,
5 including, but not limited to, suspension of ordering and ultimately disconnection of
6 service.

7
8 **II. BACKGROUND**

9
10 **Q. PLEASE PROVIDE BACKGROUND ON THE NATURE OF THE PARTIES'**
11 **DISPUTE.**

12
13 A. As noted above, this case concerns AT&T Missouri's assessment of "access charges"
14 upon certain telephone calls delivered to it by Big River. Access charges are the charges
15 that traditionally have been paid by one telephone carrier to a second carrier for the
16 origination or termination of interexchange traffic -- *i.e.*, long distance traffic that begins
17 and ends in different local "exchanges" or local calling areas. These charges compensate
18 local telephone companies (also referred to as local exchange carriers) when long
19 distance carriers (also referred to as interexchange carriers) use a local telephone
20 company's network to originate or terminate a telephone call. For example, if Big River
21 provides long distance service to one of its customers and that customer calls one of
22 AT&T Missouri's customers, Big River uses AT&T Missouri's local network to
23 complete the call, by handing the call off to AT&T Missouri, which then completes or
24 "terminates" the call to AT&T Missouri's customer. AT&T Missouri would then bill
25 access charges to Big River (either interstate or intrastate access charges, depending upon
26 whether the call was an interstate or intrastate long distance call).

1 In this case, Big River disputes the access charges AT&T Missouri has billed Big
2 River for long distance, voice telephone calls placed by Big River's customers to AT&T
3 Missouri's customers. The calls begin on Big River's circuit-switched network, are
4 transported some distance by Big River, and are handed off to AT&T Missouri for
5 completion to AT&T Missouri's customers using AT&T Missouri's circuit-switched
6 network. In other words, the calls are simply two-way voice telecommunications
7 services originating and terminating on the public switched telephone network ("PSTN").

8 Big River asserts that under its interconnection agreement with AT&T Missouri,
9 it does not have to pay access charges for these calls because they are not
10 "telecommunications services," but instead are "enhanced" or "information" services.
11 Under the parties' ICA, enhanced services traffic (sometimes called information services
12 traffic) is not subject to access charges, unless it is interconnected VoIP traffic, which
13 remains subject to access charges pursuant to Missouri law (Section 392.550 of the
14 Missouri statutes) and the interconnection agreement amendment executed by the parties
15 implementing that statute.

16 The FCC has long distinguished between telecommunications services
17 (previously called "basic" services) and information services (sometimes called
18 "enhanced" services).² A "telecommunications service" is "the offering of
19 telecommunications for a fee directly to the public . . . regardless of the facilities used."
20 "Telecommunications" means "the transmission, between or among points specified by

² As the FCC has explained, Congress "codif[ied] the Commission's decades old distinction between 'basic services' and 'enhanced services' as 'telecommunications services' and 'information services,' respectively, in the 1996 Act." Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd. 22404, n.118 (2004) ("*Vonage Order*"), *petitions for review denied, Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

1 the user, of information of the user's choosing, without change in the form or content of
2 the information as sent and received." 47 U.S.C. §§ 153(43), (46). An example is "plain
3 old telephone service" ("POTS") provided on the PSTN. Traditional voice telephone
4 service provides for the "transmission" of "information of the user's choosing" (*i.e.*, the
5 user's speech) between or among points specified by the user (*i.e.*, between the user's
6 telephone and whatever telephone he or she chose to call), without any change in the
7 form or content of the information as sent and received (*i.e.*, the speech at one end of the
8 call is reproduced at the other end).

9 An "information service," on the other hand, is "the offering of a capability for
10 generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making
11 available information via telecommunications." 47 U.S.C. § 153(20). An example is
12 Internet access service. Internet access service allows users to connect to their provider
13 and then surf the Internet and acquire, store, transform, process, retrieve, and/or utilize
14 information from any number of Internet servers located at all manner of distant points.
15 The calls at issue here – long distance, voice telephone calls from Big River's customers
16 to AT&T Missouri's customers that originate and terminate on the PSTN, just as
17 telephone calls have for decades – do not constitute enhanced/information services
18 traffic, so as to exempt them from access charges under the parties' interconnection
19 agreement. While Big River may provide its telephone customers additional features and
20 functions ancillary to their telephone service, analysis based on the available facts, the
21 FCC's orders on the subject, and other considerations, all refute Big River's position that
22 those additional features somehow turn Big River's telephone service into an
23 enhanced/information service.

