

ANDREW D. SHORE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0765

April 21, 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

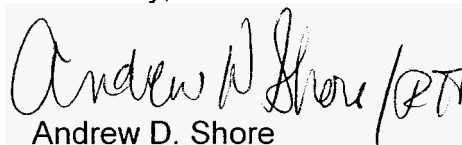
**Re: 041114-TP – Complaint of XO Florida, Inc. Against
BellSouth Telecommunications, Inc. for Refusal to Convert
Circuits to UNEs and for Expedited Processing**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Supplemental Rebuttal Testimony Shelley W. Padgett, 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,


Andrew D. Shore

Enclosures

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

DOCUMENT NUMBER: DATE

03957 APR 21 13

FPSC-COMMISSION CLERK

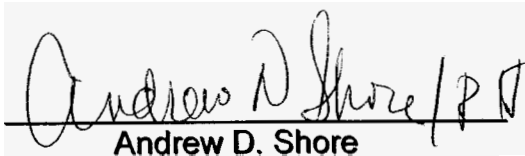
**CERTIFICATE OF SERVICE
DOCKET NO. 041114-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 21st day of April, 2005 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 (+)
Moyle Flanigan Katz Raymond
& Sheehan, PA
118 North Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 681-3828
Fax. No. (850) 681-8788
vkaufman@moylelaw.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


Andrew D. Shore

(+) SIGNED PROTECTIVE AGREEMENT

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 SUPPLEMENTAL REBUTTAL TESTIMONY OF
3 SHELLEY W. PADGETT
4 BEFORE FLORIDA PUBLIC SERVICE COMMISSION
5 DOCKET NO. 041114-TP
6 APRIL 21, 2005
7

8 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
9

10 A. My name is Shelley W. Padgett. My business address is 675 W. Peachtree Street,
11 Atlanta, Georgia 30375.
12

13 Q. ARE YOU THE SAME SHELLEY W. PADGETT WHO PROVIDED DIRECT
14 AND REBUTTAL PANEL TESTIMONY AS WELL AS SUPPLEMENTAL
15 DIRECT TESTIMONY IN THIS DOCKET?
16

17 A. Yes.
18

19 *Issue 4a: If the Commission finds in favor of XO on Issue 1, which circuits are*
20 *eligible for conversion?*
21

22 Q. MR. CASE TESTIFIED ON PAGE 5, LINES 2-3 THAT "BELLSOUTH HAS
23 ACKNOWLEDGED THAT IT IS LEGALLY OBLIGATED" TO CONVERT
24 XO'S CIRCUITS TO UNES. IS THAT ACCURATE?
25

1 A. No. BellSouth has acknowledged that it has a legal obligation to convert eligible
2 special access circuits to individual UNEs to the extent that the parties'
3 interconnection agreement provides for such conversions. Unfortunately,
4 however, XO has refused to incorporate all changes in law into its Interconnection
5 Agreement with BellSouth and is attempting to circumvent the change in law
6 process and obtain only those changes in the law that are favorable to XO.
7 Furthermore, as detailed in my supplemental direct testimony, many of the
8 circuits XO has requested to convert would not be eligible for conversion under
9 any circumstances.

10

11 Q. MR. CASE STATES ON PAGE 9, LINES 1-3 THAT XO'S
12 INTERCONNECTION AGREEMENT WITH BELL SOUTH ALREADY
13 ALLOWS COMMINGLING. IS THAT ACCURATE?

14

15 A. The parties' Interconnection Agreement does allow commingling in certain
16 limited circumstances. I mistakenly said in my supplemental direct testimony that
17 there were no commingling provisions in the Interconnection Agreement.
18 Importantly, the commingling addressed in the Interconnection Agreement is not
19 applicable to the issues in this proceeding.

20

21 Q. WHAT ARE THE CIRCUMSTANCES UNDER WHICH THE
22 INTERCONNECTION AGREEMENT ALLOWS COMMINGLING?

23

24 A. The Interconnection Agreement allows XO to order a new combination of a UNE
25 loop and a special access interoffice transport facility; in other words, a new

1 commingled EEL. Specifically, Attachment 2, Section 5.7.1 states:
2 “Additionally, BellSouth shall make available to XO a combination of an
3 unbundled loop and tariffed special access interoffice facilities. To the extent XO
4 will require multiplexing functionality in connection with such combination,
5 BellSouth will provide access to multiplexing within the central office pursuant to
6 the terms, conditions and rates set forth in its Access Services Tariffs. The tariffed
7 special access interoffice facilities and any associated tariffed services, including
8 but not limited to multiplexing, shall not be eligible for conversion to UNEs as
9 described in Section 5.5.”

