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January 21, 2004

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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

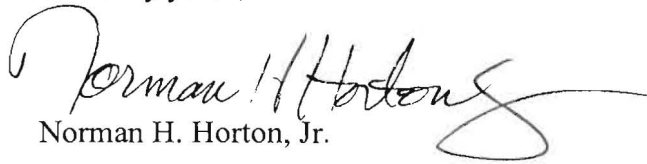
Dear Ms. Bayó:

Enclosed for filing on behalf of Xspedius Communications, LLC are an original and fifteen copies of the Rebuttal Testimony of James C. Falvey on behalf of Xspedius Communications, LLC 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

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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 - Rebuttal Testimony of James C. Falvey on behalf of
Xspedius Communications, LLC

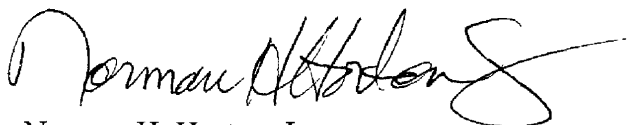
Dear Ms. Bayó:

Xspedius Communications, LLC, pursuant to Section 364.183(1), Florida Statutes, hereby claims that certain information provided in the Rebuttal Testimony of James C. Falvey, 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) Docket No.: 030852-TP
Commission Triennial UNE Review:)
For DS1, DS3, and Dark Fiber Loops) Filed: January 21, 2004
And Route-Specific Review for DS1, DS3,)
And Dark Fiber Transport)
_____)

REBUTTAL TESTIMONY OF

JAMES C. FALVEY

ON BEHALF OF

XSPEDIUS COMMUNICATIONS, LLC

1 **Q. PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS**
2 **ADDRESS.**

3 A. My name is James C. Falvey. I am the Senior Vice President of regulatory
4 Affairs for Xspedius Communications, LLC. My business address is
5 7125 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046.

6 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
7 **PROCEEDING ?**

8 A. I am testifying for Xspedius Communications, LLC, on behalf of its
9 Florida operating subsidiaries, Xspedius Management Co. Switched
10 Services, LI C and Xspedius Management Co. of Jacksonville, LLC
11 ("Xspedius").

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND**
13 **AND PROFESSIONAL EXPERIENCE.**

14 A. I am a *cum laude* graduate of Cornell University, and received my law
15 degree from the University of Virginia School of Law. I am admitted to
16 practice law in the District of Columbia and Virginia.
17 After graduating from law school, I worked as a legislative assistant for
18 Senator Harry M. Reid of Nevada and then practiced antitrust litigation in
19 the Washington office of Johnson & Gibbs. Thereafter, I practiced law
20 with the Washington, D.C. law firm of Swidler & Berlin, where I
21 represented competitive local exchange providers and other competitive
22 providers in state and federal proceedings. In May 1996, I joined e.spire
23 Communications, Inc. as Vice President of Regulatory Affairs, where I

1 was promoted to Senior Vice President of Regulatory Affairs in March
2 2000.

3 Currently, I am the Senior Vice President of Regulatory Affairs for
4 Xspedius Communications, managing all matters that affect Xspedius
5 before federal, state, and local regulatory agencies. I am responsible for
6 federal regulatory and legislative matters, state regulatory proceedings and
7 complaints, and local rights-of-way issues.

8 **Q. HAVE YOU TESTIFIED BEFORE THE FLORIDA OR OTHER**
9 **STATE PUBLIC SERVICE COMMISSIONS?**

10 A. Yes. I have testified before in Florida on local competition issues. In
11 total, I have testified before 14 public service commissions on, among
12 other issues, interconnection, resale, and reciprocal compensation,
13 including Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi,
14 North Carolina, South Carolina, Tennessee, New Mexico, Texas,
15 Pennsylvania, Arkansas, and Kansas.