1 **III. BIG RIVER'S TELECOMMUNICATIONS SERVICES OFFERED TO THE**
2 **PUBLIC**

3
4 **Q. WHAT TYPE OF SERVICES DOES BIG RIVER OFFER TO THE PUBLIC AND**
5 **HOW DOES IT OFFER THEM?**

6 A. Information that is publicly available gives insight into the types of telecommunications
7 services Big River offers to the public and how Big River offers them to its current and
8 future end users. For example, when reviewing Big River's internet website (*see*,
9 Schedule WEG-1, attached hereto) and examining the section titled "Telephone Services
10 for Residential," the section for Local Service outlines services and features such as:

- 11 • Dial Tone
- 12 • Local Calling
- 13 • Emergency 911 (where available)
- 14 • Directory Listing
- 15 • Expanded Local Calling (available in some areas)
- 16

17 Big River's website emphasizes that the company offers a "wide range of features" that
18 "meet your communication needs" and that "[s]ome of our most popular features, Caller
19 ID, Call Waiting, and Three-Way Calling are included in many packages." While these
20 are certainly useful features, they are nevertheless ancillary to the functionality of basic
21 POTS telecommunications service for two-way communication between a calling and a
22 called party. The offering of such vertical features has never, to my knowledge, been
23 regarded as sufficient to turn the offering of voice telephone service into an unregulated
24 enhanced/information service.

25 **Q. DOES AT&T MISSOURI ALSO OFFER SUCH FEATURES?**

26 A Yes. These types of features have long been offered to AT&T Missouri's retail
27 customers pursuant to its Commission-approved tariff, P.S.C. Mo.-No. 35, General
28 Exchange Tariff, Section 47.

1 **Q. DOES BIG RIVER'S WEBSITE PROVIDE ANY INDICATION THAT ITS**
2 **OFFERINGS WOULD BE CONSIDERED ENHANCED SERVICES?**

3 A Based on my review of Big River's website, the marketing and sales approach that Big
4 River is taking is not consistent with its claim that their end users' traffic terminated to
5 AT&T Missouri's network is enhanced services traffic.

6 **Q. SO, BASED ON YOUR WEBSITE REVIEW, WHAT IS YOUR CONCLUSION**
7 **AS TO THE TYPES OF SERVICES BIG RIVER PROVIDES TO ITS END USER**
8 **CUSTOMERS?**

9 A From the information made available on Big River's website, basic telephone service
10 (both commercial and residential) is clearly one of Big River's primary offerings to end
11 users in Missouri, if not the primary offering among its various telecommunications
12 service offerings. No support can be found on Big River's website allowing a conclusion
13 that its services provided to end users (or even that a portion of its end users' traffic
14 delivered to AT&T Missouri for termination) are enhanced services.

15 **Q. ARE YOU SUGGESTING THAT AT&T MISSOURI'S POSITION THAT THE**
16 **TRAFFIC BIG RIVER IS SENDING AT&T MISSOURI IS NOT ENHANCED**
17 **SERVICES TRAFFIC RESTS SOLELY ON BIG RIVER'S WEBSITE**
18 **INFORMATION?**

19 A Certainly not. Mr. Neinast's testimony discusses network-related considerations, and
20 why the added services that Big River claims to offer to its end users fall short of making
21 the telephone calls delivered to AT&T Missouri enhanced services traffic. But my point
22 is that Big River's own website undermines its assertion that the traffic that Big River
23 delivers to AT&T's network constitutes an enhanced service. Moreover, other available
24 information is to the same effect. As I discuss later, Big River's offering of service
25 pursuant to tariff, its having sought and obtained certificates of service authority from the
26 Commission, its annual reports submitted to the Commission, and its marketing and sales

1 materials, all refute Big River's assertion that the calls it delivers to AT&T Missouri
2 constitute enhanced services traffic.

3 **Q. ARE BIG RIVER'S RESPONSES TO AT&T'S REQUESTS FOR ADMISSION**
4 **RELEVANT TO BIG RIVER'S CLAIM THAT 100% OF ITS TRAFFIC IS**
5 **ENHANCED SERVICES TRAFFIC?**

6
7 A. Yes.

