

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 040130-TP
ORDER NO. PSC-05-0443-PCO-TP
ISSUED: April 26, 2005

ORDER GRANTING IN PART AND DENYING IN PART
BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO MOVE ISSUES INTO DOCKET NO. 041269-TP

BY THE COMMISSION:

Case Background

On February 11, 2004, the Joint Petitioners¹ filed their Joint Petition for Arbitration with BellSouth Telecommunications, Inc. (BellSouth) pursuant to the Telecommunications Act of 1996. On March 8, 2004, BellSouth filed its Answer to the Joint Petitioners' Petition. On July 20, 2004, both parties filed a Joint Motion to Hold Proceeding in Abeyance for 90 days. As a result, Order No. PSC-04-0807-PCO-TP, issued on August 19, 2004, revised the procedural schedule as set forth in Order No. PSC-04-0488-PCO-TP and required the parties to file an updated issues matrix on October 15, 2004.

An issue identification was held on November 15, 2004, at which the parties agreed to all supplemental issues, with the exception of Issues 113(b) and 114(b). Parties filed briefs in support of their positions regarding these two issues, and on January 4, 2005, Order No. PSC-05-0018-PCO-TP was issued granting the Joint Petitioners' request for inclusion of Issue 113(b) and 114(b). Pursuant to Order No. PSC-05-0330-PCO-TP, issued March 23, 2005, this matter is currently scheduled for an administrative hearing, April 26-28, 2005.

¹ NewSouth Communications Corp. (NewSouth); NuVox Communications, Inc. (NuVox); KMC Telecom V, Inc. (KMC V) and KMC Telecom III LLC (KMC III)(collectively "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC (Xspedius Switched) and Xspedius Management Co. of Jacksonville, LLC (Xspedius Management) (collectively "Xspedius");(collectively the "Joint Petitioners" or "CLECs")

On March 25, 2005, BellSouth filed a Motion to Move Issues to BellSouth's Generic Docket (Motion). In its Motion, BellSouth argues that several of the issues in this docket are similar, if not identical, in nature to issues being addressed and raised in Docket No. 041269-TP. Those issues are 23, 26, 36, 37, 38, 51, 108, 113, and 114. In addition, BellSouth asserts that Issues regarding the FCC's *Order and Notice of Proposed Rulemaking* in WC Docket No. 04-313 and Docket No. 01-338 (rel. Aug. 20, 2004) are rendered moot due to the TRRO taking effect on March 11, 2005. Those issues are 109, 110, 111 and 112.

On April 1, 2005, the Joint Petitioners filed their Response in Partial Support of and Partial Opposition to BellSouth's Motion. The Joint Petitioners agree that issues 109, 110, 111 and 112 are moot. They disagree with BellSouth regarding issues 26, 36, 37, 38 and 51. The basis of their disagreement is that these issues are a part of the original set of issues for which arbitration was sought and these issues are not impacted by the TRRO. Further, the Joint Petitioners argue that they have a right to have the issues resolved in their arbitration pursuant to Section 252 of the Telecommunications Act. The Joint Petitioners also assert that Docket No. 041269-TP is a generic proceeding initiated by BellSouth, and is not a Section 252 arbitration.

On April 15, 2005, Commission staff held an informal conference call with the parties. During the call, staff was informed that the parties were in agreement that issue 111 has been rendered moot.

Decision

Upon consideration, issues 23, 108, 113, and 114 shall be moved to Docket No. 041269-TP, with the understanding that the resolution of those issues will be rolled back into the arbitrated agreement resulting from Docket No. 040130-TP. It is not disputed by the parties that issues 23, 108, 113 and 114 are impacted by the FCC's TRRO and more appropriately addressed in that Docket. In addition, issues 109, 110, 111 and 112 have been rendered moot by the FCC's TRRO, and therefore, will be not be addressed in this proceeding.

As for issues 26, 36, 37, 38 and 51, they will remain in this proceeding and will be addressed at the hearing. There is very little, if any, efficiency gained by moving these issues to a generic change of law proceeding. Parties will not be prejudiced by this decision, because they have already conducted discovery, filed testimony and put forth a position in their prehearing statements regarding these issues. Therefore, issues 26, 36, 37, 38 and 51, shall remain in this proceeding and will be addressed at the hearing.

Based on the foregoing, it is

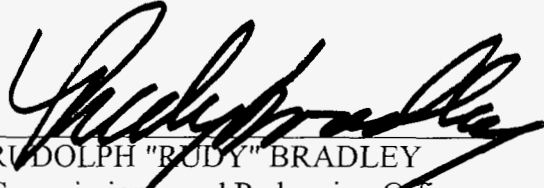
ORDERED by Commissioner Rudolph "Rudy" Bradley that BellSouth Telecommunications, Inc.'s Motion to Move issues to Generic Proceeding is granted in part and denied in part. The motion is granted to the extent issues 23, 108, 113 and 114 shall be deferred from Docket 040130-TP to Docket No. 041269-TP. The resolution of these issues in Docket No. 041269-TP shall be rolled back into Docket No. 040130-TP as if arbitrated. It is further

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ORDERED that issues 26, 36, 37, 38 and 51 shall remain in this proceeding and be addressed in Docket No. 040130-TP. It is further,

ORDERED that issues 109, 110, 111 and 112 are moot, and therefore will not be addressed in this proceeding.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 26th day of April, 2005.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.