

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-05-0444-CFO-TP
ISSUED: April 26, 2005

ORDER GRANTING BELLSOUTH TELECOMMUNICATIONS, INC.'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF DOCUMENT NOS. 03291-05;
02544-05; AND 02757-05

I. 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 March 14-15, 2005, BellSouth filed its Response to Staff's Third Set of Interrogatories and Third Request for Production of Documents. On March 15, 2005, BellSouth filed a Notice of Intent to Request Specified Confidential Classification. BellSouth alleges that its Responses to Interrogatories Nos. 83, 84, 88 and 89, as well as, Production of Document No. 20 (Document No. 02544-05), contain proprietary information. In addition, on March 21, 2005, BellSouth filed its Second Supplemental Response to Staff's Third Set of Interrogatories No. 82 (Document No. 02757-05) along with a Notice of Intent to Request Specified Confidential Classification.

On April 4, 2005, BellSouth filed a Request for Specified Confidential Classification claiming that the information contained in its responses to discovery should be exempt from Section 119.07, Florida Statutes, because the information is confidential pursuant to Sections 364.24 and 364.183(3)(e), Florida Statutes. BellSouth argues in its pleading, and Attachment A

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")

hereto, that the information subject to its request for confidential classification is related to competitive interests of the Joint Petitioners and if disclosed to the Joint Petitioners, it would impair the competitive business of BellSouth. Specifically, BellSouth claims that the information is a trade secret because it relates to the Service Quality Measurement Data for the Joint Petitioners, SEEM fees paid to the Joint Petitioners and data related to monthly bills sent to the Joint Petitioners.

II. Standard:

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. This presumption is based on the concept that government should operate in the "sunshine." The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), rev. denied 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) rehearing den. June 12, 1989. When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed.

Exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or, if none of the examples are applicable, show that disclosure of the information will harm the Company's ratepayers or its business operations.


III. Ruling:

Upon consideration, BellSouth's Request for Specified Confidential Classification for its Responses to Interrogatories Nos. 83, 84, 88, 89, Production of Document No. 20 (Document No. 02544-05), and its Second Supplemental Response to Staff's Third Set of Interrogatories No. 82 is hereby granted because it satisfies the criteria set forth in 364.183(3)(e), Florida Statutes. The information is a trade secret because it is known only to its owners and disclosure of such information would impair the competitive business practice of all parties involved in this proceeding.

Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that BellSouth Telecommunications, Inc. Request for Specified Confidential Classification of Document Nos. 03291-05, 02544-05; 02757-05 and as listed in Attachment A is hereby granted.

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



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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

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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

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION TO STAFF'S 3RD
INTERROGATORY, ITEM NOS. 82, 83, 84, 88, AND 89 AND THIRD REQUESTS
FOR PRODUCTION OF DOCUMENTS, ITEM NO 20,
FILED MARCH 15, 2004 AND MARCH 21, 2005
IN FLORIDA DOCKET NO. 040130-TP**

Explanation of Proprietary Information

1. This information contains competitive business information. Specifically, the information contains internal methods and procedures. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(e), Florida Statutes and is exempt from the Open Records Act.
2. This information contains confidential business information related to competitive interests of the Joint Petitioners and is proprietary information maintained in BellSouth's systems. Disclosure of this data would impair the competitive business and cause harm to the Joint Petitioners. Specifically, this information relates to the Service Quality Measurement Data for the Joint Petitioners, SEEM fees paid to the Joint Petitioners, and data related to monthly bills sent to the Joint Petitioners. Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(e), Florida Statutes and is exempt from the Open Records Act.
3. This information contains confidential business information related to competitive interests of the CLECs that is considered proprietary. Disclosure of this data would impair the competitive business and cause harm to the CLECs. Specifically, this information relates to CLECs that have filed for bankruptcy and CLECs that have terminated their relationship with BellSouth and have left an outstanding balance. Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(e), Florida Statutes and is exempt from the Open Records Act.

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Location Reason

Interrogatory, Item No. 82 subpart b

Subpart b, all numbers and all percentages 2

Interrogatory, Item No. 83

| <u>Page</u> | <u>Columns Labeled</u> | |
|-------------|--|---|
| 2nd page | KMC, Newsouth, Nuvox, Xspedius and Comments | 2 |

Interrogatory, Item No. 84

| <u>Page</u> | <u>Columns Labeled</u> | |
|-------------|---|---|
| All pages | 200401, 200403, 200404, 200405, 200406, 200407, 200408, 200409, 200410, and Grand Total | 2 |

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Location

Reason

Interrogatory, Item No. 88

Columns Labeled

Customer, Case #, Deposit Received,
and Debt after Deposit

3

Interrogatory, Item No. 89

Columns Labeled

Cust name, Acct name, Bad debt,
deposit, and BD net of deposit

3

Production of Documents, Item No. 20

Entire Document

1