

Exhibit No.
Issue: Dark Fiber
Witness: Deborah Fuentes Niziolek
Type of Exhibit: Direct Testimony
Sponsoring Party: Southwestern Bell
Telephone Company, d/b/a
AT&T Missouri
Case No.: IO-2011-0057

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

Case No. IO-2011-0057

DIRECT TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

Chicago, Illinois
September 29, 2010

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI


Verified Petition of Southwestern Bell Company d/b/a)
AT&T Missouri for Arbitration of Unresolved Issues for) Case No. IO-2011-0057
an Interconnection Agreement with Global Crossing)
Local Services, Inc. and Global Crossing)
Telemanagement, Inc.

AFFIDAVIT OF DEBORAH FUENTES NIZIOLEK

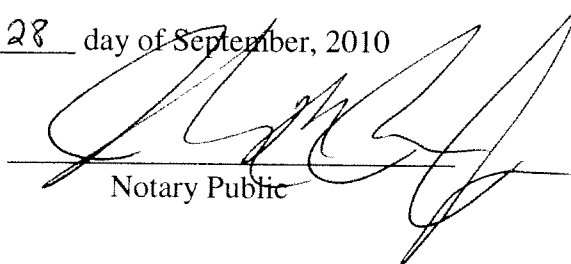
STATE OF ILLINOIS)
) SS
CITY OF CHICAGO)

I, Deborah Fuentes Niziolek, of lawful age, being duly sworn, depose and state:

1. My name is Deborah Fuentes Niziolek. I am presently Associate Director, Wholesale Services.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Deborah Fuentes Niziolek

Subscribed and sworn to before this 28 day of ~~September~~, 2010


Notary Public

My Commission Expires: 4/27/14

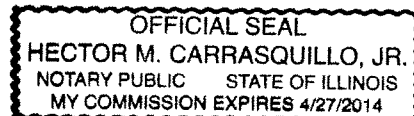


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I. **INTRODUCTION AND PURPOSE**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Deborah Fuentes Niziolek, and my business address is 350 N .
Orleans, Chicago, Illinois.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am employed by Ameritech Services, Inc., d/b/a AT&T Midwest Services as an
Associate Director – Wholesale.

Q. WHAT ARE YOUR RESPONSIBILITIES AS AN ASSOCIATE DIRECTOR - WHOLESALE?

A. As an Associate Director in AT&T's Wholesale product policy group, I support
product management and associated product policy for Interconnection
Agreements (ICAs) dealing with 911/ E911 Services, Unbundled Network
Elements (UNEs), Collocation, and General Terms and Conditions.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A. I received my Master of Science in Integrated Marketing Communications from
Roosevelt University, Chicago, Illinois, and my Bachelor of Arts in Political
Science from Loyola University, Chicago, Illinois.

I began with Ameritech (now doing business as AT&T Midwest) in 1989 in the
purchasing organization as a buyer for Furnish Only and Engineering equipment
as well as for Controlled Environmental Vaults, Huts and Remote Terminals. In
May of 1993, I became an Illinois Marketing Operations Manager, where my
responsibilities included product development, implementation and marketing
strategies for certain products. In November of that year, I became an Ameritech

1 Regional Product Manager in the Consumer Business Unit. My responsibilities
2 included development, implementation and marketing strategy for the Consumer
3 Business Unit for the five Ameritech states.

4 In May of 1995, I became a Regional Project Manager working within the
5 Strategic Supplier Implementation organization. In that position, I acted as the
6 single point of contact for one of six Ameritech Key Suppliers. In November of
7 1995, I took over responsibilities as Regional Product Manager of Unbundled
8 Local Switching. My responsibilities included the development and
9 implementation of Unbundled Local Switching. In May of 1999, I became
10 Regional Product Manager for Unbundled Loops. From December of 1999
11 through June of 2000, I was also the 13-state Product Manager responsible for the
12 development and implementation of the Sub-Loop Unbundling product. I moved
13 into my current role, as Associate Director in Wholesale, in June of 2000.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A REGULATORY**
15 **BODY?**

16
17 A. Yes. I have provided written and/or oral testimony before this Commission and
18 before the state commissions in Arkansas, California, Illinois, Indiana, Kansas,
19 Kentucky, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21
22 A. I will address Issue 2 of the Disputed Point List (DPL). It is comprised of two
23 sub-issues:

- 24 A) Should Global Crossing be permitted to obtain more than 25% of AT&T
25 Missouri's available Dark Fiber?
26 B) Should Global Crossing be allowed to hold on to Dark Fiber that it has
27 ordered from AT&T Missouri indefinitely, or should AT&T Missouri be

1 allowed to reclaim unused Dark Fiber after a reasonable period so that it
2 will be available for use by other carriers?

