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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF BIG RIVER TELEPHONE)
COMPANY, L.L.C.'S PETITION FOR)
ARBITRATION PURSUANT TO SECTION 252(B))
OF THE COMMUNICATIONS ACT OF 1934, AS)
AMENDED BY THE TELECOMMUNICATIONS)
ACT OF 1996, AND THE APPLICABLE STATE)
LAWS FOR RATES, TERMS AND CONDITIONS)
OF INTERCONNECTION WITH INDIANA BELL)
TELEPHONE COMPANY, INC.)

CAUSE NO. 44078 INT 01

APPROVED: FEB 01 2012

ORDER OF THE COMMISSION

Presiding Officers:
Larry S. Landis, Commissioner
Gregory R. Ellis, Administrative Law Judge

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1. Introduction. On September 27, 2011, Big River Telephone Company, L.L.C. (“Petitioner” or “Big River”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the federal Telecommunications Act of 1996 (“Act”) to establish an Interconnection Agreement (“Agreement” or “ICA”) with Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana (“AT&T Indiana”) in this Cause. Sections 252(b) and (c) of the Act direct state commissions to arbitrate unresolved issues related to the obligations imposed on local exchange carriers by Sections 251(b) and (c) of the Act. The Petition enumerated several issues as unresolved between Big River and AT&T Indiana.

In accordance with 47 U.S.C. § 252(b)(3), AT&T Indiana timely filed its response to Big River’s petition for arbitration on October 24, 2011.

2. Procedural History. On October 17, 2011, Big River and AT&T Indiana filed their joint proposal for a procedural schedule. A Prehearing Conference was held in this matter on October 26, 2011 establishing a procedural schedule. On November 1, 2011, Big River filed the direct testimony of Gerard J. Howe and Andrew Schwantner. The same day, AT&T Indiana filed the direct testimony of its witnesses, J. Scott McPhee, James W. Hamiter, and Dr. Kent A. Currie. On November 15, 2011, Big River filed the rebuttal testimony of Gerard J. Howe and a Motion for Confidential Treatment of certain information contained in the rebuttal testimony of Mr. Howe. AT&T Indiana filed the rebuttal testimony of Mr. McPhee, Mr. Hamiter, and Dr. Currie on November 16, 2011. On the same day, AT&T Indiana filed a Motion for Protection of Confidential and Proprietary Information of certain information contained in the rebuttal testimony of Mr. McPhee. On November 17, 2011, the Commission issued docket entries granting Big River’s Motion for Confidential Treatment and AT&T Indiana’s Motion for Protection of Confidential and Proprietary Information.

Pursuant to proper notice of hearing, published as required by law, proof of which was incorporated into the record by reference, the Commission convened an Evidentiary Hearing in this Cause on Wednesday, December 14, 2011 at 9:30 a.m. EST, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Indiana Office of Consumer Counselor (“OUCC”), Big River, and AT&T Indiana appeared and the Parties were duly represented by counsel. No other party sought to intervene, and no members of the general public appeared or sought to testify at the Evidentiary Hearing. At the hearing, Big River and AT&T Indiana offered their respective direct and reply testimony into evidence which was admitted without objection.

3. Jurisdiction. Big River and AT&T Indiana are both "public utilities" within the

meaning of Indiana Code ch. 8-1-2. AT&T Indiana is an "incumbent local exchange carrier" ("ILEC") as set forth in 47 U.S.C. § 251(h) and Big River is a "requesting telecommunications carrier" within the meaning of § 252(a) of the Act. Pursuant to Ind. Code § 8-1-2.6-1.5(b)(2), this Commission has authority to arbitrate a dispute between providers under 47 U.S.C. § 252(b). The Commission has jurisdiction over Big River and AT&T Indiana, as well as the subject matter of this Cause in the manner and to the extent provided by the laws of the State of Indiana and the Act.

4. Petitioner's Organization and Business. Big River is a Delaware limited liability company with its principal place of business at 24 S. Minnesota Avenue, Cape Girardeau, Missouri 63702. Big River is a communications service provider providing facilities-based competitive local exchange, exchange access, and interexchange telecommunications services in this state pursuant to its Certificate of Territorial Authority issued by this Commission.

5. Respondent's Organization and Business. AT&T Indiana is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, with principal offices located at 240 North Meridian Street, Indianapolis, Indiana 46204. AT&T Indiana is a communications service provider engaged in the provision of varied telecommunications services to its customers and the general public in this state pursuant to Certificates of Territorial Authority issued by the Commission.

6. Identification of Unresolved Issues. Pursuant to 47 U.S.C. § 252(b)(4)(A), the Commission "shall limit its consideration" to the issues set forth in Big River's Petition and AT&T's Response.

7. Statutory Standards. The Commission "shall resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to implement subsection (c)¹ upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section."² Section 252(b)(4)(B) further provides:

The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

Neither party to this proceeding refused or unreasonably failed to respond to any request by the Commission for information.

In resolving by arbitration any open issues and imposing conditions upon the Parties to the Agreement, Section 252(c) provides:

¹ 47 U.S.C. § 252(c).

² 47 U.S.C. § 252(b)(4)(C).

a State commission shall:

- (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In light of the above standards and using the proposed orders submitted by the Parties, we summarize the positions of the Parties on the open issues, as reflected in Big River's Petition.