8
9 **Q. PLEASE EXPLAIN.**

10 A. On July 31, 2012, AT&T Missouri submitted various requests for admission to Big River
11 pursuant to the Commission's discovery rules. Big River provided its responses to these
12 requests on August 20, 2012. Several of Big River's responses bear directly on, and
13 completely undermine, its claim. Mr. Neinast's Direct Testimony explains in detail why
14 Big River's own admissions refute its position that the offering of various ancillary
15 features makes all of its telephone traffic enhanced services traffic. However, one
16 admission in particular warrants additional emphasis. It has to do with Big River's
17 offering of service pursuant to tariff.

18 **Q. PLEASE EXPLAIN THIS ADMISSION AND ITS SIGNIFICANCE.**

19
20 A. AT&T Missouri asked Big River to admit that "[a] portion of the traffic you [Big River]
21 delivered to AT&T Missouri for termination since February 5, 2010, originated with
22 customers to whom you provided service pursuant to your Missouri P.S.C. Tariff No. 1."
23 Big River admitted to this statement without qualification.

24 Big River's admission undermines its central assertion made in this proceeding
25 that, since 2005, its traffic has been entirely enhanced services traffic. *See*, Complaint,
26 para. 22 ("Big River's [Percent Enhanced Usage] since that time has continued to be
27 100%"); *see also*, Big River's Affirmative Defense to AT&T Missouri's Complaint ("Big

1 River's traffic is exempt from the access charges claimed by AT&T Missouri because the
2 traffic is enhanced.").

3 The relevance of Big River's admission is that for *at least* the portion of that
4 traffic that originated with customers served by Big River pursuant to its tariffs, it cannot
5 be the case that this traffic is enhanced. That is because services provided pursuant to
6 tariffs filed with the Commission are confined to telecommunications services, and do
7 not include enhanced or information services. Stated another way, it cannot be the case
8 that 100% of Big River's traffic is enhanced services traffic because Big River admits
9 that "a portion of the traffic" is telecommunications services traffic provided by means of
10 its tariffs.

11 **Q. IS BIG RIVER'S HAVING SOUGHT AND OBTAINED FROM THE**
12 **COMMISSION AUTHORITY TO PROVIDE TELECOMMUNICATIONS**
13 **SERVICES IN MISSOURI CONSISTENT WITH ITS CLAIM THAT 100% OF**
14 **ITS TRAFFIC IS ENHANCED SERVICE TRAFFIC?**

15
16 A. No. Big River's claim that it provides only enhanced services is thoroughly inconsistent
17 with its status as a certificated telecommunications services provider in Missouri. *See*
18 *Order Granting Certificate to Provide Basic Local, Local Exchange, and Interexchange*
19 *Telecommunications Services*, Case TA-2001-699 (Aug. 13, 2001). In accordance with
20 its certificate, Big River has filed tariffs with the Commission to govern its provision of
21 local and intrastate long distance services, including a tariff for "intrastate interexchange
22 *telecommunications services*." Big River M.P.S.C. Tariff No. 1, Second Revised Title
23 Page. (emphasis added). Pursuant to its certificate of service authority and this tariff, Big
24 River provides "to residential and business customers" "direct-dialed message
25 telecommunications services" that allow its customers "to originate calls from a Big
26 River-provided access line to all other stations on the public switched telephone network

1 bearing the designation of any central office exchanges outside the customer's local
2 calling area." *Id.* Third Revised Pages 21, 22. This describes precisely the
3 telecommunications service that Big River provides to its Missouri customers that allows
4 them to pick up the telephone and make a non-local voice telephone call to one of AT&T
5 Missouri's customers.

6 Indeed, while Big River claims in this proceeding that the ancillary features it
7 provides its customers make all of its traffic "enhanced services," that is directly
8 inconsistent with its prior representations to the Commission. For example, in 2011, Big
9 River applied to the Commission to expand its certificate of basic local service authority
10 to include the entire State of Missouri. Application of Big River Tel. Co., LLC to Expand
11 Certificate of Basic Local Service Authority, Case TA-2011-0273 (filed Feb. 25, 2011).
12 In that application, sworn to by Big River's CEO, Big River noted it was authorized to
13 provide "basic local telecommunications service" and "interexchange
14 telecommunications services," and asserted that it "remains managerially and technically
15 qualified to provide basic local telecommunications services" and "financially qualified
16 to provide telecommunications services" because "[i]t has been successfully providing
17 basic local service since it commenced operations in 2001." *Id.* at 1, 3-4. This, of course,
18 is inconsistent with Big River's current suggestion that its services are all "enhanced,"
19 thus, not telecommunications services.