16 **Q. PLEASE DESCRIBE THE TYPE OF SERVICE XSPEDIUS**
17 **PROVIDES IN FLORIDA.**

18 A. Xspedius is a facilities-based telecommunications service provider that
19 also provides service to customers through unbundled network elements
20 leased from BellSouth. Xspedius currently offers service in Jacksonville,
21 Ft. Lauderdale, Miami, and the Tampa area. Xspedius provides a wide
22 variety of complex integrated local, long distance, and Internet services to

1 sophisticated business customers, including Xspedius Complete Access,
2 its flagship integrated T-1 product.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. The purpose of my testimony is to rebut the Direct and Supplemental
5 Direct Testimony of Shelley W. Padgett and the Direct and Supplemental
6 Testimony of Aniruddha (Andy) Banerjee, Ph.D. BellSouth has presented
7 – or is presenting – a direct case based upon facts and findings from ivory
8 tower expert reports and witnesses, but is steadfastly avoiding the real-
9 world evidence presented to it by Alternative Local Exchange Carriers
10 (“ALECs”) such as Xspedius in responses to discovery requests agreed-
11 upon in advance by BellSouth and several competitive carriers. This real-
12 world evidence is precisely the evidence that the FCC has asked the state
13 commissions to review in its recent Triennial Review Order as the primary
14 driver of its decision in this proceeding. The evidence presented by
15 BellSouth is completely inconsistent with the real-world evidence that
16 BellSouth had at its disposal when it filed its testimony. BellSouth states
17 that Xspedius is a wholesale and self-provider along certain loop routes (at
18 certain customer locations); a month before BellSouth’s testimony was
19 due, Xspedius filed responses indicating that Xspedius is in fact not a
20 wholesaler of loops in Florida. BellSouth states that Xspedius wholesales
21 and self-provides DS-1, DS-3, and dark fiber transport along certain
22 routes; a month before BellSouth’s testimony was due, Xspedius filed

1 responses indicating that Xspedius is in fact not a wholesaler or self-
2 provider of any level of transport along any transport routes in Florida.

3 I will also rebut the testimony of witnesses Fulp and White for
4 Verizon, explaining that Xspedius does not provide any level of transport
5 in Verizon's region on a wholesale or self-provisioned basis.

6 My testimony will also point to the grave danger in eliminating
7 loop or transport routes based upon hypothetical evidence on routes where
8 in fact no competitive alternatives exist. Finally, I will explain why it is
9 critical for Xspedius to have a gradual transition to delisted elements, and
10 why this Commission should establish a separate phase of this proceeding
11 to address transition issues.

12 **Xspedius Does Not Provide Wholesale Loops**

13 1. To what specific customer locations have two or more competing
14 providers, not affiliated with each other or the ILEC, including intermodal
15 providers of service comparable in quality to that of the ILEC, deployed
16 their own DS-1 facilities (including leased, purchased or UNE dark fiber
17 with the carrier's own optronics attached to activate the fiber) and offer
18 DS-1 loops over their own facilities on a widely available basis to other
19 carriers? For each such location, do the wholesale providers have access
20 to the entire customer location, including each individual unit within the
21 location?
22

23 3. To what specific customer locations have two or more competing
24 providers, not affiliated with each other or the ILEC, including intermodal
25 providers of service comparable in quality to that of the ILEC, deployed
26 their own DS-3 facilities (including leased, purchased or UNE dark fiber
27 with the carrier's own optronics attached to activate the fiber) and offer
28 DS-3 loops over these facilities on a widely available wholesale basis to
29 other carriers? For each such location, do the wholesale providers have
30 access to the entire customer location, including each individual unit
31 within the location?
32

1 **Q. DOES XSPEDIUS OFFER DS-1 OR DS-3 LOOPS AS DEFINED IN**
2 **THE TRO ON A WHOLESALE BASIS TO ANY END USER**
3 **LOCATIONS IN FLORIDA?**

4 A. No. Tracking the definitions in the TRO, Xspedius is not in the business
5 of providing loops on a wholesale basis at either the DS-1 or DS-3
6 capacity level. In this rebuttal testimony, I will not elaborate on the
7 appropriate interpretation of the triggers, which is addressed in the Direct
8 Testimony of Gary Ball on behalf of CompSouth. As discussed below,
9 there are a limited number of circumstances where Xspedius provides
10 loops for its own use, but Xspedius does not wholesale loops in Florida at
11 any capacity level.