8. Arbitration Issues. Because the Parties confirmed on the record at the Evidentiary Hearing that AT&T Indiana agreed to Big River's positions on Arbitration Issues 1 and 2 in Big River's petition, we confine our discussion below to the remaining unresolved issues (Issues 3, 4, 5, and 6).

Issue 3: Should Big River be required to route transit traffic to AT&T Indiana's tandem office switch from which the third party terminating carrier subtends?

A. Positions of the Parties.

1. Big River.

Big River's position on Issue 3 is that Big River should not be required to connect at tandems behind which it does not serve customers. Big River states that it will exchange Local/IntraLATA transit traffic at the AT&T tandem at which a Big River switch subtends. Big River provided a diagram illustrating the functions of tandem and transit switching. Big River noted that in AT&T Indiana's network, various AT&T local switches subtend the local tandem switch. Additionally, the switches of other carriers are also connected to the AT&T local tandem. As shown in Big River's testimony, both Local and IntraLATA traffic may be exchanged to other third party carriers through AT&T's Local Tandem. If Big River transits traffic from one AT&T tandem to another AT&T tandem and then to a third party carrier, the traffic would be interexchange traffic and compensation would be governed by the applicable Exchange Access tariff as specified in 6.4.1 of Attachment 2 of the proposed interconnection agreement. In other words, Big River believes that AT&T Indiana will be appropriately compensated for traffic that it transits for Big River across two tandem switches.

The local switches are for providing mass market services to end users. The local switches have the ability to serve lines, i.e. individual subscribers with an assigned telephone number, whereas the tandem switch does not have that functionality and can only support trunk

interfaces that serve other switches. Big River explained that this is a critical difference. For instance, Big River stated that lines served by an AT&T Indiana local switch can be ported to the switch of another carrier, but porting is not available to or from an AT&T Indiana tandem switch since there is no line-level capability. Thus, local number portability and the enhancements in processing ports (e.g. hot cuts, 24 hour port intervals) have no impact on the service provided by a tandem switch.

Big River stated that transit service is tandem switching provided on a non-discriminatory basis because each of AT&T Indiana's subtending local switches uses the tandem switching functionality of the AT&T Indiana's local tandem switch to complete traffic amongst themselves as well as to each of the other competitive carriers and commercial mobile radio service ("CMRS") providers that provide local service in these areas and have connectivity to the tandem switch. Big River noted that the respective tandem switch port for each of the AT&T Indiana local switches provides it with connectivity to all local switches connected to the tandem switch, regardless of the underlying carrier. Big River provided another diagram that reflects the flow of traffic to and from an AT&T Indiana end user served by one of AT&T's end offices. Big River explained that AT&T Indiana provides the tandem functionality for each of its subtending switches to connect to all of its end offices as well as all other Local Exchange Carrier ("LEC") switches connected to the tandem. Big River also illustrated on its diagram that, as AT&T Indiana is required to provide tandem switching to competitive local exchange carriers ("CLECs") on a non-discriminatory basis. The calls originated on the CLEC's network would be connected to third party LECs, just as AT&T does for its own local switches.

2. AT&T Indiana.

AT&T Indiana indicated that this issue involves network arrangements for transit traffic service. Transit traffic is traffic that originates on the network of Big River (or a third party), transits AT&T Indiana's network, and is terminated on the network of a third party (or Big River). In other words, with transit service AT&T Indiana merely serves as the middleman between Big River and the third-party carrier to switch and transport the call between them.

In some cases both Big River and the third-party carrier will subtend the same AT&T Indiana tandem switch, and in that situation it is easy to transit the call between them. In other situations, however, Big River and the third-party carrier will subtend different AT&T Indiana tandem switches. In order to avoid the added cost of transporting and switching the call at a second tandem switch ("double-tandeming"), AT&T Indiana's proposed contract language would require Big River to directly connect to any AT&T tandem switch that the third-party terminating carrier on a transit call subtends. AT&T Indiana states that it has no ability to bill for "double-tandeming" on a transited call and that requiring double-tandeming unnecessarily adds a potential point of failure to a call. AT&T Indiana further notes that by refusing to route its transit traffic properly, Big River is refusing to route calls according to the routing instructions established in the Local Exchange Routing Guide or LERG. Finally, AT&T Indiana notes that its contract language is part of its standard ICA offering to all CLECs.

AT&T Indiana believes ILECs are no longer required to provide tandem switching as an unbundled network element ("UNE"). Witness McPhee testified that under the FCC's rule 47

CFR § 51.319, tandem switching is considered to be a part of “local circuit switching”, which, pursuant to the FCC’s 2005 Triennial Review Remand Order (“TRRO”), was declassified as a UNE.