3
4 As noted in the DPL, the foregoing two sub-issues are associated with the
5 proposed language for Sections 10.4.3 and 10.7.2, of the portion of the parties'
6 pending interconnection agreement entitled "Attachment 13 – 251(c)(3) UNEs."
7 AT&T Missouri's proposed language for these sections is likewise reflected in the
8 DPL.

9
10 **II. ISSUE 2**

11
12 **Q. WHAT IS DARK FIBER?**

13
14 A. The Federal Communications Commission's ("FCC's") *UNE Remand Order*
15 defines dark fiber as "deployed, unlit fiber optic cable that connects two points
16 within the incumbent LEC's [AT&T Missouri, in this instance] network
17 [D]ark or 'unlit' fiber, unlike 'lit' fiber, does not have electronics on either end of
18 the fiber segment to energize it to transmit a telecommunications service. Thus,
19 dark fiber is fiber which has not been activated through connection to the
20 electronics that 'light' it and render it capable of carrying telecommunications
21 services."¹

22 **Q. IS AT&T MISSOURI REQUIRED TO PROVIDE DARK FIBER TO**
23 **GLOBAL CROSSING?**

24 A. Yes. AT&T Missouri must provide interoffice dark fiber transport to Global
25 Crossing, and all other requesting CLECs, as an unbundled network element
26 ("UNE"), where the requested route is considered impaired. Section 251(c)(3) of

¹ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 F.C.C.R. 3696, ¶ 325 (1999) ("UNE Remand Order").

1 the federal Telecommunications Act of 1996 (“1996 Act”) requires incumbent
2 local exchange carriers (“ILECs”), like AT&T Missouri, to make available to
3 competing local exchange carriers (“CLECs”), like Global Crossing,
4 “nondiscriminatory access to network elements on an unbundled basis,” and the
5 FCC has determined that dark fiber transport is such a network element.

6 **Q. HOW WOULD GLOBAL CROSSING OR ANOTHER CLEC USE DARK**
7 **FIBER ON AN UNBUNDLED BASIS?**

8 A. CLECs request AT&T Missouri to provide dark fiber as part of interoffice
9 transport. The CLEC would then need to connect its own electronic equipment to
10 the unbundled dark fiber extended by AT&T Missouri to the CLEC, via optical
11 cross connects.

12 **Q. BRIEFLY EXPLAIN WHAT THE DISPUTE IS REGARDING THE FIRST**
13 **OF THE TWO SUB-ISSUES WHICH COMPRISE ISSUE 2.**

14
15 A. Certainly. The dispute involves AT&T Missouri’s proposed contract language
16 intended to limit Global Crossing to 25% of AT&T Missouri’s spare unbundled
17 interoffice Dark Fiber, in any given segment, for a two-year period.

18 **Q. WHAT IS THE SPECIFIC LANGUAGE THAT AT&T MISSOURI IS**
19 **PROPOSING?**

20
21 A. AT&T Missouri proposes the following language for Section 10. 4.3 of
22 Attachment 13:

23 **10.4.3 CLEC will not obtain any more than twenty-five (25%)**
24 **percent of the spare UNE Dedicated Transport Dark Fiber**
25 **contained in the requested segment during any two-year**
26 **period.**

27
28 **Q. WHAT IS THE PURPOSE OF AT&T MISSOURI’S PROPOSED**
29 **LANGUAGE?**

1 A. AT&T Missouri's purpose is a pro-competitive one. Dark Fiber is not
2 ubiquitously available within AT&T Missouri's network. Limiting a requesting
3 CLEC to 25% spare fiber in a segment ensures the availability of dark fiber to
4 multiple carriers, not just the requesting CLEC. It also allows AT&T Missouri
5 sufficient assurance that it will be able to meet the needs of its own customers as
6 well.

