

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., 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-05-0950-CFO-TP  
ISSUED: October 5, 2005

ORDER GRANTING BELLSOUTH TELECOMMUNICATIONS, INC.'S REQUEST FOR  
CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 05021-05

**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 May 23, 2005, BellSouth filed a Request for Confidential Classification (RCC) of Document No. 05021-05. A detailed explanation of BellSouth's RCC is set forth in Attachment A to this Order. BellSouth claims that its response to Staff's Fourth Set of Interrogatories, Item No. 117, and Fourth Request for Production of Documents, Item No. 22 is proprietary. BellSouth asserts that the information contains confidential business information related to competitive interests of CLECs. Specifically, BellSouth believes that disclosure of the data would impair KMC Telecom V, Inc., KMC Telecom III LLC's (KMC) competitive interests and cause it financial harm.

On May 27, 2005, KMC filed its notice of withdrawal from the case. On July 12, 2005, by Order No. PSC-05-0742-PCO-TP acknowledged KMC's notice, stating that the withdrawal pertains to KMC only and does not apply to the remaining petitioners. Pursuant to Order No. PSC-04-0488-PCO-TO, issued May 12, 2004, CLEC witnesses selected one main witness to testify to each issue or position where the CLECs have a joint position. As a result KMC's

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<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")

DOCUMENT NUMBER-DATE

09511 OCT-5 05

FPSC-COMMISSION CLERK

testimony and evidence represents the Joint Petitioners, not KMC specifically. Thus, it remains a part of the record in the case.

## **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 review and consideration, BellSouth's RCC for its Response to Staff's Fourth Set of Interrogatories, Item No. 117, and Fourth Request for Production of Documents, Item No. 22 (collectively Document No. No. 05021-05) is hereby granted because it satisfies the criteria set forth in 364.183(3)(e), Florida Statutes. The information if disclosed would impair the competitive business practice of KMC.

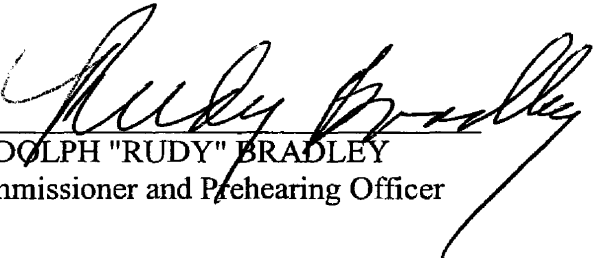
Based on the foregoing, it is

**ORDERED** by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that BellSouth Telecommunications, Inc. Request for Specified Confidential Classification of Document No. 05021-05 and as listed in Attachment A, is hereby granted. It is further

**ORDERED** that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the document specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period. It is further

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 5th day of October, 2005.

  
RUDOLPH "RUDY" BRADLEY  
Commissioner and Prehearing Officer

( S E A L )

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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

**BellSouth Telecommunications, Inc.**  
**FPSC Docket No. 040130-TP**  
**Request for Confidential Classification**  
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**REPLACEMENT REQUEST FOR CONFIDENTIAL CLASSIFICATION  
TO STAFF'S FOURTH INTERROGATORIES, ITEM NO. 117 AND FOURTH  
REQUESTS FOR PRODUCTION OF DOCUMENTS, ITEM NO. 22,  
FILED APRIL 21, 2005 IN FLORIDA DOCKET NO. 040130-TP**

**Explanation of Proprietary Information**

1. This information arguably contains confidential business information related to competitive interests of the CLECs as it refers to specific billing information between BellSouth and KMC. KMC may argue that the disclosure of this data would impair its competitive interest and cause harm to it. Thus, unless instructed otherwise by KMC, the Commission should protect this billing information.

