

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of XO Florida, Inc.  
Against BellSouth Telecommunications,  
Inc. for Refusal to Convert Circuits to  
UNEs and for Expedited Processing.

---

Docket No. 041114-TP

Filed: September 22, 2004

DIRECT TESTIMONY

OF

GARY CASE

ON BEHALF OF

XO FLORIDA, INC.

DOCUMENT NUMBER- DATE

10256 SEP 22 04

FPSC-COMMISSION CLERK

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **DOCKET NO. \_\_\_\_\_**  
3                   **DIRECT TESTIMONY**  
4                   **OF GARY CASE ON BEHALF OF XO FLORIDA, INC.**  
5                   **SEPTEMBER 22, 2004**

6  
7                   **I. Introduction and Witness Qualifications**

8   **Q.    Please state your name and address.**

9   A.    My name is Gary Case. My business address is 11111 Sunset Hills Road, Reston,  
10        Virginia 20190.

11 **Q.    Please briefly outline your educational background and related experience.**

12 A.    I am a telecommunications professional with a Bachelor's degree in Mathematics  
13        from Louisiana State University and a Master's degree in Business  
14        Administration from the University of Alabama-Birmingham. I began my  
15        telecommunications career in 1988 with BellSouth and held a variety of positions  
16        in Finance, Pricing and Economics and Strategic Management over nine and one  
17        half years. Specifically, I was involved in supporting rate filings and pricing  
18        analyses for access services. I have spent the last 6 years with two different  
19        CLECs in intercarrier compensation positions. First, I directed Carrier Billing  
20        operations for MCI/Worldcom, then for XO. In my current position at XO,  
21        Director of Carrier Management, I manage the operational and dispute  
22        relationship and negotiations with each of the LECs with whom XO does  
23        business.

24 **Q.    On whose behalf are you testifying?**

1 A. I am testifying on behalf of XO Communications Services, Inc.'s affiliate, XO  
2 Florida, Inc. (XO). XO is a certificated competitive local exchange carrier  
3 (CLEC) that provides service in various locations in Florida.

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is to provide the Commission with information  
6 regarding BellSouth Telecommunications, Inc.'s (BellSouth) refusal to convert  
7 XO special access lines to UNE loops as a billing change despite numerous XO  
8 requests to do so. BellSouth's refusal to make such conversions at just and  
9 reasonable prices is anticompetitive and violative of state and federal law  
10 precepts. My testimony describes the dispute and requests that the Commission  
11 direct BellSouth to process all such conversions for XO at BellSouth's current  
12 "switch as is" conversion charge for special access circuits to UNE transport/loop  
13 combinations known as "Enhanced Extended Loops."

14 **Q. What issue does your testimony address?**

15 A. My testimony addresses the issue set forth in XO's Complaint:  
16 Should BellSouth provide conversion of special access circuits to UNE pricing as  
17 a billing change only, within one billing cycle of such request? If so, what is the  
18 appropriate rate for such billing change?

19 **II. Background Of The Dispute**

20 **Q. Please describe the conversion process XO has requested Bellsouth to**  
21 **perform.**

22 A. XO has requested that BellSouth merely change the rate for certain special access  
23 circuits to UNE pricing consistent with the FCC's Triennial Review Order. No

1 physical change to the circuit is required; in fact, XO has specifically requested  
2 that no physical change to the circuit be made.

3 **Q. Was it important that the conversions XO requested be performed**  
4 **expeditiously?**

5 A. Yes.

6 **Q. Please explain why.**

7 A. Every day that BellSouth continues to delay the requested conversions, XO  
8 continues to incur costs higher than the appropriate costs for the affected circuits;  
9 thus, BellSouth is artificially inflating XO's costs and affecting XO's ability to  
10 compete in the marketplace.

11 **Q. What has been BellSouth's response to the XO conversion requests?**

12 A. XO's initial request, post TRO, was for conversion of circuits in Georgia.<sup>1</sup>  
13 BellSouth's first response was that it would not only provide the requested billing  
14 conversions, but that it would also complete the special access to billing  
15 conversion at the same time the circuits were being physically transferred to XO  
16 from another carrier. BellSouth provided a contract for XO to review, and XO  
17 provided its comments to that contract. BellSouth's response to XO's contract  
18 comments, however, was that BellSouth was withdrawing its agreement to  
19 provide these conversions as a billing change, and that, in order to obtain access  
20 to these conversions without disruption of service to its customers, XO would be  
21 required to pay full nonrecurring charges (NRCs) for disconnection and

---

<sup>1</sup> XO's Georgia request was not its first request for such conversions. In 2003, XO requested over 1,000 circuits converted in the states of Florida, Georgia, and Tennessee. BellSouth's continued refusal to provide the conversions as a billing change has prevented XO from obtaining conversions in all three states, including Florida.

