

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's Triennial UNE Review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport
Docket No. 030852-TP

VERIZON FLORIDA INC.'S MOTION TO COMPEL XSPEDIUS DISCOVERY

Pursuant to Rules 28-106.204 and 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.380 of the Florida Rules of Civil Procedure, Verizon Florida Inc. ("Verizon"), by and through its undersigned counsel, hereby submits this Motion to Compel Discovery requesting the Florida Public Service Commission ("Commission") to order Xspedius Communications, LLC ("Xspedius") to respond fully and completely to Verizon's First Request for Admissions ("Request for Admissions"), First Set of Interrogatories ("Interrogatories") and First Request for Production of Documents ("Request for Production of Documents") (collectively, "Verizon's First Set") (Exhibit 1).

Verizon served Xspedius with these discovery requests, which concern Xspedius' fiber optic transport facilities in Florida, on or around December 22, 2003. On December 29, 2003, Xspedius submitted a collection of general objections to Verizon's First Set but provided no detailed responses (Exhibit 2). On February 4, 2004, Xspedius submitted additional responses

("Responses") to Verizon's First Set that included objections to each of Verizon's Requests for Admission, Interrogatories, and Requests for Production of Documents that were based on the previously filed general objections (Exhibit 3).

AUS
CAF
CMP
COM 5
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

DOCUMENT NUMBER-DATE

02582 FEB 23 3

FPSC-COMMISSION CLERK

Relying on these objections, Xspedius produced *no* information about its fiber optic transmission facilities in response to Verizon's Interrogatories, other than to say -- in response to some of them -- that Xspedius does not lease transport facilities and dark fiber to or from other carriers. Xspedius similarly refuses to produce any documents in response to Verizon's requests for production, except for one confidential document containing minimal information about only three components of Xspedius's fiber network in Florida. (Exhibit 4)<sup>1</sup> Xspedius's extensive boilerplate objections -- including its objections to producing information about fiber optic transmission facilities that *Xspedius* deems are not "currently operational" and not "relevant" to this proceeding -- provide no basis for refusing to answer Verizon's requests. The Commission should overrule these objections and order Xspedius to answer Verizon's requests forewith.

Pursuant to Rule 28-106.204(3), Verizon has conferred with Xspedius regarding this motion: Verizon and Xspedius were not able to reach agreement about Xspedius' objections.

## **BACKGROUND**

### **A. The Subject Matter Of This Proceeding**

As part of its *Triennial Review Order*, the Federal Communications Commission ("FCC") has delegated certain unbundling determinations to state commissions, in the belief that "state commissions are well situated to conduct the granular analysis required" by the FCC.<sup>2</sup> In order to complete this analysis, the FCC has asked state commissions "to take on some fact

---

<sup>1</sup> In addition, in the course of responding to concerns raised by Verizon about Xspedius's responses to the First Set as described below, Xspedius provided Verizon with certain confidential documents that it had produced in response to Bellsouth's requests.

<sup>2</sup> See Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶ 190 (2003) ("*Triennial Review Order*").

finding responsibilities.”<sup>3</sup> And the focus of this fact finding must be the deployment of network facilities by competing carriers, since the FCC is “most interested in granular evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities.”<sup>4</sup>

With regard to transport in particular, the FCC has delegated to state commissions the authority to make findings of fact on a granular scale with respect to whether requesting carriers are not impaired without access to unbundled transport.<sup>5</sup> State commissions are to make these findings of fact with regard to the “two ways for an incumbent LEC or other party to show where requesting carriers are not impaired without unbundl[ing] transport” established by the FCC: “(1) by identifying specific point-to-point routes where carriers have the ability to use alternatives to the incumbent LEC’s network, or (2) by identifying specific point-to-point routes where self-provisioning transport facilities is economic.”<sup>6</sup> Moreover, the FCC “adopt[ed] two triggers designed to identify where carriers are not impaired without access to incumbent LEC transport based on the two primary ways carriers can overcome impairment.”<sup>7</sup> As the FCC explained:

The first trigger is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, where three or more competing carriers, not affiliated with each other or the incumbent LEC, and have deployed non-incumbent LEC transport facilities along a specific

---

<sup>3</sup> *Id.* ¶ 188.

<sup>4</sup> *Id.* ¶ 93.

<sup>5</sup> *Id.* ¶ 360.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* ¶ 399.

route, regardless of whether these carriers make transport available to other carriers, we find that to be sufficient evidence that competing carriers are capable of self-deploying. The second trigger is designed to identify where competitive wholesale alternatives are available. Specifically, we find that competing carriers are not impaired where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity along a given route between incumbent LEC switches or wire centers.<sup>8</sup>

This proceeding concerns whether these “triggers” have been met in Florida.

## **B. Xspedius's Objections To Verizon's Discovery**

Verizon served Requests for Admissions, Interrogatories, and Requests for Production of Documents on Xspedius on or around December 22, 2003, seeking information regarding Xspedius's fiber optic transmission facilities. Verizon's First Set includes two Requests for Admission, 21 Interrogatories, and 11 Requests for Production.

### **1. Interrogatories Regarding Facilities Owned By Xspedius**

Verizon's first eight interrogatories seek information about fiber optic transmission facilities owned by Xspedius. Specifically, Verizon asked Xspedius to “[i]dentify all fiber optic transport facilities in Florida that [Xspedius] own[s].” Interrogatory No. 1. For each transport facility identified in response to Interrogatory No. 1, Verizon asked Xspedius to (a) provide a map in electronic form showing the facility's location; (b) identify the number of fibers in the fiber cable[s] it has deployed; and (c) identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers in Florida to which the transport facility is directly or indirectly connected. *See* Interrogatory Nos. 2-3, 5. In addition, for all of Xspedius's facilities connected to an incumbent LEC switch or wire center, Verizon asked Xspedius to identify (a) the optical speed at which those facilities are operating; (b) the capacities of the services (*e.g.* DS-1, DS-3)

---

<sup>8</sup> *Id.* ¶ 400 (footnotes omitted).

carried by those facilities to and/or from the incumbent LEC switch or wire center; and (c) the numbers of "dark fibers" -- *i.e.* fibers that have not been activated through attachment of optronics -- in those facilities. *See* Interrogatory Nos. 6-8.

As to all of the interrogatories described above, in its February 4, 2004 Objections and Responses, Xspedius objected on grounds of relevance and overbreadth, and refused to provide *any* of the requested information. In response to seven of these eight interrogatories, Xspedius repeats the same specific objection:

Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, . . . . The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.*, TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation" (TRO n.1256). Therefore, Xspedius also objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant.

Responses to Interrogatory Nos. 1-3, 5-8. Additionally, in response to five of these first eight interrogatories, Xspedius objected on grounds that the questions "request[] information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC." Responses to Interrogatory Nos. 4-8.

2. Interrogatories Regarding Facilities Leased Or Obtained From Suppliers.

In interrogatories nine through 15, Verizon sought information from Xspedius regarding dark fiber and transport facilities that it has obtained from suppliers. Specifically, Verizon asked Xspedius to identify all incumbent LEC switches or wire centers in Florida at which Xspedius has obtained dark fiber from any supplier, as well as information about the optical speed and capacities of those fibers and whether Xspedius has lit the fibers using optronics. *See* Interrogatory Nos. 9-10. Verizon also asked Xspedius to identify all transport facilities in

Florida that it uses or possess but does not own, and to provide information about those facilities, such as optical speed and capacity and the names of the suppliers. *See* Interrogatory Nos. 11-15.

In response to all of these interrogatories, Xspedius again variously objected that they were overbroad to the extent that they inquired about facilities that are "not currently operational" (Responses to Interrogatory Nos. 11-16), or are "not interoffice facilities of the kind deemed relevant to this inquiry by the FCC" (Responses to Interrogatory Nos. 9-15). Subject to these and other objections, Xspedius responded that it does "not purchase[] any dark fiber for interoffice transport" within the relevant geographic area (Responses to Interrogatory Nos. 9-10), and "does not have interoffice transport . . . that it uses or possesses but does not own other than those purchased from Verizon" (Responses to Interrogatory Nos. 11-15).

### 3. Interrogatories Regarding Facilities That Xspedius Makes Available To Others

In interrogatories 16 through 20, Verizon sought similar types of information from Xspedius regarding transport facilities that it "make[s] available to other carriers, or [has] offered to make available to other carriers." Interrogatory No. 16; *see also* Interrogatory Nos. 17-20. Xspedius objected to each of these interrogatories on the same grounds that they relate to facilities that are "not currently operational" and are not relevant "interoffice facilities." Responses to Interrogatory Nos. 16-20. Subject to these and other objections, Xspedius responded that it "does not make interoffice transport available to other carriers" within the relevant geographic area (*id.*).

### 4. Verizon's Document Requests

In its Request for Production of Documents ("RFPs"), Verizon seeks documents that describe certain features (i.e., optical speed, capacity, etc.) of the transport facilities and dark fiber in Florida that Xspedius owns, makes available or is willing to make available to others,

and obtains from suppliers. *See* RFP Nos. 1, 3-5, 7-10. Verizon also asks Xspedius to produce "all document[s] identifying the incumbent LEC switches or wire centers in Florida at which you have operational collocation arrangements." RFP No. 2. Xspedius objected to all of these requests on the same grounds that they relate to facilities that are "not currently operational" and are not relevant "interoffice facilities." *See* Responses to RFP Nos. 1-10. In response to Request for Production No. 2, Xspedius produced a confidential spreadsheet which, it contends, constitutes "a list of its active collocations" in the relevant geographic area. *See* Response to RFP No. 2; FL-VERIZONTRASNP-POD2 (Exhibit 4). Xspedius produced no other documents in response to any of Verizon's FRPs.<sup>9</sup>

\* \* \*

In sum, Xspedius failed to meaningfully respond to the vast majority of Verizon's Interrogatories, Requests for Document Production, and Requests for Admission. As explained below, the information requested by Verizon in its First Set is relevant and necessary to evaluating whether the dedicated transport triggers have been satisfied.

### **C. Verizon's Attempt To Resolve Present Dispute With Xspedius**

Prior to bringing the present motion, counsel for Verizon contacted counsel for Xspedius and raised the concern that Xspedius had improperly objected to Verizon's First Set. *See* February 12, 2004 E-mail from David Mendel to Doc Horton (Exhibit 5). Counsel for Verizon contended that, by refusing to answer Verizon's discovery requests to the extent its facilities are not "currently operational" and not "relevant" to the FCC's transport inquiry, Xspedius had made

---

<sup>9</sup> Verizon's RFP No. 11 asked Xspedius to "[p]rovide the confidential filings with respect to dedicated transport that you made with the FCC in the Triennial Review docket. (*See, e.g.*, FCC's Triennial Review Order, ¶ 392 n.1216)." Xspedius refused to produce such filings on the ground that "Xspedius is not cited in the aforementioned footnote." Response to RFP No. 11.

it impossible for Verizon to ascertain whether Xspedius, in fact, had produced all responsive information relevant to the proceeding. *See id.* In response to this inquiry, Xspedius stood by its objections but produced to Verizon its earlier responses to certain of Bellsouth and the Commission Staff's discovery requests; these earlier responses, Xspedius contends, "provided . . . statewide lists of its collocations, and direct answers as to whether Xspedius self-provides or wholesales transport at the relevant capacity levels." *See* February 17, 2004 E-mail from Steve Augustino to David Mendel (Exhibit 6).

