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December 13, 2004

VIA HAND DELIVERY

Ms. Blanca Bayo
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No. 041114-TP

Dear Ms. Bayo:

On behalf of XO Florida, Inc. (XO) enclosed for filing and distribution are the original and 15 copies of the following:

- Direct Testimony and Exhibits of Gary Case on behalf of XO;
- Notice of Service of XO's Responses to Staff's First Set of Interrogatories (Nos. 1-2) and Staff's First Request for Production of Documents (Nos. 1-3);
- XO's Claim of Confidentiality.

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Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

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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
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DIRECT TESTIMONY AND EXHIBITS

OF

GARY CASE

ON BEHALF OF

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **DOCKET NO. 041114-TP**
3 **DIRECT TESTIMONY AND EXHIBITS**
4 **OF GARY CASE ON BEHALF OF XO FLORIDA, INC.**
5 **DECEMBER 13, 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 Communications, Inc.. In my current
21 position at XO Communications, Inc., Director of Carrier Management, I manage
22 the operational and dispute relationship and negotiations with each of the LECs
23 with whom XO does business.

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

1 A. I am testifying on behalf of XO Communications Services, Inc., formerly
2 certificated as XO Florida, Inc. (XO). XO is a certificated competitive local
3 exchange carrier (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 Unbundled Network Element (UNE) loops as a billing
8 change, despite numerous XO requests to do so. BellSouth's refusal to make such
9 conversions at just and reasonable prices is anticompetitive and violative of state
10 and federal law precepts. My testimony describes the dispute and requests that
11 the Commission direct BellSouth to process all such conversions for XO at
12 BellSouth's current "switch as is" conversion charge for special access circuits to
13 UNE transport/loop combinations known as "Enhanced Extended Loops."

14 **Q. What issues do you address in your testimony?**

15 A. My testimony addresses the issues identified for resolution in this proceeding,
16 which are included in the Order Establishing Procedure, Order No. PSC-04-1147-
17 PCO-TP:

18 1. Does BellSouth currently have an obligation to convert all XO special
19 access circuits to standalone UNE recurring pricing?

20 2. If so, what nonrecurring charges should apply for performing such
21 conversions?

22 3. If so, how soon after a request has been submitted for performing a
23 conversion of each type of circuit, should the conversion be effectuated?

1 **Q. Please summarize XO's position on the issues in dispute.**

2 A. As I explain in detail below, it is XO's position that BellSouth has an obligation
3 to convert all XO zero mile special access circuits to standalone UNE recurring
4 pricing, and that, although BellSouth has refused to perform these conversions,
5 BellSouth does not contest its obligation to do so under current law. This
6 conversion should be a billing change only; the conversion involves no physical
7 work and is nothing more than a record-keeping change. The nonrecurring charge
8 that BellSouth should apply to such conversions is the same charge it applies for a
9 "switch as is" charge for conversion of mileage special access circuits to UNE
10 Enhanced Extended Loops (EELs) -- \$8.98. The conversion should be made
11 within 30 days of XO's submission of the request. Further, the Commission
12 should require BellSouth to true-up to the appropriate rate all prior requests XO
13 has made for such conversions.

14 **II. Background Of The Dispute**

15 **Q. Please describe the conversion process XO has requested Bellsouth to**
16 **perform.**

17 A. XO has requested that BellSouth merely change the billing for certain special
18 access circuits XO purchases from BellSouth to UNE pricing consistent with the
19 FCC's Triennial Review Order (TRO). No physical change to the circuit is
20 required; in fact, XO has specifically requested that no physical change to the
21 circuit be made.

22 **Q. Was it important that the conversions XO requested be performed**
23 **expeditiously?**

1 A. Yes.

2 **Q. Please explain why.**

3 A. Every day that BellSouth continues to delay the requested conversions, XO incurs
4 costs higher than the appropriate costs for the affected circuits; thus, BellSouth is
5 artificially inflating XO's costs and affecting XO's ability to compete in the
6 marketplace. Before the TRO was issued, XO attempted to mitigate these
7 excessive charges by entering into a term plan with BellSouth for some of its
8 special access circuit base (the conversion request did not include the entire XO
9 base of circuits). XO, however, has now reached the point at which it cannot
10 simply continue to partially mitigate its the losses due to BellSouth's refusal to
11 comply with applicable law; those losses to XO are mounting daily.

