

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2012-0284
)	
SOUTHWESTERN BELL)	
TELEPHONE, L.P. d/b/a)	
AT&T MISSOURI)	
)	
Respondent.)	

**AT&T MISSOURI’S RESPONSE TO BIG RIVER TELEPHONE COMPANY, LLC’S
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Southwestern Bell Telephone Company, formerly known as Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (“AT&T Missouri”), pursuant to 4 CSR 240-2.117, and provides the following response to the motion for summary determination filed by Big River Telephone Company, LLC (“Big River”). At the outset, however, as is explained more fully in AT&T Missouri’s memorandum in opposition to Big River’s motion, AT&T Missouri’s position is that Big River’s motion should not detract from the only issue presented in the parties’ respective Complaints and Answers filed in the case – which is *not* addressed in the motion – that is, whether Big River’s traffic is exempt from access charges under the parties’ interconnection agreement (“ICA”).

The alleged facts on which Big River bases its motion do not afford Big River any relief here. Big River’s motion is legally barred on three separate and independent grounds: it is beyond the scope of the parties’ Complaints and Answers filed in the case; Big River never disputed AT&T Missouri’s bills upon the ground that they were inaccurate, as required under the mandatory Informal Dispute Resolution provisions of the parties’ Commission-approved

ICA in order to contest the charges upon that basis; and the matter is now time-barred under the ICA. Subject to the foregoing, AT&T Missouri provides the following responses:

BACKGROUND

1. In the case presently before the Commission, Big River filed a Complaint wherein it challenged access charges for which it was billed by AT&T Missouri.

RESPONSE: Denied. Big River's Complaint did not generally "challenge" the access charges billed by AT&T Missouri, but specifically disputed those charges upon the sole ground that Big River's traffic allegedly was "enhanced services" traffic exempt from access charges. *See, e.g.,* Big River Complaint, p. 1 & ¶ 42.

2. AT&T Missouri filed an Answer to Big River's Complaint and also filed its own Complaint against Big River.

RESPONSE: Admitted.

3. Big River's Complaint asserts that AT&T Missouri incorrectly billed Big River for access charges on enhanced services traffic.

RESPONSE: Denied. Big River's Complaint did not generally allege that AT&T Missouri's billings were incorrect, but specifically disputed those charges upon the sole ground that Big River's traffic allegedly was "enhanced services" traffic exempt from access charges. *See, e.g.,* Big River Complaint, p. 1 & ¶ 42.

4. In both its Answer and Complaint, AT&T Missouri contends that Big River's traffic is not enhanced, and the traffic is, therefore, subject to access charges.

RESPONSE: Admitted.

5. AT&T Missouri, however, has failed to establish the amount of the access charges it claims it is owed by Big River.

RESPONSE: Denied. AT&T Missouri's testimony establishes that the amount its claims is owed by Big River is \$350,637.60, through the August 2012 billing cycle, billed to Big River on BAN 110 401 0113 803. *See* Greenlaw Direct at 22 & Sch. WEG-9(HC). The amount

owed as of the November 5, 2012 bill is \$352,806.75. *See* Claude Rich Affidavit and attachment thereto (attached as Exhibit 3 to AT&T Missouri's accompanying Memorandum, incorporated herein), at ¶ 6.

Answering further, AT&T Missouri denies Big River's implication that it is AT&T Missouri's burden to establish the accuracy of the amounts it previously billed to Big River. Sections 9.3 and 13.4.1 of the General Terms and Conditions of the parties' interconnection agreement ("ICA") (attached as Exhibit 4 to AT&T Missouri's accompanying Memorandum, incorporated herein) requires a party disputing a bill to set forth the specific basis, reasons, and details of the dispute. Here, Big River disputed the access charges billed on BAN 110 401 0113 803 solely on the asserted ground that Big River's traffic was "enhanced services" traffic exempt from such charges. Big River did not otherwise dispute the accuracy of the charges. *See* Mullins Surrebuttal at 3-8. As a result, Big River cannot now contest the accuracy of AT&T Missouri's bills.

Similarly, the parties' pleadings do not raise any issue regarding the accuracy of AT&T Missouri's bills. Rather, the sole dispute framed by the pleadings – and hence the sole dispute for the Commission to resolve in this proceeding – is whether Big River's traffic is exempt from access charges under the parties' ICA.

UNDISPUTED FACTS

6. Big River, in its Complaint, alleges that it owes no amount of access charges because 100% of its traffic is enhanced. (Big River Complaint, ¶ 17)

RESPONSE: Admitted.

