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January 20, 2005

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:

- > Rebuttal Testimony of Gary Case on behalf of XO; and 00730-05
> XO Florida, Inc.'s Notice of Intent to Request Confidential Classification. 00731-05

XO Florida, Inc.'s name has been changed to XO Communications Services, Inc. To avoid confusion, since the previous pleadings are in the name of XO Florida, Inc., we have continued to use that name in the enclosed filings.

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

COM 3+orig to Ct. Rpr

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RCA Enclosures

SCR ec: Parties of Record

SEC 1

OTH +cover ltr.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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[Signature]

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DOCUMENT NUMBER-DATE

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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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PUBLIC
REBUTTAL TESTIMONY
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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DOCKET NO. 041114-TP**

3 **REBUTTAL TESTIMONY**

4 **OF GARY CASE ON BEHALF OF XO FLORIDA, INC.**

5 **JANUARY 20, 2005**

6
7 **Q. Please state your name and address.**

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

10 **Q. Are you the same Gary Case who filed Direct Testimony in this docket on**
11 **December 13, 2004?**

12 A. Yes.

13 **Q. What is the purpose of your Rebuttal Testimony?**

14 A. The purpose of my Rebuttal Testimony is to address the statements and assertions
15 contained in the Direct Testimony of BellSouth witness Owens and the Direct
16 Panel Testimony of BellSouth witnesses Willis and Padgett.

17 **Q. What items do you address in your Rebuttal Testimony?**

18 A. My Rebuttal Testimony addresses the following erroneous contentions of
19 BellSouth's witnesses:

- 20 ▪ That BellSouth has no obligation to perform the requested conversions,
21 and that XO acknowledged the lack of such obligation by submitting the request
22 via BellSouth's NBR (New Business Request) process;

- 1 ▪ That BellSouth has EVER provided a TRO-compliant amendment to the
- 2 parties' interconnection agreement (ICA) that would result in the conversion of
- 3 the requested circuits;
- 4 ▪ That XO has ever refused to incorporate the provisions of the TRO, or is
- 5 trying to circumvent any applicable change of law process;
- 6 ▪ That the outrageous process BellSouth proposes of issuing orders to
- 7 disconnect and reconnect the circuits, and then have XO pay BellSouth to “project
- 8 manage” the orders to ensure they are not really worked, is required to effectuate
- 9 the conversion of the requested circuits from special access rates to Unbundled
- 10 Network Element (“UNE”) rates; and
- 11 ▪ That converting special access circuits to UNEs is more than just a billing
- 12 change.

13 **Q. BellSouth witnesses Willis and Padgett claim that XO has acknowledged that**
14 **BellSouth has no obligation to provide the conversions XO has requested**
15 **because XO submitted the request as an NBR, or “new business request.” Is**
16 **this true?**

17 A. No, that is not true. The only reason XO submitted the request as an NBR is that
18 BellSouth refused to even consider the request any other way, and demanded that
19 XO submit it as an NBR. The reason subsequent NBRs were submitted is that
20 BellSouth personnel indicated some willingness on the part of BellSouth to
21 reconsider the pricing for the conversions, and, again, BellSouth required the
22 request be submitted as an NBR. XO never agreed with BellSouth that this was

1 the appropriate procedure to follow, but rather did it at BellSouth's insistence in
2 the hope that its orders would be timely processed.

3 **Q. Is it true that BellSouth has no obligation under the parties' interconnection**
4 **agreement to provide these conversions?**

5 A. No, that is not true. It is my understanding that BellSouth has an obligation under
6 existing law to provide these conversions, and, if necessary, to negotiate, in good
7 faith, an amendment to include a billing conversion rate and process in the
8 parties' interconnection agreement. As I explain below, such amendment is not
9 necessary; moreover, to the extent BellSouth has insisted on such an amendment,
10 XO has made every attempt to negotiate such an amendment in good faith, but
11 BellSouth has refused.