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

13 A. XO's initial request, post TRO, was for conversion of circuits in Georgia.¹ XO
14 initially requested that the billing change be done as part of a migration project,
15 moving the special access circuits of another carrier to XO's network, and
16 rerating those circuits as UNEs on XO's network. BellSouth's first response was
17 that it would not only provide the requested billing conversions, but that it would
18 also complete the special access to billing conversion at the same time the circuits
19 were being physically transferred to XO from another carrier, as XO had
20 requested. BellSouth then provided a contract for XO to review, and XO
21 provided its comments on the details of that contract dealing with issues other

¹ XO's Georgia request was not its first request for such conversions. In 2002, and again in 2003, XO requested that approximately 2,000 circuits be 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 than the quoted price. BellSouth's response to XO's contract comments,
2 however, was that BellSouth was withdrawing its agreement to provide these
3 conversions as a billing change, as well as its proposed price, and that, in order to
4 obtain access to these conversions without disruption of service to its customers,
5 XO would be required to pay a SECOND set of full nonrecurring charges (NRCs)
6 for disconnection and reconnection of the circuits, plus a BellSouth "project
7 management" fee to "coordinate" those orders. XO, as part of the migration of
8 the circuits, had already agreed to pay nonrecurring charges (NRCs) for
9 disconnection and reconnection of the circuit associated with the migration –
10 payment for the physical migration is not at issue here. But BellSouth was
11 demanding that such full NRCs not only be paid for the physical migration, but
12 also for the billing conversion to UNE once the circuit had been physically
13 migrated to XO's network. Ironically, BellSouth acknowledged that the physical
14 change to, or actual disconnection and reconnection of, the circuit was not
15 necessary for the billing conversion, but that, nonetheless, full NRCs for these
16 "phantom orders" would be required before BellSouth would process the
17 conversion request. BellSouth has indicated that its stated policy applies to any
18 conversion request XO may have, including any pending or future requests in
19 Florida.

20 **Q. By submitting its request as a New Business Request (NBR), did XO**
21 **"recogniz[e] that the requested conversion was not contemplated under the**
22 **Agreement and did not constitute a request pursuant to the Act, ask[]**
23 **Bellsouth, through the NBR process, to provide a price" for the conversions**

1 as an “extra-contractual service,” as BellSouth claims in its October 6, 2004,
2 **Response to XO’s Complaint?**

3 A. No. XO submitted its request for conversion via NBR only because BellSouth
4 refused to consider the request in any other form. XO was attempting to submit
5 its request in the only way that BellSouth indicated it would accept it.

6 **Q. If XO believed it was entitled to the conversions it had requested in 2002 at**
7 **cost-based rates, why did it engage in negotiation with BellSouth for a price**
8 **for the requested conversions, beginning in March 2002?**

9 A. BellSouth had indicated to XO that it was willing to discuss a price for
10 conversion. In fact, the NBR XO submitted was provided in good faith reliance
11 on the representations made by BellSouth representatives to that effect. See
12 BellSouth Response, Exhibit F, par. 2, in which XO told BellSouth that: “XO, in
13 good faith reliance on representations made by BellSouth representatives,
14 submitted an NBR for pricing of conversions of special access circuits to UNE
15 using the same process as that sued for conversion of special access to EELs – a
16 BILLING ONLY change.” XO reasonably expected that a price negotiated in
17 good faith would be comparable to the price for the exact same conversion of
18 mileage loops. XO felt it prudent to attempt to engage in such negotiations,
19 knowing that, even if the cost BellSouth proposed were ten times as high as the
20 EEL conversion price, the price for conversion would still have been in the \$50 to
21 \$100 range. Quite simply, because XO expected BellSouth to negotiate in good
22 faith, XO thought it reasonable and prudent to attempt to negotiate a reasonable
23 price rather expend its time and resources, and those of this Commission, on

1 expensive and protracted litigation, especially since this Commission has
2 expressed a preference for parties to attempt to resolve their difference before
3 seeking Commission intervention.

