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Of Counsel:
H LaDon Baltimore

February 25, 2005

Honorable Pat Miller, Chairman
Tennessee Regulatory Authority
ATTN: Sharla Dillon, Dockets
460 James Robertson Parkway
Nashville, TN 37243-5015

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law; Docket No. 04-00381

Dear Chairman Miller:

Enclosed please find the original and 13 copies Joint Petitioners's Motion for Emergency Relief in the above-referenced cause of action.

Thank you for your assistance If you have questions, please do not hesitate to contact me.

Sincerely,

H. LaDon Baltimore
Counsel for Joint Petitioners

LDB/dcg
Enclosures
cc: Parties of record

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION TO ESTABLISH GENERIC DOCKET TO CONSIDER AMENDMENTS TO INTERCONNECTION AGREEMENTS RESULTING FROM CHANGES OF LAW	)	**DOCKET NO. 04-00381**

MOTION FOR EMERGENCY RELIEF

COME NOW, NewSouth/NuVox Communications, Inc. ("NuVox"); KMC Telecom V, Inc.("KMC V") and KMC Telecom III LLC ("KMC III") (collectively, "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co Switched Services, LLC ("Xspedius Switched") and Xspedius Management Co. of Chattanooga, LLC ("Xspedius Management") (collectively, "Xspedius") (collectively, the "Joint Petitioners" or "CLECs"), by their attorneys respectfully move the Tennessee Regulatory Authority ("TRA" or "Authority") to issue an Emergency Declaratory Ruling finding that BellSouth Telecommunications Inc. ("BellSouth") may not unilaterally amend or breach its existing interconnection agreements with the Joint Petitioners or the Abeyance Agreement entered into by and between BellSouth and Joint Petitioners (collectively, "the Parties"). Joint Petitioners also request a stay prohibiting BellSouth from no longer accepting new orders for high-cap loops and transport after March 11, 2005 as explained hereinafter In support of such Motion, Joint Petitioner would show:

1. Joint Petitioners bring the instant matter before the Authority in light of BellSouth's February 11, 2005 Carrier Notification stating that certain provisions of the FCC's *Triennial Review Remand Order* ("*TRRO*") regarding new orders for de-listed UNEs ("new adds") are self-effectuating as of March 11, 2005 [1] BellSouth's pronouncement is based on a fundamental misreading or the *TRRO*. As with any change in law, the *TRRO* is a change that

[1] A true and correct copy of the Carrier Notification is attached hereto as Exhibit 1

must be incorporated into interconnection agreements prior to being effectuated It is not self-effectuating, as BellSouth claims To the contrary, the FCC clearly stated that the *TRRO* and the new Final Rules issued therewith would be incorporated into interconnection agreements via the section 252 process, which requires negotiation by the Parties and arbitration by the Authority of issues for which Parties are unable to resolve through negotiations.

2. Thus, as with any change in law, the *TRRO* is a change that must be incorporated into interconnection agreements prior to being effectuated NuVox, KMC and Xspedius have agreed with BellSouth that the *TRRO*, as well as the older *TRO* changes in law will be incorporated into their new arbitrated interconnection agreements. Accordingly, the Parties' new interconnection agreements will incorporate, *inter alia*, older *TRO* changes of law more-favorable-to-Joint Petitioners (such as commingling rights and clearer EEL eligibility criteria), as well as newer *TRRO* changes of law more-favorable-to-BellSouth (such as limited section 251 unbundling relief). The Parties' new Tennessee interconnection agreements certainly will not be in place by March 11, 2005.

3. BellSouth has taken an all or nothing approach to the *TRO* and past changes of law and it should not be permitted to pick-and-choose out of the *TRRO* the changes-of-law that are most favorable to it, while making NuVox and others wait-out arbitrations and/or the generic UNE proceeding to get the *TRO* changes, such as commingling and clearer EEL eligibility criteria that are more favorable to them. In Tennessee, the process for implementing these changes-of-law is already well under way in the Joint Petitioners' arbitration in the generic UNE change-of-law docket. Until the Parties are through these proceedings (or otherwise reach negotiated resolution) they must abide by their existing interconnection agreements. That is what the interconnection agreements require. That is what the Parties' Abeyance Agreement requires. That also is what the *TRRO* requires. And that what is fair.

