

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference and  
Mark-Up Conference  
October 5, 2010  
Jefferson City, Missouri  
Volume 2

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In the matter of

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

DANIEL JORDAN, presiding  
REGULATORY LAW JUDGE

REPORTED BY:  
Lisa M. Banks, CCR No. 1081  
TIGER COURT REPORTING, LLC

TIGER COURT REPORTING, LLC  
573.886.8942 tcr@tigerocr.com

A P P E A R A N C E S

ROBERT GRYZMALA, Attorney at Law, (via telephone)  
1 AT&T Center, Room 3516  
St. Louis, Missouri 63101  
314.235.6060

FOR: Southwestern Bell Telephone Company  
d/b/a AT&T Missouri

MARK JOHNSON, Attorney at Law (via telephone)  
SNR Denton  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
816.460.2655

FOR: Global Crossing Local Services, Inc. and  
Global Crossing Telemanagement, Inc.

CULLY DALE, Attorney at Law  
Missouri Public Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
573.751.4140

FOR: Staff of the Missouri Public Service Commission

1 JUDGE JORDAN: Let's go on the record. The  
2 Commission is calling File No. IO-2011-0057. And I will  
3 read the caption of the case. It is Southwestern Bell  
4 Telephone Company, d/b/a AT&T Missouri's Petition for  
5 Compulsory Arbitration of Unresolved Issues for an  
6 Interconnection Agreement with Global Crossing Local  
7 Services, Inc., and Global Crossing Telemanagement, Inc.

8 I'm Daniel Jordan. I am the arbitrator  
9 assigned to this case. And I am here to convene a  
10 prehearing and mark-up conference. We'll begin with entries  
11 of appearance. And I will start with my advisory staff.

12 will representative of the Chief Staff  
13 Counsel's Office please enter her appearance and introduce  
14 her colleagues.

15 MS. DALE: My name is Cully M. Dale. I'm the  
16 senior counsel for telecommunications. I have with me  
17 William Voight, who is the manager of the rates and tariffs  
18 division, and Dana Parish, who is a telecommunications  
19 analyst.

20 JUDGE JORDAN: Thank you. And for AT&T,  
21 please.

22 MR. GRYZMALA: Good morning, everyone. This  
23 is Bob Gryzmala, G-r-y-z-m-a-l-a, for Southwestern Bell  
24 Telephone Company, doing business as AT&T Missouri, One AT&T  
25 Center, Room 3516, St. Louis, Missouri 63101. And I have

1 with me Mr. Alan Kern, who will introduce himself.

2 MR. KERN: Alan Kern, AT&T Missouri.

3 JUDGE JORDAN: Thank you very much. Do I  
4 take it that your address is the same as Mr. Gryzmala's?

5 MR. KERN: Yes. It is.

6 JUDGE JORDAN: Okay. Very good. And for  
7 Global Crossing Local Services, Inc. and Global Crossing  
8 Telemanagement, Inc.

9 MR. GRYZMALA: Your Honor, Mark P. Johnson  
10 and Lisa A. Gilbreath, G-i-l-b-r-e-a-t-h, appearing on  
11 behalf of Global Crossing Local Services and Global Crossing  
12 Telemanagement, Inc. We are with the law firm of SNR  
13 Denton, US LLP, which you will probably note is different  
14 from last week.

15 we have combined with an English law firm,  
16 and we have changed our name, but we are still very much in  
17 Kansas City. And our address is 4520 Main Street, Suite  
18 1100, Kansas City, Missouri 64111.

19 JUDGE JORDAN: Thank you. So you haven't  
20 moved to London yet?

21 MR. JOHNSON: No. We haven't. And I  
22 certainly don't plan to.

23 JUDGE JORDAN: All right. Well, let me  
24 apologize in advance if anyone has been trying to contact me  
25 by e-mail this morning. I was locked out of my computer --

1 still am as of nine o'clock this morning. Also locked out  
2 of the hearing room, but we've got that open, and we've got  
3 everyone that we need on the telephone, so I think we're  
4 ready to go.

5               As I said, this is on the record, and if the  
6 parties like, I'll leave this line open afterwards if the  
7 parties would like to resolve issues outside of my presence;  
8 if they want to discuss sensitive matters that they don't  
9 want me to hear.

10              I note that the regulation provides that the  
11 arbitrator shall not have been -- it uses the past  
12 participle, shall not have been -- a mediator in the  
13 negotiations.

14              But the regulation governing this procedure  
15 also provides that the arbitrator may assist in the  
16 negotiation of issues between the parties. So if you'd like  
17 me to do that, I can do that.

18              My reading of the regulation is that the  
19 reason it says I can assist the parties with negotiation but  
20 shall not have been a mediator is so that I don't hear  
21 something outside the presence of one of the parties, and  
22 thus entertain an ex parte communication.

23              But I think as long as everything is on the  
24 table and aboveboard, I -- as I read the regulation, it  
25 would be okay, and I am happy to assist the parties with

1 this.

2 well, let's get to the issues. I don't think  
3 I need to lecture the parties on procedure. You know that  
4 I'm running this in the format of a contested case. And you  
5 know if we go to evidentiary hearing on Thursday, it will be  
6 an evidentiary hearing such as we have in a contested case.  
7 So I don't need to lay out any of the principles of that for  
8 the parties, I think.

9 As to the issues, we've had several  
10 statements of unresolved issues -- in the pleadings, in a  
11 joint revised statement, and in a final statement of  
12 unresolved issues. And I have to tell you, they all  
13 resemble one another pretty closely. They all look pretty  
14 familiar each time I see them.

15 So I'll ask the parties -- and whoever wants  
16 to start may -- has there been any movement on any of these  
17 issues?

18 MR. GRYZMALA: Judge, AT&T will kick off --

19 JUDGE JORDAN: All right.

20 MR. GRYZMALA: -- just a brief preface. The  
21 only difference, as I recall, in the revised or final -- I  
22 should say the final --

23 JUDGE JORDAN: Uh-huh.

24 MR. GRYZMALA: -- October 4 statement of  
25 unresolved issues -- what we call the DPL -- the only

1 difference between that October 4 filing and the one that we  
2 initially filed, I believe, on August 27 was a deletion in  
3 the language of the last passage having to do with routine  
4 network modifications.

5 JUDGE JORDAN: Okay.

6 MR. GRYZMALA: Just at a high level, you'll  
7 remember there were four classes of activities or equipment.  
8 Now there are just three. Otherwise, in all material  
9 respects, I think everything is identical. That's my  
10 recollection, Mark.

11 MR. JOHNSON: Yes. I agree with Mr. Gryzmala  
12 on that.

13 Judge, you know, there are literally hundreds  
14 of issues that are negotiated in these matters. And if an  
15 arbitration is presented to you with, you know, basically  
16 three issues, it shows that the parties have made great  
17 progress. I mean, much more so than most of the time when a  
18 case is arbitrated.

19 So at least from Global Crossing's point of  
20 view, these -- the issues that are now presented to you are  
21 the ones that we simply have been unable to resolve with  
22 AT&T, and we'd ask your -- you know, we're looking for your  
23 judgment in resolving them.

24 JUDGE JORDAN: Well, and I think I've said  
25 this before, but I'll say it again. I commend the parties

1 for getting as close as they have to an agreement, and  
2 having so few issues left for me to arbitrate, and so few  
3 for the Commission to decide. So I want to commend the  
4 parties on that, to be sure.

5 So let's start with something -- let's start  
6 with something that -- of which my grasp may be -- may be  
7 more firm than of other issues. And let's -- that would be  
8 the dark fiber limitation. That's Issue Number 2.

9 I'd like to save the parties some time by  
10 stating my understanding, or misunderstanding, of what the  
11 issue might be, and then you can correct me on it. That's  
12 how I'd like to go.

13 My understanding of this issue on the dark  
14 fiber limitation, the 25 percent limitation that AT&T is  
15 proposing, and that Global -- I'll just refer to both  
16 entities as -- collectively as Global -- is that Global  
17 doesn't really feel like it wants or needs anything more  
18 than this limitation would impose on them.

19 I read in the direct testimony that to buy up  
20 100 percent of the dark fiber, or more than 25 percent of  
21 the dark fiber, would not, as the witness said -- and not  
22 use it, as the witness said, would not pass the smell test  
23 at Global.

24 Am I reading that correctly? That question  
25 is for Global.



1 MR. JOHNSON: Certainly from a business of  
2 point of view, it would. No question about that.

3 JUDGE JORDAN: Well, my question, then, for  
4 you is, why are you opposing this provision? If you don't  
5 have a problem with that -- that limitation, why oppose the  
6 inclusion of it in the contract -- in the interconnection  
7 agreement?

8 MR. JOHNSON: Well, because it -- when I said  
9 it wouldn't pass the smell test, it wouldn't make sense for  
10 us to purchase 25 or 50 percent and then not use it. And I  
11 think to a certain extent, that's AT&T's concern.

12 what would -- what in all probability would  
13 happen in that situation is we would attempt to market the  
14 fiber that's not being used. But we simply don't want to  
15 box ourselves into a situation where we can't get fiber that  
16 we may need. We just don't know what the circumstances --  
17 what circumstances will arise in the future.

18 And, you know, even though this language does  
19 appear -- as I'm sure Mr. Gryzmala will point out -- in  
20 many -- or at least several interconnection agreements, none  
21 of those agreements has, as far as we know, been arbitrated.  
22 Those have all been negotiated.

23 And we simply do not believe that we want to  
24 box ourselves into a situation that these other CLECs have.

25 JUDGE JORDAN: Well, certainly, it sounds

1 like you're not going to need 100 percent of it  
2 indefinitely; is that correct?

3 MR. JOHNSON: It would be hard to see that  
4 that -- that that would happen.

5 JUDGE JORDAN: And I don't want to get into  
6 information that's too sensitive or too confidential, but  
7 I'm thinking that Global probably has a pretty good idea of  
8 how much it would need, say, in the coming 12 months?

9 MR. JOHNSON: well, if they do, they haven't  
10 shared it with me.

11 JUDGE JORDAN: Okay. well, that might be  
12 helpful information to know, because I'm getting the sense  
13 that Global is not averse to the principle of a limitation  
14 on how much dark fiber it reserves to itself, and probably  
15 not for how long or at what period there ought to be a  
16 review of whether it's using it or not. Am I correct in  
17 that?

18 MR. JOHNSON: I honestly don't know, Judge.

19 JUDGE JORDAN: Okay.

20 THE COURT REPORTER: who was that?

21 JUDGE JORDAN: Hang on just a second.

22 THE COURT REPORTER: who was that speaking?

23 JUDGE JORDAN: Oh, my reporter is reminding  
24 me that I should have the parties identify themselves before  
25 they speak.

1 MR. JOHNSON: Okay. Well, Judge, all the  
2 questions have been answered by Mark Johnson.

3 JUDGE JORDAN: Okay. Thank you very much.  
4 Thank you. I should have mentioned that at the beginning.  
5 Okay. So I'm sorry. Please -- can you  
6 repeat your answer to my inquiry?

7 MR. JOHNSON: I can't remember what it was  
8 now.

9 JUDGE JORDAN: Then I'll repeat my inquiry.  
10 My question is this: Does Global oppose the principle of a  
11 limitation in amount and time of dark fiber that it may  
12 reserve for itself?