Counsel for Verizon tried, without success, to break the impasse by asking Xspedius to augment the information in the spreadsheet that Xspedius had produced in response to Verizon's RFP No. 2. *See* February 19, 2004 E-mail from David Mendel to Steve Augustino (Exhibit 7). Verizon counsel also asked Xspedius to clarify certain of its terminology contained in responses to Verizon and Bellsouth's discovery requests, including the term "currently operational" and the phrase "interoffice facilities of the kind deemed relevant to this inquiry by the FCC." *See id.* Xspedius failed to provide the requested additional information and clarifications. Verizon then filed the present motion.

## ARGUMENT

### **I. Verizon Has Satisfied the Standard for Discovery of the Information Omitted by Xspedius from its Responses.**

As this Commission has recognized, discovery is proper and may be compelled if it is not privileged and is or likely will lead to relevant and admissible information:

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."



Section 90.401 of the Florida Evidence Code defines “relevance” as evidence tending to prove or disprove a material fact.<sup>10/</sup>

Verizon’s discovery requests are both relevant and likely to lead to the discovery of additional relevant and admissible information. Verizon's First Set targets the information that is necessary for the Commission to evaluate the two triggers established by the *Triennial Review Order*, discussed above. Specifically, Verizon sought detailed information regarding Xspedius's fiber optic transport facilities in Florida, including the number of fibers deployed, the number of “lit” fibers, the ILEC switches and wire facilities to which the fibers are connected, and the optical speed and capacity of Xspedius's facilities and services. This information is directly relevant to the self-provisioning trigger. Verizon also sought detailed information regarding the transport facilities that Xspedius uses or possesses but does not own, including the ILEC switches and wire centers to which these facilities are connected, the optical speed of these transport facilities, and the non-incumbent LEC supplier providing the facilities; Verizon sought similar information for any facilities that Xspedius makes available to other carriers. All of this information is directly relevant to both the self-provisioning *and* competitive wholesale alternatives triggers. Thus, the information requested by the First Set is relevant and indeed necessary to Commission’s transport analysis under the *Triennial Review Order*. Xspedius has not demonstrated otherwise.

Xspedius cannot avoid its obligation to provide the information requested by Verizon merely by contending that the information relates to facilities that are not "currently operational" or are not "interoffice facilities of the kind deemed relevant to this inquiry by the FCC." *See, e.g.,* Responses to Interrogatory Nos. 1-20. As discussed below, these contentions by Xspedius

---

<sup>10/</sup> Order Denying Public Counsel’s Motion to Compel, *Jasmine Lakes Util. Corp.*, Docket No. 920148-WS, Order No. PSC-93-0652-PCO-WS, at 2 (Fla. P.S.C. Apr. 28, 1993).

are legally and factually unsupportable. But even if there were any doubt, Xspedius is not entitled to invoke such contentions as grounds for opposing discovery. Instead, Xspedius must provide comprehensive information concerning its network architecture in order for *the Commission* to decide whether Xspedius is a self-provider of transport under the meaning of the *Triennial Review Order*, or, alternatively, whether it wholesales to other carriers, and thus whether either of the unbundled transport triggers is satisfied. The information requested by Verizon is clearly relevant to these determinations.

## **II. Xspedius Cannot Impede Discovery Through Self-Serving Reliance On Undefined Terms.**

Xspedius' objections are untenable because they rely on Xspedius's own self-serving application of terms that Xspedius has failed to define. First, Xspedius contends that Verizon is not entitled to information about facilities that are not "currently operational." This phrase does not appear in the *Triennial Review Order* with regard to transport, and in any event fails to provide a basis upon which Xspedius can argue that its facilities do not satisfy the *Order's* transport triggers. Even if what Xspedius intends to say is that Verizon is not entitled to information about facilities that are not "*operationally ready*" -- a claim that Xspedius does not expressly make -- Xspedius's objection is still problematic. The term "operationally ready" has a specific and limited meaning under the *Triennial Review Order*:

Each counted self-provisioned facility along a route must be *operationally ready* to provide transport into or out of an incumbent LEC central office. We find that the competitive transport facilities counted to satisfy this trigger must terminate in a collocation arrangement which may be arranged either pursuant to contract, tariff or, where appropriate section 251(c)(6) of the Act. We find it beneficial to count for purposes of this test all types of collocation arrangements, including those that may not qualify for collocation under section 251(c)(6).

*Id.* ¶ 406 (emphasis added) (footnotes omitted). Thus, under the *Order*, a fiber optic facility is *operationally ready* if it is *collocated* at an incumbent wire center or switch. Xspedius, however, improperly converts this term into a open-ended shield against discovery, the breadth and contours of which only Xspedius can divine. The Commission should reject Xspedius' effort to avoid producing discovery and should be ordered to produce *all* information about its network requested by Verizon, so that the Commission, not Xspedius, is permitted to decide whether its facilities count toward the FCC's triggers.

Second, Xspedius contends that Verizon is not entitled to information about facilities that are "interoffice facilities of the kind deemed relevant to this inquiry by the FCC." Again, Verizon is at a loss to understand which facilities Xspedius deems are "not relevant." Notably, FCC Rule 51.319(e), which defines dedicated transport, states:

[A] "route" is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X").

47 C.F.R. § 51.319(e). The relevant sections of the *Triennial Review Order* similarly contemplate that dedicated transport can be routed through switch facilities.<sup>11</sup> It is therefore likely that Xspedius has excluded from its discovery responses information about facilities that pass through intermediate switches or wire centers, rather than form a continuous route between incumbent ILEC wire centers, on the mistaken premise that such indirect routes are not

---

<sup>11</sup> In the paragraphs that discuss triggers for dedicated transport, the *Order* defines a route as "a connection between wire center or switch 'A' and wire center or switch 'Z.'" *Triennial Review Order* ¶ 401. The *Triennial Review Order* further states: "Even if, on the incumbent LEC's network, a transport circuit from 'A' to 'Z' passes through an intermediate wire center 'X,' the competitive providers must offer service connecting wire centers 'A' and 'Z,' *but do not have to mirror the network path of the incumbent LEC through wire center 'X.'*" *Id.* (emphasis added).

"relevant."<sup>12</sup> Xspedius should provide complete information about its transmission facilities in response to Verizon's requests, so that the Commission, not Xspedius, is permitted to decide whether its facilities count toward the FCC's triggers.

Finally, Xspedius has even failed to produce information in response to requests that it did *not* object to. In response to Verizon interrogatories 1, 2, 3, 5, 6, 7, and 8, Xspedius objects *only* to those "portions" of the questions that Xspedius contends are overbroad or irrelevant. Xspedius, however, fails to provide any responsive information -- even information that it, under its own definition, believes is relevant. Thus, at a minimum, Xspedius should be ordered to produce responsive information about facilities that are "currently operational" and "relevant" under its own definitions."<sup>13</sup>

---

<sup>12</sup> AT&T has expressly taken such a position in this proceeding, and Verizon's motion to compel discovery from AT&T refuting this position is now pending before the Commission. *See* Verizon Florida Inc.'s Motion To Compel AT&T Discovery, Docket No. 030852-TP (filed Feb. 9, 2004).

<sup>13</sup> Xspedius also should be ordered to produce any confidential filings it made with respect to dedicated transport in the Triennial Review docket, as requested by Verizon RFP No. 11. *See* RFP No. 11. These confidential filings are an obvious source of information about Xspedius' transport facilities and, therefore, are clearly relevant to this proceeding. The reason for proffered by Xspedius for its refusal to produce these filings -- that it was not "cited" in the *Triennial Review Order* footnote referenced by Verizon in the RFP -- is mere stonewalling. *See* Response to RFP 11. Verizon referenced the footnote in its RFP simply to demonstrate an *example* of a filing made by a competitive LEC in the Triennial Review docket. By no means was the referenced footnote intended to somehow *limit* the applicability of the RFP so that it excluded Xspedius. If that was the case, Verizon would not have issued this RFP to Xspedius in the first place.

## CONCLUSION

For the foregoing reasons and in light of the impending discovery cut-off on February 25, 2004 and subsequent hearings beginning March 3, 2004, the Commission should order Xspedius immediately to provide full and complete responses to Verizon First Set, without objection.

Respectfully submitted,

Verizon Florida Inc.

By: Richard A. Chapkis / By DSM

Richard A. Chapkis Esq.  
V.P. & General Counsel-SE Region  
Verizon Florida Inc.  
211 N. Franklin - FLTC0717  
P.O. Box 110  
Tampa, FL 33601-0110  
Telephone: (813) 483-1256  
Facsimile: (813) 273-9825

*Counsel for Verizon Florida Inc.*

February 23, 2004

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Motion to Compel Xspedius Discovery in Docket No. 030852-TP were sent via electronic mail and U.S. mail on February 23, 2004 to:

Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Nancy White c/o Nancy Sims  
BellSouth Telecomm. Inc.  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301-1556

Tracy Hatch  
AT&T  
101 N. Monroe, Suite 700  
Tallahassee, FL 32301

Michael Gross  
Florida Cable Telecomm. Assn.  
246 East 6<sup>th</sup> Avenue  
Tallahassee, FL 32303

Susan Masterton  
Charles Rehwinkel  
Sprint-Florida  
1313 Blairstone Road  
MC FLTLHO0107  
Tallahassee, FL 32301

Donna McNulty  
MCI WorldCom, Inc.  
1203 Governors Square Blvd.  
Suite 201  
Tallahassee, FL 32301-2960

Lisa A. Sapper  
AT&T  
1200 Peachtree Street, NE  
Suite 8100  
Atlanta, GA 30309

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter Reeves Law Firm  
117 South Gadsden Street  
Tallahassee, FL 32301

Floyd Self  
Messer Caparelo & Self  
215 S. Monroe Street  
Suite 701  
Tallahassee, FL 32301

Marva Brown Johnson  
KMC Telecom III, LLC  
1755 North Brown Road  
Lawrenceville, GA 30034-8119

Nanette Edwards  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Charles V. Gerkin, Jr.  
Allegiance Telecom, Inc.  
9201 North Central Expressway  
Dallas, TC 75231

Terry Larkin  
Allegiance Telecom Inc.  
700 East Butterfield Road  
Lombard, IL 60148

Matthew Feil  
Scott A. Kassman  
FDN Communications  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801

Norman H. Horton, Jr.  
Messer Caparelo & Self  
215 S. Monroe Street  
Suite 701  
Tallahassee, FL 32301

Jake E. Jennings  
NewSouth Comm. Corp.  
NewSouth Center  
Two N. Main Center  
Greenville, SC 29601

Jon C. Moyle, Jr.  
Moyle Flanigan Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301

