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March 1, 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

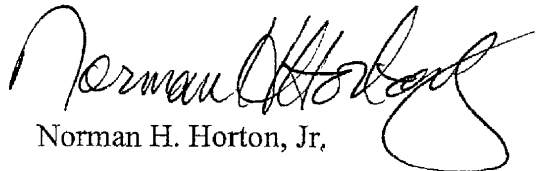
Dear Ms. Bayó:

Enclosed for filing on behalf of Xspedius communications, LLC are an original and fifteen copies of Xspedius' Response to Verizon Florida Inc.'s Motion to Compel Discovery 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

DOCUMENT NUMBER-DATE

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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' Response to Verizon Florida Inc.'s Motion
to Compel Discovery

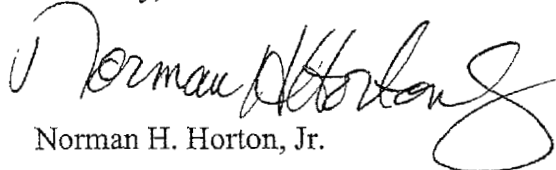
Dear Ms. Bayó:

Xspedius Communications, LLC, pursuant to Section 364.183(1), Florida Statutes, hereby claims that certain information provided in Xspedius' Response to Verizon Florida Inc.'s Motion to Compel Discovery, 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 a paper copy of the confidential documents.

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

Enclosure

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re Implementation of Requirements)
Arising from Federal Communications)
Commission Triennial UNE Review:) Docket No. 030852-TP
Location-Specific Review for DS1, DS3) Filed: March 1, 2004
And Dark Fiber Loops, and Route-Specific)
Review for DS1, DS3 and Dark Fiber)
Transport)
_____)

**XSPEDIUS' RESPONSE TO VERIZON FLORIDA INC.'S
MOTION TO COMPEL DISCOVERY**

Xspedius Communications LLC ("Xspedius"), 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, hereby respond to Verizon Florida Inc.'s Motion to Compel Xspedius Discovery. In response, Xspedius states:

1. Verizon's 11th hour motion should be denied for two reasons: First, the motion rests on the mistaken premise that Xspedius is withholding relevant information about transmission facilities deployed in the Verizon territory in Florida. To the contrary, Xspedius has answered other discovery in this case that clearly identifies where it has deployed transport facilities to collocations in the Verizon territory. Second, Verizon has delayed so long both in propounding the discovery and in filing this motion that its motives can only be to harass and burden Xspedius on the eve of hearing. Xspedius should not be required to respond further to overbroad requests that are not designed to elicit information about actual commercial deployment in the state of Florida. See TRO ¶ 405. Xspedius has provided similar information to BellSouth, Staff, and Verizon, yet only Verizon comes to the Commission with a motion to compel. While BellSouth and Staff have understood the need to limit the discovery in this proceeding to *interoffice* dedicated transport, Verizon still presses its requests for *all* Xspedius transport in the State of

Florida. Even if Xspedius could respond to this request at this late hour, it would require the production of documents relating to hundreds of miles of transport that in no way relate to interoffice transport. Given that Xspedius is a competitor of Verizon in the marketplace, the Commission should not support Verizon's burdensome fishing expedition approach to this proceeding.

2. Despite these far-reaching requests, in the Verizon territory, Verizon identifies Xspedius as a trigger candidate on only three transport routes (of the 67 Verizon claims meet the triggers) and at no customer locations. Despite the false sense of urgency created by Verizon's 11th hour motion, the fact is that Xspedius has provided responses to other discovery in this proceeding that would shed light on the limited assertions that Xspedius qualifies as a trigger candidate. This information includes Xspedius' responses to the staff's TRO data requests, Staff's First Set of Interrogatories and responses to BellSouth's First Set of Interrogatories. In those responses, Xspedius reported the following:

- That it has fiber-based collocations in the three Verizon central offices identified by Verizon;
- That it provisions transmission facilities connecting each collocation to Xspedius' switch(es) in Verizon territory;
- That it does not self provision transport between the central offices;
- That it does not wholesale transport between the central offices;
- That it has not deployed loop facilities to any customer locations in Verizon territory in Florida; and

- That it does not wholesale loops in Florida.¹

3. These responses are available to Verizon or have been provided to Verizon by counsel for Xspedius. Verizon's claim that Xspedius produced "no information about its fiber optic transmission facilities" (Motion at 2) is patently false.² Indeed, if Verizon felt that no information was available from Xspedius, one has to wonder why Verizon waited until February 23 – approximately a week and a half before the hearing – to even file the motion seeking this information. (Similarly, while BellSouth filed its discovery back in November for use in its December 22 Direct Testimony, Verizon did not file this discovery until the very date it's Direct Case was due. Again, this calls into question Verizon's purpose for this discovery.) Verizon's delays confirm Xspedius' position that the information Verizon actually needs to support its view of the case is already available.