12 **Q. DID XSPEDIUS INDICATE TO BELLSOUTH THAT IT DOES**
13 **NOT WHOLESALE LOOPS IN FLORIDA?**

14 A. Yes. In discovery responses filed and delivered to BellSouth on
15 November 14, 2003, Xspedius stated that it is not a wholesaler of loops,
16 either DS-1 or DS-3. See JCF-1 Responses and Objections of Xspedius
17 Communications to BellSouth's First Set of Interrogatories (Nos. 1-13),
18 ("Xspedius Responses"), Response to Interrogatory No. 2.

19 **Q. DID BELLSOUTH AGREE UPON THE QUESTIONS WITH**
20 **SEVERAL ALECS IN ADVANCE?**

21 A. Yes, in a brief fit of cooperative spirit, BellSouth, Xspedius and several
22 other ALECs agreed to a series of discovery questions to be propounded in
23 this proceeding. BellSouth, having agreed to the questions and having

1 received responses, seems to have chosen to set aside the unpalatable real-
2 world answers and relies instead upon third-party expert reports and
3 witnesses.

4 **Q. BUT DOESN'T BELL SOUTH'S TESTIMONY STATE THAT IT**
5 **WOULD ONLY RELY UPON THE GEOLIT PLUS REPORT**
6 **ONLY WHERE CARRIERS DID NOT RESPOND TO**
7 **DISCOVERY?**

8 A. Ms. Padgett states, that "I have used this data only in instances where a
9 carrier has not provided us with information through discovery." Yet
10 where Xspedius has provided responses to BellSouth a month before the
11 BellSouth Direct Testimony was due plainly indicating that Xspedius does
12 not wholesale loops, BellSouth still relies upon inchoate and
13 uncorroborated evidence in its stubborn attempt to make out its case.

14 **Q. IS BELL SOUTH'S CLAIM THAT ANY CARRIER THAT**
15 **PROVIDES SOME SORT OF WHOLESALE SERVICE**
16 **SOMEWHERE IN FLORIDA IS PRESUMED TO WHOLESALE**
17 **ON SPECIFIC DS-1 AND DS-3 LOOP ROUTES VALID?**

18 A. No. In her testimony, Ms. Padgett counts a carrier as a wholesale provider
19 based on, for example, the carrier's own advertisements offering wholesale
20 services. *See* Padgett Testimony at 9. BellSouth did not conduct any
21 independent verification of whether the carrier actually provides wholesale
22 service and at what customer location(s) the carrier makes wholesale
23 service available. Instead, even assuming that the carrier is a wholesale

1 provider, BellSouth goes one step further – incorrectly – and assumes that
2 the carrier offers wholesale loops at all customer locations where it is
3 located. This is incorrect. Xspedius is a good example. Xspedius
4 certainly engages in wholesale sales in Florida, but not over loop (or
5 transport) routes as defined by the FCC.

6 **Q. DID BELLSOUTH APPLY THE NECESSARY ROUTE-SPECIFIC**
7 **ANALYSIS?**

8 A. No. As Mr. Ball states in his testimony, the FCC requires carriers to
9 provide information per customer location. As I stated above, BellSouth
10 bases its allegation that a carrier provides wholesale services at certain
11 customer locations based on its claim that the carrier provides some sort of
12 wholesale service in Florida. BellSouth has failed to apply the necessary
13 route-specific analysis and its Direct wholesale case is therefore baseless.
14 BellSouth Exhibit SWP-1 is therefore inaccurate to the extent that it lists
15 Xspedius as a wholesale provider of loops. If the Commission were to
16 eliminate any loop routes based on this “ghost” competition, Florida
17 consumers living or working in the loop locations in question would be
18 denied the opportunity to purchase competitive services, frustrating the
19 intent of both state and federal statutes.