3. Exceptions and Replies.

Big River claims that AT&T Indiana’s assertion with regard to the TRRO is incorrect because the TRRO states that only “mass market local circuit switching” was de-listed, not all local switching. Big River states that the section of the TRRO that explains the de-listing clearly outlines that the de-listing of “mass market local circuit switching” refers to the use of ILEC circuit switches to serve DS0 (single line) consumers and DS1 (multi-line) enterprise customers. Big River explains that mass market local switching refers to the local switch as it is used to provide telephone service to consumers and business enterprises. Those customers use the retail connections on the local switch (i.e. lines, Direct Inward Dialing trunks, Primary Rate Interfaces) with standard retail services and features (i.e. standard single line service, dual-tone multi-frequency signaling, call waiting, call hold, caller ID, hunting in the case of enterprises). All of these services are provided to serve individual households or enterprises. A telephone number (or group of telephone numbers) is assigned to the line(s) associated with an individual account and the traffic and features are served up to those accounts based on the features assigned to that specific telephone number. Big River states that this explanation of “mass market local switching” does not include tandem switching. Big River states that a tandem switch cannot be used to provide mass market services because the ports on a tandem switch are assigned to subtending local end offices or to the switches of other interconnecting telephone companies. Big River states that they cannot be assigned, for example, to individual consumer lines because the tandem switch does not provide the required features mentioned above that individual residential and enterprise customers require.

Big River states that the distinctions referenced above related to the de-listing of “mass market” local circuit switching referenced in the TRRO distinctions were also codified in 47 CFR § 51.319(d). Big River cites § 51.319(d)(2)(i) and § 51.319(d)(3), which respectively state:

An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

Big River states that the de-listing of unbundled “mass market local circuit switching” contained in the TRRO does not refer to tandem switching. Tandem switching remains a network element that is subject to unbundling as specified in 47 CFR § 51.319 and provided based on the pricing principles as outlined in Subpart F – Pricing Elements (47 CFR § 51.501 through § 51.515). Big River references 47 CFR § 51.319(d), which states:

An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with Section 251(c)(3) of the Act and this part and as set forth in paragraph (d) of this section.

B. Commission's Analysis and Decision.

Based on the language of Section 251(c)(3) of the Act, which imposes the duty on local exchange carriers to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis, we find in favor of Big River. Big River should have non-discriminatory access tandem to tandem functionality with the transit service it receives from AT&T Indiana.

We note in response to questions from the Presiding Officers during the Evidentiary Hearing, AT&T Indiana clarified that it provides tandem to tandem switching for other carriers as well as itself. Tandem switching is an unbundled network element pursuant to Section 251(c)(3) of the Act, as specified in 47 CFR § 51.319. Additionally, transit service allows carriers like Big River to indirectly interconnect with other carriers through AT&T Indiana's network. In this instance AT&T serves as a middle man for passing traffic between LECs with which AT&T is directly interconnected but who are not directly interconnected with each other. Under Big River's proposed ICA language, AT&T Indiana would route and transport traffic to the other LEC including routing and transport to a different AT&T Indiana tandem switch that serves the other LEC. Big River indicates that AT&T will be compensated for the additional transport and switching costs when transit traffic traverses two or more tandem switches. We agree with Big River's position that it should not be required to connect at tandems behind which it does not serve customers.

Accordingly, we find in favor of Big River on Issue 3 and order that Sections 6.1 and 6.2 of the interconnection agreement incorporate the language proposed by Big River.

Issue 4: When transit traffic originated by Big River requires twenty-four or more trunks, should Big River be required to establish direct trunk group or alternate transit arrangement with the third party terminating carrier?

A. Positions of the Parties.

1. Big River.

Big River's position is that when transit traffic originated by Big River requires twenty-four or more trunks, Big River should not be required to establish direct trunk group or alternate transit arrangement with the third party terminating carrier. Big River states that AT&T Indiana is already being compensated for carrying transit traffic. Big River should not have to bear additional costs for such service based on an arbitrary limit. Big River maintains that AT&T's requirement is not supported by the facts. Big River also states that in the event Big River exceeds the 24 trunk limit, it imposes no requirement on AT&T Indiana beyond that which it is

legally required to provide. Big River states that the rest of the conditions AT&T seeks are adequately covered by the General Terms and Conditions of the Interconnection Agreement.

2. AT&T Indiana.

AT&T Indiana's position is that Issue 4 concerns how traffic from Big River to a third-party carrier should be handled when the volume of transit traffic between Big River and that third-party carrier requires 24 or more trunks' worth of capacity (the equivalent of a DS1) through the AT&T Indiana tandem switch. AT&T Indiana proposes that when traffic volume to a single carrier hits that level, Big River should be required to establish a Direct End Office Trunk group ("DEOT") to the third-party carrier's switch. AT&T Indiana explains that this provision, which is a standard part of its generic ICA offering to all CLECs, is important because it helps prevent exhaustion of the tandem switch's capacity. AT&T Indiana transits traffic for many different carriers. If all such carriers could send as much transit traffic through AT&T Indiana's tandem switch as they wanted, the cumulative effect could be exhausting or straining the capacity of the tandem switch, leading to higher costs for AT&T Indiana. AT&T Indiana's position is that its proposal will "help conserve tandem switch and trunk resources, making the network more efficient." AT&T Indiana believes its proposed language increases the likelihood of Big River's calls to a third-party carrier, as well as the calls of other carriers that use the AT&T Indiana network, being successfully completed by decreasing the number of switching points in the call completion path, and by sending the calls directly to the intended third-party carrier. AT&T Indiana further notes that it applies the same or stricter requirements to itself within its own network, for the same reasons. Specifically, AT&T Indiana requires its affiliates to establish DEOTs to third-party carriers at a 24-trunk threshold. The 24-trunk threshold allows AT&T Indiana to effectively manage its network in order to offer transit service to all CLECs and CMRS providers as an alternative to direct interconnection with smaller carriers. AT&T Indiana accordingly requests that other carriers, including Big River, establish direct trunks at that same threshold.

