

**IN THE CIRCUIT COURT OF BUTLER COUNTY
STATE OF MISSOURI
CIVIL DIVISION**

POPLAR BLUFF INTERNET, INC.)	
)	
PLAINTIFF,)	
)	
v.)	CASE NO. 11BT-CV00566
)	
THE CITY OF POPLAR BLUFF, ET AL.)	
)	
DEFENDANTS.)	

PLAINTIFF’S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

COMES NOW, Plaintiff Poplar Bluff Internet, Inc., by and through its counsel, and submits the following Statement of Additional Undisputed Material Facts in response to Defendants’ Motion for Summary Judgment:

1. On Monday, November 15, 1999, the City of Poplar Bluff approved an ordinance that permitted the voters of the City of Poplar Bluff to vote on February 2, 2000 on a bond that was to be used for “constructing and equipping a broadband telecommunications system.” (Exhibit I)
2. On February 7, 2000, the City of Poplar Bluff put an advertisement in the Daily American Republic explaining the aforementioned bond issue to the voters of the City of Poplar Bluff. (Exhibit J)
3. In the February 7, 2000 advertisement, the City of Poplar Bluff listed certain “facts about this proposed system,” which included the following:

“During the beginning of 1999, the City of Poplar Bluff commissioned the preparation and submission of a feasibility study which clearly demonstrated the deployment of a broadband telecommunications network by the City is a viable,

financially sound endeavor and is in the best interest of our community”

“The system will be capable of providing a telecommunications network for (a) cable television service, (b) distance learning, (c) any energy management and (d) high speed data transfer.” (Exhibit J)

4. The bond issue passed on February 8, 2000.
5. The “telecommunications network” was constructed and began operating in September 2001. (Exhibit L)
6. Beginning in 2002, §392.400 RSMo. provided that the Missouri Public Service Commission conduct surveys of all telecommunications systems operated by municipalities. (Exhibit K)
7. The Missouri Public Service Commission issued a report dated December 27, 2002, which detailed its survey of telecommunications systems operated by municipalities, including the City of Poplar Bluff (Exhibit K)
8. The City of Poplar Bluff answered the aforementioned survey to the Missouri Public Service Commission, in which the City of Poplar Bluff answered “Yes” to the question of whether the City of Poplar Bluff “own[s] or operate[s] a telecommunication network offering services to the public.” The City of Poplar Bluff then identified the type of the telecommunication network as “Internet.” (Exhibit L)
9. On September 28, 2004, the Missouri Public Service Commission sent the City of Poplar Bluff a survey for its “telecommunications networks,” which the City of Poplar Bluff completed and returned. (Exhibit M)
10. On October 4, 2007, the Missouri Public Service Commission sent the City of Poplar Bluff a survey for its “telecommunications networks,” which the City of Poplar Bluff

- completed and returned. (Exhibit N)
11. The City of Poplar Bluff continued to complete the surveys sent by the Missouri Public Service Commission for its “telecommunications networks.” (See Exhibit N)
 12. Plaintiff disputed its bill for November 2010 with the City of Poplar Bluff in December 2010. (Exhibit B)
 13. Plaintiff disputed its bills with the City of Poplar Bluff each month thereafter until May 2011. (Exhibits C, D, E and F)
 14. The City of Poplar Bluff did not respond in writing to any of Plaintiff’s protests except for the protest to the November 2010 bill. (Exhibit A)
 15. The City of Poplar Bluff did not send Plaintiff any findings of fact or conclusions of law following the hearing in front of the City Council on August 6, 2012. (Exhibit A)
 16. Exhibit 101 attached to Defendants’ motion for summary judgment applies to all users of Defendants’ broadband network. (Exhibit O)

Respectfully submitted,

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