4. The Authority must act now to prevent BellSouth from taking unilateral action on March 11, 2005 that would effectively breach and/or unilaterally amend Joint Petitioners'

existing interconnection agreements and most, if not all, other BellSouth Tennessee interconnection agreements. Importantly, the Authority's action must address all "new adds" and not just UNE-P. For facilities-based carriers like Joint Petitioners, high capacity loops and high capacity transport UNEs are essential and they are jeopardized by BellSouth's Carrier Notification.

5 Joint Petitioners will suffer imminent and irreparable harm if BellSouth is allowed to breach or unilaterally modify the terms of the Parties' existing interconnection agreements and Abeyance Agreement by refusing to accept local service requests ("LSRs") for new DS1 and DS3 loops and transport that BellSouth claims is delisted by application of the Final Rules Although used by Joint Petitioners to a lesser extent, the same is true for UNE-P Furthermore, Tennessee consumers relying on Joint Petitioners' services will be harmed if BellSouth is permitted to implement its announced plan to breach and/or unilaterally modify interconnection agreements by refusing to accept LSRs for "new adds" as of March 11, 2005 Tennessee businesses and consumers could be left without ordered services while the Parties sort-out the morass that will be created by BellSouth's unilateral decision to reject certain UNE orders. The resulting morass also likely would lead to a flood of litigation and complaint dockets before the Authority

6. Accordingly, Joint Petitioners seek expeditious consideration of this matter and an Order declaring *inter alia* that Joint Petitioners shall have full and unfettered access to BellSouth UNEs provided for in their existing interconnection agreements on and after March 11, 2005, until such time that those agreements are replaced by new interconnection agreements resulting from the arbitration in Docket No. 04-00046 (arbitration proceeding between the parties)

STATEMENT OF FACTS

7. On February 11, 2004, Joint Petitioners filed jointly with this Authority a petition for arbitration of an interconnection agreement with BellSouth. The matter was assigned Docket

No. 04-00046 A Hearing before the Authority was conducted in this matter January 25 - 27, 2005.

8 On March 2, 2004, the U S. Court of Appeals for the D C. Circuit in *United States Telecom Ass'n v FCC* ("*USTA II*")[2] affirmed in part, and vacated and remanded in part, the FCC's *Triennial Review Order* ("*TRO*"), which obligated ILECs to provide requesting telecommunications carriers with access to certain UNEs.[3] The D.C. Circuit initially stayed its *USTA II* mandate for 60 days. The stay of the *USTA II* mandate later was extended by the D.C Circuit for a period of 45 days, until June 15, 2004 on which date the D.C. Circuit's *USTA II* mandate issued At that time, certain of the FCC's rules applicable to BellSouth's obligation to provide CLECs with UNEs were vacated.

9. On June 30, 2004, BellSouth and Joint Petitioners entered into an Abeyance Agreement which was later memorialized in a July 15, 2004 Joint Motion to Hold Proceeding in Abeyance ("Abeyance Agreement") with the expectation that the FCC would soon issue additional and new rules governing ILECs' obligations to provide access to UNEs.[4] Specifically, the Abeyance Agreement provided for a 90-day abatement of the Parties' ongoing arbitration in order to consider *inter alia* how the post-*USTA II* regulatory framework should be incorporated into the new agreements being arbitrated.[5] The Parties agreed therein to avoid negotiating/ arbitrating change-of-law amendments to their existing interconnection agreements and agreed

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2 359 F 3d 554 (D C Cir 2004)

3 *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos 01-338, 96-98, 98-147 (rel Aug 21, 2003)("*Triennial Review Order*") ("*TRO*")

4 The Abeyance Agreement was filed in the form of a Joint Motion in Docket No 04-00046 (filed July 15, 2004)

5 Abeyance Agreement at 2

instead to continue to operate under their existing interconnection agreements until their arbitrated successor agreements become effective [6]

10. The Authority issued an order granting the Parties' Abeyance Agreement (*i e*, the Joint Motion) on July 16, 2004.

11 On August 20, 2004, the FCC released its *Interim Rules Order*, which held *inter alia* that ILECs shall continue to provide unbundled access to switching, enterprise market loops and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004.[7] The FCC required that those rates, terms and conditions remain in place until the earlier of the effective date of final unbundling rules, or six months after publication of the *Interim Rules Order* in the Federal Register.[8]

12. On February 4, 2005, the FCC released the *TRRO*, including its latest Final Unbundling Rules.[9] In the *TRRO*, the FCC found *inter alia* that requesting carriers are not impaired without access to local switching and dark fiber loops. The FCC also established conditions under which ILECs would be relieved of their obligation to provide pursuant to section 251(c)(3) unbundled access to DS1 and DS3 loops, as well as DS1, DS3 and dark fiber dedicated transport.

