

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

AUGUST 30, 2005

RE: Docket No. 040130-TP - 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. (Deferred from August 2, 2005 conference.)

Issue 4: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

Recommendation: Staff recommends that a party's liability should be limited to the issuance of bill credits in all circumstances other than gross negligence or willful misconduct.

APPROVED

COMMISSIONERS ASSIGNED: Bradley, Edgar

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Lisa Polak Edgar
Neddy Bradley

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

08295 AUG 30 '05

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Issue 5: If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?

Recommendation: Staff recommends that CLECs have the ability to limit their liability through their customer agreements and/or tariffs. If a CLEC does not limit its liability through its customer agreements and/or tariffs, then the CLEC should bear the resulting risk.

APPROVED

Issue 6: How should indirect, incidental or consequential damages be defined for purposes of the Agreement?

Recommendation: Staff recommends that the Commission should not define indirect, incidental or consequential damages for purposes of the Agreement. The decision of whether a particular type of damage is indirect, incidental or consequential should be made, consistent with applicable law, if and when a specific damage claim is presented to the Commission or a court.

APPROVED

Issue 7: What should the indemnification obligations of the parties be under this Agreement?

Recommendation: A Party should be indemnified, defended and held harmless against claims, loss or damage to the extent reasonably arising from or in connection with the other Party's gross negligence or willful misconduct.

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Issue 9: Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a court of law for resolution first?

Recommendation: Staff recommends that the parties should be allowed to seek resolution of disputes arising out of the interconnection agreement from the Commission, FCC or courts of law. However, staff believes that the Commission has primary jurisdiction over most disputes arising from interconnection agreements and that a petition filed in an improper forum would ultimately be subject to being dismissed or held in abeyance while the Commission addressed the matters within its jurisdiction.

APPROVED

Issue 12: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

Recommendation: No. A provision including such a statement could be subject to various interpretations in the context of a dispute. Instead, the contract should be interpreted according to its explicit terms if those terms are clear and unambiguous. If the contract language at issue in a dispute is deemed ambiguous, the terms should be interpreted in accordance with applicable law governing contract interpretation.

APPROVED

Issue 26: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

Recommendation: Yes, BellSouth is required, upon a CLEC's request, to commingle or to allow commingling of UNEs or UNE combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271.

DENIED

available only under Section 271.

Bell South is required, upon a CLEC's request, to commingle or to allow commingling of UNEs or UNE combinations with any service, network element, or other offering that it is obligated to make available. However, this does not include services, network elements, or other offerings made ←

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Issue 36A: How should line conditioning be defined in the Agreement?

Recommendation: The definition should be taken from the FCC rules and contain the limiting conditions of nondiscriminatory access and suitability for xDSL delivery, which appear in the rules leading to the definition found in 47 C.F.R. § 51.319(a)(1)(iii)(A). If the parties through negotiation cannot agree on a definition that includes the stated conditions, then the following language should serve as a default:

Line Conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver xDSL capability, to ensure that the copper loop or copper subloop is suitable for providing xDSL services and provided the same for all telecommunications carriers requesting access to that network and at least in quality to that which the incumbent provides to itself.

APPROVED

Issue 36B: What should BellSouth's obligations be with respect to line conditioning?

Recommendation: BellSouth's obligations with respect to line conditioning are to provide nondiscriminatory access and ensure digital subscriber line capability.

APPROVED

Issue 37: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

Recommendation: Yes. Staff recommends that the Agreement should contain specific provisions addressing the availability of load coil removal by loop length, specifically less than or greater than 18,000 feet, provided that the criteria established remain at parity with what BellSouth offers its own customers or other carriers. (See Recommendation for Issues 36A and B.)

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Issue 38: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Recommendation: BellSouth should be required to remove bridged taps to ensure xDSL capability at parity with what it does for itself. Cumulative bridged taps greater than 6,000 feet should be removed at no charge. Cumulative bridged taps between 2,500 feet and 6,000 feet should be removed at no more than TELRIC rates. Bridged taps less than 2,500 feet may be removed based upon the rates, terms and conditions negotiated by the parties. If negotiations are not successful, BellSouth's Special Construction Process should apply.

APPROVED

Issue 51B: Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

Recommendation: Yes. BellSouth should provide written notice to the CLEC 30 days prior to the date that BellSouth seeks to commence the audit. The notice should include the cause that BellSouth believes warrants the audit, but need not identify the specific circuits that are to be audited or contain additional detailed documentation.

APPROVED

Issue 51C: Who should conduct the audit and how should the audit be performed?

Recommendation: The audit should be performed by an independent, third-party auditor selected by BellSouth from a list of at least four auditors included in the interconnection agreement. The list should be developed as recommended in the analysis portion of staff's July 21, 2005 memorandum. The audit should be performed according to the standards of the American Institute of Certified Public Accountants (AICPA).

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Issue 65: Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

Recommendation: Yes. BellSouth should be allowed to charge the CLEC a Tandem Intermediary Charge (TIC) for transport of transit traffic when CLECs are not directly interconnected to third parties. Unless a different rate is negotiated prior to the parties filing their agreement, the applicable rate in the agreement should be \$.0015 per minute of use.

MODIFIED

Rather than setting a rate of \$.0015, parties will be strongly encouraged to continue negotiations, beginning at a rate of \$.0015 per minute of use.

Issue 86B: How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

Recommendation: In the event that the alleged offending party disputes the allegation of unauthorized access to customer service records (CSR) information (even after the party's inability to produce an appropriate Letter of Authorization), the alleging party should seek expedited resolution from the appropriate regulatory body pursuant to the dispute resolution provision in the Interconnection Agreement's General Terms and Conditions section. The alleging party should take no action to terminate the alleged offending party during any such pending regulatory proceeding. If the alleged offending party does not dispute the allegation of unauthorized access to CSR information, BellSouth may suspend or terminate service under the time lines proposed by BellSouth.

APPROVED

Issue 88: What rate should apply for Service Date Advancement (a/k/a service expedites)?

Recommendation: BellSouth's tariffed rates for service expedites should apply unless the parties negotiate different rates.

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Issue 97: When should payment of charges for service be due?

Recommendation: Payment of charges for service should be payable on or before the next bill date.

APPROVED

Issue 100: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Recommendation: Yes. A CLEC should be required to pay past due undisputed amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination.

APPROVED

Issue 101: How many months of billing should be used to determine the maximum amount of the deposit?

Recommendation: The maximum deposit should not exceed two months' estimated billing for new CLECs or two months' actual billing for existing CLECs based on average monthly billings for the most recent six-month period.

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Issue 102: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

Recommendation: No. The amount of the deposit BellSouth requires from CLEC should not be reduced by past due amounts owed by BellSouth to CLEC.

APPROVED

Issue 103: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

Recommendation: BellSouth should be entitled to terminate service to the CLEC pursuant to the process for termination due to non-payment if the CLEC refuses to remit any deposit required by BellSouth and does not dispute the deposit request per Section 1.8.7 of the proposed Agreement, within 30 calendar days.

APPROVED

Issue 115: Should this docket be closed?

Recommendation: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

APPROVED