12 **Q. Does the current interconnection agreement between XO and BellSouth**
13 **contain an applicable rate?**

14 A. Yes. Currently, the parties' interconnection agreement contains a "switch as is,"
15 or billing conversion rate. It is my understanding that the process for these types
16 of conversions (special access to UNE and special access to EELs) is essentially
17 the same. Therefore, no further amendment to the ICA should be necessary, since
18 BellSouth has not required detailed language of the conversion process in the
19 ICAs previously, but has performed billing conversions of EELs under the
20 agreement's existing language. Thus, my lay understanding is that BellSouth has
21 an obligation under the parties' interconnection agreement, as interpreted under
22 existing law, to perform these conversions.

1 **Q. Have you attempted in discovery to have BellSouth describe any differences**
2 **it claims exists between the two processes?**

3 A. Yes. XO has asked for this information in discovery. For instance, XO asked
4 BellSouth to describe the difference, if any, between the special access to UNE
5 conversion and the special access to EEL process (see XO Interrogatory No. 3 to
6 BellSouth). But BellSouth has refused to provide any information on the EEL
7 conversion process and whether there is any required difference between the
8 current process used for EELs and the same billing conversion for stand-alone
9 UNEs, claiming that such conversion process is “irrelevant.” XO currently has a
10 motion to compel BellSouth to respond to such discovery. XO reserves the right
11 to comment further on this issue once BellSouth has properly responded to XO’s
12 discovery requests on this issue.

13 **Q. Has BellSouth proposed an amendment that would provide XO these**
14 **conversions, which XO has refused to sign?**

15 A. Absolutely not. That assertion is not only untrue, but the testimony of witnesses
16 Willis and Padgett is misleading at best. BellSouth has NEVER provided XO
17 with an amendment that would result in these conversions being performed;
18 BellSouth has only presented amendments that provide a hypothetical
19 “contractual right” to these conversions (see, Direct Panel Testimony of
20 BellSouth witnesses Willis and Padgett, p. 9, l. 19-22); however, those very same
21 amendments were overreaching, and would have eliminated altogether the very
22 UNEs to which XO seeks conversion. Thus, had XO signed the proposed
23 BellSouth amendment, BellSouth would still have refused to perform these

1 conversions and no doubt told XO that the amended ICA would not permit the
2 conversions.

3 **Q. Did XO respond to BellSouth's proposed amendments?**

4 A. Yes. XO responded to each BellSouth proposal with substantive edits that would
5 make the amendments compliant with existing law; BellSouth refused to consider
6 XO's edits. XO, on the other hand, has attempted in good faith to address
7 BellSouth's unreasonable demands for an amendment on the conversion issue,
8 and even proposed a TRO compliant amendment that explicitly implements the
9 non-appealed TRO issues, both those favorable to XO and those favorable to
10 BellSouth, while obligating the parties to act in good faith to implement the
11 FCC's final order on the appealed issues. BellSouth has flatly refused to even
12 consider XO's amendment, or provide any substantive response thereto.

13 **Q. Was BellSouth forced to file an arbitration proceeding against XO in
14 Tennessee as BellSouth claims?**

15 A. No. Actually, both parties filed for arbitration, based on the lack of progress on
16 negotiating a successor agreement to the parties' current interconnection
17 agreement. As for the issue of conversions, XO has filed a similar complaint to
18 the instant case against BellSouth in Tennessee, seeking an order requiring
19 BellSouth to perform conversion of special access to UNE billing.

20 **Q. Is XO attempting, as BellSouth claims, to circumvent the change of law
21 provisions of the parties' interconnection agreement?**

22 A. No. As explained above, XO's position is that no further amendment to the
23 parties' ICA is necessary for BellSouth to perform these conversions. On other

1 TRO issues, however, XO has not taken that position, because the TRO,
2 interpreted in the context of the parties' existing ICA, does require an amendment.
3 XO has continued to work with BellSouth to negotiate such an amendment. Most
4 recently, as a member of the Southeastern Competitive Carriers Association, XO
5 has supported BellSouth's petition for a generic change of law docket on these
6 issues. XO urged the Tennessee Regulatory Authority to conduct such a
7 proceeding as a dispute resolution forum to deal with issues arising from the TRO
8 as they become ripe, as XO has attempted individually to do for more than a year
9 with BellSouth. XO is not trying to circumvent the process. Rather, to the extent
10 the TRO required negotiation of terms regarding the price and process for these
11 billing conversions, the parties' existing interconnection agreement is more than
12 sufficient and does not need an amendment for BellSouth to perform these billing
13 conversions. In claiming otherwise, BellSouth is simply attempting to hold the
14 conversion issue "hostage" to other issues arising from the TRO that were the
15 subject of appeal and that have nothing to do with the conversion issue.

