

JAMES MEZA III
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January 24, 2005

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 BellSouth Telecommunications, Inc.'s Prehearing Statement, 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

00827 JAN 24 05

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 First Class U.S. Mail this 24th day of January, 2005 to the following:

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James Meza III

(+) SIGNED PROTECTIVE AGREEMENT

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of XO Florida, Inc.) Docket No.: 041114-TP
Against BellSouth Telecommunications, Inc. for)
Refusal to Convert Circuits to UNEs and for)
Expedited Processing)
_____) Filed: January 24, 2005

PREHEARING STATEMENT OF BELL SOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth"), in compliance with the Order Establishing Procedure (Order No. PSC-04-1147-PCO-TP) issued on November 18, 2004, hereby submits its Prehearing Statement for Docket No. 041114-TP.

A. Witnesses

BellSouth proposes to call the following witness to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Issue(s)</u>
Eddie Owens (Direct/Rebuttal)	1, 2, and 3
Shelley Padgett (Direct/Rebuttal Panel)	1, 2, and 3
Michael E. Willis (Direct/Rebuttal Panel)	1, 2, and 3

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct and rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on February 7, 2005. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

B. Exhibits

1. Eddie Owens Rebuttal Exhibit ELO -1
2. Shelly Padgett and Michael Willis Direct Panel Testimony Exhibits MEW/SP 1-8

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

C. Statement of Basic Position

Bellsouth has no obligation under the parties' current interconnection agreement ("Current Agreement") to convert special access circuits to stand-alone UNEs at TELRIC pricing. Not only is this fact supported by the clear language of the Current Agreement but it is also definitively established by the fact that, over the past 3 years, XO submitted three, separate New Business Requests ("NBRs") under the Current Agreement to request that BellSouth convert special access circuits to stand-alone UNEs. This conversion right at TELRIC only came into existence with the FCC's decision in *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) ("*TRO*"). In the *TRO*, the FCC held for the first time that incumbent local exchange carriers ("ILECS") had an obligation to convert special access circuits to stand-alone UNEs at TELRIC. *TRO* at ¶¶ 586-87.

Thus, in order to realize this right and others set forth in the *TRO*, XO was required to comply with its change of law obligations in the Current Agreement. However, because XO does not want to make the current agreement compliant with all current changes in the law, including the *TRO*, XO has refused to comply with its change of law obligations in the Agreement and instead has filed the instant Complaint. Simply put, XO is using litigation in an attempt to effectuate only those changes in the law that are beneficial to XO in violation of the Current Agreement.

D. BellSouth's Position on the Issues

Issue 1: *Does BellSouth currently have an obligation to convert all XO special access circuits to stand-alone recurring UNE pricing?*

Position: No. For the reasons set forth above, BellSouth has no obligation under the Current Agreement to convert all XO special access circuits to stand-alone recurring UNE pricing.

Issue 2: *If so, what is the appropriate rate for such billing change?*

Position: The Commission need not address this issue because, as stated above, BellSouth has no obligation under the Current Agreement to convert special access circuits to stand-alone UNEs for XO. Further, it would not be appropriate for the Commission to set a rate for a service that is not required under the Current Agreement. Until XO amends the Current Agreement to make it complaint with all aspects of the law, granting XO's request for relief would result in the imposition of a rate on a professional service that is beyond the scope of the Commission's authority

under Section 252 of the Act and would circumvent the parties respective obligations under the Current Agreement to amend that agreement consistent with applicable law.

Issue 3: ***Must such conversions be completed within one billing cycle of the initial request for conversion?***

Position: The Commission need not address this issue because, as stated above, BellSouth has no obligation under the Current Agreement to convert special access circuits to stand-alone UNEs for XO. In any event, any due dates for 15 or more circuits must be negotiated as standard intervals are not designed for such a large numbers of circuits.

E. Stipulations

None.

F. Pending Motions

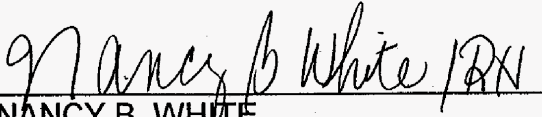
XO's December 17, 2004 Motion to Compel and BellSouth's Response.

I. Confidentiality Motions

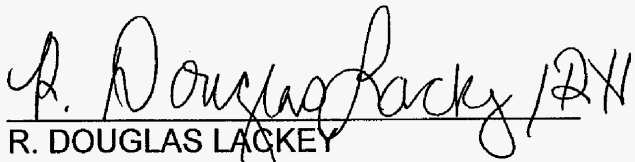
1. Request for Confidential Classification of BellSouth's Response to Staff's 1st Request for Production, No. 1 – Filed January 10, 2005.
2. Request for Confidential Classification of BellSouth's Response to XO's First Interrogatory No. 5 – Filed January 10, 2005.
3. Request for Confidential Classification of BellSouth's Response to XO's First Request for Production, Nos. 1 and 7 – Filed January 10, 2005.

Respectfully submitted this 24th day of January 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

Handwritten signature of Nancy B. White in cursive, with "BN" written at the end.

NANCY B. WHITE
c/o Nancy H. Sims
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Handwritten signature of R. Douglas Lackey in cursive, with "BN" written at the end.

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