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 INITIAL POST-HEARING BRIEF ON ARBITRATION ISSUES 2 AND 3

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") and respectfully submits its initial brief on Issues 2 and 3 in this proceeding.[1] Both issues concern language that AT&T Missouri proposes to include in the parties' interconnection agreement ("ICA") and that Global Crossing opposes. As we demonstrate below, AT&T Missouri's proposed language – which the Kansas Corporation Commission adopted in the parties' recent arbitration there – is reasonable and consistent with federal law, while Global Crossing's objections to AT&T Missouri's proposed language are without merit.

ARGUMENT

ISSUE 2: SHOULD GLOBAL CROSSING BE PERMITTED TO OBTAIN MORE THAN 25% OF AT&T MISSOURI'S AVAILABLE DARK FIBER? SHOULD GLOBAL CROSSING BE ALLOWED TO HOLD ONTO DARK FIBER THAT IT HAS ORDERED FROM AT&T MISSOURI INDEFINITELY, OR 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 Position**:** The parties' ICA should include AT&T Missouri's proposed provisions that seek to ensure that all carriers will have equal access to AT&T Missouri's limited inventory of spare dark fiber. The Federal Communications Commission ("FCC") has found provisions like those proposed by AT&T Missouri reasonable, as have other state commissions – including the

[1] The parties submitted their initial briefs on Issue 1 on September 29, 2010.

> Kansas Corporation Commission in the parties' recent arbitration there.[2] Global Crossing's opposition to AT&T Missouri's proposed language is anticompetitive.

Discussion: Dark fiber is "deployed unlit fiber optic cable that connects two points within the incumbent LEC's network. . . . [D]ark or 'unlit' fiber, unlike 'lit' fiber, does not have electronics on either end of the fiber segment to energize it to transmit telecommunications service."[3] AT&T Missouri must provide interoffice dark fiber transport to Global Crossing, and all other requesting competitive local exchange carriers ("CLECs"), as an unbundled network element ("UNE") at certain locations on AT&T Missouri's network. However, because dark fiber is a finite resource,[4] AT&T Missouri has proposed two contract provisions to maximize the availability of dark fiber to multiple carriers by preventing Global Crossing from unfairly monopolizing it. One provision limits Global Crossing to 25% of AT&T Missouri's spare unbundled interoffice dark fiber, in any given segment, for a two-year period; the other allows AT&T Missouri to revoke Global Crossing's access to dark fiber that Global Crossing does not use within twelve months after first leasing it. We address the two provisions separately.

1. The 25% limitation: AT&T Missouri proposes the following language for section 10.4.3 of Attachment 13:

> CLEC will not obtain any more than twenty-five (25%) percent of the spare UNE Dedicated Transport Dark Fiber contained in the requested segment during any two-year period.

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[2] Arbitration Award, *Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996*, Kansas Corporation Commission Docket No. 10-SWBT-419-ARB (April 23, 2010), at 36, *aff'd in pertinent part*, Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing (Aug. 13, 2010), at 14-15.

[3] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, ¶ 325 (1999) ("*UNE Remand Order*").

[4] Direct Testimony of Deborah Fuentes Niziolek ("Niziolek Direct") at p. 5, lines 1-2.

Global Crossing objects to AT&T Missouri's proposed language, and thus in effect contends that it should have unlimited access to all the available interoffice dark fiber capacity in a given segment – and this despite the fact that Global Crossing has not ordered even a single strand of dark fiber from AT&T Missouri (or any other AT&T Incumbent local exchange carrier ("ILEC") since at least 2006).[5] That position is patently unreasonable, because it would enable Global Crossing to foreclose all other CLECs from access to AT&T Missouri's limited inventory of dark fiber.

AT&T Missouri's proposed language is in line with limitations on dark fiber that the FCC has ruled are reasonable. In the *UNE Remand Order*, the FCC stated that "state commissions retain the flexibility to establish reasonable limitations governing access to dark fiber loops in their states."[6] In the same paragraph, the FCC described the restrictions that the Texas Public Utility Commission ("TPUC") had adopted as "moderate."[7] Those restrictions included the 25% restriction AT&T Missouri is proposing here. Further, the FCC expressly noted that the 25% limitation "address[es] the incumbent LEC's legitimate concerns."[8]

Other state commissions have adopted the 25% limitation that AT&T Missouri proposes here. When the California Public Utilities Commission did so, it stated:

> Spare dark fiber is limited. Level 3's [the CLEC's] proposal creates the risk of the supply being limited to fewer CLECs and controlled by fewer CLECs, to the detriment of all other CLECs. Pacific's [the ILEC's] proposal more reasonably ensures that the limited spare dark fiber will potentially be available to more CLECs.[9]

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[5] *See* AT&T Missouri's Entry of Discovery Responses into the Record, October 8, 2010, *attaching* Global Crossing's Responses to AT&T Missouri Data Requests 10 and 11.
[6] *UNE Remand Order* ¶ 199.
[7] *Id.*
[8] *Id.* ¶ 352 n. 694.
[9] Final Arbitrator's Report, *Level 3 Communications Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, for Rates, Terms, and Conditions with Pacific Bell Telephone Company*, California Public Utilities Commission, A00-04-037 (Sept. 5, 2000), at 42.

Similarly, the TPUC adopted the 25% limitation because "it is an important tool for the implementation of the policy of the Commission to have dark fiber available to a number of CLECs."[10] And the Wisconsin Public Service Commission concluded, "it is reasonable to limit the number of dark fibers that can be obtained by any one CLEC to 25% of the total spare fibers. . . . The Panel finds that this restriction is reasonable in that it allows multiple providers to share the spare capacity."[11]

Most recently, in an arbitration proceeding in which Global Crossing contested the same contract language that AT&T Missouri proposes here, the Kansas Corporation Commission ("KCC") resolved the issue in favor of AT&T Kansas based on its conclusion that, "Without capacity restrictions, one carrier could swoop into all of the attractive fiber segments and shut out the competition by leasing the entire dark fiber inventory. The Arbitrator awards [this] issue . . . to AT&T and directs the adoption of AT&T's proposed language into the parties' interconnection agreement."[12]

Global Crossing's objections to AT&T Missouri's language are flimsy at best. First, Global Crossing contends that the 25% limitation does not appear in the FCC's rules.[13] That

[10] Arbitration Award on Post Interconnection Disputes, *Petition of Waller Creek for Arbitration With Southwestern Bell Telephone Company* (Docket 17922); *Complaint of Waller Creek Communications, Inc., For Post Interconnection Agreement Dispute Resolution With Southwestern Bell Telecommunications Company*, Texas Public Utility Commission, Docket 19722/20268 (dated June 8, 1999), at 11-12. The Texas commission reaffirmed that decision in a subsequent arbitration proceeding. Arbitration Award, *Joint Petition Of Coserv, L.L.C. d/b/a Coserv Communications And Multitechnology Services, L.P. d/b/a Coserv Broadband Services For Arbitrations Of Interconnection Rates, Terms, Conditions And Related Arrangements With Southwestern Bell Telephone Company*, Texas Public Utility Commission, Docket 23396, dated April 2001, at 124-29.

[11] Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, Wisconsin Public Service Commission, Docket 05-MA-120 (Oct 12, 2000), at 94.

[12] Arbitration Award, *Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996*, Kansas Corporation Commission Docket No. 10-SWBT-419-ARB (April 23, 2010), at 36, *aff'd in pertinent part*, Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing (Aug. 13, 2010), at 14-15.

[13] Direct Testimony of Mickey Henry ("Henry Direct") at p. 4, line 3.

contention is unavailing. It is true that the FCC's Rules do not *explicitly* refer to the 25% limitation. However, FCC Rule 307(a) provides:

> An incumbent LEC shall provide, to a 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 terms and conditions that are just, reasonable, and nondiscriminatory* in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules.[14]

The 25% limitation is a just, reasonable and nondiscriminatory term and condition, as the FCC found in its *UNE Remand Order*. Thus, even though the FCC's rules do not explicitly mention the 25% limitation, the limitation is fully consistent with those rules – and its omission would be inconsistent with them.