Jorge Cruz-Bustillo  
Supra Telecommunications and Information Systems, Inc.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, FL 33133

Jonathan Audu  
Supra Telecommunications and Information Systems, Inc.  
1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301-5027

Bo Russell  
Nuvox Communications Inc.  
301 North Main Street  
Greenville, SC 29601

Thomas M. Koutsky  
Z-Tel Communications, Inc.  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, DC 20036

Charles J. Beck  
Deputy Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

J. Jeffry Wahlen  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, FL 32301

Richard A. Chapkis / By DSM  
Richard A. Chapkis



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising ) Docket No. 030852-TP  
from Federal Communications Commission's ) Filed: December 22, 2003  
triennial UNE Review: Location-Specific )  
Review for DS1, DS3, and Dark Fiber Loops )  
and Route-Specific Review for DS1, DS3 and )  
Dark Fiber Transport )  
\_\_\_\_\_ )

**VERIZON FLORIDA INC.'S  
FIRST REQUEST FOR ADMISSIONS (NOS. 1-2),  
FIRST SET OF INTERROGATORIES (NOS. 1-21) AND  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-11) TO  
XSPEDIUS COMMUNICATIONS, LLC  
D/B/A/ XSPEDIUS COMMUNICATIONS**

Verizon Florida Inc. ("Verizon") hereby requests that Xspedius Communications, LLC d/b/a Xspedius Communications ("Respondent") respond to the following Combined Requests for Admission, Interrogatories, and Production of Documents (collectively, "Requests"). These Requests are to be answered by the Respondent's corporate officers, employees, or agents who know the requested information and are authorized to respond on behalf of Respondent, with said answers being served upon Verizon within 20 calendar days of service of these Requests pursuant to Order No. PSC-03-1265-PCO-TP. These Requests are continuing in nature and therefore require Respondent to submit supplemental answers or documents should additional responsive information become known or documents supplied in response prove to be incorrect or defective.

**I. INSTRUCTIONS**

A. If you object to any part of a Request, answer all parts of such Request to which you do not object, and as to each part to which you do object, set forth the specific basis for the objection.

B. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to a Request contained in a non-written communication, state the following with respect to the non-written communication:

1. The date;
2. The identity of each of the participants in the non-written communication;
3. The identity of each person present during all or any part of the non-written communication;
4. A description of the non-written communication that is sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed;
5. The nature of your claim of non-discoverability (e.g., attorney-client privilege); and
6. Each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Verizon to make a full determination as to whether your claim is valid.

C. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to a Request contained in a document, set forth with respect to the document:

1. The date and number of pages;

2. The identity of the author(s) or preparer(s);
3. The identity of the addressee, if any;
4. The title;
5. The type of tangible thing (e.g., letter, memorandum, telegram, chart, report, recording disc);
6. The subject matter (without revealing the information as to which privilege or protection from non-disclosure is claimed);
7. The identity of each person who has received the document or to whom knowledge of the contents of the document was communicated;
8. The identity of the present custodian(s);
9. The nature of your claim of non-discoverability (e.g., attorney-client privilege); and
10. The facts on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Verizon to make a full determination as to whether your claim is valid.

D. On each Request response, list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

## II. DEFINITIONS

As used in these Requests, the following terms have the meaning as set forth below:

A. The terms "your company" shall include all of your subsidiaries and affiliates, including without limitation all former and present officers, attorneys, servants, agents, and representatives. For example, a request to AT&T includes without limitation TCG, and a request to MCI or WorldCom includes without limitation Intermedia.

B. The term "Verizon" shall include former GTE, including without limitation all former and present officers, attorneys, servants, agents, and representatives.

C. The terms "relates to" or "relating to" mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

D. The term "including" means "including, but not limited to."

E. The terms "document" or "documents" shall include, without limitation, any writings and documentary material of any kind whatsoever, both originals and copies (regardless of origin and whether or not including additional writing thereon or attached thereto), and any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written comments of and concerning such material, including but not limited to: correspondence, letters, memoranda, notes, reports, papers, files, books, contracts, contract amendments or supplements, contract offers, and records of any sort (printed, recorded or otherwise) of any oral

communication whether sent or received or neither, and other written records or recordings, in whatever form, stored or contained in or on whatever medium including computerized or digital memory or magnetic media.

F. The term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

G. The term "person" or "persons" means and includes any individual, committee, task force, division, department, company, contractor, state, federal or local government agency, corporation, firm, association, partnership, joint venture or any other business or legal entity.

H. The terms "identify" and "identity" when used with reference to a natural person mean to state his or her full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.

I. The terms "identify" and "identity" when used with respect to any other entity mean to state its full name, the address of its principal place of business and the name of its chief executive officers.

J. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general subject matter, its present location, and

its present custodian. If any such document was but is no longer in Respondent's possession or subject to its control, state what disposition was made of it and explain the circumstances surrounding, and the authorization, for such disposition, and state the date or approximate date thereof.

K. The terms "identify" and "identity" with respect to any non-written communication mean to state the identity of the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

L. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of the Requests.

M. The terms "transport services" or "transport facilities" include but are not limited to transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch.

### **III. REQUESTS FOR ADMISSION: DEDICATED TRANSPORT**

In responding to each Request for Admission, specifically admit or deny the matter, or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

1. Admit that Respondent states on its website, in words or in substance, that it offers transport facilities or services to other carriers. (For the definitions of transport facilities or transport services for this and all other requests for admission, see Instruction M.)
2. Admit that Respondent does not state on its website, in words or in substance, that it does not offer transport facilities or services to other carriers in Florida.

#### **IV. INTERROGATORIES: DEDICATED TRANSPORT**

1. Identify all fiber optic transport facilities in Florida that you own, by street address of its origination and termination points (or if no termination point, by the location of a fiber ring), as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.) (For the definitions of transport facilities or transport services for this and all other interrogatories, see Instruction M.)
2. For each transport facility identified in response to Question 1, provide a map in an electronic form (such as MapInfo, Arcview, or another GIS program) showing its location.
3. For each transport facility identified in response to Question 1, identify the number of fibers in the fiber cable(s) you deployed.
4. For each transport facility identified in response to Question 1, identify the number of fibers that you activated (*i.e.*, "lit") through the attachment of optronics.
5. For each transport facility identified in response to Question 1, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers in Florida to which the transport facility is directly or indirectly connected.
6. For each incumbent LEC switch or wire center identified in response to Question 5, identify the optical speed at which the facilities connected to each is operating.
7. For each incumbent LEC switch or wire center identified in response to Question 5, identify the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by your transport facilities to and/or from the incumbent LEC switch or wire center.
8. For each incumbent LEC switch or wire center identified in response to Question 5, identify where you have fiber that has not been "lit" through the attachment of optronics (*i.e.*, dark fiber) and the number of unlit fibers in each transport facility terminating at that location.
9. Identify by the 11-digit CLLI code, all incumbent LEC switches or wire centers in Florida at which you have obtained dark fiber transport facilities from any supplier, including but not limited to from incumbent LECs.

10. For each dark fiber facility identified in response to Question 9, state (a) whether you have activated the dark fiber through the attachment of optronics (*i.e.*, whether the fiber is now "lit"), (b) the optical speed at which the facility operates, and (c) the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by each such transport facility.
11. Identify all transport facilities in Florida that you use or possess but do not own, by street address of its origination and termination points, as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.)
12. For each transport facility identified in response to Question 11, identify by the 11-digit CLLI code, all incumbent ILEC switches and wire centers to which the transport facility is connected.
13. For each incumbent LEC switch or wire center identified in response to Question 12, identify the optical speed at which the transport facilities connected to each operates.
14. For each incumbent LEC switch or wire center identified in response to Question 12, identify the capacity or capacities of transport services (*e.g.*, DS-1, DS-3) carried by the transport facility or facilities to and/or from the incumbent LEC switch or wire center.
15. For all transport facilities identified in response to Questions 11 and 12, identify the non-incumbent LEC supplier from which you have obtained the facility.
16. Identify all transport facilities in Florida that you make available to other carriers, or have offered to make available to other carriers by street address of its origination and termination points, as well as a description of the route between those points.
17. For each transport facility identified in response to Question 16, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers to which the transport facility is directly or indirectly connected.
18. For each incumbent LEC switch or wire center identified in response to Question 17, identify the optical speed at which the facilities connected to each operates.
19. For each incumbent LEC switch or wire center identified in response to Question 17, identify the capacity or capacities of services (*e.g.*, DS-1, DS-3)



carried by the transport facilities to and/or from the incumbent LEC switch or wire center.

20. For each incumbent LEC switch or wire center identified in response to Question 17, identify the carrier or carriers to which you make the transport facility available, or to which you have offered to make the facility available.
21. Identify the points in Florida at which local network facilities that you own or use are connected to the networks of carriers other than the incumbent LECs, including interconnection with other CLECs, interexchange carriers, or internet service providers at any point of presence, network access point, collocation hotel, data center, or similar facility (collectively or individually, "interconnection points" or "IPs").

#### **V. REQUESTS FOR PRODUCTION OF DOCUMENTS: DEDICATED TRANSPORT**

1. Provide all documents identifying the fiber optic dedicated transport in Florida that you make available, or have offered to make available (e.g., through lease, indefeasible right of use), to other carriers.
2. Provide all document identifying the incumbent LEC switches or wire centers in Florida at which you have operational collocation arrangements.
3. Provide all documents that discuss or describe your willingness to provide dedicated transport in Florida to other carriers.
4. Provide all documents that discuss or describe the optical speeds at which your dedicated transport in Florida operates.
5. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer to other carriers, or have offered to other carriers.
6. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer in Florida to retail customers, or have offered to retail customers.
7. Provide all documents that discuss or describe whether you are willing to provide dark fiber dedicated transport in Florida to other carriers.
8. Provide all documents that discuss or describe the dedicated transport in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LECs.

9. Provide all documents that discuss or describe the capacity or capacity of services (*e.g.*, DS-1, DS-3) in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.
10. Provide all documents that discuss or describe dark fiber in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.
11. Provide the confidential filings with respect to dedicated transport that you made with the FCC in the Triennial Review docket. (*See, e.g.*, FCC's Triennial Review Order, ¶ 392 n.1216)

LAW OFFICES  
Messer, Caparello & Self  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: www.lawfla.com

December 29, 2003

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP

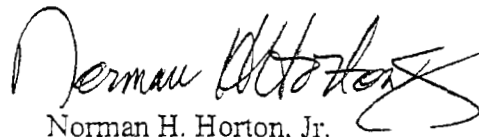
Dear Ms. Bayó:

Enclosed for filing on behalf of Xspedius Communications, LLC are an original and fifteen copies of Xspedius' Preliminary Objections to Verizon's First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos 1-11) in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

  
Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Requirements )  
Arising From Federal Communications )  
Commission Triennial UNE Review: )  
For DS1, DS3, and Dark Fiber Loops )  
And Route-Specific Review for DS1, DS3, )  
And Dark Fiber Transport )  
\_\_\_\_\_ )

Docket No.: 030852-TP  
Filed: December 29, 2003

**XSPEDIUS' PRELIMINARY OBJECTIONS TO VERIZON  
FIRST REQUEST FOR ADMISSIONS (NOS. 1-2), FIRST SET OF  
INTERROGATORIES (NOS. 1-21) AND  
FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 1-11)**

Xspedius Communications, LLC, on behalf of its Florida operating affiliates, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC (collectively "Xspedius"), pursuant to the *Order Establishing Procedure*, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003 (hereinafter "*Procedural Order*") by the Florida Public Service Commission ("Commission"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, hereby generally and specifically objects to Verizon Florida, Inc.'s (hereinafter "Verizon") First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents to Xspedius, served on December 22, 2003. The Objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the seven-day requirement set forth in the *Procedural Order*.

