

**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.)	

REBUTTAL TESTIMONY OF

MICKY HENRY

ON BEHALF OF

GLOBAL CROSSING LOCAL SERVICES, INC., AND

GLOBAL CROSSING TELEMAGEMENT, INC.

October 4, 2010

1 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS CASE?**

2 A. Yes. I filed Direct Testimony on behalf of Global Crossing Local Services, Inc., and
3 Global Crossing Telemanagement, Inc.

4 **Q. ARE YOU FILING REBUTTAL TESTIMONY ON BEHALF OF THOSE**
5 **PARTIES?**

6 A. Yes, I am.

7 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY FILED BY AT&T IN**
8 **THIS PROCEEDING?**

9 A. Yes. I have reviewed the Direct Testimony filed by Deborah Fuentes Niziolek, Richard
10 Hatch, and Andrew D. Sanders.

11 **Q. DO YOU HAVE ANY RESPONSE TO THE TESTIMONY FILED BY THOSE**
12 **WITNESSES?**

13 A. Yes, I do. I am responding to the Direct Testimony filed by Deborah Fuentes Niziolek
14 and Andrew D. Sanders in my Rebuttal Testimony.

15 **RESPONSE TO DIRECT TESTIMONY OF DEBORAH FUENTES NIZIOLEK**

16 **Q. PLEASE SPECIFY THE TOPICS COVERED BY MS. FUENTES NIZIOLEK TO**
17 **WHICH YOU ARE RESPONDING.**

18 A. I am responding to Ms. Fuentes Niziolek's proposals that: (1) AT&T should be able to
19 limit Global Crossing's access to 25% of the spare dark fiber UNEs on any particular route or
20 segment; and (2) AT&T should be able to unilaterally revoke Global Crossing's access to dark
21 fiber UNEs after a one-year period if it deems that Global Crossing is not utilizing that dark fiber
22 capacity.

1 **Q. SHOULD THE COMMISSION ADOPT AT&T'S PROPOSALS TO LIMIT**
2 **GLOBAL CROSSING'S ACCESS TO DARK FIBER UNES AS MS. FUENTES**
3 **NIZIOLEK PROPOSES?**

4 A. No. As I stated in my Direct Testimony, the principal reason that Global Crossing
5 objects to AT&T's proposal to limit Global Crossing's access to dark fiber UNEs is that such
6 restrictions are not found in the FCC rules requiring incumbent LECs to provide access to dark
7 fiber to their competitors.

8 Ms. Fuentes Niziolek's testimony cites selective passages from the FCC UNE Remand
9 Order about "reasonable limitations" on access to dark fiber UNEs. However, none of those
10 limitations made it into the final rules adopted by the FCC. There is no limitation in the FCC
11 rules on the amount of dark fiber that a CLEC may purchase — and for good reason. Once the
12 FCC determines that a particular unbundled network element should be made available to
13 requesting CLECs under federal law, giving the incumbent LEC the ability to "ration" access to
14 that UNE could effectively eliminate the very competition that the FCC intended to promote.

15 Under AT&T's proposal in this case, AT&T would be able to "ration" Global Crossing's
16 access to dark fiber UNEs by making unilateral determinations about: (1) the amount of dark
17 fiber that is "spare"; (2) the calculation of the twenty-five percent (i.e., what are the numerator
18 and denominator in the equation); (3) what is the "requested segment"; and (4) the calculation of
19 the start and end date of the two-year period. None of these terms is defined. Permitting AT&T
20 to so limit, and thereby ration its competitors' access to, UNEs is clearly a slippery slope that the
21 FCC chose not to go down.

22 **Q. PLEASE COMMENT ON AT&T'S PROPOSAL THAT WOULD PERMIT AT&T**
23 **TO REVOKE GLOBAL CROSSING'S ACCESS TO DARK FIBER UNES.**

1 A. Similar to AT&T's proposal to ration Global Crossing's access to 25% of the dark fiber
2 UNEs that it deems is "spare" on a "requested segment," AT&T's proposal to be able to
3 unilaterally revoke Global Crossing's access to dark fiber UNEs already obtained is also not
4 found in the FCC's rules. In this proposal, AT&T would unilaterally determinate whether
5 Global Crossing had "utilized" the access to dark fiber over the prior twelve months.

6 As I indicated in my Direct Testimony, Global Crossing has no incentive to obtain and
7 lease an asset that it has no intention of utilizing. It makes no business sense to do so. Whether
8 the Global Crossing business plan calls for that asset to be utilized within twelve months or thirty
9 six months (or whatever time period) is a matter for Global Crossing to determine. The FCC
10 rules do not contain any expiration date for UNEs nor do they permit AT&T to place any
11 limitations on the period of time that must elapse before Global Crossing utilizes the dark fiber it
12 leases or permit AT&T to unilaterally revoke Global Crossing's right to access that dark fiber for
13 its business purposes.

14 Ms. Fuentes Niziolek's testimony at page 10 speaks to AT&T's entitlement to revoke
15 Global Crossing's access to dark fiber within 12 months if Global Crossing is not using it simply
16 because AT&T owns the dark fiber, maintains it, and has constructed interoffice dark fiber.
17 Again, there is no such entitlement in the FCC Rules.

18 **Q. DO YOU AGREE THAT AT&T SHOULD BE PERMITTED TO RECLAIM**
19 **ACCESS TO DARK FIBER IN ORDER TO PERMIT OTHER CLECS TO UTILIZE**
20 **THAT DARK FIBER?**

21 A. No. Ms. Fuentes Niziolek's testimony at page 10 seems to imply that AT&T must be
22 able to unilaterally revoke Global Crossing's access to dark fiber so that it can be available "for
23 use by itself or other carriers."

1 In the real world, if Global Crossing has leased dark fiber that it is not presently utilizing
2 and has no immediate business plans to use, and another competitive carrier would like to utilize
3 that leased capacity, that carrier would approach Global Crossing and a commercial transaction
4 between Global Crossing and that carrier would be worked out. Neither Global Crossing nor the
5 competitive carrier need AT&T to be involved in that transaction. Competitive carriers routinely
6 engage in capacity swaps and similar commercial transactions without the need for AT&T to
7 become involved.

8 **RESPONSE TO DIRECT TESTIMONY OF ANDREW D. SANDERS**

9 **Q. Do you agree with Mr. Sanders' testimony on page 5 that the costs to perform the**
10 **three Routine Network Modification ("RNM") activities at issue are not already covered**
11 **through any existing recurring or non-recurring charges?**

12 A. No. Global Crossing maintains that it does not know whether AT&T included these costs
13 in its UNE cost studies filed with and approved by this Commission. As I stated in my Direct
14 Testimony, there is a distinct possibility that allowing AT&T's proposed language will result in
15 over-recovery, in essence, double charging for the same RNM, because the functions specified in
16 the language may already be included in AT&T's normal charges. Mr. Sanders purports to
17 explain in his Direct Testimony that the costs of the enumerated RNMs are not recovered
18 elsewhere. However, even if he is correct, and those costs are not recovered elsewhere, any rates
19 AT&T does charge for RNM must first be approved (tariffed) by the Missouri Public Service
20 Commission.

21 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 A. Yes it does.

STATE OF GEORGIA)
)
COUNTY OF PICKENS) ss.

VERIFICATION

Comes now Mickey Henry, being of lawful age and duly sworn, and says and affirms the following:

1. I am Director of Carrier Relations for Global Crossing.
2. I have read the foregoing testimony and affirm that the statements contained therein are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

Mickey Henry

Subscribed and sworn to before me this 4th day of October, 2010.

Notary Public

My commission expires: