

Mark P. Johnson
816.460.2424
mjohnson@sonnenschein.com

4520 Main Street
Suite 1100
Kansas City, MO 64111
816.460.2400
816.531.7545 fax
www.sonnenschein.com

*Chicago
Kansas City
Los Angeles
New York
San Francisco
Short Hills, N.J.
St. Louis
Washington, D.C.
West Palm Beach*

December 13, 2004

Via Hand Delivery

Mr. Dale H. Roberts
Executive Secretary
MISSOURI PUBLIC SERVICE COMMISSION
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

RE: Case No. TO-2005-0117

FILED²

DEC 13 2004

**Missouri Public
Service Commission**

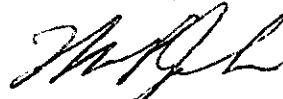
Dear Mr. Roberts:

Please find enclosed for filing with the Commission the original and eight copies of the Response of Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. in the above-referenced case. Please return one "filed" copy of the Response to me in the enclosed return envelope.

A copy of the Response has been served on all counsel of record via U.S. mail.

If you have any questions, please give me a call.

Very truly yours,



Mark P. Johnson

MPJ/rgr

Enclosures

cc: All Parties of Records (w/enclosure) (via U.S. mail)

FILED²
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Missouri Public
Service Commission

INTRODUCTION

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2. Please direct all correspondence, pleadings, orders and other documents in this proceeding to the following:

Mark P. Johnson
James M. Kirkland
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: 816.460.2400
Facsimile: 816.531.7545
Email: mjohnson@sonnenschein.com
jkirkland@sonnenschein.com

and

Michael J. Shortley, III
Global Crossing Local Services, Inc.
1080 Pittsford-Victor Road
Pittsford, NY 14534
Telephone: 585.255.1429
Facsimile: 585.381.6781
Email: michael.shortley@globalcrossing.com

3. SBC is asking the Commission to ignore the negotiation and arbitration process set forth in Section 252 of the Communications Act of 1934, as amended ("Act"). SBC's Petition is premature at best and, at worst, would itself place SBC out of compliance with existing federal law. SBC fails to reconcile the relief it requests with these substantive and procedural deficiencies. In short, contrary to the advice of the Federal Communications Commission ("FCC"), SBC merely seeks to waste the time and resources of the Commission and the parties.¹ There is no valid reason for the Commission to entertain SBC's proposal at this time. Accordingly, the Commission should dismiss the Petition.

¹ Although SBC relies heavily on pronouncements of the FCC to support its Petition, SBC ignores one salient piece of advice, namely, that premature state proceedings "would be wasteful in light of the [FCC's] plan to adopt new permanent rules as soon as possible." *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC 04-179, ¶ 5 (Aug. 20, 2004).

ARGUMENT

THE RELIEF REQUESTED BY SBC IS BOTH PREMATURE AND UNLAWFUL.

4. Section 252 of the Act sets forth the specific requirements for the adoption of interconnection agreements. Section 252(a) provides that a CLEC may request negotiation of an interconnection agreement. In the event that the parties cannot agree upon the terms of an interconnection agreement, Section 252(b)(1) permits one of the parties to request compulsory arbitration. Sections 252(b)(4)(c) and 252(e)(4), in turn, provide a deadline for state commission action.

5. The procedures set forth in Section 252 are mandatory. If an interconnection agreement is to be entered into, a party must follow the procedures set forth in Section 252. Section 252 neither contemplates nor permits one party to seek to force its view of the propriety of an interconnection agreement upon the other contracting party through a proceeding of the type that SBC has initiated here.

6. Indeed, SBC's Petition ignores critical procedural requirements of Section 252. SBC does not indicate that it (or any of those CLECs with which it has interconnection agreements) have initiated good faith negotiations.² It does not indicate that those negotiations, if any, have required the commencement of arbitration, or, indeed, that any party has requested arbitration.

