

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 020535-TP  
ORDER NO. PSC-02-1002-PAA-TP  
ISSUED: July 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

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NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TRANSFER OF TELECOMMUNICATION ASSETS; TRANSFER OF  
CERTIFICATES; AND GRANTING WAIVER OF THE CARRIER SELECTION  
REQUIREMENTS OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On June 17, 2002, we 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, LLC and from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (holder of ALEC Certificate No. 5474 and IXC Certificate No. 5339) to Xspedius Management Co. Switched Services, LLC. Additionally, on July 3, 2002, we 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).

Acquisition of Telecommunications Assets and Transfer of  
Certificates

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. Accordingly, we find the transfer of the assets and the transfer of the certificates as being in the public interest.

#### Waiver of the Carrier Selection Requirements

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.

We find 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

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provided for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. We have 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, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

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

We are vested with jurisdiction in this matter pursuant to Sections 364.335, 364.337, 364.345, and 364.603, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that American Communication Services of Jacksonville, Inc. d/b/a e.spire and Xspedius Management Co. of Jacksonville, LLC's joint request for approval to transfer the telecommunications assets and Alternative Local Exchange Telecommunications Certificate No. 4722 from American Communication Services of Jacksonville, Inc. d/b/a e.spire to Xspedius Management Co. of Jacksonville, LLC is hereby granted. It is further

ORDERED that Alternative Local Exchange Telecommunications Certificate No. 4722 shall be amended to reflect that Xspedius Management Co. of Jacksonville, LLC is the holder of this certificate. It is further

ORDERED that this Order shall serve as Xspedius Management Co. of Jacksonville, LLC's certificate and should be retained by Xspedius Management Co. of Jacksonville, LLC as proof of certification. It is further

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ORDERED that American Communication Services of Jacksonville, Inc. d/b/a e.spire and Xspedius Management Co. of Jacksonville, LLC shall remit Regulatory Assessment Fees for the year 2002. It is further

ORDERED that ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. and Xspedius Management Co. Switched Services, LLC's joint request for approval to transfer the telecommunications assets, Alternative Local Exchange Telecommunications Certificate No. 5474 and Interexchange Telecommunications Certificate No. 3160 from ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. to Xspedius Management Co. Switched Services, LLC is hereby granted. It is further

ORDERED that Alternative Local Exchange Telecommunications Certificate No. 5474 shall be amended to reflect that Xspedius Management Co. Switched Services, LLC is the holder of this certificate. It is further

ORDERED that Interexchange Telecommunications Certificate No. 5339 shall be amended to reflect that Xspedius Management Co. Switched Services, LLC is the holder of this certificate. It is further

ORDERED that this Order shall serve as Xspedius Management Co. Switched Services, LLC's certificate and should be retained by Xspedius Management Co. Switched Services, LLC as proof of certification. It is further

ORDERED that the carrier selection requirements in Rule 25-4.118, Florida Administrative Code, are waived in this instance. It is further

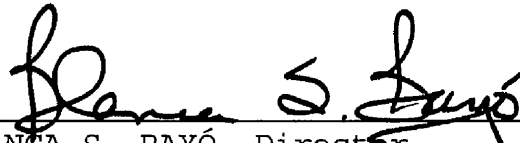
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of July, 2002.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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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 that is available under Section 120.57, 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 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.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 15, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.