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6 *Id*

7 *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order and Further Notice of Proposed Rulemaking, WC Docket No 04-313, CC Docket No 01-338 (rel Aug 20, 2004) ("*Interim Rules Order*")

8 *Id* ¶ 21

9 *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order on Remand, WC Docket No 04-313, CC Docket No 01-338 (rel Feb 4, 2005)("*Triennial Review Remand Order*") ("*TRRO*") BellSouth already has sought to overturn this order *United States Telecom Ass'n et al v FCC*, Supplemental Petition for Writ of Mandamus, Nos 00-1012 *et al* (D C Cir), filed Feb 14, 2005 (BellSouth, Qwest, SBC and Verizon were parties to the pleading)

13. In the section of the *TRRO* entitled "Implementation of Unbundling Determinations" the FCC held that "incumbent LECs and competing carriers will implement the Authority's findings as directed by section 252 of the Act."[10]

14. The *TRRO* will become an effective FCC order on March 11, 2005.[11]

15. On February 11, 2005, BellSouth issued a Carrier Notification in which BellSouth alerted carriers to the issuance of the *TRRO* and made certain unfounded pronouncements regarding the effects of that order. Specifically, BellSouth claimed that "with regard to the issue of 'new adds' . the FCC provided that no 'new adds' would be allowed as of March 11, 2005, the effective date of the *TRRO*."[12] BellSouth further claimed that "[t]he FCC clearly intended the provisions of the *TRRO* related to 'new adds' to be self-effectuating," *i e.*, "without the necessity of formal amendment to any existing interconnection agreements."[13] BellSouth stated that as of March 11, 2005 it would reject UNE-P orders and orders for high capacity loops and transport where it has been relieved of its obligation to provide such UNEs, except where such orders are certified in accordance with paragraph 234 of the *TRRO*.[14] BellSouth also announced that it would not accept new orders for dedicated transport "UNE entrance facilities" or "UNE dark fiber loops" under any circumstances.[15]

ARGUMENT

A. The *TRRO* Is Not Self-Effectuating

16. Contrary to BellSouth's, the *TRRO* is not self-effectuating with regard to "new adds" or, for that matter, in any other respect (including any changes in rates of the availability of

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10 *Id* ¶ 233

11 *Id* ¶ 235.

12 Carrier Notification at 1

13 *Id* at 2

14 *Id*

15 *Id*

access to UNEs). In fact, in the section of the *TRRO* entitled "Implementation of Unbundling Determinations" the FCC plainly states that "incumbent LECs and competing carriers will implement the Authority's findings as directed by section 252 of the Act " [16] Section 252 of the Act requires negotiations and state Authority arbitration of issues that cannot be resolved through negotiation. This process is not "self effectuating."

17. This decision by the FCC to employ the traditional process by which changes of law are implemented is reflected in several instances throughout the *TRRO*. With regard to high capacity loops, the FCC held that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes."[17] The FCC also stated that "we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms for such facilities through the section 252 process."[18]

18. Concerning high capacity transport, the FCC also stated that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes."[19] And the FCC also stated that "we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms for such facilities through the section 252 process."[20]

19. With regard to UNE-P arrangements, the FCC also held that "carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes."[21]

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16 *Id* ¶ 233

17 *Id* ¶ 196

18 *Id* at note 519

19 *Id* ¶ 143

20 *Id* at note 399

21 *Id* ¶ 227

20. Thus, the FCC in no way indicated that it was unilaterally modifying state Authority approved interconnection agreements or that the changes-of-law that would become effective on March 11, 2005 would automatically supplant provisions of existing interconnection agreements as of that date. The "different direction" BellSouth claims the FCC took with respect to "new adds" is not evident in the *TRRO* Instead it is simply another diversion created by BellSouth.

