

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Southwestern Bell Telephone Company d/b/a AT&T     )  
Missouri's Petition for Compulsory Arbitration of     )  
Unresolved Issues for an Interconnection Agreement     ) **File No. IO-2010-0185**  
with Global Crossing Local Service, Inc. and Global     )  
Crossing Telemanagement Inc.     )

## ORDER DISMISSING CASE FOR LACK OF SUBJECT MATTER JURISDICTION

Issue Date: January 6, 2010

Effective Date: January 16, 2010

On December 17, 2009, Southwestern Bell Telephone Company d/b/a AT&T Missouri filed with the Missouri Public Service Commission a petition for arbitration pursuant to the Telecommunications Act of 1996, requesting that the Commission arbitrate unresolved issues AT&T has with Global Crossing Local Service, Inc. and Global Crossing Telemanagement Inc.<sup>1</sup>

In its petition, AT&T states that on June 11, 2009, it “gave Global Crossing a written Notice of Non Renewal and Request for Negotiation.”<sup>2</sup> Federal law<sup>3</sup> requires that petitions for arbitration be filed with the state commission no later than 160 days after an incumbent has received a request. In this case, however, it is the incumbent who has made the request. Further, June 11 is the date the request was made, not received. The Eighth Circuit Court of Appeals has stated; “the parties’ ability to request the arbitration of an agreement is confined to the period from the 135<sup>th</sup> to the 160<sup>th</sup> day after the requesting

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<sup>1</sup> Hereinafter, Global Crossing Local Service, Inc. and Global Crossing Telemanagement Inc. will be referred to collectively as Global Crossing.

<sup>2</sup> Verified Petition for Arbitration, paragraph 11.

<sup>3</sup> 47 U.S.C. 252(b)(1).

carrier submits its request to the incumbent.”<sup>4</sup> This language includes a request made by the incumbent and defines the time period as beginning when the request was submitted. Accordingly, AT&T should have filed its petition no later than November 18, 2009, which is 160 days after June 11.

The Commission is a creature of statute and can only exercise the powers that are expressly conferred to it.<sup>5</sup> The Commission has previously held that an untimely petition for arbitration under the Act fails to confer subject matter jurisdiction.<sup>6</sup> Because the petition was filed on December 17, 190 days after the request for negotiation, the Commission must dismiss this matter for lack of jurisdiction.

**THE COMMISSION ORDERS THAT:**

1. The Petition for Arbitration filed by Southwestern Bell Telephone Company d/b/a AT&T Missouri is dismissed for lack of jurisdiction.
2. This order shall become effective on January 16, 2010.

( S E A L )

**BY THE COMMISSION**



Steven C. Reed  
Secretary

Kennard L. Jones, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 6th day of January, 2010.

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<sup>4</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753, 801 (8<sup>th</sup> Cir. 1997).

<sup>5</sup> *State ex rel. Missouri, K&T Ry. Co. v. Public Service Commission of Missouri*, 219 S.W. 386 (Mo 1919).

<sup>6</sup> *In the Matter of TCG St. Louis for Arbitration Pursuant to §252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-98-14 (Order Regarding Jurisdiction and Status of Case, issued Sep. 4, 1997).