7 **Q. WHAT IS GLOBAL CROSSING'S POSITION?**

8 A. Global Crossing objects to AT&T Missouri's proposed language. By doing so,
9 Global Crossing is suggesting that it (or any individual CLEC) should have
10 unlimited access to all of the available interoffice dark fiber capacity in a given
11 segment which could quickly deplete the interoffice dark fiber capacity.

12 **Q. DOES THE FCC AGREE WITH AT&T MISSOURI THAT REASONABLE**
13 **LIMITATIONS FOR ACCESS TO DARK FIBER, INCLUDING THE 25%**
14 **LIMITATION WHICH AT&T MISSOURI IS PROPOSING HERE, ARE**
15 **APPROPRIATE?**

16 A. Yes. In the *UNE Remand Order*, the FCC did "not wish to disturb the reasonable
17 limitations and technical parameters for dark fiber" that various state commissions
18 either had or might implement.² It was especially concerned with the possibility
19 of one CLEC foreclosing all other CLECs from access to limited dark fiber
20 inventory, and determined that "state commissions retain the flexibility to
21 establish reasonable limitations governing access to dark fiber loops in their
22 states."³

² *UNE Remand Order* ¶ 199.

³ *Id.*

1 The FCC expressly acknowledged that the Texas Public Utility Commission's
2 dark fiber unbundling rules "forbid competitors in any two year period from
3 leasing more than 25 % of the dark fiber in a given segment of the network."⁴
4 (The FCC also expressly acknowledged that these same Texas rules "also allow
5 [ILECs] to take back underused (less than OC-12) fiber," a restriction which is the
6 same as AT&T Missouri advances in connection with the second sub-issue of
7 Issue 2 in this arbitration proceeding).⁵ The FCC found both of these restrictions
8 to be "moderate restrictions governing the availability [of] dark fiber."⁶ Further,
9 the FCC expressly noted that the 25% limitation "address[es] the [ILEC's]
10 legitimate concerns."⁷

11 **Q. HAVE OTHER STATE COMMISSIONS LIKEWISE ADOPTED THE 25%**
12 **LIMITATION THAT AT&T MISSOURI PROPOSES HERE?**

13
14 A. Yes. To my knowledge, the California, Texas, Wisconsin and most recently,
15 Kansas, commissions have adopted this limitation.

16 In the Level 3/Pacific Bell arbitration, the California Public Utilities Commission
17 adopted the 25 % limitation, emphasizing the finite nature of the resource and
18 competitive equality considerations:

19 Spare dark fiber is limited. Level 3's proposal creates the risk of
20 the supply being limited to fewer CLECs, and controlled by fewer
21 CLECs, to the detriment of all other CLECs. Pacific's proposal
22 more reasonably ensures that the limited spare dark fiber will
23 potentially be available to more CLECs.⁸

⁴ *UNE Remand Order* ¶ 352, fn. 694.

⁵ *Id.*

⁶ *Id.*, ¶ 199.

⁷ *UNE Remand Order* ¶ 352, fn. 694.

⁸ *Final Arbitrator's Report*, Level 3 Communications, LLC (U 5941 C) Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, for Rates, Terms, and Conditions with Pacific Bell Telephone Company (U 1001 C), California Public Utilities Commission, Application 00-04-037, dated Sept. 5, 2000 at p. 40.

1 Other state commissions have emphasized similar considerations. For example,
2 when the Texas Public Utility Commission (“TPUC”) adopted a 25% limitation, it
3 reasoned that “it is an important tool for the implementation of the policy of the
4 Commission to have dark fiber available to a number of CLECs.”⁹ The TPUC
5 also applied its decision in a subsequent Section 252 arbitration proceeding with
6 CoServ.¹⁰

7 The Wisconsin Public Service Commission also concluded that, “it is reasonable
8 to limit the number of dark fibers that can be obtained by any one CLEC to 25%
9 of the total spare fibers,” based on its “find[ing] that this restriction is reasonable
10 in that it allows multiple providers to share the spare capacity.”¹¹

11 The Kansas Corporation Commission (“KCC”) most recently concluded:
12 “Without capacity restrictions, one carrier could swoop into all of the attractive
13 fiber segments and shut out the competition by leasing the entire dark fiber
14 inventory. The Arbitrator awards issue 5(A) to AT&T and directs the adoption of

⁹ Arbitration Award on Post Interconnection Disputes, Petition of Waller Creek for Arbitration With Southwestern Bell Telephone Company (Docket No. 17922); Complaint of Waller Creek Communications, Inc., for Post Interconnection Agreement Dispute Resolution With Southwestern Bell Telecommunications Company (Docket No. 20268), Texas Public Utility Commission, Docket 19722/20268; dated June 18, 1999, at pp. 10-11.