21. Notably, the FCC's position in the *TRRO* also mirrors the position it took in the *TRO* In the *TRO,* the FCC declined Bell Operating Company requests to override the section 252 process and unilaterally change all interconnection agreements to avoid any delay associated with the renegotiation of contract provisions, explaining that "[p]ermitting voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252."[22]

22. BellSouth cannot escape the FCC's clear and unambiguous language requiring parties to amend their interconnection agreement pursuant to change of law processes. The Authority must not allow BellSouth to avail itself of its tortured interpretation of the *TRRO* with respect to "new adds." Accordingly, Joint Petitioners seek a declaration that the *TRRO*'s unbundling decisions and transition plans do not "self effectuate" a change to the Parties' existing interconnection agreements and that they will not govern the Parties relationships until such time as – and only to the extent – that the agreements currently being arbitrated are modified to incorporate such unbundling decisions and transition plans

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[22] *TRO* ¶ 701

B. The Abeyance Agreement Requires BellSouth to Continue to Provision UNEs Under the Terms of the Parties Existing Agreements, Until those Agreements Are Replaced with New Agreements

23. The terms of the Abeyance Agreement clearly require BellSouth to abide by the terms of the Parties' existing interconnection agreements until such agreements are replaced with new agreements currently being arbitrated. BellSouth and Joint Petitioners voluntarily agreed to continue to operate under the Parties' existing interconnection agreements until they are able to move into the arbitrated agreements that result from the Joint Arbitration Docket No 04-00046

24 In the Abeyance Agreement, the Parties stated that they agreed to the abatement period so that "they can consider how the post *USTA II* regulatory framework should be incorporated" into their interconnection agreements being arbitrated before the Authority [23] The Parties agreed to "avoid a separate/second process of negotiating/arbitrating change-of-law amendments to the current interconnection agreements to address *USTA II* and its progeny."[24] To implement this shared objective, BellSouth and the Parties agreed to "continue operating under their current Interconnection Agreements until they are able to move into the new arbitrated/negotiated agreements that ensue from [the arbitration] proceeding."[25]

25 In the Abeyance Agreement, BellSouth and the Joint Petitioners agreed to an orderly procedure for implementing whatever UNE rule changes ultimately resulted from *USTA II*. Since the Parties had all expended considerable resources in negotiating and arbitrating replacements to their expired interconnection agreements, and the process was closing in on an arbitrated resolution, it made no sense to anyone involved to waste time negotiating and arbitrating amendments to their expired interconnection agreements Instead, all concerned agreed to identify the issues raised by *USTA II* and its "progeny" (i e., the post-*USTA II*

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[23] Abeyance Agreement, at 2

[24] *Id*

[25] *Id*, at 2-3

regulatory framework, including the FCC's Final Rules adopted in the *TRRO*[26]) and resolve them in the context of their already ongoing proceedings to establish newly negotiated/arbitrated replacement interconnection agreements. As the Authority is well aware, the arbitration proceeding is well under way A Hearing was conducted in January 2005 and a briefing schedule has been set. A decision and resultant new interconnection agreements will follow

26. Nonetheless, by self-proclaimed fiat, BellSouth now seeks to walk away from its commitments in the Abeyance Agreement and make an end run around the Authority's interconnection arbitration process. By proclaiming that certain aspects of the *TRRO* are self-effectuating, and that BellSouth is entitled to unilaterally implement its disputed interpretation of those rule changes, BellSouth attempts to unilaterally amend the existing interconnection agreements that it previously agreed would not be changed, and renege on its agreement that the Parties would continue to operate under those agreements pending the outcome of the ongoing interconnection arbitration proceedings. As a simple matter of contract law and regulatory procedure, the Authority cannot allow BellSouth to simply abrogate the Abeyance Agreement and end run the arbitration process. Moreover, for BellSouth to ignore the commitments made to the Joint Petitioners in their Abeyance Agreement would constitute a breach of the duty to negotiate in "good faith" imposed on ILECs by Section 251(c)(1).

27. Joint Petitioners believe that BellSouth cannot implement the *TRRO* changes in law under any interconnection agreement without modifying interconnection agreements. However, that is especially true with respect to the Joint Petitioners. BellSouth and the Joint Petitioners actually sat down and negotiated on that point after *USTA II* became effective, agreed on the appropriate and orderly way to incorporate the post-*USTA II* rule changes into their new

