

ORIGINAL
MOYLE, FLANIGAN, KATZ, RAYMOND & SHEEHAN, P.A.
ATTORNEYS AT LAW

The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

Telephone: (850) 681-3828
Facsimile: (850) 681-8788

Vicki Gordon Kaufman
E-mail: vkaufman@moylelaw.com

Wellington Office
(561) 227-1560
West Palm Beach Office
(561) 659-7500

May 12, 2005

VIA HAND DELIVERY
CONFIDENTIAL MATERIALS ENCLOSED

Ms. Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 041114-TP

Dear Ms. Bayo:

On behalf of XO Communications Services, Inc. (XO) enclosed for filing are the original and one copy each of the following:


- XO's Third Request for Specified Confidential Classification with one (1) copy of the CONFIDENTIAL information attached to the original; and
- XO's Fourth Request for Specified Confidential Classification with one (1) copy of the CONFIDENTIAL information attached to the original.

This material contains proprietary confidential business information of XO within the meaning of Section 364.183(1), Florida Statutes. To that end, the confidential information in the public copy of the attachments has been redacted.

CMP 1
COM _____
CTR _____
ECR _____
GCL 1
OPC _____
MMS _____
RCA _____
SCR _____
SEC 1
OTH 1

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

Sincerely,


Vicki Gordon Kaufman

Enclosures

cc: Jason Rojas (w/redacted enclosures)
James Meza/Andrew Shore (w/enclosures)
Dana Shaffer (w/enclosures)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

RECEIVED-FPSC
05 MAY 12 PM 3:08
COMMISSION
CLERK

DOCUMENT NUMBER-DATE

04643 MAY 12 '05

FPSC-COMMISSION CLERK

ORIGINAL

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: May 12, 2005

**XO COMMUNICATION SERVICES INC.'S THIRD REQUEST
FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

XO Communication Services Inc. (XO), pursuant to Rule 25-22.006, Florida Administrative Code, files this Third Request for Specified Confidential Classification for the Supplemental Rebuttal Testimony and Exhibit Nos. GC-10-14 of Gary Case.

1. On April 21, 2005, XO filed the Supplemental Rebuttal Testimony and Exhibits of Gary Case. Confidential information was provided to the Commission along with a Notice of Intent to Request Confidential Classification.

2. Testimony appearing on p. 9, line 17, p. 10, line 4, as well as information contained in Exhibit Nos. GC-10 through GC-14 to Mr. Case's supplemental rebuttal testimony contains confidential proprietary business information. The cited testimony contains confidential proprietary information on billing amounts in dispute between the parties, and the Exhibits No.s GC-10-14 contain information on individual XO circuits. XO considers this information to be confidential proprietary business information.

3. Section 364.183, Florida Statutes, provides an exemption from the disclosure requirements of section 119.07, Florida Statutes, when disclosure of confidential business information would "impair the competitive business of the provider of the information." Disclosure of the XO confidential information would harm its business operations by placing details of its operations and capabilities in the public domain. Further, disclosure of the disputed billing amounts could impair XO's competitive interests including XO's ability to contract for goods and services on favorable terms. Accordingly, the information should be shielded from

DOCUMENT NUMBER-DATE

disclosure and exempt from the public disclosure requirements of section 119.07, Florida Statutes. XO considers and treats this information as confidential and proprietary. A more specific description of the exhibit information is contained in Attachment A.

4. The Commission has ruled twice in this docket that circuit information is proprietary and confidential in accordance with Section 362.183 (3) Florida Statutes, and disclosure of this information would cause harm to the requesting party's competitive interests. (*i.e.* PSC-05-TP0511-CFO, BellSouth's Responses to Staff's Second Request for Production of Documents No. 33 and BellSouth's Responses to Staff's Third Request for Production of Documents No. 59, *See also* PSC-05-0466-CFO-TP). The circuit information contained in Exhibits GC10-14 is the same type of circuit information and disclosure would cause harm to XO's competitive interests.

5. Appended hereto as Attachment B are two copies of the requested documents with the confidential classification redacted.

6. Appended hereto as Attachment C is a sealed envelope containing one copy of the documents that XO claims are confidential and proprietary.

WHEREFORE, based on the foregoing, XO moves the Commission to enter an order declaring the information described above to be confidential, proprietary business information that is not subject to public disclosure.

Diana K. Shumans
Moyle Flanigan Katz Raymond & Sheehan, PA
118 North Gadsden Street
Tallahassee, Florida 32301
850.681.3828 (phone)

850.681.8788 (fax)
vkaufman@moylelaw.com

Attorneys for XO Communications Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing XO Communication Services, Inc.'s Third Request For Confidential Classification was served on the following by hand delivery this 12th day of May , 2005.