4 **Q. When those initial negotiations broke down, why did XO not simply order**
5 **the conversions and dispute the charges, as BellSouth suggests on page 4 of**
6 **its Response to XO's Complaint?**

7 A. XO had planned to do exactly that; however, BellSouth would not even consider
8 processing XO's conversion orders unless and until XO signed a contract
9 agreeing to pay BellSouth's outrageous charges and waiving any right to dispute
10 those charges. BellSouth's unreasonable posture on this matter made it impossible
11 for XO to order the conversions without waiving its rights.

12 **Q. Did XO raise this issue in the Florida CLEC collaborative?**

13 A. I believe so, but I think the initial issue was whether XO's EEL conversions had
14 been processed and the appropriate credits issued. The parties also discussed the
15 conversion of zero mile circuits, but that was prior to the TRO, when XO and
16 BellSouth were still in negotiations.

17 **Q. What was the result of the discussions in the collaborative?**

18 A. The collaborative, as I understand it, was an entirely voluntary exercise. If the
19 parties concerned did not voluntarily resolve an issue, it remained in dispute. In
20 this case, BellSouth refused to resolve the issue and, therefore, XO's only
21 recourse was either to continue to try to negotiate with BellSouth, or file a
22 complaint with the Commission. XO continued to try the former, and has now
23 done the latter.

1 **Q. Did XO continue to negotiate with BellSouth in 2003 for the conversion of**
2 **special access circuits to UNE pricing?**

3 A. Yes. XO attempted to pursue all non-litigation avenues before bringing its
4 dispute to the Commission.

5 **Q. What was the result of such negotiations?**

6 A. Much time was spent discussing the applicability of certain charges, and XO
7 devoted negotiation time to trying to find out if BellSouth would process the
8 conversions at the high project management rate, without the need for
9 disconnection and reconnection of the circuits, or the charges associated with
10 disconnection and reconnection. XO made a genuine effort to reach agreement to
11 have BellSouth process the conversions, get the circuits on the appropriate
12 pricing, and then ask the Commission to determine whether the charges were
13 appropriate. BellSouth refused to agree to this approach.

14 **Q. Why didn't XO take this matter to the Commission at that time, as it**
15 **threatened to do on May 22, 2003?**

16 A. That was prior to the TRO, and although XO's position was that BellSouth was
17 obligated to provide these conversions, the FCC had not yet confirmed an explicit
18 obligation to provide special access to UNE conversions within one billing cycle
19 of request at cost-based rates. XO turned its efforts to mitigating its losses in the
20 interim, while awaiting the TRO Order; under duress, XO agreed to put a certain
21 percentage of its special access circuit base with BellSouth under a term, or
22 discount, while retaining enough month-to-month circuits to effectuate a
23 conversion post-TRO.

1 **Q. In June 2003, BellSouth responded to XO's May 22, 2003 communication,**
2 **indicating that it disagreed that the conversion was simply a billing change.**
3 **Did BellSouth provide any documentation that the requested conversions**
4 **would require physical change to the circuits in question?**

5 A. No. In fact, BellSouth has never provided any documentation that any physical
6 change to the circuit is required. To the contrary: BellSouth has indicated that
7 the disconnection and reconnection of the circuits is NOT required. See, July 21,
8 2004 letter from Scott Kunze to Dana Shaffer, Exhibit A to XO Complaint.

