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COMMISSION
CLERK

April 1, 2005

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

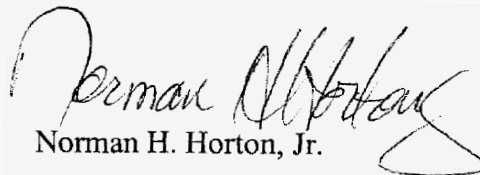
Re: Docket No. 040130-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of New South Communications, Corp., NuVox Communications, Inc., KMC Telecom, Inc. and Xspedius Communications, Inc., enclosed are an original and 15 copies of a Response in Partial Support of and in Partial Opposition to BellSouth's Motion to Move Issues to Generic Proceeding and Motion to Move Issue 111 (second question) to Generic Proceeding in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Sincerely yours,


Norman H. Horton, Jr.

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- RCA _____
- SCR _____
- SEC _____
- OTH _____

NHH/amb
Enclosures

cc: Parties of Record

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DOCUMENT NUMBER-DATE

03238 APR-1 05

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

IN RE:

JOINT PETITION FOR ARBITRATION OF)	
NEWSOUTH COMMUNICATIONS CORP.,)	
NUVOX COMMUNICATIONS, INC.,)	
KMC TELECOM V, INC., KMC TELECOM III LLC,)	
AND XSPEDIUS COMMUNICATIONS, LLC ON)	Docket No.
BEHALF OF ITS OPERATING SUBSIDIARIES)	040130-TP
XSPEDIUS MANAGEMENT CO. SWITCHED)	
SERVICES, LLC AND XSPEDIUS MANAGEMENT CO.)	
OF JACKSONVILLE, LLC)	

**JOINT PETITIONERS' RESPONSE IN PARTIAL SUPPORT OF
AND IN PARTIAL OPPOSITION TO BELL SOUTH'S MOTION
TO MOVE ISSUES TO GENERIC PROCEEDING AND MOTION
TO MOVE ISSUE 111 (second question) TO GENERIC PROCEEDING**

NewSouth Communications Corp. ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC Telecom V, Inc. and KMC Telecom III, LLC ("KMC"), and Xspedius Communications, LLC on behalf of its operating subsidiaries named in this proceeding ("Xspedius") (collectively the "Joint Petitioners"), by and through undersigned counsel, hereby respond to BellSouth's Motion to Move Issues to Generic Proceeding ("Motion"). Joint Petitioners do not object to BellSouth's Motion in its entirety. This pleading is filed in both partial support of and in partial opposition to BellSouth's Motion. Joint Petitioners agree with BellSouth that certain issues are now moot, and, although for different reasons, Joint Petitioners also agree that certain issues should be moved to the Generic Proceeding (Docket No. 041269-TP). However, Joint Petitioners oppose moving to the Generic Proceeding all the issues BellSouth proposes to move in its Motion. Joint Petitioners also move to have issue 111 (2nd

question) moved to the Generic Proceeding for resolution. In support of this response, Joint Petitioners provide the following:

1. As a result of the *TRRO*, Joint Petitioners believe that a sub-set of the Supplemental Issues relating to the FCC's *Order and Notice of Proposed Rulemaking* in WC Docket No. 04-313, CC Docket No. 01-338 (rel. Aug. 20, 2004) ("*Interim Rules Order*") are now moot. These issues include Issues 109, 110, 111 in part (i.e., 1st question), and 112 ("Moot Supplemental Issues"). Joint Petitioners do not find moot the second component of Issue 111 (i.e., 2nd question), as it addresses generically the issue if the transition mechanisms adopted by the FCC in the *TRRO*. Accordingly, Joint Petitioners support BellSouth's request that the Commission find issues 109, 110, 111 (1st question only), and 112 to be moot. Joint Petitioners oppose BellSouth's request to have issue 111 in its entirety declared moot, as, for the reason set forth above, the second question raised therein is not at all moot.