20 More generally, if the offering of ancillary features, like the ability to manage
21 incoming call options and set-up call forwarding, were sufficient to turn the provision of
22 voice telephone service into an unregulated enhanced/information service, then likely

1 every telephone provider in Missouri would be classified as an enhanced/information
2 services provider, not a telecommunications services provider.

3 **Q. DID BIG RIVER PRODUCE DOCUMENTS RELEVANT TO ITS CLAIM THAT**
4 **ITS TRAFFIC DELIVERED TO AT&T MISSOURI IS 100% ENHANCED**
5 **SERVICES TRAFFIC?**

6
7 A. Yes. Big River produced in discovery its Annual Reports submitted to the Missouri
8 Public Service Commission for each of 2008, 2009, 2010 and 2011. All are attached to
9 my testimony as Schedules WEG-2(HC) through WEG-5(HC).

10 In each of these reports, Big River confirmed its status as a "Competitive Local
11 Exchange Telecommunications Carrier" and a "Competitive Interexchange
12 Telecommunications Carrier." Further, in each, Big River reported substantial
13 telecommunication service revenues, including substantial Missouri "net jurisdictional
14 revenues" for Missouri USF purposes. Such revenues, by definition, account for only the
15 "provision of intrastate regulated telecommunications services." 4 CSR 31.010(12).
16 Enhanced services are not telecommunications services. Big River's reporting of
17 substantial revenues for its provision of telecommunication services, all submitted to the
18 Commission under oath, is flatly inconsistent with its claim that 100% of its traffic is
19 enhanced services traffic.

20 **Q. WHAT OTHER DOCUMENTS DID BIG RIVER PRODUCE WHICH**
21 **CONTRADICT ITS CLAIM THAT ITS TRAFFIC DELIVERED TO AT&T**
22 **MISSOURI IS 100% ENHANCED SERVICES TRAFFIC?**

23
24 A. Big River produced a generic "Master Service Agreement." (*see*, Schedule WEG-6,
25 attached hereto). That agreement confirms that Big River is a provider of
26 telecommunications services. For example, under the caption "Tariff Considerations (at
27 page 4 of the Agreement), it states: "Depending on the Customer's choice of products

1 and services, Customer may receive from Big River Telephone and its affiliates,
2 regulated local, interstate, intrastate, and local toll telecommunications services provided
3 pursuant to Big River Telephone tariffs and price lists and the terms and conditions
4 contained therein.” No mention appears to be made of the specific services which Big
5 River now claims in its Complaint are enhanced.

6 Additionally, Big River produced copies of its “Features Guide-Commercial” and
7 “Features Guide-Residential.” (*see*, Schedules WEG-7 and WEG-8, attached hereto).
8 These documents describe the “features” that Big River offers to its telephone service
9 customers, but do not describe Big River’s underlying telephone service (*i.e.*, the ability
10 to make and receive calls), much less suggest that the features are so integrated with the
11 underlying telephone service as to make the latter an enhanced service. Rather, the
12 features are described as add-ons that customers may elect, but are not required, to
13 activate.

14
15 **IV. BIG RIVER’S DEALINGS WITH AT&T**

16
17 **Q. PLEASE DISCUSS THE ICA ENTERED INTO BETWEEN BIG RIVER AND**
18 **AT&T MISSOURI AND THE PARTIES’ DISPUTE UNDER THE ICA.**

19 A. On August 13, 2005, in Case No. TK-2006-0073, the Commission approved the ICA
20 entered into between Big River and AT&T Missouri. The ICA remains in effect today.
21 The parties’ dispute initially took root shortly after the Commission approved the parties’
22 ICA. The “Attachment 12 - Intercarrier Compensation” portion of that agreement
23 specified the compensation the parties would be entitled to receive for the exchange of
24 telecommunications traffic. While the agreement specified generally that non-local
25 traffic would be subject to access charges, Section 13.3 specified different compensation