7. AT&T Missouri's Answer to Big River's Complaint does not set forth a specific amount that it claims Big River owes for access charges. (See AT&T Missouri's Answer)

RESPONSE: Denied. Paragraph 34 of Big River's Complaint alleged that AT&T Missouri was seeking approximately \$335,000 in access charges, and in answering, AT&T Missouri alleged that Big River owes more than \$335,000 in access charges.

8. Likewise, AT&T Missouri's Complaint does not set forth a specific amount that it claims Big River owes for access charges. (See AT&T Missouri's Complaint)

RESPONSE: Denied. AT&T Missouri's Complaint provides that the amounts it claims Big River owes for access charges are all the access charges billed on BAN 110 401 0113 803 since January 1, 2010. *See* AT&T Answer, ¶ 4 & Prayer. There is no dispute regarding what those amounts are, and AT&T's testimony summarizes those amounts by month. *See* Greenlaw Direct, Sch. WEG-9(HC).

9. AT&T Missouri did not attach a single copy of any bill or statement of account to its Answer or Complaint in support of its position. (See AT&T Missouri's Answer, Complaint, and Testimony)

RESPONSE: Admitted. Answering further, AT&T Missouri notes that no rule of which it is aware requires AT&T Missouri to have attached a copy of its bills or statement of account, and further, that Big River also did not attach a single copy of any bill or statement of account to its Answer or Complaint to show that AT&T Missouri had been billing access charges to Big River. In any event, there is no dispute that the amounts summarized in Mr. Greenlaw's testimony (Sch. WEG-9(HC)) reflect the amount of access charges billed to Big River that Big River disputed and refused to pay.

10. Before the formal Complaint was filed, Big River had requested documentation to support AT&T Missouri's billing. (Jennings Rebuttal, p. 4, l. 10-19)

RESPONSE: Denied. Before filing its Complaint, Big River had requested a single month of call detail records from AT&T Missouri. AT&T Missouri provided one week of such records to Big River, and Big River did not thereafter contact AT&T Missouri to suggest those records were insufficient or that Big River required additional data. *See* Mullins Surrebuttal at 6-

7. Further, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See id.* at 3-8.

11. AT&T Missouri has never provided documentation, other than one week's worth of traffic data, to support the amount of access charges it claims to be owed. (Jennings Rebuttal, p. 4, l. 10-19)

RESPONSE: Denied. No documentation supporting the amount of access charges owed was requested of AT&T Missouri. Additionally, AT&T Missouri's bills to Big River set forth the access charges, rates, traffic quantities, and other details regarding the billings. *See* Claude Rich Affidavit, at ¶ 5 & Attachment thereto. In addition, there is no dispute that Mr. Greenlaw's testimony (Sch. WEG-9(HC)) accurately summarizes the amounts billed to Big River that Big River contested and refused to pay. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

12. AT&T Missouri has never identified the access charge rate(s) it allegedly applied or the manner in which such rates were applied. (See AT&T Missouri's Answer, Complaint and Testimony)

RESPONSE: Denied. AT&T Missouri's bills to Big River under BAN 110 401 0113 803 identify and show the application of the access charge rates applied by AT&T Missouri. *See* Claude Rich Affidavit, at ¶ 5 & Attachment thereto. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

13. AT&T Missouri has never identified the traffic for which it claims it is owed access charges or the jurisdictional nature of such traffic. (See AT&T Missouri's Answer, Complaint and Testimony)

RESPONSE: Denied. AT&T Missouri's bills to Big River under BAN 110 401 0113 803 identify the traffic and jurisdictional nature for which AT&T Missouri billed access charges. *See* Claude Rich Affidavit, at ¶ 5 & Attachment thereto. Indeed, Big River has essentially

admitted this, asserting in one dispute letter that the invoices for February 5, 2010 to March 5, 2011 included 16,889 interstate minutes of use, and 4,487,739 intrastate minutes of use. *See* Mullins Surrebuttal, Sch. JM-1. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

14. AT&T Missouri has never identified the traffic for which it claims it is owed access charges or the number of minutes, calls, or rate elements to which AT&T allegedly applied those rates. (See AT&T Missouri's Answer, Complaint and Testimony)

RESPONSE: Denied. AT&T Missouri's bills to Big River under BAN 110 401 0113 803 contain such information. *See* Claude Rich Affidavit, at ¶ 5 & Attachment thereto. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

15. AT&T Missouri has never even provided any evidence that the BAN on which it claims access charges are due involves traffic originated by Big River. (See AT&T Missouri's Answer, Complaint and Testimony)

RESPONSE: Denied. Big River disputed the charges upon the BAN in question solely upon the grounds that the charges pertained to Big River traffic that allegedly was "enhanced services" traffic. Big River never disputed AT&T Missouri's bills upon any other ground, including that the traffic was not even originated by Big River. *See* Mullins Surrebuttal at 3-8.

