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May 20, 2005

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

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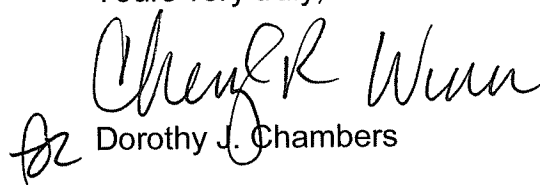
PUBLIC SERVICE
COMMISSION

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:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Motion to Move TRO Arbitration Issues to Generic Proceeding.

Yours very truly,


Dorothy J. Chambers

Enclosures

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 20 2005

PUBLIC SERVICE
COMMISSION

IN 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 AND XSPEDIUS)
MANAGEMENT CO. OF LEXINGTON, LLC, AND XSPEDIUS)
MANAGEMENT CO. OF LOUISVILLE, LLC)

CASE NO.
2004-00044

**MOTION TO MOVE *TRO* ARBITRATION ISSUES
TO GENERIC PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, respectfully requests that the Kentucky Public Service Commission ("Commission") move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) ("*TRO* Arbitration Issues") to the Commission's Generic Proceeding (Docket No. 2004-00427) for consideration and resolution. Alternatively, BellSouth requests that the Commission postpone any decision on the *TRO* Arbitration Issues until the Commission decides the issues in the context of the Generic Proceeding. In support of this Motion, BellSouth states the following:

1. NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc. and KMC Telecom III, LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries (collectively "Joint Petitioners") and BellSouth are currently engaged in a section 252 arbitration proceeding before the Commission. Several issues in dispute in the arbitration proceeding relate to the Federal Communication Commission's ("FCC") findings in the *Triennial Review Order*, FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) ("*TRO*") regarding

commingling, EEL audits, and line conditioning (previously defined as *TRO* Arbitration Issues). The hearing of this matter occurred on May 17, 2005.

2. On or about October 29, 2004, BellSouth filed with the Commission a petition which sought the Commission's resolution of issues related to, *inter alia*, several changes of law resulting from the *TRO* and the FCC's *Order and Notice of Proposed Rulemaking* in WC Docket No. 04-313, CC Docket No. 01-338 (rel. Aug. 20, 2004) ("*Interim Rules Order*") ("*IRO*"). By Commission Order, a generic proceeding was established (Docket No. 2004-00427).

3. On February 4, 2005, the FCC released its *Triennial Review Remand Order*, FCC 04-290, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("*TRRO*"). Issues relating to the *TRRO* will be addressed in the Generic Proceeding.

4. The *TRO* Arbitration Issues are identical if not similar to issues in the Generic Proceeding. Specifically, as set forth in agreed-upon Regional Issues Matrix for all Generic Proceedings in BellSouth's region, Issue 26 in the arbitration is identical to Issue 14 in the Generic Proceeding; Issue 51 in the arbitration is virtually identical to Issue 29 in the Generic Proceeding; and Issues 36-38 in the arbitration are encompassed within Issue 26 in the Generic Proceeding. *See* Regional Matrix, attached hereto as Exhibit A. Consequently, it is more than likely that all of the *TRO* Arbitration Issues will be addressed in the Commission's Generic Docket.

5. BellSouth believes it is neither necessary nor appropriate to expend the time and resources of the Commission, Staff, and the Parties addressing the *TRO* Arbitration Issues in the context of this Section 252 arbitration when the same issues are likely to affect all CLECs in Kentucky that have interconnection agreements with BellSouth. Indeed, in response to Staff Counsel's question at the hearing of this matter, Joint Petitioner witness Russell conceded that

the Commission's decision, at least in relation to Issue 51, would impact CLECs other than the Joint Petitioners. Accordingly, BellSouth submits that the *TRO* Arbitration Issues should be addressed in the Generic Proceeding, where all affected entities will have the opportunity to be heard on these issues and the Commission can render a single decision applicable to all affected entities. In addition to duplicating scarce resources, the piecemeal approach proposed by the Joint Petitioners also presents the risk of inconsistent decisions being rendered in this docket and the Generic Proceeding.