4. Turning to the substance of Verizon's claims, Verizon focuses on two objections by Xspedius, claiming that Xspedius has misinterpreted the TRO and is withholding relevant information from Verizon. The first objection relates to facilities that have not been deployed. Specifically, Xspedius objected to several interrogatories because each:

requests information related to facilities that are not in use and the company's anticipated use [of facilities], 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.

5. Although Verizon claims the phrase "currently operational" does not appear in the TRO, it ignores the fact that the TRO does limit the fact finding under the triggers to "actual

¹ Xspedius' list of on-net collocations was provided in response to Staff and party discovery. See Exhibit 1. An excerpt dealing solely with Verizon wire centers was provided in response to Verizon's Request for Production of Documents no. 2. Lit buildings were identified in response to Staff discovery. See Exhibit 2.

commercial deployment of an element by competing carriers.” TRO ¶ 405. Actual commercial deployment, the TRO explains, “is the best indicator that requesting carriers are not impaired and, therefore, [we] emphasize that this quantitative trigger is the primary vehicle through which non-impairment findings will be made.” TRO ¶ 410. Indeed, the TRO specifically cautions that the self-provisioning trigger “preclude[s] counting competitive facilities before the facility is capable of operation on that route” (TRO ¶ 406, n.1256) and that the wholesale trigger should not count providers that are “unable immediately to provision service along the route” (TRO ¶ 414). Xspedius’ objection that it would not produce information regarding facilities that have not become operational is justified by these sections of the TRO. It is axiomatic that facilities must be deployed before they could count as either self-provisioning or wholesale facilities.

6. The second Xspedius objection discussed by Verizon also is supported by the TRO. Specifically, although Verizon does not identify the particular interrogatories to which this claim applies, Verizon takes issue with Xspedius’ objection to interrogatories 5, 6, 7 and 8, that the requests seek information concerning facilities that are not dedicated interoffice transport.

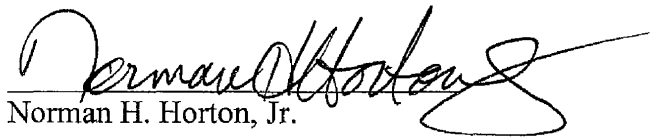
7. Verizon accuses Xspedius of relying “on the mistaken premise that ... indirect routes are not ‘relevant.’” See Verizon Motion at 10-11. It is Verizon, however, that is mistaken. Xspedius has considered all dedicated interoffice transport routes between ILEC central offices, whether direct or indirect routes. Xspedius is not withholding information regarding facilities that indirectly provide transport between ILEC wire centers. As to those facilities, Xspedius states (and has repeated stated) that it does not have dedicated transport connecting two ILEC wire centers with each other.

² Moreover, Verizon admits that Xspedius provided certain information to Verizon that was already provided to BellSouth. Motion at n.1.

8. In any event, as explained above, Xspedius has in fact provided information relating to transmission facilities that do not connect two ILEC wire centers. Xspedius has listed its three on-net collocations in Verizon territory, all of which are connected to Xspedius' switch in the Verizon territory. Although these facilities are not transport, the identity of them is available to Verizon. To the extent Verizon is seeking more detailed information about those facilities, such as the number of fibers deployed or capacity of each facility, Xspedius stands by the General Objections identified in response to each specific interrogatory, including but not limited to Objection 5 (seeks information not reasonably calculated to lead to relevant evidence), and Objection 8 (requests are overly broad, unduly burdensome and oppressive). Verizon has not challenged those objections to the discovery requests.

WHEREFORE, for the reasons set forth herein, Xspedius requests that the Commission enter an Order denying Verizon's Motion to Compel Xspedius Discovery.

Respectfully submitted this 1st day of March, 2004.



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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 (*), and/or U. S. Mail the 1st day of March, 2004.

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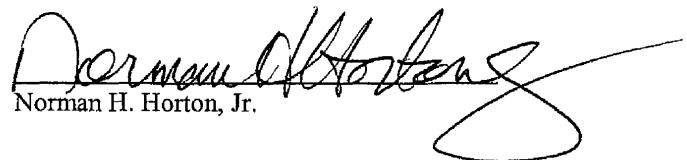
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