

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on January 19,
2011.

Southwestern Bell Telephone Company d/b/a)	
AT&T Missouri's Petition for Compulsory Arbitration of)	
Unresolved Issues for an Interconnection Agreement with)	File No. IO-2011-0057
Global Crossing Local Services, Inc. and)	
Global Crossing Telemanagement, Inc.)	

Order Denying Rehearing and Reconsideration

Issue Date: January 19, 2011

Effective Date: January 19, 2011

The Commission is denying the motion for reconsideration or rehearing, because rehearing does not apply to this action, and the motion does not meet the standard for reconsideration or rehearing.

A. Background

This action addresses an interconnection agreement ("agreement") between Southwestern Bell Telephone Company d/b/a AT&T Missouri ("ATT"); and Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., ("Global"). The Commission disposed of all disputed matters on the merits in the *Decision* issued and effective on December 15, 2010. As provided in Commission regulation 4 CSR 240-36.050 ("the regulation"), ATT filed the agreement as conformed to the *Decision* ("conformed agreement") for the Commission's review. Global filed an *Application for Rehearing or, in the Alternative, Motion for Reconsideration* ("motion") on December 27, 2010. ATT filed *AT&T Missouri's Response In Opposition To Global Crossing's Application For Rehearing, Or In The Alternative, Motion For Reconsideration* on January 6, 2010.

B. Rehearing and Reconsideration

Commission regulation 4 CSR 240-2.160, which is in the Commission's general regulations on practice and procedure, addresses reconsideration and rehearing. Rehearing is a creation of Section 386.500, RSMo 2000 ("the rehearing statute"). The rehearing statute states that a motion for rehearing is necessary to preserve matters for review in circuit court.

The rehearing statute provides:

2. No cause or action arising out of any order or decision of the commission shall accrue in any court to any [person] unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing. . . . The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.

By making the *Decision* effective on the date of issuance, Global argues, the Commission denied Global the right to preserve matters for judicial review.

But judicial review of this action is not subject to the rehearing statute because this action is not subject to judicial review in circuit court. Unlike other Commission actions, the federal district courts have jurisdiction to review this action under the federal statutes that create this action:

. . . In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section. [¹]

That federal statute also finds mention in the regulation:

(6) Review of Commission Decision--Any party aggrieved by a

¹ 47 USC Section 252(e)(6).

commission decision made under this rule may seek relief in an appropriate federal district court pursuant to [47 USC] section 252(e)(6)[.]

Global cites no authority under which the state statute determines the issues in federal district court.²

C. Post-Decision Procedure in this Action

In lieu of rehearing, the regulation provides multiple opportunities for post-decision evidence and argument pending the Commission's determination on the conformed agreement.

First, the parties must file statements:

(1) . . . Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

On December 28, 2010, ATT filed the conformed agreement with *AT&T Missouri's Filing of the Fully Conformed Interconnection Agreement, and Statement of Compliance*. On December 28, 2010, Global filed *Global Crossing Statement*.

Next, the parties may file comments under the regulation.

(2) Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review referenced in section 4 CSR 240-36.050(4) of this chapter [.]

Global filed *Global Crossing Comments Concerning Agreement* on January 10, 2011.

In addition, the regulation allows additional informal hearings and oral argument.

² See also U.S. Const., Art. VI, cl. 2.

(2) . . . The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

No party sought additional informal hearings or oral argument.

Those provisions appear under 4 CSR 240-36, relating to arbitration of interconnection agreements specifically. Publishing those specific provisions was a meaningless act if the general provisions of 4 CSR 240-2 already applied. The law presumes against meaningless acts³ so the Commission concludes that rehearing and reconsideration do not apply to this action.

D. Sufficient Cause

Even if rehearing and reconsideration applied to this action, the Commission would still reject the motion, because the motion does not meet the standard for rehearing and reconsideration. The rehearing statute provides that:

1. [T]he commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear [;]

and:

4. If, after a rehearing and a consideration of the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same [.]

Those standards, the statute provides, apply to:

2. . . . the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable.

³ *Missouri ex rel. Bouchard v. Grady*, 86 S.W.3d 121, 123 (Mo. App., E.D. 2002).

A motion for reconsideration is subject to the same standard.⁴ Global alleges no facts arising since the making of the *Decision*, and the *Decision* determined all the arguments in the motion. Therefore, sufficient reason for rehearing does not appear in the motion. That conclusion supports denial of both reconsideration and rehearing.

E. Ruling

The rehearing and reconsideration provisions do not apply and, if they did, the Commission would still deny motion.

THE COMMISSION ORDERS THAT:

1. The *Application for Rehearing or, in the Alternative, Motion for Reconsideration* is denied.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge

⁴ 4 CSR 240-2.160(2).