

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

GLOBAL CROSSING'S SUBSEQUENT FINAL OFFER

COME NOW Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. (collectively, "Global Crossing"), pursuant to Sections 251 and 252 of the federal Communications Act of 1934, as amended (the "Act"), 4 CSR 240-36.040(5), and the Missouri Public Service Commission's ("Commission") September 16, 2010 Order Setting Procedural Schedule, and hereby submit their subsequent final offer regarding the Petition for Arbitration filed by Southwestern Bell Telephone Company ("ATT"), stating the following:

1. Global Crossing submits as its subsequent final offer the language contained in the Disputed Points List ("DPL") attached hereto.
2. This subsequent final offer meets the requirements of section 251 of the Act, including the rules prescribed by the Commission and the Federal Communications Commission ("FCC") pursuant to that section.
3. This subsequent final offer meets the requirements of section 252(d) of the Act, including the rules prescribed by the Commission and the FCC pursuant to that section.
4. The language that Global Crossing has proposed will be, if adopted by the Commission, included in the interconnection agreement with AT&T. These terms will be implemented immediately upon Commission approval of the interconnection agreement, as they apply to charges which AT&T will impose for VoIP-related traffic and Global Crossing orders for dark fiber. In both cases, the terms will not be implemented gradually or over time, but must be followed immediately upon Commission approval of the ICA.

Wherefore, Global Crossing requests that the Commission consider its Subsequent Final Offer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of October, 2010, served a true and final copy of the foregoing by electronic transmission upon the following, listed below, in accordance with Commission rules.

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Issue No.	Attachment & Section No.	Issue Statement	Disputed Contract Language	AT&T Missouri Position	Global Crossing Position
1	Attachment 2 – ISP-Network Interconnection Section 6.14	What is the appropriate compensation for VoIP?	6.14.1 For purposes of this Agreement only, 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 (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T-22STATE's local exchange tariffs on file with the applicable state commission) <u>including, without limitation, any traffic that originates/terminates over a Party's circuit switch, including traffic from a service that (i) terminates/originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of how many providers are involved in providing IP transport) and/or (ii) terminates to/originates from the End User's premises in IP format, except that Switched Access Traffic shall not include any traffic that originates and/or terminates at the End User's premises in Internet Protocol format.</u> Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate	The parties agree that Switched Access Traffic is subject to interstate and intrastate switched access charges and that Switched Access Traffic is traffic that originates from an end user physically located in one local exchange and is delivered for termination to an end user physically located in a different local exchange (excluding traffic between exchanges sharing a common mandatory local calling area as defined in AT&T Missouri's local exchange tariff). The parties also agree that local IP-to-PSTN and PSTN-to-IP traffic should be treated as local traffic. ("IP-to-PSTN" traffic means voice traffic that originates in Internet Protocol format and is	The Commission is required to apply existing law in this arbitration proceeding. <i>UTEX Communications Corp.</i>, 24 FCC Rcd 12573, 12578 (WCB 2009). Under existing law, access charges do not apply to IP-PSTN or PSTN-IP traffic. Such traffic is "enhanced" or "information services" traffic that is exempt from access charges. Enhanced services are not regulated under Title II of the Communications Act. See <i>Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)</i>, 77 FCC 2d 384, 432-35 (1980). The FCC's definition of "enhanced services" has

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			and interstate switched access charges. However, in states where applicable law provides, such compensation shall not exceed the compensation contained in the respective AT&T-22STATE tariff in whose exchange area the End User is located, provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:	transmitted to the Public Switched Telephone Network ("PSTN"), e.g., AT&T Missouri's network, from which it is terminated to the called party. "PSTN-to-IP" traffic means the converse. The parties disagree, however, about whether non-local IP-to-PSTN and PSTN-to-IP traffic should be treated differently, for intercarrier compensation purposes, than other non-local traffic that is sent to or from the PSTN. There is no basis for treating VoIP traffic differently than other voice traffic. The FCC's rules, and FCC-approved tariffs, which subject Switched Access Traffic to switched access charges, apply to all telecommunications, and do	been carried forward into the definition of "information services" from the Telecommunications Act of 1996. See 47 U.S.C. § 153(20). VOIP services (which include IP-PSTN and PSTN-IP on an end-to-end basis) are enhanced services and are exempt from access charges. See <i>Developing a Unified Intercarrier Compensation Regime</i> , 16 FCC Rcd 9610, 9613, 9615 (2001) ("IP telephony [is] generally exempt from access charges under the enhanced service provider (ESP) exemption"); <i>MTS and WATS Market Structure</i> , 97 FCC 2d 682, 715 (1983) (exempting enhanced service providers from access

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				not make any special provision for VoIP traffic. In addition, Missouri law squarely supports AT&T Missouri's position: "Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges." Section 392.550.2, RS Mo. (enacted in 2008 as part of HB 1779). Although the FCC has not yet expressly addressed IP-to-PSTN traffic or PSTN-IP traffic, it has ruled that non-local PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic") is telecommunications subject to access charges. <i>Petition</i>	charges). Federal courts in Missouri and Washington, DC, have issued decisions clearly exempting VOIP traffic from access charges because they undergo a net protocol conversion and are therefore enhanced services. See <i>PAETEC Communications, Inc. v. CommPartners, LLC</i>, No. 08-0397 (D.D.C. Feb. 18, 2010); <i>Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n</i>, 461 F. Supp. 2d 1055, 1081-83 (E.D. Mo. 2006). Global Crossing is both a retail provider of VOIP services and a wholesale provider for other entities with VOIP retail offerings. As such, Global Crossing is entitled to terminate VOIP traffic