13 MR. JOHNSON: Yes.

14 JUDGE JORDAN: Really?

15 MR. JOHNSON: Well, as I've said, the  
16 company -- that limitation boxes itself in. And right now,  
17 we're only -- we're talking about a 25 percent limitation.  
18 And candidly, I don't know what the company's decision would  
19 be if it were 50 or 75 percent.

20 JUDGE JORDAN: Okay. Well, you know, if the  
21 company is not going to give me -- well, I guess that means  
22 that the company would have to give me some testimony as to  
23 what a just and reasonable interconnection agreement would  
24 provide for, as far as the reservation -- paying for the  
25 reservation of dark fiber.

1 MR. JOHNSON: well, we --

2 JUDGE JORDAN: Or perhaps the issue is really  
3 not so much being just and reasonable as it is  
4 nondiscriminatory, since AT&T really ought to allow access  
5 to other carriers, should it not?

6 MR. GRYZMALA: well, and AT&T could respond  
7 briefly, Your Honor, at --

8 JUDGE JORDAN: Please do.

9 MR. GRYZMALA: -- at your pleasure.

10 JUDGE JORDAN: Go ahead.

11 MR. GRYZMALA: Oh, I should do so?

12 MS. DALE: That's Mr. Gryzmala.

13 JUDGE JORDAN: Yes. That's Mr. Gryzmala.  
14 Right?

15 MR. GRYZMALA: Yes, sir. Yes, Judge. It is,  
16 as I believe you -- pigeonholed. I mean, if a firm is going  
17 to purchase dark fiber or lease dark fiber, it's reasonable  
18 to expect that they use it.

19 As we know, it's unrebutted in the testimony  
20 that Global Crossing today doesn't lease dark fiber from the  
21 company. They really have no skin in this game.

22 It's reasonable from a perspective of  
23 competitive equality to ensure that all CLECs have the same  
24 access. And that's what our language is directed to doing.

25 It only comes into play under 10.7.2 if the

1 CLEC doesn't use it within 12 months. That's ample time.  
2 And so we believe it's appropriate that that language be  
3 approved.

4 And we would not be prepared to, you know,  
5 yield on that, particularly because, if I recall the  
6 testimony, we have obligations to other CLECs in that same  
7 regard pursuant to previously approved interconnection  
8 agreements wherein those CLECs have likewise committed to  
9 the same limitation. So that's all we would have on that  
10 subject, Your Honor.

11 JUDGE JORDAN: Well, thank you for that.  
12 I've got some follow-up questions for AT&T. And this goes  
13 to the statement that you wrapped up with, that other  
14 entities have agreed to this language. I take it that you  
15 have some standard language in your interconnection  
16 agreements that addresses this and has worked for you; is  
17 that correct?

18 MR. GRYZMALA: I believe that's right. And I  
19 don't have it immediately in front of me, as you might  
20 suspect. I'm thumbing through the testimony myself.

21 JUDGE JORDAN: Sure.

22 MR. GRYZMALA: And I believe our witness,  
23 Mr. Hatch -- or, rather -- I'm sorry -- Ms. Fuentes did  
24 identify some of those items, as well. And maybe Mr. Hatch  
25 as well.

1                   Let me -- what I'm looking here -- Your  
2 Honor, I would direct your attention to direct testimony of  
3 Richard Hatch. I believe --

4                   JUDGE JORDAN: And while you're looking for  
5 that reference, I just want to mention that I --

6                   MR. GRYZMALA: I'll read what that says.  
7 Your Honor, when the Bell operating companies, and we in  
8 particular, obtained 271 relief -- that is long distance  
9 relief. That is the opportunity to engage in that business.

10                  The trade-off was abiding by certain  
11 obligations under the federal act that found themselves in  
12 interconnection agreements which were approved, I'm  
13 guessing, 2001 or thereabouts -- about the time we entered  
14 long distance in Missouri with the Commission's approval.

15                  The interconnection agreements that were  
16 formed at that time all expired, give or take, in early  
17 2005, wherein we embarked on a major arbitration.

18                  The result of that arbitration was then Judge  
19 Kevin Thompson's order, which was passed on, ultimately, by  
20 the Commission in, I recall, July of 2005, resolving a  
21 host -- hundreds -- of issues with multiple CLECs. So what  
22 you see in that footnote -- Footnote 1 at Page 4 of Hatch  
23 Direct --

24                  JUDGE JORDAN: Uh-huh.

25                  MR. GRYZMALA: -- is the result of one of

1 those issues devoted to the dark fiber. You'll see the  
2 names of the carriers indicated there. That is what we sort  
3 of call in the trade the CLEC Coalition. It was a number of  
4 CLECs who banded together to, you know, make their points to  
5 the Commission.

6 And so, ultimately, the language which you  
7 see in that footnote, I'm confident you will see in their  
8 currently effectively interconnection agreements.

9 JUDGE JORDAN: Okay. Thank you. And I want  
10 to clarify that while AT&T's standard interconnection  
11 agreement language is helpful, it won't necessarily -- it  
12 doesn't necessarily govern the Commission. I'm sure  
13 everyone understands that.

14 But its existence and its -- the status as to  
15 whether it works, how it's worked will be helpful to the  
16 Commission in resolving this issue. Testimony on that, I  
17 should think, would be very helpful at an evidentiary  
18 hearing on Thursday. And that's, you know, testimony either  
19 way.

20 And also testimony as to whether this --  
21 whether AT&T's proposition or Global's proposition relate to  
22 the standard of an agreement that is nondiscriminatory.  
23 Okay. That's really my worry with this issue.

24 MR. GRYZMALA: Well, I'm a little perplexed,  
25 because we tried our very best to explain, I think, through

1 Mr. Richard Hatch how the, you know, process works. I know  
2 we had some questions of Your Honor --

3 JUDGE JORDAN: Uh-huh.

4 MR. GRYZMALA: -- that you asked us to  
5 address. And we felt that it was important for clarity that  
6 they be a part of the record. And, of course, we put  
7 that -- those answers in Mr. Hatch's testimony. We're  
8 hopeful that that would be a sufficient record.

9 JUDGE JORDAN: Well, I don't want to give the  
10 impression that I've prejudged any issue, so I don't want to  
11 say who needs to present more testimony on this issue. Hang  
12 on just a second, if you please.

13 (A discussion was held off-the-record.)

14 MS. DALE: Bob, can you tell me where the 25  
15 percent limitation is in the -- in Mr. Hatch's testimony?  
16 We can find the 12-month stuff. Oh, wait a minute. I think  
17 I may have found it.

18 JUDGE JORDAN: 25 percent. Right there.

19 MS. DALE: Yeah. Okay.

20 JUDGE JORDAN: Page 4, Footnote 1.

21 MS. DALE: And these were all approved in  
22 the -- these were all pursuant to the arbitration that  
23 happened with Judge Thompson?

24 MR. GRYZMALA: Is this Cully?

25 MS. DALE: Yes.



1 MR. GRYZMALA: Yeah. Hi, Cully. Yes. My --  
2 you know, let's be -- I will be candid. I have not laid  
3 eyeballs on the text. Okay.

4 MS. DALE: Okay.

5 MR. GRYZMALA: But the witness did, as I  
6 understand it. And yes -- the answer to your question is  
7 yes. In 2005, as a result of Judge Thompson's rulings --  
8 well, let me back up.

9 There were some -- some things that were  
10 uncontested, some things that were contested. And at the  
11 end of the day when Judge Thompson made cuts, made rulings  
12 on the contested items, the parties were then all  
13 obligated -- that is AT&T Missouri and all the CLECs -- to  
14 submit what's called conforming agreements.

15 And those conforming agreements were, as the  
16 name suggests, agreements which hosted the uncontested  
17 language -- in other words, the non-disputed language -- and  
18 Judge Thompson's determinations on whose language among the  
19 competing language proffered was preferable.

20 Now, back in those days, of course, the  
21 decisions were, you know, many. And some of those decisions  
22 went to the Commission for approval.

23 And you may know -- but really is not  
24 pertinent here -- that some of those rulings went up to the  
25 Federal District Court in the Eighth Circuit.

1 But to answer your question, these are --  
2 this is language which resulted from that process, the  
3 so-called conforming amendment or conforming agreement  
4 process.

5 And maybe, then, you know -- well, then,  
6 after that, of course, I believe, if I recall, from that one  
7 major docket spun off a number of separate dockets to simply  
8 approve -- review and approve the interconnection agreements  
9 proffered.

10 So, for example, you had a separate docket  
11 for -- I'm just picking one out -- Big River, the Charter  
12 Communications vs. Xspedius, that sort of thing.

13 So I can't tell you, you know, which docket  
14 these were in, but I have instructed our witnesses to be  
15 very certain that when the Staff proceeds to identify and  
16 satisfy itself that the language is actually there where we  
17 say it is, that it can be found. Does that answer your  
18 question?

19 MS. DALE: Yes. Thank you.

20 MR. GRZYMALA: Okay. You're welcome.

21 JUDGE JORDAN: Okay. I had just one other  
22 issue on -- one other question on the dark fiber limitation,  
23 before we move on, and that had to do with the contract  
24 language we've been discussing, and the 12-month review.

25 I wanted to know whether there were

1 provisions -- how that -- there's -- there is plenty of  
2 testimony -- direct testimony as to how AT&T monitors the  
3 use of its fiber.

4 My question has to do more with the  
5 procedure, the process that AT&T goes through in order to  
6 notify someone in Global's position that the fiber is not  
7 being used, they are getting ready to take it back.

8 Is there a provision for notice, and possibly  
9 for extension, of the reservation of dark fiber? And  
10 I'll -- that question is addressed to Mr. Gryzmala.

11 MR. GRYZMALA: How we go about -- that is how  
12 AT&T would go about notifying Global Crossing of intent to  
13 take back --

14 JUDGE JORDAN: Yes.

15 MR. GRYZMALA: -- and --

16 JUDGE JORDAN: In other words --

17 MR. GRYZMALA: -- time or --

18 JUDGE JORDAN: Yeah. In other words, suppose  
19 Global Crossing reserved a certain amount and began using  
20 it. And let's say it was -- let's say that they reserved 25  
21 percent. But on the 365th day they'd only used 24 percent,  
22 but on the 366th day, they were ready to use that 25th  
23 percent.

24 I -- my concern is with the disruption of  
25 business growth and business plans. So is there a -- I just

1 wanted a rundown of any -- of the procedure that AT&T might  
2 use to notify Global of its intent to take back that fiber,  
3 and whether it was possible for Global to continue its  
4 reservation.

5 MR. GRYZMALA: Okay. I'm just jotting this  
6 down so I get it --

7 JUDGE JORDAN: Sure.

8 MR. GRYZMALA: -- Your Honor.

9 JUDGE JORDAN: Take your time.

10 MR. GRYZMALA: Okay. Yeah. I would -- my  
11 recollection of the direct testimony is that Mr. Hatch does  
12 not deal specifically with those questions --

13 JUDGE JORDAN: Right.

14 MR. GRYZMALA: -- or answer those questions.  
15 I will say, just in observation, Your Honor, that, you know,  
16 the point of disagreement between Global Crossing and my  
17 company rests on the principle, the policy, the authority,  
18 the rights and duties of the parties.