¹⁰ Arbitration Award, Joint Petition Of Coserv, L.L.C. d/b/a Coserv Communications And Multitechnology Services, L.P. d/b/a Coserv Broadband Services For Arbitrations Of Interconnection Rates, Terms, Conditions And Related Arrangements With Southwestern Bell Telephone Company, Texas Public Utility Commission, Docket 23396, dated April 2001, at pp. 124-29.

¹¹ Arbitration Award, Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Wisconsin Public Service Commission, Docket 05-MA-120, dated Oct. 12, 2000, at p. 94.

1 AT&T's proposed language into the parties' interconnection agreement.”¹²
2 Notably, that decision was rendered in an arbitration proceeding between Global
3 Crossing and AT&T Kansas, and Global Crossing made, and the KCC rejected,
4 the same arguments Global Crossing advances here.
5 Finally, in the 2005 post-M2A arbitration proceeding, the Missouri Public Service
6 Commission adopted AT&T Missouri's virtually identical contract language (over
7 that offered by a Coalition of CLECs), and that language contained a clear 25%
8 limitation (“CLEC will not obtain any more than 25% of the spare dark fiber
9 contained in the requested segment, during any two-year period.”) Indeed, though
10 another part of the offered language was disputed, this passage was not even
11 contested by the CLEC Coalition in that proceeding.¹³

12 **Q. IS AT&T MISSOURI'S PROPOSED LIMITATION CONSISTENT WITH**
13 **THE REQUIREMENTS OF THE 1996 ACT?**

14 A. Yes. Section 251(c)(3) of the 1996 Act – the provision that requires AT&T
15 Missouri to provide dark fiber to Global Crossing – mandates that network
16 elements be made available “on rates, terms and conditions that are just,
17 reasonable and nondiscriminatory.” AT&T Missouri's proposed language is
18 plainly just and reasonable, for the reasons that I have discussed and that other
19 state commissions have found compelling. And the proposed language is also

¹² Arbitration Award: Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996, Docket No. 10-SWBT-419-ARB, dated April 23, 2010, at p. 36, *aff'd in pertinent part*, Order Adopting Arbitrator's Determination of unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, dated August 13, 2010, at pp. 14-15.

¹³ Final Arbitrator's Report, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successful Interconnection Agreement to the Missouri 271 Agreement (“M2A”), Case No. TO-2005-0336, June 21, 2005, Att. III.A Part 6 Detailed Language Decision Matrix, CLEC Coalition Issue 23 (Section 5.4.3.1), *aff'd in pertinent part*, Arbitration Order, July 11, 2005.

1 nondiscriminatory: As a matter of policy, and in order to ensure that all CLECs
2 have equal access to dark fiber, AT&T Missouri seeks to include this language in
3 the interconnection agreements to which it is a party.

4 **Q. PLEASE EXPLAIN WHAT THE DISPUTE IS REGARDING THE**
5 **SECOND SUB-ISSUE OF ISSUE 2.**

6
7 A. The second sub-issue of Issue 2 relates to AT&T Missouri's entitlement to revoke
8 the CLECs' access to interoffice dark fiber if the CLEC is not using it within 12
9 months. It is only fair, in a competitive environment in which more than one
10 carrier may need access to particular dark fiber strands, to permit AT&T Missouri
11 to reclaim spare interoffice dark fiber that a CLEC has ordered but not used for
12 twelve months, so that AT&T Missouri can return the fiber to inventory where it
13 will be available for AT&T Missouri or for other carriers that actually have a need
14 for it. It appears that Global Crossing disagrees, although it is unclear what its
15 objection is.

