

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

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

Plaintiff,

vs.

Big River Telephone Company, LLC

Defendant.

Case No. 08SL-CC01630

Division 2

2008 SEP 29 PM 5:19

JOY L. GILMER
Circuit Clerk

Filed
January 16, 2013
Data Center
Missouri Public
Service Commission

ANSWER AND COUNTERCLAIMS/THIRD PARTY CLAIMS

Answer

COMES NOW Big River Telephone Company, LLC and for its Answer to the Petition states to the Court:

PARTIES

1. Big River admits the averments of paragraph 1 of the Petition.
2. Big River admits the averments of paragraph 2 of the Petition.

NATURE OF ACTION

3. Big River denies the averments of paragraph 3 of the Petition.

VENUE

4. Big River admits the averments of paragraph 4 of the Petition.

COUNT I

5. Big River denies the averments of paragraph 5 of the Petition.
6. Big River denies the averments of paragraph 6 of the Petition.
7. Big River denies the averments of paragraph 7 of the Petition.
8. Big River denies the averments of paragraph 8 of the Petition.
9. Big River denies the averments of paragraph 9 of the Petition.

AT&T Exhibit No. 31
Date 10-13-13 Reporter *
File No. 10-202-0281

COUNT II

10. Big River restates and incorporates by reference herein each of paragraphs 1 through 9 above as if each were separately set forth and restated herein, as its answer to paragraph 10 of the Petition.

11. Big River denies the averments of paragraph 11 of the Petition.

12. Big River denies the averments of paragraph 12 of the Petition.

13. Big River denies the averments of paragraph 13 of the Petition.

14. Big River denies the averments of paragraph 14 of the Petition.

15. Big River denies the averments of paragraph 15 of the Petition.

COUNT III

16. Big River restates and incorporates by reference herein each of paragraphs 1 through 15 above as if each were separately set forth and restated herein, as its answer to paragraph 16 of the Petition.

17. Big River denies the averments of paragraph 17 of the Petition.

18. Big River denies the averments of paragraph 18 of the Petition.

19. Big River denies the averments of paragraph 19 of the Petition.

20. Big River denies any and all other averments of the Petition.

AFFIRMATIVE DEFENSES

21. AT&T has failed to exhaust applicable administrative remedies, the subject matter of the Petition is currently in dispute in a proceeding pending before the Missouri Public Service Commission under its primary jurisdiction, and accordingly the Petition should be dismissed.

22. AT&T has breached its contractual arrangements with Big River by filing the Petition and the Petition should be dismissed.

23. The Petition fails to state a claim upon which relief may be granted and should be dismissed.

WHEREFORE, Big River moves the Court to dismiss the Petition with prejudice, award Big River its costs and attorneys fees herein incurred, and grant such other and further relief to Big River as the Court deems meet and proper,

Counterclaims/Thlrd Party Claims

Count I

COMES NOW Big River Telephone Company, LLC and for Count I of its Counterclaims/Third Party Claims states to the Court:

1. Big River is a Delaware limited liability company duly authorized to conduct business and provide telecommunications services in Missouri and other states.

2. Southwestern Bell Telephone Company d/b/a AT&T Missouri is a Missouri corporation authorized to conduct business and provide telecommunications services in Missouri and other states.

3. AT&T Communications of the Southwest, Inc. is a Delaware corporation authorized to conduct business and provide telecommunications services in Missouri and other states.

4. AT&T Corp. is a New York corporation authorized to conduct business and provide telecommunications services in Missouri and other states.

5. AT&T Missouri, AT&T Communications of the Southwest, Inc. and AT&T Corp. are all part of a single international telecommunications corporation and are hereinafter jointly and severally referred to as AT&T.

6. Big River offers and provides interstate and intrastate access services in Missouri and other states, pursuant to tariff.

7. AT&T has obtained, and continues to obtain, interstate and intrastate access services from Big River in Missouri and other states.

8. AT&T has failed to pay Big River for such access services.

9. Big River has billed for such access services and demanded payment, to no avail.

10. For the period from July 1, 2005 through July 31, 2008, AT&T owes Big River \$830,222.00 for such access services, including late charges and interest, and the balance has continued to grow daily since July 2008.

11. AT&T owes late charges and interest to Big River on the amounts due for such access services, at the highest rates allowed by law from the earliest allowable date.

12. Big River has been damaged by AT&T's failure to pay for such access services, and such failure to pay is a breach of AT&T's obligations under Big River's tariffs.

13. AT&T's failure to pay for access charges is unlawful, in violation of chapter 392 RSMo and orders and decisions of the Missouri Public Service Commission, AT&T has willfully failed to pay Big River, and AT&T should be required to pay all attorney's fees incurred by Big River herein as costs taxed in this matter pursuant to 488.472 RSMo.

WHEREFORE, Big River prays for judgment against AT&T for all amounts owed for access services, currently exceeding \$830,222.00, including late charges and interest at the highest rate allowed by law from the earliest allowable date, attorney's fees, costs and expenses

herein incurred, and such other and further relief as to the Court seems meet and proper in the premises.