6. The North Carolina Utilities Commission ("NCUC") used this same rationale in moving issues in a BellSouth/AllTel Section 252 arbitration proceeding to generic proceedings over the protest of AllTel. In reaching this conclusion, the Chair of the NCUC stated:

After careful consideration, the Chair concludes that good cause exists to consider the above issues within the context of their respective generic dockets. The Commission has frequently had recourse to consider generic issues that arise in arbitrations within the context of a generic docket. Each of the above issues are in fact under consideration in the generic dockets, and it would promote judicial efficiency and justice for them to be considered there.

In re: Petition of AllTel Communications, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 with BellSouth Telecommunications, Inc., Docket No. P-514, Sub 18, N.C.U.C. (Apr. 9, 2001), 2001 WL 1756716 *1.

7. Similarly, the Georgia Public Service Commission ("GPSC") *sua sponte* and after the evidentiary hearing moved issues asserted in a BellSouth/MCI Section 252 arbitration proceeding to a generic docket for consideration and resolution. In doing so, the GPSC stated: "This issue has arisen in subsequent arbitration proceedings currently pending before the Commission. The Commission finds therefore that it is equitable and efficient for the

Commission to address this issue along with Issue 46 in a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings on these issues.” *In re: MCI Metro Transmission Serv., LLC*, Docket No. 11901-U (Ga. P.S.C.) (Feb. 6, 2001) 2001 WL 391562 *10, 14.

8. The Joint Petitioners would not be prejudiced if the Commission moves these issues to the Generic Proceeding because they are actively participating in it. Additionally, the timing of the Commission’s decision in the arbitration proceeding and its decision in the Generic Proceeding is such that there should be only minimal time between issuance of the two decisions.¹ And, given the fact that the Parties have been either negotiating or arbitrating the *TRO* since its issuance in October 2003, any delay that may result by moving the issues to the Generic Proceeding should be of little consequence and does not outweigh the considerable benefit of allowing all affected entities in Kentucky to address these issues.

9. Any argument by the Joint Petitioners that the Commission must decide the *TRO* Arbitration Issues in a Section 252 arbitration, would be disingenuous in that the Joint Petitioners jointly agreed with BellSouth to move other issues in the arbitration to the Generic Proceeding for consideration and resolution. The Commission granted this joint request on May 17, 2005. Further, as evidenced by the decisions of the NCUC and GPSC in the AllTel/BellSouth and MCI/BellSouth arbitrations, these Commissions did not follow any such argument. Additionally, BellSouth’s instant Motion does not require the Commission to decide these issues outside the context of a Section 252 arbitration. Rather, it simply requests that the Commission address the *TRO* Arbitration Issues in conjunction with the Commission’s consideration of identical or

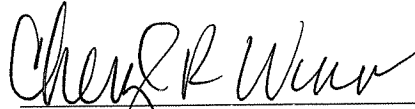
¹ In the arbitration, briefs are due in early July 2005, reply briefs are due in early August 2005, and the Parties have agreed that the Commission has 45 days from the date of filing the last brief to render a decision. In addition, BellSouth and the CLECs have agreed to jointly seek to schedule the hearing of the Generic Proceeding in Kentucky in October 2005 (subject of course to the Commission’s schedule).

similar issues in the Generic Proceeding. Indeed, upon information and belief, the Parties' respective positions on the *TRO* Arbitration Issues in the Generic Proceeding will be identical to the positions taken in the arbitration proceeding.

10. BellSouth acknowledges that the Florida Public Service Commission's ("FPSC"), in Order No. PSC-05-00443-PCO-TP, rejected BellSouth's request to move the *TRO* Arbitration Issues to the Florida Generic Proceeding. In reaching this decision, the FPSC focused solely on the fact that it believed there would be no efficiencies in moving these issues to the Florida Generic Proceeding. BellSouth submits that this decision should not dissuade this Commission from finding similar to the NCUC and GPSC. Simply stated, issues common to all CLECs relating to the *TRO* will be addressed in the pending arbitration as well as the Generic Proceeding. As a result, this Commission's decision on these issues in the arbitration will impact, either directly or indirectly, all CLECs. Consequently, this Commission should move these common issues to the Generic Proceeding for consideration and resolution so that all CLECs can participate in that decision. Alternatively, the Commission should defer resolving the common issues until the Commission decides the same or similar issues in the Generic Proceeding.

WHEREFORE, for the foregoing reasons, BellSouth requests that the Commission move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) to the Commission's Generic Proceeding (Docket No. 2004-00427) for consideration and resolution. Alternatively, BellSouth requests that the Commission postpone any decision on the *TRO* Arbitration Issues until the Commission decides the issues in the context of the Generic Proceeding.

