

**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 STATEMENT

Global Crossing hereby submits, pursuant to 4 CSR 240-36.050, this Statement regarding the conformed interconnection agreement's ("ICA") compliance with the requirements of sections 251 and 252 of the federal Communications Act of 1934, as amended (the "Act"), Missouri statutes, and the Commission's rules in the above-captioned proceeding.

I. The ICA Provisions Subjecting VOIP to Access Charges are in Violation of Federal Law.

A. VOIP Traffic Is Exempt from Access Charges.

Access charges clearly do not apply to VOIP traffic handled by carriers, a fact that is absent from the ICA. Section 251(b)(5) of the Act requires all telecommunications traffic to be subject to reciprocal compensation and not access charges.¹ Section 251(g) of the Act creates a limited exemption from the reciprocal compensation requirement of Section 251(b)(5) where there was a "pre-Act obligation relating to inter-carrier compensation."²

As discussed at length in Global Crossing's briefs, FCC precedent dating back to 1980, which has been confirmed in recent federal court cases, clearly confirms that information services traffic — i.e., traffic like interconnected VOIP that undergoes a net protocol conversion

¹ 47 U.S.C. § 251(b)(5).

² 47 U.S.C. § 251(g).

— is exempt from access charges.³ The court in *PAETEC*,⁴ which, following on decisions of the Supreme Court in *Brand X*⁵ and the Eastern District of Missouri in *Southwestern Bell v. Missouri Public Service Commission*,⁶ held VOIP traffic to be exempt from access charges regardless of the type of entity transmitting it. As the court in *PAETEC* held, “[t]here cannot be a pre-Act obligation relating to intercarrier compensation for VoIP, because VoIP was not developed until the 1996 Act was passed.”⁷ The U.S. District Court for the Eastern District of Missouri made an identical ruling in 2006 when it held that “[b]ecause IP-PSTN is a new service developed after the Act, there is no pre-Act compensation regime which could have governed it, and therefore § 251(g) is inapplicable.”⁸

Thus, only in the very limited circumstances covered by Section 251(g) do access charges apply; and VOIP traffic is not one of those circumstances. IP traffic is not telecommunications and hence not subject to access charges; but if it were telecommunications (which it is not) it would generally be subject to reciprocal compensation (regardless of whether it is local or interexchange) or, in very limited circumstances (which do not include IP traffic), access charges. The ICA provisions subjecting VOIP traffic to access charges are thus contrary to federal law.

³ Initial Brief of Global Crossing, Sept. 29, 2010, at 4-8 (“Global Crossing Brief”).

⁴ *PAETEC Communications, Inc. v. CommPartners, LLC*, No. 08-0397 (D.D.C. Feb. 18, 2010).

⁵ *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

⁶ *Southwestern Bell Tel., L.P. v. Missouri Pub. Utils. Comm’n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006), *aff’d*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 971 (2009). Nor does the Draft Report discuss this Commission’s ruling in the M2A arbitration that VOIP is not subject to access charges under federal law, *see* Arbitration Order, TO-2005-0336, which ruling was affirmed in the district court’s decision in *Southwestern Bell*.

⁷ *PAETEC Communications, Inc. v. CommPartners, LLC*, No. 08-0397 at 7-8 (D.D.C. Feb. 18, 2010).

⁸ *Southwestern Bell Tel., L.P. v. Missouri Pub. Utils. Comm’n*, 461 F. Supp. 2d 1055, 1080 (E.D. Mo. 2006), *aff’d*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 971 (2009).

B. Federal Law Preempts the Missouri Statute that Subjects VOIP to Access Charges.

The ICA language subjecting VOIP to access charges “[c]onsistent with Missouri law,” adopted by the Commission and made a part of the parties’ conformed ICA pursuant to 4 CSR 240-36.050, is not in compliance with federal law. The Missouri law referenced — RSMo 392.550.2 — provides that “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.” This statute plainly cannot apply to interstate VOIP traffic (due to the Commerce Clause) or to nomadic VOIP traffic (for which it is inherently impossible to determine the jurisdiction of particular calls). Nor can it apply to interconnected VOIP traffic between points located in Missouri as it has been explicitly preempted by federal law according to FCC,⁹ the U.S. District Court for the District of Minnesota,¹⁰ and Eighth Circuit decisions.¹¹ This statute, and the ICA provision relying on the same, subjects VOIP (even if only intrastate VOIP traffic between locations within Missouri) to access charges in direct conflict with these clear federal rulings. The ICA provision subjecting VOIP to access charges “[c]onsistent with Missouri law” cannot stand, as current federal law exempts information services traffic like VOIP from access charges and preempts state laws inconsistent with that exemption.

II. Conclusion

For the foregoing reasons, Global Crossing respectfully requests that the Commission consider its statement that the provision in the interconnection agreement that conforms to the Commission’s December 15, 2010 Decision regarding VOIP does not comply with the requirements of sections 251 and 252 of the Act.

⁹ *Vonage Holdings Corp.*, 19 FCC Rcd 22404 (2004).

¹⁰ *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm’n*, 290 F. Supp. 2d 993 (D. Minn. 2003).

¹¹ *See Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

Respectfully submitted,

/s/ Mark P. Johnson

Mark P. Johnson #30740

Lisa A. Gilbreath #62771

SNR Denton US LLP

4520 Main Street, Suite 1100

Kansas City, MO 64111

Telephone: (816) 460-2424

Fax: (816) 531-7545

mark.johnson@snrdenton.com

lisa.gilbreath@snrdenton.com

**Attorneys for Global Crossing Local Services,
Inc. and Global Crossing Telemanagement, Inc.**

Of Counsel:

Michael J. Shortley, III

R. Edward Price

Global Crossing North America, Inc.

225 Kenneth Drive

Rochester, NY 14623

Telephone: (585) 255-1439

Fax: (585) 334-0201

michael.shortley@globalcrossing.com

ted.price@globalcrossing.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this 28th day of December, 2010, served a true and final copy of the foregoing by electronic transmission upon the following, listed below, in accordance with Commission rules.

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

Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

Leo J. Bub
Robert J. Gryzmala
Southwestern Bell Telephone Company
d/b/a AT&T Missouri
One AT&T Center, Room 3516
St. Louis, MO 63101
leo.bub@att.com
robert.gryzmala@att.com

/s/ Mark P. Johnson

Mark P. Johnson