

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-05-0896-CFO-TP  
ISSUED: September 8, 2005

ORDER GRANTING BELL SOUTH TELECOMMUNICATIONS, INC.'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF  
DOCUMENT NOS. 04073-05; 04075-05; AND 04077-05

**I. Case Background:**

On February 11, 2004, the Joint Petitioners<sup>1</sup> (JP) 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 April 26, 2005, BellSouth filed three Requests for Specified Confidential Classification (RCC) of Document Nos. 04073-05; 04075-05; 04077-05 claiming that the information contained in its responses to JP's 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 RCC, that public disclosure of the information would impair the competitive business of BellSouth and would provide competitors with an unfair advantage in future negotiations. The specific descriptions and explanations for confidential classification of Document Nos. 04073-05, 04075-05 and 04077-05 are contained in Attachments A, B and C to this Order.

**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

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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")

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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:**

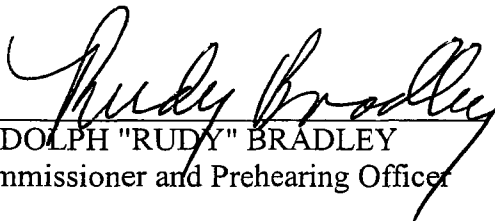
Upon review and consideration, BellSouth's Requests for Specified Confidential Classification, as reflected in Attachments A, B and C hereto, are granted because the information satisfies the criteria set forth in Section 364.183(3)(e), Florida Statutes. The information identified in Attachments A, B and C could be used by competitors in formulating strategic plans for entry into BellSouth's market. For example, BellSouth's RCC regarding Document No. 04073-05 contains the company's internal business procedures for LISC Invoicing Service Representative Training that qualify as a trade secret. Document No. 04075-05 contains internal procedure that qualify as a trade secret. These internal procedures include, but are not limited to, Unbundled Dedicated Transport (UDT) Service arrangements, and ENCORE user requirements. Document No. 04077-05 also includes trade secrets dealing with UDT Service Arrangements, Interconnection CLEC Enabler, ICE User Guide and ENCORE user requirements. In conclusion, all of the information is used to obtain economic value. Therefore, BellSouth's RCCs are granted confidentiality because disclosure of such information would impair the competitive business practice of the company.

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. 04073-05; 04075-05, and 04077-05 and as listed in Attachments A, B and C are hereby granted.

ORDERED that information granted confidential classification in Document Nos. 04073-05; 04075-05, and 04077-05 and as listed in Attachments A, B and C shall remain protected from disclosure for a period of 18 months from the date of issuance of this order. It is further

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
8th day of September, 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 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.**  
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S  
FIRST SUPPLEMENTAL RESPONSES TO JOINT PETITIONER'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS FILED WITH THE NORTH CAROLINA  
UTILITIES COMMISSION IN DOCKET NOS. P-772, SUB 8; P-913, SUB 5;  
P-989, SUB 3; P-824, SUB 6 AND P-1202, SUB 4 AND WITH THE FLORIDA PUBLIC  
SERVICE COMMISSION ON APRIL 25, 2005 IN DOCKET NO. 040130-TP**

**Explanation of Proprietary Information**

1. This information contains competitive, business information. 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 business information related to competitive interests of BellSouth that is proprietary to BellSouth. The documents contain actual unit cost information for discrete cost elements. Public disclosure of this information would provide BellSouth's competitors with an advantage in that they would know the price or rate below which BellSouth could not provide the service. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing, and overall business strategies concerning these services. This same information on competitors is not available to BellSouth. Disclosure of this data would impair the competitive business and cause harm to BellSouth. Consequently, this information should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.