7. Rather than follow these mandatory procedures, SBC merely asserts that it "is compelled to seek this Commission's assistance in conforming its interconnection agreements to

² SBC, in fact, admits that it has done precisely the opposite. SBC asserts that it sent out contract amendment proposals on three prior occasions, but does not allege that it formally requested negotiations. (Amended Petition, at 3.) SBC is entirely silent on whether it has even sought to commence good faith negotiations with respect to its latest iteration. It is clear, however, that SBC has not done so. Rather, it has commenced this proceeding in an attempt to avoid its obligation to negotiate in good faith.

governing law.”³ These allegations are insufficient as a matter of law. There is no allegation as to how the Global Crossing companies’ interconnection agreements violate federal law and should therefore be amended, much less any allegation that SBC has initiated negotiations to discuss such an amendment. To the extent that SBC wishes to change existing interconnection agreements, it must commence the appropriate negotiations and if necessary, the appropriate arbitration proceedings -- and there is no allegation that SBC has taken this action. SBC utterly fails to comply with these basic procedural requirements.⁴

8. In addition, the proposed procedures set forth in SBC's Petition do not permit the Commission to fulfill its obligations under Section 252. Under Section 252(c)(2), in order to approve an interconnection agreement, the state commission must conclude that: (a) a proposed agreement does not discriminate against carriers not parties to that agreement; (b) the proposed agreement is consistent with the public interest, convenience and necessity; and (c) that the proposed complies with the substantive requirements of Section 251.

9. SBC's Petition does not even address these substantive standards, much less set forth the basic allegations which would provide a procedural vehicle for the Commission to make these critical factual determinations. Effectively, it requests that the Commission shove down the throats of the respondents its one-sided amendment, without making the allegations necessary to support such relief.

10. Finally, SBC's proposed amendment substantively is a chimera. SBC observes that it is proposing its amendment (albeit in a wholly improper manner procedurally) “to be

³ Amended Petition, at 3.

⁴ Moreover, SBC's assertion that existing agreements (particularly the agreement with Global Crossing) do not comply with existing federal law is simply wrong. The "rules" upon which SBC relies have not yet even been adopted by the FCC as final regulations and hence, do not comprise existing law. In addition, adoption of SBC's proposed amendment would place it out of compliance with existing federal law, namely, its obligations under Section 271 of the Act and under the SBC/Ameritech merger guidelines to which it voluntarily agreed. SBC does not even attempt to deal with these substantive deficiencies inherent in its Amended Petition.

implemented by all parties by December 31, 2004, in anticipation of new FCC unbundling rules by the end of the year."⁵ Presumably, SBC would not wish to foreclose itself from later arguing that whatever rules the FCC ultimately adopts are either themselves unlawful or, at a minimum, require further revisions to the very amendment that SBC proposes here.

11. Indeed, SBC's own conduct suggests that SBC intends to preserve precisely this right. This is yet the fourth amendment that SBC has surfaced. Each time, it has altered its stance in response to regulatory developments and there is every reason to expect that SBC would engage in the same conduct once the FCC's latest unbundling rules become final.

12. In other states where SBC has initiated proceedings substantively identical to this proceedings, SBC has signaled precisely this intent. In its complaint brought before the Illinois Commerce Commission, for example, SBC flatly asserted:

In seeking amendment of its Section 251/252 interconnection agreements, SBC Illinois in no way waives its right to assert in this or any other proceeding or circumstance that it has no obligation, contractual or otherwise, to provide products or services pursuant to the 251/252 interconnection agreements on an unbundled basis where there is no lawful FCC or judicial mandate in effect that requires it to do so.

13. Thus, SBC requests that the Commission cram down the throats of unwilling parties an amendment applicable to virtually all existing interconnection agreements that is premature at best and with which SBC has no intention of complying in any event. The Commission should decline the invitation.

CONCLUSION

For the foregoing reasons, the Commission should dismiss SBC's Amended Petition with prejudice.

⁵ Amended Petition, at 23.