A. General Objections

Xspedius makes the following General Objections to Verizon's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents, including the applicable definitions and general instructions therein ("Verizon discovery"),

which as appropriate will be incorporated into each relevant response when Xspedius's responses are served on Verizon.

1. Xspedius objects to the Verizon discovery to the extent that such discovery seeks to impose an obligation on Xspedius to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. Xspedius further objects to any and all Verizon discovery that seeks to obtain information from Xspedius for Xspedius subsidiaries, affiliates, or other related Xspedius entities that are not certificated by the Commission.

2. Xspedius has interpreted the Verizon discovery to apply to Xspedius's regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any Verizon discovery is intended to apply to matters that take place outside the state of Florida and which are not related to Florida intrastate operations subject to the jurisdiction of the Commission, Xspedius objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. Xspedius objects to the Verizon discovery to the extent that such discovery calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. Xspedius objects to the Verizon discovery insofar as such discovery is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests. Any responses provided by Xspedius in response to the Verizon discovery will be provided subject to, and without waiver of, the foregoing objection.

5. Xspedius objects to the Verizon discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. Xspedius objects to the Verizon discovery insofar as it seeks information or documents, or seek to impose obligations on Xspedius which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

7. Xspedius objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission or which is already in the possession, custody, or control of Verizon.

8. Xspedius objects to the Verizon discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

9. Xspedius objects to each and every request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that Verizon's requests seek proprietary confidential business information which is not the subject of the "trade secrets" privilege, Xspedius will make such information available to the Verizon pursuant to the terms of the Commission's Protective Order and the requirements of section 364.183 and Florida Administrative Code Rule 25-24.006, subject to any other general or specific objections contained herein.

10. Xspedius is a large corporation with employees located in many different locations in Florida and in other states. In the course of its business, Xspedius creates countless documents that are not subject to Florida Public Service Commission or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from

site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. Xspedius will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Verizon discovery purports to require more, Xspedius objects on the grounds that compliance would impose an undue burden or expense.

11. Xspedius objects to the Verizon discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome. Any answers that Xspedius may provide in response to the Verizon discovery will be provided subject to, and without waiver or, this objection.

12. Xspedius objects to the Verizon discovery to the extent such discovery seeks to have Xspedius create documents not in existence at the time of the request.

13. Xspedius objects to the Verizon discovery to the extent that such discovery is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

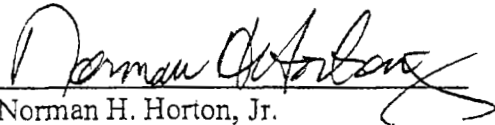
14. In light of the short period of time Xspedius has been afforded to respond to the Verizon discovery, the development of Xspedius’s positions and potentially responsive information to the Verizon requests is necessarily ongoing and continuing. Accordingly, these are preliminary objections to comply with the *Procedural Order*, and Xspedius reserves the right to supplement, revise, or modify its objections at the time that it serves its actual responses to the Verizon discovery. However, Xspedius does not assume an affirmative obligation to supplement its answers on an ongoing basis.

B. Specific Objections

Xspedius makes the following Specific Objections to Verizon's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents, including the applicable definitions and general instructions expressed therein ("Verizon discovery"), which as appropriate will be incorporated into each relevant response when Xspedius's responses are served on Verizon.

15. Xspedius objects to each and every interrogatory or request for production that seeks information regarding Xspedius's projections regarding future services, revenues, marketing strategies, equipment deployments, or other such future business plans as such requests are trade secrets and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues to be decided in this docket.

Respectfully submitted this 29<sup>th</sup> day of December, 2003.



Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
215 S. Monroe Street, Suite 701  
Tallahassee, FL 32302  
(850) 222-0720

Attorneys for Xspedius Communications, LLC.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (\*), electronic mail, and/or U. S. Mail this 29<sup>th</sup> day of December, 2003.

Jeremy Susac, Esq.\*  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Jason Rojas, Esq.\*  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Nancy B. White  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

Susan S. Masterton, Esq.  
Sprint-Florida, Incorporated  
Sprint Communications Company Limited  
Partnership  
P.O. Box 2214  
Tallahassee, FL 32316-2214

Richard A. Chapkis, Esq.  
Verizon Florida Inc.  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-0110

Nanette Edwards  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Mr. James White  
ALLTEL  
601 Riverside Avenue  
Jacksonville FL 32204-2987

Ms. Laurie A. Maffett  
Frontier Telephone Group  
180 South Clinton Avenue  
Rochester NY 14646-0700

Mr. R. Mark Ellmer  
GT Com  
P. O. Box 220  
Port St. Joe FL 32457-0220

Mr. Robert M. Post, Jr.  
ITS Telecommunications Systems, Inc.  
P. O. Box 277  
Indiantown FL 34956-0277

Ms. Harriet Eudy  
NEFCOM  
11791 110th Street  
Live Oak FL 32060-6703

Ms. Lynn B. Hall  
Smart City Telecom  
P. O. Box 22555  
Lake Buena Vista FL 32830-2555

Michael A. Gross  
Vice President, Regulatory Affairs  
& Regulatory Counsel  
Florida Cable Telecommunications Assoc., Inc.  
246 E. 6<sup>th</sup> Avenue  
Tallahassee, FL 32301

Tracy W. Hatch, Esq.  
AT&T Communications of the Southern States, LLC  
101 N. Monroe Street, Suite 701  
Tallahassee, FL 32301

Lisa Sapper  
AT&T  
1200 Peachtree Street, NE, Suite 8100  
Atlanta, GA 30309

Donna McNulty, Esq.  
WorldCom  
1203 Governors Square Blvd, Suite 201  
Tallahassee, FL 32301-2960

De O'Roark, Esq.  
MCI WorldCom Communications, Inc.  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328

Vicki Kaufman, Esq.  
Joe McGlothlin, Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301

Marva Brown Johnson, Esq.  
KMC Telecom III, LLC  
1755 North Brown Road  
Lawrenceville, GA 30034-8119.

Charles V. Gerkin, Jr.  
Regulatory Counsel  
Allegiance Telecom, Inc.  
9201 North Central Expressway  
Dallas, TX 75231

Terry Larkin  
Allegiance Telecom, Inc.  
Regional Vice President  
700 East Butterfield Road  
Lombard, IL 60148

James C. Falvey, Esq.  
Senior Vice president, Regulatory Affairs  
Xspedius Communications, LLC  
7125 Columbia Gateway Drive, Suite 200  
Columbia, MD 21046

Floyd R. Self  
Messer, Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302-1876

Mr. Jake E. Jennings  
NewSouth Communications Corp.  
Two N. Main Center  
Greenville, SC 29601

Jon C. Moyle, Jr., Esq.  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, FL 32301

Charles E. Watkins  
Covad Communications Company  
1230 Peachtree Street, NE, 19<sup>th</sup> Floor  
Atlanta, GA 30309

Rand Currier  
Granite Telecommunications, LLC  
234 Copeland Street  
Quincy, MA 02169

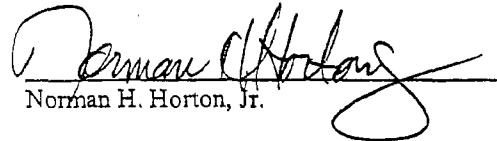
Andrew O. Isar  
Miller Isar, Inc.  
7901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335

Jorge Cruz-Bustillo, Esq.  
Supra Telecommunications and Information Systems,  
Inc.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133

Mr. Jonathan Audu  
Supra Telecommunications and Information  
Systems, Inc.  
1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301

Thomas M. Koutsky  
Vice president, Law and Public Policy  
Z-Tel Communications, Inc.  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, DC 20036

Michael B. Twomey  
P.O. Box 5256  
Tallahassee, FL 32314-5256

  
Norman H. Horton, Jr.

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: [www.lawfla.com](http://www.lawfla.com)

February 4, 2004

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP

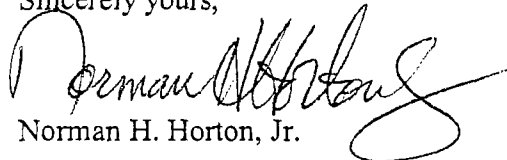
Dear Ms. Bayó:

Enclosed for filing on behalf of Xspedius Communications, LLC d/b/a Xspedius Communications is an original and one copy of Xspedius' Notice of Serving Xspedius' Responses and Objections to Verizon Florida, Inc.'s First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos. 1-11) in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Norman H. Horton, Jr.

NHH/amb  
Enclosures  
cc: Parties of Record

LAW OFFICES  
**Messer, Caparello & Self**  
A Professional Association

Post Office Box 1876  
Tallahassee, Florida 32302-1876  
Internet: [www.lawfla.com](http://www.lawfla.com)

February 3, 2004

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 030852-TP - Xspedius Communications Responses and Objections to Verizon's First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents

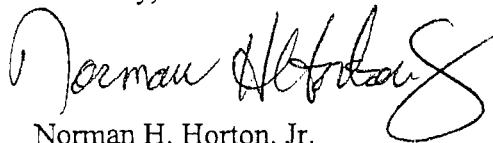
Dear Ms. Bayó:

Xspedius Communications, LLC d/b/a Xspedius Communications, pursuant to Section 364.183(1), Florida Statutes, hereby claims that certain information provided in Xspedius Communications, LLC's Responses and Objections to Verizon's First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents, contains confidential and proprietary business information that should be held exempt from public disclosure. Pursuant to Rule 25-22.006(5), Florida Administrative Code, in the attached envelope is one paper copy of the confidential document.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Norman H. Horton, Jr.