The requirement in FCC Rule 307(a) that terms and conditions for the provision of UNEs be *nondiscriminatory* is of particular significance here. The 25% limitation that AT&T Missouri is proposing is standard in AT&T Missouri interconnection agreements. During the 2005 post-M2A arbitration proceedings, virtually identical language – which was not even contested by the CLECs – was adopted by the Commission.[15] AT&T Missouri does its best to ensure that such language appears in all of its interconnection agreements; it appears in every Missouri ICA that AT&T Missouri's witness reviewed, including Global Crossing's current ICA.[16]

Global Crossing is a beneficiary of the 25% limitation that appears in the other AT&T Missouri interconnection agreements because the limitations in those ICAs ensure that other carriers cannot monopolize AT&T Missouri's dark fiber. It is only fair that Global Crossing be subject to the same restriction. Moreover, the omission of AT&T Missouri's proposed language from Global Crossing's ICA would be discriminatory vis-a-vis all those other carriers that have

[14] 47 C.F.R. § 51.307(a) (emphasis added).
[15] Niziolek Direct, at p. 8, lines 5-11.
[16] Rebuttal Testimony of Deborah Fuentes Niziolek ("Niziolek Rebuttal") at p. 4, line 3 – p. 5, line 7. *See also* Direct Testimony of Richard Hatch ("Hatch Direct") at p. 4, lines 6-15.

the language in their agreements.[17] Finally, it is telling that Global Crossing has ordered no dark fiber from AT&T Missouri or any other AT&T ILEC since at least 2006. In light of this, Global Crossing's assertion of its discriminatory position is unseemly.

Finally, Global Crossing contends that since it would be paying AT&T Missouri the appropriate Commission-approved rate to lease the dark fiber, AT&T Missouri should not be allowed to limit the amount of fiber Global Crossing can lease.[18] That point might make sense if Global Crossing were the only CLEC in Missouri, but it is not. Other competing carriers, as well as AT&T Missouri itself, need access to AT&T Missouri's spare dark fiber, which is a limited resource. Global Crossing's position on this issue is unreasonable and anti-competitive and should be rejected.[19]

2. Revocation in case of non-use: It is only fair, in a competitive environment in which more than one carrier may need access to particular dark fiber strands, to allow AT&T Missouri to reclaim spare interoffice dark fiber that a CLEC has ordered but not used for twelve months, so that AT&T Missouri can return the fiber to inventory where it will be available for AT&T Missouri or other carriers that actually need it.[20] Accordingly, AT&T Missouri has proposed the following language for section 10.7.2 of Attachment 13:

> Should the CLEC not utilize the fiber strand(s) subscribed to within the twelve (12) month period following the date AT&T-21STATE provided the fiber(s), AT&T-21STATE may revoke the CLEC's access to the UNE Dedicated Transport Dark Fiber and recover those fiber facilities and return them to AT&T-21STATE's inventory.

[17] Niziolek Rebuttal at p. 5, lines 1-7.
[18] Henry Direct at p. 4, lines 5-10.
[19] Assuming that AT&T Missouri's proposed language is adopted, AT&T Missouri will ensure compliance with the 25% limitation, just as it does today for CLECs whose ICAs already include the language, by means of databases that track and inventory dark fiber. Hatch Direct at p. 2, lines 11-25.
[20] Niziolek Direct at p. 9, lines 4-15.

This provision is just, reasonable and nondiscriminatory and thus consistent with FCC Rule 307(a). AT&T Missouri owns the dark fiber, maintains it, and has constructed interoffice dark fiber to be available to many carriers, including itself, other CLECs and interexchange carriers. CLECs simply lease the dark fiber when the fiber is not being used by AT&T Missouri or other carriers. AT&T Missouri is not proposing to arbitrarily reclaim dark fiber; rather, if Global Crossing has not placed electronics on the fiber after leasing it for twelve months, then AT&T Missouri should have the right to reclaim it and place it back in AT&T Missouri's inventory for use by other carriers.[21]