1 reconnection of the circuit, plus a BellSouth “project management” fee to  
2 coordinate those orders. BellSouth acknowledged that the physical change  
3 proposed to the circuit was not required, but that, nonetheless, full NRCs for these  
4 “phantom orders” are required. BellSouth has indicated that its stated policy  
5 applies to any conversion request XO may have in Florida, as well.

6 **Q. Has BellSouth indicated that it will require an amendment to XO’s**  
7 **interconnection agreement before it will process the conversion requests?**

8 A. Yes. However, the amendment BellSouth is requiring would eliminate the UNEs  
9 in question, rendering the requested conversions unavailable. In effect, BellSouth  
10 is denying access to these conversions unless XO agrees to give up the very UNEs  
11 for which the conversion is requested.

12 **Q. Should an amendment be required to make this billing change?**

13 A. No. XO, however, has offered to execute an amendment addressing the  
14 conversions only; BellSouth has refused. XO also requested that BellSouth  
15 perform the conversions, then allow XO to avail itself of the billing dispute  
16 mechanism of the interconnection agreement to have the Commission determine  
17 the appropriate rate for conversions. BellSouth continues to refuse to perform the  
18 conversions unless XO agrees to the outrageous charges and waives its right to  
19 challenge the charges.

20 **Q. Did BellSouth discuss the implications of XO raising a billing dispute with**  
21 **the Commission?**

1 A. Yes. In addition to indicating that BellSouth would not perform the conversion  
2 unless XO agreed to the charges, BellSouth indicated that, should XO dispute the  
3 billing of the charges, such dispute might “affect XO’s access to services.”

4 **Q. Has XO attempted to resolve this matter with BellSouth?**

5 A. Yes. As described above, XO has made numerous attempts to resolve this matter.

### 6 III. Appropriate Conversion Rate

7 **Q. What is your understanding of how the charge for the billing change for the**  
8 **XO conversions should be assessed?**

9 A. The charge should be a billing change charge only, or “switch as is.” That  
10 BellSouth may enter the billing change in its systems as one or two separate  
11 orders does NOT mean that any physical change to the circuit should be made.  
12 We are talking about the EXACT SAME circuit.

13 **Q. What rate does BellSouth propose to charge XO for the billing change?**

14 A. Following are the Special Access to UNE conversion costs that BellSouth has  
15 indicated would be assessed:

16 A UNE DS1 Loop nonrecurring charge of \$313.75 (for zone 1 circuits); a UNE  
17 Loop Manual Service Order Nonrecurring Charge of \$11.90; and a Time Specific  
18 Conversion Nonrecurring Charge of \$23.02.

19 Also, an additional project management fee would be required to avoid possible  
20 service disruption.<sup>2</sup> BellSouth’s proposed project management fee, with order  
21 provisioning, is \$635.83. In short, BellSouth is proposing to charge almost  
22 \$1,000.00 for what should be a billing change, compared to a “switch as is”

---

<sup>2</sup> If the orders are not project managed, BellSouth has indicated that it cannot guarantee that the Disconnect order will not be worked long before the New order establishing the UNE, causing the end user to be out of service.

1 charge of \$8.98 for the same conversion of a special access mileage circuit to a  
 2 UNE loop/transport combination.

3 **Q. Why is this rate erroneous?**

4 A. This rate recovers the costs of actual disconnection of the circuit and installation  
 5 of a new circuit; again, we are talking about the EXACT SAME circuit, with no  
 6 physical change; BellSouth will not incur these costs.

7 **Q. What impact has BellSouth’s refusal to make the conversions had on XO?**

8 A. As you can see from the table below, the monthly cost of a UNE loop is \$94.56  
 9 less than the same loop at Special Access rates. Every 1000 circuits that  
 10 Bellsouth prevents XO from converting by its excessive conversion fees costs XO  
 11 \$94,560 per month.

	Description of Rate Elements	Type	Rate Zone	Rate	Source
Special Access					
FL	Channel Termination	MRC	1	\$168.00	FCC 1 Tariff Section 7.5.9 (A) (1)
UNE					
FL	UNE DS1 Loop	MRC	1	\$73.44	XO ICA Pricing Schedule

Monthly UNE Cost Savings \$94.56

12

13

**IV. Conclusion**

14 **Q. How should the Commission resolve this matter?**

15 A. The Commission should order that the requested conversions be processed  
 16 immediately, at BellSouth’s “switch as is” charge for EEL conversions. The  
 17 Commission should also require a true-up of the rates for these circuits to the

1            appropriate rate, effective 30 days, or one billing cycle, from the date of the initial  
2            conversion requests.

3    **Q.    Does this conclude your Direct Testimony?**

4    A.    Yes.




**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing the Direct Testimony of Gary Case on Behalf of XO Florida, Inc. was served on the following by (\*) hand delivery and U.S. Mail this 22<sup>nd</sup> day of September, 2004:

(\*) Beth Keating  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

(\*) Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

  
Vicki Gordon Kaufman