1 for “enhanced/information services traffic, including without limitation Voice over
2 Internet Protocol (‘VOIP’) traffic and other enhanced services traffic.” To identify this
3 traffic, the agreement allowed Big River to designate a “Percent Enhanced Usage”
4 (“PEU”) factor, specifying the percentage of its traffic it claimed was
5 enhanced/information services traffic. AT&T Missouri commenced billing Big River
6 access charges for terminating the traffic Big River delivered to AT&T Missouri. In
7 October, 2005, Big River claimed that the PEU for all traffic it was sending to AT&T
8 Missouri for termination was 100%, apparently so that Big River would not be obligated
9 to pay AT&T Missouri any access charges. Big River disputed AT&T Missouri’s
10 charges, claiming that AT&T was obligated to terminate the traffic in question at no
11 charge to Big River, pursuant to Attachment 12 of the parties’ agreement. In April, 2008,
12 litigation in St. Louis County Circuit Court ensued over the matter.

13 **Q. WHAT HAPPENED NEXT?**

14 A. In the meantime, HB 1779 was enacted in 2008. Among other things, HB 1779 added to
15 Chapter 392 of the Missouri statutes a new Section 392.550. The new section set forth a
16 process by which providers could offer and provide interconnected VoIP service,
17 principally by means of a “registration” obtained from the Commission. In addition, the
18 new law codified an interconnected VoIP provider’s obligation to pay access charges for
19 the termination of its interconnected VoIP traffic. In particular, Subsection 2 of Section
20 392.550 states:

21 Interconnected voice over Internet protocol service shall be subject to
22 appropriate exchange access charges to the same extent that
23 telecommunications services are subject to such charges. Until January 1,
24 2010, this subsection shall not alter intercarrier compensation provisions
25 specifically addressing interconnected voice over Internet protocol service

1 contained in an interconnection agreement approved by the commission
2 pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.
3

4 As its language makes apparent, the new law provided that the imposition of access
5 charges would not commence until January 2010 to the extent that a pre-existing
6 agreement already contained compensation provisions relating to interconnected VoIP.
7 That, of course, was the case with respect to Big River, whose interconnection agreement
8 contained such provisions.

9 The following year, AT&T and Big River decided to settle all of the disputes
10 presented in the St. Louis County litigation, including what was referred to as the
11 "Enhanced Services Dispute." A final settlement agreement was entered into in
12 October, 2009. Paragraph 1.B of the Settlement Agreement states:

13 ** _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____ **

27
28 As is obvious from the foregoing, the parties agreed to a bifurcated solution to their
29 dispute. First, with respect to charges imposed or to be imposed by AT&T Missouri
30 upon Big River prior to January 1, 2010, ** _____
31 _____

32 _____ ** Second, with respect

1 to charges to be imposed by AT&T Missouri upon Big River from and after January 1,
2 2010, **

3
4
5 **

6 **Q. WAS THE ICA BETWEEN THE PARTIES AMENDED THEREAFTER?**

7
8 **A.** Yes. The amendment to the parties' 2005 agreement was executed by the parties, it was
9 filed with the Commission, and it was approved by the Commission on November 5,
10 2009. As noted in the filing letter submitted to the Commission and distributed to the
11 parties, the amendment contained "certain VoIP intercarrier compensation provisions
12 pursuant to Section 392.550 as reflected in the newly enacted HB 1779." The
13 amendment provided:

14 **House Bill 1779, Section 392.550.** The Parties shall exchange interconnected
15 voice over Internet protocol service traffic, as defined in Section 386.020
16 RSMo, subject to the appropriate exchange access charges to the same extent
17 that telecommunications services are subject to such charges; provided,
18 however, to the extent that as of August 28, 2008, the Agreement contains
19 intercarrier compensation provisions specifically applicable to interconnected
20 voice over Internet protocol service traffic, those provisions shall remain in
21 effect through December 31, 2009, and the intercarrier compensation
22 arrangement described in the first clause of this Section shall not become
23 effective until January 1, 2010.

24
25 Big River's current complaint, filed with the Commission in March, 2012, concerns
26 charges billed by AT&T Missouri to Big River -- *after* January 1, 2010 -- pursuant to the
27 terms of the approved amendment to the interconnection agreement. Seeking to now
28 disavow itself of both the October, 2009 settlement agreement and subsequent
29 interconnection agreement amendment approved by the Commission in November, 2009,
30 Big River claims that its traffic is *not* VoIP, and the "capabilities [of its network] are

1 available to all subscribers and provide enhanced functionality well beyond the
2 capabilities of VoIP.” Complaint ¶ 32. But that is inconsistent with the parties’
3 settlement agreement and ICA, which specifically refer to VoIP (not enhanced services)
4 and whose reference to applicable charges becoming effective January 1, 2010 is a
5 uniquely direct result of the VoIP access charge provisions of Section 392.550.

