



Steven L. Beshear
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Commonwealth of Kentucky
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David L. Armstrong
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James W. Gardner
Vice Chairman

John W. Clay
Commissioner

March 30, 2009

Hon. Holly C. Wallace
Dinsmore & Shoal LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, Kentucky 40202

Hon. John J. Heitmann
Kelly Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Re: NewSouth Communications Corp., et al - Petition for Confidential Treatment
received October 17, 2005 - PSC Reference – 2004-00044

Dear Counselors:

Please find enclosed a copy of your Petition for Confidential Treatment in the above styled case and the Commission's response. I regret the Commission's untimely response to your Petition. In the confusion of several retirements in 2008, a group of Petitions was left unanswered. We are responding to these Petitions for Confidential Treatment as fast as possible. As we work our way through the Petitions, you may receive additional outdated responses and thank you for your patience.

To correct the situation, we have established an electronic logging system so that we avoid a recurrence. I apologize for any inconvenience this may have caused you or your client. Please contact me should you have any questions with regard to any Petitions for Confidential Treatment.

Sincerely,

A handwritten signature in black ink, appearing to read "Helton Helton".

Helton Helton
General Counsel

kg/
cc: Parties of Record



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Washington, DC 20036

Re: NewSouth Communications Corp., et al - Petition for Confidential Treatment
received October 17, 2005
PSC Reference – 2004-00044

Dear Counselors:

The Public Service Commission has received the Petition for Confidentiality you filed on October 17, 2005 on behalf of NewSouth Communications Corp., Nuvox Communications, Inc., and Xspedius Communications, LLC, to protect certain information filed with the Commission as confidential under Section 7 of 807 KAR 5:001 and KRS 61.870 et. seq. The information you seek to have treated as confidential is identified as customer name, customer identifiable information, and critical monetary terms in a Customer Services Agreement for Network Services attached to your Petition. Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise their competitive position in the industry and result in an unfair commercial advantage to their competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information you seek to keep confidential is not of a confidential or proprietary nature and therefore does not meet the criteria for confidential protection, and therefore is **DENIED**. Further, the Commission in

its June 2, 2006 Order in this case held that the same information was denied confidential treatment based upon the above cited regulations and statutes.

The information denied confidential treatment will be withheld from public inspection for 20 days from the date of this letter in accordance with 807 KAR 5:001. If you disagree with the Commission's decision, you may seek a rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400.

Sincerely,



Jeff Derouen
Executive Director

kg/

cc: Parties of Record

Howe 11

COPY

**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

PETITION FOR CONFIDENTIAL TREATMENT

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") for confidential treatment of the customer name, customer identifiable information, and critical monetary term in the attached Customer Service Agreement for Network Services ("Customer Service Agreement") highlighted in yellow. In support of their motion, Joint Petitioners state as follows.

1. The customer name, customer identifiable information, and monetary term in the Customer Service Agreement are exempt from public disclosure pursuant to KRS 61.878(c)(1). This statute provides that "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that

disclosed the records” shall remain confidential unless otherwise ordered by a court of competent jurisdiction.

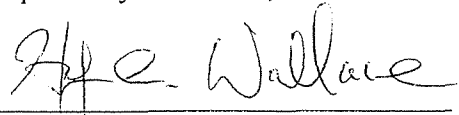
2. The Joint Petitioners note that the telecommunications market is a competitive industry and that they have active competitors.

3. The public disclosure of the customer name, customer identifiable information and critical monetary term in the Customer Service Agreement would permit an unfair advantage to Joint Petitioners' competitors, such as Alltel Communications, Inc., Talk America, Inc., Sprint Communications Company, L.P., and Qwest Communications Corporation, by identifying one of NewSouth Communications Corp./NuVox Communications, Inc.'s most important customers, and the monetary term they negotiated with that customer.

