

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for expedited review of growth code denials by Number Pooling Administrator for Bartow, Bradenton, Clearwater, Hudson, Jacksonville, Lakeland, Mulberry, New Port Richey, Palmetto, Plant City, St. Petersburg, Sarasota, Tarpon Springs, West Palm Beach, and Zephyrhills rate centers, by Xspedius Management Co. Switched Services, LLC d/b/a Xspedius Communications.

DOCKET NO. 050298-TX  
ORDER NO. PSC-05-0612-PAA-TX  
ISSUED: June 2, 2005

NOTICE OF PROPOSED AGENCY ACTION ORDER DIRECTING NEUSTAR TO  
PROVIDE XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC d/b/a XSPEDIUS  
COMMUNICATIONS WITH A GROWTH CODE  
WITH ADDITIONAL NUMBERING RESOURCES

BY THE COMMISSION:

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

BACKGROUND

On March 12, 2005, Xspedius Management Company Switched Services, LLC (Xspedius), submitted a numbering resource application to the NeuStar Pooling Administrator (NeuStar) for a 10,000 number block (NXX code) in each of the Bartow, Bradenton, Clearwater, Hudson, Jacksonville, Lakeland, Mulberry, New Port Richey, Palmetto, Plant City, St. Petersburg, Sarasota, Tarpon Springs, West Palm Beach, and Zephyr Hills rate centers. NeuStar denied Xspedius's request on March 12, 2005, because certain criteria had not been met. Xspedius is a competitive local exchange carrier certificated by this Commission to operate in Florida. On May 2, 2005, Xspedius filed a petition requesting that the Florida Public Service Commission (Commission or PSC) overturn the decision of NeuStar, to provide a full NXX Code in each of the fifteen rate centers.

DOCUMENT NUMBER-DATE

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We are vested with jurisdiction pursuant to Sections 364.01 and 364.16(4), Florida Statutes, and 47 U.S.C. §151, and 47 C.F.R. §52.15(g)(3)(iv).

### ANALYSIS

Carriers in need of numbering resources request numbers from the North American Numbering Plan Administrator (NANPA) in blocks of 10,000 numbers if the area where the numbering resources are requested is not in a mandatory number pooling area. If the area where the numbering resources are needed is a number pooling area, the carrier must obtain the numbers from the Number Pooling Administrator in blocks of 1,000 numbers. Each of the areas where Xspedius is requesting numbering resources is a mandatory number pooling area. When requesting additional numbering resources, carriers must meet certain criteria. Carriers needing growth numbering resources must meet a national utilization threshold. Pursuant to 47 C.F.R. § 52.15(h):

All applicants for growth numbering resources shall achieve a 60% utilization threshold, calculated in accordance with paragraph (g)(3)(ii) of this section, for the rate center in which they are requesting growth numbering resources. This 60% utilization threshold shall increase by 5% on June 30, 2002, and annually thereafter until the utilization threshold reaches 75%.

The current utilization threshold for growth numbering resources is 75%. Xspedius's utilization in the fifteen rate centers where they are seeking numbers, ranges from 3.78% to 66.74%, with an average utilization of 27.11%. NeuStar denied Xspedius's code requests because it failed to meet the 75% utilization criteria in each of the fifteen rate centers.

In Federal Communications Commission (FCC) Order FCC 01-362, released December 28, 2001, the FCC addressed a "safety valve" process to allow carriers that do not meet the utilization criteria to obtain additional numbering resources stating "[w]e agree with the commenting parties that a safety valve mechanism should be established, and we delegate authority to state commissions to hear claims that a safety valve should be applied when the NANPA or Pooling Administrator denies a specific request for numbering resources." (§61)

The Order also addressed specific instances of code denials, stating "[w]e also clarify that states may grant requests by carriers that receive a specific customer request for numbering resources that exceeds their available inventory. Finally, we give states some flexibility to direct the NANPA or Pooling Administrator to assign additional numbering resources to carriers that have demonstrated a verifiable need for additional numbering resources outside of these specifically enumerated instances." (§61)

By Order No. 01-1973-PCO-TL, issued March 15, 2002, Docket No. 020087-TL, In re: Petition by BellSouth Telecommunications, Inc. for expedited review of pooling administrator's denial of request for additional numbering resources for the West Palm Beach Exchange (Royal Palm Beach) and for modification of expedited process for reviewing North American

Numbering Plan Administration (NANPA) to include Pooling Administrator Code Denials, the Commission adopted a three-step administrative process to apply to Pooling Administrator code denials.