16 **Q. WHAT IS THE SPECIFIC LANGUAGE THAT AT&T MISSOURI IS**
17 **PROPOSING?**

18
19 A. AT&T Missouri proposes the following language for Section 10.7.2 of
20 Attachment 13:

21 **10.7.2 Should CLEC not utilize the fiber strand(s) subscribed to**
22 **within the twelve (12) month period following the date AT&T-**
23 **21STATE provided the fiber(s), AT&T-21STATE may revoke**
24 **CLEC's access to the UNE Dedicated Transport Dark Fiber**
25 **and recover those fiber facilities and return them to AT&T-**
26 **21STATE's inventory.**
27

28 **Q ARE THERE REASONS, IN ADDITION TO WHAT YOU ALREADY**
29 **STATED, THAT IT IS APPROPRIATE FOR AT&T MISSOURI TO BE**
30 **ALLOWED TO RECLAIM UNUSED DARK FIBER FROM A CLEC?**

1 A. AT&T Missouri owns the dark fiber, maintains it, and has constructed interoffice
2 dark fiber to be available to many carriers, including itself, Global Crossing, other
3 CLECs and interexchange carriers. CLECs simply lease the dark fiber when
4 AT&T Missouri is not using it. If Global Crossing (or any other CLEC) has not
5 placed electronics on the fiber after leasing it for twelve months, then AT&T
6 Missouri should be able to reclaim it and make it available for use by itself or
7 other carriers.

8 **Q WHAT WOULD BE THE CONSEQUENCE IF AT&T MISSOURI WERE**
9 **NOT ALLOWED TO REVOKE UNUTILIZED DARK FIBER?**

10
11 A. If AT&T were not permitted to revoke unutilized dark fiber, AT&T Missouri's
12 ability to provide dark fiber would be impaired, and AT&T Missouri's ability to
13 provision interoffice facilities could be impaired as well.

14 **Q. HAS THE FCC EXPRESSED ANY VIEW ON PROVISIONS LIKE THE**
15 **REVOCATION PROVISION AT&T MISSOURI IS PROPOSING HERE?**

16
17 A. Yes. I mentioned earlier that in the *UNE Remand Order*, the FCC spoke
18 approvingly of the reasonable limitations that the Texas commission has imposed
19 on the duty to provide dark fiber. Those limitations included, in addition to the
20 25% restriction I discussed above, a revocation provision much like the one
21 AT&T Missouri is proposing here. As the FCC noted, "[t]he Texas commission's
22 dark fiber unbundling rules also allow incumbent LECs to take back underused
23 (less than OC-12) fiber. . . ." ¹⁴ The FCC noted that that rule, like the 25%
24 limitation, "address[es] the incumbent LEC's legitimate concerns."¹⁵

¹⁴ *UNE Remand Order* ¶ 352 fn. 694.

¹⁵ *Id.*

1 **Q. HAVE ANY OTHER STATE COMMISSIONS LIKEWISE ADDRESSED**
2 **THIS TYPE OF RESTRICTION?**

3
4 A. Yes. The Kansas Corporation Commission awarded the same issue to AT&T
5 Kansas, and adopted language identical to that offered here by AT&T Missouri.¹⁶
6 Similarly, in the 2005 post-M2A arbitration proceeding, the CLECs did not
7 contest contract language virtually identical to that offered by AT&T Missouri
8 here (“Should CLEC not utilize the fiber strand(s) subscribed to within the twelve
9 (12) month period following the date SBC Missouri provided the fiber(s), SBC
10 Missouri may revoke CLEC’s access to dark fiber and recover those fiber
11 facilities and return them to SBC Missouri inventory.”).¹⁷

12 **Q. DOES GLOBAL CROSSING USE ANY AT&T MISSOURI DEDICATED**
13 **TRANSPORT DARK FIBER?**

14
15 A. No. Our company records reflect that Global Crossing is not purchasing any
16 UNE Dedicated Transport dark fiber from AT&T Missouri.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A Yes.

¹⁶ Arbitration Award: Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996, Docket No. 10-SWBT-419-ARB, dated April 23, 2010, at pp. 38-39, *aff’d in pertinent part*, Order Adopting Arbitrator’s Determination of unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, dated August 13, 2010, at pp. 15-17.

¹⁷ Final Arbitrator’s Report, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successful Interconnection Agreement to the Missouri 271 Agreement (“M2A”), Case No. TO-2005-0336, June 21, 2005, Att. III.A Part 6 Detailed Language Decision Matrix, CLEC Coalition Issue 27 (Section 5.4.6.2), *aff’d in pertinent part*, Arbitration Order, July 11, 2005. Though the arbitrator did not approve the phrase “dedicated transport” in conjunction with the phrase “dark fiber,” that determination was not explained and, in any case, should be corrected in this proceeding, as AT&T Missouri’s language proposes.