

JAMES MEZA III
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0769

December 23, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


**Re: 041114-TP – Complaint of XO Florida, Inc. Against
BellSouth Telecommunications, Inc. for Refusal to Convert
Circuits to UNEs and for Expedited Processing**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Motion to Compel, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

13457 DEC 23 3

FPSC-COMMISSION CLERK

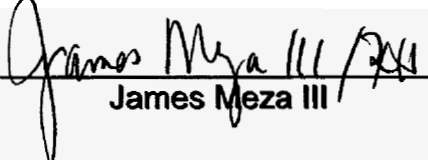
**CERTIFICATE OF SERVICE
DOCKET NO. 041114-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and Federal Express this 23rd day of December, 2004 to the following:

Jason Rojas
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6179
irojas@psc.state.fl.us

Vicki Gordon Kaufman (+)
McWhirter Reeves McGlothlin
Davidson Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
vkaufman@mac-law.com
Represents XO

Dana Shaffer (+)
XO Florida, Inc.
VP, Regulatory Counsel
105 Molloy Street, Ste. 300
Nashville, TN 37201
Tel. No. (615) 777-7700
Fax. No. (615) 850-0343
dana.shaffer@xo.com



James Meza III

(+) SIGNED PROTECTIVE AGREEMENT

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 23, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Opposition to the Motion to Compel ("Motion") filed by XO Florida, Inc. ("XO"). For the following reasons, the Florida Public Service Commission ("Commission") should deny XO's Motion as the information sought is either irrelevant or BellSouth has already provided responsive information.

BACKGROUND

The primary issue for the Commission to determine in this proceeding is whether ***"BellSouth currently [has] an obligation to convert all XO special access circuits to stand-alone recurring UNE pricing?"*** See Order No. PSC-04-1147-PCO-TP (emphasis added). As set forth in BellSouth's pre-filed direct testimony, the answer to this fundamental question is an unequivocal no. BellSouth has no such obligation under its current agreement with XO ("Current Agreement"). Further, the right to convert special access circuits to stand-alone UNEs was not established until the Federal Communications Commission ("FCC") issued its decision in the *Triennial Review Order* ("TRO"),¹ and, XO has historically refused to amend its agreement to be compliant with the TRO.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, et al, FCC 03-36, 17 FCC Rcd 16978 (Aug. 21, 2003).

Contrary to XO's assertions, this proceeding is not about XO's right to convert special access circuits to Enhanced Extended Loops ("EELs"), which is a right that exists in the Current Agreement, or the Commission's rate for such service, which was established in the Commission's UNE docket. Instead, this case is about XO attempting to use the Commission's complaint procedures to (1) circumvent XO's change of law obligations under the Current Agreement; and (2) take advantage of those portions of the FCC rules that are beneficial to XO while avoiding those portions of the FCC rules that are not beneficial; and (3) establish a cost-based rate for a service that XO has no current contractual right to receive.

On November 22, 2004, XO propounded Requests for Production, Interrogatories, and Requests for Admission on BellSouth. On December 13, 2004, BellSouth responded to XO's discovery requests and provided hundreds of pages of documents in response (after XO executed a protective agreement). Of particular importance, BellSouth included in this production its proposed cost-based rate for converting special access circuits to stand-alone UNEs for those carriers that have amended their interconnection agreement to be *TRO*-compliant. On December 17, 2004, XO filed the Motion and asked that the Commission compel BellSouth to respond to Interrogatory Nos. 1, 3, 4, 7, and 8 and Requests for Production No. 1, 2, 4 and 6.

ARGUMENT

Interrogatory Nos. 1, 3, 7, and 8; Request For Production Nos. 2 and 4. In these discovery requests, XO asks BellSouth to describe the process and the costs associated with converting special access circuits to EELs as well as any difference between said process and costs with the process and costs for converting special access circuits to stand-alone UNEs. Although BellSouth submits that information

related to the costs or process for converting special access circuits to stand-alone UNEs is irrelevant because XO has no right to such a service at TELRIC under the Current Agreement, BellSouth provided responsive information to XO, including its proposed cost-based rate for such a conversion once XO makes its Current Agreement compliant with the law.

It is axiomatic that discovery must be relevant to the subject matter of the pending case. See Florida Rules of Civil Procedure 1.280(b)(1); *Davich v. Norman Bros. Nissan, Inc.*, 739 So. 2d 138 (5th DCA 1999) (Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence). Contrary to XO's allegations in the Motion, the cost and process for converting special access circuits to EELs is simply not relevant to any issue in this proceeding. XO is not seeking to convert such circuits to EELs. And, Issue 1, as admitted by XO in its Motion, is limited to the conversion of special access circuits to stand-alone UNE recurring pricing. Indeed, XO has no legitimate reason for information relating to the process and cost for converting special access circuits to EELs unless it intends to violate the Telecommunications Act of 1996 (the "Act") by hijacking the rates and process for EEL conversions and applying them to stand-alone UNE conversions to avoid a UNE proceeding on this discrete service. In fact, assuming *arguendo* that the Commission allows XO to receive the benefits of the TRO without requiring XO to honor its change of law obligations in the Agreement (which it should not), the Commission should establish a TELRIC based rate for the specific service in question and not use the rate established for a different process as a

surrogate.² Accordingly, the Commission should reject XO's attempt to bring the cost and process of converting special access circuits to EELs into this proceeding and deny the Motion.

Interrogatory No. 4. In this Interrogatory, XO asked BellSouth to identify the "switch as is" price for the conversion of special access mileage circuits to EELs in each of BellSouth's states. BellSouth objected to this request on multiple grounds but, subject to and without waiving the objections, referred XO to the Current Agreement for identification of the current "switch as is" rate, if applicable, for the conversion of special access circuits to EELs. Thus, BellSouth has responded to the interrogatory and XO's Motion is moot.

Requests for Production Nos. 1 and 6. For both of these requests, BellSouth provided responsive documents subject to and without waiving certain objections.³ Thus, as a practical matter, XO's Motion is moot as to these requests and should be denied.

CONCLUSION

For the foregoing reasons, BellSouth requests that the Commission deny XO's Motion to Compel.

² This issue is further compounded by the fact that, notwithstanding XO's claims that this proceeding is limited to the conversion of XO special access circuits to stand-alone UNEs, XO previously requested BellSouth to convert the circuits of another carrier (Global Crossing) to stand-alone UNEs, and, just recently, XO requested that BellSouth convert the special access circuits of still another carrier – Allegiance Telecom – to stand-alone UNEs. The act of converting the circuits of other carriers involves more steps and costs than converting solely XO circuits.

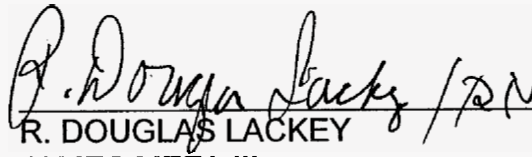
³ As to Request for Production No. 1, BellSouth objected on the grounds that the request was overly broad, unduly burdensome, and irrelevant as it sought information unrelated to XO. BellSouth maintains the objection and XO has not specifically addressed this objection in its Motion. Likewise, as to Request for Production No. 4, BellSouth objected to the request on the grounds that it sought BellSouth to put a cost study in a particular format, which BellSouth has no obligation to do. BellSouth maintains the objection and XO has not specifically addressed this objection in its Motion.

Respectfully submitted this 23rd day of December, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

 /RN

NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

 /RN

R. DOUGLAS LACKEY
JAMES MEZA III
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0769

564683