9 **Q. BellSouth claims that, in October 2003, "XO advised BellSouth that it no**
10 **longer wished to proceed with the NBR process." Response, p. 5, par. 1. Did**
11 **XO specifically advise BellSouth that it no longer wished to convert special**
12 **access circuits to UNE pricing?**

13 A. No; XO simply agreed to proceed with the physical migration of the circuits to
14 XO's network, while the parties continue to disagree with regard to the billing
15 conversion. Oddly enough, BellSouth claims XO withdrew its NBR, but the
16 email attachment to that claim doesn't state that. I'm not aware that XO has ever
17 withdrawn its continued request for the billing conversions at issue, and in fact,
18 XO has continued to press the issue. BellSouth advised XO that it will consider
19 an NBR cancelled unless XO accepts BellSouth's demands. See May 2002 email
20 string from Michael Willis of BellSouth, attached hereto as Exhibit No. ____ (GC-
21 1), in which BellSouth insists that "XO must accept or reject BellSouth's
22 proposal" and if the proposal is not accepted, BellSouth will consider XO's NBR
23 "cancelled." XO strongly disagrees that one party may unilaterally "consider

1 closed” such an important matter simply because the other party will not tolerate
2 unreasonable demands and insists upon good faith negotiations.

3 **Q. In December, 2003, BellSouth claims that it sent XO an amendment by which**
4 **XO “could have obtained the contractual right (with the corresponding**
5 **TELRIC pricing) for the service it previously requested through a[n] NBR.”**
6 **Response, p. 5, para. 1. Is that correct?**

7 A. No. BellSouth fails to mention that any contractual right to conversions
8 contained in the amendment it proposed would have been negated, or made moot,
9 by BellSouth’s inclusion of language in that amendment to eliminate the very
10 UNEs to which XO had requested conversion. Had XO signed the amendment
11 BellSouth proffered, XO not only would not have obtained the requested
12 conversions, but would also have given up all access to DS1 and other high
13 capacity UNEs.

14 **Q. Did XO refuse to execute BellSouth’s proposed amendment simply because it**
15 **wanted, as BellSouth claims, to extend the life of its current agreement?**

16 A. No; XO refused to execute the amendment because of its onerous conditions,
17 some of which I explained above.

18 **Q. Did XO refuse to engage in any substantive negotiations regarding a follow**
19 **on agreement or TRO amendment?**

20 A. No, in fact, XO has continued negotiations, even proposing its own TRO
21 amendment to BellSouth, as discussed below.

1 **Q. Was BellSouth required, as it claims, to petition the Tennessee Regulatory**
2 **Authority (TRA) to “force XO to renegotiate” as BellSouth claims at page 5**
3 **of its Response?**

4 A. No. BellSouth intentionally fails to mention that BOTH parties filed petitions for
5 arbitration in Tennessee. If anything, XO was attempting to get BellSouth to
6 negotiate in good faith, and even requested mediation from the TRA. XO has
7 continued to emphasize its willingness to work with BellSouth to resolve this
8 dispute.

9 **Q. When did XO send its proposed TRO Amendment to BellSouth?**

10 A. The amendment was sent in February 2004.

11 **Q. Has BellSouth engaged in any meaningful discussions or negotiation of XO’s**
12 **proposed amendment since that time?**

13 A. No; to date (some 10 months later), BellSouth has refused to even consider it.

14 **Q. Given BellSouth’s refusal to even consider, much less accommodate, XO’s**
15 **conversion requests, why did XO then submit an NBR to BellSouth in July,**
16 **2004 for the conversion of 30 Global Crossing circuits?**

17 A. XO submitted the NBR because BellSouth personnel had indicated that BellSouth
18 would be willing to perform the conversions, and provide a reasonable rate for a
19 “one-step” conversion, from Global Crossing special access to XO UNEs. In fact,
20 BellSouth’s first response indicated that it would perform the requested one-step
21 conversions for a project management fee of \$135 per circuit.

22 **Q. Did BellSouth perform those conversions at that quoted price?**

1 A. No. XO provided its comments to BellSouth on BellSouth's proposed contract;
2 weeks later, rather than responding to XO's comments, BellSouth's response was
3 to withdraw the contract and the offer, and again refuse to provide the requested
4 conversions.

5 **Q. Then what did XO do?**

6 A. XO proceeded to work with BellSouth to at least have the Global Crossing special
7 access circuits migrated to XO special access circuits. In fact, according to a
8 recent email from Daphne Legg of BellSouth, which is attached hereto as Exhibit
9 No. __ (GC-2), there are thirty-six (36) former Global Crossing circuits, all of
10 which have either been migrated or are in process of being migrated to XO.