AT&T Indiana noted that its affiliate, AT&T Illinois, recently arbitrated this identical issue with Big River, and that the Illinois Commerce Commission ("ICC") held for AT&T Illinois. *See* Arbitration Decision, Ill. Comm. Comm'n Docket No. 11-0083, at 39, 2011 WL 2999015 (June 14, 2011). Moreover, this Commission similarly ruled for AT&T Indiana and its predecessor on this very same issue in both *BellSouth Cellular Corp.*, Cause No. 41495-INT-01, at *12-*14 (IURC Nov. 17, 1999) and *AT&T Communications of Indiana, Inc.*, Cause No. 40571-INT-03, at Issue 4 (IURC Nov. 20, 2000). The FCC's Wireline Competition Bureau likewise approved a similar provision in the *Virginia Arbitration Order*, finding that "Verizon's proposed 60-day transition period is reasonable, providing [the CLEC] adequate time to arrange to remove its transit traffic from Verizon's tandem switch once the traffic meets the DS-1 threshold." *In re WorldCom, Inc.*, 17 FCC Rcd. 27039, ¶ 115 (FCC Wireline Competition Bureau, July 17, 2002).

Regarding Big River's argument that it should be allowed to send an unlimited amount of transit traffic to any third-party carrier as long as it pays AT&T Indiana's rate, AT&T Indiana contends that Big River misses the point. AT&T Indiana's position is that its proposal both recognizes economic reality and takes steps to protect the reliability of AT&T Indiana's network

for all carriers, which is why other regulators have approved this same kind of ICA language. Simply paying the basic transit rate does not account for the added pressures put on AT&T Indiana's network if every CLEC were allowed to send unlimited amounts of transit traffic rather than using direct connections once traffic exceeds a DS1 of capacity.

AT&T Indiana's position regarding Big River's claim that AT&T Indiana's tariff for transit service does not include the same DEOT requirement is that the claim is both misleading and irrelevant. AT&T Indiana claims this irrelevant because Big River has not chosen to interconnect with AT&T Indiana under the tariff, but rather has chosen to interconnect using an ICA, and AT&T Indiana's ICA offering is what is at issue. In addition, Big River's position is misleading because the transit tariff states that "the parties will cooperate to determine the performance of their respective networks and will implement such joint network management controls to further overall service integrity." See AT&T Indiana Tariff IURC No. 20, part 23, Section 2, 1st Revised Sheet 8, § 1.B.7 (first bullet point). AT&T Indiana's indicates that its 24-trunk threshold in the ICA seeks to protect the performance of networks and further overall service integrity.

B. Commission Analysis and Decision.

Upon consideration of the evidence, the Commission finds in favor of AT&T Indiana on Issue 4. We find that transit service provides an efficient method for Big River to exchange traffic with other LECs in instances when the amount of traffic is insufficient to justify the establishment of direct interconnection at a third-party's switch. However, the Commission also finds when the amount of transit traffic exchanged through AT&T Indiana's network between Big River and another LEC reaches a certain level; Big River should be required to establish a direct connection with that third carrier to prevent exhaustion of AT&T Indiana's tandem switch's capacity.

AT&T Indiana's proposal of requiring Big River to establish direct trunks when traffic exceeds 23 trunks through an AT&T tandem is reasonable. Such a limit is the standard AT&T applies to itself, its affiliates, and other carriers to establish direct trunks under these same circumstances. AT&T Indiana's requirements do not impose any unfair burden on Big River. AT&T Indiana's provisions in Section 7.1 of the interconnection agreement are designed to protect the integrity of its network for all carriers.

Accordingly, we adopt AT&T Indiana's contract language in regards to Section 7.1 of the Agreement.

Issue 5: What is the appropriate rate that AT&T Indiana should charge for transit service?

A. Positions of the Parties.

1. Big River.

Big River states that the transit rate charged by the ILEC must be cost based and that AT&T Indiana must establish its rate based on a forward-looking cost study. Until a cost-based rate is approved by the Commission, Big River proposes an interim rate of \$0.0015 per minute of use (“MOU”). This rate was derived from the FCC Tandem Proxy Rate as set forth in the former 47 C.F.R. § 51.513. Big River is aware that § 51.513 was vacated by court order. However, that court’s decision was based on the premise that the FCC could not enforce the proxy rates. It does not prevent a state commission from adopting them on an interim basis until the relevant cost information is produced.

Big River states that AT&T has not provided any cost studies to show the current forward looking costs of providing transit service. Big River claims the cost studies upon which the current rates in IURC No. 20, Part 23 are based are stale and appear to have been performed using costs AT&T incurred in the late 1990’s. Because of the significant changes in the cost structure of the incumbent, Big River claims the costs of providing transit service have changed, and AT&T Indiana has an obligation to provide these services at forward-looking economic costs.