4. With the identity of the customer and the knowledge of the monetary term, Joint Petitioners' competitors would have inside information regarding one of NewSouth/NuVox's customers which would enable the Joint Petitioners' competitors to target this customer in an effort to entice it to switch from NewSouth/NuVox to one of the competitors. This information would give Joint Petitioners' competitors a distinct competitive advantage due to the inability of Joint Petitioners (specifically, NewSouth/NuVox) to likewise determine the identity of their competitors' customers and the monetary terms they negotiated with those customers.

WHEREFORE, pursuant to 807 KAR 5:001, §7, Joint Petitioners request the Commission issue an Order directing that the customer name, customer identifiable information, and monetary term in the attached Customer Service Agreement be afforded confidential treatment.

Respectfully submitted,



John E. Selent
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202
Tel.: (502) 540-2300
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and

John J. Heitmann
Stephanie A. Joyce
Garret R. Hargrave
KELLY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington DC 20036
Tel: (202) 955-9600
Fax: (202) 955-9792

**COUNSEL TO THE JOINT
PETITIONERS**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of October, 2005, a true and correct copy of the foregoing has been forwarded via first class U.S. Mail to the following.

Dorothy J. Chambers
BellSouth Corporation
P.O. Box 32410
601 W. Chestnut Street, Room 407
Louisville, KY 40232-2410

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



COUNSEL TO JOINT PETITIONERS



2003

Addendum to Customer Service Agreement
for Network Services

This Addendum is to the Customer Service Agreement for Network Services (the "Agreement") between NewSouth Communications Corp. ("NewSouth") and d/b/a ("Customer") and shall be incorporated into the Agreement as if fully set forth therein.

1. During the term of the Agreement NewSouth shall carry and maintain workers compensation insurance in statutory amounts and comprehensive general liability insurances through companies reasonably satisfactory to Customer endorsed to include products and completed operations and contractual liability in a minimum amount of combined single limit. All such policies (except workers compensation) shall specifically state that Customer and Customer's owners are named as additional insureds under the above policies and such insurance shall be primary and not contributory with Customer's insurance. Each such policy shall provide that it may not be cancelled or material changes made without at least ten (10) days prior written notice to Customer. NewSouth shall furnish to Customer a certificate of insurance evidencing such coverage prior to the commencement of the Services and shall continue to provide, at the reasonable request of Customer, subsequent certificates of insurance evidencing uninterrupted compliance with this insurance requirement until the termination of the Agreement.
2. NewSouth hereby assumes liability for, and shall indemnify, defend, protect, save and hold harmless Customer, the _____ and their respective parents, subsidiaries and affiliates and their officers, agents, subcontractors and employees from and against any and all third party liabilities, claims, judgments, damages and losses, to the extent directly caused by or arising out of the negligence or willful misconduct of NewSouth Communications or its respective officers, employees, or agents and which are in any way related to the physical presence of NewSouth personnel on or at a Customer location referenced in the Agreement, provided that: (i) Customer notifies NewSouth in writing no later than thirty (30) days after its receipt of notification of a potential claim against Customer which could result in indemnification by NewSouth; (ii) NewSouth may assume sole control of the defense of such claim and all related settlement negotiations; and (iii) Customer provides NewSouth, at NewSouth's request and expense, with the assistance and information reasonably necessary for NewSouth to comply with its obligations hereunder.

Notwithstanding anything in the Agreement to the contrary, NewSouth shall defend, indemnify, and hold harmless Customer, the owner of Customer's location referenced herein, and their respective parents, subsidiaries and affiliates and their officers, agents, subcontractors and employees from and against any and all actions, costs, claims, losses, expenses and/or damages, including attorneys' fees, for or arising out of any bodily

Privileged and Confidential
NVX000051

injuries to or the death of any of NewSouth's employees working at the hotel, however caused or occasioned, excepting the willful misconduct or negligence of Customer.

NewSouth Communications Corp.