10

11 Q. WHY ARE ONLY NEW COMMINGLED EELS AVAILABLE PURSUANT
12 TO THIS PROVISION?

13

14 A. There is no provision in the Interconnection Agreement that allows for XO to
15 convert a portion of a combination of elements. Therefore, the parties could not
16 have intended that this provision allow XO to order anything other than a new
17 commingled EEL. The fact that the provision quoted above uses the future tense
18 is further evidence of the parties’ clear intent.

19

20 Q. IS XO’S CONTRACTUAL RIGHT TO NEW COMMINGLED EELS AT ISSUE
21 IN THIS CASE?

22

23 A. No. XO has requested to convert portions of some circuits to create commingled
24 EELs.

25

1 Q. IF THE COMMISSION FINDS IN FAVOR OF XO ON ISSUE 1, SHOULD XO
2 BE ALLOWED TO CONVERT LOOPS TO CREATE COMMINGLED EELS?

3
4 A. No. The Interconnection Agreement does not provide for converted commingled
5 EELs. To the extent XO seeks to convert loops combined with other elements,
6 until its Interconnection Agreement is amended to include both the right to such a
7 conversion and the accompanying service eligibility criteria, XO should not be
8 allowed to convert these elements. When XO has amended its Interconnection
9 Agreement to include these provisions (as well as the other changes necessitated
10 by changes in law) XO will have the ability to convert the circuits it seeks to
11 convert, provided that it can comply with the relevant terms of the
12 Interconnection Agreement.

13
14 However, if the Commission decides to allow XO to convert circuits to
15 commingled EELs, which it should not, the Commission should also require XO
16 to comply with the requirements in the TRO regarding loops combined with other
17 elements, that is, the service eligibility criteria.

18
19 Q. MR. CASE DISTINGUISHES BETWEEN AN EEL AND A “STAND-ALONE
20 LOOP COMMINGLED WITH SPECIAL ACCESS TRANSPORT” (P. 9, L. 11-
21 12). PLEASE COMMENT.

22
23 A. Although an EEL strictly speaking is comprised of UNEs, Mr. Case ignores the
24 fact that a “stand-alone loop commingled with special access transport” is a
25 commingled EEL and is subject to the same service eligibility criteria as an EEL.

1 Paragraph 593 of the TRO says: “To ensure that our rules on service eligibility
2 are not gamed in whole or in part, we make clear that the service eligibility
3 criteria must be satisfied (1) to convert a special access circuit to a high-capacity
4 EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part
5 of a high-capacity loop-transport combination (commingled EEL).”
6

7 Q. ARE THE CIRCUITS LISTED IN MR. CASE’S EXHIBITS GC-3 AND 4 “THE
8 SUBJECT OF APPROPRIATE REQUESTS TO CONVERT” (CASE, P. 12, L.,
9 7-8)?
10

11 A. No. First, XO’s Interconnection Agreement with BellSouth does not allow XO to
12 request a conversion for a stand-alone element. Second, even if the Commission
13 decides Issue 1 in XO’s favor, not all of the circuits listed in Exhibits GC-3 and 4
14 are eligible for conversion. Specifically, only 251 of the 389 circuits listed on
15 Exhibit GC-3 and 109 of the 266 circuit listed on Exhibit GC-4 are stand-alone
16 loops. Only 22 and 45 of those circuits listed on Exhibits GC-3 and GC-4,
17 respectively, are commingled EELs that terminate in a collocation arrangement.
18

19 *Issue 4b: If the Commission finds in favor of XO on Issue 1, what is the appropriate*
20 *effective date of conversion for each eligible circuit?*
21

22 Q. WHAT IS THE APPROPRIATE EFFECTIVE DATE FOR CONVERSION OF
23 EACH ELIGIBLE CIRCUIT?
24

1 A. As stated in the direct panel testimony of Ms. Willis and myself as well as my
2 supplemental direct testimony, the appropriate effective date for conversion
3 would be a date following 1) an effective amendment to the parties'
4 Interconnection Agreement making the agreement compliant with current law,
5 specifically the TRO and the TRRO; 2) receipt by BellSouth of an accurate
6 spreadsheet from XO listing the relevant circuits and other required information;
7 and 3) allowing a reasonable period of time for BellSouth to complete the work.
8 BellSouth would suggest that thirty (30) days would be the appropriate effective
9 date.

