Exhibit No.:
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Witness: Mark Neinast
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 Mark Neinast
On Behalf of AT&T Missouri

September 28, 2012

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 MARK NEINAST

COUNTY OF COLLIN	)	
	)	SS
STATE OF TEXAS	)	

I, Mark Neinast, of lawful age, being duly sworn, depose and state:

1. My name is Mark Neinast. I am Associate Director - Network 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.

Mark Neinast

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

Notary Public

My Commission Expires: 04/05/2014

YANMIN YOUNG
Notary Public, State of Texas
My Commission Expires
April 5, 2014

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Mark Neinast. My business address is 2701 N. Central Expressway, Richardson, Texas 75080.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am an Associate Director – Network Regulatory in AT&T's Network Planning and Engineering Department.

Q. FOR WHICH PARTY ARE YOU PROVIDING THIS TESTIMONY?

A. Southwestern Bell Telephone Company, d/b/a AT&T Missouri ("AT&T Missouri").

Q. PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES.

A. My primary responsibility is to represent various AT&T operating companies in the development of network policies, procedures, and plans from a technical and regulatory perspective. I assist in developing corporate strategy associated with 9-1-1, interconnection, switching, Signaling System 7 ("SS7"), call-related databases, and emerging technologies such as Internet Protocol ("IP")-based technologies and services. I am also responsible for representing the company's network organization in negotiations, arbitrations, and disputes with Competitive Local Exchange Carriers ("CLECs") and wireless carriers.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I have a Bachelor of Science degree in Business Administration from the University of Texas at Dallas, with a double major in Management Information Systems and Behavioral Management. I have been employed by AT&T for over 37 years, primarily in

the network organization. This includes seven years in central offices as a technician. I also spent two years as a training instructor for electronic switching systems and four years managing technicians in central offices and a Network Operations Center ("NOC"). I worked as a staff manager for the North Texas Network Operations Division for five years. In that role, I supported NOC functions and managed major switching system projects. Subsequently, as an Area Manager in a NOC Translations Center for over seven years, I was responsible for managing the switch translations for over 100 switches. I also successfully managed many other major network projects, including over 60 analog-digital switching dial-to-dial and 16 analog-digital 911 conversions, as well as the implementation of Local Number Portability ("LNP") in all of these switching systems.

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

A. Yes, I have testified before several state public utility commissions on technical and network issues. These proceedings most often involved the arbitration of interconnection agreements ("ICAs") or disputes regarding claimed breaches of an approved ICA.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony will show, from a network and technical perspective, that Big River is delivering telecommunications services traffic to AT&T Missouri, which is subject to access charges, and not enhanced services traffic exempt from access charges. Big River claims that 100% of its traffic is enhanced services traffic, which Big River says means it can avoid paying access charges for interexchange traffic. I will explain why Big River's

assertions are incorrect and are nothing more than an attempt to avoid paying access charges, similar to other carriers' attempts in the recent past.[1]

Q. WHAT IS THE DISTINCTION BETWEEN A TELECOMMUNICATIONS SERVICE AND AN ENHANCED (OR INFORMATION) SERVICE?

A. As explained more fully in Mr. Greenlaw's opening testimony, federal law has long distinguished between telecommunications services (or basic services) and enhanced services (or information services). A "telecommunications service" is "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used," and "telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. §§ 153(43), (46). An example is traditional long distance telephone service. An enhanced or information service, on the other hand, is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). An example is Internet access service, which allows users to surf the Internet and acquire, process, and utilize information from any number of Internet servers.

Q. WHAT IS THE NATURE OF THE TRAFFIC BIG RIVER TERMINATES TO AT&T MISSOURI?

[1] Halo Wireless recently argued that its interexchange traffic was wireless simply because it routed the traffic through a WI-MAX tower which then converted it from landline to wireless. Once that argument failed before the FCC and state commissions, Halo then attempted to argue that basic transmission fundamentals which are performed by every carrier somehow "enhances" calls so that access charges are not due. Every state commission, including this Commission, ruled against Halo, determined that Halo's traffic was not enhanced traffic, and found that access charges were due for the termination of its interexchange traffic.

A. The traffic from Big River that AT&T Missouri assessed access charges upon is interexchange traffic (*i.e.*, traffic that begins and ends in different local exchange or local calling areas) consisting of calls from Big River's customers to AT&T Missouri's customers. AT&T Missouri contends that this long distance traffic is an ordinary telecommunications service, subject to the same access charges that for decades have applied to long distance traffic. Big River, on the other hand, points to several features of its services (in paragraphs 27-31 of its complaint, and in a letter dated May 19, 2011, referenced in paragraph 26 of the complaint[2]) that it claims makes its services 100% "enhanced services" and therefore not subject to access charges. I will discuss each of these features separately.