ATTACHMENT A

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Interrogatory, Item No. 117

<u>Location</u>	<u>Reason</u>
<u>Bates Stamped Pg #</u>	<u>Sentence Numbers/Lines</u>
1000002	Dollar amounts on lines 2 and 11 1
1000004	Dollar amount on line 1 1
1000005	Lines 5-37, Column A
1000006	Lines 2-37, Column A 1
1000007	Lines 2-36, Column A 1
1000008	Lines 2-37, Column A 1
1000009	Lines 2-37, Column A 1
1000010	Lines 2-37, Column A 1
1000011	Lines 2-37, Column A 1
1000012	Lines 2-37, Column A 1
1000013	Lines 2-37, Column A 1
1000014	Lines 2-37, Column A 1
1000015	Lines 2-28, Column A 1
1000017	Lines 2-30, Columns F-G 1
1000018	Dollar amount on line 3 1
1000019	Lines 2-54, Columns F-G 1
1000020	Lines 1-51, Columns F-G 1
1000021	Dollar amount on line 3
1000022	Lines 4-36, Column A 1
1000023	Lines 1-37, Column A 1
1000024	Lines 1-37, Column A 1
1000025	Lines 1-36, Column A 1
1000026	Lines 1-37, Column A 1
1000027	Lines 1-36, Column A 1
1000028	Lines 1-37, Column A 1
1000029	Lines 1-37, Column A 1
1000030	Lines 1-37, Column A 1

ATTACHMENT A

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1000031	Lines 1-37, Column A	1
1000032	Lines 1-37, Column A	1
1000034	Dollar amount on line 3	1
1000035	Lines 2-36, Columns F-G	1
1000036	Lines 2-36, Columns F-G	1
1000037	Lines 2-19, Columns F-G	1
1000038	Lines 2-18, Columns F-G	1
1000039	Dollar amount on line 2	1
1000042	Dollar amounts on lines 3 and 6	1
1000043	Lines 4-35, Column A	1
1000044	Lines 1-37, Column A	1
1000045	Lines 1-37, Column A	1
1000046	Lines 1-37, Column A	1
1000047	Lines 1-37, Column A	1
1000048	Lines 1-37, Column A	1
1000049	Lines 1-37, Column A	1
1000050	Lines 1-37, Column A	1
1000051	Lines 1-37, Column A	1
1000052	Lines 1-37, Column A	1
1000053	Lines 1-18, Column A	1
1000054	Dollar amounts on lines 3 and 4	1
1000055	Lines 2-31, Columns E-F	1
1000056	Lines 2-30, Columns E-F	1
1000057	Lines 2-30, Columns E-F	1
1000058	Lines 2-28, Columns E-F	1
1000059	Lines 2-5, Columns E-F	1
1000060	Dollar amounts on lines 2-4, 6-7	1
1000061	Dollar amount on line 3	1
1000062	Dollar amount on lines 2 and 7	1
1000064	Dollar amount on line 3	1
1000065	Lines 4-35, Column A	1

ATTACHMENT A

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1000066	Lines 2-37, Column A	1
1000067	Lines 2-37, Column A	1
1000068	Lines 2-36, Column A	1
1000069	Lines 2-37, Column A	1
1000070	Lines 2-36, Column A	1
1000071	Lines 2-37, Column A	1
1000072	Lines 2-37, Column A	1
1000073	Lines 2-37, Column A	1
1000074	Lines 2-37, Column A	1
1000075	Lines 2-37, Column A	1
1000076	Lines 2-9, Column A	1
1000077	Dollar amounts on lines 2 and 3	1
1000078	Lines 2-42, Columns K-L	1
1000079	Lines 2-42, Columns K-L	1
1000080	Lines 2-14, Columns K-L	1

**Production of Documents, Item No. 22**

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All	Customer	1

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ATTACHMENT A

ATTACHMENT C

**BellSouth Telecommunications, Inc.**  
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**Request for Confidential Classification**  
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**REPLACEMENT REQUEST FOR CONFIDENTIAL CLASSIFICATION  
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