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[26] The arbitration issues identified include Issue 23 (post federal transition period migration process), Issue 108 (*TRRO* / Final Rules), Issue 109 (*Interim Rules Order* intervening federal or state orders), Issue 110 (*Interim Rules Order* intervening court orders), Issue 111 (*Interim Rules Order* – transition plan / *TRRO* transition plan), Issue 112 (*Interim Rules Order* – frozen terms), Issue 113 (High Capacity Loop Unbundling Under 251/*TRRO*, 271, state law), Issue 114 (High Capacity Transport Unbundling Under 251/*TRRO*, 271, state law)

interconnection agreements, committed to continue operating under unchanged existing interconnection agreements until the newly negotiated/arbitrated agreements are finalized, and BellSouth certainly cannot be permitted to usurp its commitments made to the Joint Petitioners in Abeyance Agreement. Joint Petitioners have acted in reliance upon those commitments and proceeded through the arbitration process and the active Generic docket on that basis

CONCLUSION

28 BellSouth's recent Carrier Notice regarding the *TRRO* is a baseless and thinly veiled attempt to breach and or unilaterally amend the Parties' existing interconnection agreements. Moreover, it signals an intent to breach the Abeyance Agreement and to usurp the arbitration and Generic proceedings being conducted by the Authority. Joint Petitioners will be irreparably harmed and Tennessee consumers will suffer if BellSouth is permitted to breach the Parties' existing interconnection agreements or the Abeyance Agreement. Such action would also contravene the FCC's express directive that the *TRRO* is to be effectuated by the Section 252 process. As a matter of law, this Authority must ensure that Joint Petitioners have full and unfettered access to UNEs provided for in their existing interconnection agreements until such time as their agreements are superceded by the agreements currently being arbitrated before the Authority.

29. Moreover, principles of equity and fairness dictate that BellSouth and Joint Petitioners should stand on equal footing and play by the same rules. Joint Petitioners have waited a long time to avail themselves of pro-CLEC changes of law such as commingling rules and clearer EEL eligibility criteria ushered in by the *TRO*. Indeed, both of those issues have been

issues in the ongoing arbitration.[27] Even if they hadn't been arbitration issues, BellSouth has insisted on an all-or-nothing approach to implementing the changes-of-law ushered in by the *TRO*. BellSouth likewise must wait for the conclusion of the arbitration process to avail itself of *TRRO* changes of law favorable to it. This foundation of fairness is encapsulated in the Parties' Abeyance Agreement.

WHEREFORE, for the foregoing reasons, Joint Petitioners respectfully request that the Authority

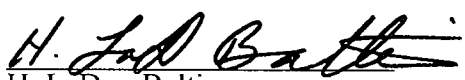
(1) declare that the transition provisions of the *TRRO* are not self-effectuating but rather are effective only at such time as the Parties' existing interconnection agreements are superceded by the interconnection agreements resulting from Docket No. 04-00046;

(2) declare that the Abeyance Agreement requires BellSouth to continue to honor the rates, terms and condition of the Parties' existing interconnection agreements until such time as those Agreements are superceded by the agreements resulting from Docket No. 04-00046,

(3) issue a stay prohibiting BellSouth from no longer accepting new orders for high-cap loops and transport after March 11, 2005, and

(3) grant Joint Petitioners such other relief as the Authority deems just and reasonable.

Respectfully submitted,



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[27] Issue 26 addresses whether BellSouth must abide by the FCC's commingling rules (BellSouth insists that it is entitled to an unwritten exception to the rules) and it remains unresolved Issue 50 addressed whether the EEL eligibility criteria should be incorporated to the agreement using the term "customer" (as in the rule) or another term defined by BellSouth in a manner that could be construed to limit Joint Petitioners' access to UNEs BellSouth recently agreed to abide by the rule and the issue was resolved using Joint Petitioner's proposed language

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U S Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 25th day of February, 2005.

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H. LaDon Baltimore

Dated: February 24, 2005

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91085039

Date February 11, 2005

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – Triennial Review Remand Order (TRRO) - Unbundling Rules

On February 4, 2005, the Federal Communications Commission (FCC) released its permanent unbundling rules in the Triennial Review Remand Order (TRRO)

The TRRO has identified a number of former unbundled network elements ("UNEs") that will no longer be available as of March 11, 2005, except as provided in the TRRO. These former UNEs include all switching[1], as well as certain high capacity loops in specified central offices[2], and dedicated transport between a number of central offices having certain characteristics,[3] as well as dark fiber[4] and entrance facilities[5]