NHH/amb  
Enclosures

cc: Parties of Record

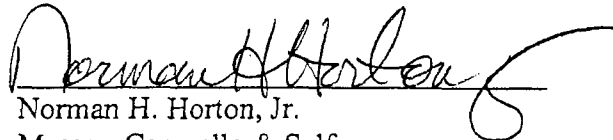
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Requirements )  
Arising From Federal Communications )  
Commission Triennial UNE Review: )  
Location Specific Review For DS1, DS3, ) Docket No.: 030852-TP  
and Dark Fiber Loops And Route-Specific ) Filed: February 3, 2004  
Review for DS1, DS3, And Dark Fiber )  
Transport )  
\_\_\_\_\_ )

**XSPEDIUS' NOTICE OF SERVING RESPONSES AND OBJECTIONS  
TO RESPONSES AND OBJECTIONS OF XSPEDIUS COMMUNICATIONS  
TO VERIZON FLORIDA INC.'S FIRST REQUEST FOR ADMISSIONS (NOS. 1-2),  
FIRST SET OF INTERROGATORIES (NOS. 1-21) AND FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-11) TO XSPEDIUS COMMUNICATIONS,  
LLC D/B/A XSPEDIUS COMMUNICATIONS**

Xspedius Communications, LLC, on behalf of its Florida operating affiliates, Xspedius Management Co., Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC (collectively "Xspedius") by and through its undersigned counsel, hereby files and serves Notice that it has served its Responses and Objections to Verizon Florida, Inc.'s First Request for Admissions (Nos. 1 - 2), First Set of Interrogatories (Nos. 1-21) and First Request for Production of Documents (Nos. 1-11) by e-mail on Richard Chapkis, Esq. and by U.S. Mail on Richard Chapkis, Esq., Verizon Florida, Inc., P.O. Box 110, FLTC0007, Tampa, FL 33601-0110 on this 3<sup>rd</sup> day of February, 2004.

Respectfully submitted,



Norman H. Horton, Jr.  
Messer, Caparello & Self  
215 S. Monroe Street, Suite 701  
Tallahassee, FL 32302  
(850) 222-0720

Attorneys for Xspedius Communications, LLC

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by electronic mail on this 3<sup>rd</sup> day of February, 2004 and by Hand Delivery (\*), and/or U. S. Mail the 4<sup>th</sup> day of February, 2004.

Adam Teitzman, Esq.\*  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Jason Rojas, Esq.\*  
Office of General Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Nancy B. White  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

Susan S. Masterton, Esq.  
Sprint-Florida, Incorporated  
Sprint Communications Company Limited  
Partnership  
P.O. Box 2214  
Tallahassee, FL 32316-2214

Richard A. Chapkis, Esq.  
Verizon Florida Inc.  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-0110

Nanette Edwards  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Mr. James White  
ALLTEL  
601 Riverside Avenue  
Jacksonville FL 32204-2987

Ms. Laurie A. Maffett  
Frontier Telephone Group  
180 South Clinton Avenue  
Rochester NY 14646-0700

Mr. R. Mark Ellmer  
GT Com  
P. O. Box 220  
Port St. Joe FL 32457-0220

Mr. Robert M. Post, Jr.  
ITS Telecommunications Systems, Inc.  
P. O. Box 277  
Indiantown FL 34956-0277

Ms. Harriet Eudy  
NEFCOM  
11791 110th Street  
Live Oak FL 32060-6703

Ms. Lynn B. Hall  
Smart City Telecom  
P. O. Box 22555  
Lake Buena Vista FL 32830-2555

Michael A. Gross  
Vice President, Regulatory Affairs  
& Regulatory Counsel  
Florida Cable Telecommunications Assoc., Inc.  
246 E. 6<sup>th</sup> Avenue  
Tallahassee, FL 32301

Tracy W. Hatch, Esq.  
AT&T Communications of the Southern States, LLC  
101 N. Monroe Street, Suite 701  
Tallahassee, FL 32301

Lisa Sapper  
AT&T  
1200 Peachtree Street, NE, Suite 8100  
Atlanta, GA 30309

Donna McNulty, Esq.  
MCI WorldCom Communications, Inc.  
1203 Governors Square Blvd, Suite 201  
Tallahassee, FL 32301-2960

De O'Roark, Esq.  
MCI WorldCom Communications, Inc.  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328

Vicki Kaufman, Esq.  
Joe McGlothlin, Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301

Marva Brown Johnson, Esq.  
KMC Telecom III, LLC  
1755 North Brown Road  
Lawrenceville, GA 30034-8119

James C. Falvey, Esq.  
Senior Vice president, Regulatory Affairs  
Xspedius Communications, LLC  
7125 Columbia Gateway Drive, Suite 200  
Columbia, MD 21046

Floyd R. Self  
Messer, Caparello & Self, P.A.  
P.O. Box 1876  
Tallahassee, FL 32302-1876

Mr. Jake E. Jennings  
NewSouth Communications Corp.  
Two N. Main Center  
Greenville, SC 29601

Jon C. Moyle, Jr., Esq.  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, FL 32301

Charles E. Watkins  
Covad Communications Company  
1230 Peachtree Street, NE, 19<sup>th</sup> Floor  
Atlanta, GA 30309

Matt Feil  
Scott A. Kassman  
FDN Communications  
2301 Lucien Way, Suite 200  
Orlando, FL 32751

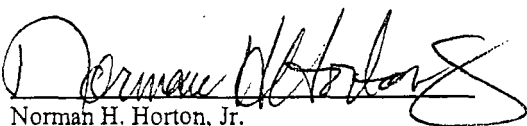
Jorge Cruz-Bustillo, Esq.  
Supra Telecommunications and  
Information Systems, Inc.  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133

Mr. Jonathan Audu  
Supra Telecommunications and  
Information Systems, Inc.  
1311 Executive Center Drive, Suite 220  
Tallahassee, FL 32301

Mr. Bo Russell  
Vice President  
Regulatory and Legal Affairs  
Nuvox Communications, Inc.  
301 North Main Street  
Greenville, SC 29601

Charles Beck  
Office of the Public Counsel  
111 W. Madison St., Room 812  
Tallahassee, FL 32399-1400

J. Jeffry Wahlen  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, Florida 32302

  
Norman H. Horton, Jr.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Implementation of Requirements	)	
Arising From Federal Communications	)	Docket No.: 030852-TP
Commission Triennial UNE Review:	)	
For DS1, DS3, and Dark Fiber Loops	)	
And Route-Specific Review for DS1, DS3,	)	
And Dark Fiber Transport	)	
<hr/>		

**RESPONSES AND OBJECTIONS OF XSPEDIUS COMMUNICATIONS  
TO VERIZON FLORIDA INC.'S FIRST REQUEST FOR ADMISSIONS (NOS. 1-2),  
FIRST SET OF INTERROGATORIES (NOS. 1-21) AND FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-11) TO XSPEDIUS COMMUNICATIONS,  
LLC D/B/A XSPEDIUS COMMUNICATIONS**

Xspedius Communications, LLC, on behalf of its Florida operating affiliates, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC (collectively "Xspedius"), pursuant to the *Order Establishing Procedure*, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003 (hereinafter "*Procedural Order*"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, hereby responds and objects to Verizon Florida Inc.'s (hereinafter "Verizon") First Request for Admissions (Nos. 1-2), First Request for Production of Documents (Nos. 1-11) To Xspedius Communications, LLC D/B/A Xspedius Communications (hereinafter "Verizon Discovery"), served on December 18, 2003, and, to the extent necessary, hereby moves the Florida Public Service Commission (hereinafter the "Commission") for a protective order. Pursuant to the Commission's blanket protective order, Xspedius is providing its responses today and confidential information, identified below, to Verizon.



## **I. General Objections**

Xspedius makes the following General Objections to the Verizon Discovery which, as appropriate, will be incorporated into each relevant response to the Verizon Discovery.

1. Xspedius objects to the Verizon discovery to the extent that such discovery seeks to impose an obligation on Xspedius to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. Xspedius further objects to any and all Verizon discovery that seeks to obtain information from Xspedius for Xspedius subsidiaries, affiliates, or other related Xspedius entities that are not certificated by the Commission.

2. Xspedius has interpreted the Verizon discovery to apply to Xspedius' regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any Verizon discovery is intended to apply to matters that take place outside the state of Florida and which are not related to Florida intrastate operations subject to the jurisdiction of the Commission, Xspedius objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. Xspedius objects to the Verizon discovery to the extent that such discovery calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. Xspedius objects to the Verizon discovery insofar as such discovery is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations and are not properly defined or explained for purposes of these requests.

5. Xspedius objects to the Verizon discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. Xspedius objects to the Verizon discovery insofar as it seeks information or documents, or seek to impose obligations on Xspedius which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

7. Xspedius objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission, the FCC, is otherwise publicly available, or which is already in the possession, custody, or control of Verizon.

8. Xspedius objects to the Verizon discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

9. Xspedius objects to each and every request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that Verizon's requests seek proprietary confidential business information which is not the subject of the "trade secrets" privilege, Xspedius will make such information available to counsel for Verizon pursuant to an appropriate Protective Agreement, subject to any other general or specific objections contained herein.

10. Xspedius is a corporation with employees located in many different locations in Florida and in other states. In the course of its business, Xspedius creates countless documents that are not subject to Florida Public Service Commission or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible

that not every document has been identified in response to these requests. Xspedius will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Verizon discovery purports to require more, Xspedius objects on the grounds that compliance would impose an undue burden or expense.

11. Xspedius objects to the Verizon discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome.

12. Xspedius objects to the Verizon discovery to the extent such discovery seeks to have Xspedius create documents not in existence at the time of the request.

13. Xspedius objects to the Verizon discovery as overly broad and unduly burdensome to the extent that such discovery is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket.

14. In light of the short period of time Xspedius has been afforded to respond to the Verizon discovery, the development of Xspedius’ positions and potentially responsive information to the Verizon requests is necessarily ongoing and continuing. This process is further complicated since at this point in time, the actual issues to be set forth for hearing in this docket have not yet been established by order of the Commission. Accordingly, these are preliminary objections to comply with the Commission’s September 22, 2003, order Xspedius reserves the right to supplement, revise, or modify its objections at the time that it serves its actual responses to the Verizon discovery. However, Xspedius does not assume an affirmative obligation to supplement its answers on an ongoing basis, contrary to the Verizon General Instruction.

15. Xspedius objects to the Verizon discovery to the extent that it seeks disclosure of facts known and opinions held by experts acquired and/or developed in anticipation of litigation or for hearing and outside the scope of discoverable information pursuant to Rule 1.280(4) of the Florida Rules of Civil Procedure.

16. Xspedius objects to the Verizon discovery to the extent that the definitions operate to seek discovery of matters other than those subject to the jurisdiction of the Commission, pursuant to the FCC's Triennial Review Order, Florida Administrative Code, and Florida statutes.

17. Xspedius objects to the Verizon discovery to the extent that it asks for information that may not be available in precisely the same format, category, or definitions from Xspedius systems, which systems are limited in terms of their capacity to produce unlimited reports and information in any format, category or definition requested.

## **II. Specific Objections**

Xspedius makes the following Specific Objections to the Verizon discovery, which as appropriate will be incorporated into each relevant response when Xspedius' responses are served on Verizon.

18. Xspedius objects to each and every request for admission, interrogatory or request for production that seeks information regarding Xspedius' operations in ILEC service areas other than the Verizon ILEC service area within the state of Florida as such information is irrelevant to Verizon's case in this docket and such discovery is overly broad and unduly burdensome.

