

John E. Selent  
502-540-2315  
john.selent@dinslaw.com

July 18, 2005

RECEIVED

JUL 18 2005

PUBLIC SERVICE  
COMMISSION

**Via Hand Delivery**

Hon. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40601

***Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., 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, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00044***

Dear Ms. O'Donnell:

With this letter I am filing the original and ten copies of a motion to withdraw certain confidential documents from the public record which it inadvertently filed in the public record in the above-styled case on Wednesday, July 13, 2005. These confidential documents are now the subject of a motion for confidential treatment filed by the Joint Petitioners along with their brief on Friday, July 15.

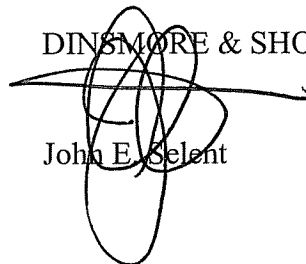
Hon. Beth O'Donnell  
July 18, 2005  
Page 2

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Thank you, and if you have any questions with respect to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read "John E. Selent". The signature is highly stylized and scribbled, with a horizontal line extending to the right from the middle of the signature.

John E. Selent

JES/bmt  
Enclosures

cc: Amy E. Dougherty, Esq.  
All Parties of Record

101942v2  
32138-1

JUL 18 2005

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

*In the Matter of:* )  
)  
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 )

Case No. 2004-00044

**MOTION TO WITHDRAW DOCUMENTS FROM THE PUBLIC RECORD**

NewSouth Communications Corp., Nuvox Communications, Inc., 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 (collectively the "Joint Petitioners"), hereby move the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to remove the confidential documents from the public record which were inadvertently filed in the public record on Wednesday, July 13, 2005. (These confidential documents are identified at Exhibit A hereto and were filed along with a transmittal letter of the same date, which transmittal letter is part of Exhibit A.)

These confidential documents are now the subject of a motion for confidential treatment filed with the Commission on Friday, July 15, 2005, along with Joint Petitioners' post-hearing brief in the above-styled matter.

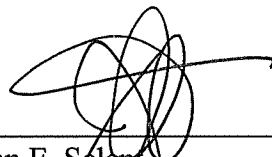
As grounds for this motion, Joint Petitioners states that these documents are confidential, that they were inadvertently filed in the public record and that they are now the subject of a motion for confidential treatment. Under these circumstances, the Joint Petitioners submit that

there is no reason that the documents should not be withdrawn from the public record and there is no reason to prejudice the Joint Petitioners in the competitive environment in which they compete due to the inadvertent filing of sensitive, proprietary, and confidential documents. (See e.g., *KL Group v. Case, Kay & Lynch*, 829 F.2d 909, 915 (9th Cir. 1987) ("We have held that a district court may order a party to **return privileged documents inadvertently produced \*1080** during discovery in the same proceeding pending before the court. See, e.g., *KL Group*, 829 F.2d at 919 (district court did not abuse discretion in ordering **return of privileged document inadvertently produced** in action pending before the court.")).

Finally, Joint Petitioners note that these confidential documents are presently being treated as confidential by the only other party to this proceeding, that is, BellSouth Telecommunications, Inc., upon whom they were served.

For these reasons, the documents identified at Exhibit A hereto should be treated as confidential and removed from the public record pending a ruling on Joint Petitioners' motion for confidential treatment of them.

Respectfully submitted,



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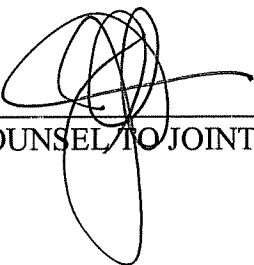
John J. Heitmann  
Stephanie A. Joyce  
Garret R. Hargrave  
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E-mail: ghargrave@kelleydrye.com

**COUNSEL TO THE JOINT  
PETITIONERS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18th day of July, 2005, a true and correct copy of the foregoing has been forwarded via first class U.S. Mail, overnight delivery, and electronic transmission to the following.

James Meza III  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

  
\_\_\_\_\_  
COUNSEL TO JOINT PETITIONERS



## **EXHIBIT "A"**

1. XSP00004
2. XSP00005
3. NVX00051
4. NVX00052

John E. Selent  
502-540-2315  
john.selent@dinslaw.com

July 12, 2005

Hon. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

***Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xpedius Communications, LLC on Behalf of Its Operating Subsidiaries, Xpedius Management Co. Switched Services, LLC, Xpedius Management Co. of Lexington, LLC, and Xpedius 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, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00044***

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Dear Ms. O'Donnell:

I am enclosing with this letter two (2) copies of the written discovery filed in the arbitration proceeding before the North Carolina Utilities Commission, (Docket Numbers P-772, P-913, P-989, P-824, and P-1202), pursuant to Paragraph #2 of the Joint Stipulation between the parties to this proceeding before the Kentucky Public Service Commission, which Paragraph #2 provides as follows:

***2. North Carolina written discovery and depositions go in (per usual arrangement).***

Parts of the written discovery referred to in this letter are confidential and are therefore being filed under separate cover, along with a petition for confidential treatment with respect thereto.

Thank you, and if you have any questions with regard to this matter, please call me.

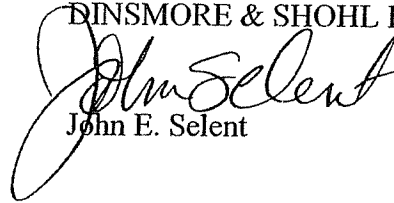


Hon. Beth O'Donnell  
July 12, 2005  
Page 2

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Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to read "John E. Selent", written over the printed name.

John E. Selent

JES/kwi

cc: Amy E. Dougherty, Esq.  
All Parties of Record

101791v1  
32138-1