6 **Q. WHAT DOES THE PARTIES’ ICA SAY ABOUT PAYMENT OF BILLED**
7 **CHARGES?**

8 A. Section 14 of the General Terms and Conditions of the parties’ ICA outlines the parties’
9 payment obligations under the agreement. Section 14.2 states that the billed party should,
10 “pay all undisputed Unpaid Charges to the Billing Party.”

11 **Q. ARE DISPUTED AMOUNTS EXEMPT FROM THIS REQUIREMENT?**

12 A. Yes, but only for the period of time during which a particular billing dispute is open.
13 Once resolution of that dispute has been provided, the dispute is considered closed and
14 the amounts at issue within that dispute are either credited to the billed party or paid by
15 the billed party, depending upon which party prevails in the dispute.

16 **Q. IF THE BILLED PARTY FAILS TO MEET THE OBLIGATIONS UNDER**
17 **SECTION 14.2, WHAT IS THE RECOURSE FOR AT&T?**
18

19 A. Section 14.4 of the General Terms and Conditions of the parties ICA provides for the
20 actions that AT&T Missouri may take if a past due balance remains unpaid, it states that:

21 After expiration of the written notice furnished pursuant to Section 14.1
22 hereof, if CLEC continues to fail to comply with Section 14.2.1 through
23 14.2.4, inclusive, or make payment(s) in accordance with the terms of any
24 mutually agreed payment arrangement, [AT&T]AT&T MISSOURI may, in
25 addition to exercising any other rights or remedies it may have under
26 Applicable Law, furnish a second written demand to CLEC for payment
27 within five (5) Business Days of any of the obligations enumerated in Section
28 14.2.1. On the day that [AT&T] MISSOURI provides such written demand
29 to CLEC, [AT&T] MISSOURI may also exercise any or all of the following
30 options:

1 *14.4.1 suspend acceptance of any application, request or order from
2 the Non-Paying Party for new or additional Interconnection, Resale
3 Services, unbundled Network Elements, Collocation, functions,
4 facilities, products or services under this Agreement; and/or

5
6 *14.4.2 suspend completion of any pending application, request or
7 order from the Non-Paying Party for new or additional Interconnection,
8 Resale Services, unbundled Network Elements, Collocation, functions,
9 facilities, products or services under this Agreement.

10
11 **Q. WHAT STEPS MAY A PARTY TAKE IF THEY ARE NOT SATISFIED WITH**
12 **THE RESOLUTION OF A BILLING DISPUTE ?**

13 A. The ICA contains specific parameters that govern dispute resolution between the parties,
14 but it should be noted that once the billing dispute is closed, those amounts remain owing
15 and are subject to the terms and conditions in the ICA regarding payment. If a CLEC,
16 such as Big River, is unhappy with the resolution provided, it may seek formal resolution
17 of the dispute pursuant to Section 13.5.1 of the General Terms and Conditions of the
18 parties' ICA which states:

19 Except as otherwise specifically set forth in this Agreement, for all disputes
20 arising out of or pertaining to this Agreement, including but not limited to
21 matters not specifically addressed elsewhere in this Agreement require
22 clarification, renegotiation, modifications or additions to this Agreement,
23 either party may invoke dispute resolution procedures available pursuant to
24 the complaint process of the MO-PSC....

25
26 **Q. DID BIG RIVER INVOKE THE FORMAL DISPUTE RESOLUTION CLAUSE IN**
27 **THE ICA?**

28 A. Yes. As Section 13.5 of the General Terms and Conditions states, if the parties cannot
29 resolve the dispute, either party may invoke the dispute resolutions available pursuant to
30 the Commission's complaint process. In this case, Big River was not satisfied with the
31 outcome of the dispute and the parties were unable to resolve the issue. Big River
32 refused to comply with the payment obligations under the ICA regarding the exchange
33 access charges they had previously disputed. Once AT&T began taking the steps

1 necessary to enforce the terms of Big River's agreement pursuant to Section 14 of the
2 General Terms and Conditions regarding payment of billed amounts, Big River filed its
3 complaint with the Commission.

