



# Public Service Commission

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COMMISSION CLERK

**DATE:** JULY 11, 2002

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (PRUITT) *Y*  
OFFICE OF THE GENERAL COUNSEL (TEITZMAN) *AT Bic*

**RE:** DOCKET NO. 020535-TP - REQUEST FOR APPROVAL OF TRANSFER OF SUBSTANTIALLY ALL ASSETS, INCLUDING CUSTOMER CONTRACTS, OF E.SPIRE OPERATING ENTITIES TO XSPEDIUS OPERATING ENTITIES; APPLICATION FOR TRANSFER OF ALEC CERTIFICATE 4722 FROM AMERICAN COMMUNICATION SERVICES OF JACKSONVILLE, INC. D/B/A E.SPIRE TO XSPEDIUS MANAGEMENT CO. OF JACKSONVILLE, LLC, FOR TRANSFER OF ALEC CERTIFICATE NO. 5474 FROM ACSI LOCAL SWITCHED SERVICES, INC. D/B/A E.SPIRE COMMUNICATIONS, INC. TO XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC, AND FOR TRANSFER OF IXC CERTIFICATE NO. 5339 FROM ACSI LOCAL SWITCHED SERVICES, INC. D/B/A E.SPIRE COMMUNICATIONS, INC. TO XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC, AND REQUEST FOR WAIVER OF CARRIER SELECTION REQUIREMENT OF RULE 25-4.118, F.A.C.

**AGENDA:** 07/23/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\020535.RCM

### CASE BACKGROUND

On June 17, 2002, this Commission received a joint petition for approval to transfer the assets, including customer contracts, and the telecommunications certificates from American Communication Services of Jacksonville, Inc. d/b/a e.spire (holder of ALEC Certificate No. 4722) to Xspedius Management Co. of Jacksonville,

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LLC, from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (holder of ALEC Certificate No. 5474) to Xspedius Management Co. Switched Services, LLC, and from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (holder of IXC Certificate No. 5339) to Xspedius Management Co. Switched Services LLC.

On July 3, 2002, the Commission received a letter requesting that the docket be expanded to include a request for waiver of the carrier selection requirements in Rule 25-4.118, Florida Administrative Code.

The e.spire Operating Entities (American Communication Services of Jacksonville, Inc. d/b/a e.spire and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc.) filed a voluntary petition for Chapter 11 protection with the United States Bankruptcy Court for Delaware on March 22, 2001. On June 5, 2002 the Court approved the acquisition of the assets, including the customer accounts, by the Xspedius Operating Entities (Xspedius Management Co. of Jacksonville, LLC and Xspedius Management Co. Switched Services, LLC).

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, 364.345, and 364.603, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the acquisition of the telecommunications assets of the e.spire Operating Entities by the Xspedius Operating Entities, the transfer of ALEC Certificate 4722 from American Communications Services of Jacksonville, Inc. d/b/a e.spire to Xspedius Management Co. of Jacksonville, LLC, the transfer of ALEC Certificate No. 5474 from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. to Xspedius Management Co. Switched Services, LLC, and the transfer of IXC Certificate No. 5339 from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. to Xspedius Management Co. Switched Services, LLC?

**RECOMMENDATION:** Yes. (Pruitt)

**STAFF ANALYSIS:** The Commission should approve the acquisition of the telecommunications assets and the transfer of the certificates by the Xspedius Operating Entities. Section 364.345(2), Florida Statutes, reads:

A telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without:

- (a) A determination by the commission that the proposed sale, assignment, or transfer is in the public interest;
- and
- (b) The approval of the commission.

Section 364.337(1), Florida Statutes, reads in part:

The commission shall grant a certificate of authority to provide alternative local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area to be served.

Section 364.337(3), Florida Statutes, reads:

The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to

provide such service in the geographic area proposed to be served.

The Xspedius Operating Entities submitted three applications with the petition. A review of the applications indicates that the companies appear to meet the requirements of Sections 364.337 (1) and 364.337(3), Florida Statutes. Therefore, staff recommends that the Commission approve the transfer of the assets and the transfer of the certificates as being in the public interest.

**ISSUE 2:** Should the Commission relieve the Xspedius Operating Entities in this instance of the carrier selection requirements in Rule 25-4.118, Florida Statutes?

**RECOMMENDATION:** Yes. (Pruitt)

**STAFF ANALYSIS:** Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Pursuant to Rules 25-24.490 and 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs and ALECs.

Rule 24-24.455(4), Florida Administrative Code, reads as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is

consistent with the public interest to do so. The commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

(a) The factors enumerated in Section 364.337(4), Fla. Statutes;

(b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and

(c) Alternative regulatory requirements for the company may serve the purpose of this Part.

Furthermore, Section 364.337(2), Florida Statutes, reads in part:

A certificated alternative local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The companies have attested that they have provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notices that will be sent to the customers. The customers will receive ample notification of the transfer, and should not experience any interruption of service, rate increase, or switching fees.

If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, staff recommends that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived in this instance.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(Teitzman)**

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.