Big River indicates that in the absence of AT&T Indiana rates that are based on current costs, the Commission should look to the Section 251(c)(3) of the Telecom Act and the FCC’s rules for guidance on pricing for tandem switching as an unbundled network element. Specifically, 47 CFR § 51.503 (General Pricing Standard) states:

- (a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.
- (b) An incumbent LEC’s rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—
 - (1) Pursuant to the forward-looking economic cost-based pricing set forth in §§ 51.505 and 51.511; or
 - (2) Consistent with the proxy ceilings and ranges set forth in § 51.513.
- (c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

Big River states that in the absence of forward-looking cost studies, the Commission should defer to the proxy ceilings and ranges specified in 47 CFR §51.513 which are intended for a state commission’s use in the event where “the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511”. Specifically, per 47 CFR § 51.513(c)(5), Big River claims the proxy Tandem Switching rate should not exceed \$0.0015 per MOU.

Big River maintains that the proxy rate contained in 47 CFR § 51.513(c)(5) is further proof of the inappropriateness of the rate contained in AT&T Indiana’s tariff, IURC No. 20, Part 23, Section 2. The rate contained therein is \$0.004388 per MOU, which is nearly 3 times the FCC’s proxy rate. Further, the Tandem Switching rate for transit calls is 14 times greater than the Tandem Switching rate for Reciprocal Compensation calls.

2. AT&T Indiana.

AT&T Indiana’s proposed transit rates are the rates set forth in its tariff, IURC No. 20, Part 23, Section 2, 1st Revised Sheet 16. That tariff and the rates have previously been approved by the Commission as being TELRIC-compliant. Those rates are as follows:

Tandem Switching	\$0.004388 per MOU
Tandem Transport	\$0.000095 per MOU
Tandem Transport Facility	\$0.000056 per MOU

AT&T Indiana states that the only issue here is which party’s proposed contract language to adopt. AT&T Indiana’s position is there are only two proposals on the table – Big River’s proposal to use the FCC’s proxy rate for unbundled tandem switching, and AT&T Indiana’s proposal to use its approved, tariffed rate for transit service in Indiana, which is included in many other ICAs. Between those two options, AT&T Indiana argues there are several fatal flaws in Big River’s proposal.

First, Big River’s proposal relies on the FCC’s “proxy” rates for unbundled tandem switching. AT&T Indiana first notes that tandem switching is not the same as transit service, and that the FCC’s proxy-rate rule never included any rate for transit service. Moreover, the FCC’s proxy rate rule, former 47 C.F.R. § 51.513, was vacated on appeal. *Iowa Utils Bd. v. FCC*, 219 F.3d 744, 756-57 (8th Cir. 2000), *rev’d in part on other issues, Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467 (2002). AT&T Indiana cites the Eighth Circuit’s holding that “[w]e conclude the proxy prices cannot stand and, for the foregoing reasons, vacate rules 51.513, 51.611, and 51.707.” *Id.*; *US West Commc’ns, Inc. v. Jennings*, 304 F.3d 950, 955 (9th Cir. 2002) (the *Iowa Utilities Board* decision “vacated [the FCC’s] proxy price rules”). Accordingly, AT&T Indiana contends imposing any prices based on the FCC’s vacated rule would be unlawful.

Second, AT&T Indiana states that even if the FCC’s proxy rule had not been vacated, Big River’s proposal is unlawful because it relies on the former proxy price for unbundled tandem switching, and tandem switching is no longer required to be unbundled. In 47 C.F.R. § 51.319(d), which was revised as a result of the FCC’s TRRO, the FCC defined tandem switching as part of the “local switching” network element and then held that after a phase-out period, which has ended, local switching – and thus tandem switching – no longer has to be unbundled. 47 C.F.R. § 51.319(d) (defining local switching as “includ[ing] tandem switching” and as including “trunk-to-trunk” connections, which occur only in tandem switches). AT&T Indiana states that Big River’s claim that tandem switching still must be provided as an unbundled network element under Section 251(c)(3) of the 1996 Act is patently wrong.

Third, AT&T Indiana notes that even if the FCC's proxy rule had not been vacated, those proxy rates were merely a stop-gap measure for the period immediately after the FCC's *First Report and Order* in 1996, and could only be used prior to the time that a "state commission has completed review of a cost study that complies with" the FCC's TELRIC pricing methodology (for products and services subject to that methodology). *See* 47 C.F.R. § 51.513 (a)(1) (vacated). Here, of course, it is undisputed that the Commission has reviewed and approved a TELRIC-based cost study for AT&T Indiana's transit service as part of Cause No. 40611 and that the rates resulting from that study are the rates included in AT&T Indiana's tariff (and in other ICAs) and are TELRIC-based.

Fourth, with regard to Big River's position that the cost study underlying AT&T Indiana's approved transit rates as being "stale" or otherwise flawed, AT&T Indiana replies that (i) the proxy rates in the FCC's vacated rule – which again are the sole basis for Big River's proposed rate – are from 1996, and thus older than AT&T Indiana's transit cost study; and (ii) the FCC's vacated proxy rates were not based on any Indiana-specific data and were in no way tailored for use in Indiana. *See* 47 C.F.R. § 51.513(c)(5) (vacated) (no Indiana-specific proxy rate for unbundled tandem switching). AT&T Indiana adds that if the Commission were to force it to significantly lower its transit service rate, as Big River proposes, that would likely preclude further competition from developing in the market for transit service.