10

11 If the Commission determines, however, that XO is not required to amend its
12 Interconnection Agreement to be entitled to the conversion of special access to
13 UNE provisions of the TRO, which it should not do, the Commission should find
14 that the effective date for any conversion is thirty (30) days from the receipt of a
15 clean, error-free spreadsheet from XO pursuant to the ordering provisions in place
16 for CLECs who have amended their agreements.

17

18 Q. MR. CASE CLAIMS ON PAGE 11, LINES 8-10 THAT THE TRO REQUIRED
19 THAT ANY PENDING CLEC CONVERSION REQUESTS BE TRUED-UP TO
20 THE "CORRECT PRICING." IS THAT ACCURATE?

21

22 A. No. The TRO required that for pending EEL requests that had not been converted
23 (whether or not they would actually be converted due to the change in the
24 qualifying criteria, i.e., the TRO's service eligibility criteria), CLECs were

1 entitled to a true-up to the effective date of the TRO. Specifically, paragraph 589
2 of the TRO states:

3 As a final matter, we decline to require retroactive billing
4 to any time before the effective date of this Order. The
5 eligibility criteria we adopt in this Order supersede the safe
6 harbors that applied to EEL conversions in the past. To the
7 extent pending requests have not been converted, however,
8 competitive LECs are entitled to the appropriate pricing up
9 to the effective date of this Order.

10 There is nothing in this paragraph that addresses the conversion or requested
11 conversion of individual elements.

12

13 Q. WHEN WERE XO'S CONVERSION REQUESTS MADE?

14

15 A. XO has made three formal requests via the New Business Request ("NBR")
16 process and one informal request for conversion by letter dated December 14,
17 2004, from Laura Inniss of XO to Jerry Hendrix of BellSouth. XO submitted the
18 first NBR in February 2002. Mr. Case does not mention this request in his
19 supplemental direct testimony. XO submitted its second NBR addressing
20 conversions in March 2003. XO submitted a third NBR to rearrange and convert
21 circuits from Global Crossing to XO and was made in July 2004. Mr. Case also
22 fails to mention this request in his testimony. These last two requests are the only
23 ones made after the effective date of the TRO.

24

1 **Issue 4c: If the Commission finds in favor of XO on Issue 1, is XO entitled to any**
2 **billing credits as a result of such conversion, and if so, what is the amount of such**
3 **credit(s)?**

4
5 Q. IS XO ENTITLED TO ANY CREDITS AS A RESULT OF XO'S
6 CONVERSION REQUESTS?

7
8 A. No. XO is not entitled to any billing credits for conversions of stand-alone
9 elements. As previously discussed, XO's Interconnection Agreement with
10 BellSouth does not allow XO to request a conversion for a stand-alone element.
11 However, even if the Commission decides Issue 1 in XO's favor, BellSouth
12 should not be penalized for complying with the terms of its Interconnection
13 Agreement.

14
15 Q. WHY ARE THERE REVISED EXHIBITS SWP-8 AND SWP-9 ATTACHED
16 TO THIS SUPPLEMENTAL REBUTTAL TESTIMONY?

17
18 A. In the course of preparing this supplemental rebuttal testimony, I discovered that I
19 had not included all of the relevant special access rate elements that would be
20 included in any conversion to UNEs. The revised exhibits account for these
21 elements.

22
23 Q. DO THE REVISED EXHIBITS SWP-8 AND SWP-9 SHOWING
24 CALCULATIONS OF ANY POSSIBLE BILLING CREDITS COMPARE
25 WITH MR. CASE'S EXHIBITS?

1 A. Not directly. First, my calculations include only those circuits which might be
2 eligible to convert under the requirements of the TRO: stand-alone loops and, as
3 an additional possibility which XO only even began to argue in Mr. Case's late
4 filed exhibits to his deposition, commingled EELs which terminate in a
5 collocation arrangement. Mr. Case's calculations include some circuits without
6 loop elements.

7

8 Second, my calculations show the amounts from the first request made by XO as
9 well as from the effective date of the TRO. Mr. Case's show the amounts from
10 thirty days following the March 2003 and December 2004 requests only.

11

12 In the interest of comparison, I have recalculated Exhibits SWP-8 and SWP-9 to
13 show the difference between the UNE and special access rates for the loop
14 elements as of thirty days from the March 2003 or December 2004 requests,
15 whichever was earlier. These calculations are contained in Exhibit SWP-10 and
16 SWP-11.

