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T.R.A. DOCKET ROOM
March 25, 2004

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *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 No. 04-00046

Dear Chairman Tate:

On March 22, 2004, the Petitioners in this proceeding filed a Request for Leave to file yet another Reply to BellSouth's Motion to Sever, along with a proposed Reply. This latest filing by the CLECs, in the main, is not a reply at all, but simply a restatement of arguments they have previously made. BellSouth does not want to burden the record by responding once more to the arguments these CLECs make in their proposed Reply for a second time. However, in the Reply, the CLECs make two contentions for the first time, which misrepresent either Orders of other Commissions or of the Authority. Accordingly, BellSouth is filing this letter only to bring these two specific instances to the attention of the Authority.

One, in the proposed Reply, the CLECs claim that "no state has granted BellSouth's Motion to Sever." Further, they state "that the Alabama Public Service Commission issued an Order on March 16, 2004 effectively denying BellSouth's Motion to Sever." (Proposed Reply, p. 2, footnote 1). Neither of these statements is true. BellSouth's Motion to Sever (as filed in Alabama, before this Authority, and before every other Commission in BellSouth's region), requested that the arbitration be severed into four separate proceedings or, that the respective Commission institute certain procedural restrictions that are necessary to prevent a joint proceeding from becoming completely unmanageable. Although the Alabama Commission did not order the severance of this proceeding into four separate

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proceedings, it did order precisely the procedural restrictions that BellSouth requested. In pertinent part, the Order states the following:

Petitioners' position must be identical on each issue. Petitioners may sponsor one witness per issue or subissue.

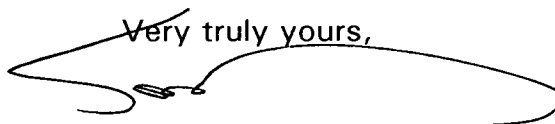
(Procedural Ruling, Docket 29242, Alabama Public Service Commission, p. 4).

The CLECs' contention that the Alabama Commission sustained their position is flatly wrong. Moreover, if the CLECs did prevail in Alabama (as they claim), then they should have no objection to this Authority imposing exactly the same restrictions imposed by the Alabama Panel. Thus, BellSouth submits that the Authority can resolve this dispute by imposing the exact restrictions that are set forth on page 4 of the Alabama Panel's Procedural Ruling (a copy of which is attached).

As to other states, South Carolina has not issued an Order. However, based on the vote taken March 16, 2004—and the discussion preceding that vote—BellSouth believes that the South Carolina Commission will impose the same restrictions as those imposed in Alabama. The North Carolina Commission declined BellSouth's request to restrict the CLECs' presentation of testimony. The other five State Commissions in BellSouth's region have not ruled on the Motion.

Two, the CLECs also claim that there is precedent for their attempt to join together four separate arbitrations without first seeking leave from the Authority to do so. To this end, they cite a pending docket before the Authority in which 26 parties are participating in an arbitration (Docket No. 03-00585). What the CLECs neglect to mention in their proposed Reply is that, in the above-referenced docket, all parties agreed to a joint proceeding. The Authority simply approved this agreed-upon procedure. That case is obviously not comparable to our case, in which four Petitioners have filed a joint petition without filing a motion to consolidate, and the respondent (BellSouth) opposes the joint proceeding. Thus, Docket No. 03-00585 provides no precedent.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", with a long, sweeping horizontal stroke extending to the right.

Guy M. Hicks

cc: Richard Collier, General Counsel

Hon. Deborah Taylor Tate, Chairman
March 25, 2004
Page 2

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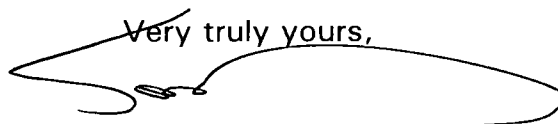
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Very truly yours,

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Guy M. Hicks

cc: Richard Collier, General Counsel



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
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JAN COOK ASSOCIATE COMMISSIONER
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WALTER L THOMAS, JR
SECRETARY

ALABAMA PUBLIC SERVICE COMMISSION

In the Matter of)
) Docket No. 29242
Joint Petition for Arbitration of)
)
NewSouth Communications Corp., 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)
Birmingham LLC, Xspedius Management)
Co. of Mobile LLC, and Xspedius)
Management Co. of Montgomery LLC)
)
Of an Interconnection Agreement with)
BellSouth Telecommunications, Inc.,)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as Amended)

Procedural Ruling

On February 11, 2004, NewSouth Communications Corp., 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 Birmingham LLC, Xspedius Management Co of Mobile LLC, and Xspedius Management Co. of Montgomery LLC filed a Joint Petition for arbitration seeking resolution of certain issues arising between the

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Joint Petitioners and BellSouth Telecommunications, Inc., (BellSouth) in the negotiation of an interconnection agreement.