19. Xspedius objects to each and every request for admission, interrogatory or request for production that seeks to obtain information regarding former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Xspedius as such

information is not within Xspedius' control, would be unduly burdensome to attempt to obtain and is likely irrelevant.

### RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSIONS

1. Admit that Respondent states on its website, in words or in substance, that it offers transport facilities or services to other carriers. (For the definitions of transport facilities or transport services for this and all other requests for admission, see Instruction M.)

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 4, 5, 7, and 8, as if set forth herein verbatim. Xspedius objects because the question is vague, ambiguous, overly broad, imprecise, and utilizes terms that are subject to multiple interpretations. Verizon has defined the terms "transport services" or "transport facilities" as including but not limited to "transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch." Xspedius does not currently offer such dedicated interoffice transport services on a DS-1 or DS-3 level in a manner that would be relevant to this proceeding. Subject to and without waiving these objections, Xspedius denies, but admits that it offers other transport facilities or services to other carriers in Florida, and that such other dedicated transport offerings are reflected on its website.

**Objections/Response Provided By:** Objections provided by counsel. Response provided by Nancy Gaudin, Director, Product Development, 5555 Winghaven Blvd., O'Fallon, MO 63366.

2. Admit that Respondent does not state on its website, in words or in substance, that it does not offer transport facilities or services to other carriers in Florida.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 4, 5, 7, and 8, as if set forth herein verbatim. Xspedius objects because the question is vague, ambiguous, overly broad, imprecise, and utilizes terms that are subject to multiple interpretations. Verizon has defined the terms "transport services" or "transport facilities" as including but not limited to "transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch." Xspedius does not currently offer such dedicated interoffice transport services on a DS-1 or DS-3 level in a manner that would be relevant to this proceeding, and is not operationally ready to provide them on a widely available basis. Subject to and without waiving these objections, Xspedius denies, but admits that it does not state on its website, in words or in substance, that it does not offer transport facilities or services to other carriers in Florida.

**Objections/Response Provided By:** Objections provided by counsel. Response provided by Nancy Gaudin, Director, Product Development, 5555 Winghaven Blvd., O'Fallon, MO 63366.

## RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Identify all fiber optic transport facilities in Florida that you own, by street address of its origination and termination points (or if no termination point, by the location of a fiber ring), as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.) (For the definitions of transport facilities or transport services for this and all other interrogatories, see Instruction M.)

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.,* TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant.

**Provided by:** Objections provided by Counsel.

2. For each transport facility identified in response to Question 1, provide a map in an electronic form (such as MapInfo, Arcview, or another GIS program) showing its location.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.,* TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant.

**Provided by:** Objections provided by Counsel.

3. For each transport facility identified in response to Question 1, identify the number of fibers in the fiber cable(s) you deployed.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.,* TRO ¶406) are relevant

to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant.

**Provided by:** Objections provided by Counsel.

4. For each transport facility identified in response to Question 1, identify the number of fibers that you activated (*i.e.*, “lit”) through the attachment of optronics.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

5. For each transport facility identified in response to Question 1, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers in Florida to which the transport facility is directly or indirectly connected.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (*See, e.g.*, TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

6. For each incumbent LEC switch or wire center identified in response to Question 5, identify the optical speed at which the facilities connected to each is operating.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (*See, e.g.*, TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon’s question related to

facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

7. For each incumbent LEC switch or wire center identified in response to Question 5, identify the capacity or capacities of services (e.g., DS-1, DS-3) carried by your transport facilities to and/or from the incumbent LEC switch or wire center.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.,* TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

8. For each incumbent LEC switch or wire center identified in response to Question 5, identify where you have fiber that has not been "lit" through the attachment of optronics (*i.e.,* dark fiber) and the number of unlit fibers in each transport facility terminating at that location.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (*See, e.g.,* TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

9. Identify by the 11-digit CLLI code, all incumbent LEC switches or wire centers in Florida at which you have obtained dark fiber transport facilities from any supplier, including but not limited to from incumbent LECs.



**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question on the grounds that it is overbroad and irrelevant in that it requests information related to facilities that are not interoffice transport and information related to facilities outside the Verizon serving area in Florida. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, Xspedius has not purchased any dark fiber for interoffice transport within the Verizon serving area in Florida.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O’Fallon, Missouri 63366.

10. For each dark fiber facility identified in response to Question 9, state (a) whether you have activated the dark fiber through the attachment of optronics (*i.e.*, whether the fiber is now “lit”), (b) the optical speed at which the facility operates, and (c) the capacity or capacities of services (*e.g.*, DS-1, DS-3) carried by each such transport facility.

**Xspedius Response:** See Objections and Response to Question 9.

11. Identify all transport facilities in Florida that you use or possess but do not own, by street address of its origination and termination points, as well as a description of the route between those points. (For purposes of responding to this question, your own transport facilities include facilities that you own solely or jointly, as well as facilities that you have obtained from another entity on a long-term, indefeasible right of use basis.)

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question because it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, *e.g.*, TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius also objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, Xspedius does not have interoffice transport in Verizon serving territory in Florida that it uses or possesses but does not own other than those purchased from Verizon.

**Provided by:** Objections provided by Counsel. Responses provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O’Fallon, MO 63366.

12. For each transport facility identified in response to Question 11, identify by the 11-digit

CLLI code, all incumbent ILEC switches and wire centers to which the transport facility is connected.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 12.

**Provided by:** Objections provided by Counsel.

13. For each incumbent LEC switch or wire center identified in response to Question 12, identify the optical speed at which the transport facilities connected to each operates.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 12.

**Provided by:** Objections provided by Counsel.

14. For each incumbent LEC switch or wire center identified in response to Question 12, identify the capacity or capacities of transport services (e.g., DS-1, DS-3) carried by the transport facility or facilities to and/or from the incumbent LEC switch or wire center.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended

to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 12.

**Provided by:** Objections provided by Counsel.

15. For all transport facilities identified in response to Questions 11 and 12, identify the non-incumbent LEC supplier from which you have obtained the facility.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 12.

**Provided by:** Objections provided by Counsel.

16. Identify all transport facilities in Florida that you make available to other carriers, or have offered to make available to other carriers by street address of its origination and termination points, as well as a description of the route between those points.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, Xspedius does not make interoffice transport available to other carriers in the Verizon serving area in Florida.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram,

Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

17. For each transport facility identified in response to Question 16, identify by the 11-digit CLLI code, all incumbent LEC switches and wire centers to which the transport facility is directly or indirectly connected.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 16.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

18. For each incumbent LEC switch or wire center identified in response to Question 17, identify the optical speed at which the facilities connected to each operates.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 16.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

19. For each incumbent LEC switch or wire center identified in response to Question 17, identify the capacity or capacities of services (e.g., DS-1, DS-3) carried by the transport facilities to and/or from the incumbent LEC switch or wire center.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 16.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

20. For each incumbent LEC switch or wire center identified in response to Question 17, identify the carrier or carriers to which you make the transport facility available, or to which you have offered to make the facility available.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving these objections, see response to Question 16.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

21. Identify the points in Florida at which local network facilities that you own or use are connected to the networks of carriers other than the incumbent LECs, including interconnection with other CLECs, interexchange carriers, or internet service providers at any point of presence, network access point, collocation hotel, data center, or similar facility (collectively or individually, "interconnection points" or "IPs").

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius Communications objects to this question to the extent that it seeks information related to the Company's connection points including "collocation hotels," that do not fall under the definition of "route"

contained in the Triennial Review Order and the guidelines provided by the FCC therein. The FCC makes clear that the points at which the local network facilities connect to the networks of carriers other than the incumbent LEC should not be considered when evaluating any assertion of non-impairment under the fact-based triggers set forth in the TRO. Specifically, the FCC stated that alternative network connections, such as collocation hotels “do not provide a substitute for the need to access within an incumbent LEC’s network.” (See n. 1121) As this request seeks information that is not used in the analysis of either the self-provisioning trigger or the wholesale facilities trigger, it is overly broad and irrelevant.

**Provided by:** Objections provided by Counsel.

**V. REQUESTS FOR PRODUCTION OF DOCUMENTS: DEDICATED TRANSPORT**

1. Provide all documents identifying the fiber optic dedicated transport in Florida that you make available, or have offered to make available (e.g., through lease, indefeasible right of use), to other carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

2. Provide all document identifying the incumbent LEC switches or wire centers in Florida at which you have operational collocation arrangements.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius

also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Xspedius also objects to the extent the question relates to any collocations outside the Verizon serving area in Florida. Subject to and without waiving these objections, Xspedius will provide, as Confidential exhibit Xspedius FL-VERIZONTRANSP-POD-2 and subject to the appropriate confidentiality protection, a list of its active collocations in the Verizon serving area in Florida.

**Provided by:** Objections provided by Counsel. Response provided by Brian Butram, Director, Transmission Engineering, 5555 Winghaven Blvd., O'Fallon, MO 63366.

3. Provide all documents that discuss or describe your willingness to provide dedicated transport in Florida to other carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

4. Provide all documents that discuss or describe the optical speeds at which your dedicated transport in Florida operates.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

5. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer to other carriers, or have offered to other carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

6. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer in Florida to retail customers, or have offered to retail customers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC.

**Provided by:** Objections provided by Counsel.

7. Provide all documents that discuss or describe whether you are willing to provide dark fiber dedicated transport in Florida to other carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended



to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving the foregoing objections, see response to Interrogatory No. 16.

**Provided by:** Objections provided by Counsel.

8. Provide all documents that discuss or describe the dedicated transport in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LECs.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving the foregoing objections, see response to Interrogatory No. 11.

**Provided by:** Objections provided by Counsel.

9. Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company’s anticipated use, on the grounds that it is overbroad and irrelevant. The FCC’s Triennial Review Order states that only “operationally ready” facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the “requirement is intended to preclude counting competitive facilities before the facility is capable of operation...” (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon’s question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities

that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving the foregoing objections, see response to Interrogatory No. 11.

**Provided by:** Objections provided by Counsel.

10. Provide all documents that discuss or describe dark fiber in Florida that you obtain from other non-incumbent LEC carriers, or have obtained from other non-incumbent LEC carriers.

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving the foregoing objections, see response to Interrogatory No. 11.

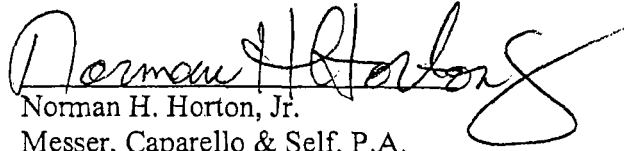
**Provided by:** Objections provided by Counsel.

