

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR ARBITRATION OF	)	
NEWSOUTH COMMUNICATIONS CORP.,	)	
NUVOX COMMUNICATIONS, INC., KMC	)	CASE NO.
TELECOM V, INC., KMC TELECOM III LLC,	)	2004-00044
AND XSPEDIUS COMMUNICATIONS, LLC ON	)	
BEHALF OF ITS OPERATING SUBSIDIARIES	)	
XSPEDIUS MANAGEMENT CO. SWITCHED	)	
SERVICES, LLC, XSPEDIUS MANAGEMENT	)	
CO. OF LEXINGTON, LLC, AND XSPEDIUS	)	
MANAGEMENT CO. OF LOUISVILLE, LLC	)	

O R D E R

On March 2, 2005, Nuvox Communications, Inc., Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC, KMC Telecom III, LLC and KMC Telecom V, Inc., competitive local exchange carriers ("CLECs"), filed a petition for emergency relief. On March 2, 2005, the Commission required BellSouth Telecommunications, Inc. ("BellSouth") to respond as if to a formal complaint by no later than March 7, 2005. BellSouth has timely responded to the petition.

The CLECs assert that despite BellSouth's carrier notification indicating to the contrary, BellSouth must continue to accept unbundled network element orders until it and the CLECs have completed their negotiations required by change of law provisions in their currently effective interconnection agreements. The matters complained of arose on February 11, 2005 with BellSouth's notification to CLECs that it intended to

discontinue providing certain unbundled network elements pursuant to its understanding of the Federal Communications Commission (“FCC”) Triennial Review Remand Order.<sup>1</sup> BellSouth asserts that the plain reading of the Triennial Review Remand Order authorizes it to cease providing certain unbundled network elements as of March 11, 2005, the FCC’s designated effective date for its order.

The Commission, having considered the emergency petitions and BellSouth’s responses thereto, and having been otherwise sufficiently advised, finds that a change of law within the meaning of the existing effective contract terms between BellSouth and these CLEC carriers has occurred. Because these contracts are in effect, BellSouth must follow the contract language to change its interconnection agreements. Nothing in the Triennial Review Remand Order justifies an immediate change without the parties having an opportunity to negotiate a new contract. In fact, the FCC contemplates negotiated changes to these contracts:

We expect that incumbent LECs and competing carriers will implement the Commission’s findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.<sup>2</sup>

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<sup>1</sup> Triennial Review Remand Order, Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier, FCC 04-290(Feb. 4, 2005)

<sup>2</sup> *Id.* at ¶ 233 (footnotes omitted)

IT IS THEREFORE ORDERED that:

1. BellSouth shall follow its contractual obligation to negotiate the effect of changes of law on its interconnection agreements regarding the discontinuation of unbundled network elements.

2. By no later than April 15, 2005, the parties shall apprise the Commission, in writing, of the status of their negotiations, if they have not previously submitted negotiated agreements addressing these issues.

3. Issues not addressed herein shall remain pending in this docket.

Done at Frankfort, Kentucky, this 10<sup>th</sup> day of March, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director