Q. PARAGRAPH 27 OF THE BIG RIVER COMPLAINT DESCRIBES THE TRAFFIC FLOW THROUGH THE BIG RIVER NETWORK, INCLUDING THE CONVERSION OF THE TRAFFIC TO INTERNET PROTOCOL (IP) FORMAT. DOES THIS MAKE THE TRAFFIC DELIVERED TO AT&T MISSOURI ENHANCED SERVICES TRAFFIC?

A. No, Big River's use of Internet Protocol ("IP") technology is not sufficient to make all its traffic an enhanced service, as the FCC has made clear.

Time Division Multiplexing ("TDM") format is the communications format long used by the public switched telephone network ("PSTN"), including AT&T Missouri's network. That is, ordinary telephone calls made on the wireline telephone network have traditionally originated, been carried, and terminated in TDM format. TDM technology utilizes dedicated channels between end users for the entire duration of a call. IP, on the other hand, uses packets of information that do not tie up an entire circuit for the duration of a call, but only when required, and the packets of information can be sent over diverse

[2] Schedule 1, attached hereto, is a letter from John Jennings to Janice Mullins dated May 19, 2011.

routes with other data packets and then re-assembled at their destination. IP signaling was designed for computer data, so voice information is converted from analog telephony to data packets to be delivered to its destination. Because IP sends data in packets and does not tie up a particular circuit for the duration of a call, it is generally more efficient than the traditional TDM signaling, especially for long-haul toll traffic such as the long distance traffic at issue here. As a result, many carriers have incorporated IP into their networks, particularly for the transmission of calls between the originating and terminating locations.

The traffic from Big River's customers that Big River delivers to AT&T Missouri originates in TDM format, like ordinary long distance calls. Big River then converts the call to IP for some portion of the call's transmission, and then converts it back to TDM for termination to AT&T Missouri. In reading through the letter[3] from John Jennings, Big River states its traffic consists of PSTN PCM (Pulse Code Modulation) traffic that is converted to IP. Big River converts the traffic back to TDM for termination to AT&T Missouri and other third party's end users. In other words, a call begins in TDM format, is converted to IP, and then must be converted back to TDM.

This is nothing more than "IP in the middle" traffic. The FCC has previously ruled on long distance IP in the middle traffic, holding that it is not enhanced traffic and that it remains subject to access charges. In the *IP Access Charge Order*,[4] AT&T Corp. (prior to its merger with SBC Communications, Inc.) had petitioned the FCC for a

[3] *See*, Schedule 1, first bullet: "The system first receives media in digital PCM form from the PSTN and packetizes the media into IP datagrams."

[4] Order, *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, 19 FCC Rcd 7457 (FCC rel. April 21, 2004) ("*IP Access Charge Order*"), available at 2004 WL 856557.

declaration that its "phone-to-phone IP telephony services" were exempt from access charges. The services at issue used IP only in the middle: an interexchange call was "initiated in the same manner as traditional interexchange calls," once the call "reaches AT&T's network, AT&T converts it from its existing format into an IP format and transports it over AT&T's Internet backbone," and "AT&T then converts the call back from the IP format and delivers it to the called party through [the local carrier's PSTN]." *Id.* ¶ 1. "[U]nder the current rules," the FCC squarely held, such a service "is a telecommunications service upon which interstate access charges may be assessed." *Id.* The FCC noted that "telecommunications" is the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received," and while AT&T Corp. converted calls to IP in the middle, users "obtain only voice transmission with no *net* protocol conversion." *Id.* ¶ 12 (emphasis added). In other words, what went into one end of the transmission on the PSTN – a human voice – came out the other end on the PSTN with no net change. The same is true here.

Q. PARAGRAPH 28 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO RECORD CALLS. DOES THIS MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI ENHANCED SERVICES TRAFFIC?

A. No. Big River contends that because its customers have the ability to record a telephone call, its traffic is all enhanced services traffic. But the FCC, in its recent *InterCall Order*,[5] held that enabling a customer to record does *not* turn telephone service into an enhanced/information service:

[5] Order on Reconsideration, *Petitions for Reconsideration and Clarification of the InterCall Order*, WC Docket No. 06-122, CC Docket No. 96-45, FCC 12-10 (FCC rel. January 27, 2012), available at 2012 WL 258204 at p. 6, ¶¶ 12-13.