11 **Q. Why does that migration not end this matter?**

12 A. That migration involved the movement of the Global Crossing special access
13 circuits to the XO network as special access circuits. XO needs the conversion of
14 these special access circuits, as well as its pending and future conversion requests,
15 at cost-based rates for a billing change, or "switch as is."

16 **III. BellSouth's Obligation to Convert**

17 **Q. As a preliminary matter, can you describe what is not at issue in this case?**

18 A. The migration of another carrier's circuits to XO as UNEs is not the issue in this
19 **Complaint.** It is important to be clear as to what this case is about and what it
20 is not about. XO's Complaint seeks a ruling requiring BellSouth to perform the
21 requested conversion of XO's special access circuits to UNE pricing at a cost-
22 based rate – again, this is a billing change, with no physical work required on

1 BellSouth's part. BellSouth already has established a "switch as is" charge for
2 billing changes, and that charge is in the parties' interconnection agreement.

3 **Q. Is XO's Complaint about conversion of the former Global Crossing circuits**
4 **only?**

5 A. No; the issue here is whether BellSouth is obligated to convert special access
6 circuits to UNE pricing in accordance with the TRO.

7 **Q. But on page 8 of its Response, BellSouth states, "Furthermore, as evidenced**
8 **by XO's third NBR, the circuits of multiple parties are involved – a fact that**
9 **XO fails to mention to the Commission." Is this true?**

10 A. Absolutely not. As I explained above, the circuits of multiple parties are NOT
11 involved – the circuits at issue are all XO circuits. BellSouth's statement to the
12 contrary appear, in my lay opinion, to be an attempt to confuse the issue and
13 persuade the Commission to delay action on this matter.

14 **Q. In your lay opinion, does BellSouth have an obligation to convert the circuits**
15 **at issue here?**

16 A. Let me preface my answer by stating that I am not a lawyer. This is, at least in
17 part, a legal question that the parties will brief. However, it is my understanding
18 from BellSouth's Response to XO's Complaint, that BellSouth does not dispute
19 its obligation to convert the circuits. See Response at page 5, where BellSouth
20 notes that the FCC has found that "ILECs [are] now obligated to convert special
21 access circuits to stand-alone UNEs." The problem appears to be that BellSouth
22 refuses to perform the required conversions without an amendment to the ICA
23 addressing numerous unrelated and/or unresolved matters. Not only is an

1 amendment to perform these conversions not necessary, even if it were, BellSouth
2 is, in essence, holding XO hostage in an attempt to get it to agree to unrelated and
3 unreasonable terms.

4 **Q. Has XO made every effort to reach agreement on an amendment with**
5 **BellSouth?**

6 A. Yes, even though no amendment should be required in this instance, XO has
7 made every effort to appease BellSouth's demand for an amendment. In fact, as
8 stated above, XO provided a proposed amendment that would have incorporated
9 all of the non-appealed TRO issues, and would have obligated the parties to work
10 cooperatively to amend the agreement to incorporate any interim and/or
11 permanent rules with regard to the issues affected by the vacatur. Moreover,
12 BellSouth recently indicated a willingness to discuss an amendment that addresses
13 the issues "not affected by appeal of the TRO", but, on December 6, when XO
14 came to a meeting with BellSouth prepared to discuss the amendment, BellSouth
15 changed its position and refused to discuss such an amendment.

16 **Q. Why do you say, "even though no amendment should be required?"**

17 A. BellSouth has been processing the same conversions for mileage special access
18 circuits to UNE to EELs without specific process language in the ICA, and has
19 provided a cost-based price for a "switch-as-is" conversion in the ICA. For
20 BellSouth to now say that a detailed process for "switch-as-is" conversions must
21 be negotiated in order for it to abide by the obligation set forth in the TRO is
22 disingenuous at best.