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				for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephone Services are Exempt from Access Charges, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97). This ruling also supports AT&T Missouri's position that IP-to-PSTN traffic and PSTN-to-IP traffic is telecommunications subject to access charges under current FCC rules. Global Crossing's citation to various federal authorities, including the Paetec and Southwestern Bell cases, is inapposite. See, e.g., <i>In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the</i>	without having to pay access charges. The FCC has had this issue squarely placed before it on numerous occasions, and it has expressly declined to conclude that VOIP services are telecommunications services (i.e., not enhanced services). See <i>Universal Service Contribution Methodology</i>, 21 FCC Rcd 7518 (2006) (subjecting VOIP services to universal service requirements without concluding they are telecommunications services); <i>Communications Assistance for Law Enforcement Act and Broadband Access Services</i>, 20 FCC Rcd

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				<i>Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC 06-55, released Mar. 1, 2007 (DA 07-709).</i> Global Crossing's attack on Section 392.550.2, RS Mo also must be rejected. The Commission, a creature of the Missouri Legislature, has no authority to find or otherwise declare that the provisions of state law are preempted by federal law or are otherwise unenforceable. Even apart from the foregoing considerations, Global Crossing's proposed language is unacceptable because it would leave the treatment of VoIP traffic open, thus guaranteeing	14989 (2005) (subjecting to VOIP services to the requirements of CALEA but refusing to categorize VOIP as a telecommunications service under the <i>Communications Act</i>); <i>E911 Requirements for IP-Enabled Services</i>, 20 FCC Rcd 10245 (2005) (subjecting interconnected VOIP services to E911 requirements but refusing to categorize those services as telecommunications). AT&T's reliance on the IP-in-the-Middle Order is sorely misplaced. In that order the FCC concluded that IP-in-the-Middle traffic is not an information service because there is no net change in protocol,

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				that there will be continuing disputes under the ICA for such traffic. On August 13, 2010, in <i>Docket No. 10-SWBT-419-ARB</i>, the Kansas Corporation Commission addressed this issue by adopting the Arbitrator's ruling in favor of AT&T.	on an end-to-end basis. See <i>Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges</i>, 19 FCC Rcd 7457, 7465 (2004). This merely restated existing law. See <i>id.</i> at 7459-60. Where there is a net protocol conversion (as in IP-PSTN and PSTN-IP traffic), the traffic is an enhanced service and is not subject to access charges. It is AT&T that is seeking to rewrite existing law, not Global Crossing. The Commission should reject AT&T's proposed language and accept Global Crossing's. The Missouri statute that AT&T cites is inapplicable

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2	Attachment 13 – 251(c)(3) UNEs Sections 10.4.3 and 10.7.2	Should Global Crossing be permitted to obtain more than 25% of AT&T Missouri's available Dark Fiber?	<u>10.4.3 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.</u>	No – a CLEC should be allowed to obtain no more than 25% of the available dark fiber available in a given transport segment during any two-year period. This limitation ensures that dark fiber will be available for other competing carriers, thereby ensuring parity conditions.	here because this is a question of federal law, and the FCC has preempted state jurisdiction over the regulation of VOIP services. <i>Minnesota Pub. Utils. Comm'n v. FCC</i> , 483 F.3d 570 (8 th Cir. 2007), <i>affg</i> , <i>Vonage Holdings Corp.</i> , 19 FCC Rcd 22404 (2004). Hence the Missouri statute does not apply. This requirement does not appear in the FCC's rules. Moreover, the burden is on AT&T to demonstrate that making dark fiber available interferes with its carrier of last resort obligations. This is an evidentiary burden and AT&T's presumption is inappropriate. If and when a CLEC finds itself in this

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				AT&T Missouri's proposed language is consistent with the FCC's statement in its Third Report and Order—FCC 99-238 – that “if incumbent LECs are able to demonstrate to the state commission that unlimited access to unbundled dark fiber threatens their ability to provide service as a carrier of last resort, state commissions retain the flexibility to establish reasonable limitations governing access to dark fiber loops in their state”.	position, then AT&T may petition for a factual determination as to its carrier of last resort obligations.
		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	<u>10.7.2 Should 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 CLEC's access to the UNE Dedicated Transport Dark Fiber and recover those fiber facilities and return them to AT&T-21STATE's inventory.</u>	AT&T Missouri's proposed language for section 10.7.2 serves a similar purpose. A CLEC should not be allowed to deprive other competitors access to the limited amounts of available dark fiber by acquiring dark	

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		to reclaim unused Dark Fiber after a reasonable period so that it will be available for use by other carriers?		fiber and not using it. AT&T Missouri's proposed language gives a CLEC a full year to make use of dark fiber. If the CLEC does not use the fiber within that period, it is appropriate to allow AT&T Missouri to reclaim the fiber so it will be available for use by others. On August 13, 2010, in <i>Docket No. 10-SWBT-419-ARB</i> , the Kansas Corporation Commission addressed these issues by adopting the Arbitrator's ruling in favor of AT&T.	
3	Attachment 13 - 251(c)(3) UNEs-- Section 11.1.7	Which Routine Network Modification ("RNM") costs are not being recovered in existing recurring and non-recurring charges?	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	The parties agree that AT&T Missouri should be allowed to recover its costs for RNMs that are not otherwise already being recovered. AT&T Missouri's proposed	The rule is that AT&T Missouri can charge for RNM in order to recover its costs. Global Crossing has no knowledge as to what costs are currently being recovered by AT&T Missouri

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			charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. <u>The Parties agree that 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.</u>	language accurately identifies those costs. On August 13, 2010, in <i>Docket No. 10-SWBT-419-ARB</i>, the Kansas Corporation Commission addressed this issue by adopting the Arbitrator's ruling in favor of AT&T.	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.

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