> As the Commission has previously noted, the classification of a service as either information or telecommunications hinges on whether the transmission capability is "sufficiently integrated" with the information service capabilities to make it reasonable to describe the two as a single, integrated offering and classify the entire integrated service as an information service. Merely packaging two services together (such as teleconferencing packaged with additional features that perform validation functions, collect billing and participant information, and *enable the participants to record,* delete, playback, mute and unmute, and access operator assistance) does not create a single integrated service.
>
> [W]e find that these separate capabilities are part of a package in which the customer can conduct its conference call with or without accessing these features. (emphasis added).

Similarly, here Big River offers its customers a service whereby they can make long distance telephone calls to other telephone customers (like AT&T Missouri's) using the PSTN. That service is an ordinary telecommunications service. While Big River may package this service with additional features, like the ability to record a call, the availability of that feature does not turn a telephone call from a Big River customer to an AT&T Missouri customer into an enhanced/information service. The ability to record a call is a separate capability from the ability to make a voice telephone call, and Big River's customers can place voice telephone calls without recording the calls. Indeed, Big River admitted in discovery that its "subscribers can place a non-local voice telephone call to AT&T Missouri's subscribers without activating the program to begin recording mid-call and store the recording for later access via phone or email." *See*, Schedule 2, attached hereto, at p. 8. And Big River has not shown that *any* of the long distance calls it delivered to AT&T Missouri involved the recording of the call. As a result, this feature, under the test established by the FCC, does not make Big River's traffic 100% enhanced.

Q. PARAGRAPH 29 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO VIEW, CONFIGURE, AND MANAGE ITS INCOMING CALL-HANDLING OPTIONS. DOES THIS MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI 100% ENHANCED SERVICES TRAFFIC?

A. No. The features Big River describes in paragraph 29, such as the ability to reject calls or forward calls, are "vertical" features that have long been available to telephone customers. Many of them have existed since electronic switching became available in the 1960s, but others were made available with the advent of CLASS (Custom Local Area Signaling Services) features that uses SS7, *i.e.*, call rejection and specialized ringing. These features are added to an end user's line, but do not turn the underlying telephone service into an enhanced/information service.

Moreover, the call handling options Big River describes are all options for *incoming* calls. These features have nothing to do with the traffic at issue here – *outgoing* calls made by Big River customers to AT&T Missouri's customers. A Big River customer need not configure his or her incoming call options to place calls to AT&T Missouri's customers, nor does placing calls to AT&T Missouri's customers somehow activate these features. As a result, these ancillary features, while packaged with Big River's telecommunications services, are not sufficiently integrated to make the basic telephone service provided by Big River an enhanced/information service, as required by the *InterCall Order*.

The FCC reached a similar conclusion in its *Prepaid Calling Card Order*.[6] There, the FCC rejected the claims of some prepaid calling card providers that their services were exempt from access charges because they used interactive menus. Upon dialing a

[6] Declaratory Ruling and Report and Order, *In the Matter of Regulation of Prepaid Calling Card Services*, 21 FCC Rcd. 7290 (rel. June 30, 2006) ("*Prepaid Calling Card Order*"), available at 2006 WL 1826190.

toll-free number, a cardholder was "presented with the option to make a telephone call or to access several types of information," such as directory, sports, weather, or entertainment information. *Id.* ¶ 11. The FCC concluded, as it later did in the *InterCall Order*, that "the key question in classifying offerings with both telecommunications and information service capabilities is whether the telecommunications transmission capability is 'sufficiently integrated' with the information service component 'to make it reasonable to describe the two as a single, integrated offering,'" and "merely packaging two services together does not create a single integrated service." *Id.* ¶ 14. The FCC found that "there simply is no functional integration between the information service features and the use of the telephone calling capability with menu-driven pre-paid calling cards." *Id.* ¶ 15. "The menu is a mechanism by which the customer can access the separate capabilities that are packaged together in a single prepaid calling card," and "[t]he customer may use only one capability at a time and the use of the telecommunications transmission capability is completely independent of the various other capabilities that the card makes available." *Id.* "For example, an individual may use MCI's Golden Retriever card to make a long distance call without obtaining restaurant information, sports scores, or stock quotes," so "even if those additional capabilities are classified as an information service, the packaging of these multiple services does not by itself transform the telecommunications component of these cards into an information service." *Id.* Thus, the FCC held, pre-paid calling card providers remained obligated to pay access charges notwithstanding their provision of these ancillary features. *Id.* ¶ 27.