Respectfully submitted this 20th day of May, 2005.



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**CHANGE OF LAW GENERIC DOCKET
ISSUES MATRIX**

ATTACHMENT A

NO.	ISSUE DESCRIPTION
1	<p>TRRO / FINAL RULES: The Section 252 process requires negotiations and to the extent parties may not be able to negotiate resolution of particular issues arising out of the Final Rules/TRRO or to the extent that new issues related to the Final Rules/TRRO arise, issues related to those matters will be added to this list.</p>
2	<p>TRRO / FINAL RULES: What is the appropriate language to implement the FCC's transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?</p>
3	<p>TRRO / FINAL RULES:</p> <ul style="list-style-type: none"> a) How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations? b) What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that the FCC has found are no longer Section 251(c)(3) obligations?
4	<p>TRRO / FINAL RULES: What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport?</p>
5	<p>TRRO / FINAL RULES:</p> <ul style="list-style-type: none"> a) Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate? b) What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport? c) What language should be included in agreements to reflect the procedures identified in (b)?
6	<p>TRRO / FINAL RULES: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?</p>
7	<p>TRRO / FINAL RULES: Once a determination is made that CLECs are not impaired without access to high capacity loops or dedicated transport pursuant to the FCC's rules, can changed circumstances reverse that conclusion, and if so, what process should be included in Interconnection Agreements to implement such changes?</p>

**CHANGE OF LAW GENERIC DOCKET
ISSUES MATRIX**

ATTACHMENT A

NO.	ISSUE DESCRIPTION
8	<p>TRRO / FINAL RULES: (a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251? (b) If the answer to part (a) is affirmative in any respect, does the Authority have the authority to establish rates for such elements? (c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?</p>
9	<p>TRRO / FINAL RULES: What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?</p>
10	<p>TRRO/FINAL RULES: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services?</p>
11	<p>TRRO / FINAL RULES: What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?</p>
12	<p>TRRO / FINAL RULES: Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base?"</p>
13	<p>TRRO / FINAL RULES: Should network elements de-listed under section 251(c) (3) be removed from the SQM/PMAP/SEEM?</p>
14	<p>TRO - COMMINGLING: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?</p>
15	<p>TRO - CONVERSIONS: Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?</p>
16	<p>TRO - CONVERSIONS: What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?</p>
17	<p>TRO - LINE SHARING: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?</p>

**CHANGE OF LAW GENERIC DOCKET
ISSUES MATRIX**

ATTACHMENT A

NO.	ISSUE DESCRIPTION
18	TRO – LINE SHARING – TRANSITION: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?
19	TRO – LINE SPLITTING: What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?
20	TRO – SUB-LOOP CONCENTRATION: What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration?
21	TRO – PACKET SWITCHING: What is the appropriate ICA language, if any, to address packet switching?
22	TRO – CALL-RELATED DATABASES: What is the appropriate ICA language, if any, to address access to call related databases?
23	TRO – GREENFIELD AREAS: a) What is the appropriate definition of minimum point of entry (“MPOE”)? b) What is the appropriate language to implement BellSouth’s obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber loops, including fiber loops deployed to the minimum point of entry (“MPOE”) of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?
24	TRO – HYBRID LOOPS: What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?
25	TRO – END USER PREMISES: Under the FCC’s definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an “end user customer’s premises”?
26	TRO – ROUTINE NETWORK MODIFICATION: What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?
27	TRO – ROUTINE NETWORK MODIFICATION: What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?
28	TRO – FIBER TO THE HOME: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?
29	TRO – EELS AUDITS: What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?
30	252(i): What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?
31	ISP Remand Core Forbearance Order: What language should be used to incorporate the FCC’s <i>ISP Remand Core Forbearance Order</i> into interconnection agreements?

**CHANGE OF LAW GENERIC DOCKET
ISSUES MATRIX**

ATTACHMENT A

NO.	ISSUE DESCRIPTION
32	General Issue: How should the determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 20th day of May 2005.

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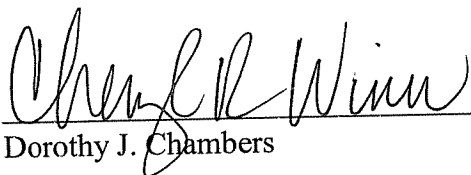
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