Count II

COMES NOW Big River Telephone Company, LLC and for Count II of its Counterclaims/Third Party Claims states to the Court:

1. Big River incorporates by this reference the averments of paragraphs 1-5 of Count I of its Counterclaims/Third Party Claims.

2. Big River and AT&T are parties to that certain Interconnection Agreement dated August 9, 2005 and approved by the Missouri Public Service Commission under the Telecommunications Act of 1996 in Case No. TK-2006-0073.

3. Pursuant to the terms and conditions of the Interconnection Agreement, Big River and AT&T are each to identify for the other Enhanced/Information Services traffic, including but not limited to voice over internet protocol (VOIP) traffic, that is exchanged with the other party, and the receiving party is required to terminate that traffic at no charge to the sending party.

4. Pursuant to the terms and conditions of the Interconnection Agreement, Big River and AT&T are each required to provide the other party with a Percent Enhanced Usage (PEU) factor to reflect the amount of Enhanced/Information Services traffic being exchanged with the other party.

5. Big River provided its PEU factor of 100% to AT&T in October 2005.

6. Notwithstanding Big River's PEU factor, and in breach of the terms and conditions of the Interconnection Agreement, AT&T billed Big River \$487,779.00 for terminating Enhanced/Information Services traffic sent by Big River to AT&T.

7. AT&T billed inapplicable access charges for such traffic, in breach of its tariffs.

8. Big River was not aware that AT&T had improperly included such charges with bills for access services, and Big River paid AT&T improper bills.

9. Big River is entitled to a refund from AT&T for such improperly billed charges, in the total principal amount of \$487,779.00. Big River has demanded a refund, but AT&T has refused. Further, AT&T has continued to improperly bill such charges, but Big River has disputed such subsequent bills.

10. AT&T owes interest to Big River on the amounts it improperly collected from Big River, at the highest rates allowed by law from the earliest allowable date.

11. Big River has been damaged by AT&T's improper and excessive bills, and such bills were issued in breach of AT&T's obligations under its access tariffs and the Interconnection Agreement.

12. AT&T's excessive charges are unlawful, in violation of chapter 392 RSMo and orders and decisions of the Missouri Public Service Commission, AT&T has willfully overcharged Big River, and AT&T should be required to pay all attorney's fees incurred by Big River herein as costs taxed in this matter pursuant to 488.472 RSMo.

WHEREFORE, Big River prays for judgment against AT&T for all refunds owed for the foregoing excessive charges paid by Big River, currently exceeding \$487,779.00, including interest at the highest rate allowed by law from the earliest allowable date, attorney's fees, costs and expenses herein incurred, declaratory judgment that AT&T's continuing billings are not due and owing from Big River, and such other and further relief as to the Court seems meet and proper in the premises.

Count III

COMES NOW Big River Telephone Company, LLC and for Count III of its Counterclaims/Third Party Claims states to the Court:

1. Big River incorporates by this reference the averments of paragraphs 1-5 of Count I of its Counterclaims/Third Party Claims.

2. Big River and AT&T are parties to that certain Interconnection Agreement dated August 9, 2005 and approved by the Missouri Public Service Commission under the Telecommunications Act of 1996 in Case No. TK-2006-0073.

3. Big River offers and provides interstate and intrastate access services in Missouri and other states, pursuant to tariff.

4. Pursuant to the Interconnection Agreement and Big River's tariffs, Big River has billed AT&T for meet-point traffic that originates on AT&T's network and terminates on Big River's network.

5. AT&T has failed and refused to pay \$753,621.00 owed for Big River terminating such meet-point traffic, despite Big River's demands for payment.

6. AT&T owes late charges and interest to Big River on the amounts due for terminating such meet-point traffic, at the highest rates allowed by law from the earliest allowable date.

7. Big River has been damaged by AT&T's failure to pay for termination of such meet-point traffic, and such failure to pay is a breach of AT&T's obligations under Big River's tariffs and the Interconnection Agreement.

8. AT&T's failure to pay for termination of meet-point traffic is unlawful, in violation of chapter 392 RSMo and orders and decisions of the Missouri Public Service Commission, AT&T

has willfully failed to pay Big River, and AT&T should be required to pay all attorney's fees incurred by Big River herein as costs taxed in this matter pursuant to 488.472 RSMo.

WHEREFORE, Big River prays for judgment against AT&T for all amounts owed for terminating meet-point traffic, currently exceeding \$753,621.00, including late charges and interest at the highest rate allowed by law from the earliest allowable date, attorney's fees, costs and expenses herein incurred, and such other and further relief as to the Court seems meet and proper in the premises.

Count IV

COMES NOW Big River Telephone Company, LLC and for Count IV of its Counterclaims/Third Party Claims states to the Court:

1. Big River incorporates by this reference the averments of paragraphs 1-5 of Count I of its Counterclaims/Third Party Claims.

2. Big River and AT&T are parties to that certain Interconnection Agreement dated August 9, 2005 and approved by the Missouri Public Service Commission under the Telecommunications Act of 1996 in Case No. TK-2006-0073.