Big River's incoming call-handling options are like the "menu" options addressed in the *Prepaid Calling Card Order*. They may be packaged and sold together with the basic function of placing long distance telephone calls, but they are not an integrated service. Big River's customers can place long distance telephone calls to AT&T Missouri's customers without going online to configure their incoming call options, and the two plainly are separate capabilities. Indeed, Big River admitted in discovery that "[w]hen a Big River subscriber configures his or her incoming call manager through a Big River web portal, that communications session does not consist of a telephone call placed by the Big River subscriber to one of AT&T Missouri's subscribers," and "Big River's subscribers can place a non-local voice telephone call to AT&T Missouri's subscribers without configuring their incoming call manager, or viewing, configuring, or managing their call-handling options." *See*, Schedule 2 at pp. 8-9.

Q. PARAGRAPH 30 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO CONVERT AN INCOMING FAX TRANSMISSION TO DATA IN A PDF FORMAT AND THEN FORWARD THAT INFORMATION TO AN EMAIL ADDRESS. DOES THIS MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI ENHANCED SERVICES TRAFFIC?

A. No. The traffic at issue in this case consists of telephone calls made by Big River customers to AT&T Missouri customers. This case does not involve fax transmissions to Big River customers (which the Big River customers can have converted to pdf and emailed to them). The fax feature described by Big River would never be delivered to an AT&T Missouri end user on the PSTN.

Further, as explained above, the fact that Big River may package with its telephone service various additional features, such as this fax feature, does not make its telephone services traffic an enhanced/information service. Big River's telephone service

allows its customers to make voice telephone calls to AT&T Missouri's customers without ever using this fax feature. That is, Big River's customers do not have to receive a fax (and convert it to pdf and email it) when they place voice telephone calls. And, as Big River has admitted, "[w]hen a facsimile is converted to PDF format and forwarded to a Big River subscriber's email address, that communications session does not consist of a telephone call placed by the Big River subscriber to one of AT&T Missouri's subscribers." *See*, Schedule 2 at p. 9. Thus, even if this fax feature were an information service, it is not integrated with Big River's voice telephone service in a way that would make the latter an enhanced/information service.

Q. PARAGRAPH 31 OF THE BIG RIVER COMPLAINT DESCRIBES HOW THE BIG RIVER NETWORK ALLOWS A SUBSCRIBER TO ACCESS INFORMATION VIA THE WEB, DIALING A NUMBER TO ACCESS GOOGLENEWS FROM THEIR TELEPHONE. DOES THIS MAKE THE TRAFFIC BIG RIVER DELIVERED TO AT&T MISSOURI ENHANCED SERVICES TRAFFIC?

A. No. This case does not involve calls by Big River customers to GoogleNews. In discovery, Big River clarified that in paragraph 31 of the complaint it was referring to its "Headline News Line," whereby Big River provides news "upon the receipt of a call from a subscriber." *See*, Schedule 2 at p. 4. The traffic at issue in this case consists of telephone calls made by Big River customers to AT&T Missouri customers, not calls made to Big River's Headline News Line. The latter would never be delivered to an AT&T Missouri end user on the PSTN. Rather, AT&T Missouri's end users are receiving voice traffic over the PSTN from Big River.

Moreover, Big River's telephone service allows its customers to place calls to AT&T Missouri's customers without dialing a special number to access GoogleNews – the two are separate, non-integrated functionalities. As Big River admitted in discovery,

its "subscribers can place a non-local voice telephone call to AT&T Missouri's subscribers without accessing the latest GoogleNews from their telephone or obtaining other information via the web." *See*, Schedule 2 at p. 9.

This kind of ancillary service is precisely what the FCC addressed in the *Prepaid Calling Card Order*, where it held that the ability of customers to access, for example, "sports, weather, or restaurant or entertainment information" (¶ 11) did not convert long distance calls made using the calling card into an enhanced/information service. Just as an individual could "use MCI's Golden Retriever card to make a long distance call without obtaining restaurant information, sports scores, or stock quotes," a Big River customer can place a long distance voice telephone call to AT&T Missouri's customers without accessing GoogleNews, so "even if those additional capabilities are classified as an information service, the packaging of these multiple services does not by itself transform the telecommunications component of these cards into an information service." *Id.* ¶ 15.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.