In support of the petition, the Joint Petitioners stated that the window for filing a formal request for arbitration under the Telecommunications Act of 1996 opened on January 17, 2004, and closed on February 11, 2004.

Joint Petitioners listed 107 issues, with ten of those issues not common among all parties. Joint Petitioners stated that they anticipated a team witness approach. Joint Petitioners requested a temporary waiver of Commission Rule T-26(A), which requires that petitioners for arbitration file testimony and discovery on the date they file the petition for arbitration. Joint Petitioners noted that they would agree to the Commission granting BellSouth a similar extension of the deadline for filing of Additional Requirements, should BellSouth request such an extension.

In support of the request for a waiver of T-26(A), Joint Petitioners stated that the parties are still in robust negotiation and that some of the outstanding issues may well be resolved subsequent to the filing for arbitration. In addition, the task of preparing testimony and discovery requests are expected to be costly and resource-intensive. Joint Petitioners stated that these costs could not be justified if there is likelihood that the parties will resolve some of the outstanding issues. Further, Joint Petitioners commented that they have been unable to devote their time to preparing prefiled testimony and discovery requests because of their focus on negotiations.

Joint Petitioners stated that should the Commission decide that separate petitions for arbitration be filed by each of the Joint Petitioners, the Joint Petitioners request that the Commission grant them adequate time to prepare and submit their individual petitions for arbitrations and toll the statutory deadlines imposed by Section 252(b)(1) of the Communications Act for good cause.

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On March 2, 2004, BellSouth Telecommunications, Inc., filed its opposition to Joint Motion for Partial and Temporary Waiver of the Commission's Arbitration Requirements, Motion to sever or to Impose Procedural Restrictions, and Request for Expedited Consideration. BellSouth indicated that the Joint Petitioners' filing for arbitration of issues was not in accordance with Commission Rules for Arbitration. According to BellSouth, Joint Petitioners should have filed separate petitions for arbitration with a request that these petitions be consolidated into a Joint Petition. Also, Joint Petitioners did not seek a waiver of T-26(A) in a timely fashion. Further, petitioners' basis for seeking a waiver of Commission Rule T-26 is not sufficient to justify such a waiver according to BellSouth.

BellSouth asserted that the Commission should sever the proceeding or in the alternative impose procedural restrictions on a joint proceeding. Specifically, BellSouth objected to the Joint Petitioners' anticipated team witness approach. Additionally, BellSouth has requested that the Commission require that Joint Petitioners' positions be identical on each common issue. Further, BellSouth requested that the Commission restrict Joint Petitioners to cross examining each BellSouth witness only once. Finally, BellSouth requested that if the Commission permits the CLECs to continue jointly, they should be limited to one witness per issue or subissue.

BellSouth also stated that to the extent that the Commission waives Rule T-26(A) for the Joint Petitioners, BellSouth requests Commission waiver of Rule T-26(B) for response.

On March 8, 2004, BellSouth filed its response to the Joint Petitioners request for arbitration. BellSouth did not file prefiled testimony or discovery requests.

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On March 9, 2004, Joint Petitioners filed a Joint Response, and Opposition of Petitioners to BellSouth's Motion was filed on March 2, 2004. In a letter dated March 15, 2004, BellSouth issued its reply to the Joint Response.

Having considered the points raised by the parties, the Panel grants the Joint Petitioners request for Joint Arbitration of issues as well as their request for a temporary waiver of Commission Rule T-26 (A). The Panel requires Joint Petitioners to file all items required in Rule T-26(A) that were not filed with the Original petition for arbitration, including discovery requests and testimony, by April 6, 2004.

Petitioners position must be identical on each common issue. Petitioners may sponsor one witness per issue or subissue. Joint Petitioners may cross examine each BellSouth's witness only once.

BellSouth shall file its response to discovery requests by Joint Petitioners, testimony, discovery requests, as well as any other information required by Commission Rule 4-26(B) on May 7, 2004.

Joint Petitioners shall file responses to BellSouth discovery by May 31, 2004.

The Parties are instructed to file jointly an agreed schedule for filing additional testimony, as well as a proposed hearing schedule on May 31, 2004

IT IS SO RULED.


Done at Montgomery, Alabama this

day of March, 2004.

Arbitration Panelists


Larry S. Smith


Justice Terry L. Butts


Rolland Casey

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2004, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
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- ☒ Electronic

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