4 **V. BIG RIVER'S LIABILITY FOR ACCESS CHARGES**

5
6 **Q. WHAT IS THE BASIS FOR AT&T MISSOURI'S REQUEST THAT THE**
7 **COMMISSION RULE THAT BIG RIVER MUST PAY AT&T MISSOURI**
8 **ACCESS CHARGES?**

9 A. The terms of the ICA are clear and unambiguous regarding payment of AT&T Missouri's
10 billed charges, so ultimately, the only issue that the Commission needs to determine is
11 whether the services Big River is providing to end users, resulting in calls originating on
12 Big River's network and delivered to AT&T Missouri for termination to its end users, are
13 100% enhanced services, as Big River claims, or whether they constitute mere
14 telecommunications services involving two parties talking on both ends of a call. As
15 stated above and as elaborated further in Mr. Neinast's direct testimony, it is clear that
16 the traffic that Big River is delivering to AT&T Missouri for termination to AT&T
17 Missouri's end users is not enhanced services traffic; therefore, the calls are subject to the
18 appropriate access charges.

19 **Q. ARE THE ACCESS CHARGE RATES THAT BIG RIVER OWES SET FORTH**
20 **IN THE PARTIES' INTERCONNECTION AGREEMENT?**

21 A. No, while the applicability of access charges is set forth in the ICA, the dollars-and-cents
22 access charge rates are actually tariffed rates, incorporated by reference into the ICA.
23 AT&T Missouri's federal tariff, filed with the FCC, requires Big River to pay access
24 charges on the interstate traffic AT&T Missouri has terminated for Big River, and AT&T

1 Missouri's state tariff, filed with this Commission, requires Big River to pay access
2 charges on the intrastate non-local traffic AT&T Missouri has terminated for Big River.

3 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE FEDERAL TARIFF?**

4 A. Southwestern Bell Telephone Company Access Service Tariff F.C.C. NO. 73, Section
5 6.9.

6 **Q. WHAT ARE THE PERTINENT PROVISIONS OF THE STATE TARIFF?**

7 A. P.S.C. Mo. -No. 36 Access Services Tariff Sections 3.8, 6.11.

8
9 **VI. AT&T MISSOURI'S COMPLAINT**

10
11 **Q. DESCRIBE THE NATURE OF AT&T MISSOURI'S OWN COMPLAINT**
12 **AGAINST BIG RIVER.**

13
14 A. AT&T Missouri's Complaint is straightforward. Pursuant to the parties' ICA, as
15 amended, Big River has delivered to AT&T Missouri for termination to end users non-
16 local traffic for which Big River is required to pay charges which have been billed to it
17 by means of BAN 110 401 0113 803. Such traffic is subject to switched access charges
18 pursuant to Section 13 of Attachment 12 to the ICA and the ICA amendment, unless such
19 traffic is enhanced/information services traffic. The non-local traffic which Big River
20 has delivered to AT&T Missouri for termination and for which Big River is required to
21 pay access charges, which have been billed to it by means of BAN 110 401 0113 803, is
22 not enhanced/information services traffic, for all of the reasons I have stated above and
23 those explained in Mr. Neinast's Direct Testimony.

24 Simply put, AT&T Missouri simply wants Big River to meet the obligations of
25 the ICA and pay the exchange access charges that are rightfully owed to AT&T Missouri

1 for the services rendered. If Big River fails to do so, then AT&T Missouri should be able
2 to enforce the terms of the ICA regarding non-payment of the charges.

3 AT&T Missouri's Complaint also seeks to ensure that Big River does not use the
4 parties' 2009 settlement agreement as both a shield and a sword. Big River's Complaint
5 (at paragraph 21), recites that, as a result of this settlement, AT&T Missouri "credited
6 Big River in full for the access charges." This statement is misleading and does not
7 accurately convey the details of the parties' settlement of their dispute regarding this
8 issue (which was only one of several disputes resolved at that time). Yet, when AT&T
9 Missouri's Complaint referenced the actual terms of the settlement agreement, and
10 alleged that settlement was premised upon Big River's representation that its traffic was
11 interconnected VoIP traffic and upon its understanding that Big River would pay access
12 charges for its traffic after January 1, 2010, in light of Section 392.550.2, RSMo., Big
13 River proceeded to claim in its Answer to AT&T Missouri's Complaint that "the terms of
14 the prior settlement agreement are confidential and not subject to disclosure." It is
15 disingenuous of Big River to assert that the settlement is privileged and confidential,
16 when it was Big River who opened the door to the settlement in its Complaint. Big River
17 cannot be allowed to disavow its obligations under the settlement and resulting ICA
18 amendment while reaping the benefits of the settlement.