The FCC, recognizing that it removed significant unbundling obligations formerly placed on incumbent local exchange carriers (ILEC), adopted transition plans to move the embedded base of these former UNEs to alternative serving arrangements.[6] The FCC provided that the transition period for each of these former UNEs (loops, transport and switching), would commence on March 11, 2005 [7] The FCC made provisions to include these transition plans in existing interconnection agreements through the appropriate change of law provisions. It also provided that rates for these former UNEs during the transition period would be trued up back to the effective date of the TRRO to reflect the increases in the prices of those former UNEs that were approved by the FCC in the TRRO

The FCC took a different direction with regard to the issue of "new adds" involving these former UNEs With regard to each of the former UNEs the FCC identified, the FCC provided that no "new adds" would be allowed as of March 11, 2005, the effective date of the TRRO. For instance, with regard to switching, the FCC said, "This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers using unbundled access to local circuit switching."[8] The FCC also said "This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251 (c)(3) except as otherwise specified in this Order." (footnote omitted)[9]

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[1] TRRO, ¶199
[2] TRRO, ¶¶174 (DS3 loops), 178 (DS1 loops)
[3] TRRO, ¶¶126 (DS1 transport), 129 (DS3 transport),
[4] TRRO, ¶¶133 (dark fiber transport), 182 (dark fiber loops)
[5] TRRO, ¶141
[6] TRRO, ¶¶142 (transport), 195 (loops), 226 (switching)
[7] TRRO, ¶¶143 (transport), 196 (loops) 227 (switching)
[8] TRRO, ¶199
[9] TRRO, ¶227

EXHIBIT
tabbies
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The FCC clearly intended the provisions of the TRRO related to "new adds" to be self-effectuating First, the FCC specifically stated that "Given the need for prompt action, the requirements set forth herein shall take effect on March 11, 2005.. .."[10] Further, the FCC specifically stated that its order would not "...supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis...,"[11] but made no such finding regarding existing interconnection agreements Consequently, in order to have any meaning, the TRRO's provisions regarding "new adds" must be effective March 11, 2005, without the necessity of formal amendment to any existing interconnection agreements. Therefore, while BellSouth will not breach its interconnection agreements, nor act unilaterally to modify its agreements, the FCC's actions clearly constitute a generic self-effectuating change for all interconnection agreements with regard to "new adds" for these former UNEs

Thus, pursuant to the express terms of the TRRO, effective March 11, 2005, for "new adds," BellSouth is no longer required to provide unbundled local switching at Total Element Long Run Incremental Cost ("TELRIC") rates or unbundled network platform ("UNE-P") and as of that date, BellSouth will no longer accept orders that treat those items as UNEs.

Further, effective March 11, 2005, BellSouth is no longer required to provide high capacity UNE loops in certain central offices or to provide UNE transport between certain central offices. As of that date, BellSouth will no longer accept orders that treat these items as UNEs, except where such orders are certified pursuant to paragraph 234 of the TRRO. In addition, as of March 11, 2005 BellSouth is no longer required to provide new UNE dark fiber loops or UNE entrance facilities under any circumstances and we will not accept orders for these former UNEs

Prior to the effective date of the TRRO, BellSouth will provide comprehensive information to CLECs regarding those central offices where UNE DS1 and DS3 loops are no longer available, and the routes between central offices where UNE DS1, DS3 and dark fiber transport are no longer available.

CLECs will continue to have several options involving switching, loops and transport available to serve their new customers To this end, with regard to the combinations of switching and loops that constituted UNE-P, BellSouth is offering CLECs these options:

- Short Term (6 month) Commercial Agreement to provide a bridge between the effective date of the Order and the negotiation of a longer term commercial agreement,
- Long Term Commercial Agreement (3 years, effective January 1, 2005, with transitional discounts available under those agreements executed by March 10, 2005)

In addition, most CLECs, if not all, already have the option of ordering these former UNEs, and particularly the combination of loops and switching, as resale, pursuant to existing interconnection agreements.

To be clear, in the event one of the above options is not selected and a CLEC submits a request for new UNE-P on March 11, 2005 or after, the order will be returned to the CLEC for clarification and resubmission under one of the available options set forth above. CLECs that have already signed a Commercial Agreement may continue to request new service pursuant to their Commercial Agreement.