This material is proprietary and confidential business information of a technical nature used by BellSouth in conducting its business and not commonly known by or available to the public. BellSouth derives economic value from this information not being generally known to, and not being readily ascertainable by competitors who can obtain economic value from its disclosure. Specifically, BellSouth's internal procedures for *LISC Invoicing Service Representative Training: Reciprocal Billing IC459* provides

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**Explanation of Proprietary Information (cont.)**

descriptions, service restrictions, appropriate forms, service order issuance requirements, installation intervals, repair procedures, etc. that are proprietary and confidential to BellSouth as it describes BellSouth's internal operations. Additionally, the information contains forecasted demand data and BellSouth's strategic schedule of deployment which competitors could use to gain an economic advantage.

Furthermore, this information has been prepared at great cost to BellSouth and therefore, others should not be permitted to gain the noncompetitive benefit from not having to develop these instructions and materials themselves. And, job aids have historically been protected by the Florida Public Service Commission. Therefore, this information is entitled to confidential classification pursuant to Section 364.183(3)(e) of the Florida Statute.

<u>Location</u>	<u>Reason</u>
<b><u>Item No. 2-39-1</u></b>	
Bates Nos. 001404-001421	1,2
<b><u>Item No. 7-8-1</u></b>	
<b><u>LISC Invoicing Service Representative Training: Reciprocal Billing IC459</u></b>	3

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2. This information contains business information related to competitive interests of BellSouth that is proprietary to BellSouth. The documents contain actual unit cost information for discrete cost elements. Public disclosure of this information would provide BellSouth's competitors with an advantage in that they would know the price or rate below which BellSouth could not provide the service. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing, and overall business strategies concerning these services. This same information on competitors is not available to BellSouth. Disclosure of this data would impair the competitive business and cause harm to BellSouth. Consequently, this information should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.
3. This material is proprietary and confidential business information of a technical nature used by BellSouth in conducting its business and not commonly known by or available to the public. BellSouth derives economic value from this information not being generally known to, and not being readily ascertainable by competitors who can obtain economic value from its disclosure. Specifically, BellSouth's internal procedures for *Unbundled Dedicated Transport – Service Rearrangements Phase I Marketing Service Description*;

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**Explanation of Proprietary Information (cont.)**

*UDT Service Rearrangement; Interconnection CLEC Enabler Release 1.0, ICE Users Guide; Interconnection CLEC Enabler – Web Site Application Map and Web Page Descriptors; ENCORE User Requirements – Enhancements to Mechanization of Loop Makeup; Implementation of Single Network Element-Switch As-Is (SNE-SAI); Single ENCORE User Requirements for Mechanization of Loop Make-up for CLEC XDSLs; Interconnection Services Policies and Procedures Manual* provide description, service restrictions, appropriate forms, service order issuance requirements, installation intervals, repair procedures, etc. that are proprietary and confidential to BellSouth as it describes BellSouth's internal operations. Additionally, the information contains forecasted demand data and BellSouth's strategic schedule of deployment which competitors could use to gain an economic advantage.

Furthermore, this information has been prepared at great cost to BellSouth and therefore, others should not be permitted to gain the noncompetitive benefit from not having to develop these instructions and materials themselves. And, job aids have historically been protected by the Florida Public Service Commission. Therefore, this information is entitled to confidential classification pursuant to Section 364.183(3)(e) of the Florida Statute.

Location

Reason

**Item No. 2-4(B)-1**

UNE to SPA Conversion

Bates Nos. 000081-000087 (in their entirety)

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<u>Location</u>	<u>Reason</u>
<b><u>Item No. 2-5(C)-1</u></b>	
<u>Unbundled Dedicated Transport</u> Bates Nos. 000089-000096 (in their entirety)	3
<b><u>Item No. 2-5(C)-3</u></b>	
<u>UDT- Service Rearrangement</u> Bates Nos. 000098-000102 (in their entirety)	3
<u>Unbundled Dedicated Transport</u> Bates Nos. 000103-000110 (in their entirety)	3
<b><u>Item No. 2-12-1</u></b>	
Bates Nos. 000168-000179 (in their entirety)	2
<b><u>Item No. 2-25-1</u></b>	
<u>Interconnection CLEC Enabler Release 1.0</u> Bates Nos. 000509-000557 (in their entirety)	3
<u>Interconnection CLEC Enabler: Web Site Application Map and Web Page Descriptors</u> Bates Nos. 000559-000604 (in their entirety)	3
<u>Encore User Requirements - Enhancements to Mechanization of Loop Make-up</u> Bates Nos. 000614-000615 (in their entirety)	3