20 **Q. CAN BELLSOUTH USE XSPEDIUS LOOPS TO MEET THE DS-1**
21 **TRIGGERS IF XSPEDIUS DOES NOT WHOLESALE LOOPS**
22 **OVER THOSE ROUTES?**

1 A. No. The self-provisioning trigger only applies to DS-3 loops, not DS-1
2 loops. TRO, para. 405. In other words, there must be wholesale
3 competition in order to delist DS-1 unbundled loops. Therefore, because
4 Xspedius does not wholesale any loops, it cannot be relied upon to
5 eliminate DS-1 loop routes.

6 BellSouth has identified five (5) locations on SWP-2 and SWP-3
7 that are Xspedius locations. All five (5) must be eliminated as triggers
8 when Xspedius is no longer relied upon because there is only one other
9 carrier going into each building. These five (5) locations are listed in the
10 attached Exhibit JCF-2, ALL-LOOP-INT-1, provided in discovery
11 responses to BellSouth. In general, the Commission should be extremely
12 demanding in applying the FCC wholesale standards with respect to DS-1
13 loops. See TRO, para. 338. Access to these loops is critical to my
14 company's ability to provide competitive services in Florida, and access to
15 a robust wholesale provider that meets the standards detailed in Mr. Ball's
16 testimony is critical.

17 **Q. DID BELLSOUTH VERIFY THAT EACH LOOP PROVIDER HAS**
18 **ACCESS TO ALL UNITS IN THE BUILDINGS IN QUESTION?**

19 A. No. Again, Xspedius provided information in its discovery responses that
20 in 4 of the 5 buildings in question, it does not have access to all units in
21 the building. See TRO, para. 337. See Exhibit JCF-2, ALL-LOOP-INT-
22 1, attached hereto. Xspedius first provided this information in its
23 November discovery responses but BellSouth does not even have a

1 column in its Exhibits to address that issue. BellSouth has again run
2 roughshod over the detailed requirements of the TRO in presenting its
3 direct case.

4
5 **Xspedius Has Not Deployed DS-3 (§51.319(a)(5)) or Dark Fiber Loops**
6 **(§51.319(a)(6))**
7

- 8 2. To what specific customer locations have two or more competing
9 providers, not affiliated with each other or the ILEC, including intermodal
10 providers of service comparable in quality to that of the ILEC, either (1)
11 deployed their own DS-3 facilities and actually serve customers via those
12 facilities or (2) deployed DS-3 facilities by attaching their own optronics
13 to activate dark fiber obtained under a long-term indefeasible right of use
14 and actually serve customers via those facilities at that location?
15
- 16 5. To what specific customer locations have two or more competing
17 providers deployed their own dark fiber facilities, including dark fiber
18 owned by the carrier or obtained under a long-term indefeasible right of
19 use (but excluding ILEC unbundled dark fiber)?
20

21 **Q. ARE THERE SIMILAR WEAKNESSES IN MS. PADGETT'S**
22 **TESTIMONY RELATING TO SELF-PROVISIONED DS-3 AND**
23 **DARK FIBER LOOPS?**

24 A. Yes. Again, many of the same issues that exist with respect to wholesale
25 also apply to self-provisioned loops. Xspedius submitted discovery
26 responses to BellSouth in November 2003, and BellSouth should not be
27 relying on external experts or reports. Ms. Padgett's exhibits SWP-3,
28 SWP-4, and SWP-5 again incorrectly list Xspedius and Xspedius locations
29 as the basis for eliminating certain loop routes. (SWP-4 and SWP-5 are
30 incomplete in that they fail to provide detail as to particular carriers.
31 Xspedius must assume that they can be read in conjunction with the
32 carrier-specific information in SWP-3.)