As noted above, the FCC spoke approvingly in the *UNE Remand Order* of the reasonable limitations that the TPUC had imposed on the ILEC's duty to provide dark fiber. Those limitations included, in addition to the 25% restriction discussed above, a revocation provision much like the one AT&T Missouri is proposing here. As the FCC noted, "[t]he Texas commission's dark fiber unbundling rules also allow incumbent LECs to take back underused (less than OC-12) fiber. . . ."[22] The FCC noted that that provision, like the 25% limitation, "address[es] the incumbent LEC's legitimate concerns."[23]

Global Crossing has no plausible objection to AT&T Missouri's proposed revocation language. As with the 25% limitation discussed above, Global Crossing's contention that the FCC's rules do not explicitly provide for revocation ignores the fact that FCC Rule 307(a) requires that contractual terms and conditions for the provision of dark fiber be just, reasonable and nondiscriminatory. Additionally, Global Crossing's contention that it should be able to do as it pleases with dark fiber it leases is anticompetitive, because it ignores the needs of other carriers. Global Crossing's position is also discriminatory, because other carriers' ICAs include

[21] Niziolek Direct at p. 9, lines 28-30 – p. 10, lines 1-7.
[22] *UNE Remand Order* ¶ 352 fn. 694.
[23] *Id.*

revocation provisions of the sort that AT&T Missouri is proposing here, and Global Crossing benefits from the presence of those provisions in its competitors' ICAs.[24]

Finally, Global Crossing contends there is no need for the revocation language because Global Crossing would not lease the fiber if it did not intend to use it.[25] That contention is unpersuasive, because if Global Crossing in fact uses the dark fiber it leases within a year after obtaining it, as it suggests it will, the revocation language will not come into play. The language should be included in the ICA in case Global Crossing's stated intentions do not come to fruition.

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

> AT&T Missouri Position**:** AT&T Missouri has demonstrated – and Global Crossing does not dispute – that when AT&T Missouri adds an equipment case, adds a doubler or repeater or installs a repeater shelf, AT&T Missouri incurs costs that are not recovered in AT&T Missouri's recurring or non-recurring charges for routine network modifications. Accordingly, the parties' interconnection agreement should so state. Global Crossing has no plausible reason for objecting to the inclusion in the ICA of language that it concedes is accurate and that will ensure against uncertainty in the future.

Discussion: This issue concerns section 11.1.7 of Attachment 13 (concerning unbundled network elements), which reads as follows, with agreed language in normal font and bold underscored language proposed by AT&T Missouri and opposed by Global Crossing:

> 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**

[24] Hatch Direct at p. 4, line 6 – p. 5, line 2; Niziolek Rebuttal at p. 4, line 3 – p. 5, line 7.
[25] Henry Direct at p. 4, lines 10-12.

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 agreed language reflects, Global Crossing recognizes that AT&T Missouri should be allowed to charge Global Crossing for the costs AT&T Missouri incurs when it performs routine network modifications for Global Crossing and that AT&T Missouri does not already recover through its existing recurring and non-recurring charges. The only question is what RNM costs AT&T Missouri in fact does not recover through those existing charges.

The answer is that AT&T Missouri incurs otherwise unrecovered costs when it performs the RNMs identified in items (i), (ii) and (iii) of its proposed language. Global Crossing's position during contract negotiations was not that it disagreed, but only that AT&T Missouri's proposed contract language should not be included in the parties' ICA unless AT&T Missouri demonstrated it was accurate. Specifically, Global Crossing's position was:

> The rule is that AT&T Missouri can charge for RNM in order to recover its costs. *Global Crossing has no knowledge as what costs are currently being recovered by AT&T Missouri in its MRCs and NRCs and cannot agree that the costs specified are not being recovered. Before the Commission permits AT&T to include such language in an interconnection agreement, AT&T should be required to demonstrate to the Commission that it in fact is not recovering such costs in existing charges.* And any charges that AT&T is not already recovering need to be approved in advance by the Commission.[26]

