

**ORIGINAL**

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**Sent:** Friday, December 17, 2004 4:06 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Jason Rojas; Dana Shaffer; James Meza  
**Subject:** Docket No. 041114

Pursuant to the Commission's procedures for e-filing, XO Florida, Inc. provides the following information:

a. The attorney responsible for the filing is:

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b. The document is to be filed in Docket No. 041114-TP, Complaint of XO Florida, Inc. Against BellSouth Telecommunications, Inc. for Refusal to Convert Circuits to UNEs and for Expedited Processing.

c. The document is filed on behalf of XO.

d. The document consists of a motion which is 6 pages long and Exhibit A which is 4 pages long, for a total of 10 pages.

e. The document is XO's Motion to Compel BellSouth Telecommunications, Inc. to Respond to Discovery.

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**ORIGINAL**

**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: December 17, 2004

**XO FLORIDA, INC.'S MOTION TO COMPEL  
BELLSOUTH TELECOMMUNICATIONS, INC.  
TO RESPOND TO DISCOVERY**

XO Florida, Inc. (XO), pursuant to rule 28-106.204, Florida Administrative Code, moves this Commission for an order requiring BellSouth Telecommunications, Inc. (BellSouth) to respond to XO's First Set of Discovery (Interrogatory Nos. 1, 3, 4, 7, 8 and Production Request Nos. 1, 2, 4 and 6).<sup>1</sup> As grounds therefore, XO states:

**Introduction**

1. On September 22, 2004, XO filed a Complaint against BellSouth in which it alleged that BellSouth has refused to convert XO special access circuits to UNE pricing. It is XO's position, as expressed in its Complaint and in the direct testimony of its witness, Gary Case, filed on December 13, 2004, that BellSouth performs the very same "process" when it converts special access circuits to Enhanced Extended Loops (EELs). However, rather than the thousands of dollars BellSouth seeks to charge XO for the special access to UNE billing change, for the special access to EEL change, BellSouth charges \$8.98.

2. BellSouth has refused to provide answers to any XO discovery questions that relate to EEL conversions, claiming that such questions are "irrelevant." As

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<sup>1</sup> XO's questions and BellSouth's responses are attached hereto as Attachment A.

discussed below, such questions are clearly relevant to the issues in this docket and well within the bounds of permissible discovery.

### **Standard for Ruling on Discovery Requests**

3. The scope of discovery is broad. *See Allstate v. Boecher*, 733 So.2d 993, 935 (Fla. 1999).<sup>2</sup> Rule 1.280(b), Florida Rules of Civil Procedure, addresses the scope of discovery:

**Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

4. The purpose of discovery is "to simplify the issues of the case, to eliminate the element of surprise, . . . to avoid costly litigation, and to achieve a balanced search for the truth and achieve a fair trial." *See Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1996). In *Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980), the Florida Supreme Court stated that: "A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal." The Court also stated that a main purpose of discovery is "to provide each party with all available sources of proof as early as possible to facilitate trial preparation." *Id.* at 706. When the above standards for

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<sup>2</sup> "Our rules of civil procedure broadly allow parties to obtain discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," whether the discovery would be admissible at trial, or is merely 'reasonably calculated to lead to the discovery of admissible evidence.'"

discovery are applied to BellSouth's objections, they must fail. The information XO seeks is relevant and likely to lead to the admission of relevant evidence because the information bears directly on the issues before the Commission in this proceeding.

**The XO Discovery is Relevant to the Issues**

5. Via its refusal to answer legitimate discovery questions, BellSouth seeks to foreclose this Commission and XO from making the most obvious and relevant comparisons in this case:

- What process does BellSouth use to make a billing change involving the conversion of a special access circuit to a UNE?
- How does that compare to what BellSouth does to make a billing change the conversion of an EEL to a UNE?
- What are the cost-based charges for these processes?

BellSouth has already admitted that no physical change to the circuits at issue is required to convert them from special access to UNE pricing. (See BellSouth response to XO Request for Admission, No. 3). If, as XO has alleged, the processes used to make these conversions are essentially the same, the huge price difference BellSouth is attempting to charge XO for special access to UNE conversions simply lacks any justification.

6. To gain information on these issues, XO asked BellSouth a number of questions (reproduced in Exhibit A) going to these fundamental points. For example, XO Interrogatory No. 1 asks:

Provide a detailed description of BellSouth's current process for converting special access mileage circuits to Enhanced Extended Loops ("EELs"), or UNE combinations of loop and transport in Florida, and

indicate whether this process is the same as the conversion process for such circuits in the other states in BellSouth's region.

Interrogatory No. 3 asks:

Describe, in detail, any differences between the processes [for converting EELs and special access circuits] described in Interrogatory Nos. 1 and 2 above, including an explanation of the need for any difference in the two processes.