1 Q. DID BELLSOUTH AGAIN IGNORE THE ISSUE OF WHETHER
2 THE CARRIERS IN QUESTION HAVE ACCESS TO ALL UNITS
3 IN THE BUILDING?

4 A. Yes, in all but one of the Xspedius locations listed on SWP-4 and SWP-5,
5 Xspedius does *not* have access to all units in the building. BellSouth had
6 access to that information a month before it filed its Direct Testimony but
7 failed to create a column in its exhibits relating to access to units, and
8 failed to even mention this key factor. As to the one building where
9 Xspedius has access to all units, Xspedius has submitted responses
10 indicating that it does not have spare electronics in that building. See JCF-
11 1, Xspedius Responses, Response to Interrogatory No. 12, and Exhibit
12 JCF-2, ALL-LOOP-INT-1. Under the FCC's rules and orders, Xspedius
13 cannot count as a trigger at any of these five locations, because either (1) it
14 does not serve the entire customer location, or (2) it does not have spare
15 electronics in the building. Again, these buildings, without Xspedius, no
16 longer meet the appropriate threshold (see SWB-3) and should be removed
17 from the list of locations where unbundled DS-3 or dark fiber loops would
18 no longer be available. The Commission should stick to this real-world
19 evidence and should not rely upon hypothetical or ivory tower testimony
20 when analyzing loop routes.

21 **Dedicated DS-1 Transport (§51.319(e)(1)(ii))**
22

23 7. Along what particular routes have two or more competing providers, not
24 affiliated with each other or the ILEC, including intermodal providers of
25 service comparable in quality to that of the ILEC, deployed their own DS-
26 1 level dedicated transport facilities (including leased, purchased or UNE

1 dark fiber with the carrier's own optronics attached to activate the fiber)
2 and are willing to provide DS-1 level transport immediately over their
3 own facilities on a widely available basis to other carriers?
4
5 8. For any particular route where at least two competing providers will
6 provide wholesale DS-1 dedicated transport, do both competing providers'
7 facilities terminate in collocation arrangements at an ILEC premise or a
8 similar arrangement in a non-ILEC premise? If so, can requesting carriers
9 obtain reasonable and nondiscriminatory access to those competing
10 providers' termination points through a cross-connect to the providers'
11 collocations either at the ILEC premise or similar arrangement if located
12 at a non-ILEC premise?
13

14 **Q. DOES BELLSOUTH'S DS-1 TRANSPORT TESTIMONY SUFFER**
15 **FROM SOME OF THE SAME FAILINGS AS ITS LOOP**
16 **TESTIMONY?**

17 A. Yes. BellSouth has relied on data and tests that the FCC has said are not
18 appropriate. BellSouth witness Padgett comes right out and states that
19 BellSouth has relied entirely on collocation data in assuming that any two
20 collocations that have fiber between them automatically qualify as trigger
21 routes. See Padgett Direct at 20-21. With respect to DS-1 transport – and
22 as discussed further below DS-3 and dark fiber transport – BellSouth fails
23 to make its Direct case in a number of ways.

24 **Q. DOES BELLSOUTH ACCURATELY REPRESENT XSPEIDIUS**
25 **DS-1 TRANSPORT ROUTES?**

26 A. No. Xspedius does not provide dedicated transport services between
27 incumbent LEC central offices. Xspedius is not willing immediately to
28 provide dedicated transport on a widely available basis in Florida. Ms.
29 Padgett has clearly just pointed to any two central offices where Xspedius

1 is collocated and assumed that Xspedius is providing DS-1 transport on
2 that route. But again, as BellSouth knew from November discovery
3 responses, Xspedius does not provide DS-1 transport between any of the
4 pairs of offices identified in SWP-8. See Exhibit JCF-1; Xspedius
5 Responses, Response to Interrogatory No. 2.

