

Exhibit No.:
Issue: Is the Traffic that Big River
sends to AT&T Missouri
subject to Switched Access
Charges?
Witness: William L. Voight
Sponsoring Party: MO PSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: TC-2012-0284
Date Testimony Prepared: November 9, 2012

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

REBUTTAL TESTIMONY

OF

WILLIAM L. VOIGHT

BIG RIVER TELEPHONE COMPANY

vs.

**SOUTHWESTERN BELL TELEPHONE COMPANY
AT&T MISSOURI**

CASE NO. TC-2012-0284

*Jefferson City, Missouri
November 2012*

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CASE No. TC-2012-0284

Q. Please state your name and give your business address.

A. My name is William L. (Bill) Voight and my business address is P.O. Box 360,
200 Madison Street, Jefferson City, Missouri 65102-0360.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission as
Telecommunications Rates and Tariff Supervisor. I have general supervisory responsibility
for staff recommendations pertaining to tariff filings, certificate applications, interconnection
agreements, Interconnected Voice over Internet Protocol ("I-VoIP") registration, statewide
video authorization and telephone company mergers and acquisitions. In conjunction with
other staff persons, I provide staff recommendations on a wide variety of other matters before
the Commission including rule makings, complaints filed with the Commission, and
Commission comments to the Federal Communication Commission ("FCC").

My duties have also involved participation as a member of the Commission's
Arbitration Advisory Staff, which is comprised of subject matter experts who assist an
arbitrator in disputes involving the Federal Telecommunications Act of 1996. Lastly, I
participate in and coordinate special projects, as assigned by management. Examples of
special projects include Case No. TW-2004-0324, a Study of Voice over Internet Protocol in

1 denies being in breach of the Parties' Interconnection Agreement ("Agreement"), and
2 characterizes AT&T's actions as unfounded and anticompetitive. Big River urges the
3 Commission to deny AT&T's request to terminate service, which Big River characterizes as a
4 "nuclear option."¹ As of August 2012 the financial amount of the dispute appears to be
5 between \$350,637.60² and \$355,000.00.³

6 Both AT&T and Big River have requested the Commission rule on the question of
7 whether or not Big River's traffic constitutes an enhanced service. The Staff does not believe
8 the Commission needs to rule on the question of enhanced services. Rather, the Staff believes
9 the Commission need only decide whether or not Big River is providing I-VoIP service. It is
10 the Staff's opinion that Big River does indeed offer I-VoIP service. Consequently, the Staff
11 recommends the Commission make the following two rulings: (1) The Commission should
12 find that Big River offers I-VoIP service and; (2) Consistent with Section 13.3.2 of the dispute
13 resolution aspects of the Agreement, the Commission should order AT&T to provide further
14 supporting documentation to assist Big River in determining the reasonableness of the billing
15 invoices it has presented to Big River, irrespective of the question of the enhanced services
16 issue.

17 Q. From the Staff's perspective, why has this case come before the Commission?

18 A. Big River brought this action on March 1, 2012. Big River seeks Commission
19 resolution because it believes AT&T wrongly interprets §392.550 RSMo. to mean that Big
20 River's traffic is I-VoIP traffic subject to access charges and not, as Big River claims,
21 enhanced services traffic which would be exempt from access charges. Moreover, Big River

¹ Howe Rebuttal; page 18, line 14.

² Greenlaw Direct; page 22, line 17.

³ Jennings Direct; page 3, line 5.

1 federal definition of the term “enhanced service.” Big River does not operate a traditional
2 circuit-switched network¹¹ and, unlike Halo Wireless and Transcom, Big River provides
3 service to end-users and is not merely a “carrier’s carrier” or a “least cost router.” In my view,
4 Big River does not engage in protocol conversions or alter communications content to avoid
5 access charges; rather, Big River engages in various conditioning efforts in order to deliver
6 the best quality sound and overall customer experiences while simultaneously achieving
7 network efficiencies. Moreover (and again unlike Halo), Big River does not exist merely to
8 terminate traffic of other carriers and it most certainly has not been set up simply to avoid
9 paying access charges. To the contrary, Big River is a Missouri-based company of long
10 standing and, as an historical long-distance company, I would expect Big River has paid many
11 access charge bills over the decades.

12 The testimony in this case points to a long standing dispute arising from one aspect of
13 a 2005 arbitration award in Case No. TO-2005-0336. One aspect of that award - involving
14 reciprocal compensation for IP-PSTN traffic - was litigated and resulted in an unfavorable
15 decision to Southwestern Bell Telephone Company now known as AT&T Missouri.¹² The
16 testimony in this case reveals that the original agreement did not distinguish between
17 enhanced traffic and I-VoIP traffic,¹³ and that the Parties reached a settlement over those
18 original differences on October 31, 2009 pursuant to actions occurring in the St. Louis County
19 Circuit Court.¹⁴

20 In my view, this disagreement involves interpretation of Missouri statutes that are less
21 than a model of clarity. In any regard, nothing in this case leads me to conclude that Big River

¹¹ Howe Rebuttal; page 3, line 11.

¹² *Id.*; page 2, line 15.

¹³ Greenlaw Rebuttal; page 4, line 22.

¹⁴ Greenlaw Direct; page 14, line 12.

1 calls. I believe it is to this statute that the Commission must look in determining whether
2 access charges apply.

3 Because much of Big River's traffic constitutes I-VoIP traffic as defined by Missouri
4 statute it is, therefore, subject to the application of access charges. To the extent Big River is
5 engaged in some form of reselling or provisioning of facility-based non-VoIP traffic, such
6 interexchange traffic would also be subject to switched access charges.

7 Q. Please explain why you believe Big River is providing I-VoIP service.

8 A. §386.020(23) RSMo. defines I-VoIP as a "service that: (a) Enables real-time,
9 two-way voice communications; (b) Requires a broadband connection from the user's
10 location; (c) Requires Internet protocol-compatible customer premises equipment; and (d)
11 Permits users generally to receive calls that originate on the public switched telephone
12 network and to terminate calls to the public switched telephone network."

13 In an October 23, 2012 deposition Mr. Howe was asked the following series of
14 questions:

15 Question: Are there residential retail customers of Big River with IP customer
16 premises equipment in Missouri [page 16, line 13]?

17 Answer: Yes.

18 * * *

19 Question: Is it safe to say that the majority of Big River retail customers with IP
20 CPE have the ability to make voice telephone calls [page 29, line 7]?

21 Answer: Yes.

22 * * *

23 Question: And that voice telephone service includes the ability to make telephone
24 calls to people who are served on the PSTN [page 29, line 11]?

25 Answer: Yes.

26 * * *

27 Question: With respect to Big River customers that have IP customer premises
28 equipment where their telephone calls are converted to IP format at the customer
29 premises, is there a broadband connection to those customer's location [page 28,
30 line 15].

31 Answer: I think so.

32 * * *

1 No person, corporation, or other entity shall offer or provide interconnected
2 voice over Internet protocol service as defined in section 386.020, RSMo,
3 without first having obtained a registration from the commission allowing it
4 to do so. Upon application, the commission shall grant a registration to any
5 person, corporation, or other entity to provide interconnected voice over
6 Internet protocol service, subject to the provisions of this section.
7

8 In the Staff's view, this statute is optional for companies who are already certificated
9 to provide base telephone service, such as Big River. Although such companies may register
10 if they prefer, Staff does not interpret the statute as requiring dual commission registration as
11 both a local exchange carrier ("LEC") and an I-VoIP company. The Staff respectfully
12 disagrees with Mr. Howe's apparent belief that provision of I-VoIP services must result in
13 registration with the MoPSC. In the Staff's view, the sole exception to Mr. Howe's statement
14 that the provision of I-VoIP services must result in registration occurs when a company has
15 already been certificated as a LEC.¹⁸ Staff's position on this matter may also be different from
16 that of AT&T. Based on statements made by Big River witness Jennings; it appears AT&T
17 might believe dual registration is necessary.¹⁹

18 Q. Please comment on what the witnesses have said about attempts to resolve this
19 dispute.

20 A. AT&T witness Greenlaw states that Big River has never asserted that, if its
21 traffic were classified as telecommunications services traffic, the amounts billed by AT&T
22 Missouri were wrongly computed or would not otherwise be due in full.²⁰ Big River witness
23 Jennings disputes Mr. Greenlaw's characterization, and states that Big River did in fact

¹⁸ For example, Companies certificated by the MoPSC as Local Exchange Carriers are already mandated to adhere to the reporting requirements of I-VoIP companies including: the Relay Missouri program, the MoUSF, Local 9-1-1; license taxes, annual assessments and reports including listing of certain customer information.

¹⁹ Jennings Direct; page 7, line 10.

²⁰ Greenlaw Direct; page 22, line 1.

1 to the extent that as of August 28, 2008, the Agreement contains intercarrier
2 compensation provisions specifically applicable to interconnected voice over
3 internet protocol service traffic, those provisions shall remain in effect
4 through December 31, 2009, and the intercarrier compensation arrangement
5 described in the first clause of this Section shall not become effective until
6 January 1, 2010 (Big River Complaint, paragraph 12).
7

8 Q What is your response to the parties having entered into this agreement?

9 A. Similar Agreement amendments were made between AT&T and numerous
10 competitive local exchange carriers. Although I never questioned the reason, it would seem
11 that this amendment is only necessary if the two parties are exchanging I-VoIP traffic.