16. Big River, by letter dated October 20, 2005, provided AT&T Missouri with a percent enhanced usage ("PEU) which Big River claimed was 100%. (Jennings Direct, p. 5, l. 3-8)

RESPONSE: Admitted.

17. AT&T Missouri did not respond to Big River with any challenge to the PEU set forth in that letter. (Jennings Rebuttal, p. 1, l. 13-15)

RESPONSE: Denied. As Big River admits (*see, e.g.*, Complaint pp. 1-2), AT&T Missouri billed access charges to Big River, thus making clear that AT&T Missouri did not agree that Big River's traffic was exempt from access charges. Ultimately, the matter became a

subject of litigation which concluded in a settlement agreement executed by the parties in 2009, as Big River observes in its Complaint filed in this case. *See* Complaint ¶¶ 20-21.

18. AT&T Missouri did not exercise its right to audit the percent enhanced usage (“PEU”) claimed by Big River’s. (Jennings Rebuttal, p. 2, l. 11-13; Greenlaw Rebuttal, p. 1, l. 21-26)

RESPONSE: Admitted.

19. AT&T Missouri has never identified what PEU it used in determining the amount of access charges it claims Big River owes. (Jennings Rebuttal, p. 2, l. 8-10)

RESPONSE: Denied. AT&T Missouri has made clear its position that Big River’s traffic is not “enhanced services” traffic exempt from access charges – *i.e.*, the “PEU” is zero. *See, e.g.*, AT&T Complaint, ¶ 6).

20. One week’s worth of traffic data was insufficient to allow Big River to reconcile AT&T Missouri’s bills, which are based on a monthly cycle, to confirm the rates used, the jurisdictional nature of the traffic, the number of minutes, the PEU factor, whether the traffic originated from Big River’s network, and whether or not the traffic was billed on any other BAN. (Jennings Rebuttal, p. 4, l. 10-19)

RESPONSE: Denied. The testimony cited by Big River does not support the alleged statement of fact. In addition, Big River has provided no evidence regarding what, if any, efforts it undertook to “reconcile” AT&T Missouri’s bills, nor has it provided evidence that it could not “reconcile” the bills using the information on the bills themselves, combined with Big River’s own data regarding its own traffic that it delivered to AT&T Missouri. In any event, Big River never disputed AT&T Missouri’s bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

21. This was made apparent in Big River’s responses to AT&T Missouri’s Request for Admissions. (See Attachment A)

RESPONSE: Denied. Big River’s responses are conclusory and do not detail any attempt made to “reconcile” AT&T Missouri’s bills, attempt to explain how Big River was unable to “reconcile” the bills, or attempt to explain how it could not “reconcile” the bills using

the information on the bills themselves, combined with Big River's own data regarding its own traffic that it delivered to AT&T Missouri. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

22. Of Big River's fourteen denials, eight of them explained that the denial was based on the fact that Big River did not possess information sufficient to admit or deny AT&T Missouri's request since AT&T failed to provide sufficient supporting detail for its bills. (See Attachment A)

RESPONSE: AT&T Missouri admits that Big River denied several requests to admit on the purported ground that Big River did not possess sufficient information, but denies that Big River's denial were proper, that Big River provided any coherent explanation of its purported lack of sufficient information (including any explanation of any attempts made to "reconcile" the bills using the information on the bills themselves, combined with Big River's own data regarding its own traffic that it delivered to AT&T Missouri), or that Big River's purported inability to admit or deny the requests to admit is affirmative evidence of any relevant fact. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

23. Despite all of the above, AT&T Missouri's witness William Greenlaw testified that "Big River has never asserted that, if its traffic were classified as telecommunications services traffic, the amounts billed by AT&T Missouri were wrongly computed or would not otherwise be due in full." (Greenlaw Direct, p. 22, l. 1-3)

RESPONSE: Admitted.

24. Mr. Greenlaw's statement is in direct contradiction to Big River's denial of Request for Admission number 17. (See Attachment A)

RESPONSE: Denied. Big River's denial of request to admit 17 is not in contradiction of Mr. Greenlaw's statement, because in that denial Big River does not assert that, if its traffic were classified as telecommunications services traffic, the amounts billed by AT&T Missouri were wrongly computed or would not otherwise be due in full. Rather, Big River denied the

request solely upon a purported lack of information sufficient to admit or deny. In any event, Big River's serial denials in its responses to AT&T Missouri's request for admission are irrelevant, given that, to this day, Big River has not identified even one purported inaccuracy in AT&T Missouri's bills.