17

18 Q. ARE THE CALCULATIONS IN SWP-10 AND SWP-11 (OR GC-3 AND GC-4)
19 RELEVANT?

20

21 A. No. First, XO is not entitled under any scenario to billing credits for the March
22 2003 request, because it was made prior to the TRO. There was no obligation for
23 BellSouth to convert stand-alone elements to UNEs prior to the effective date of
24 the TRO, as explained in my supplemental direct testimony.

25

1 Second, for the December 2004 request, BellSouth relied upon the terms of its
2 Interconnection Agreement with XO. As previously noted, the Interconnection
3 Agreement contains no provisions allowing for conversions such as those
4 requested by XO. To the contrary, the Interconnection Agreement requires the
5 parties to negotiate changes in law such as this new conversion requirement prior
6 to incorporating them into the Interconnection Agreement, and specifically states
7 that changes to the Agreement cannot be made without a written amendment.
8 BellSouth should not be held liable for a change to its Interconnection Agreement
9 not made in writing at least until the point that the Commission itself clearly
10 overrides the terms of the Agreement between the parties.

11

12 Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL
13 TESTIMONY?

14

15 A. Yes.

Billing Difference for Standalone Loops

Bill Month	Total SPA Loop Charges	Total UNE Loop Charges	Total Difference
Mar-02			
Apr-02			
May-02			
Jun-02			
Jul-02			
Aug-02			
Sep-02			
Oct-02			
Nov-02			
Dec-02			
Jan-03			
Feb-03			
Mar-03			
Apr-03			
May-03			
Jun-03			
Jul-03			
Aug-03			
Sep-03			
Oct-03			
Nov-03			
Dec-03			
Jan-04			
Feb-04			
Mar-04			
Apr-04			
May-04			
Jun-04			
Jul-04			
Aug-04			
Sep-04			
Oct-04			
Nov-04			
Dec-04			
Jan-05			
Feb-05			

Total since first request
 Total since TRO

Billing Difference for Commingled EELs

Bill Month	Total SPA Loop Charges	Total UNE Loop Charges	Total Difference
01-Mar-02			
01-Apr-02			
01-May-02			
01-Jun-02			
01-Jul-02			
01-Aug-02			
01-Sep-02			
01-Oct-02			
01-Nov-02			
01-Dec-02			
01-Jan-03			
01-Feb-03			
01-Mar-03			
01-Apr-03			
01-May-03			
01-Jun-03			
01-Jul-03			
01-Aug-03			
01-Sep-03			
01-Oct-03			
01-Nov-03			
01-Dec-03			
01-Jan-04			
01-Feb-04			
01-Mar-04			
01-Apr-04			
01-May-04			
01-Jun-04			
01-Jul-04			
01-Aug-04			
01-Sep-04			
01-Oct-04			
01-Nov-04			
01-Dec-04			
01-Jan-05			
01-Feb-05			

Total since first request
 Total since TRO

Billing Difference for Standalone Loops Requested March 2003 and December 2004

April 2003 request			
Bill Month	Total SPA Loop Charges	Total UNB Loop Charges	Total Difference
May-03			
Jun-03			
Jul-03			
Aug-03			
Sep-03			
Oct-03			
Nov-03			
Dec-03			
Jan-04			
Feb-04			
Mar-04			
Apr-04			
May-04			
Jun-04			
Jul-04			
Aug-04			
Sep-04			
Oct-04			
Nov-04			
Dec-04			
Jan-05			
Feb-05			

Total since request

Total since TRO

December 2004 request			
Bill Month	Total SPA Loop Charges	Total UNB Loop Charges	Total Difference
Jan-05			
Feb-05			

Total since request

Total since TRO

Billing Difference for Commingled EELs Requested March 2003 and December 2004

April 2003 request			
Bill Month	Total SPA Loop Charges	Total UNE Loop Charges	Total Difference
May-03			
Jun-03			
Jul-03			
Aug-03			
Sep-03			
Oct-03			
Nov-03			
Dec-03			
Jan-04			
Feb-04			
Mar-04			
Apr-04			
May-04			
Jun-04			
Jul-04			
Aug-04			
Sep-04			
Oct-04			
Nov-04			
Dec-04			
Jan-05			
Feb-05			

Total since request

Total since TRO

December 2004 request			
Bill Month	Total SPA Loop Charges	Total UNE Loop Charges	Total Difference
Jan-05			
Feb-05			

Total since request

Total since TRO