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 With Global Crossing Local Services, Inc. and Global Crossing Telemanagement Inc.	)))))	Case No. IO-2011-0057

AT&T MISSOURI'S COMMENTS ON
DRAFT ARBITRATOR'S REPORT

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") and submits its Comments on the Draft Arbitrator's Report ("DAR").

AT&T Missouri appreciates the Arbitrator's diligent analysis of the issues – particularly Issue 1, the challenging issue concerning intercarrier compensation on VoIP traffic. As always, in an arbitration under section 252(b) of the federal Telecommunications Act, the ultimate question is what language will be included in the parties' interconnection agreement ("ICA"), and AT&T Missouri believes that the Arbitrator's answer to that question was for the most part sound and well-considered. In two limited respects, however, AT&T Missouri respectfully suggests that the VoIP contract language mandated by the DAR should better reflect the parties' practical, day-to-day realities of doing business under an interconnection agreement. Accordingly, AT&T Missouri proposes two modifications to that language – neither of which requires reconsideration of the factual or legal analysis that led the Arbitrator to the conclusions set forth in the DAR. AT&T Missouri also urges that the contract language associated with routine network modifications (Issue 3) restore the reference to the three modifications previously referenced in that language, so as to spell out, with as much clarity and precision as possible, the parties' rights and obligations in view of AT&T Missouri's unrebutted evidence and Global Crossing's pre-hearing admission.

ISSUE 1: WHAT IS THE APPROPRIATE COMPENSATION FOR VOIP?

The parties have agreed from the outset that the ICA will provide: "Switched Access Traffic shall mean all traffic that originates from an End User physically located in one (1) local exchange and delivered for termination to an End User physically located in a different local exchange" (subject to an exception that is not relevant here). The question presented by Issue 1 is what the ICA will say, immediately after the language just quoted, about interconnected VoIP traffic. The DAR concludes (at p. 18) that the ICA should recite, "Missouri law provides that interconnected voice over Internet protocol traffic that is not within one calling scope is subject to access charges as is any other switched traffic, regardless of format."

AT&T Missouri wholeheartedly agrees with that statement of Missouri law, but suggests two technical modifications to the contract language. First, "calling scope" should be changed to "local exchange," which means exactly the same thing. The reason for this change is simply that the preceding, agreed-to, sentence uses the term "local exchange," and the same term should be used again to convey the same concept. Otherwise, a future reader of the ICA might infer, incorrectly, that some difference was intended.

Second, the sentence should not only declare what Missouri law provides, but also expressly require that the parties comply with the law. Surely this was the Arbitrator's intent. To avoid any possible misunderstanding, however, the contract language should be framed in terms of the parties' rights and obligations, rather than as a mere recitation of a legal proposition.

Accordingly, AT&T Missouri suggests that the sentence to be included in section 6.14.1 (see DAR at 9) read as follows (with the proposed additions to the DAR's language italicized and deletions in strikethrough): "*Consistent with* Missouri law, ~~provides that~~ interconnected voice over Internet protocol traffic that is not within one *local exchange* ~~calling scope~~ is subject

to access charges as is any other switched traffic, regardless of format." With those minor technical changes, the provision will have the effect that AT&T Missouri believes the Arbitrator intended, and will be altogether acceptable to AT&T Missouri, notwithstanding that it is not the language AT&T Missouri proposed.

AT&T Missouri anticipates, however, that Global Crossing will contend in its comments that the Arbitrator's VoIP language should be narrowed, so that it encompasses not all interconnected VoIP traffic (as it now properly does – both in the version in the DAR and in the modified version proposed by AT&T Missouri), but only a subset of interconnected VoIP traffic – fixed intrastate VoIP traffic. The Commission should reject any such objection.

First, the parties placed squarely before the Commission the question of intercarrier compensation for *all* interconnected VoIP traffic – whether fixed or nomadic, intrastate or interstate. As the DAR recognizes (at p. 4 & n.8), the Commission must resolve the issues set forth in the arbitration petition and response, and in this instance that includes compensation for VoIP traffic in general, not just a subset of VoIP traffic. Thus, the VoIP language to be included in the ICA must encompass all interconnected VoIP traffic.

Second, under current federal law, like Missouri law, interconnected voice over Internet protocol traffic that is not within one local exchange (*i.e.*, that originates in one local exchange and terminates in another) is subject to access charges as is any other switched traffic, regardless of format. As explained in AT&T Missouri's initial brief and reply brief on Issue 1, and as the DAR recognizes (at p. 12), the FCC's "enhanced service provider" access charge exemption applies only to particular persons – namely, enhanced or information service providers. As a result, a telecommunications carrier that transports interstate VoIP traffic for an ESP or ISP

remains subject to interstate access charges when it uses local exchange switching facilities (*i.e.*, AT&T Missouri's local network) to terminate traffic.

ISSUE 2: SHOULD GLOBAL CROSSING BE PERMITTED TO OBTAIN MORE THAN 25% OF AT&T MISSOURI'S AVAILABLE DARK FIBER? SHOULD AT&T MISSOURI BE ALLOWED TO RECLAIM UNUSED DARK FIBER AFTER A REASONABLE PERIOD SO THAT IT WILL BE AVAILABLE FOR USE BY OTHER CARRIERS?