11. Provide the confidential filings with respect to dedicated transport that you made with the FCC in the Triennial Review docket. (See, e.g., FCC's Triennial Review Order, ¶ 392 n.1216)

**Xspedius Response:** Xspedius adopts and incorporates its General Objections 1, 5, 6, 8, 9, 15, and 16, as if set forth herein verbatim. Xspedius objects to this question as vague, overbroad, and irrelevant. Xspedius also objects to the extent that it requests information related to facilities that are not in use and the Company's anticipated use, on the grounds that it is overbroad and irrelevant. The FCC's Triennial Review Order states that only "operationally ready" facilities (See, e.g., TRO ¶406) are relevant to the proceeding, stating specifically that the "requirement is intended to preclude counting competitive facilities before the facility is capable of operation..." (TRO n. 1256). Therefore, Xspedius objects to that portion of Verizon's question related to facilities that are not currently operational, as both overbroad and irrelevant. Xspedius also objects to this question to the extent that it requests information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC. Subject to and without waiving the foregoing objections, Xspedius is not cited in the aforementioned footnote.

Provided by: Objections provided by Counsel.

Respectfully submitted this 3rd day of February, 2004.

A handwritten signature in black ink, appearing to read "Norman H. Horton, Jr.", written in a cursive style.

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
215 S. Monroe Street, Suite 701  
Tallahassee, FL 32302  
(850) 222-0720

Attorneys for Xspedius Communications, LLC

**EXSPEDIUS CONFIDENTIAL INFORMATION**

**RESPONSE TO VERIZON'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS NO. 2**

**(1 PAGE)**

**Mendel, David**

---

**From:** Mendel, David  
**Sent:** Thursday, February 12, 2004 2:14 PM  
**To:** 'nhorton@lawfla.com'  
**Cc:** Ronis, Catherine  
**Subject:** VZ's discovery to Xspedius, Docket 030852-TP

Doc,

This follows up on our telephone conversation on February 10 regarding the Objections and Responses of Xspedius to Verizon's First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos. 1-11) in the Florida Triennial proceedings, Docket No. 030852. As I explained during our call, Xspedius's responses are deficient in a number of respects, including:

- (1) RFA 1: Xspedius responds that it "does not currently offer such dedicated interoffice transport services on a DS-1 or DS-3 level in a manner that would be relevant to this proceeding." This statement, of course, entirely ignores what Xspedius may be offering on the OCn level.
- (2) Interrogatories 1 through 8: Xspedius refuses to provide requested information to the extent its facilities are not "currently operational." However Xspedius may define this phrase -- it does not appear in the Triennial Review Order -- the information requested by Verizon is clearly relevant to the proceeding, and Xspedius should produce it. Even if the parties disagree on which of Xspedius's facilities would satisfy the FCC's transport triggers, Xspedius is not entitled to block Verizon's discovery of relevant information. I further note that Xspedius has not indicated that it will produce information about facilities that are "currently operational." Xspedius's responses to other interrogatories are similarly deficient to the extent Xspedius is withholding information in reliance on the same terminology.
- (3) Xspedius objects to a number of interrogatories "to the extent" they "request[] information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC." What information is Xspedius withholding based on this objection?
- (4) Data Requests: many if not all of these are deficient for the reasons stated above.

Unless I receive full and complete responses to Verizon's discovery requests by COB on February 12, Verizon will be forced to consider additional steps to enforce these requests, including the filing of a motion to compel.

Thank you for your consideration of these issues.

David

2/20/2004

David Mendel  
Wilmer Cutler Pickering LLP  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
Telephone: (202) 663-6128  
Facsimile: (202) 663-6363  
David.Mendel@wilmer.com

**Mendel, David**

---

**From:** Augustino, Steven A. [SAugustino@KelleyDrye.com]  
**Sent:** Tuesday, February 17, 2004 8:08 AM  
**To:** Mendel, David; Falvey, Jim; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; richard.chapkis@verizon.com  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

David,

On behalf of Xspedius, I am providing the following response to your email of February 12. We have reviewed your stated concerns with Xspedius' response to Verizon. Our ability to respond substantively has been hindered, however, by Verizon's failure to provide a more detailed explanation of Verizon's concerns as well as an explanation of the relevance of the information sought. Most importantly, Verizon has not adequately explained why the substantial discovery already served in this proceeding -- including the Commission's TRO discovery requests, staff's discovery and BellSouth's discovery -- do not provide the information Verizon contends is necessary. Where Verizon has only provided general concerns, Xspedius can only respond at the same level of generality.

(1) RFA 1: This is a request for admission. Xspedius has denied the request but was willing to admit to certain other facts. The Triennial Review Order has already determined that OCn level facilities need not be unbundled so a review of OCn availability is not called for in the triggers. The self-provisioning trigger applies at the DS-3 level and to dark fiber (para. 409) and the wholesale trigger applies at the DS-1, DS-3, and dark fiber levels. Xspedius has fully responded to this request for admission.

(2) Interrogatories 1-8: Verizon has made a broad comment about these 8 responses. Although Xspedius cannot discern Verizon's specific concerns with particular questions, in general, Verizon's interrogatories are extremely broad, particularly compared with the BellSouth first interrogatories that the parties agreed to in advance. The BellSouth first interrogatories track the Triennial Review Order triggers, and the extensive work done in the TRIP process, which Xspedius participated in through its attorneys in this proceeding. Requests asking for "all fiber optic transport facilities in Florida that you own" (Interrogatory 1) and all related maps (Interrogatory 2) are overbroad and not designed to elicit the information that is the subject of the TRO triggers. The Order does in fact limit the inquiry to circuits that are currently operational, focusing on "actual commercial deployment" (para. 405), "actual competitive deployment" (para. 410), and circuits that are "operationally ready" (para. 414), to name just a few cites. In addition, Xspedius has in fact provided extensive responsive information in this docket, to BellSouth, to Staff, and to Verizon. Xspedius has provided, among other things, statewide lists of its collocations, and direct answers as to whether Xspedius self-provides or wholesales transport at the relevant capacity levels.

(3) It's not clear what RFAs, PODs, or Interrogatories this applies to. Xspedius has responded with information relevant to the triggers; that is, relating to DS-1, DS-3, and dark fiber interoffice transport. Xspedius is not withholding information and in fact has provided extensive information in response to these and other interrogatories.

(4) The same arguments stated in our pleading and restated above apply with respect to the Requests for Production.

Xspedius has been proactive in providing discovery to BellSouth, to the Staff, and to Verizon, as well as other parties that have made requests. Verizon has not shown why its additional requests are not duplicative of the information already provided by Xspedius. Nevertheless, we are prepared to work with Verizon on any particular requests if Verizon can provide a more detailed explanation.

Steve Augustino  
Kelley Drye & Warren LLP  
1200 19th Street N.W.  
Suite 500  
Washington, DC 20036

2/20/2004

202-955-9608  
202-955-9792 (fax)  
saugustino@kelleydrye.com

-----Original Message-----

**From:** Mendel, David [mailto:David.Mendel@wilmer.com]  
**Sent:** Monday, February 16, 2004 10:20 PM  
**To:** Falvey, Jim; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; Augustino, Steven A.; richard.chapkis@verizon.com  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

Jim,

In your last e-mail you said you would get back to us by 5 pm today, but thus far I have not heard from you. It has now been over six days since I telephoned Doc raising concerns about Xspedius's objections. Also, on February 12, Doc left me a voice mail indicating that Xspedius would at least be willing to produce to Verizon what it already gave to Staff. Please provide Xspedius's response to staff by 5:00 pm EST on Tuesday, February 17. Please also tell me whether Xspedius will be responding further to Verizon's discovery requests and provide any additional information as soon as possible.

Thank you.

David

-----Original Message-----

**From:** Falvey, Jim [mailto:Jim.Falvey@xspedius.com]  
**Sent:** Thursday, February 12, 2004 4:09 PM  
**To:** Mendel, David; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; Augustino, Steven A.  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

I am in receipt of your e-mail as of 2:14 today. I don't know what your definition of close of business is but roughly 4 hours notice on such a motion is not sufficient under any state's rules. Xspedius will review your comments, confer with counsel, and get back to you by 5 p.m. EST on Monday, February 16.

-----Original Message-----

**From:** Mendel, David [mailto:David.Mendel@wilmer.com]  
**Sent:** Thursday, February 12, 2004 2:14 PM  
**To:** nhorton@lawfla.com  
**Cc:** Ronis, Catherine  
**Subject:** VZ's discovery to Xspedius, Docket 030852-TP

Doc,

This follows up on our telephone conversation on February 10 regarding the Objections and Responses of Xspedius to Verizon's First Request for Admissions



(Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos. 1-11) in the Florida Triennial proceedings, Docket No. 030852. As I explained during our call, Xspedius's responses are deficient in a number of respects, including:

(1) RFA 1: Xspedius responds that it "does not currently offer such dedicated interoffice transport services on a DS-1 or DS-3 level in a manner that would be relevant to this proceeding." This statement, of course, entirely ignores what Xspedius may be offering on the OCn level.

(2) Interrogatories 1 through 8: Xspedius refuses to provide requested information to the extent its facilities are not "currently operational." However Xspedius may define this phrase -- it does not appear in the Triennial Review Order -- the information requested by Verizon is clearly relevant to the proceeding, and Xspedius should produce it. Even if the parties disagree on which of Xspedius's facilities would satisfy the FCC's transport triggers, Xspedius is not entitled to block Verizon's discovery of relevant information. I further note that Xspedius has not indicated that it will produce information about facilities that are "currently operational." Xspedius's responses to other interrogatories are similarly deficient to the extent Xspedius is withholding information in reliance on the same terminology.

(3) Xspedius objects to a number of interrogatories "to the extent" they "request [] information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC." What information is Xspedius withholding based on this objection?

(4) Data Requests: many if not all of these are deficient for the reasons stated above.

Unless I receive full and complete responses to Verizon's discovery requests by COB on February 12, Verizon will be forced to consider additional steps to enforce these requests, including the filing of a motion to compel.

Thank you for your consideration of these issues.