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<u>Location</u>	<u>Reason</u>
<u>Encore User Requirements for Mechanization of Loop Make-up for CLEC XDSLs</u> Bates Nos. 000617-000625 (in their entirety)	3
<b><u>Item No. 2-33(A)-1</u></b>	
Bates Nos. 000627-000636 (in their entirety)	1, 2
<b><u>Item No. 2-40-1</u></b>	
<u>Encore User Guide</u> Bates Nos. 000654-000667 (in their entirety)	3
<b><u>Item No. 6-5-1</u></b>	
Bates Nos. 000829-000835 (in their entirety)	1, 2
<b><u>Item No. 6-10(A)-1</u></b>	
Bates Nos. 000906-000915 (in their entirety)	1, 2
<b><u>Item No. 7-11-1</u></b>	
<u>Interconnection Services: Policies &amp; Procedures Manual</u> Bates Nos. 001014-001024 (in their entirety)	3

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DOCKET NO. 29242 AND WITH THE FLORIDA PUBLIC SERVICE COMMISSION  
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**Explanation of Proprietary Information (cont.)**

*Descriptors; ENCORE User Requirements – Enhancements to Mechanization of Loop Makeup; Implementation of Single Network Element-Switch As-Is (SNE-SAI); Single ENCORE User Requirements for Mechanization of Loop Make-up for CLEC XDSLs; Interconnection Services Policies and Procedures Manual* provide description, service restrictions, appropriate forms, service order issuance requirements, installation intervals, repair procedures, etc. that are proprietary and confidential to BellSouth as it describes BellSouth's internal operations. Additionally, the information contains forecasted demand data and BellSouth's strategic schedule of deployment which competitors could use to gain an economic advantage.

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Location

Reason

**Item No. 2-5(C)-1**

Unbundled Dedicated Transport

Bates Nos. 000080-000088 (in their entirety)

3

**Item No. 2-5(C)-3**

UDT- Service Rearrangement

Bates Nos. 000090-000094 (in their entirety)

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<u>Location</u>	<u>Reason</u>
<u>Unbundled Dedicated Transport</u> Bates Nos. 000095-000102 (in their entirety)	3
<b><u>Item No. 2-12-1</u></b>	
Bates Nos. 000160-000171 (in their entirety)	2
<b><u>Item No. 2-25-1</u></b>	
<u>Interconnection CLEC Enabler Release 1.0</u> Bates Nos. 000498-000546 (in their entirety)	3
<u>Interconnection CLEC Enabler: Web Site Application Map and Web Page Descriptors</u> Bates Nos. 000548-000593 (in their entirety)	3
<u>Encore User Requirements – Enhancements to Mechanization of Loop Make-up</u> Bates Nos. 000603-000604 (in their entirety)	3
<u>Encore User Requirements for Mechanization of Loop Make-up for CLEC XDSLs</u> Bates Nos. 000606-000614 (in their entirety)	3
<b><u>Item No. 2-33(A)-1</u></b>	
Bates Nos. 000616-000625 (in their entirety)	1, 2

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<u>Location</u>	<u>Reason</u>
<b><u>Item No. 2-40-1</u></b>	
<i>Encore User Guide</i>	
Bates Nos. 000643-000656 (in their entirety)	3
<b><u>Item No. 6-5-1</u></b>	
Bates Nos. 000824-000830 (in their entirety)	1, 2
Bates No. 000899 (in its entirety)	1, 2
<b><u>Item No. 6-10(A)-1</u></b>	
Bates Nos. 000901-000910 (in their entirety)	1, 2
<b><u>Item No. 7-11-1</u></b>	
<i>Connection Services: Policies &amp; Procedures Manual</i>	
Bates Nos. 001009-001019 (in their entirety)	3