In its testimony, AT&T Missouri made the showing that Global Crossing demanded. AT&T Missouri witness Andrew Sanders demonstrated in detail that AT&T Missouri is not recovering in any existing recurring or nonrecurring charges the costs it incurs in connection with item (i), (ii) or (iii).[27] We do not reiterate that demonstration here, because Global Crossing does not dispute it. Global Crossing chose to forego cross-examination of Mr. Sanders, and took no issue in its rebuttal testimony with Mr. Sanders' demonstration that AT&T Missouri does not

[26] DPL at pp. 9-10 (emphasis added).
[27] Direct Testimony of Andrew D. Sanders ("Sanders Direct") at p. 5, line 9 – p. 12, line 12.

recover the costs of items (i), (ii) and (iii). Indeed, Global Crossing conceded the point at the October 5 prehearing and mark-up conference:

> JUDGE JORDAN: Now all this is -- everything, both the agreed and disagreed language, is against the background of what AT&T is recovering or not recovering in its current rates.
>
> I understand that's really not an issue and it's -- that's -- that Global is satisfied as to that issue; is that correct?
>
> MR. JOHNSON: Yeah. Based on the testimony, which we have no reason to question -- we didn't rebut it. . . .[28]
>
> * * *
>
> JUDGE JORDAN: . . . The disputed language [in section 11.1.7] really has two components as to which it says, The parties agree. And the parties agree to the following. Okay. And number one of -- one of them had to do with the -- whether AT&T was recovering its costs in certain rates. And –
>
> MR. GRYZMALA: Correct.
>
> JUDGE JORDAN: And Global has very helpfully addressed that issue and no longer disputes it. And that's -- that moves us very far along to one final matter. . . .[29]

That should be the end of the matter. Global Crossing's objection to AT&T Missouri's proposed language was that it needed proof that AT&T Missouri does not recover in its existing charges the costs it incurs when it performs items (i), (ii) and (iii); AT&T Missouri came forward with that proof; and Global Crossing has accepted AT&T Missouri's proof.

Nonetheless, Global Crossing – even while not disputing the accuracy of AT&T Missouri's proposed language – suggests that the language should not be included in the parties' ICA. Specifically, Global Crossing proposes that the Commission defer decision on the question whether AT&T Missouri is already recovering the costs of items (i), (ii) and (iii) until a later date, when Global Crossing orders a UNE for which AT&T Missouri seeks to impose charges to

[28] Tr. (Oct. 5, 2010), at p. 86, lines 14-22.
[29] *Id.* at p. 88, lines 5-13; *see also id.* at p. 70, line 16 – p. 71, line 8.

recover those costs.[30] The Commission should reject that suggestion. AT&T Missouri has conclusively demonstrated that it is not recovering the costs in question, and that AT&T Missouri's proposed language should therefore be included in the ICA, so there is no reason for the Commission to defer decision. Moreover, Global Crossing's approach would waste the Commission's and the parties' resources, because it would require a proceeding in the future to resolve a matter that can and should be resolved now.

Other state commissions, including the Indiana Utility Regulatory Commission and the Illinois Commerce Commission, have resolved the issue presented here in favor of the AT&T ILEC.[31] The Kansas Corporation Commission ("KCC"), in the recent Global Crossing/AT&T Kansas arbitration in which the KCC was presented with exactly the same issue presented here, found as follows:

> Global Crossing agreed that AT&T should recover the cost of providing RNM service and/or equipment when requested by Global Crossing. The Arbitrator determined that these charges are *not recovered elsewhere* by AT&T because RNM charges are not contained in the long-run incremental cost study for AT&T's network. The Commission adopts the determination by the Arbitrator of Issue 6.[32]

Global Crossing contends that any rates AT&T Missouri seeks to charge for the RNMs identified in items (i), (ii) and (iii) "must first be approved (tariffed) by the Missouri Public Service Commission."[33] That contention fails for several reasons. First and foremost, it is a red herring, because AT&T Missouri's proposed language does not say anything about what rates AT&T Missouri will charge for the RNMs at issue; all it says is that AT&T Missouri will be

