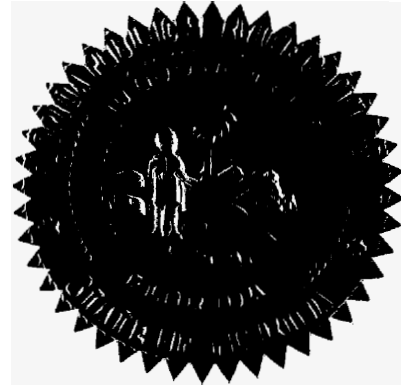


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041114-TP

IN THE MATTER OF:

COMPLAINT OF XO FLORIDA, INC.
AGAINST BELLSOUTH TELECOMMUNICATIONS,
INC. FOR ALLEGED REFUSAL TO CONVERT
CIRCUITS TO UNES; AND REQUEST FOR
EXPEDITED PROCESSING.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER LISA POLAK EDGAR

DATE: Thursday, May 19, 2005

TIME: Commenced at 9:30 a.m.
Concluded at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

1 PARTICIPATING:

2 ANDREW SHORE, ESQUIRE, BellSouth Telecommunications,
3 Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida
4 32301-1556, appearing on behalf of BellSouth
5 Telecommunications, Inc.

6 VICKI GORDON KAUFMAN, ESQUIRE, Moyle, Flanigan, Katz,
7 Raymond & Sheehan, P.A., 118 North Gadsden Street, Tallahassee,
8 Florida 32301, appearing on behalf of XO Communications
9 Services, Inc.

10 DANA SHAFFER, ESQUIRE, XO Florida, Inc., 105 Molloy
11 Street, Suite 300, Nashville, Tennessee 37201-2315, appearing
12 on behalf of XO Florida, Inc.

13 JASON ROJAS, ESQUIRE, FPSC General Counsel's Office,
14 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
15 appearing on behalf of the Florida Public Service Commission
16 Staff.

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 COMMISSIONER DEASON: Call the hearing to order.
3 Could I have the notice read, please.

4 MR. ROJAS: Pursuant to notice issued, this time and
5 place has been set for hearing in Docket Number 041114-TP
6 regarding the complaint of XO Florida, Incorporated, against
7 BellSouth Telecommunications, Incorporated, for alleged refusal
8 to convert circuits to UNES. The purpose is set forth in the
9 notice.

10 COMMISSIONER DEASON: Thank you.

11 Appearances.

12 MR. SHORE: I'm Andrew Shore on behalf of BellSouth.

13 MS. KAUFMAN: Vicki Gordon Kaufman of the Moyle
14 Flanigan law firm. And with me is Dana Shaffer, Vice
15 President, Regulatory Counsel, for XO Communications, and we
16 are here on behalf of XO.

17 MR. ROJAS: Jason Rojas on behalf of the Commission.

18 COMMISSIONER DEASON: Okay. Mr. Rojas, I think we
19 have a very significant preliminary matter we need to discuss.

20 MR. ROJAS: Yes, sir, we do. The parties have filed
21 a joint motion for continuance, and I believe it's pending a
22 written settlement. I'm sure they can address it.

23 COMMISSIONER DEASON: Yes. I have received the
24 motion. I have reviewed it and I think Commissioner Edgar has,
25 as well. First of all, I want to congratulate the parties for

1 being able to -- what appears to be an imminent settlement. I
2 guess that is the only question I have. I certainly don't mind
3 continuing the hearing if it appears that settlement is at
4 hand. This matter has been going on for some time. We have
5 had one continuance before when we added some issues for
6 clarification and to make sure the record was complete. But if
7 I can get that assurance, that would certainly give me some
8 comfort.

9 MR. SHORE: Yes, sir. Certainly we believe we have
10 an agreement, and the motion is subject to having us execute a
11 settlement agreement and cross the Ts and dot the Is. But I
12 think in our mind, and I'm sure XO will agree that we do have a
13 deal.