19 I will admit that there are procedures that  
20 underlie each -- well, virtually all of the provisions of an  
21 ICA, which is a pretty thick document itself. Those  
22 procedures and processes, I do not recall being a part of  
23 the interconnection agreement.

24 JUDGE JORDAN: Okay.

25 MR. GRYZMALA: I don't doubt that, you know,

1 they exist, but they are not etched with that sort of, you  
2 know, detail.

3 I will say this for -- and I feel confident  
4 in saying this: My company would not unilaterally terminate  
5 or disconnect or pull down circuits which we know to be in  
6 use for customers, whether ours or a CLEC, without a very  
7 high regard for the potential dislocation that could wreak  
8 on the parties and good cause.

9 I mean, so if -- in your fact pattern, Your  
10 Honor, if we realize that a CLEC -- any CLEC; this is not  
11 applicable only to Global Crossing -- is using, you know,  
12 the lion's share of the dark fiber to which it's been  
13 provided access, we would respect that and continue that  
14 provisioning.

15 JUDGE JORDAN: So that's something like  
16 Global's smell test, in other words?

17 MR. GRYZMALA: Well --

18 JUDGE JORDAN: Just good business practice?

19 MR. GRYZMALA: No. It's more than that.  
20 It's a sensitivity to our obligation to have very good  
21 cause --

22 JUDGE JORDAN: Uh-huh.

23 MR. GRYZMALA: -- immediate very good cause  
24 before we turn down circuits. That is a precipitous moment.  
25 And so we treat that very, very carefully both with our

1 retail end users, wherein you'll understand, we do give lots  
2 of notice, and with wholesale end users. I'm not in the  
3 wholesale organization, Your Honor --

4 JUDGE JORDAN: Uh-huh.

5 MR. GRYZMALA: -- but clearly, we don't take  
6 any sort of precipitous action of that type without  
7 correspondence to the CLEC and opportunity to, you know,  
8 voice a counterpoint or the like.

9 I mean, so anyway, the long and short of it  
10 is, the answer is not in the ICA that I'm aware of. That is  
11 the specific procedures in place. I'm confident that, you  
12 know, we would make sure that there's no dislocation.

13 JUDGE JORDAN: Okay. Thank you for that  
14 answer. And I do acknowledge this was an issue that the  
15 parties hadn't raised, but I felt I needed to raise on  
16 behalf of the ratepayers and the people of the State of  
17 Missouri.

18 MR. JOHNSON: Well, Your Honor, this is Mark  
19 Johnson. On behalf of Global Crossing, I mean, I can only  
20 speak to experience that I've had in other situations with  
21 other clients where, as Mr. Gryzmala indicated, you know,  
22 AT&T followed a notice practice.

23 But at the end of the day, the -- you know,  
24 the 12-month take-back gives them the right -- I mean, they  
25 can send wonderful letters to us, but at the end of the day,

1 regardless of what proposals we might counter with, they'll  
2 just say, Sorry, 12 months, that's it. We're cutting you  
3 off. So, you know, even though, you know, notice provisions  
4 are wonderful, at the end of the day, it's the 12 months  
5 that's matters.

6 JUDGE JORDAN: Okay. I didn't see any  
7 proposal or proposition for -- from Global for any notice or  
8 other procedure as to this. Did I miss something there?

9 MR. JOHNSON: No. You didn't.

10 JUDGE JORDAN: Okay.

11 MR. GRYZMALA: But, Your Honor, I have one  
12 correcting matter. I think I heard Mr. Johnson say, you  
13 know, that after wonderful letters there is a risk that we  
14 would cut them off.

15 Let's be clear here: The 20 -- the  
16 limitation in 10.7.2 simply allows a revocation if it's not  
17 being used. It's not as though people's dial tone is going  
18 down. There's -- it's not as though it's a cutoff.

19 This is a reclamation or a revocation. These  
20 are unused -- according to the language, they -- the right  
21 of AT&T would trigger only if the CLEC would not "utilize"  
22 the fiber strand.

23 I mean, if -- either you're using it or  
24 you're not. If it's not being used, that's when this  
25 provision comes in play. There's no cutoff here. I want to

1 be very clear about that.

2 MR. JOHNSON: There can be situations where  
3 we might have contractual obligations to our customers to  
4 provide them with fiber.

5 They don't happen to be using it at the  
6 moment, but, you know, one day after the 12 months, they  
7 decide to use it, and they discover that AT&T has taken it  
8 back. So we could be in a contractual difficulty with our  
9 customers.

10 MR. GRYZMALA: I don't disagree. And then,  
11 again, we turn full circle back to the policy point. The  
12 policy point being, should other CLECs be denied the use of  
13 that fiber while Global Crossing and/or its partner lies in  
14 waiting for some future day. That's where we differ.

15 JUDGE JORDAN: Okay. Is there anything that  
16 either party wants to add on this issue before we move on?

17 AT&T, anything you haven't told me so far?

18 MR. GRYZMALA: I think we've answered as best  
19 we can, Your Honor.

20 JUDGE JORDAN: Okay. Thank you.

21 And anything further from Global? Anything  
22 you haven't told me so far that you feel you need to?

23 MR. JOHNSON: No, Your Honor.

24 JUDGE JORDAN: Okay. Thank you very much.

25 Then let's move on to Issue Number 3, the placement of



1 equipment. I'll set forth my understanding of what's in  
2 dispute here, and ask the parties to correct me.

3 I understand that -- it looks to me like the  
4 inventory of items that we're talking about doesn't really  
5 seem to be the problem.

6 That is, AT&T has taken a definition that's  
7 pretty close to FCC regulations and is kind of an industry  
8 standard in describing the type of equipment we're talking  
9 about.

10 Am I correct on that? We'll start with AT&T.

11 MR. GRYZMALA: I believe that's right, Your  
12 Honor, subject to check. I think our testimony drew from  
13 the FCC's rule identifying what constitutes routine network  
14 modifications in the -- I can't recall.

15 We cited either the triennial review order or  
16 the triennial review remand order and the accompanying rules  
17 that were passed on by the FCC back in those orders.

18 JUDGE JORDAN: Okay.

19 MR. GRYZMALA: I remember a rule citation.  
20 I'm guessing 51.318. It's in our testimony. And I can  
21 recover that quickly, if you haven't already --

22 JUDGE JORDAN: Well, I recall the testimony.

23 MR. GRYZMALA: Yes. Yes. So we did  
24 identify -- and the answer is yes, it is --

25 JUDGE JORDAN: Good.

1 MR. GRYZMALA: -- in my, you know, crude way  
2 of putting it, FCC sanction language.

3 JUDGE JORDAN: Okay. And Global, what's your  
4 take on this?

5 MR. JOHNSON: Yeah. I agree with Bob, that,  
6 you know -- no, we're talking about the equipment. Yes.

7 JUDGE JORDAN: Right. Right. Part of my --  
8 my concern looking at this, as an outsider, was this  
9 definition. Did it sufficiently identify the type of  
10 equipment we were talking about, or would we have to go  
11 through that piecemeal? But if we have a standard that is  
12 recognized in the industry, that carries us a long way, I  
13 feel, towards the resolution of this matter.

14 Hang on just a second. Hang on just a  
15 second. I'm going to put you on mute for just a second  
16 while I consult with my staff -- if I can figure out which  
17 button to push. Here we are. So I'm not hanging up; I'm  
18 just putting you on hold. Okay?

19 MR. GRYZMALA: Okay.

20 JUDGE JORDAN: Okay.

21 MR. GRYZMALA: Thank you.

22 JUDGE JORDAN: Sure.

23 (Off the record.)

24 JUDGE JORDAN: Hello. Everyone is still  
25 there, I hope.

1 MR. JOHNSON: Yeah, we're still here.

2 MR. GRYZMALA: AT&T is, Your Honor. This is  
3 Bob Gryzmala.

4 JUDGE JORDAN: All right. If I understand --  
5 I want to make sure I understand what's left of this issue.  
6 And is it solely whether AT&T is already recovering these  
7 costs in its rates?

8 Is -- and I'll ask that question of Global.  
9 Is that the sticking point here?

10 MR. JOHNSON: Sorry. I was on mute for a  
11 second. This is Mark Johnson. To say that that's the only  
12 sticking point is, to an extent -- is accurate, to an  
13 extent.

14 JUDGE JORDAN: Okay.

15 MR. JOHNSON: We would be satisfied with a  
16 finding from the Commission that, number one, they are not  
17 contained within the existing AT&T rates -- and AT&T has  
18 provided testimony to that extent; and number two, that  
19 they -- that the charges for these -- for this equipment be  
20 included in the rates, terms and conditions in the pricing  
21 schedule.

22 Because then, you know, the alternative is  
23 that each time we ask for these, we will be required to  
24 individually negotiate with AT&T the price. And if AT&T is  
25 unhappy with our -- the price we want to pay, they can say

1 no. I mean, essentially, we would like to know what we're  
2 going to have to pay.

3 JUDGE JORDAN: Then let me restate the issues  
4 as I understand them. Is -- first, as to the recovery in  
5 AT&T's rate, is Global saying that -- is it contending and  
6 prepared to point me to evidence that AT&T does not  
7 recover -- does recover -- I'll start over again.

8 Am I stating Global's position accurately as  
9 follows: AT&T is already recovering these costs in its  
10 rates? Is that Global's position?

11 MR. JOHNSON: No.

12 JUDGE JORDAN: Okay.

13 MR. JOHNSON: Our position is, we don't know.

14 JUDGE JORDAN: Okay. You still don't know.  
15 In other words, having reviewed the direct testimony --

16 MR. JOHNSON: No. The thing is, before the  
17 direct testimony was filed -- before the testimony was  
18 filed, AT&T had not -- in fact, it wasn't until the rebuttal  
19 testimony from Mr. Sanders that AT&T actually provided  
20 testimony that said that these charges are not included --

21 JUDGE JORDAN: Uh-huh.

22 MR. JOHNSON: -- in AT&T rates.

23 JUDGE JORDAN: Okay. And let's --

24 MR. JOHNSON: In his direct. I apologize.  
25 It was in his direct testimony.

1 JUDGE JORDAN: Right. And --

2 MR. JOHNSON: But up to that point, we did  
3 not know.

4 JUDGE JORDAN: Okay. At this point, do you  
5 know?

6 MR. JOHNSON: Yes. And taking that as being  
7 accurate, we now know that they are not contained within the  
8 existing AT&T rates.

9 JUDGE JORDAN: Okay.

10 MR. GRYZMALA: And, Your Honor, I would have  
11 just a brief point, if I may.

12 JUDGE JORDAN: Please. Go ahead,  
13 Mr. Gryzmala.

14 MR. GRYZMALA: I would take issue that Global  
15 Crossing did not know prior to the direct testimony of  
16 Mr. Sanders. But regardless, the bottom line is they now  
17 state and agree that they now know that those costs are not  
18 already recovered.