23

IV. Appropriate Conversion Rate

1
2 **Q. What is your understanding of how the charge for the billing change for the**
3 **XO conversions should be assessed?**

4 A. The charge should be a billing change charge only, or a “switch as is” charge.
5 That BellSouth may enter the billing change in its systems as one or two separate
6 orders does NOT mean that any physical change to the circuit should be made or
7 that an exorbitant charge should be assessed. We are talking about the EXACT
8 SAME circuit. BellSouth’s current “switch as is” charge in Florida is \$8.98.

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

10 A. Following are the Special Access to UNE conversion costs that BellSouth has
11 indicated would be assessed to XO:

- 12 ▪ a UNE DS1 Loop nonrecurring charge of \$313.75 (for zone 1 circuits);
- 13 ▪ a UNE Loop Manual Service Order Nonrecurring Charge of \$11.90; and
- 14 ▪ a Time Specific Conversion Nonrecurring Charge of \$23.02.

15 Also, BellSouth wants to charge an additional project management fee that it says
16 is required to avoid possible service disruption.² BellSouth’s proposed project
17 management fee, with order provisioning, is \$635.83 per circuit! In short,
18 BellSouth is proposing to charge almost \$1,000.00 for what should be a billing
19 change, compared to a “switch as is” charge of \$8.98 for the same conversion of a
20 special access mileage circuit to a UNE loop/transport combination. For the
21 approximately 1700 circuits for which XO sought conversion in 2003, BellSouth
22 provided a price quote of \$1.2 million (see Exhibit G, page 3, to BellSouth’s

² 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 Response) – a conversion that should have cost approximately \$15,000 as a
 2 “switch as is” conversion. This \$1.2 million dollar quote fails to pass the “straight
 3 face” test.

4 **Q. Is this rate erroneous?**

5 A. Yes, absolutely. This rate recovers the costs of actual disconnection of the circuit
 6 and installation of a new circuit; again, we are talking about the EXACT SAME
 7 circuit, with no physical change; BellSouth simply will not incur these costs
 8 which it seeks to recover.

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

10 A. As you can see from the table below, the monthly cost of a UNE loop is \$94.56
 11 less than the same loop at Special Access rates. Every 1000 circuits that
 12 Bellsouth prevents XO from converting by its excessive conversion fees costs XO
 13 \$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

14

15 **V. Conversion Time**

16 **Q. How soon after a conversion request has been submitted, should the**
 17 **conversion occur?**

1 A. Since this is just a billing change, the conversion should occur no later than 30
2 days after XO submits the request. This is a reasonable time frame, as the parties
3 use a 30-day billing cycle, and because nothing more than a billing change is
4 required, as discussed above.

5 VI. BellSouth's Claims

6 **Q. BellSouth urges the Commission not to act on XO's Complaint due to the**
7 **"uncertainty in the industry and the plethora of change in law proceedings**
8 **that will take place in the near future...." Response, page 8. Do you agree**
9 **that the issue of conversions is uncertain?**

10 A. I am not a lawyer, but it is my understanding is that the TRO's provisions
11 regarding the obligation of an ILEC to convert special access circuits to UNE
12 pricing at cost-based rates, within one billing cycle of the request, or of the
13 effective date of the TRO (for pending requests), was not the subject of any
14 appeal, reconsideration, or vacatur. I fail to see how this issue is uncertain.

15 **Q. Is XO trying to circumvent the change of law process in the parties' ICA as**
16 **BellSouth claims?**

17 A. No. As explained above, no change of law amendment is required based on the
18 parties' interconnection agreement language. Further, to say that XO is trying to
19 "circumvent" anything ignores the numerous attempts XO has made to negotiate
20 this issue, including numerous attempts appease BellSouth and to negotiate a
21 TRO amendment. With regard to such amendment, BellSouth has taken
22 unreasonable positions as to "vacated UNEs," and has "held hostage" all other

1 TRO issues in an attempt to force XO to agree to a clearly unfair TRO
2 amendment.

3 **Q. Is XO attempting unilaterally to declare certain portions of the TRO to be**
4 **“self-effectuating” as BellSouth argues?**

5 A. XO is not trying to “declare” anything; it is simply asking that BellSouth act in
6 good faith to implement the clear provisions of the TRO.