12 Q. AT&T witness Greenlaw places great significance on the fact that Big River
13 admits to providing service pursuant to its Missouri P.S.C. Tariff No. 1.²⁴ According to Mr.
14 Greenlaw, services provided pursuant to tariffs are confined to telecommunications services,
15 and cannot be enhanced services. Mr. Greenlaw also maintains that Big River's claim to
16 providing enhanced services is inconsistent with its authority as a certificated
17 telecommunications services provider in Missouri. How do you respond?

18 A. Fundamentally, I would tend to agree with Mr. Greenlaw; enhanced services
19 are not part of tariffs and enhanced service providers are not required to be registered with the
20 Commission. Moreover, Big River's provision of "telecommunications" services, as opposed
21 to "enhanced" services, in Missouri is supported by the annual reports it annually submits to
22 the Commission.²⁵ However, it would not be unheard of for a telecommunications company
23 to have traffic characterized as "information" or "enhanced." After all, that is indeed what
24 happened as a result of the arbitration decision setting up the original Agreement between Big

²⁴ Greenlaw Direct; page 9, line 18.

²⁵ *Id.*: page 12, line 3.

1 sufficient for the Commission to conclude that 100% of Big River's traffic is an enhanced
2 service.

3 Irrespective of the quality and efficiencies of Big River's network, it is the Staff's
4 view that Big River is providing I-VolP service and the Commission's decision is bound by
5 §392.550.2 RSMo. which holds that switched access charges are to be applied to such I-VolP
6 traffic when Big River sends it to AT&T for call termination. In conclusion, it appears to Staff
7 that House Bill 1779 has changed the legal and regulatory classification of Big River's service
8 offerings.

9 Q. Will you please summarize your testimony?

10 A. Yes, Staff recommends the Commission rule only that Big River is providing
11 I-VolP service pursuant to §386.020 (23) RSMo. The Staff does not believe it is necessary for
12 the Commission to rule on whether or not Big River's service constitutes an enhanced service.
13 Staff further recommends the Commission order AT&T to provide additional data sufficient
14 to permit Big River to ascertain the appropriateness of the amounts billed.

15 Q. Does this conclude your rebuttal testimony?

16 A. Yes, it does.

William L. Voight

TESTIMONY EXPERIENCE

Case No. TR-96-28	In the Matter of Southwestern Bell's tariff sheets designed to increase Local and Toll Operator Service Rates.
Case No. TT-96-268	In the Matter of Southwestern Bell Telephone Company's tariffs to revise PSC Mo. No. 26, Long Distance Message Telecommunications Services Tariff to introduce Designated Number Optional Calling Plan.
Case No. TA-97-313	In the Matter of the Application of the City of Springfield, Missouri, through the Board of Public Utilities, for a Certificate of Service Authority to Provide Nonswitched Local Exchange and Intrastate Interexchange Telecommunications Services to the Public within the State of Missouri and for Competitive Classification.
Case No. TA-97-342	In the Matter of the Application of Max-Tel Communications, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services and the Company as Competitive.
Case No. TA-96-345	In the Matter of the Application of TCG St. Louis for a Certificate of Public Convenience and Necessity to provide Basic Local Telecommunication Services in those portions of St. Louis LATA No. 520 served by Southwestern Bell Telephone Company.
Case No. TO-97-397	In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo. (1996).
Case No. TC-98-337	Staff of the Missouri Public Service Commission, Complainant, vs. Long Distance Services, Inc., Respondent.
Case No. TO-99-227	Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.
Case No. TA-99-298	In the Matter of the Application of ALLTEL Communications, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services and the Company as Competitive.
Case No. TO-99-596	In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri.
Case No. TO-99-483	In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996.

Case No. TC-2007-0307	In the Matter of CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC d/b/a CenturyTel Tariff Filings to Grandfather Remote Call Forward Services To Existing Customers and Existing Locations.
Case No. LC-2008-0049	Complaint of Charter Fiberlink-Missouri, LLC Seeking Expedited Resolution and Enforcement of Interconnection Agreement Terms Between Charter Fiberlink-Missouri, LLC and CenturyTel of Missouri, LLC.
Case No. TC-2008-0225	Socket Telecom, LLC, Complainant, vs. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel.
Case No. TC-2012-0331	Halo Wireless, Inc. Complainant, v. Craw-Kan Telephone Cooperative, Inc. et. Al.