19 JUDGE JORDAN: Okay. And that leaves us,  
20 then, I think, with -- as far as contract language goes, for  
21 me, the issue is, do we put in this definition and  
22 provision, such as AT&T has proposed, front-loading this  
23 issue, or do we do what Global requested and do them  
24 afterwards on a case-by-case basis? Is that the choice left  
25 to us?

1 MR. JOHNSON: Well, Your Honor, I would  
2 suspect that, you know, Global's position at this point is  
3 that there's a clause in the disputed language that says,  
4 and for which costs will be imposed on CLEC as an ICB/SC  
5 include.

6 JUDGE JORDAN: Uh-huh.

7 MR. JOHNSON: That language puts us at risk.  
8 We would like to have the rates to be charged for this type  
9 of equipment to be included in the pricing attachment to the  
10 interconnection agreement.

11 JUDGE JORDAN: Okay. So you'd like the  
12 inclusion of a schedule. I -- okay. Now, that sounds like  
13 something on which -- let's see, now.

14 I didn't see any language proposed to me for  
15 that. I think that's something that the parties would have  
16 to come up with. Am I correct?

17 MR. GRYZMALA: Your Honor, I would have some  
18 points to -- in response to Mr. Johnson's point, including  
19 this one. But however you want to --

20 JUDGE JORDAN: Okay.

21 MR. GRYZMALA: If you want Mr. Johnson to go  
22 first -- however.

23 JUDGE JORDAN: Well, I haven't seen -- I  
24 haven't seen any reference to a proposed price schedule.

25 And my question is for Global. Am I correct

1 on that? Have I missed something? The thing you want, in  
2 other words, doesn't -- I haven't seen it in your pleadings.

3 MR. JOHNSON: Well, it's in Mr. Henry's  
4 testimony that we -- we'd like to have these rates set  
5 forth.

6 JUDGE JORDAN: Okay. But that's not language  
7 that I can pick and incorporate by reference in my draft  
8 decision; is that correct?

9 MR. JOHNSON: I guess you're right.

10 JUDGE JORDAN: Okay. That was my question.  
11 Thank you.

12 Mr. Gryzmala, you had something you wanted to  
13 tell me.

14 MR. GRYZMALA: Very briefly, Your Honor; four  
15 or five points. Number one, to your point directly,  
16 Mr. Henry may have made his points, but the bottom line is,  
17 you are correct, Global Crossing has not proposed any  
18 competing language to now price each of these items. And so  
19 they have abandoned that.

20 Number two, in 11.1.7, it is uncontested  
21 language that AT&T shall provide those routine network mods  
22 "set forth in the attachment and in the pricing schedule, or  
23 at rates" -- or at rates -- "to be determined on an  
24 individual case basis" -- ICB -- "or through the special  
25 construction process."

1           That is agreed-to language which disposes, at  
2 the beginning of any argument that they should be  
3 preapproved.

4           Number three, the testimony is clear that  
5 these rates can differ depending upon the order submitted by  
6 a CLEC. And on that basis, among others, the Commission and  
7 the Kansas Corporation Commission determined that we would  
8 not be required to put those rates in dollars and cents on  
9 the table in the pricing appendix; that ICB would be  
10 sufficient.

11           Subject to check, I believe that's --  
12 Paragraphs 49 and 50 of the Kansas Corporation Commission's  
13 order of August 13, 2010. Subject to check, also, other  
14 CLECs have the same language in their agreement.

15           So -- and I -- just one personal observation,  
16 if you will. You know, the Staff is familiar with ICB in a  
17 different arena. We call it the CSP arena -- the  
18 customer-specific pricing arena. In Section 392.200.8, that  
19 statute effectively authorizes customer-specific pricing for  
20 business services.

21           And I don't want to beat this up, but I guess  
22 the key point I would like to make is that CSP pricing has  
23 worked well in the retail arena. CSP or ICB in the  
24 wholesale arena here is effectively a business-to-business  
25 negotiation, and it works.



1                   we don't have disputes, generally speaking.  
2 I don't think I've ever seen a complaint filed at the  
3 Commission to the effect that, you know, we have been  
4 unreasonable or the parties can't agree. It works well.

5                   So for the same reason 392.200.8 implements a  
6 customer-specific pricing model in the retail arena, so too  
7 does the ICB process in the wholesale arena. And so for all  
8 of those reasons, we think this is appropriate language.

9                   But, of course, as we pointed out at the  
10 outset, there is no remaining issue. Mr. Sanders met the  
11 challenge -- Andy Sanders delivered when he demonstrated  
12 that we were not already recovering those costs.

13                  JUDGE JORDAN: Right.

14                  MR. GRYZMALA: It's over in our view, because  
15 Global Crossing had already agreed to uncontested language.  
16 For it now to come back and want to rewrite that language is  
17 impermissible.

18                  JUDGE JORDAN: Okay. I'm going to -- right  
19 now, I'm going to defer to Staff and see if they have any  
20 inquiries.

21                  MR. VOIGHT: Hey, Bob. It's Bill Voight.

22                  MR. GRYZMALA: Yes, sir. Hi.

23                  MR. VOIGHT: How are you doing?

24                  MR. GRYZMALA: Oh, okay.

25                  MR. VOIGHT: Is Alan Kern on the line, as

1 well?

2 MR. GRYZMALA: He's with me, yes.

3 MR. VOIGHT: I wanted to just make sure that  
4 we are tracking with what you and Mr. Johnson were just  
5 discussing.

6 And I'm looking at the disputed point list  
7 and Issue Number 3. And I'm looking at Exhibit 3, Page 9 of  
8 10. And it's dated August 27th. Is that -- do I have the  
9 most recent document with me?

10 MR. GRYZMALA: Yes. And I am sorry, Bill. I  
11 hope I didn't create any confusion. That is what we filed  
12 on October 4, but it is dated August 27th. So you're right  
13 on.

14 MR. VOIGHT: Okay. That -- I have the  
15 October 4th, then. That's what I thought. And we're  
16 talking about this DPL Number 3.

17 And when you look under the disputed contract  
18 language -- that being the column right in the very  
19 middle -- Bob, there's -- there's a part -- is in bold, and  
20 that's really over on Page 10, and then there's a part that  
21 is not in bold.

22 MR. GRYZMALA: Right.

23 MR. VOIGHT: And I want to make sure that I  
24 understand what you're saying, Bob. And that is that the  
25 part that is not in bold, are you saying that there is no

1 dispute over that part of that wording?

2 MR. GRYZMALA: Right. My understanding of  
3 the process -- and I feel pretty comfortable about this,  
4 Bill -- is that as parties move through the negotiation  
5 process, three things happen:

6 Either the language is uncontested, in which  
7 case the result is normal font. The second scenario -- and  
8 you'll see it from the key at the bottom of that page --  
9 bold, underlined language represents language we, AT&T, puts  
10 on the table, but the CLEC opposes -- i.e. bold, underline.  
11 And bold italicized language is language put on the table by  
12 the CLEC -- here Global Crossing -- and opposed by AT&T.

13 So in terms of 11.1.7, everything on Page 9,  
14 trailing into the beginning of Page 10, is uncontested  
15 language. The part that begins, The parties agree -- that  
16 is in bold, underline -- is language we advance but Global  
17 Crossing opposes. And there is no language that has been  
18 proposed by Global Crossing in the parties' agreed-to joint  
19 DPL.

20 MR. VOIGHT: And that was my understanding of  
21 it. I just wanted to make sure that I was clear.

22 Mr. Johnson, is that your understanding,  
23 Mark, as well, of what Bob -- do you agree with what Bob  
24 just said?

25 MR. JOHNSON: I guess the point is this: Is

1 that if -- if this is Mr. Henry's testimony -- you know,  
2 he's -- at the bottom of Page 4 and the top of Page 5, he  
3 quotes from what they say is agreed language. Why do they  
4 want the rest of this? It sounds like it's completely  
5 surplusage.

6 MR. GRYZMALA: Well, that's a new argument  
7 that's never been made. I'm not quite sure what to make of  
8 that. I mean -- anyway, I'll let Your Honor determine what  
9 we should answer.

10 JUDGE JORDAN: Well, you know, if you want to  
11 make a comment, you may, but you don't have to.

12 MR. GRYZMALA: Well, I think that the only  
13 thing that -- you know, I don't have any -- at this point,  
14 on this particular question, Your Honor, I don't add  
15 anything more to, you know --

16 JUDGE JORDAN: Okay.

17 MR. GRYZMALA: -- you know, the analysis than  
18 what might be intuitive to the parties.

19 I mean, I think we all understand that, you  
20 know, the language there is, if nothing else, it identifies  
21 the specific items that are the subject of ICB pricing.

22 I mean, the first part of the language  
23 already says, we're going to -- you know, the dollars and  
24 cents are either going to be in the appendix or special  
25 construction or ICB. We're done with that part.

1           The second part of the language, which is  
2 contested, does nothing more than identify those specific  
3 pieces of equipment or activities for which costs are not  
4 already being recovered. That's all that second language  
5 does.

6           MR. VOIGHT: Bob, it's Bill. Excuse me,  
7 Judge.

8           JUDGE JORDAN: No. Go ahead. Go ahead. Go  
9 ahead.

10          MR. VOIGHT: You made a -- I guess a comment  
11 about Missouri statutes and how the Commission historically  
12 and continues to treat, you know, customer-specific pricing,  
13 individual case-based pricing, so on and so forth, which is  
14 part of the -- I think the disputed language here. And  
15 that's really what I'm trying to lead up to.

16          But I just wanted to establish sort of a  
17 foundation to make sure that I was understanding, first,  
18 what is in this disputed point list. And I think I'm  
19 beginning to better understand that.

20          MR. GRZMALA: All right.

21          MR. VOIGHT: What type of services are we  
22 talking about here -- are we talking about with these  
23 routine network modification costs? First of all, let me  
24 ask. There were no cost studies submitted in this case; is  
25 that correct?

1 MR. GRYZMALA: No. Or -- I'm sorry. That is  
2 correct. No cost studies were submitted in this case.

3 MR. VOIGHT: Yeah. I noticed the testimony  
4 talks a lot -- or at least, it highlights incremental costs  
5 and various cost studies and so on and so forth, but I just  
6 want to be clear. There's no cost study before the  
7 arbitrator in this case?

8 MR. GRYZMALA: Yeah. I'm pretty comfortable  
9 with that point. I'm looking at the testimony, Bill, and I  
10 don't recall any being referenced. And I certainly don't  
11 recall any being submitted in this case.

12 MR. VOIGHT: What type of services, Alan, are  
13 we talking about here? Are we just talking about unbundled  
14 network elements, or are we talking about loops and things  
15 like that?

16 I mean, I notice testimony about repeaters  
17 and DS1s and DS3s and all that sort of thing. Are we just  
18 talking -- are we talking about unbundled network elements  
19 here? Or what are we talking about?

20 MR. KERN: Let me --

21 MR. VOIGHT: Because it references the -- the  
22 DPL references, you know, a section number --

23 MR. GRYZMALA: Let me do this, Bill.

24 MR. VOIGHT: -- and it's talking about  
25 attachment UNE.

1 MR. GRYZMALA: Maybe this will move us along.

2 The attachment that this goes into --

3 MR. VOIGHT: Yes.

4 MR. GRYZMALA: -- if you look in the  
5 left-hand column, it says Attachment 13 UNES.

6 MR. VOIGHT: Yes.

7 MR. GRYZMALA: And if you look at Section 11,  
8 in the table of contents there, I'm reading; it says,  
9 Routine network modifications for UNE loops, UNE DS1, DS3  
10 and dark fiber dedicated transport. Page 17.