16 **Q. The panel of Witnesses Willis and Padgett claims that XO is "requesting a**
17 **different product from what it is purchasing..." and that the service must be**
18 **disconnected and reinstalled. Is this correct?**

19 A. No. The convoluted process BellSouth describes is nothing more than BellSouth's
20 attempt to justify the outrageous price it seeks to extract from XO. As I noted in
21 my Direct Testimony, no physical change to the circuits is required. To
22 disconnect and reinstall essentially the same service is inefficient and wasteful. It

1 puts unnecessary roadblocks in the path of what should be a simple billing
2 process.

3 **Q. Is the process BellSouth witness Owens describes necessary to effectuate the**
4 **conversion of special access circuits to UNE pricing?**

5 A. Absolutely not. While Mr. Owens claims that the conversion process is
6 “efficient,” nothing could be further from the truth. It is interesting to note that
7 Mr. Owens begins his description of the “necessary” process with the prefatory
8 remark that it applies to “CLECs that have not amended their interconnection
9 agreements...” (Owens Direct Testimony at p. 3). Mr. Owens then describes a
10 very elaborate, labor-intensive project, which will be used. The Commission
11 should not permit this. Apparently, a different, less convoluted process applies to
12 CLECs who are willing to accept, without challenge, BellSouth’s unrelated
13 overreaching amendments.

14 **Q. Is such a “process” necessary to convert the circuits?**

15 A. No. As I explained in my Direct Testimony, nothing physical needs to be done to
16 the circuits – they should simply be billed at a lesser rate. And, in fact, BellSouth
17 admits this. In response to XO’s Request for Admissions, BellSouth said:
18 “BellSouth admits that no physical disconnection or installation of the loop
19 should be required...” (BellSouth Response to XO Request for Admission, No.
20 4). Further, the fact that the conversion can be accomplished as only a billing
21 change is illustrated by the huge disparity in charges for this “process” for CLECs
22 who have “amended their agreement” versus those who have not. For CLECs

1 who accede to the required BellSouth amendment, BellSouth charges the
2 following cost-based rates:

3 DSO loops = [REDACTED]

4 DS1 loops = [REDACTED]

5 (BellSouth Proprietary Response to XO Interrogatory No. 5).

6 Compare these cost-based rates with the almost \$1,000 per circuit charge
7 which BellSouth is trying to levy on XO (described on page 15 of my Direct
8 Testimony). The confidential rates shown above make it obvious that this is a
9 billing change and that BellSouth is attempting to hold XO hostage and force it to
10 accept other unreasonable and unrelated amendments without the give and take of
11 true negotiation. Were BellSouth to treat this as a billing change only, the
12 complex "ghost order" process Witness Owens describes in painful detail
13 becomes unnecessary.

14 In addition, the process Mr. Owens describes is also highly suspect
15 because it puts the end user service at unwarranted and unnecessary risk of
16 disruption. This should be viewed as an unscrupulous attempt to justify charging
17 almost a thousand dollars for a billing conversion that BellSouth has priced as a
18 billing only change at [REDACTED] for a DSO, and [REDACTED] for a DS1. Finally,
19 BellSouth admits that if the Commission finds that BellSouth has an obligation to
20 convert the circuits, "the costs for converting special access zero mileage circuits
21 to UNE loops should be the same or less than the costs for converting special
22 access mileage circuits to EELs." (BellSouth Response to XO Request for
23 Admission, No. 1). The price for conversion of EEL circuits in Florida is \$8.98.

1 Q. **Does this conclude your Rebuttal Testimony?**

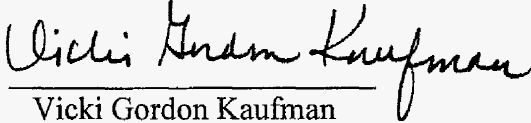
2 A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Rebuttal Testimony of Gary Case on Behalf of XO Florida, Inc. was served on the following by hand delivery this 20th day of January, 2005:

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Vicki Gordon Kaufman