2. Joint Petitioners believe that a sub-set of the Supplemental Issues – Issues 23, 108, 111 (2nd question), 113, and 114 ("Unresolved Supplemental Issues") – are impacted by the FCC's *TRRO* and should be moved to the Generic Proceeding established as Docket No. 041269-TP for consideration and resolution because (1) those issues and the parties' positions with respect thereto likely will evolve as a result of the FCC's release of the *TRRO* and the parties' subsequent negotiations with respect to how the *TRRO* should be incorporated into the new Agreements that result from the above-captioned arbitration, and (2) the Commission has established a docket wherein these issues can be resolved after appropriate negotiations and the results then can be folded back into the above-captioned arbitration dockets and the arbitrated agreements that result therefrom. Joint Petitioners thus support BellSouth's Motion to move issues 23, 108, 113 and 114 into the Generic Proceeding, but for different reasons, as set forth

herein. Joint Petitioners also note that their support is conditioned on the establishment and adoption of a requirement that the results of the Generic Proceeding on these issues will be folded back into the above-captioned arbitration dockets so that they can be properly incorporated into the arbitrated agreements that result therefrom. For these same reasons, Joint Petitioners respectfully move that issue 111 (2nd question) be moved to the Generic Proceeding, as well.

3. By agreeing that the Unresolved Supplemental Issues be moved into the Generic Proceeding, Joint Petitioners do not waive any arguments related to those issues (or with respect to any others).

4. Joint Petitioners object to BellSouth's Motion to the extent it seeks to move Issues 26, 36, 37, 38, and 51 ("Original Arbitration Issues") to the Generic Proceeding. Each of these issues is part of the original set of issues on which arbitration was sought in February 2004. These issues are not the supplemental issues – i.e., issues which by agreement were added months after the abeyance period. Previously, the parties agreed to move the non-moot supplemental issues into the Generic Proceeding. This agreement is reflected in various statements that the respective parties inserted into drafts of the prehearing order. There is no agreement to move these issues into the Generic Proceeding. The law has been long settled on these particular issues, and these issues are not impacted by the *TRRO*. The parties already have invested considerable time, money, and resources on these issues drafting written testimony and engaging in discovery. Both Joint Petitioners and BellSouth are fully prepared to address these issues at this month's arbitration hearing. Finally, under section 252, Joint Petitioners have the right to have these issues resolved in their section 252 arbitration being conducted before the Commission. This has been recognized by this Commission previously. In Order No. PSC-02-

1304-FOF-TL issued September 25, 2002, in Docket 960786A-TL, in addressing a concern raised by a witness that one on one arbitrations are inefficient said:

We acknowledge that similar issues have been arbitrated in multiple dockets, and note that where a trend is identified, a generic docket is typically established. Regardless of the existence of a generic proceeding, however, we believe that an ALEC or BellSouth may always request an arbitration pursuant to Section 252(b)(1).

In an earlier arbitration proceeding, BellSouth argued to the Prehearing Officer that several issues were not appropriate for arbitration in light of these recent FCC orders but should be resolved in a generic proceeding. In rejecting the argument and allowing the issues,

Commissioner Deason, as Prehearing Officer said:

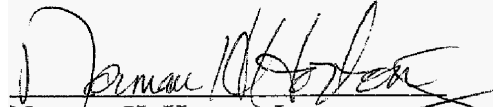
While these are issues that are perhaps more appropriately resolved in generic proceedings, there is nothing to preclude parties to an interconnection negotiation from negotiating resolutions of them and, if unsuccessful, submitting them to this Commission to be arbitrated.

(Order No. PSC-96-1238-PHO-TP Dockets 960833, 960846, 960916, issued October 7, 1996 at pp 59,60.) Joint Petitioners are unwilling to waive this right or any other established in section 252. The Generic Proceeding is not a section 252 arbitration and, even if it were, it is certainly not the one filed by Joint Petitioners. Joint Petitioners, therefore, respectfully oppose BellSouth's request to have the Original Arbitration Issues moved into the Generic Proceeding and request that the Commission deny it.

5. Accordingly, the Parties request that the Commission move the Unresolved Supplemental Issues into the Generic Proceeding and keep the Original Arbitration Issues in this docket.

WHEREFORE, for the foregoing reasons, Joint Petitioners request that this Commission move the Unresolved Supplemental Issues to the Generic Proceeding, keep the Original Arbitration Issues in this docket, and concurrently find the Moot Supplemental Issues moot.

Respectfully submitted this 1st day of April, 2005.



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April 1, 2005

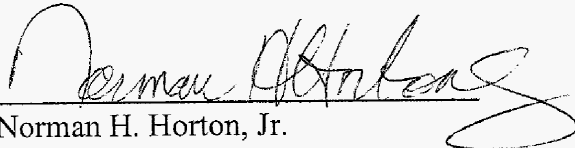
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by hand delivery (*) and/or U. S. Mail this 1st day of April, 2005.

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