Jason Rojas
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

James Meza
Andrew Shore
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301


Vicki Gordon Kaufman

ATTACHMENT A

DOCKET NO. 04114-TP

XO COMMUNICATIONS SERVICES, INC.'S THIRD REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION

Explanation of Proprietary Information

1. The copies contain **CONFIDENTIAL** XO information regarding specific XO circuits. This information is related to XO's ongoing business affairs and can be used by XO's competitors to harm its competitive interests. Section 364.183, Florida Statutes, allows for an exemption from the disclosure requirements of section 119.07, Florida Statutes, when disclosure would "impair the competitive business of the provider of the information." Therefore, the information should be shielded from disclosure pursuant to section 119.07, Florida Statutes and section 24 (a), Art. 1 of the State Constitution.
2. The copies contain **CONFIDENTIAL** XO information regarding calculations and monetary credits due to XO in this case. This information is related to XO's business affairs and could cause harm to XO's competitive interests. In addition, disclosure of the information could impair XO's ability to contract for goods and services on favorable terms. Section 364.183, Florida Statutes, allows for exemptions from the disclosure requirements of Section 119.07, Florida Statutes, when disclosure would "impair the efforts of the company...to contract for goods or services on favorable terms" or would "impair the competitive business of the provider of the information." Therefore, the information should be shielded from disclosure pursuant to Section 119.07, Florida Statutes and section 24 (a), Art. 1 of the State Constitution.

Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
9	17, word 11	2
10	4, word 1	2

Exhibit GC-10 to Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
1-3	All	1

Exhibit GC-11 to Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
1-8	All	1

Exhibit GC-12 to Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
1	All	1

Exhibit GC-13 to Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
1-3	All	1

Exhibit GC-14 to Supplemental Rebuttal Testimony of Gary Case

<u>Page Nos.</u>	<u>Line(s)</u>	<u>Reason</u>
1	All	1

ATTACHMENT B

DOCKET NO. 041114-TP

**XO COMMUNICATIONS SERVICES, INC'S
THIRD REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

**REDACTED VERSIONS OF TESTIMONY ARE ATTACHED.
THE EXHIBIT DOCUMENTS ARE NOT ATTACHED AS EACH
ARE CONFIDENTIAL IN THEIR ENTIRETY.**

ATTACHMENT B

1 Exhibit No. __ (GC-10 [Response to SWP-2]) I indicate, for reasons stated below,
2 that only one of the listed allegedly ineligible "circuits" is on XO's circuit lists for
3 which it seeks relief and this circuit requires further investigation.

4 In a nutshell, BellSouth's lists are simply inaccurate and for the most part contain
5 circuits for which XO is not seeking relief in this docket. Generally, Ms.
6 Padgett's lists have no relevance to the list of XO circuits at issue before the
7 Commission.

8 **Q. Has Ms. Padgett properly included all of the loops at issue in this case?**

9 A. No. As I explained above, it appears that Ms. Padgett has included all of the loops
10 listed on XO's initial request in her analysis, rather than addressing the circuits at
11 issue in this proceeding -- the circuits that XO has requested be converted and/or
12 are subject to billing credits.

13 **Q. Do you have any other comments on BellSouth's circuit lists?**

14 A. Yes. Even though BellSouth's circuit lists are inaccurate, and it challenges
15 circuits that are not even at issue in this proceeding, BellSouth's determination of
16 the appropriate true-up or billing credit amounts support XO's claim. For
17 example, BellSouth's calculation of the true-up shown on SWP-8, is [REDACTED]
18 -- a number of similar magnitude to the true-up amount XO has calculated for a
19 true-up of circuits for conversion based on an effective date one billing cycle after
20 date of request, shown on Exhibit No. __ (GC-5).

21 **Q. Is XO willing to accept BellSouth's calculation?**

22 A. No. BellSouth wrongly attempts to exclude circuits that are eligible for
23 conversion. I am merely pointing out that, despite all of the "smoke and mirrors"

CONFIDENTIAL

ATTACHMENT B

1 of BellSouth's classification of circuits, BellSouth admits that an appropriate
2 billing credit, if the Commission were to order conversions effective one billing
3 cycle after the date of first request, as the *TRO* requires, would be at least
4 [REDACTED]. Based on this information, I am confident that, once the
5 Commission rules on the issue of BellSouth's obligation to provide conversions,
6 the appropriate effective date for those conversions, and the appropriateness of
7 billing credits based on the ordered effective date of conversion, the exact amount
8 of the billing credits is a simple calculation

9 **Q. Before we turn to your comments on Ms. Padgett's classification of certain**
10 **circuits, has BellSouth raised concerns regarding the classification of specific**
11 **requested circuits before?**

12 A. No. This is the first time, in over two years of negotiation and dispute over these
13 conversions, that BellSouth has questioned the eligibility of any specific circuit
14 for conversion. And, in fact, XO submitted an NBR to BellSouth for circuit
15 conversion and BellSouth provided a response; it did not indicate that any of the
16 circuits Ms. Padgett *now* claims for the first time are ineligible for conversion
17 were not eligible at the time the NBR was submitted. Now, however, though
18 most of these conversion requests have been pending for over two years,
19 BellSouth is apparently reviewing the circuits in detail for the first time and
20 fashioning arguments in an attempt to block their conversion. In contrast, XO
21 has, in an on-going fashion, reviewed, or "scrubbed" the list, to ensure the list of
22 current circuits eligible for conversion, as well as the list of disconnected circuits

CONFIDENTIAL