25. Further, Mr. Greenlaw does not work in AT&T Missouri's billing department and has no experience or expertise in billing or accounting. (Greenlaw Direct, p. 1, l. 8 through p. 2, l. 8)

RESPONSE: Denied. Mr. Greenlaw does not work in AT&T Missouri's billing department, but the testimony cited by Big River does not support Big River's assertion that he has no experience in billing issues.

26. Nor was he involved in the current billing dispute prior to the filing of Big River's Complaint with the Commission. (Jennings Rebuttal, p. 5, l. 9-12)

RESPONSE: Admitted.

27. An unsubstantiated statement in William Greenlaw's direct testimony is the only pleading filed thus far by AT&T Missouri that mentions an amount allegedly owed by Big River. (Greenlaw Direct, p. 22, l. 17)

RESPONSE: Denied. AT&T Missouri's answer to the complaint addresses the amount owed (¶ 34), and Mr. Greenlaw's direct testimony is not "unsubstantiated," but summarizes the monthly charges billed to Big River on BAN 110 401 0113 803 (*see* Sch. WEG-9(HC)). Additionally, in response to Paragraph 34 of Big River's Complaint, which alleged that AT&T Missouri was seeking approximately \$335,000 in access charges, AT&T Missouri answered that Big River owes more than \$335,000 in access charges. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated. *See* Mullins Surrebuttal at 3-8.

CONCLUSION

28. As shown above, Big River has asserted that AT&T Missouri has improperly billed it for access charges and that Big River owes no such charges.

RESPONSE: AT&T Missouri admits that Big River has asserted that it owes no access charges because its traffic purportedly is “enhanced services” traffic that is exempt from access charges under the parties’ ICA. AT&T Missouri further states that Big River has not asserted, prior to the filing of its motion, that it owes no access charges due to any other reason.

29. AT&T Missouri has produced no evidence in its Answer, Complaint, or Testimony to establish the amount it claims Big River owes in access charges.

RESPONSE: Denied. AT&T Missouri’s testimony establishes that the amount its claims is owed by Big River is \$350,637.60, through the August 2012 billing cycle, billed to Big River on BAN 110 401 0113 803. *See* Greenlaw Direct at 22 & Sch. WEG-9(HC).

Answering further, AT&T Missouri denies Big River’s implication that it is AT&T Missouri’s burden to establish the accuracy of the amounts it previously billed to Big River. Sections 9.3 and 13.4.1 of the General Terms and Conditions of the parties’ interconnection agreement (“ICA”) requires a party disputing a bill to set forth the specific basis, reasons, and details of the dispute. Here, Big River disputed the access charges billed on BAN 110 401 0113 803 solely on the asserted ground that Big River’s traffic was “enhanced services” traffic exempt from such charges. Big River did not otherwise dispute the accuracy of the charges. *See* Mullins Surrebuttal at 3-8. As a result, Big River cannot now contest the accuracy of AT&T Missouri’s bills.

Similarly, the parties’ pleadings do not raise any issue regarding the accuracy of AT&T Missouri’s bills. Rather, the sole dispute framed by the pleadings – and hence the sole dispute for the Commission to resolve in this proceeding – is whether Big River’s traffic is exempt from access charges under the parties’ ICA.


30. As such, AT&T Missouri has presented no genuine issue of material fact regarding the amount of access charges allegedly owed by Big River.

RESPONSE: AT&T Missouri admits that there is no genuine issue of material fact regarding the amount of access charges owed by Big River - \$350,637.60, through the August 2012 billing cycle (excluding amounts billed through the conclusion of this proceeding, and late payment charges). Big River has not disputed that that amount correctly reflects the amounts billed to Big River on BAN 110 401 0113 803 that Big River disputed and has failed to pay. Nor has Big River presented evidence sufficient to show any genuine issue of material fact as to the accuracy of AT&T Missouri's bills. In particular, Big River does not even attempt to identify any inaccuracy in AT&T Missouri's bills. In any event, Big River never disputed AT&T Missouri's bills upon the ground that any of the charges were inaccurately calculated, as it was required to do under the parties' ICA in order to preserve such an issue. *See Mullins Surrebuttal* at 3-8.

WHEREFORE, AT&T Missouri respectfully requests that the Commission deny Big River's Motion for Summary Determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on December 6, 2012.


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