

BellSouth Telecommunications, Inc.

601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

December 7, 2005

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PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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 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 BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended PSC 2004-00044

Dear Ms. O'Donnell:

BellSouth Telecommunications, Inc. ("BellSouth") files this letter to revise and clarify BellSouth's response to a question asked by Commission Counsel, Amy Dougherty, at the November 30, 2005 oral argument in the above-captioned docket.

The question involved jurisdictional issues and the pricing methodology that would be applicable if the Kentucky Public Service Commission ("Commission") determines that BellSouth (and all other carriers) must provide a transit service pursuant to Section 251(a)(1) of the Telecommunications Act of 1996 (the "Act"). BellSouth stated at the oral argument that the transit service probably would be priced pursuant to Sections 201 and 202 of the Act and that the Commission probably had jurisdiction to make such a determination. As BellSouth's counsel stated in oral argument, however, BellSouth's response was conditional, because of uncertainty as to the answer.

BellSouth has further analyzed the issue subsequent to the oral argument and has determined that its original, conditional answer should be revised. Consequently, BellSouth retracts its original answer and provides its revised answer below.

As an initial matter and as set forth in BellSouth's Briefs and its Motion for Rehearing, BellSouth has no obligation under Section 251(a)(1) to provide a transit service (although BellSouth voluntarily agrees to provide it). However, assuming *arguendo*, that the Commission finds such an obligation, the Commission does not have any authority under the Act, including under Sections 201 or 202, to determine the appropriate rate for the service.

Specifically, a state commission's authority to set rates in a Section 252 arbitration does not include rates for Section 251(a) obligations. See 47 U.S.C. § 252(d). Further, the Act does not provide state commissions with any authority to review rates under Section 201 or 202. In addition, while it is clear that a TELRIC rate is inapplicable to a Section 251(a) obligation, the FCC recently pronounced that "Section 251(a)(1) does not address pricing" and thus has sought comment on the appropriate pricing methodology that should apply for transit service if carriers are obligated to provide it. See *In re: Matter of Developing a Unified Intercarrier Compensation Regime*, FCC 05-33, CC Docket No. 01-92 at ¶ 132.

Thus, if this Commission determines that BellSouth has an obligation under Section 252(a)(1) to provide a transit service (a premise with which BellSouth disagrees), the Commission has no authority to determine the rate at which BellSouth can offer the service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dorothy J. Chambers", written in a cursive style.

Dorothy J. Chambers

cc: Parties of Record