By: _____
Name:
Title:

By: _____
Name:
Title:

Regional Vice President

Privileged and Confidential
NVX000052

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR ARBITRATION OF)
NEWSOUTH COMMUNICATIONS CORP., NUVOX)
COMMUNICATIONS, INC., KMC TELECOM III)
LLC, AND XSPEDIUS COMMUNICATIONS, LLC)
ON BEHALF OF ITS OPERATING SUBSIDIARIES) CASE NO. 2004-00044
XSPEDIUS MANAGEMENT CO. SWITCHED)
SERVICES, LLC XSPEDIUS MANAGEMENT CO.)
OF LEXINGTON, LLC AND XSPEDIUS)
MANAGEMENT CO. OF LOUISVILLE, LLC)

O R D E R

On May 17, 2005, in accordance with an agreement between BellSouth Telecommunications, Inc. ("BellSouth") and NewSouth Communications Corp. ("NewSouth"); Nuvox Communications, Inc. ("Nuvox"); KMC Telecom V, Inc.; KMC Telecom III LLC;¹ 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 ("Xspedius") (collectively referred to as "Joint Petitioners"), upon Commission request, BellSouth provided certain discovery responses, depositions, and a transcript of the

¹ KMC Telecom V, Inc. and KMC Telecom III LLC, originally parties to this action, served notice of their withdrawal with prejudice and withdrew their request for arbitration on May 31, 2005.

hearing from a Florida proceeding (“Florida Record”)² involving BellSouth and Joint Petitioners, to be incorporated into the record of this case. Also on that date, BellSouth provided the Commission with discovery responses and excerpts of depositions from a North Carolina proceeding (“North Carolina Record”)³ also involving BellSouth and Joint Petitioners. BellSouth claimed that a portion of the information was protected from disclosure as proprietary/trade secret information.

On June 24, 2005, BellSouth petitioned the Commission for confidential treatment of certain portions of the Florida Record and the North Carolina Record pursuant to KRS 61.878 of Kentucky’s Open Records Act, KRS 61.870 to 61.884 (“Open Records Act”) and 807 KAR 5:001, Section 7.

On July 15, 2005, Joint Petitioners, by letter to the Commission’s Executive Director, requested that the Commission pull from the public record, certain “confidential” documents that they claim were filed in the record in error. On that date, Joint Petitioners filed a motion similarly requesting that the Commission afford confidential treatment to those same documents. Specifically, they requested confidential treatment for documents from the North Carolina Record, Docket Numbers P-772, P-913, P-989, P-824, and P-1202.

² Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications Corp., KMC 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 Jacksonville, LLC; Docket No. 040130-TP.

³ Joint Petition for Arbitration of NewSouth Communications Corp, et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended; Docket Nos. P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6; P-1202, Sub 4.

On July 18, 2005, the Commission's Executive Director denied the requests for confidentiality filed on June 24, 2005. Also on that date, in response, BellSouth filed a motion to withdraw from the record the documents denied confidential treatment. On August 16, 2005, the Commission's Executive Director denied the requests for confidentiality, stating that the documents would be made available for public inspection on September 6, 2005.

On August 23, 2005, BellSouth requested confidential treatment for portions of the Florida Record and the North Carolina Record claiming that the information is confidential and proprietary or otherwise constitutes customer proprietary network information ("CPNI").

On September 6, 2005, Joint Petitioners moved for confidential treatment of a certain Customer Service Agreement for Network Services ("Customer Service Agreement"). Also on September 6, 2005, Joint Petitioners moved to withdraw certain documents from the record (NVX 000001 through 000004, NVX 000026 through 000037, NSC/NVX 000076 through 000081, and NSC/NVX 000003).

On September 28, 2005, the Commission's Executive Director denied the requests for confidential treatment made on September 6, 2005. On October 17, 2005, Joint Petitioners moved to receive confidential treatment for only the "customer name, customer identifiable information, and critical monetary term" contained in the Customer Service Agreement. By letter from the Commission's Executive Director dated January 30, 2006, the requests were denied. In response, the parties requested that the Commission reconsider the denial of confidential treatment.

