

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR ARBITRATION OF)	
NEWSOUTH COMMUNICATIONS CORP.,)	CASE NO.
NUVOX COMMUNICATIONS, INC., KMC)	2004-00044
TELECOM V, INC., KMC TELECOM III LLC,)	
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)	
OF AN INTERCONNECTION AGREEMENT)	
WITH BELL SOUTH TELECOMMUNICATIONS,)	
INC. PURSUANT TO SECTION 252(B) OF THE)	
COMMUNICATIONS ACT OF 1934, AS)	
AMENDED)	

O R D E R

BellSouth Telecommunications, Inc. (“BellSouth”) and NuVox Communications, Inc. and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries (collectively “Joint Petitioners”) have submitted to the Commission their proposals for the disputed language for the Commission to consider. The parties have been unable to reach an agreement on the language for Issues 12 and 51 to incorporate the decisions of the Commission into their interconnection agreements.

ISSUE 12: SHOULD THE AGREEMENT STATE THAT
ALL EXISTING STATE AND FEDERAL LAWS, RULES,
REGULATIONS, AND DECISIONS APPLY UNLESS
OTHERWISE SPECIFICALLY AGREED TO BY THE PARTIES?

BellSouth points to the Commission's Order that specifically adopts its language for this issue and expressly rejects the Joint Petitioners' language for Issue 12. The Commission also previously rejected the Joint Petitioners' rehearing request. The Joint Petitioners now wish to add additional language to the contract as follows:

Except to the extent expressly set forth otherwise herein, all FCC rules and orders (in effect as of the Effective Date) relating to the subject matter contained in the Agreement are deemed incorporated as though expressly set forth herein and the competitive carrier does not waive any right to require BellSouth's compliance with such federal rules and orders.

The Joint Petitioners argue that this arbitration proceeding must comply with Section 251 and meet the requirements and conform to the regulations prescribed by the FCC. Thus, this language is necessary. They contend that without this language BellSouth would be able to refuse to comply with an applicable Section 251 requirement if it is not memorialized in the agreement. The Commission disagrees.

Although Joint Petitioners state their request differently than before, the proposed language is effectively the same as that already rejected by the Commission. The Commission confirms its previous decision to reject Joint Petitioners' language for this issue for reasons set forth in its previous Orders.

ISSUE 51: SHOULD THERE BE A NOTICE
REQUIREMENT FOR BELL SOUTH TO CONDUCT
AN AUDIT, AND WHO SHOULD CONDUCT THE AUDIT?

BellSouth has proposed language that mirrors the Commission's language in its reconsideration Order addressing this issue.¹ The Joint Petitioners object to the language which BellSouth has proposed. Their primary objection is the omission of the following sentence: "Notwithstanding the foregoing, the competitive carrier neither waives nor relinquishes any of its rights to invoke or enforce EEL audit limitations and requirements provided under federal law."

As the Joint Petitioners are well aware, the Commission may not approve an arbitrated interconnection agreement that is contrary to federal statutes or regulations. Thus, Joint Petitioners' proposed language is unnecessary; it merely states the obvious. The Commission did not necessarily intend for the parties to mirror the Commission's language word-for-word in their interconnection agreement, as BellSouth proposes, but the substance of the Order should be contained in the agreement. Therefore, the following language should be incorporated into the agreement:

To invoke its limited right to audit, BellSouth will send a Notice of Audit to the competitive carrier identifying the cause upon which BellSouth rests its allegations. Such Notice of Audit will be delivered to the competitive carrier no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence an audit. The competitive carrier may object to the audit after it has been performed but may not prevent its initiation once BellSouth asserts it has adequate documentation to support an audit. The audit should be limited to those circuits over which BellSouth initially raised concern.

¹ March 14, 2006 Reconsideration Order at 17.

The Commission HEREBY ORDERS that:

1. BellSouth's proposed language for Issue 12 shall be incorporated into the interconnection agreement.
2. The language for Issue 51, delineated above, shall be incorporated into the interconnection agreement.
3. Except as altered herein, previous Commission Orders remain in full force and effect.

Done at Frankfort, Kentucky, this 14th day of December, 2006.

By the Commission

ATTEST:



Executive Director