11 MR. VOIGHT: Okay. So I think the answer is  
12 yes, we're talking about what we generally think of as UNES.  
13 That's what I thought, Bob. I just wanted to make sure.

14 MR. GRYZMALA: Yeah. I'm just kind of going  
15 to the ICA here. Yeah. Yeah.

16 MR. VOIGHT: So when you look at the bold  
17 language, then, on Page 10 -- and Mark, this question is  
18 really for you. What AT&T is proposing is that there will  
19 be individual case-based pricing --

20 MR. JOHNSON: Right.

21 MR. VOIGHT: -- for things like adding an  
22 equipment case, a repeater, shelves, repeater shelves,  
23 multiplexing equipment. A lot of this, if not all of this,  
24 sounds like hardware.

25 And Mark, I want to make sure -- Global

1 Crossing's position -- and I don't want to mischaracterize  
2 it -- but your client would prefer that the -- whatever  
3 costs there may be, that those costs be specifically listed  
4 in the interconnection agreement for these functions and not  
5 have the ICB language; is that correct?

6 MR. JOHNSON: Yes.

7 MR. VOIGHT: Okay. And Bob, if I recall your  
8 statements, individual case-based pricing is something that  
9 the Commission is familiar with, and your viewpoint would be  
10 that doing it that way, in a business-to-business  
11 transaction, is -- there really aren't too many problems  
12 along those lines?

13 MR. GRZYMALA: Right. I mean, that's just  
14 based on my experience here, Bill, on the desk for AT&T  
15 Missouri.

16 And I don't recall any issue, as it were,  
17 so -- and the other thing, too, is I don't have the line  
18 or -- the page or line, but I think it was very directly  
19 stated by Andy Sanders or maybe Mr. Hatch that, you know,  
20 these orders are ICB -- you know, these are uniquely suited  
21 for ICB, because it depends upon the specific type and order  
22 a CLEC may give us.

23 And I think that's why you kind of see that  
24 language in other agreements and recognize because of that  
25 reality.



1 MR. VOIGHT: I understand. And I think I do  
2 recall reading that testimony. Thank you, Bob. This is  
3 Bill. I really don't have any further questions right now.

4 JUDGE JORDAN: Okay. I'm going to go off the  
5 record for just a minute, and I'll be back with you shortly.  
6 I'm going to put you on mute.

7 (Off the record.)

8 JUDGE JORDAN: Hello, everyone. We're back.  
9 I hope everyone is still there. Mr. Johnson?

10 MR. JOHNSON: Yes. We're here.

11 JUDGE JORDAN: And Mr. Gryzmala?

12 MR. GRYZMALA: Yes, Your Honor. We're here.

13 JUDGE JORDAN: Okay. I have been looking at  
14 this language and poring over it with my advisory staff.  
15 And my question that I come up with is for Mr. Gryzmala.

16 Taking a look at your -- at the agreed and  
17 disagreed language in 11.1.7, I understand that the agreed  
18 language -- I'm going to state my understanding, and you can  
19 correct me. I'm going to go through it bit by bit.

20 The agreed language seems to say this: For  
21 RNM, one of two possibilities provide -- applies -- one of  
22 two possibilities applies in this agreed language. Okay.

23 Number one, it's either subject to the terms  
24 and conditions set forth in this attachment and pricing  
25 schedule. And if it's not, then we use the ICB or SC

1 process. Am I correct so far?

2 MR. GRYZMALA: I think that's fair.

3 JUDGE JORDAN: Okay.

4 MR. GRYZMALA: My recollection, Your Honor,  
5 is that in the old 2005, mods were specified in the pricing  
6 appendix as ICB. So I think that that's the way it would  
7 work. Mr. Sanders referred to that in his rebuttal. I  
8 think it was at the very last page.

9 JUDGE JORDAN: Okay. Say that last part  
10 again.

11 MR. GRYZMALA: Well, just for example --  
12 well, the answer to your question is yes.

13 JUDGE JORDAN: Okay. Good. Good answer.

14 MR. GRYZMALA: All right. That is they're  
15 not in the pricing schedule, then they're resolved through  
16 ICB.

17 But that's my historical recollection, that  
18 if you look at that old pricing appendix from the previously  
19 approved 2005s, and you look at routine network  
20 modifications, you'll see that it was ICB. I mean, those  
21 letters appear in that line entry in the pricing schedule.

22 MS. DALE: So, Bob, was your brief hesitation  
23 there because some of the ICB items are included in the  
24 pricing schedule as ICB?

25 MR. GRYZMALA: Come again, Cully. Just help

1 me -- do that one more time for me.

2 MS. DALE: The question is: You were  
3 hesitating there to say it's either/or.

4 MR. GRYZMALA: Right.

5 MS. DALE: And my question is, are you  
6 hesitating because sometimes items are included in the  
7 pricing schedule but they say in the pricing schedule  
8 they're priced ICB?

9 MR. GRYZMALA: Well, I'll tell you, actually,  
10 here's why I -- here's why I paused, candidly. Because when  
11 Judge Jordan said, if they're in the -- if they're not in  
12 the pricing schedule, then do you go to an ICB?

13 And I got hung up because I thought I  
14 recalled that well, they're in the pricing schedule, but  
15 they are reflected as ICB in that schedule. In other words,  
16 you would not see a dollars and cents.

17 MS. DALE: Okay.

18 MR. GRYZMALA: That was the reason --

19 JUDGE JORDAN: Okay.

20 MR. GRYZMALA: -- for my hesitation.

21 JUDGE JORDAN: Okay.

22 MS. DALE: Okay. Got it.

23 JUDGE JORDAN: So we have a pricing schedule,  
24 and for some things it will say \$10. For another one, the  
25 pricing schedule itself will say ICB or SC.

1 MS. DALE: Right. And in some cases, there  
2 won't be any mention of some things in the pricing schedule,  
3 at all.

4 JUDGE JORDAN: Right. And then we know,  
5 according to the agreed language, that it's either ICB or  
6 SC. We go to that if it's not listed at all.

7 Let me ask Mr. Johnson if he has any  
8 reflections on that.

9 MR. JOHNSON: No. I agree with that, and  
10 that's --

11 JUDGE JORDAN: Okay. Good.

12 MR. JOHNSON: -- what pricing schedules often  
13 have, is just a whole slew of ICBs in them.

14 JUDGE JORDAN: Now, all this is --  
15 everything, both the agreed and disagreed language, is  
16 against the background of what AT&T is recovering or not  
17 recovering in its current rates.

18 I understand that's really not an issue, and  
19 it's -- that's -- that Global is satisfied as to that issue;  
20 is that correct?

21 MR. JOHNSON: Yeah. Based on the testimony,  
22 which we have no reason to question -- we didn't rebut it --

23 JUDGE JORDAN: Good. Right.

24 MR. JOHNSON: -- the --

25 JUDGE JORDAN: Hello. Is -- I hope someone

1 is still on the line.

2 MR. GRYZMALA: I'm sorry. I lost connection,  
3 too, Your Honor.

4 MR. JOHNSON: Are you there?

5 MS. DALE: There we go.

6 MR. JOHNSON: Can you hear me?

7 MS. DALE: Yes.

8 JUDGE JORDAN: Mr. Johnson, you're still  
9 there? You're back with us?

10 MR. JOHNSON: Yes.

11 JUDGE JORDAN: Good.

12 MR. JOHNSON: Can you hear me? Yes.

13 JUDGE JORDAN: Good. Yeah.

14 MR. JOHNSON: We're still here.

15 JUDGE JORDAN: Yes. Yes. Yes. So okay,  
16 that's very helpful. That's very helpful. Now, let's move  
17 to the disagreed -- the disputed part of the language.

18 And we've already -- we've established that  
19 recovered, not recovered and incurrent rates is -- Global  
20 agrees to that. And I think that's very helpful.

21 That leaves us with this bit, this breakout  
22 of three items. And my question is, if the undisputed  
23 language already describes the universe of items, why are we  
24 breaking out those three items and making a separate  
25 provision for them? And that question is for Mr. Gryzmala.

1 MR. GRYZMALA: Let me -- I apologize, Your  
2 Honor. I'm just looking at 11.1.7 now. And can you repeat  
3 your question?

4 JUDGE JORDAN: I will happily repeat the  
5 question. The disputed language really has two components  
6 as to which it says, The parties agree. And the parties  
7 agree to the following. Okay. And number one of -- one of  
8 them had to do with the -- whether ATT was recovering its  
9 costs in current rates. And --

10 MR. GRYZMALA: Correct.

11 JUDGE JORDAN: And Global has very helpfully  
12 addressed that issue and no longer disputes it. And I think  
13 that's -- that moves us very far along to one final matter.  
14 The --

15 MR. GRYZMALA: Okay.

16 JUDGE JORDAN: Which is that second matter in  
17 the disputed contract language.

18 MR. GRYZMALA: The for -- the "for which  
19 costs will be imposed on CLEC as in ICB/SC"?

20 JUDGE JORDAN: Yes. They include, but are  
21 not limited to, these three items. Now, if we already have  
22 universal language undisputed, why are we breaking these  
23 out? Do we need to?

24 MR. GRYZMALA: That's a factual question,  
25 Your Honor. I just do not know the answer to it.

1 JUDGE JORDAN: Okay.

2 MR. GRYZMALA: I mean, I literally do not  
3 know that. For some reason, the parties, you know,  
4 concluded, or the company concluded that there was a need to  
5 specify those specific items. For clarity, I will say, you  
6 know -- again, please don't hold me to this --

7 JUDGE JORDAN: Uh-huh.

8 MR. GRYZMALA: -- you know, answer -- but I  
9 think a clue in that language is with respect to Part 4,  
10 which has been taken out.

11 Part 4 had to do with -- and I don't have it  
12 in front of me, but it basically added a fourth piece of  
13 equipment, multiplexer. Okay?

14 And there was a recognition that in Missouri,  
15 that cost was already being recovered elsewhere so that it  
16 was very, you know, expected that it should come off. This  
17 is to add clarity, I suppose, with the remaining three.

18 JUDGE JORDAN: Well, that leaves me with a  
19 little bit of a quandary, in that I don't know whether this  
20 is -- this -- I don't want to read this as redundant --

21 MR. GRYZMALA: Right.

22 JUDGE JORDAN: -- but otherwise it's an  
23 exception, and we don't seem to have that nailed down.

24 In other words, this could be read to take  
25 three items away from the pricing schedule in any event, and

1 say whatever the pricing schedule says, it's always going to  
2 be ICB and SC.

3 And if that's the intent, that's the intent.  
4 But I would feel more comfortable if it actually said that.  
5 So that's something that I think you need to get back with  
6 your client to clarify. And --

7 MR. GRYZMALA: To what, now? To ensure -- to  
8 make sure that?

9 JUDGE JORDAN: Oh, to -- so that if I -- if I  
10 point the Commission to this language and say, Use it, I  
11 need to know what it means.