Finally, AT&T Indiana notes that the Commission has approved its tariffed transit rates for use in other arbitrated ICAs, including Cause No. 42893-INT-01 (Jan. 11, 2006) and Cause No. 40571-INT-03 (2001). And just a few months ago, AT&T Illinois arbitrated this same issue with Big River, concerning an AT&T Illinois transit service cost study and tariffed transit rates of the same vintage as AT&T Indiana's. *See* Arbitration Decision, Ill. Comm. Comm'n Docket No. 11-0083, at 39, 2011 WL 2999015 (June 14, 2011). After considering the same arguments presented here, the Illinois Commerce Commission's Staff strongly supported AT&T's position and the ICC held in favor of AT&T Illinois.

3. Exceptions and Replies.

Big River states that the rates AT&T Indiana proposes were based on costs as they existed in 1998 and fail to meet the standard set in the 1996 Telecom Act and codified by the FCC. Accordingly, Big River claims those rates cannot lawfully be used in the proposed interconnection agreement. Further, Big River claims that in accordance with federal law, AT&T Indiana, as the ILEC, has a burden to provide a cost study for evidentiary purposes that meet federal pricing standards. In the event such evidence is not provided, Big River proposes that the proxy rates set by the FCC be used until AT&T Indiana produces a current, forward-looking cost study.

Big River claims that federal law dictates a number of standards governing the rates to be used. First, 47 CFR § 51.501 states that rates used must be just, reasonable and non-discriminatory. Second, 47 CFR § 51.505 states that the rates used must be forward looking and based on the most efficient network technology currently available. And finally, 47 CFR § 51.511 states that the rates should be determined using a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting

telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services. AT&T Indiana's proposed historical rates fail each of these standards.

Big River claims that AT&T Indiana's proposed rates fail the 'reasonableness' test on two counts. First, the cost study AT&T Indiana produced to Big River in discovery shows many shortcomings for their use today, two of which are critical and destroy the reasonableness of their use today and prospectively. Big River states the two principle flaws in AT&T Indiana's cost studies are:

- a. The cost study dates from 1998. Since 1998 many key assumptions and key variables have changed. Among these changes are:
 - i. The corporate changes and accompanying cost savings since 1998 have not been incorporated in AT&T Indiana's proposed rates. Ameritech Indiana who initially filed the cost studies has gone through three major corporate transformations in the merger with SBC Communications, the subsequent merger with AT&T and finally, the merger with BellSouth. The organizational changes and their impact on AT&T's costs were not anticipated and thus not reflected in AT&T Indiana's proposed rates.
 - ii. The cost study was performed at the dawn of competition in the local telecommunications market. As such, AT&T used assumptions on transit traffic volumes that pale in comparison to the volumes that AT&T Indiana actually processes today. Big River presented evidence that the number of minutes processed annually by AT&T Indiana has increased dramatically since AT&T Indiana presented cost data in Cause No. 40611. Big River states that this change has had a significant impact on the allocation of fixed and common costs across the transit minutes (or units). This is clearly inconsistent with the requirements of 47 CFR § 51.511 that states 'the forward-looking economic cost of the element, as defined in § 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers'.
 - iii. A significant portion of the total transit cost rate per minute is in the cost of billing and recording. Big River states that billing and recording is largely an automated function performed by computers recording call details and rating those call records. Big River claims that AT&T's cost study is woefully outdated given the rapid pace of advancement in computer technology and the rapid decline in processing and memory costs associated with such processing that have occurred since 1998. According to Big River, this is inconsistent with the requirements of 47 CFR § 51.505 which states, "The total element long-run incremental cost of an element should be measured based on the use of the most efficient

telecommunications technology currently available and the lowest cost network configuration”.

- b. Big River states that the proportion of costs associated with the billing and recording of transit calls is so high, it is beyond the realm of reasonableness. Per AT&T’s cost study, the preponderance of the cost of providing tandem switching is allocated to AT&T’s billing process. Big River indicates based on the cost study information supplied by AT&T that the cost of billing and recording the call itself is roughly eleven times the cost of actually processing the call. Further, Big River states that since AT&T is not burdened with these billing and recording costs associated with the use of their tandem switches in their network, these costs that AT&T proposes to assess Big River would result in significant economic discrimination to Big River’s use of the tandem switching element.

Big River states that AT&T Indiana’s assertion that cost based rates are not necessary for transit service fails to acknowledge AT&T Indiana’s clear obligation to provide tandem switching, and to do so on a non-discriminatory basis. In support of its claim, Big River points to § 251(c)(3) of the 1996 Telecom Act, which places obligations on Incumbent Local Exchange Carriers to:

provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

Big River contends that tandem switching is clearly a network element which incumbent local exchange carriers are obligated to provide. According to Big River, the proof for this is contained in the FCC’s rules for the pricing of unbundled network elements contained in 47 CFR § 51.503 (General Pricing Standard). There, the FCC establishes that the rate for such unbundled network elements should be forward-looking economic cost-based pricing methodology set forth in 47 CFR §§ 51.505 and 51.511; or consistent with the proxy ceilings and ranges set forth in 47 CFR § 51.513. Big River states that 47 CFR § 51.513 sets a proxy rate of \$0.0015 per MOU for tandem switching that may be used in the event that a state commission lacks evidence of appropriate forward-looking economic cost based rates. Big River contends no evidence was provided by AT&T Indiana in this case to establish rates at all.