19 **Q. HAS BIG RIVER PROVIDED ANY REASON AS TO WHY IT REFUSES TO**
20 **PAY THE ACCESS CHARGES BILLED TO IT BY AT&T MISSOURI?**

21
22 **A.** The only reason advanced by Big River for its refusal to pay AT&T Missouri's billed
23 access charges is that the traffic it has sent to AT&T Missouri for termination is 100%
24 enhanced services traffic, and therefore is exempt from exchange access charges. Big
25 River has never asserted any other reason for its refusal to pay these charges. For

1 example, Big River has never asserted that, if its traffic were classified as
2 telecommunications services traffic, the amounts billed by AT&T Missouri were wrongly
3 computed or would not otherwise be due in full.

4 **Q. HAS THE FCC RECENTLY ADDRESSED THE EFFECTS OF ACCESS-**
5 **AVOIDANCE?**

6 A. Yes. On November 18, 2011, the FCC issued its *Connect America Fund Order*.³ In the
7 words of FCC Commissioner Michael J. Copps, that Order “puts the brakes on the
8 arbitrage and gamesmanship that have plagued [intercarrier compensation] for years and
9 that have diverted private capital away from real investment in real networks....Today we
10 say ‘no more.’”⁴ Commissioner Copps thus decried the fact that the unlawful avoidance
11 of access charges, also known as access arbitrage, is an ongoing and significant problem
12 for the industry as a whole. Given the lack of any reasonable support for Big River’s
13 claim that the traffic at issue here is enhanced services traffic, Big River’s refusal to pay
14 AT&T Missouri’s access charges certainly appears to be yet another in a long line of
15 access charge avoidance schemes.

16 **Q. WHAT IS THE FINANCIAL IMPACT OF BIG RIVER’S DISPUTE?**

17 A. Through the August 2012 billing cycle, Big River owed AT&T Missouri \$350,637.60 in
18 unpaid past due access charges billed by means of BAN 110 401 0113 803, excluding
19 any late payment charges, as applicable. (See, Schedule WEG-9(HC), attached hereto).

³ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90 *et al.* (rel. Nov. 18, 2011) (“*Connect America Fund Order*”), 26 FCC Rcd 17663, available at 2011 WL 5844975.

⁴ 26 FCC Rcd at 18404, available at 2011 WL 5844975, *571 (statement of Commissioner Michael J. Copps).

1 **VII. CONCLUSION**

2
3 **Q. HOW SHOULD THE COMMISSION RULE WITH RESPECT TO AT&T**
4 **MISSOURI'S COMPLAINT?**

5
6 A. The Commission should find that Big River has breached the parties' ICA by failing to
7 meet its payment obligations under the parties' ICA, as amended.

8 **Q. WHAT RELIEF IS AT&T MISSOURI SEEKING FROM THE COMMISSION?**

9 A. AT&T Missouri is asking the Commission to:

10 (a) Find that the access charges AT&T Missouri has billed Big River since
11 January 1, 2010 by means of BAN 110 401 0113 803 are charges for
12 terminating non-local traffic that either is not enhanced information
13 services traffic or is interconnected VoIP traffic;

14 (b) Find that the access charges AT&T Missouri has billed Big River since
15 January 1, 2010 by means of BAN 110 401 0113 803 are required by and
16 consistent with the parties' ICA, as amended;

17 (c) Find that the access charges AT&T Missouri has billed Big River since
18 January 1, 2010 by means of BAN 110 401 0113 803, plus any late
19 payment charges, as applicable, are due and owing by Big River;

20 (d) Find that if the access charges outlined in (a), (b), and (c) above are not
21 immediately cured, AT&T Missouri is excused from further performance
22 under the ICA, may suspend Big River's ability to submit requests for
23 additional service, may suspend provisioning of all pending orders; and,
24 may terminate the ICA; and

25 (e) Grant all other relief as is just and appropriate.
26

1 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

2 **A. Yes.**