12 MR. GRYZMALA: Okay. What it means is that  
13 if we are -- well, these are the items. These are specific  
14 items which the degree AT&T is not recovering, and that you  
15 can expect charges to be imposed on ICB or SC.

16 I think that you read that when you look at  
17 the pricing schedule itself. And that has been pointed out  
18 to me. And I believe the Commission would have that. We  
19 filed it when we filed the petition.

20 The very last piece of the interconnection  
21 agreement that we filed on August 27 would be the Missouri  
22 pricing appendix. Okay. It says, Pricing Schedule, AT&T.  
23 And I have that in front of me. And I'm looking at a line  
24 entry, and this would be for the staff to confirm. But I'm  
25 pretty comfortable with this.



1                   It says, Missouri pricing -- Page 4 of 11,  
2 Line 162. The service is called routine modifications.  
3 There is a USOC associated with it, which, in our business,  
4 means, if I recall, universal service ordering code. And  
5 then on the -- Column E, there is a nonrecurring rate,  
6 initial, which means ICB. And it says ICB. I'm sorry.

7                   So my point is, is that so far as I can tell  
8 on this pricing schedule, all routine network modifications  
9 are priced on an ICB basis -- as a nonrecurring, by the way.

10                  I see monthly recurring rate not applicable,  
11 which means there would be no monthly recurring rate  
12 associated with that under the pricing schedule that I'm  
13 viewing, Page 4 of 11. So that is the parties' agreement  
14 there, routine modifications -- Line 162, nonrecurring rate  
15 of ICB.

16                  JUDGE JORDAN: Mr. Voight, did you have a  
17 question?

18                  MR. VOIGHT: Yes. Bob, it's Bill Voight.

19                  MR. GRYZMALA: Yes, sir.

20                  MR. VOIGHT: I'm looking at Andrew Sanders'  
21 rebuttal testimony filed on October 4th. I think you  
22 referenced that.

23                  MR. GRYZMALA: Yeah. Let me get to it real  
24 quick here. Hang on.

25                  MR. VOIGHT: And I'm looking at Page 6.

1 MR. GRYZMALA: Sanders' Rebuttal 6?

2 MR. VOIGHT: Yes, sir.

3 MR. GRYZMALA: Okay. Hang on.

4 MR. VOIGHT: What I've come -- I'm trying to  
5 understand if these costs are already included in  
6 everything, or if they're not included in anything, or if  
7 some they are and some they aren't.

8 I thought I understood that. Now, I'm more  
9 confused. Because I think what Judge -- what the judge was  
10 asking is, what is the necessity of the bold language on  
11 Page 10 of the DPL? Do you all --

12 JUDGE JORDAN: Yeah. I'm trying to figure  
13 out --

14 MR. VOIGHT: Was your question answered?

15 JUDGE JORDAN: Does -- is this intended to  
16 constitute an exception to the otherwise provision of the --  
17 of the pricing schedule? Is that why that -- why that is  
18 there? We have three items we're making a special provision  
19 for.

20 MR. VOIGHT: I mean, there's a lot -- there's  
21 numerous references to prior -- to the Mega arbitration  
22 case, the successor M2A agreements, and so on and so forth.

23 And I know there's always been some concern  
24 about double recovery of cost. And I don't know if this an  
25 attempt to address that, or -- my real question is, on Page

1 6 of -- Bob, of Mr. Sanders' testimony, we have some  
2 contract language there. His testimony is, is in the M2A  
3 arbitration proceeding in 2005, in Paragraph 10.7.3 --

4 MR. GRYZMALA: Okay. I'm on that -- I'm  
5 looking at that, Bill. Yes.

6 MR. VOIGHT: Okay. Is that language that the  
7 Commission ordered be put into the M2A, or is that language  
8 that was proposed by AT&T? Or what is this language  
9 supposed to represent?

10 My real question is: Why are you deviating  
11 from that language in this Global -- proposal for Global  
12 Crossing?

13 MR. GRYZMALA: Okay. I'm trying to catch up,  
14 so bear with me, please.

15 MR. VOIGHT: Sure.

16 JUDGE JORDAN: Take your --

17 MR. GRYZMALA: I'm looking at Sanders. I  
18 would have to infer, Bill, that it was not agreed-to  
19 language, because at Line 24 on that page says, It was  
20 specifically noted that SPC's language is most consistent  
21 with the arbitrator's report. That tells me it was  
22 contested in some way, shape or form.

23 MR. VOIGHT: Oh, I believe it was contested.  
24 My first question is, this Paragraph 10.7.3, right in the  
25 middle of the block -- right in the middle of Page 6, what

1 is that language there? Is it in the current agreement? Or  
2 is that, in effect, what AT&T proposed at that time?

3 I find Mr. Sanders' testimony, I'm just not  
4 able to follow what he's trying to say here.

5 MR. GRYZMALA: You mean where 10.7.3 came  
6 from?

7 MR. VOIGHT: Yeah. Is that language that  
8 he's quoted there, is that in the current M2A?

9 MR. GRYZMALA: I don't know. I'll have to  
10 check that. I don't know if you -- I mean, if it is in the  
11 current M2A. I don't know. I mean --

12 MR. VOIGHT: Well, because -- the reason I'm  
13 asking, Bob, right in the middle of that, it says, The ICB  
14 rate -- and I'm reading at Line 12 --

15 MR. GRYZMALA: Okay.

16 MR. VOIGHT: -- of Mr. Sanders' testimony on  
17 Page 6 of his rebuttal testimony filed on October 4th, I  
18 believe.

19 MR. GRYZMALA: Right. I have it. I'm  
20 looking at that page.

21 MR. VOIGHT: And I'm looking at Page --  
22 Line 12.

23 MR. GRYZMALA: Okay.

24 MR. VOIGHT: And it says, The ICB rate shall  
25 be determined on an individual case basis and shall reflect

1 an engineering estimate of the actual costs of time and  
2 materials required to perform the routine network  
3 modification, provided, however, that the ICB rate shall not  
4 include any costs already recovered through existing  
5 applicable recurring/nonrecurring charges.

6 That sounds to me like Commission-worded  
7 language. Do you know if it is or not? Was this language  
8 ordered by the Commission?

9 MR. GRYZMALA: Give me a moment.

10 MR. VOIGHT: Because --

11 MR. GRYZMALA: I --

12 MR. VOIGHT: -- someone is obviously  
13 concerned about double recovery of costs here.

14 MR. GRYZMALA: Right. I understand. I just  
15 want to make sure I understand. Bear with me. I'm going  
16 through some 2005 material.

17 JUDGE JORDAN: And while you're doing that,  
18 Mr. Gryzmala, let me just get with Mr. Johnson and ask him a  
19 question.

20 MR. JOHNSON: Yes, sir.

21 JUDGE JORDAN: As to the three items that are  
22 listed in the disputed language --

23 MR. JOHNSON: Yes.

24 JUDGE JORDAN: -- does Global have a problem  
25 with these things going to the ICB/SC process?

1 MR. JOHNSON: well --

2 JUDGE JORDAN: If you do, it's okay. I just  
3 want to clarify your position.

4 MR. JOHNSON: No. As -- you know, given  
5 Mr. -- I always get -- let me get the witness's name --  
6 Sanders' testimony that they're not included within existing  
7 rates, I guess we really don't. So that's why --

8 JUDGE JORDAN: Okay.

9 MR. JOHNSON: -- I made the point that, you  
10 know, that seems to have gotten some traction that the  
11 disputed language is, at this point, unnecessary.

12 MR. GRZYMALA: Judge, I have -- I think I  
13 have an additional point on that language that might help  
14 get us through this. I don't know, but it might.

15 And Bill, to your point -- and please bear  
16 with me; I hope I can get you there -- I'm looking at the  
17 2005, you know, decision, and I will just read to you.

18 It's Attachment 3-A, Part 4, Detailed  
19 Language Decision Matrix. You may recall that. And this is  
20 an issue that was brought by the CLEC Coalition. So if you  
21 look in the left-hand of four columns it says CC UNE 23.

22 The CLEC has language that they proffer, SBC  
23 has language that they proffer, and the arbitrator -- Judge  
24 Thompson -- states, SBC's language is most consistent with  
25 the arbitrator's report.

1                   Now, the piece that -- I'm -- you know,  
2 subject to your check, the piece that is bolded, that SBC  
3 put on the table, starts, A rate for any routine network  
4 modification shown as ICB, which corresponds with Sanders at  
5 Page 6, Line 7 -- I'm just reading one against the other --  
6 A rate for any routine network modification -- again, I'm  
7 reading from that detail matrix -- shown as ICB in appendix  
8 pricing or the applicable tariff indicates that the parties  
9 have not negotiated and/or that the State Commission has not  
10 reviewed and approved a specific rate for that routine  
11 network modification.

12                   The ICB rates shall be determined on an  
13 individual case basis, and shall reflect an engineering  
14 estimate of the actual costs of time and materials required  
15 to perform the routine network modification, provided,  
16 however, that the ICB rates shall not include any costs  
17 already recovered through existing, applicable recurring and  
18 nonrecurring -- and then I lose the language after that.

19                   For some reason, it was cut off in the  
20 decision matrix. I think it was recovered elsewhere. In  
21 fact, I'm certain that I thought I had this put into  
22 Sanders' testimony.

23                   But what I read to you was the bolded  
24 language to which Judge Thompson reported SCB's language is  
25 most consistent with the arbitrator's report, ergo it went

1 into the M2A, as I gather.

2 Now, the CLEC language here, it looks like  
3 it's uncontested. It's only one short sentence in the  
4 detail language decision matrix. SBC Missouri shall provide  
5 routine network modifications at the rates, terms and  
6 conditions set out in this attachment and in the appendix  
7 pricing UNE schedule of prices. That was the only  
8 uncontested that I can see.

9 And then it has an italicized parentheses.  
10 Note: The following deleted language was SBC's proposed  
11 language and was not agreed to by the coalition. I take  
12 that to mean our bolded language was not agreed to. I don't  
13 know if that adds any more, but --

14 MR. VOIGHT: Bob, what's -- so what's the  
15 answer to my question, which is --

16 MR. GRZMALA: These items will be ICB  
17 priced.

18 MR. VOIGHT: -- which is, again, on Line 5  
19 of Mr. Sanders' testimony, beginning at Line 5 and ending at  
20 Line 22, where does that language come from?

21 MR. GRZMALA: Oh, the language that we are  
22 offering in 11.1.7? What do you mean, "that language"? Are  
23 you asking where 10.7.3 comes from?

24 MR. VOIGHT: Are you looking at Page 6 of  
25 Mr. Sanders' rebuttal testimony? Do you have that?



1 MR. GRYZMALA: Yes, sir.

2 MR. VOIGHT: Do you see between Lines 5 and  
3 Lines 22?

4 MR. GRYZMALA: Yes, sir.

5 MR. VOIGHT: And it says 10.7.3. Do you see  
6 that?

7 MR. GRYZMALA: Yes, sir. I do.

8 MR. VOIGHT: where does that language come  
9 from?

10 MR. GRYZMALA: well, I read it to you as far  
11 as I could from the reported EFIS decision from 2005  
12 arbitration.