7 **Q. Did XO intentionally “fail to disclose years of history and correspondence**
8 **between the parties,” as BellSouth claims on page 11 of its Response?**

9 A. No. In fact, the history between the parties supports XO’s position that BellSouth
10 is acting unreasonably in continuing to deny XO’s request. XO’s intent was to
11 present the issue clearly to the Commission of whether BellSouth is required to
12 perform these conversions at cost-based rates within one billing cycle of the
13 request for conversion. The history between the parties only shows that XO has
14 made every effort to resolve this with BellSouth, and has used commission
15 intervention as a last resort.

16 **Q. Earlier, you stated that BellSouth would not allow XO to simply order these**
17 **conversions and dispute the pricing, or take just the pricing issue to the**
18 **Commission. Did BellSouth discuss any implications of XO raising such a**
19 **billing dispute with the Commission?**

20 A. Yes. In addition to indicating that BellSouth would not perform the conversions
21 unless XO agreed to the charges and agreed to waive its right to dispute the
22 charges, Jerry Hendrix of BellSouth indicated, in a conference call with XO, that

1 should XO dispute the billing of the charges, such dispute might “affect XO’s
2 access to services.” This veiled threat was highly inappropriate.

3 **Q. Has XO exhausted the possibility of resolving this matter with BellSouth?**

4 A. Yes; though XO has indicated to BellSouth its willingness to try to reach
5 resolution, resolution appears unlikely. Further, XO cannot afford any more
6 protracted “negotiation.” It needs expeditious resolution of this matter.

7 **VII. Conclusion**

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

9 A. The Commission should order that the requested conversions be processed
10 immediately, at BellSouth’s “switch as is” charge used for EEL conversions. The
11 Commission should also require a true-up of the rates for all circuits for which
12 conversion has been requested, effective 30 days, or one billing cycle, from the
13 date of the initial conversion request. Finally, the Commission should order that
14 all new conversion requests be processed within 30 days of submission.

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

16 A. Yes.

-----Original Message-----

From: Willis, Michael [mailto:Michael.Willis@BellSouth.com]
Sent: Tuesday, May 28, 2002 4:08 PM
To: Shaffer, Dana; Willis, Michael; Wright, Sue
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John; Salemme, Gerry
Subject: RE: BellSouth NBR for UNE Conversion Project
Importance: High

Sue and Dana: The firm price quote was based on the initial spreadsheet provided by XO, and does not include a waiver of the NRCs as XO requested in its counter-offer. Please let me know XO's intent to proceed with the it's NBR of February 18th. Consistent with the Parties' Interconnection Agreement XO must accept or reject BellSouth's proposal. The firm price quote was based on the initial spreadsheet provided by XO, and does not include a waiver of the NRCs as XO requested in its counter-offer.

Please call me if you have any questions.

Thank you.

-----Original Message-----

From: Shaffer, Dana [mailto:dana.shaffer@xo.com]
Sent: Tuesday, May 14, 2002 11:55 AM
To: 'Willis, Michael'; Wright, Sue; Shaffer, Dana
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John; Salemme, Gerry
Subject: RE: BellSouth NBR for UNE Conversion Project

if the application of NRCs is not negotiable, and BellSouth refuses to provide an "all-in" quote that includes a waiver of some of all of the NRCs, then we are wasting our time and will proceed with appropriate action before the applicable authority.

-----Original Message-----

From: Willis, Michael [mailto:Michael.Willis@BellSouth.com]
Sent: Tuesday, May 14, 2002 10:22 AM
To: 'Wright, Sue'; Shaffer, Dana; Willis, Michael
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John
Subject: RE: BellSouth NBR for UNE Conversion Project
Importance: High

Sue and Dana: The price that was provided is just the price for BellSouth to project manage replacement of circuits, and the new UNE NRCs will be as set forth in the interconnection agreement.

The Price that was provided was based on the initial spreadsheet provided by XO. If it is XO's intent to move forward with the NBR BellSouth can provide another quote based on the new spreadsheet.

