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: January 24, 2005

XO FLORIDA, INC.'S PREHEARING STATEMENT

XO Florida, Inc. (XO), pursuant to Order No. PSC-04-1147-PCO-TP, files its Prehearing Statement of Issues and Positions.

A. APPEARANCES:

VICKI GORDON KAUFMAN, McWhirter Reeves Davidson Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301

DANA SHAFFER, Vice President, Regulatory Counsel, XO Communications, Inc., 105 Molloy Street, Nashville, Tennessee 37201-2315

On Behalf of XO Florida, Inc. (now known as XO Communications Services, Inc.)

B. WITNESSES:

Direct

Witness	Proferred by	Issues
Gary Case	XO	All

Rebuttal

Gary Case	XO	All

C. EXHIBITS:

Exhibit	Witness	Description
Exhibit No. ___ (GC-1)	Gary Case	Emails regarding NBR

Exhibit No. ___ (GC-2)	Gary Case	Email regarding migration of Global Crossing's circuits

D. STATEMENT OF BASIC POSITION:

The issues in this case are simple ones. XO has requested that BellSouth convert XO zero mile special access circuits to UNE stand-alone cost-based pricing. As BellSouth admits, this does not require any physical change or work on the circuits. It can be done as merely a billing change.

BellSouth has the obligation under current law to process XO's conversion requests. While not denying that the special access to UNE conversion must be done at cost-based rates, BellSouth refuses to perform these conversions until XO accepts a far-reaching amendment to its interconnection agreement that not only encompasses many other issues -- issues that are in dispute as well as issues that are currently unsettled pending issuance of the permanent FCC rules – but also would not result in XO obtaining the conversions it has requested. The issue of BellSouth's obligations to perform these conversions, however, was not appealed and is not an unsettled issue.[1] The obligation is clear.

That BellSouth seeks to prevent XO from obtaining conversion of special access circuits to UNEs by "cooking up" an outrageous charge for the conversion is evident in BellSouth's own admission of the cost-based rates (contained in the confidential rebuttal testimony of XO witness Case) BellSouth would charge a CLEC that had amended its interconnection agreement. When these cost-based rates are compared to the almost *$1,000 per circuit charge* that BellSouth seeks to levy on XO for the very same activity (as well as the convoluted "process" BellSouth describes to accomplish the change), it becomes obvious that the charge BellSouth seeks to apply to XO has no basis in reality. Every day that BellSouth refuses to perform these conversions at the cost-based rates results in the loss of thousands of dollars to XO and inhibits XO's ability to compete in Florida.

BellSouth's untenable position regarding a "required amendment" must be rejected for two reasons. First, no amendment to the interconnection agreement is required or necessary in this instance. As explained in XO's rebuttal testimony, the parties' current agreement contains a "switch as is" rate of $8.98. This process and this rate are applicable to the special access to UNE billing change (the same process used for special access to EEL conversion); thus no interconnection amendment is needed.[2]

[1] To the extent that the FCC permanent rules may impact UNE availability, there is no evidence that the circuits at issue here will be affected. Moreover, the fact that the FCC permanent rules are pending should not be allowed to delay these conversions anymore than it would be a proper basis for BellSouth to refuse to process new UNE orders.

[2] In discovery, BellSouth acknowledged that the charge for circuit conversions should be the same as for EELs.

BellSouth has not required such amendments for EEL conversions. Second, XO has made it clear, for more than one year, that it is willing to execute an amendment related to the special access to UNE conversion if BellSouth insists upon it. What XO is not willing to do is to execute the broad amendment BellSouth insists upon which deals with many issues outside the conversion question and forces XO to accept BellSouth's "self effectuating delisted UNE" language. XO is also not willing to continue to wait for FCC rules on other issues in order to avail itself of an obligation BellSouth has had since 2003 to perform these conversions.

To resolve this dispute, the Commission should require BellSouth to immediately begin processing XO's conversion requests at either the "switch as is" price in the parties' current agreement or at the cost-based rate established by BellSouth, as set out in Mr. Case's rebuttal testimony. In addition, the Commission should require BellSouth to true up the rates for all circuits for which conversion has been requested, effective 30 days, or one billing cycle from the initial conversion request. Finally, all new conversion requests should be processed within 30 days of submission.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: Does BellSouth currently have an obligation to convert all XO special access circuits to standalone UNE recurring pricing?

XO: Yes. Those portions of the *TRO* relating to the conversion issue raised in this docket were not appealed and thus not affected by *United States Telecom Assn v. FCC,* 359 F.3d 554 (D.C. Cir. 2004 (*USTA II*). The pertinent sections of the *TRO* (¶¶ 585-589) require BellSouth to perform the conversions XO has requested at just and reasonable rates, as a billing change only, within one billing cycle of receipt of request for conversion. The charge of almost *$1,000 per circuit* that BellSouth seeks to apply fails to meet this standard.

BellSouth's claim that it is entitled to charge this outrageous amount until XO agrees to BellSouth's proposed amendment to the parties' interconnection agreement is unfounded. The agreement contains a "switch as is" price of $8.98 for the same conversion process requested by XO; thus, no amendment is required. XO has long expressed its willingness to enter into an amendment on this issue if BellSouth insists, but XO is not willing to accept BellSouth's unilateral and unrelated amendments that have no bearing on the conversion issue and that would have the practical effect of denying XO the conversions it has requested by giving XO only a meaningless "contractual right" to the conversions, with offsetting right granted to BellSouth to deny XO access to UNEs.

ISSUE 2: If so, what nonrecurring charges should apply for performing such conversions?

XO: The Commission should apply the $8.98 charge for "switch as is" or the charge BellSouth claims it would apply to CLECs who amend their interconnection agreements. This charge, which BellSouth provided in discovery, is quoted in Mr. Case's rebuttal testimony.

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

XO: Since this is just a billing change, the conversions should occur no later than 30 days after XO submits its request, or one billing cycle, as required by the *TRO*.

F. STIPULATED ISSUES:

None.

G. PENDING MOTIONS:

XO Motion to Compel BellSouth to Respond to Discovery, filed December 17, 2004.

H. PENDING CONFIDENTIALITY REQUESTS:

1. On December 13, 2004, XO responded to Staff's 1st Request for Production of Documents. Some of the documents produced are confidential and XO filed them pursuant to a claim of confidentiality under § 364.183(1), Florida Statutes;

2. On January 20, 2005, XO filed Rebuttal Testimony of Gary Case. Mr. Case's testimony contains information that BellSouth claims is confidential. XO notified BellSouth of its intent to use this information and filed a Notice of Intent with the confidential version of the testimony.

I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH:

XO is unaware of any requirements with which it cannot comply at this time.

J. DECISIONS WHICH MAY IMPACT THIS CASE:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-

147, Report and Order on Remand and Further Notice of Proposed Rulemaking, rel. Aug. 21, 2003 (*TRO*);[3]

FCC Press Release on Final Unbundling Rules, issued December 15, 2004.[4]

K. OBJECTIONS TO WITNESS QUALIFICATIONS:

BellSouth has not designated any of its witnesses as experts.

s/ Vicki Gordon Kaufman

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[3] *United States Telecom Assn v. FCC,* 359 F.3d 554 (D.C. Cir. 2004 (*USTA II)*, does not impact the unappealed issue which is the subject of this docket.

[4] XO has included this reference to support its position that the permanent unbundling rules will *not* impact this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing XO Florida, Inc.'s Prehearing Statement was served on the following by electronic mail and U.S. Mail this 24th day of January 2005:

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