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August 22, 2006

Elizabeth O'Donnell  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

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PUBLIC SERVICE  
COMMISSION

***RE: Case No. 2006-00341***

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Reply of Global Crossing Telecommunications, Inc. in Support of Motion to Dismiss in the above referenced case.

Please indicate receipt of this filing by your office by placing your file stamp on the extra copy and returning to me via the enclosed, self-addressed stamped envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELEPHONE COMPANY )  
)  
COMPLAINANT )  
) CASE NO. 2006-00341  
v. )  
)  
GLOBAL CROSSING TELECOMMUNICATIONS, INC. )  
)  
DEFENDANT )

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**REPLY OF GLOBAL CROSSING TELECOMMUNICATIONS, INC.**  
**IN SUPPORT OF MOTION TO DISMISS**

Global Crossing Telecommunications, Inc. (“Global Crossing”), by counsel, for its Reply in Support of Motion to Dismiss, states as follows:

**BACKGROUND**

Global Crossing has been brought before the Commission in its capacity as a customer of Brandenburg Telephone Company (“Brandenburg”). Brandenburg’s access tariffs include rates for the switched access services it sells to Global Crossing.

Brandenburg claims Global Crossing has not paid its utility bills. However, Global Crossing has legitimate questions with regard to the accuracy of recent access billing from Brandenburg and has sought to obtain the call detail records (“CDR”) necessary to reconcile the bill.<sup>1</sup> Global Crossing even offered to pay Brandenburg’s fee for the CDRs as long as

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<sup>1</sup> Global Crossing’s request for electronic CDRs to reconcile a paper access bill is not at all unusual. Brandenburg’s reaction to the request was, however, extraordinary.

Brandenburg would refund the fee if a billing error were demonstrated.<sup>2</sup> In response, Brandenburg filed this Complaint proceeding at the Commission.

Brandenburg would have accomplished more by working with its customer to reconcile the billing dispute. The Complaint is non-jurisdictional pursuant to clear Commission precedent. Chapter 278 provides a customer with a forum for complaints against a utility. It most emphatically does not provide a utility with a forum to complain against its customers. Brandenburg points out that Global Crossing is also a utility, but that is a distinction without a difference. Global Crossing is not before the Commission as a defendant *utility*. It is before the Commission as a defendant *utility customer*.

The Complaint must be dismissed.

## **ARGUMENT**

### **I. Brandenburg's Complaint is Against Global Crossing in its Capacity as a Customer – Global Crossing's Service is Not at Issue**

Brandenburg's struggle to create a jurisdictional footing for its complaint plays out over several pages of undisputed (but irrelevant) facts that, together, creatively reconstruct Chapter 278. For example, Brandenburg claims Global Crossing "neglected" in its Motion to Dismiss to identify itself as a utility (as if the Commission might not have noticed), then tries to distinguish the seminal Commission decision which extinguishes Brandenburg's complaint, *Kentucky Power Co.*, 2000 Ky. PUC LEXIS 1337 (2000), by pointing out that the Kentucky Power customer which refused to pay a tariffed charge, AK Steel, was not a utility. But it does not matter that Global Crossing is a utility. KRS 278.260 gives the Commission authority to investigate and remedy customer "complaints as to *rates or service* of any utility." Brandenburg has no complaint about Global Crossing's rates or service. Accordingly, the Commission's analysis in

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<sup>2</sup> Motion to Dismiss, n. 1.

*Kentucky Power Co.* applies with equal force here: “[n]o provision of KRS Chapter 278 extends the Commission’s jurisdiction to a customer of a utility or otherwise empowers the Commission to direct a customer to take, or refrain from taking, any action.” Global Crossing’s status as a utility was obvious from reading Brandenburg’s complaint – the dispute relates to a switched access tariff. Most likely every customer ordering from that tariff is a utility. Brandishing Global Crossing’s “Utility ID” and “Utility Status” as if they are facts Global Crossing tried to hide (*See* Brandenburg Response, Exhibit 1) is purely theatrical.

Brandenburg’s attempt to torture the language of the complaint statute fares no better. Global Crossing has done nothing unreasonable, unsafe, insufficient or unjustly discriminatory (*cf.* KRS 278.260(1)), and it is absurd for Brandenburg to implicitly threaten interruption of Global Crossing’s access service as a way to bootstrap itself into having standing to bring a collections complaint under any provision of Chapter 278. This complaint is non-jurisdictional and must be dismissed.

## **II. An Interstate Access Tariff Dispute Exists**

As Global Crossing explained in its Motion to Dismiss, given the FCC’s recent decision in *U.S. Telepacific Corp. v. Tel-America of Salt Lake City*, 19 FCC Rcd. 24552 (2004), Brandenburg could not file a complaint at the FCC because, like Kentucky law, the Communications Act provides no basis for a collections action against a carrier customer. But Brandenburg’s complaint has another jurisdictional flaw. Global Crossing explained in its Motion to Dismiss that even if the Kentucky Commission had jurisdiction, which it does not, there would be no basis for the Commission to order Global Crossing to pay amounts due under an interstate tariff. Brandenburg claims this explanation is a “fatal” admission by Global Crossing. Hardly. There is no dispute that some part of Brandenburg’s claim is related to

intrastate access services. But as Global Crossing explained in its Motion to Dismiss, that type of collection claim is not one which the Commission can hear at all.

The Commission may well wonder why Brandenburg would withhold CDRs from an access customer rather than providing them as a way to accelerate resolution of a billing dispute. After all, the CDRs, if they are worth anything, are worth no more than the \$500.00 Brandenburg is trying to charge for them, but Brandenburg alleges Global Crossing owes it nearly \$90,000.00. Could it be that Brandenburg's goal here is to wheedle the Commission into issuing an order which prevents Global Crossing from ever disputing an access service invoice issued by Brandenburg or its alter ego CLEC, Brandenburg Telecom? *See* Complaint, page 5, Request for Relief 4 (requesting an order that Global Crossing timely pay for future services or face immediate termination of all services without further notice). And could it be in furtherance of that wrongful purpose that Brandenburg asks the Commission to rewrite its enabling statute to assume jurisdiction where none exists? Global Crossing respectfully requests that the Commission dismiss this complaint and grant all other relief to which Global Crossing may be entitled.

Respectfully submitted,



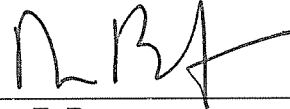
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*COUNSEL FOR GLOBAL CROSSING TELECOMMUNICATIONS, INC.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served all parties in this case this 22nd day of August, 2006.



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Douglas F. Brent

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