Interrogatory Nos. 7 and 8 ask for an explanation of the cost differences BellSouth seeks to charge for the processes. BellSouth refuses to answer the and similar questions, claiming the questions are "irrelevant and not likely to lead to the discovery of admissible evidence." BellSouth further claims that the issue in this case is limited to "whether XO has the right to convert special access circuits to stand-alone UNEs *under the Current Agreement*."<sup>3</sup> That is BellSouth's formulation of the issue, not XO's nor this Commission's. Issue No. 1, contrary to BellSouth's claim, is: "Does BellSouth currently have an obligation to convert all XO special access circuits to standalone UNE recurring pricing?"<sup>4</sup>

7. Further, Issue No. 2 addresses the issue of what charges should apply to such conversions.<sup>5</sup> Clearly, cost information regarding the special access to EEL conversion is relevant to pricing issues.

8. BellSouth makes similar "irrelevance" objections when asked to produce documents related to EEL conversions (POD No. 2), cost studies underlying the EEL "switch as is" price (POD No. 4), and other similar requests. As explained above, such information is critical to the issues that are the subject of this docket and necessary for an appropriate analysis of the disputes in this case.

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<sup>3</sup> Emphasis added.

<sup>4</sup> Order Establishing Procedure, Order No. PSC-04-1147-PCO-TP, Attachment A.

<sup>5</sup> *Id.*

9. XO's questions are highly relevant and without such information, which only BellSouth possesses, XO and the Commission will be hamstrung in their efforts in this case.

10. Counsel for XO has conferred with counsel for BellSouth regarding the above discovery and represents that BellSouth opposes this motion.

**WHEREFORE**, XO's Motion to Compel as to Interrogatory Nos. 1, 3, 4, 7, 8, and Production Request Nos. 1, 2, 4 and 6 should be granted and BellSouth should be required to respond immediately.

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Attorneys for XO Florida, Inc.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing XO Florida, Inc.'s Motion to Compel was served on the following by electronic mail and U.S. Mail this 17<sup>th</sup> day of December 2004:

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

James Meza  
BellSouth Telecommunications, Inc.  
675 W. Peachtree Street, NE, Suite 4300  
Atlanta, Georgia 30375

S/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

## XO INTERROGATORIES

1. Provide a detailed description of BellSouth's current process for converting special access mileage circuits to Enhanced Extended Loops ("EELs"), or UNE combinations of loop and transport in Florida, and indicate whether this process is the same as the conversion process for such circuits in the other states in BellSouth's region.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement.

3. Describe, in detail, any differences between the processes described in Interrogatory Nos. 1 and 2 above, including an explanation of the need for any difference in the two processes.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement.

4. What is the current "switch as is" price for conversion from special access mileage circuits to EELs in each of BellSouth's states?

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement. In addition, the interrogatory is overly-broad and irrelevant



as it seeks information unrelated to XO's operations in Florida as well as states where XO has not file [sic] a Complaint.

Subject to, and without waiving the foregoing objection, if applicable, please see the "switch as is rate" in XO's contract with BellSouth for each BellSouth state.

7. Provide and explain in detail the underlying cost(s) for the conversion without disconnection of a special access mileage circuit to an EEL, including an explanation of each component of such cost.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement.

8. Explain, in detail, any difference between the costs provided in Interrogatory No. 6 above [costs for conversion without disconnection of special access zero to a UNE loop] and Interrogatory No. 7 above, including the necessity of any difference in costs in order to complete such conversions.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement.

## XO REQUESTS TO PRODUCE

1. All internal and external correspondence, including, but not limited to, internal memos, emails, voicemails, etc., regarding the issue of conversion of special access circuits (mileage and/or zero mileage circuits) to Unbundled Network elements, EELs, or stand alone loops:

(a) in general, from the date of XO's first request for such conversion to the present;

(b) specific to XO; and

(c) regarding the analysis of the appropriate treatment of and rate for CLEC requests for conversions of special access circuits to unbundled network elements of any type.

**BELLSOUTH RESPONSE:** BellSouth objects to this request as being overly broad, unduly burdensome, and irrelevant and not likely to lead to the discovery of admissible evidence. BellSouth also objects on the grounds that it seeks confidential and proprietary information. Subject to the foregoing objections, BellSouth will produce responsive documents upon execution of a protective agreement.

2. All documents illustrating, discussing, analyzing, or describing the current process for converting special access mileage circuits to EELs.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement.

4. Provide the cost study(ies) and all cost information and documentation supporting the "switch as is" price provided in response to Interrogatory No. 4.

**BELLSOUTH RESPONSE:** See BellSouth's response and objection to Interrogatory No. 4.

6. Provide the cost study(ies) and all cost documentation for the underlying cost(s) for the conversion, without disconnection, of a special access zero mileage circuit to a UNE loop, in the same format as the cost study documentation for conversion of special access mileage circuits to EELs.

**BELLSOUTH RESPONSE:** BellSouth objects to this request on the grounds that it is irrelevant and not likely to lead to the discovery of admissible evidence as the Complaint, as framed by XO, is limited to whether XO has the right to convert special access circuits to stand-alone UNEs under the Current Agreement. Indeed, there is no dispute that XO has the right to convert special access circuits to EELs under the Current Agreement. In addition, BellSouth has no obligation to provide documents in a particular format to XO. Subject to and without waving the foregoing objection, see the documents produced in response to Request for Production No. 7, which will be provided upon execution of a protective agreement.