B. Commission Analysis and Decision.

Upon consideration of the evidence, the Commission finds in favor of AT&T Indiana on Issue 5. The current transit rate that AT&T Indiana uses was established previously by the Commission’s January 18, 2001 Order in Cause No. 40611. The Commission notes that the AT&T Indiana rate is based on Indiana-specific, approved TELRIC cost studies that were the result of a contested TELRIC cost docket and have been approved and adopted for use in other ICAs since. This rate was calculated through a specific AT&T transit service cost study and

remains appropriate at this time. While it is true that the AT&T Indiana transit rates are nearly 10 years old, the proxy rates advocated by Big River are five years older than AT&T Indiana's transit rates and are not supported by cost data.

We note that the Illinois Commerce Commission in a 2011 arbitration dealing with the same issue reached a conclusion that the current AT&T transit rates in Illinois, which are based on a cost study of similar age to the Indiana cost study, remain appropriate transit rates.

We find that the transit rates proposed by AT&T Indiana are just, reasonable, and nondiscriminatory. Accordingly, we adopt AT&T Indiana's transit service rates, just as we have done in prior arbitrations.

Issue 6: Should Big River be financially responsible for facilities that carry Mass Calling/choke trunk Groups?

A. Positions of the Parties.

1. Big River.

Big River disputes AT&T Indiana's position that a choke trunk on AT&T Indiana's network is necessary and that Big River should be financially responsible for it. Big River notes that a choke trunk is a separate trunking arrangement established to control or "choke" the number of calls allowed to complete to customers, such as broadcasters with contest call-in numbers or a ticket agency. Big River explains that AT&T affiliates are the only ILECs that require a separate choke trunk. AT&T affiliates identify a switch to handle mass calling NXXs in the Local Calling Area ("LCA") and establish separate direct trunking to that switch from every End Office within the LCA. NXX codes refer to the combination of area codes (NPAs) and local exchanges (NXXs). Mass calling numbers must be assigned to a unique NXX and must be identified as a mass calling NXX. This identification allows all End Offices within the LCA to route the calls over the choke network. Thus, mass calling associated with media contests and event ticket sales are sent over a choke network that limits the impact on the rest of the Public Switched Telephone Network ("PSTN") and prohibits the significant influx of calls from degrading the capability of the PSTN.

Big River states that AT&T Indiana has designed its network to include a configuration designed to prevent PSTN/Tandem congestion due to large call volumes to a particular type of customer (e.g. radio stations). However, Big River states that § 251(b)(5) traffic is exchanged through this same configuration and Big River should not have to bear additional cost due to AT&T Indiana's network design. Big River states that AT&T possesses no special capability to choke mass calling traffic. Rather, Big River has the capability of creating a choke mechanism within its own network that would limit the number of concurrent calls to a particular mass calling NXX(s) and would prevent all choked traffic from ever leaving Big River's network, at no cost to either Big River or AT&T Indiana. All other traffic would continue to be exchanged between Big River and AT&T over the local interconnection trunking established between AT&T and Big River. Big River maintains that if AT&T requires Big River to establish a choke

trunk to AT&T network, as opposed to Big River performing its own choke function, then AT&T should bear the cost of such choke trunking.

Big River states that AT&T has never provided or assigned to Big River any mass calling NXXs in any areas where it has been required to establish choke trunking, and states that in the areas where AT&T has required Big River to establish choke trunking, the utilization for all trunks is 0% - meaning that no traffic has ever been exchanged across these trunks. Big River states that the reason for this is that since AT&T has never provided Big River with the mass calling NXXs, Big River is unable to discern mass calling traffic to deliver over the choke trunks that AT&T directed Big River to establish. In those areas in which AT&T has required Big River to use choke/mass calling trunk groups, Big River states that it incurs an estimated yearly cost of \$31,083.12. Big River states that while AT&T is the only ILEC that requires Big River to establish choke trunking, it has not required it in the AT&T Southeast region.

2. AT&T Indiana.

AT&T Indiana indicates that Issue 6 concerns contract language and financial responsibility regarding the facilities that carry choke/mass calling trunk groups, also called High-Volume Call-In (“HVCI”) trunks. AT&T Indiana’s language would require Big River to establish and bear financial responsibility for choke/mass calling trunks groups, just as other CLECs do, as AT&T Indiana does for its own traffic, and as Big River has agreed to do for other types of specialized facilities, namely those used to deliver OS/DA, Emergency 911, and meet-point traffic. Choke/mass calling trunks are necessary to protect the PSTN from overload caused by mass calling events.