The expedited process provides that the carrier shall file a petition with this Commission requesting review of the code denial. Our staff reviews the carrier's application to the pooling administrator for numbering resources, and the subsequent denial. If the carrier's request for numbering resources is for a specific customer, our staff contacts the end-user customer and verifies that the customer needs that amount of numbers, and that the carrier presenting the petition is its carrier of choice. If the criteria of Order No. 01-1973-PCO-TL are met, staff of the Office of General Counsel issue a Proposed Agency Action Order overturning the Pooling Administrator's code denial.

Order No. 01-1973-PCO-TL also provides that if these three criteria are not met, or our staff believes that the complexity of the case warrants a more thorough analysis in a recommendation to be considered on the regular agenda schedule, our staff will contact the company to discuss the matter. If discussions with the company do not resolve the concerns, our staff will prepare a recommendation to address the matter before the full Commission.

As mentioned above, Xspedius's request for additional numbers did not meet the 75% utilization criteria set forth by the FCC. We find that it would not be in the interest of Florida to request NeuStar to overturn its decision because these rate centers are mandatory pooling areas, there are no end-use customers for these numbers, the request for 10,000 numbers in each of 15 rate centers was based on pure speculation, and overturning code denials such as these will deplete Florida's numbering resources and lead to premature exhaust of area codes.

Xspedius requested the numbers on behalf of j2 Global Communications (j2), an e-fax service. j2 wants to be assured that it will have access to numbering resources that are sufficient to serve its prospective customers in a new market. The request for 10,000 numbers in each rate center is based on speculation as j2 has no customers at the present time in these rate centers.

Based on these concerns, and in accordance with Order No. 01-1973-PCO-TL, our staff contacted Xspedius on May 5, 2005, to discuss its request. Our staff requested that Xspedius review its current inventory of numbers to determine if it has any uncontaminated blocks of 1,000 numbers it could use for these requests. Xspedius determined that it could provide enough numbering resources in the Bradenton, Plant City, and Zephyr Hills rate centers for j2 to start with. Xspedius agreed to modify its request for 10,000 numbers in the other twelve rate centers to a single 1,000 number block in each.

On May 17, 2005, Xspedius submitted correspondence modifying its request from 150,000 numbers (10,000 numbers in 15 rate centers) to 12,000 numbers (1,000 numbers in each of 12 rate centers). Our concerns have been addressed and resolved by Xspedius's modifications. Therefore, in accordance with Commission Order PSC-02-0352-PAA-TL (Docket No. 020087-TL), which approved an expedited process for NeuStar code denials, we have determined the following:

- 1) The carrier has demonstrated that it has a customer in need of numbering resources;
- 2) The carrier has shown that it is unable to provide services to a potential customer because of NeuStar's denial of numbering resources;
- 3) A customer will not be able to obtain the service from the provider of his/her choice because the carrier will not have the numbers available.

### CONCLUSION

Based on the foregoing, we find it appropriate to overturn NeuStar's decision to deny additional numbering resources, and direct NeuStar to provide Xspedius with additional numbering resources consisting of a 1,000 number block in each of the Bartow, Clearwater, Hudson, Jacksonville, Lakeland, Mulberry, New Port Richey, Palmetto, St. Petersburg, Sarasota, Tarpon Springs, and West Palm Beach rate centers as soon as possible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that NeuStar shall provide Xspedius Management Company Switched Services, LLC with a 1,000 number block in each of the Bartow, Clearwater, Hudson, Jacksonville, Lakeland, Mulberry, New Port Richey, Palmetto, St. Petersburg, Sarasota, Tarpon Springs, and West Palm Beach rate centers as soon as possible, as reflected in the body of this Order. It is further

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

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

By ORDER of the Florida Public Service Commission this 2nd day of June, 2005.

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

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 23, 2005.

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

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