David

David Mendel  
Wilmer Cutler Pickering LLP  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
Telephone: (202) 663-6128  
Facsimile: (202) 663-6363  
David.Mendel@wilmer.com

**Mendel, David**

---

**From:** Mendel, David  
**Sent:** Thursday, February 19, 2004 12:47 PM  
**To:** 'Augustino, Steven A.'; Falvey, Jim; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; richard.chapkis@verizon.com  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

Steve,

You have asked for further clarification on our discovery requests. We have reviewed the responses of Xspedius to Staff and Bellsouth, as well as its objections and responses to Verizon, and believe the following information is still missing from your responses:

- (1) Please confirm that Xspedius has no other active collocations in the Verizon serving area other than those identified in FL-VERIZONTRANSP-POD-2, which is referenced in Xspedius's response to Verizon's RFP #2 (dedicated transport). If there are others, please include them in an augmented chart.
- (2) For each of the active collocations identified in FL-VERIZONTRANSP-POD-2, or any augmented chart, please state: (a) whether fiber optic facilities connected to these collocations are owned by Xspedius; controlled by Xspedius through an IRU; leased from another carrier or fiber provider; or leased from Verizon; (b) the optical speeds and capacities of these facilities, i.e., whether they are operating at DS1, DS3, etc.; (c) whether the facilities consist in part or in whole of dark fibers; and (d) the number of fibers within each facility that are lit and dark.
- (3) Please refer to the December 22, 2003 Revised Responses and Objections of Xspedius Communications, LLC To Bellsouth's First Set of Interrogatories (Nos. 1-13). In response to Interrogatory 1, Xspedius states, in relevant part, that it "denies that it has self-provided such facilities regionwide." In response to Interrogatory 2, Xspedius states, in relevant part, that it "denies that it has offered such facilities to carriers on a wholesale basis regionwide." In response to Interrogatory 3, Xspedius states, in relevant part, that it "denies that it has acquired such facilities regionwide." Please confirm that, by use of the term "regionwide," Xspedius means that it does not self-provide, has not offered, and has not acquired relevant facilities **in any State in the region, including in the State of Florida.**
- (4) Please refer to the December 22, 2003 Revised Responses and Objections of Xspedius Communications, LLC To Bellsouth's First Set of Interrogatories (Nos. 1-13). In response to interrogatories 1, 2, and 3, Xspedius states that it is only answering for facilities that are "operationally ready." Please confirm that Xspedius' definition of "operationally ready" here is the same as the definition provided in Para. 406 of the Triennial Review Order. That paragraph states:

Each counted self-provisioned facility along a route must be **operationally ready** to provide transport into or out of an incumbent LEC central office. We find that the competitive transport facilities counted to satisfy this trigger must terminate in a collocation arrangement which may be arranged either pursuant to contract, tariff or, where appropriate section 251(c)(6) of the Act. We find it beneficial to count for purposes of this test all types of collocation arrangements, including those that may not qualify for collocation under section 251(c)(6).

2/20/2004

In other words, Verizon regards a fiber optic facility to be "operationally ready" if the facility is collocated within the meaning of paragraph 406. Please confirm that Xspedius is operating under the same definition. If it is not, please state whether Xspedius has facilities that terminate to a collocation but which it contends are not "operationally ready."

(5) Please refer to the December 22, 2003 Revised Responses and Objections of Xspedius Communications, LLC To Bellsouth's First Set of Interrogatories (Nos. 1-13). In response to each of the first six interrogatories, Xspedius asserts a general relevance objection (objection number 5). Verizon is concerned that Xspedius is using a restrictive definition of "transport" in determining which of its facilities are "relevant" to Bellsouth's requests. Please confirm that Xspedius is not excluding from its responses any fiber optic transmission facilities that Xspedius owns, controls, or leases to or from other providers and that connect **indirectly** between Verizon central offices. See Triennial Review Order Para. 401. For example, has Xspedius provided information about all of its facilities that connect two Verizon end points, regardless of whether Xspedius routes those facilities through centralized switching facilities?

(6) Please refer to Xspedius's February 4, 2004 Responses and Objections to Verizon's discovery, specifically with regard to Xspedius's answers to interrogatories 1 through 8. Please confirm that Xspedius's use of the term "currently operational" is the same as the definition of "operationally ready" that is provided in Para. 406 of the Triennial Review Order, as explained above under #4.

(7) Please refer to Xspedius's February 4, 2004 Responses and Objections to Verizon's discovery. Xspedius continually asserts a relevance objection. Also, in response to interrogatories 4, 9, and others, Xspedius objects on grounds that the questions request "information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC." Again, Verizon is concerned that Xspedius is using a restrictive definition of "transport" in determining which of its facilities are "relevant" to its requests. Please confirm that Xspedius is not excluding from its responses any fiber optic transmission facilities that Xspedius owns, controls, or leases to or from other providers and that connect **indirectly** between Verizon central offices. For example, has Xspedius provided information about all of its facilities that connect two Verizon end points, regardless of whether Xspedius routes those facilities through centralized switching facilities?

Please provide this information by noon tomorrow, Friday. If we don't hear from you, we will be forced to file a motion to compel with the Commission later on Friday.

Thanks for your cooperation. I hope we can resolve all of our outstanding issues by tomorrow.

David Mendel  
Wilmer Cutler Pickering LLP  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
Telephone: (202) 663-6128  
Facsimile: (202) 663-6363  
David.Mendel@wilmer.com

-----Original Message-----

**From:** Augustino, Steven A. [mailto:SAugustino@KelleyDrye.com]  
**Sent:** Tuesday, February 17, 2004 8:08 AM  
**To:** Mendel, David; Falvey, Jim; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; richard.chapkis@verizon.com  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

David,  
On behalf of Xspedius, I am providing the following response to your email of February 12. We have reviewed

2/20/2004

your stated concerns with Xspedius' response to Verizon. Our ability to respond substantively has been hindered, however, by Verizon's failure to provide a more detailed explanation of Verizon's concerns as well as an explanation of the relevance of the information sought. Most importantly, Verizon has not adequately explained why the substantial discovery already served in this proceeding -- including the Commission's TRO discovery requests, staff's discovery and BellSouth's discovery -- do not provide the information Verizon contends is necessary. Where Verizon has only provided general concerns, Xspedius can only respond at the same level of generality.

(1) RFA 1: This is a request for admission. Xspedius has denied the request but was willing to admit to certain other facts. The Triennial Review Order has already determined that OCn level facilities need not be unbundled so a review of OCn availability is not called for in the triggers. The self-provisioning trigger applies at the DS-3 level and to dark fiber (para. 409) and the wholesale trigger applies at the DS-1, DS-3, and dark fiber levels. Xspedius has fully responded to this request for admission.

(2) Interrogatories 1-8: Verizon has made a broad comment about these 8 responses. Although Xspedius cannot discern Verizon's specific concerns with particular questions, in general, Verizon's interrogatories are extremely broad, particularly compared with the BellSouth first interrogatories that the parties agreed to in advance. The BellSouth first interrogatories track the Triennial Review Order triggers, and the extensive work done in the TRIP process, which Xspedius participated in through its attorneys in this proceeding. Requests asking for "all fiber optic transport facilities in Florida that you own" (Interrogatory 1) and all related maps (Interrogatory 2) are overbroad and not designed to elicit the information that is the subject of the TRO triggers. The Order does in fact limit the inquiry to circuits that are currently operational, focusing on "actual commercial deployment" (para. 405), "actual competitive deployment" (para. 410), and circuits that are "operationally ready" (para. 414), to name just a few cites. In addition, Xspedius has in fact provided extensive responsive information in this docket, to BellSouth, to Staff, and to Verizon. Xspedius has provided, among other things, statewide lists of its collocations, and direct answers as to whether Xspedius self-provides or wholesales transport at the relevant capacity levels.

(3) It's not clear what RFAs, PODs, or Interrogatories this applies to. Xspedius has responded with information relevant to the triggers; that is, relating to DS-1, DS-3, and dark fiber interoffice transport. Xspedius is not withholding information and in fact has provided extensive information in response to these and other interrogatories.

(4) The same arguments stated in our pleading and restated above apply with respect to the Requests for Production.

Xspedius has been proactive in providing discovery to BellSouth, to the Staff, and to Verizon, as well as other parties that have made requests. Verizon has not shown why its additional requests are not duplicative of the information already provided by Xspedius. Nevertheless, we are prepared to work with Verizon on any particular requests if Verizon can provide a more detailed explanation.

Steve Augustino  
Kelley Drye & Warren LLP  
1200 19th Street N.W.  
Suite 500  
Washington, DC 20036  
202-955-9608  
202-955-9792 (fax)  
saugustino@kelleydrye.com

-----Original Message-----

**From:** Mendel, David [mailto:David.Mendel@wilmer.com]

**Sent:** Monday, February 16, 2004 10:20 PM

**To:** Falvey, Jim; nhorton@lawfla.com

**Cc:** Ronis, Catherine; Augustino, Steven A.; richard.chapkis@verizon.com

**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

2/20/2004

Jim,

In your last e-mail you said you would get back to us by 5 pm today, but thus far I have not heard from you. It has now been over six days since I telephoned Doc raising concerns about Xspedius's objections. Also, on February 12, Doc left me a voice mail indicating that Xspedius would at least be willing to produce to Verizon what it already gave to Staff. Please provide Xspedius's response to staff by 5:00 pm EST on Tuesday, February 17. Please also tell me whether Xspedius will be responding further to Verizon's discovery requests and provide any additional information as soon as possible.

Thank you.

David

-----Original Message-----

**From:** Falvey, Jim [mailto:Jim.Falvey@xspedius.com]  
**Sent:** Thursday, February 12, 2004 4:09 PM  
**To:** Mendel, David; nhorton@lawfla.com  
**Cc:** Ronis, Catherine; Augustino, Steven A.  
**Subject:** RE: VZ's discovery to Xspedius, Docket 030852-TP

I am in receipt of your e-mail as of 2:14 today. I don't know what your definition of close of business is but roughly 4 hours notice on such a motion is not sufficient under any state's rules. Xspedius will review your comments, confer with counsel, and get back to you by 5 p.m. EST on Monday, February 16.

-----Original Message-----

**From:** Mendel, David [mailto:David.Mendel@wilmer.com]  
**Sent:** Thursday, February 12, 2004 2:14 PM  
**To:** nhorton@lawfla.com  
**Cc:** Ronis, Catherine  
**Subject:** VZ's discovery to Xspedius, Docket 030852-TP

Doc,

This follows up on our telephone conversation on February 10 regarding the Objections and Responses of Xspedius to Verizon's First Request for Admissions (Nos. 1-2), First Set of Interrogatories (Nos. 1-21), and First Request for Production of Documents (Nos. 1-11) in the Florida Triennial proceedings, Docket No. 030852. As I explained during our call, Xspedius's responses are deficient in a number of respects, including:

- (1) RFA 1: Xspedius responds that it "does not currently offer such dedicated interoffice transport services on a DS-1 or DS-3 level in a manner that would be relevant to this proceeding." This statement, of course, entirely ignores what Xspedius may be offering on the OCn level.
- (2) Interrogatories 1 through 8: Xspedius refuses to provide requested

information to the extent its facilities are not "currently operational." However Xspedius may define this phrase -- it does not appear in the Triennial Review Order -- the information requested by Verizon is clearly relevant to the proceeding, and Xspedius should produce it. Even if the parties disagree on which of Xspedius's facilities would satisfy the FCC's transport triggers, Xspedius is not entitled to block Verizon's discovery of relevant information. I further note that Xspedius has not indicated that it will produce information about facilities that are "currently operational." Xspedius's responses to other interrogatories are similarly deficient to the extent Xspedius is withholding information in reliance on the same terminology.

(3) Xspedius objects to a number of interrogatories "to the extent" they "request [] information related to facilities that are not interoffice facilities of the kind deemed relevant to this inquiry by the FCC." What information is Xspedius withholding based on this objection?

(4) Data Requests: many if not all of these are deficient for the reasons stated above.

Unless I receive full and complete responses to Verizon's discovery requests by COB on February 12, Verizon will be forced to consider additional steps to enforce these requests, including the filing of a motion to compel.

Thank you for your consideration of these issues.

David

David Mendel  
Wilmer Cutler Pickering LLP  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
Telephone: (202) 663-6128  
Facsimile: (202) 663-6363  
David.Mendel@wilmer.com