6 **Q. PLEASE EXPLAIN HOW XSPEDIUS USES ITS COLLOCATIONS.**

7 A. Xspedius has a limited number of collocations dedicated to aggregating
8 and carrying Xspedius traffic from the BellSouth central office back to the
9 Xspedius switch. Xspedius purchases unbundled loops and special access
10 circuits from BellSouth and uses its collocations to collect and return that
11 traffic to the Xspedius network and switch. Xspedius has paid a very high
12 price for its collocations. Xspedius investors invested in collocations to
13 serve Xspedius customers. Xspedius has yet to become free cash flow
14 positive and Xspedius investors are counting on the use of those
15 collocations to support the primary business plan of serving Xspedius
16 retail customers. Xspedius's limited ongoing investments are not
17 dedicated to changing the current use of its collocations. In short,
18 Xspedius is not currently commercially deploying DS-1 transport and
19 Xspedius and its investors are not willing to provide DS-1 level transport
20 immediately over its own facilities on a widely available basis to other
21 carriers. As a result, contrary to the testimony of Ms. Padgett, Xspedius is
22 not operationally ready to provide DS-1 transport over its existing
23 collocations. See Ball Direct Testimony; see also TRO, paras. 405, 406.

1 Xspedius does not have DS-1 circuits that terminate in the collocations
2 identified by BellSouth. Accordingly, those DS-1 routes that rely upon
3 Xspedius and require Xspedius to meet the threshold number of carriers
4 cannot meet those thresholds.

5 **Q. DOES XSPEDIUS PROVIDE WHOLESALE DS-1 TRANSPORT?**

6 A. No. As Xspedius responded to BellSouth in November discovery
7 responses, Xspedius does not self-provision DS-1 transport and does not
8 wholesale DS-1 transport. See JCF-1, Xspedius Responses, Response to
9 Interrogatory No. 2. Again, Xspedius is not willing to alter its business
10 plans to create such wholesale operations, nor is it currently operationally
11 ready to provide wholesale DS-1 along the routes in question. Xspedius is
12 not willing or able to provide DS-1 level dedicated transport immediately
13 over its facilities on a widely available basis to other carriers.

14 **Q. WOULD YOU MAKE THE SAME STATEMENTS IN RESPONSE**
15 **TO VERIZON'S CLAIM IN ITS JOINT SUPPLEMENTAL**
16 **DIRECT FULP/WHITE TESTIMONY THAT XSPEDIUS IS A**
17 **WHOLESALE PROVIDER OF DS-1 TRANSPORT?**

18 A. Yes. With respect to wholesaling of DS-1 transport, the same responses
19 apply: Xspedius is not currently providing DS-1 transport along the routes
20 named by Verizon, is not operationally ready to self-provide or wholesale
21 DS-1 transport over such routes, and is not willing or able to provide DS-1
22 dedicated transport immediately over its facilities on a widely available

1 basis to other carriers over the Verizon routes. To the extent that Verizon
2 relies upon Xspedius transport routes, it cannot meet the transport triggers.

3 **Dedicated DS-3 Transport (§51.319(e)(2))**
4

- 5 9. Along what particular routes have three or more competing providers, not
6 affiliated with each other or the ILEC, including intermodal providers of
7 service comparable in quality to that of the ILEC, deployed their own DS-
8 3 level dedicated transport facilities (including leased, purchased or UNE
9 dark fiber with the carrier's own optronics attached to activate the fiber)
10 and are operationally ready to use those transport facilities?
11
- 12 10. For any particular route where at least three competing providers have
13 self-provisioned DS-3 level dedicated transport facilities, do the
14 competing providers' facilities terminate in collocation arrangements at an
15 ILEC premise or a similar arrangement in a non-ILEC premise?
16
- 17 11. Along what particular routes have two or more competing providers, not
18 affiliated with each other or the ILEC, including intermodal providers of
19 service comparable in quality to that of the ILEC, deployed their own DS-
20 3 level dedicated transport facilities (including leased, purchased or UNE
21 dark fiber with the carrier's own optronics attached to activate the fiber),
22 are operationally ready to use those transport facilities, and are willing to
23 provide DS-3 level dedicated transport immediately over their facilities on
24 a widely available wholesale basis to other carriers?
25
- 26 12. For any particular route where at least two competing providers will
27 provide wholesale DS-3 level dedicated transport, do both competing
28 providers' facilities terminate in collocation arrangements at an ILEC
29 premise or a similar arrangement in a non-ILEC premise? If so, can
30 requesting carriers obtain reasonable and nondiscriminatory access to
31 those competing providers' termination points through a cross-connect to
32 the providers' collocations either at the ILEC premise or similar
33 arrangement if located at a non-ILEC premise?
34