Docket No.: 041114-TP
Witness: Gary Case
Exhibit No. _____(GC-1)
E-mails regarding NBR.
Page 1 of 3

Please confirm OX's intent.

Thanks

-----Original Message-----

From: Wright, Sue [mailto:sue.wright@xo.com]
Sent: Monday, May 13, 2002 2:02 PM
To: 'Willis, Michael'
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John; Shaffer, Dana
Subject: RE: BellSouth NBR for UNE Conversion Project

Michael - attached is the MOST current spreadsheet of circuits - There appears to be closer to 1600 circuits now.

Sue Wright
Sr. Manager - Carrier Relations
XO Communications
v: 509-434-1553
f: 509-444-5599
sue.wright@xo.com

-----Original Message-----

From: Shaffer, Dana
Sent: Monday, May 13, 2002 10:16 AM
To: 'Willis, Michael'; Wright, Sue; Shaffer, Dana
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John
Subject: RE: BellSouth NBR for UNE Conversion Project

Does Bell have any offer on an "all in" price, or is Bell's position that the NRCs will apply, as well as the project management fee?

Again -- the difference between a roughly \$56 conversion fee for loop AND transport vs. a roughly \$1500 price for conversion to a loop with no transport is impossible to justify.

-----Original Message-----

From: Willis, Michael [mailto:Michael.Willis@BellSouth.com]
Sent: Monday, May 13, 2002 12:11 PM
To: 'Wright, Sue'; Willis, Michael; Shaffer, Dana
Cc: Amador, David I; Vega, Len; Ruby, Shawna; Hudson, Kristen; Jaques, Deborah; Seaton, John
Subject: RE: BellSouth NBR for UNE Conversion Project
Importance: High

Sue and Dana:

Consistent with our May 8th meeting, attached is the written NBR firm price quote provided for BellSouth's project managed replacement of 2722 SPA circuits to UNEs in 3 states. Consistent with the Parties Interconnection Agreement, please let this serve as a firm price quote

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Witness: Gary Case
Exhibit No. _____(GC-1)
E-mails regarding NBR.
Page 2 of 3

for XO's February 18th NBR. I have also attached BellSouth's response to XO's redline of the professional services agreement.

BellSouth has considered XO's counter-offer of \$112 per circuit for the project managed replacement of XO's 2722 SPA circuits, and waiver of the associated NRCs for such circuits. BellSouth is unable to accept XO's counter-offer. Therefore, consistent with the Parties Interconnection Agreement XO must notify BellSouth in writing whether it accepts or rejects this offer within 30 days, or BellSouth will consider XO's February 18th NBR cancelled.

If you have any questions, please do not hesitate to call.

Thanks,

Michael Willis Bates

From: Legg, Daphne [Daphna.Legg@bellsouth.com]
Sent: Tuesday, October 19, 2004 10:08 AM
To: Buerrosse, Bob
Subject: XO / Global Crossing Project - Atlanta

Bob --

Concerning the project we were working on with Jeff Prince, I have updated this spreadsheet. There ended up being 36 Global Crossing DSLs that were to be rolled to XO. All have been done or are pending orders, except for 5. The attached spreadsheet will have the items colored coded for your review.

Thanks

Daphne Legg
Network Sales Engineer
BellSouth Telecommunications
205-321-4953
205-321-4343 (fax)
ipager - daphnelegg@imcingular.com

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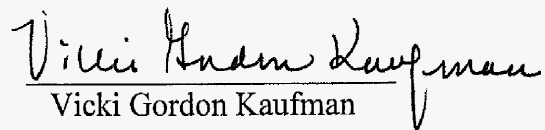
Docket No.: 041114-TP
Witness: Gary Case
Exhibit No. ____ (GC-2)
E-mail regarding migration of Global
Crossing's circuits.
Page 1 of 1

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing the Direct Testimony and Exhibits of Gary Case on Behalf of XO Florida, Inc. was served on the following by hand delivery and U.S. Mail this 13th day of December 2004:

Jason Rojas
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

James Meza
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556


Vicki Gordon Kaufman