

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 BILLSOUTH TELECOMMUNICATIONS,)	
INC. PURSUANT TO SECTION 252(B) OF THE)	
COMMUNICATIONS ACT OF 1934, AS)	
AMENDED)	

O R D E R

On June 2, 2006, the Commission entered an Order in response to petitions for confidential treatment of certain materials submitted to the Commission in the case sub judice. In the Order, the Commission granted in part certain requests and denied in part other requests for confidential treatment.

On June 22, 2006, NuVox Communications, Inc. (to include the former NewSouth Communications Corp.) ("NewSouth") (now collectively referred to as "NuVox") filed a motion for limited reconsideration of a portion of the Commission's June 2, 2006 Order denying confidential treatment. Specifically, NuVox requested that the Commission reconsider its decision denying confidential treatment of the customer name and location in documents NSC/NVX 000051-52.

ARGUMENT

In making its request for reconsideration, NuVox contends that the information is “customer proprietary network information” (“CPNI”) as defined by 47 U.S.C.A. § 222 of the Telecommunication Act of 1996. As CPNI, petitioner alleges that the documents are exempt under federal law, and therefore also exempt under KRS 61.878(1)(k) of Kentucky’s Open Records Act, KRS 61.870 to 61.884 (the “Open Records Act”) and 807 KAR 5:001, Section 7.

DISCUSSION

All material on file with the Commission is to be “open for inspection by any person, except as otherwise provided in KRS 61.870 to 61.884.”¹ A person requesting that the Commission grant confidential treatment has the burden to show that the material falls within an exclusion from disclosure requirements enumerated in the Open Records Act.²

“The basic policy of [the Open Records Act] is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.”³ The primary purpose of the Open Records Act is to inform the public as to whether governmental agencies are properly executing their statutory functions.

¹ See Lexington-Fayette Urban County Government v. Lexington Herald-Leader Co., 941 S.W.2d 469 (Ky. 1997), citing KRS 61.872(1).

² 807 KAR 5:001, Section 7(2)(d).

³ KRS 61.871.

KRS 61.878(1)(k) exempts from disclosure records or information of which the disclosure is prohibited by federal law or regulation. Under federal law, CPNI is information maintained by a telephone company describing who and when a customer calls and what telephone features the customer uses. CPNI is defined as:

- (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
- (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.⁴

The document labeled NSC/NVX 000051 is a response from BellSouth Telecommunications, Inc. ("BellSouth") to an e-mail from NewSouth. In the e-mail document labeled NSC/NVX 000052, NewSouth requested a written explanation regarding an early disconnect of service experienced by a NewSouth end-user. The e-mail is dated January 15, 2001; the response from BellSouth is dated April 12, 2001. Both documents are in excess of five years old.

First, upon further review of the e-mail document, the Commission finds that, standing alone, the e-mail document labeled NSC/NVX 000052 does not contain CPNI and would not be subject to exemption as CPNI nor under the Open Records Act. It is merely a request for information regarding the underlying cause for the early disconnect experienced by one of its end-users.

Given the interrelation of the documents, the Commission must view the documents jointly. BellSouth's April 12, 2001 response letter labeled NSC/NVX 000051 provides NewSouth with a chronological explanation of the reason for the early

⁴ 47 U.S.C. § 222(h)(1).

disconnect. Basically, the letter advises that BellSouth followed its normal operating procedure and suggests that NewSouth failed to change certain subscription verification due dates or otherwise cancel certain disconnect orders. The contents of this letter also fail to trigger either Section 222 or KRS 61.878(1)(k).

Based on the foregoing, including the contents and the age of the documents, the Commission finds that it is prohibited from withholding these documents from public inspection.

CONCLUSION

NuVox has the burden to show that withholding the subject public documents from public inspection falls within an exception to the Open Records Act. In its motion for reconsideration, NuVox has offered no additional information and has failed to meet its statutory burden of proof. The law requires that the Commission make these public documents available for public review.

IT IS THEREFORE ORDERED that:

1. NuVox's limited request for reconsideration of the Commission's Order denying confidential treatment of the customer name and location in documents NSC/NVX 000051-52 is denied.
2. The documents addressed in this Order shall not be placed in the public record for 20 days in order to allow petitioner to seek any remedy afforded by law.⁵

⁵ 807 KAR 5:001, Section 7(4).

Done at Frankfort, Kentucky, this 12th day of July, 2006.

By the Commission

ATTEST

Executive Director

Case No. 2004-00044