13 MR. VOIGHT: So this --

14 MR. GRYZMALA: It is in Judge Thompson's  
15 order where I cited.

16 MR. VOIGHT: So the Commission ordered this  
17 language be put into the M2A?

18 MR. GRYZMALA: I -- you know, when Judge  
19 Thompson said SBC's language is more consistent, or the  
20 CLEC's language is more consistent, we took that as an  
21 order. Yes.

22 MR. JOHNSON: well -- this is Mark Johnson.  
23 And, you know, and I wish I had the entire proposed  
24 interconnection agreement in front of me.

25 Does this language appear in the proposed

1 agreement between AT&T and Global Crossing? Because,  
2 candidly, if it doesn't, of what relevance is referencing  
3 language that appears in somebody else's agreement?

4 MR. GRYZMALA: Right.

5 MR. VOIGHT: I'm sorry. I don't know. Who  
6 are you asking that question of, Mark?

7 MS. DALE: It's rhetorical.

8 MR. JOHNSON: I don't know. Maybe it's --  
9 well, you know, I wish I had the entire proposed agreement  
10 in front of me. Let me take a look here.

11 MR. VOIGHT: Well, you know, where I'm --  
12 where I'm going with this, is AT&T proposing that the M2A be  
13 modified with respect to these -- recovery of these costs?

14 MR. GRYZMALA: Oh, no. I mean, the language  
15 is the language. I mean, at a high level, Bill, we're not  
16 looking to, nor could we ever effectuate, a change to what's  
17 already been previously approved by the Commission.

18 MR. VOIGHT: Well, this is a totally  
19 different case.

20 MR. GRYZMALA: Right. I agree with that.

21 MR. VOIGHT: Well, I'm not following, then.  
22 So this language on Page 6 is currently in the -- what AT&T  
23 and Global Crossing are agreeing to? It's currently being  
24 proposed?

25 MR. GRYZMALA: I mean, I think the language

1 in 11 -- in -- let me -- the language with Global Crossing  
2 differs -- or the language we are proposing in the  
3 October 4, DPL, I mean, just eyeballing it, is different  
4 than 10.7.3.

5 That language --just, again, eyeballing it as  
6 we all can, that language adds specific items of equipment  
7 which the parties agree AT&T is not already recovering their  
8 costs.

9 MR. VOIGHT: So 10.7.3, what is -- nowhere is  
10 that being included in the proposed AT&T/Global agreement;  
11 is that correct?

12 MR. GRYZMALA: Oh, I see. Okay. This is --  
13 okay. It might be. I mean, you got to look at the sections  
14 like -- for example, before. You know, I mean, we have to  
15 put the entirety of the ICA on the table. Right?

16 JUDGE JORDAN: Which is why Mr. Johnson  
17 said --

18 MR. GRYZMALA: So, I mean --

19 JUDGE JORDAN: -- he wished he had it.

20 MR. GRYZMALA: -- you have to look at 11.1.7,  
21 I -- or 11.1 -- whatever before it. Let me see here.

22 MR. VOIGHT: And Bob, where I'm going with  
23 this, it just seems to me like this issue has already been  
24 addressed by the Commission previously.

25 And while we don't necessarily have to go by

1 it, I would just like to know if you're not going by it, why  
2 not? And specifically, the issue was really double recovery  
3 of costs.

4 MR. GRYZMALA: Right.

5 MR. VOIGHT: I -- is AT&T --

6 MR. GRYZMALA: what you're saying --

7 MR. VOIGHT: It AT&T proposing to abandon  
8 that safeguard?

9 MR. GRYZMALA: well, let me ask you -- Bill,  
10 I'm not the negotiator. I don't know what happened between  
11 the parties at the table.

12 MR. VOIGHT: Okay.

13 MR. GRYZMALA: Let me just ask you if I  
14 understand what you're saying, as a practical business  
15 matter.

16 MR. VOIGHT: Sure.

17 MR. GRYZMALA: Are you saying, why didn't you  
18 guys just go ahead and use what the Commission had already  
19 approved in 10.7.3?

20 MS. DALE: Yes.

21 MR. VOIGHT: well --

22 MR. GRYZMALA: why are we looking at new  
23 language today?

24 MR. VOIGHT: Yeah. That would be the basic  
25 question. Yes.

1 MR. GRYZMALA: I don't have an answer. I  
2 mean, you know, the business management folks between our  
3 company and Global negotiate language. And, you know, this  
4 is where we've gotten to with three issues.

5 I can't -- I just don't have the answer. And  
6 I don't have the negotiator, you know, that I can ask him,  
7 you know, Do you remember what happened? Why did we just  
8 not, you know, pony up 10.7.3 or --

9 MR. VOIGHT: And I understand, Bob. I  
10 respect that. I truly do. You don't have to do the same  
11 thing, obviously --

12 MR. GRYZMALA: For five years --

13 MR. VOIGHT: -- from one contract --

14 MR. GRYZMALA: And this is --

15 MR. VOIGHT: -- to another.

16 MR. GRYZMALA: -- total conjecture, Bill.

17 MR. VOIGHT: And I understand --

18 MR. GRYZMALA: Total.

19 MR. VOIGHT: -- the witnesses are not here.  
20 I understand.

21 MR. GRYZMALA: Witnesses are not here. But I  
22 realize I'm on the record, so I want to caveat my point.  
23 Since the 2005 arbitration was decided, you know, there have  
24 been developments and, you know, here and elsewhere, and the  
25 company has strived to effectuate -- I think you've come to

1 see, from time to time, a 22-state agreement. So, you know,  
2 maybe it was a part of that.

3 As a process of evolution, better learning --  
4 I don't know the answer. I mean, I can't tell you why the  
5 parties didn't just stick to 10.7.3 from 2005 in here. And  
6 we'd be done and all go home. I don't have the answer to  
7 that.

8 JUDGE JORDAN: Okay. Okay.

9 MR. VOIGHT: Fair enough. And the only  
10 reason -- just one final comment, Bob.

11 MR. GRYZMALA: Oh, sure. Bill. Any time.

12 MR. VOIGHT: To us, here, the arbitration --  
13 the arbitrator, I think, and the team -- AT&T's team is --  
14 we're not able to understand why the reason for the  
15 additional bold language on the DPL, because it seems like  
16 the ICB is already covered in the non-bolded portion.

17 MR. GRYZMALA: Well, and, again, I don't  
18 mean -- I don't know what the consequence of this is. If  
19 the -- if -- you know, our view, it's a high level -- it's  
20 either the language is accepted or it's not.

21 Now, if someone were to ask me as a lawyer  
22 whether or not these items would be captioned with the  
23 uncontested language, I think my preliminary read would be,  
24 if we are not recovering them in our costs already, then  
25 yes, that is agreed to at -- within the, you know,

1 uncontested language.

2           And if there is a difference about that, then  
3 we have a fight. Okay. And if we can't resolve it, then we  
4 fight it out at the Commission.

5           The additional bonus in this language, the  
6 newly added language, the proposed --

7           MR. VOIGHT: Uh-huh.

8           MR. GRYZMALA: -- language --

9           MR. VOIGHT: Uh-huh.

10          MR. GRYZMALA: -- is that there is no issue,  
11 no potential for a fight.

12          MR. VOIGHT: Okay.

13          MR. GRYZMALA: That is, I could tell the  
14 clients, you know, Look at this new language, or this  
15 additional language. The parties have already agreed that  
16 these are items for which we're not recovering our costs.  
17 It's over. In other words, that element of uncertainty, if  
18 you will, is resolved between businesses earlier than later.

19          JUDGE JORDAN: And if I understand, then,  
20 what you're saying is that as to the method of pricing, the  
21 parties are trying to say through this language, should  
22 Mr. Johnson -- if Mr. Johnson's client agreed to it, is that  
23 whatever the pricing schedule says -- whatever it says --  
24 these three items will be ICB/SC; is that correct?

25          whatever the pricing schedule may say, we're

1 going to make sure that these three items are ICB or SC? Is  
2 that an accurate reading?

3 That would give meaning to that proposed  
4 language. Because, otherwise, it's already taken care of in  
5 the pricing schedule. I think one would have --

6 MR. GRYZMALA: Right.

7 JUDGE JORDAN: -- to read it as an exception.

8 MR. GRYZMALA: And, I mean, it does say, they  
9 will be imposed on ICB or SC.

10 JUDGE JORDAN: Yes. Yes. So that's my read  
11 of it. I can't think of any other reason for those words  
12 being here.

13 MR. JOHNSON: Uh-huh.

14 JUDGE JORDAN: And if I recall correctly,  
15 Mr. Johnson doesn't really have a problem with those three  
16 items being assigned to ICB or SC. Am I correct,  
17 Mr. Johnson?

18 MR. JOHNSON: That's correct. But --

19 JUDGE JORDAN: Then do you really need me --

20 MR. JOHNSON: -- we will have to find it --

21 JUDGE JORDAN: Do you really need me anymore?

22 MR. JOHNSON: On this issue, if AT&T agrees  
23 to delete this language because it's -- with Mr. Sanders'  
24 testimony, it, you know, indicates that these items are not  
25 contained within -- are not -- there is a double recovery



1 issue for these items, then I don't think we have a dispute  
2 that the agreed language would cover them.

3 JUDGE JORDAN: Well, the way I'm reading the  
4 disputed language is that the undisputed language may not  
5 cover them, and we're going to make sure that these three  
6 items are IBC/SC, and Global agrees that they should be. Am  
7 I missing something, Mr. Johnson?

8 MR. JOHNSON: Well, then we're stuck with the  
9 "but are not included, but are not limited to" problem.

10 JUDGE JORDAN: Okay. Let me find those  
11 words. But are not limited to -- include, but are not  
12 limited to.

13 Now, as I mentioned at the beginning of our  
14 conversation a couple hours ago, this comes from FCC  
15 regulation, does it not? And that question is for  
16 Mr. Johnson.

17 In other words, this language seems to have  
18 an understood meaning within the industry.

19 MR. JOHNSON: But are not limited to? I  
20 don't think so. I don't think they have any kind of -- they  
21 are not limited to the telecom business. It's -- you know,  
22 candidly, it's -- you know, we -- we all know what it is;  
23 it's lawyer language to make sure we've got wiggle room.

24 JUDGE JORDAN: Sure. But didn't this  
25 language come from somewhere, Mr. Gryzmala?

1 MR. GRYZMALA: I am looking at -- and please  
2 bear with me, Your Honor. I just want to give you the right  
3 answer.

4 JUDGE JORDAN: I -- and I appreciate that, so  
5 take your time. Take the time that's required to do that.  
6 But I seem to recall reading that in the prefiled testimony.

7 MR. GRYZMALA: Yeah. It is Sanders, Page 4,  
8 when asked to define routine network mods -- or  
9 modifications, the FCC rule cited, 51.319, Routine network  
10 modifications include, but are not limited to -- et cetera,  
11 et cetera. So it's drawn from that rule.

12 JUDGE JORDAN: Okay. Now, what that's  
13 telling me -- hang on a second. Hang on just a second.  
14 Okay. Let's -- we're going to go off the record for just a  
15 second. I'll be back with you in a minute.

16 (Off the record.)

