BELLSOUTH

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April 21, 2005

Dana Shaffer, Esquire
XO Communications, Inc.
105 Malloy Street, #100
Nashville, TN 37201

Re *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*
Docket No 04-00381

Dear Ms. Shaffer: Dana,

We are in receipt of your e-mail dated April 19, 2005 and want to respond to it, as well as clarify some matters which may be outstanding in this docket.

On April 19, 2005, BellSouth re-sent a copy of our proposed interconnection agreement, which contained TRO- and TRRO-complaint language on comingling and conversion, to all of the complaining CLECs, including XO It was this e-mail and attachment to which you responded on April 19

In your email, you ask that we provide a "proposed amendment ASAP" and not the TRO/TRRO-compliant proposed amendment that addresses all issues resolved by the FCC, including comingling and conversions It is not clear to BellSouth what XO believes it is entitled to; however, BellSouth has provided to XO a TRO/TRRO-compliant proposal. We are confident that the TRA did not intend to order the execution of an interconnection agreement that only partially reflects changes in the law, and that the TRA specifically did not intend to require us to execute an agreement that reflects only the changes required by those orders and subsequent rules that benefit XO For instance, at the same time that the TRO allowed conversions, it also provided that we were no longer required to provide entrance facilities, or to provide enterprise switching (a ban that has now been extended to mass market switching). To order such a one-sided partial amendment would be so patently unfair as to create real due process issues, and we are confident that the TRA did not intend to do that. Therefore, and to reiterate, we have provided XO with an amendment that does what the TRA wanted us to do All XO has to do is either execute it, and our issues are at an end, or provide us

with your proposed changes so that we can discuss them and see whether we have common ground where we can resolve these issues.

We do want to be clear that we have provided the CLECs, including XO, with contract language that provided what the FCC required involving conversions and commingling as long ago as late 2003. The CLECs were provided a contract amendment that, if executed, would have amended your contracts to provide you with whatever you were entitled to with regard to conversions and commingling. That proposal was superseded by the decision in USTA II. As a result, in or about June 2004, we sent the CLECs another proposal, which reflected the law as it then existed That proposal also would have given XO what the law required with regard to commingling and conversions, if XO had only executed the amendment Now we are at a point where the law has changed again, and we have now provided the third proposal, which, for the third time, proposes language that if included in an interconnection agreement, would give XO what it is entitled to with regard to commingling and conversions. If you disagree with the language that we have proposed, the proper course is to tell us what you disagree with, and why, and then we can try to negotiate a resolution of our disputes Instead of doing that, XO seems bent on attempting to get a partial amendment that only benefits XO. We seriously doubt that the TRA would impose such a one-sided burden on any telecommunications carrier, whether it was BellSouth, or a CLEC.

By stating that you "cannot and will not respond to an attempt to renegotiate all provisions of Attachment 2", XO highlights the very problem that I have been describing The TRO is now more than 18 months old. USTA II is now more than a year old The TRRO is now two and a half months old. Exactly when does XO intend to negotiate the changes required by these orders? BellSouth's view is that the time to do this has come and is rapidly passing. Nevertheless, we remain ready and willing to meet with XO and to resolve the differences that we have that arise from these orders. We want, however, an interconnection agreement that reflects all of the changes that these orders have required, not just the few that favor XO

I also want to tell you, with regard to the April 11, 2005 transcript, it is our belief that the "no new adds" issue has been decided, and is not a "change of law" issue That is, this is not a situation where we are trading the "no new adds" for conversions and commingling. Director Tate, correctly recognizing authority from other jurisdictions (and not even taking into account the recent decisions of the North Carolina Commission, the U.S District Court in Mississippi, and the 11th Circuit Court of Appeals denying the emergency relief requested by the CLECs) stated that it was clear that the FCC had ordered an end to UNE-P, and that there will be no new adds. (Tr. p. 8)

Thus, it is only a matter of when BellSouth stops taking UNE-P orders in Tennessee, not if. Further, the Directors also made it clear that any such date would be subject to a true-up back to March 11, 2005 – the date set by the FCC.

Finally, and I want to make this clear, we recognize your view that some of the issues in the TRO/TRRO-compliant agreement that we sent you in 2003, in 2004 and again in March of this year, may not apply to XO because of its particular business plan and other factors. We are prepared to remove from our proposed language, provisions that do not apply to XO's situation. You have to let us know what they are, however, and we have to make provision to insure that if something is eliminated from our amendment because it is not applicable to XO, that all parties understand that the changes were made based on such representations, so we don't have problems with XO subsequently changing its business plans in a manner that implicates the removed sections We are willing to negotiate and to consider such changes in our proposed language, but, I repeat, you have to tell us what they are and why they should be eliminated. This process isn't supposed to be one sided We have made a proposal, and you need to respond in some manner other than an outright and total refusal to negotiate

BellSouth would also point out that, as of this date, well over 50 per cent of previously-existing UNE-P lines in its nine-state region are now covered by commercial agreements with a large number of CLECs. Thus, it is apparent that the majority of the previous UNE-P providers have been able to reach agreements on this issue.

The fact that the majority of previously-existing UNE-P lines are now under commercial agreement proves that it can be done and other parties have found a way for it to be done. As mentioned in our e-mail yesterday, BellSouth is prepared to meet as soon and as often as possible to resolve these issues.

Very truly yours,

Guy M. Hicks

cc Hon. Sara Kyle, Director
Hon. Deborah Taylor Tate, Director
Hon Ron Jones, Director