Respectfully submitted,



Mark P. Johnson #30740
James M. Kirkland #50794
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Facsimile: (816) 531-7545
Email: mjohnson@sonnenschein.com
jkirkland@sonnenschein.com

and

Michael J. Shortley, III
Global Crossing Local Services, Inc.
1080 Pittsford-Victor Road
Pittsford, NY 14534
Telephone: (585) 255-1429
Facsimile: (585) 381-6781
michael.shortley@globalcrossing.com

ATTORNEYS FOR GLOBAL CROSSING
LOCAL SERVICES, INC., AND GLOBAL
CROSSING TELEMAGEMENT, INC.

Dated: December 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by First-Class United States mail, postage prepaid, on all parties of record on this 13th day of December, 2004.



VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Comes now Mark P. Johnson, being of lawful age and duly sworn, and who swears and affirms as follows:

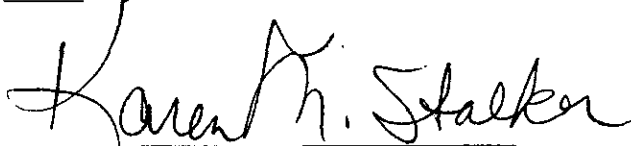
1. My name is Mark P. Johnson, and I am an attorney for Global Crossing Local Services, Inc., and Global Crossing Telemanagement, Inc. I am authorized to execute this verification on behalf of Global Crossing Local Services, Inc., and Global Crossing Telemanagement, Inc.

2. I have read the foregoing Response, and it is true and correct to the best of my knowledge and belief.



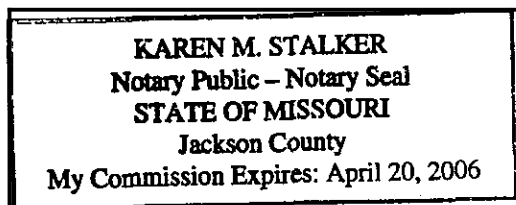
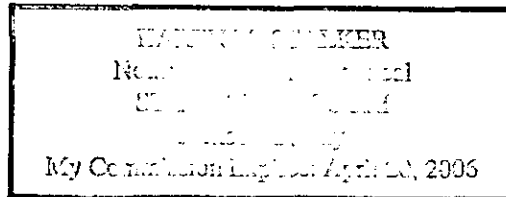
Mark P. Johnson

Subscribed and sworn to before me this
13th day of December, 2004



Karen M. Stalker

My commission expires:



STATE OF MISSOURI



Matt Blunt
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

GLOBAL CROSSING LOCAL SERVICES, INC.

using in Missouri the name

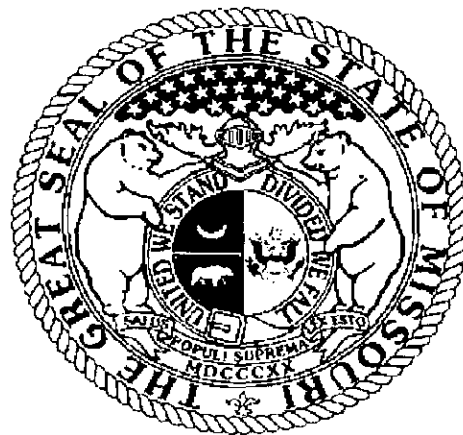
**GLOBAL CROSSING LOCAL SERVICES, INC.
F00450802**

a MICHIGAN entity was created under the laws of this State on the 14th day of January, 1998, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 13th day of December, 2004

Matt Blunt

Secretary of State



STATE OF MISSOURI



Matt Blunt
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

GLOBAL CROSSING TELEMAGEMENT, INC.

using in Missouri the name

**GLOBAL CROSSING TELEMAGEMENT, INC.
F00446329**

a WISCONSIN entity was created under the laws of this State on the 24th day of September, 1997, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 13th day of December, 2004

A handwritten signature of Matt Blunt in black ink.

Secretary of State