17 JUDGE JORDAN: We're back on the record. I  
18 hope everyone is still with us. Mr. Gryzmala?

19 MR. GRYZMALA: Yes, Your Honor.

20 JUDGE JORDAN: And Mr. Johnson?

21 MR. JOHNSON: Yes.

22 JUDGE JORDAN: Okay. Well, I think that  
23 we've addressed all that we need to address in Issue Number  
24 3, so I'd like to move on to one matter of Issue Number 1.  
25 And for that, I will refer to -- I will defer to Cully Dale

1 for that.

2 MS. DALE: My one question is -- and I want  
3 you guys to assume for the sake of argument that the  
4 Missouri statute that says that access charges apply to  
5 interconnected voIP calls will be applied. And assume that  
6 we believe that we have not been preempted.

7 Assuming those things, do you believe that  
8 the contract language itself is sufficiently clear to  
9 exclude the other kinds of information services calls that  
10 could be brought into this?

11 Does everybody agree that the language  
12 itself, on its face, clearly applies only to those  
13 interconnected voIP calls or voIP in the middle calls that  
14 are -- actually already have access?

15 MR. JOHNSON: Cully, it's Mark. And the  
16 answer from Global Crossing is no.

17 MS. DALE: So that even if -- so if we  
18 decided to do that, we would still need to clarify the  
19 language?

20 MR. JOHNSON: Yes. And in the judge's order  
21 of September 22, in which he asked us to think about this,  
22 he broke it down into the three categories of Internet  
23 protocol calls.

24 MS. DALE: Right.

25 MR. JOHNSON: First, obviously, is

1 interconnected VoIP calls. And we believe that the  
2 language -- not conceding the legality or the lawfulness of  
3 it --

4 JUDGE JORDAN: Understood.

5 MS. DALE: Right.

6 MR. JOHNSON: -- the language in the  
7 interconnection agreement is consistent with the statute and  
8 would call for access charges to be imposed on  
9 interconnected VoIP calls. Okay.

10 Second point with respect to nomadic VoIP,  
11 which is VoIP in the middle, we do not believe that the  
12 proposed -- the language in the agreement is sufficiently  
13 clear to deal with that situation. We believe that access  
14 charges under any interpretation cannot be applied to those  
15 types of calls.

16 And then, third and finally, with respect to  
17 Internet access calls, we do believe that the agreement  
18 language as proposed does properly exclude, I believe, those  
19 calls.

20 And there, I point to the bolded language  
21 that is not underlined. So this is 6.14.1. The language at  
22 the end of the sentence that says, Except that switched  
23 access traffic shall not include any traffic that originates  
24 and/or terminates at the end user's premises in Internet  
25 protocol format. I think that covers -- in essence, what

1 we're talking about is dial-up Internet access.

2 MS. DALE: Right.

3 MR. JOHNSON: I think that's good enough for  
4 us on that one point.

5 MS. DALE: So if we -- if Judge Jordan  
6 decides that he will include the underlined and bolded  
7 language in that section, not -- putting aside the legality  
8 of whether or not fixed VoIP gets access charges --

9 MR. JOHNSON: Right.

10 MS. DALE: -- do you --

11 MR. JOHNSON: That's the -- that's the -- you  
12 know, when the 392.550.2 is preempted.

13 MS. DALE: Right. But assuming --

14 MR. JOHNSON: Yeah. Okay.

15 MS. DALE: -- that it's not preempted, does  
16 your additional language beginning with the "except that"  
17 cure any deficiencies that you see?

18 MR. JOHNSON: I don't think that it covers  
19 nomadic VoIP.

20 MS. DALE: Okay. So we still need to address  
21 the fact that nomadic VoIP is not -- does not --

22 MR. JOHNSON: Yeah.

23 MS. DALE: -- have access charges?

24 MR. JOHNSON: Yes. We think that the  
25 language as proposed could be interpreted to impose switched

1 access charges on nomadic VoIP.

2 MS. DALE: Okay. Bob.

3 MR. GRYZMALA: Yes.

4 MS. DALE: Do you agree? Was this language  
5 intended to apply access charges to nomadic VoIP?

6 MR. GRYZMALA: My understanding is under our  
7 proposed contract language, it is not distinguished. In  
8 other words, under the language that is offered, switched  
9 access charges would apply to interconnected VoIP calls,  
10 both nomadic and fixed, unless the call is local, just like  
11 392.550.2 states.

12 MS. DALE: Okay.

13 MR. JOHNSON: And Cully, that's how we read  
14 the language, as well.

15 MS. DALE: Okay.

16 MR. GRYZMALA: Right. In other words, it  
17 doesn't distinguish between nomadic --

18 JUDGE JORDAN: Between nomadic --

19 MR. GRYZMALA: -- and fixed.

20 JUDGE JORDAN: -- and fixed.

21 MR. GRYZMALA: And we can talk now or later  
22 about the preemption. But, you know -- I mean, I understand  
23 Mr. Johnson -- or Global Crossing's view on that matter.

24 MS. DALE: Okay.

25 MR. GRYZMALA: But to answer your language

1 question, I hope I did that.

2 MS. DALE: I believe that you have.

3 MR. GRYZMALA: Okay.

4 JUDGE JORDAN: Okay. Let's go off the record  
5 for a second.

6 (Off the record.)

7 JUDGE JORDAN: And let's go back on the  
8 record. We're back on the record. I hope AT&T is still  
9 with us.

10 MR. GRYZMALA: Yes, sir.

11 JUDGE JORDAN: And I hope Global is still  
12 with us.

13 MR. JOHNSON: Yes. We are.

14 JUDGE JORDAN: Very good. I think we've  
15 inquired all we need to inquire about Issue Number 1, as  
16 well.

17 So the last thing that I have on my list --  
18 my to-do list has to do with our schedule. And we had  
19 something -- we have a motion pending to waive the  
20 evidentiary hearing and to waive cross-examination, and I  
21 intend to rule on that well before the end of the day.

22 In the course of that, should we deal with  
23 the filing of discovery?

24 MR. JOHNSON: I believe -- Your Honor, this  
25 is Mark Johnson. We owe AT&T a response to their data

1 request, and we will have that to them in a timely fashion,  
2 which is tomorrow.

3 JUDGE JORDAN: Okay. All right. Does that  
4 satisfy AT&T? What would AT&T like me to say -- would AT&T  
5 like me to say anything about that in my ruling?

6 MR. GRYZMALA: No. Maybe only to reflect the  
7 parties' understanding and Global Crossing's commitment that  
8 responses will be provided to the data request by October 6.

9 JUDGE JORDAN: Uh-huh. Uh-huh.

10 MR. GRYZMALA: And I'm thinking out loud,  
11 Judge. Just whatever achieves the best result. We all  
12 understand the principle was that in the event that  
13 discovery was generated, the proponent to that discovery  
14 sometimes then has the opportunity to submit that into  
15 evidence.

16 JUDGE JORDAN: Uh-huh.

17 MR. GRYZMALA: But if you're not having a  
18 hearing, we would only ask as -- you know, as we would  
19 support -- we would only ask that the record remain open,  
20 say, for an additional day, through Friday, to accommodate  
21 any discovery responses which AT&T wishes to admit into  
22 evidence.

23 JUDGE JORDAN: Okay. So --

24 MR. JOHNSON: And Judge, we have no objection  
25 to that.



1 JUDGE JORDAN: Okay. So, really, all we're  
2 talking about here is that if I rule in favor of the motion  
3 to cancel the hearing, that AT&T could still put in any  
4 discovery responses that it needs to into the record,  
5 stipulated to by Global Crossing, by the end of the day that  
6 we had scheduled for the hearing date, which is October 7th.  
7 Have I got that right?

8 MR. GRYZMALA: With one wrinkle, Judge. And  
9 I was just buying an extra day if it would be acceptable.  
10 But if you're --

11 JUDGE JORDAN: Okay.

12 MR. GRYZMALA: -- you know, pretty firm, that  
13 would have been the obligation we would have been under had  
14 the hearing gone on. But we might then have also asked for  
15 an additional day just to peruse the responses. It's just  
16 such a short time frame to think about this.

17 JUDGE JORDAN: Well, I don't have any problem  
18 with an extra day, I don't think. That would just move us  
19 to the 8th, which is Friday. And Global has no problem with  
20 that?

21 MR. JOHNSON: No. We don't.

22 JUDGE JORDAN: Well --

23 MR. GRYZMALA: Mark's okay with it. Okay.

24 JUDGE JORDAN: Okay. Then I have no problem  
25 with it, either, and I will include that in my order --

1 whichever way the ruling on the evidentiary hearing goes.

2 MR. GRYZMALA: Okay. Your Honor, one  
3 housekeeping matter --

4 JUDGE JORDAN: Yes.

5 MR. GRYZMALA: -- if I may. I have -- we do,  
6 of course, recommend granting -- I think it's fair to say  
7 both parties recommend granting the motion to waive and to  
8 cancel. But if that is not to happen, or even if it does, I  
9 just have one wrinkle. I have two very innocuous,  
10 non-substantive corrections to the Sanders' direct.

11 JUDGE JORDAN: Okay.

12 MR. GRYZMALA: And I can report them now or  
13 report them later. They are truly innocuous. And that's  
14 all I would have. Now, those are the kinds of things -- you  
15 know, corrections to the testimony -- that in the -- in a  
16 live hearing the witness takes on --

17 JUDGE JORDAN: Right.

18 MR. GRYZMALA: -- on the stand.

19 JUDGE JORDAN: Right. Tell you what. Why  
20 not file -- you can title it what you want -- an erratum or  
21 a --

22 MR. GRYZMALA: Okay.

23 JUDGE JORDAN: -- amendment or correction.

24 And if --

25 MR. GRYZMALA: Okay. We can certainly do

1 that.

2 JUDGE JORDAN: And if Global has no problem  
3 with that, neither do I.

4 MR. GRYZMALA: Good. Thank you.

5 MR. JOHNSON: That's fine with us. Is there  
6 anything else that Global needs to bring up before we go off  
7 the record?

8 MR. JOHNSON: No.

9 JUDGE JORDAN: Okay. Would the parties like  
10 me to keep this line open for discussion? Because I can do  
11 that. And --

12 MR. JOHNSON: It's not necessary from our  
13 point of view.

14 JUDGE JORDAN: Okay. Well, I have to tell  
15 you, that's a little bit disappointing, but there we are.  
16 Okay.

17 well, anything else from AT&T or Global?

18 MR. GRYZMALA: Not from our side, AT&T, Your  
19 Honor. Thank you so much for your time. And Cully, Bill  
20 and Dana, thank you so much. We appreciate it. Thanks a  
21 lot.

22 JUDGE JORDAN: Okay. And nothing else from  
23 Global, then?

24 MR. JOHNSON: No. Thanks for your time.

25 JUDGE JORDAN: Okay. With that, I'll hang up

1 this line, and we'll go off the record. we're adjourned.

2 Thank you very much.

3 MR. GRYZMALA: Thank you.

4 MR. JOHNSON: Bye.

5 (The conference was concluded.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing conference was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor connected with any of the parties to the action in which this conference was taken, and further, that I am not a relative or employee of an attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the

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Lisa M. Banks, CCR

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