14 COMMISSIONER DEASON: You have a conceptual
15 agreement, anyway, is that correct?

16 MR. SHORE: Yes. You know, we have a term sheet that
17 sets forth the terms, but you know how us lawyers are, we've
18 got to make it more complicated.

19 COMMISSIONER DEASON: Okay.

20 MS. KAUFMAN: I think XO would agree. We spent a lot
21 of time yesterday hammering it out. And as Mr. Shore said, we
22 have got an agreement in principle with the major terms, and we
23 have to just convert it into a formal settlement document. And
24 we're going to get to that very quickly, as soon as Ms. Shaffer
25 returns to her office tomorrow.

1 COMMISSIONER DEASON: Okay. I have a question for
2 Mr. Rojas. If we accept the -- approve the motion for
3 continuance, obviously there is no reason to go forward with
4 the hearing today. This whole matter would be continued, and
5 we would be awaiting the receipt of the settlement, is that
6 correct?

7 MR. ROJAS: Yes, sir.

8 COMMISSIONER DEASON: And then once we receive the
9 settlement, that will be presented to this panel of
10 Commissioners for -- or does the matter just get resolved on
11 its own and the complaint is withdrawn and there is no further
12 need for Commission involvement?

13 MR. ROJAS: I believe there would be no further need
14 for Commission involvement.

15 MR. SHORE: The understanding that we have is once we
16 execute the settlement agreement that XO will dismiss its case,
17 so it will be over and the Commission will not have to fool
18 with it.

19 COMMISSIONER DEASON: That's even better.

20 Commissioner Edgar, do you have any questions?

21 COMMISSIONER EDGAR: I'm comfortable. Thank you.

22 COMMISSIONER DEASON: Unless there is an objection
23 from you, I think the Commission will recognize the motion and
24 approve that motion for continuance. This matter will be
25 continued, and we will be awaiting the settlement. And

1 hopefully accompanying that settlement, or shortly thereafter,
2 there will be a withdrawal of the complaint, and there will be
3 no need for -- now that is another question I guess I have.

4 Is the settlement, itself, to be filed with the
5 Commission, or this is just between the parties, and once you
6 all reach your settlement you will withdraw the complaint and,
7 therefore, there is no need for Commission action?

8 MS. SHAFFER: Dana Shaffer on behalf of XO. I think
9 Mr. Shore will agree with me, the settlement, itself, will not
10 be filed unless it results in some terms that require an
11 amendment to the interconnection agreement. And to the extent
12 those terms are incorporated into our interconnection
13 agreement, those amendments and/or interconnection agreements
14 will be filed for approval.

15 MR. SHORE: I think that's right. But the settlement
16 agreement, itself, is just between the parties, and XO will
17 dismiss its case with prejudice, or whatever the proper
18 terminology here is.

19 COMMISSIONER DEASON: That certainly sounds
20 reasonable and acceptable, and I assume staff agrees with that
21 procedure?

22 MR. ROJAS: Yes, sir.

23 COMMISSIONER DEASON: All right. Once again, I
24 congratulate the parties. I know that this has been a long
25 contentious proceeding. And to the extent that you all have

1 reached in agreement, I congratulate you on your efforts.

2 MS. KAUFMAN: Thank you.

3 MS. SHAFFER: Thank you.

4 COMMISSIONER DEASON: This is the type thing that the
5 Commission likes to see. I think I can speak on Commission
6 Edgar's behalf in that regard, as well.

7 COMMISSIONER EDGAR: Yes, sir.

8 COMMISSIONER DEASON: Okay. This matter is
9 continued, and this hearing is adjourned.

10 Thank you all.

11 MS. KAUFMAN: Thank you, Commissioners.

12 MR. SHORE: Thank you.

13 (The hearing concluded at 9:35 a.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

:

CERTIFICATE OF REPORTER

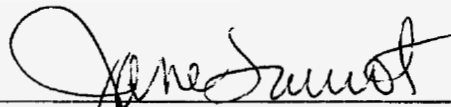
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 19th day of May, 2005.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732