3. Pursuant to the terms and conditions of the Interconnection Agreement and the requirements of Missouri law, AT&T is required to provide Big River with call records at no charge to enable Big River to bill for traffic that AT&T originates and sends to Big River for termination.

4. For a period of time, AT&T failed and refused to provide such call records to Big River at no charge.

5. From August 2005 through January 2007, Big River incurred charges totaling \$123,000.00 due to AT&T's failure and refusal to provide call records at no charge.

6. Big River is entitled to reimbursement from AT&T for such charges, in the total principal amount of \$123,000. Big River has demanded payment, but AT&T has refused.

7. AT&T owes interest to Big River on the amounts it owes for call record charges incurred by Big River, at the highest rates allowed by law from the earliest allowable date.

8. Big River has been damaged by AT&T's refusal to provide call records at no charge in breach of AT&T's obligations under its access tariffs, the Interconnection Agreement, and Missouri law.

9. AT&T's refusal to provide call records at no charge was unlawful, in violation of chapter 392 RSMo and orders and decisions of the Missouri Public Service Commission, AT&T willfully refused to provide call records to Big River at no charge, and AT&T should be required to pay all attorney's fees incurred by Big River herein as costs taxed in this matter pursuant to 488.472 RSMo.

WHEREFORE, Big River prays for judgment against AT&T for all damages sustained by Big River due to AT&T's refusal to provide call records at no charge, which currently exceed \$123,000.00, including interest at the highest rate allowed by law from the earliest allowable date, attorney's fees, costs and expenses herein incurred, and such other and further relief as to the Court seems meet and proper in the premises.

Count V

COMES NOW Big River Telephone Company, LLC and for Count V of its Counterclaims/Third Party Claims states to the Court:

1. Big River incorporates by this reference the averments of paragraphs 1-5 of Count I of its Counterclaims/Third Party Claims.

2. Big River and AT&T are parties to that certain Interconnection Agreement dated August 9, 2005 and approved by the Missouri Public Service Commission under the Telecommunications Act of 1996 in Case No. TK-2006-0073.

3. Big River has sought to extend ("port") the terms and conditions of the Interconnection Agreement into other states pursuant to commitments made by AT&T in connection with its acquisition of and merger with BellSouth in 2006.

4. AT&T has breached those merger commitments and failed and refused to allow Big River to port the Interconnection Agreement into other states.

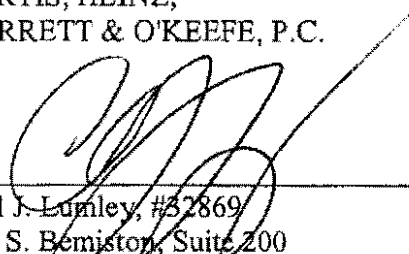
5. As a result of AT&T's breach, Big River has been damaged and through July 2008 incurred costs in excess of \$438,036.00 that otherwise would not have been incurred, and since then has continued to incur such costs.

6. AT&T owes interest to Big River on the amounts it owes for costs incurred by Big River due to AT&T's refusal to allow Big River to port the Interconnection Agreement into other states, at the highest rates allowed by law from the earliest allowable date.

7. AT&T's refusal to allow Big River to port the Interconnection Agreement into other states is unlawful, in violation of chapter 392 RSMo and orders and decisions of the Missouri Public Service Commission, AT&T has willfully refused to allow Big River to port the Interconnection Agreement into other states, and AT&T should be required to pay all attorney's fees incurred by Big River herein as costs taxed in this matter pursuant to 488.472 RSMo.

WHEREFORE, Big River prays for judgment against AT&T for all damages sustained by Big River due to AT&T's refusal to allow Big River to port the Interconnection Agreement into other states, which damages currently exceed \$438,036.00, including interest at the highest rate allowed by law from the earliest allowable date, attorney's fees, costs and expenses herein incurred, and such other and further relief as to the Court seems meet and proper in the premises.

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.



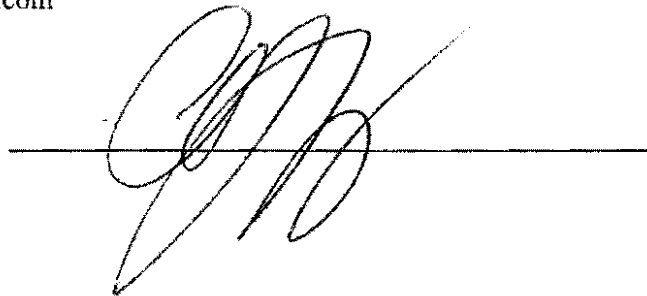
Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (Fax)
Email: clumley@lawfirmemail.com

Attorneys for Defendant
Big River Telephone Company, LLC

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either emailed, faxed or mailed by U.S. Mail postage paid this 29th day of September, 2008, to:

Robert J. Gryzmala
Timothy P. Leahy
Leo J. Bub
Southwestern Bell Telephone Company
d/b/a AT&T Missouri
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-247-0014 (Fax)
Email: Robert.gryzmala@att.com

A handwritten signature, likely of Robert J. Gryzmala, is written in black ink over a horizontal line. The signature is stylized and cursive.