

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: APR 18 2012

ORDER ON RECONSIDERATION

Presiding Officers:

Larry S. Landis, Commissioner

Gregory R. Ellis, Administrative Law Judge

On September 27, 2011, Big River Telephone Company, L.L.C. ("Big River") filed its Petition For Arbitration with the Indiana Utility Regulatory Commission ("Commission") pursuant to 47 U.S.C. § 252(b)(1) of the federal Telecommunications Act of 1996 ("Act") to establish an Interconnection Agreement with Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana ("AT&T Indiana") in this Cause. 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. At the hearing, Big River and AT&T Indiana offered their respective direct and reply testimony into evidence which was admitted. The Commission issued its Arbitration Order on February 1, 2012.

On February 21, 2012, AT&T Indiana filed with the Commission AT&T Indiana's Verified Petition for Rehearing and Reconsideration ("Petition") of the February 1, 2012 Arbitration Order of the Commission. In its Petition, AT&T Indiana only seeks reconsideration of Arbitration Issue 3. Arbitration Issue 3 sets out: 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? In the February 1, 2012 Arbitration Order, the Commission found that Big River should have non discriminatory access tandem to tandem functionality with the transit service it receives from AT&T Indiana and ordered Sections 6.1 and 6.2 of the interconnection agreement incorporate the language proposed by Big River in regards to Arbitration Issue 3.

AT&T Indiana also filed its Motion to Extend Due Date for Submitting Conformed Interconnection Agreement ("Motion") in this Cause on February 21, 2012. In its Motion, AT&T Indiana requested that the Commission modify the due date for jointly submitting a conformed interconnection agreement to ten (10) days after the Commission rules on the Petition. On February 28, 2012, Big River filed its Response to AT&T Indiana's Request for Extension indicating that Big River did not object to AT&T Indiana's Motion. The Commission granted AT&T Indiana's Motion

through a docket entry on February 28, 2012.

On March 2, 2012, Big River filed Big River Telephone Company, LLC's Response to AT&T Indiana's Petition for Rehearing and Reconsideration ("Response"). In its Response, Big River argued that to the extent AT&T Indiana's Petition seeks rehearing it fails to comply with 170 IAC 1-1.1-22(e) and merely criticizes the basis of the Arbitration Order without offering any justification for its reversal. Further, Big River argued that AT&T Indiana fails to establish a basis upon which the Presiding Officers should reconsider and amend its February 1, 2012 Arbitration Order on Issue 3.

On March 9, 2012, AT&T Indiana filed its Reply in Support of Petition for Rehearing or Reconsideration ("Reply"). AT&T Indiana argued that Big River's assertion that AT&T Indiana failed to offer any basis for changing the Commission's ruling on Arbitration Issue 3 was incorrect.

1. Jurisdiction. In the Commission's Arbitration Order of February 1, 2012, the Commission found that 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. The Commission further found, 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). Therefore, 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.

2. Standards. AT&T Indiana requested in its Petition for Rehearing and Reconsideration that the Commission reconsider its February 1, 2012 Arbitration Order, in accordance with 170 IAC 1-1.1-22(e). 170 IAC 1-1.1-22(e) states that:

(e) Following a final order, any party to a proceeding may file with the commission and serve upon all parties of record a petition for rehearing and reconsideration within twenty (20) days of the entry of the final order, unless an applicable statute shall specifically fix a longer period. The following are required for a petition for rehearing and reconsideration:

(1) Such petition shall be concise, stating the specific grounds relied upon, with appropriate record references and specific requests for the findings or orders desired. If the petition seeks rehearing, it shall be verified or supported by affidavit and shall set forth the following:

(A) The nature and purpose of the evidence to be introduced at rehearing.

(B) The reason or reasons such new evidence was not available at the time of the hearing or could not be discovered with due diligence.

(C) A statement of how such evidence purportedly would affect the outcome of the proceeding if received into the record.

(D) A showing that such evidence will not be merely cumulative.

(2) Responses to such petitions shall be filed and served within ten (10) days after service of the petition upon the responding party unless the presiding officer shall prescribe a different time. Any reply to such responses shall be filed within seven (7) days after service of the response unless the presiding officer shall prescribe a different time.

(3) In response to such a petition, the commission may:

(A) reconsider the final order and uphold it without modification;

(B) correct errors by modifying or clarifying it without further hearing based upon the existing record;

(C) upon notice to the parties, reopen the proceeding for the receipt of further evidence on particular issues; or

(D) reverse the final order.

(4) A petition for reconsideration shall be deemed a petition for rehearing for purposes of *IC 8-1-3-2*.

(5) A petition for reconsideration shall be deemed denied if not ruled upon or otherwise addressed within sixty (60) days following its filing.

In accordance with 170 IAC 1-1.1-22(e), AT&T Indiana timely filed its Petition for Rehearing and Reconsideration of the Commission's Arbitration Order in this matter. In its Petition, AT&T Indiana sets forth several issues relating to Arbitration Issue 3 in which it contends the Commission failed to fully consider or erred in reaching its determination in the Arbitration Order. AT&T Indiana asserts in its Petition that the following conclusions are incorrect and warrant reconsideration by the Commission: 1) The ruling on Arbitration Issue 3 erroneously concludes that AT&T Indiana is required to provide tandem switching as an unbundled network element; 2) The ruling on Arbitration Issue 3 was in error in concluding that AT&T Indiana provides tandem-to-tandem switching for itself or others; 3) The Commission's finding in favor of Big River on Arbitration Issue 3 to incorporate the language proposed by Big River in Sections 6.1 and 6.2 of the interconnection agreement makes no sense because Big River has already agreed to route end-users' traffic to all AT&T Indiana tandems; and, 4) The Commission's Arbitration Order erroneously assumes that Big River would pay AT&T Indiana for the added costs of tandem-to-tandem switching. AT&T Indiana requests the Commission grant rehearing and reverse its findings on Arbitration Issue 3.

3. Conclusion. The Commission finds that AT&T Indiana has thoroughly presented the issues for which it seeks reconsideration. However, AT&T Indiana has failed to comply with the requirements set out in 170 IAC 1-1.1-22(e). AT&T Indiana's Petition does not set forth the nature and purpose of the evidence to be introduced at a rehearing, the reason such new evidence was not

available at the time of the initial hearing, a statement of how such evidence would affect the outcome of the proceeding, or a showing that the evidence wouldn't be merely cumulative. Further, we find that AT&T Indiana's Petition does not present any new evidence for Commission consideration; instead it is asking the Commission to reconsider arguments and reweigh evidence that the Commission has already considered.

After fully considering AT&T Indiana's Verified Petition for Rehearing and Reconsideration, Big River's Response, AT&T Indiana's Reply and the evidence of record, the Commission hereby finds that the issues presented by AT&T Indiana in its Petition were fully developed and presented by the parties at the Evidentiary Hearing conducted in this matter; and, each of the issues raised by AT&T Indiana in its Petition were fully evaluated and properly considered by the Commission in reaching its determination in this cause. Therefore, the Commission hereby finds that AT&T Indiana's Verified Petition for Rehearing and Reconsideration should be denied.

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

1. AT&T Indiana's Verified Petition for Rehearing and Reconsideration is hereby denied.
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 the Arbitration Order of February 1, 2012, 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 within ten (10) calendar days following the issuance of this Order.
3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: APR 18 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