ARGUMENT

The parties contend that the subject information is exempt from public disclosure pursuant to Kentucky's Open Records Act. In their various motions, they maintain that the information is excluded under KRS 61.878(1)(c) because they assert that disclosure would permit an unfair advantage to their competitors and potential competitors by allowing free access to all of the substantial research and business analysis they have developed. They further contend, *inter alia*, that disclosure of certain information would allow competitors to target their customers while they would lack similar access.

BellSouth further claims that certain of the information is CPNI as defined by 47 U.S.C.A. § 222 of the Telecommunication Act of 1996. As CPNI, BellSouth alleges that the documents are exempt under federal law, and therefore also exempt under KRS 61.878(1)(k) of the Open Records Act.

DISCUSSION

The Commission is a public agency and the documents at issue are public records subject to the Open Records Act.⁴ "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."⁵ The primary purpose of the Open Records Act is to inform the public as to whether governmental agencies are properly executing their statutory functions.

⁴ KRS 61.878(1-2).

⁵ KRS 61.871.

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.”⁶ 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.⁷

KRS 61.878(1)(c) of the Open Records Act provides an exemption for “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. . . .”

To the extent that the parties rely on KRS 61.878(1)(c), they must show that the commercial documents are generally recognized as confidential or proprietary and that disclosure would permit an unfair commercial advantage to competitors.⁸ The court in Southeastern United Medigroup, Inc. v. Hughes,⁹ in considering KRS 61.878(1)(c), held that if it is established that a document sought to be withheld is confidential or proprietary, and if disclosure to competitors would provide substantially more than a trivial unfair advantage, the document should be protected from disclosure.

⁶ See Lexington-Fayette Urban County Government v. Lexington Herald-Leader Co., 941 S.W.2d 469 (Ky. 1997), citing KRS 61.872(1).

⁷ 807 KAR 5:001, Section 7(2)(d).

⁸ 93-ORD-43.

⁹ Southeastern United Medigroup, Inc. v. Hughes, 952 S.W.2d 195 (Ky.1997).

BellSouth further claims that portions of the subject information is CPNI and therefore exempt from disclosure under federal law and the Open Records Act. KRS 61.878(1)(k) exempts from disclosure records or information of which the disclosure is prohibited by federal law or regulation. 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.¹⁰

The 1996 Act excludes from the definition of CPNI several categories of information, including: subscriber list information such as name, address, and telephone number.¹¹ It also excludes aggregate customer information from which individual customer identities have been removed.¹²

CONCLUSION

The Commission is mindful of the fact that the exceptions provided in KRS 61.878 are to be strictly construed. The burden falls upon the person seeking to withhold a public document from public inspection to show that it falls within an exception to the Open Records Act. Having considered this exacting standard and the

¹⁰ 47 U.S.C. § 222(h)(1).

¹¹ 47 U.S.C. § 222(e) and (h)(3).

¹² 47 U.S.C. § 222(c)(3) and (h)(2).

particular facts of this case, the Commission finds that the parties have met their statutory burden of proof with respect to certain of the documents and have failed to meet their burden with the remainder.

Document Withdrawal

The parties have requested that in lieu of non-disclosure, they be allowed to withdraw certain documents from the record. They fail to cite any law in support of this request. Neither the relevant statutes nor the Commission's regulations specifically provide for the withdrawal of a document herein.¹³

It is well established that "while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in [Kentucky's Open Records Act], some being exempt under KRS 61.878."¹⁴ As such, a party's remedy for non-disclosure turns on whether the documents satisfy an exemption under KRS 61.878. To allow a party to withdraw a document merely because it fails to satisfy an exemption to the Open Records Act is to allow a party to subvert the intent of the Open Records Act.¹⁵

¹³ See, e.g., 401 KAR 100.010, Section 7(2), for certain Kentucky agency regulations that provide for the withdrawal of public records. Notably, these regulations contemplate original documents withdrawn from the record may be substituted with true copies.