With regard to the former high capacity loop and transport UNEs, including dark fiber and entrance facilities, that BellSouth is no longer obligated to offer, BellSouth has two options for CLECs to consider. Specifically, CLECs may either elect to order resale of BellSouth's Private Line Services or alternatively, may request Special Access service in lieu of the former TELRIC-priced UNEs. Any orders submitted for new unbundled high capacity loops and unbundled dedicated interoffice transport

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[10] TRRO ¶235

[11] TRRO ¶199 Also see ¶ 198

in those non-impaired areas after March 11, 2005, without the required certifications, will be returned to the CLEC for clarification and resubmission under one of the above options.

To obtain more information about this notification, please contact your BellSouth contract negotiator.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

BEFORE THE TENNESSEE REGULATORY AUTHORITY

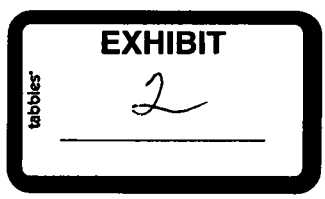
Nashville, Tennessee

In 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

JOINT MOTION TO HOLD PROCEEDING IN ABEYANCE

NewSouth Communications Corp. ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC Telecom V, Inc. and KMC Telecom III, LLC (collectively "KMC"), and Xspedius Communications, LLC on behalf of its operating subsidiary Xspedius Management Company Switched Services, LLC ("Xspedius") (collectively the "Joint Petitioners") and BellSouth Telecommunications, Inc. ("BellSouth") (together, the "Parties"), through their respective counsel, submit this Joint Motion to Hold Proceeding in Abeyance and hereby respectfully request that the Tennessee Regulatory Authority (the "Authority") hold the above-captioned proceeding in abeyance for a period of ninety (90) days. In doing so, the Parties request that the Authority suspend all pending deadlines and consideration of all pending motions until after October 1, 2004. By this Joint Motion, and contingent upon a grant by the Authority of the relief requested herein, the Parties waive through June 2005 the deadline, under section 252(b)(4)(C) of the Act, 47 U.S.C. § 252(b)(4)(C), for final resolution by the Authority of



the issues in this arbitration. In support of this Joint Motion, the Parties submit the following.

Joint Petitioners and BellSouth have engaged in the above-captioned arbitration proceeding since February 11, 2004. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), affirmed in part, and vacated and remanded in part, certain rules of the Federal Communications Commission ("FCC"), pursuant to which incumbent LECs are obligated to provide to any requesting telecommunications carrier access to network elements on an unbundled basis. The D.C. Circuit initially stayed its *USTA II* mandate for a period of sixty (60) days. The stay of the *USTA II* mandate later was extended by the D.C. Circuit for a period of forty-five (45) days, until June 15, 2004 on which date the D.C. Circuit's *USTA II* mandate issued. At this time, certain of the FCC's rules applicable to BellSouth's obligation to provide to Joint Petitioners network elements on an unbundled basis are vacated and the FCC is expected to issue new rules.

In light of these events, the Parties have agreed to the proposed 90-day abatement so that they can consider how the post *USTA II* regulatory framework should be incorporated into the new agreements currently being arbitrated and to identify what arbitration issues may be impacted and what additional issues, if any, need to be identified for arbitration. The Parties have agreed that no new issues may be raised in this arbitration proceeding

other than those that result from the Parties' negotiations regarding the post-*USTA II* regulatory framework.

With this framework, the Joint Petitioners and BellSouth have agreed to avoid a separate/second process of negotiating/arbitrating change-of-law amendments to the current interconnection agreements to address *USTA II* and its progeny. Accordingly, the Parties have agreed that they will continue operating under their current Interconnection Agreements until they are able to move into the new arbitrated/negotiated agreements that ensue from this proceeding.

During this ninety (90) day period, the Parties also have agreed to continue their efforts to reduce the number of issues already identified. In this regard, the Parties have agreed to conduct multiple face-to-face negotiations.

Consistent with the foregoing, the Joint Petitioners and BellSouth hereby respectfully request that the Authority hold the above-captioned proceeding in abeyance for a period of ninety (90) days. In so doing, the Parties request that the Authority suspend all pending deadlines and consideration of all pending motions until after October 1, 2004. The Parties also jointly propose and request approval of the following revised procedural schedule.

October 1, 2004	Revised Issues Matrix
October 22, 2004	Supplemental Direct Testimony (Simultaneous)

November 12, 2004 Reply Testimony (Simultaneous)

January 25-28, 2005 Hearing

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2004, a copy of the foregoing document was served on the following, via the method indicated:

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