Big River, however, contends that it should have discretion to decide how and when – and even whether – to take the steps necessary to protect the PSTN during mass calling events. AT&T Indiana’s position is that it makes sense for Big River to bear financial responsibility for facilities that carry choke/mass calling trunks, since those facilities will be entirely one-way. That is, they will be used only to carry traffic from Big River customers, and will never be used to carry traffic from AT&T Indiana’s or any other carrier’s end-users. AT&T Indiana also notes that if Big River collocates in the Melrose office in Indianapolis, where AT&T Indiana’s choke/mass calling switch is located, Big River’s cost of connecting from its collocation to AT&T Indiana’s choke/mass calling switch within the same office will be minimal.

A mass calling event is an occurrence in which unusually large numbers of people call a particular phone number. These events are usually generated by radio and TV stations, as well as ticket sales for concerts and professional sporting events. A classic example would be what happens when a radio station offers a prize to the 100th person who calls a particular number. Mass calling events are bursty and spontaneous in nature, and as such, very difficult to control. In a metropolitan area, a typical event could hit and be over before a control could be placed in every office.

Mass calling events pose a potential threat to the PSTN because if a large burst of traffic occurs it could cause an overload on the PSTN, leading to an inability to complete calls and possible loss of records and degradation of service. Perhaps the most serious risk is a network

failure caused by a mass calling event that could trigger a delay in Emergency 911 services. HVCI trunks are established to deal with these risks by being set up in advance and thus ready for instant use during any High Volume Call In situations as they arise. Specifically, HVCI trunks divert traffic from all carriers' end-users on the PSTN to special trunks and facilities (including a Choke Serving Office) used for the mass calling event, and the choke/mass calling trunks limit the number of calls allowed at any one time to a particular mass calling number (*e.g.*, the radio station being called for a concert ticket promotion). This diversion to HVCI trunks of all traffic to the mass calling NXX prevents AT&T Indiana's tandem switches from being overwhelmed. The Network Interconnection Interoperability Forum ("NIIF"), an industry standards body, has agreed that when a carrier like AT&T Indiana has reserved a fixed NXX code to serve HVCI traffic as AT&T Indiana does, all interconnected carriers should provision an HVCI trunk group to carry HVCI traffic to the serving office or tandem switch. AT&T Indiana uses HVCI trunks for its own traffic and the baseline language in AT&T Indiana's standard ICA likewise requires CLEC to establish HVCI trunks to interconnect with AT&T Indiana, much like CLECs are required to establish separate trunks for OS/DA, Emergency 911, or meet-point interconnection traffic.

Big River contends that it should have the discretion to send mass calling traffic over the same facilities as its other Section 251(b)(5)/IntraLATA toll traffic. AT&T Indiana contends the problem with that is mass calling issues do not just affect Big River. The goal is to protect the entire PSTN, and the way to make that work is not to have each carrier try to do its own thing at the lowest cost, but rather to use the established, NIIF-endorsed system of choke/mass calling trunks so that all mass calling traffic is handled the same way and the PSTN is fully protected.

AT&T Indiana's position is that it is an obligation of all carriers who are an interconnected part of the PSTN to do their part to protect the reliability and integrity of the PSTN and, more specifically, the 911 network for emergency services. Each CLEC must accept its fair measure of responsibility for safeguarding the network and especially the 911 emergency network. Leaving the decision on how to do that – indeed, whether to do it at all – to each individual CLEC opens the door to untested, potentially unreliable practices, which could harm the customers of other carriers as well as that CLEC.

B. Commission Analysis and Decision.

Upon consideration of the evidence, the Commission finds in favor of AT&T Indiana on Issue 6. We find that the issue relates to the ability of AT&T Indiana to protect its network performance and customers from the impact of high-volume call-ins through the use of choke/mass calling trunks. The use of choke/mass calling trunks to handle mass calling events as AT&T Indiana proposes is well established and supported by NIIF, an industry standards group.

We note that AT&T and its affiliates establish facilities to handle high-volume call-ins. The fact that AT&T is asking no more from Big River than AT&T asks of itself in this regard is persuasive. The choke/mass calling facilities at issue would be used exclusively by Big River's customers, and therefore Big River should bear the cost associated with those facilities, just as other CLECs bear the cost of the choke/mass calling facilities that their customers use. In a

similar fashion, Big River has agreed to bear the costs of facilities that its customers use for OS/DA, Emergency 911, and meet-point traffic. The Commission also notes that Big River can, to some extent, control any costs associated with choke/mass calling facilities based on where and how it interconnects with AT&T Indiana.

We recognize that AT&T Indiana should have reasonable latitude to configure and maintain its network in order to protect its customers and the network performance in a nondiscriminatory manner. Accordingly, we find that Section 3.2.5 of the agreement shall adopt AT&T Indiana's language.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The disputed issues between the parties are resolved in accordance with the findings and conclusions set forth herein.

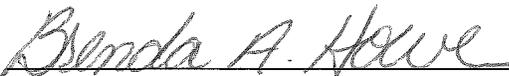
2. The parties shall jointly submit for the Commission's approval a single Interconnection Agreement (also referred to as a "conforming agreement") reflecting our resolution of the disputed issues as described in this Order, as well as the agreed upon provisions that emerged as a result of the negotiations prior to the Evidentiary Hearing. Such Interconnection Agreement shall be submitted to the Commission as set forth herein by the parties within thirty (30) calendar days following the issuance of this Order.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: FEB 01 2012

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe
Secretary to the Commission