[30] Henry Direct at p. 5, lines 10-16.
[31] *See* Sanders Direct at p. 8, line 10 – p. 10, line 5.
[32] *In the Matter of the Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996,* Docket No. 10-SWBT-419-ARB, Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues, August 13, 2010, at 17. (emphasis added).
[33] Henry Rebuttal at 4, lines 18-20.

permitted to charge for them. With that language included in the ICA, the parties will have a binding agreement that if Global Crossing places an order that requires AT&T Missouri to add a repeater, or to do any of the other tasks identified in items (i), (ii) and (iii) of AT&T Missouri's language, AT&T Missouri will be allowed to charge Global Crossing for the performance of those tasks. At that point, the parties may or may not have a disagreement about the rate AT&T Missouri proposes to charge; if they do have a disagreement and are unable to resolve it on a "business-to-business" basis, they can call upon the Commission to resolve it. There is no reason, however, not to resolve now the disagreement that can so readily be resolved – and the only disagreement that is teed up in the disputed language – namely, whether AT&T Missouri is in fact not recovering the costs of the specified RNMs through its current charges.

Beyond that, Global Crossing offers no support of any kind for its assertion that the Commission must pre-approve AT&T Missouri's RNM charges – Mr. Henry simply says it.[34] And indeed, Global Crossing's assertion is contrary to contract language to which Global Crossing has already agreed. Again, the agreed portion of the contract provision that includes the disputed language reads as follows

> 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. (emphasis added)

By definition, charges assessed on an individual case basis or special construction process basis are determined at the time of the order – not pre-set by the Commission Thus, Global Crossing

[34] *Id.*

has *already* agreed to be subject to charges that are not pre-approved by the Commission. Moreover, the Commission, in Case No. TO-2005-0336, approved ICB pricing for RNMs.[35]

Finally, the RNM costs at issue here "cannot be quantified on a 'one size fits all' basis; rather, the costs will necessarily vary from one UNE order to another."[36] Accordingly, in the parallel proceeding in Kansas, the KCC accepted AT&T Kansas' statement that "it could not quantify or describe at this time the RNM costs because they would vary from one UNE order to another,"[37] and on that basis overruled the arbitrator's recommended instruction that AT&T Kansas "provide a list of charges it would assess Global Crossing for RNMs" and related items.[38]

In sum, there is no sound reason to require that the Commission embark on case-by-case future proceedings to resolve a matter which can, and should, be resolved now, by adopting the language AT&T Missouri proposes.

CONCLUSION

For the foregoing reasons, the Commission should resolve Issues No. 2 and 3 in favor of AT&T Missouri.

[35] Rebuttal Testimony of Andrew D. Sanders, p. 6, lines 1-27.
[36] Sanders Direct, p. 10, lines 19-21.
[37] *In the Matter of the Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996.* Docket No. 10-SWBT-419-ARB. August 13, 2010, at 18.
[38] *Id.*

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY
D/B/A AT&T MISSOURI

BY 

Jeffrey E. Lewis #62389
Leo J. Bub #34326
Robert J. Gryzmala #32454
Attorney for Southwestern Bell Telephone Company
One AT&T Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (tn)/314-247-0014 (fax)
leo.bub@att.com
robert.gryzmala@att.com

CERTIFICATE OF SERVICE

Copies of this document and all attachments thereto were served on the following by e-mail on October 13, 2010.


Robert J. Gryzmala

General Counsel
Kevin Thompson
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov
kevin.thompson@psc.mo.gov

Public Counsel
Office Of The Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

Mark P. Johnson
Lisa Gilbreath #62771
Sonnenschein Nath & Rosenthal LLP
4520 Main, Suite 1100
Kansas City, Missouri 64111
mjohnson@sonnenschein.com
lgilbreath@sonnenschein.com
Attorneys for Global Crossing Local Services, Inc.
and Global Crossing Telemanagement, Inc.

Michael J. Shortley, III
Senior Associate & General Counsel
Global Crossing Local Service, Inc. and
Global Crossing Telemanagement, Inc.
1080 Pittsford Victor Road
Pittsford, NY 14534
Michael.Shortley@globalcrossing.com