

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-05-0065-PCO-TP  
ISSUED: January 19, 2005

ORDER MODIFYING PROCEDURE

BY THE COMMISSION:

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

**I. Case Background**

On February 11, 2004, the Joint Petitioners<sup>1</sup> 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 in anticipation of the Federal Communications Commission (FCC) releasing its interim rules regarding unbundling obligations. As a result, Order No. PSC-04-0807-PCO-TP, issued on August 19, 2004, required the parties to file an updated issues matrix on October 15, 2004.

On October 15, 2004, the parties submitted an updated issues matrix containing supplemental issues. An issue identification was held on November 15, 2004 whereby the parties agreed to all supplemental issues but for the inclusion of issues 113(b) and 114(b). Parties filed briefs in support of their positions, and on January 4, 2005, Order No. PSC-05-

<sup>1</sup> 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")

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0018-PCO-TP was issued granting the Joint Petitioners' request for inclusion of issues 113(b) and 114(b). In addition, the parties also requested that the response time for all discovery should be twenty days inclusive of mailing.

## II. Ruling

Upon consideration, Order No. PSC-04-0488-PCO-TP, issued May 12, 2004, shall be modified to reflect that all discovery responses shall be due 20 days after service of the request, with no additional time for mailing. In addition, Order No. PSC-04-0488-PCO-TP, issued May 12, 2004, shall also be modified to add the supplemental issues in Attachment A of this Order.

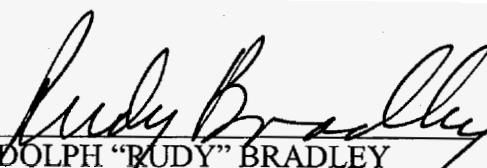
Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Order No. PSC-04-0488-PCO-TP, issued on May 28, 2004, is modified to the extent that response time for all discovery shall be 20 days after service of the request, with no additional time for mailing. It is further

ORDERED that Order No. PSC-04-0488-PCO-TP, issued May 28, 2004, shall be modified to include the supplemental issues in Attachment A of this Order. It is further

ORDERED that Order No. PSC-04-0488-PCO-TP, issued May 28, 2004, is reaffirmed in all other respects.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 19th day of January, 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.

ATTACHMENT A

Supplemental Issues:

108. How should the final FCC unbundling rules be incorporated into the Agreement?
109. (A) Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how? (B) Should any intervening State Commission Order relating to the unbundling obligations, if any, be incorporated into the Agreement? If so, how?
110. If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?
111. At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period<sup>2</sup> transition plan should be incorporated into the Agreement?
112. (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were “frozen” by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?
113. (A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?
114. (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber dedicated transport? (B) If so, under what rates, terms and conditions?

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<sup>2</sup> INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179.