¹⁴ KRS 61.8715.

¹⁵ See, e.g., 05-ORD-141; see, also, the State Archives and Records Act, KRS 171.410 - .740, as discussed in 05-ORD-141, similar to Kentucky's Open Records Act. This Act states that "it is the duty of an agency to 'establish such safeguards against removal or loss of records as he shall deem necessary and as may be required by rules and regulations issued under authority of KRS 171.410 to 171.740.' KRS 171.710. These safeguards include 'making it known to all officials and employees of the agency that no records are to be alienated or destroyed except in accordance with law, and calling attention to the penalties provided by law for the unlawful removal or destruction of records.' KRS 171.710."

Specific Findings

The Commission makes the following findings with respect to the requests for confidential treatment. The Commission grants confidential treatment to the information requested in the May 17, 2005 petition for confidential treatment.

In its June 24, 2005 petition, BellSouth requested confidential treatment for certain documents from the North Carolina Record and the Florida Record. The Commission finds that this information constitutes confidential and proprietary information such that disclosure of the subject information has the potential to provide more than a trivial unfair advantage to competitors and that certain of the information constitutes CPNI. The Commission therefore affords confidential treatment to these documents.

Joint Petitioners request that several categories or types of documents be granted confidential treatment in their July 15, 2005 petition. The Commission grants their request in part and denies the request in part. The Commission finds the documents labeled NSC/NVX 000003, NSC/NVX 000076-000078 and NVX 000001-000004 represent confidential information and shall be excluded from the public record.

The Commission denies confidential treatment to the documents labeled NSC/NVX 000079-000081. These documents do not contain information subject to exclusion and should be available for public inspection. The Commission also denies confidential treatment to the document labeled NVX 000026. This document contains general customer reports insufficient to subject the document to exemption. The Commission denies confidential treatment for the "Master Service Agreement" document labeled NVX 00027-00030. The unexecuted document is generic in nature

and contains no information sufficiently confidential or proprietary to be granted confidentiality.

Joint Petitioners requested confidential treatment for certain complaint response letters in documents labeled NVX 000031-000037. These documents are 3 years to 5 years old. In addition to the fact that they are old, they fail to contain information subject to exemption from public disclosure.

The Commission denies Joint Petitioners' request for confidential treatment for the document labeled XSP 000090-000091. The copy of this "Bad Act" Reporting Form was redacted prior to submission to the Commission. It appears that any information that might otherwise qualify for exemption has not been provided to the Commission and the redacted information has not been placed in the public record.

The Commission finds that the unexecuted document entitled "Xspedius Communications Services Agreement," labeled XSP 000004-000005, fails to qualify for confidential treatment. The document does not appear to contain information of a confidential or proprietary nature so as to qualify for exemption from public inspection.

The document labeled NSC/NVX 000051 is a complaint response letter dated April 12, 2001. It is more than 5 years old and does not contain information appropriate to permit its exclusion from the public record. Finally, the e-mail document labeled NSC/NVX 000052 is dated January 15, 2001. The nature of its contents and the age of the e-mail prohibit the Commission from withholding this document from public inspection.

To the extent that certain requests for confidential treatment have been granted, the Commission makes clear that these exemptions are subject to modification based on future events. The parties have a duty to inform the Commission in writing when any information granted confidential treatment becomes publicly available.¹⁶ Also, to the extent the Commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it will notify the parties and allow them 10 days to respond.¹⁷

IT IS THEREFORE ORDERED that:

1. The requests for confidential treatment are granted in part and denied in part as described above.
2. The parties shall advise the Commission in writing when the information granted confidential treatment becomes publicly available or otherwise no longer qualifies for confidential treatment.

Done at Frankfort, Kentucky, this 2nd day of June, 2006.

By the Commission

ATTEST:



Executive Director

¹⁶ 807 KAR 5:001, Section 7(9)(a).

¹⁷ 807 KAR 5:001, Section 7(9)(b).

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

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:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Executive Director