

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 040130-TP
ORDER NO. PSC-05-1026-CFO-TP
ISSUED: October 20, 2005

ORDER GRANTING JOINT PETITIONERS'
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NOS. 04804-05 AND 04249-05

I. Case Background:

On February 11, 2004, the Joint Petitioners¹ (Petitioners) filed their Joint Petition for Arbitration with BellSouth Telecommunications, Inc. (BellSouth) pursuant to the Telecommunications Act of 1996. On March 8, 2004, BellSouth filed its Answer to the Joint Petitioners' Petition.

On May 17, 2005, the Petitioners filed a Requests for Specified Confidential Classification (RCC) of Document Nos. 04804-05 and 04249-05. In the RCC, the Petitioners claim that the information contained in responses to BellSouth's discovery should be exempt from Section 119.07, Florida Statutes, because the information is confidential pursuant to Section 364.183, Florida Statutes. The Joint Petitioners also argue in its RCC, that public disclosure of the information would impair the companies' competitive business practices, and provide competitors with an unfair advantage in future negotiations. Specifically, the information contains information regarding customer agreements, contractual proposals and other business arrangements that relate to the companies' competitive interests. The specific descriptions and explanations for confidential classification are contained in Attachment A to this Order.

¹ NewSouth Communications Corp. (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 Jacksonville, LLC (Xspedius Management) (collectively "Xspedius");(collectively the "Joint Petitioners" or "CLECs")

DOCUMENT NUMBER-DATE

10194 OCT 20 05

FPSC-COMMISSION CLERK

II. Standard:

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. This presumption is based on the concept that government should operate in the "sunshine." The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), rev. denied 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) rehearing den. June 12, 1989. When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed.

Exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or, if none of the examples are applicable, show that disclosure of the information will harm the Company's ratepayers or its business operations.

III. Ruling:

Upon review and consideration, Joint Petitioners' Request for Specified Confidential Classification, as reflected in Attachment A, hereto, is granted because the information satisfies the criteria set forth in Section 364.183, Florida Statutes. The information identified in Attachment A could be used by competitors in formulating strategic plans to compete against the Joint Petitioners. For example, the information contains information regarding customer agreements, contractual proposals and other business arrangements that relate to the companies' competitive interests. Therefore, the Joint Petitioners' RCCs are granted confidentiality because disclosure of such information would impair the competitive business practice of the company.


Based on the foregoing, it is

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Joint Petitioners' Request for Specified Confidential Classification of Document Nos. 04804-05 and 04249-05 and as listed in Attachment A, is hereby granted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 20th day of October, 2005.


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Description of Confidential Information

1. This document contains competitive, business information regarding operations, negotiations and agreements which is valuable to the Company and which is not intended to be disclosed. Such information is considered a trade secret pursuant to Section 364.183(3)(a), Florida Statutes, and is exempt from disclosure.
2. This document contains technical, customer specific business information related to the competitive interest of the Company and disclosure would impair the competitive business of the Companies. Pursuant to Section 364.183(3)(e), Florida Statutes, such information is exempt from the Public Records Act.
3. The document contains information concerning customer agreements, business arrangements and arrangements which relate to the competitive interest of the Company. Such information has value to the Company and disclosure would harm the Company and its customers. Such information is considered confidential pursuant to Section 364.183(3)(e), Florida Statutes and is exempt from the Public Records Act.
4. The information relates to the competitive interests of the Company and has value to the Company. The documents contain marketing and service information, contractual proposals and technical arrangements which have competitive value. Disclosure would be harmful to the Company and its customers and is confidential pursuant to Section 364.183(3)(d)(e) and is exempt from the Public Records Act.

<u>Document</u>	<u>Reason</u>
2 (A) (1)	2
2 (A) (2)	1, 2, 3
2 (A) (3)	4
2 (A) (4)	3, 4
2 (A) (5)	2, 3
2 (B)	2
2 (C)	4
2 (D)	2, 3, 4
2 (E)	1
2 (F) (1)	1, 2, 3
2 (F) (2)	3, 4
2 (F) (3)	2