AT&T Missouri concurs fully with the DAR's resolution of Issue 2. The contract provisions that the DAR endorses are a reasonable and non-discriminatory means to ensure that multiple carriers will have fair access to AT&T Missouri's limited supply of dark fiber. Moreover, such provisions have been approved by the Federal Communications Commission, by other state commissions (including, most recently, the Kansas Corporation Commission), and by this Commission in its 2005 post-MTA proceeding.

ISSUE 3: WHICH ROUTINE NETWORK MODIFICATION (RNM) COSTS ARE NOT BEING RECOVERED IN EXISTING RECURRING AND NON-RECURRING CHARGES?

The question presented by this issue is whether the underscored language below will or will not be included in the ICA:

> 11.1.7 AT&T-22STATE shall provide RNM at the rates, terms and conditions set forth in this Attachment and in the Pricing Schedule or at rates to be determined on an individual case basis (ICB) or through the Special Construction (SC) process; provided, however, that AT&T-22STATE will impose charges for RNM only in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. **The RNM for which AT&T-22STATE is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC as an ICB/SC include, but are not limited to: (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), and (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf.**

As the undisputed language in plain font states, the parties had already agreed that AT&T Missouri will charge Global Crossing for routine network modifications ("RNMs") whose costs

are not already recovered in AT&T Missouri's existing recurring and non-recurring charges. The parties' disagreement was simply whether the three RNMs enumerated in the underscored language fall into that category – *i.e.*, whether AT&T Missouri in fact does not recover the costs of those RNMs. AT&T Missouri conclusively demonstrated, through unrebutted testimony, that it does not recover the costs of those three RNMs in its existing recurring and non-recurring charges.

The DAR agrees that AT&T Missouri is entitled to charge Global Crossing for the three enumerated RNMs. Nonetheless, the DAR rejects the contract language that reflects that entitlement, based on the fact that Global Crossing, at the pre-hearing conference, "stated that it no longer disputes that matter." DAR at 23-24. In light of that concession, the DAR concludes, "The named items no longer add clarity since Global ceased to deny, and the Commission has found, that none [of the costs of the three enumerated items] are included in AT&T's recurring and nonrecurring charges." *Id*. at 25.

AT&T Missouri of course agrees with the Arbitrator's conclusion that the costs of the three enumerated RNMs are not included in AT&T Missouri's recurring and nonrecurrning charges. Global Crossing's concession to that effect, however, is a reason to affirmatively include AT&T Missouri's proposed language in the ICA, not a reason to exclude it. Moreover, as a practical matter regarding contract implementation, it is essential – in order to ensure against future disputes – for an interconnection agreement to spell out with as much clarity and precision as possible the parties' rights and obligations. If, for example, Global Crossing orders an unbundled network element, say, in 2013, and the provisioning of that network element requires (for example) the addition of an equipment case, AT&T Missouri is entitled, according to the findings made in the DAR, to charge Global Crossing for that equipment case. *Id*. There is no

guarantee, however, that Global Crossing (perhaps represented in 2013 by individuals who were not privy to this arbitration) will concede that. Indeed, Global Crossing continued to contest the point in its arbitration briefs, notwithstanding AT&T Missouri's unrebutted evidence and the unequivocal concession Global Crossing made at the pre-hearing conference.[1] In order for the ICA to be as clear as possible, and to eliminate a potential area of later dispute when the parties are actually doing business under the ICA, the ICA should identify the three RNMs that AT&T Missouri proved, and that the Commission found, AT&T Missouri is entitled to charge for. The upside of identifying those three items in the ICA is clear, and there is no downside.

The Arbitrator appeared troubled, however, by the fact that AT&T Missouri's proposed language provided that the RNMs for which AT&T Missouri does not elsewhere recover "*include, but are not limited to*" the enumerated three. *Id*. The reason for that language is simply that there *may be* additional RNMs that qualify. To the extent that the "not limited to" language remains a concern, however, AT&T Missouri would not object to its exclusion or – preferably – to the following modification, which appropriately expresses the possibility that there may be additional qualifying RNMs, while at the same time not implying that there are: "The RNMs for which AT&T-22STATE is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC as an ICB/SC include, but are not <u>necessarily</u> limited to: (i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), and (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf."

[1] *See* Reply Brief of Global Crossing (Oct 18, 2010), at 9-10 ("AT&T claims that Global Crossing somehow conceded during the October 5 conference that AT&T is not recovering certain costs in its TELRIC rates reflected in the disputed ICA language. That is clearly not the case. Global Crossing merely said that it has no basis on which to rebut the testimony of AT&T's witness, Mr. Sanders, on that point. Mr. Sanders has said AT&T is not recovering certain RNM-related costs in its TELRIC rates. Whether that is the case is for this Commission to decide and is not known or unknown by Global Crossing.").

CONCLUSION

AT&T Missouri respectfully submits that the Commission should adopt the contract language recommended in the Draft Arbitrator's Report, with the modifications proposed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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