35 **Q. DOES THE NATURE OF THE XSPEDIUS NETWORK ALSO**
36 **MEAN THAT IT DOES NOT PROVIDE INTEROFFICE DS-3**
37 **TRANSPORT?**

38 A. Yes, Xspedius also does not self-provide DS-3 interoffice transport.
39 Again, because of the nature of the Xspedius network and business,

1 Xspedius uses its handful of collocations in Jacksonville, Ft. Lauderdale,
2 and Miami to aggregate traffic from unbundled loops and special access
3 circuits and carries that traffic to the Xspedius switch. Xspedius does not
4 currently self-provide DS-3 interoffice transport over the routes identified
5 by Ms. Padgett in SWP-8. Xspedius's limited ongoing investments are not
6 dedicated to changing the current use of its collocations. Xspedius is not
7 currently commercially deploying DS-3 transport and Xspedius and its
8 investors are not willing to provide DS-3 level transport immediately over
9 their own facilities on a widely available basis to other carriers. As a
10 result, contrary to the testimony of Ms. Padgett, Xspedius is not
11 operationally ready to provide DS-3 transport over its existing
12 collocations. See Ball Direct Testimony; see also TRO, paras. 405, 406.
13 Xspedius does not have DS-3 circuits that terminate in the collocations
14 identified by BellSouth. Accordingly, those DS-3 routes that rely upon
15 Xspedius and require Xspedius to meet the threshold number of carriers,
16 cannot meet those thresholds.

17 **Q. DID XSPEDIUS INDICATE TO BELLSOUTH IN DISCOVERY**
18 **RESPONSES THAT IT DOES NOT PROVIDE DS-3 TRANSPORT?**

19 A. Yes, in its discovery responses in November 2003, Xspedius plainly
20 indicated that it does not self-provide DS-3 transport. See JCF- 1,
21 Xspedius Responses, Response to Interrogatory No. 1. But BellSouth
22 makes no mention of these responses when it included Xspedius as a DS-3

1 transport trigger in SWP-8. As mentioned above, SWP-8 is therefore
2 inaccurate to the extent it references Xspedius DS-3 routes.

3 **Q. DOES XPSEDIUS PROVIDE DS-3 INTEROFFICE TRANSPORT**
4 **ON A WHOLESALE BASIS?**

5 A. No. As Xspedius responded to BellSouth in November discovery
6 responses, Xspedius does not self-provision DS-3 transport and does not
7 wholesale DS-3 transport. See JCF-1, Xspedius Responses, Response to
8 Interrogatory Nos. 1 and 2. Again, Xspedius is not willing to alter its
9 business plans to create such wholesale operations, nor is it currently
10 operationally ready to provide wholesale DS-3 along the routes in
11 question. Xspedius is not willing or able to provide DS-3 level dedicated
12 transport immediately over its facilities on a widely available basis to
13 other carriers.

14 **Q. WOULD YOU MAKE THE SAME STATEMENTS IN RESPONSE**
15 **TO VERIZON'S CLAIM IN ITS JOINT SUPPLEMENTAL**
16 **DIRECT FULP/WHITE TESTIMONY THAT XSPEDIUS IS A**
17 **SELF-PROVIDER AND WHOLESALE PROVIDER OF DS-3**
18 **TRANSPORT?**

19 A. Yes. With respect to both self-providing and wholesaling of DS-3
20 transport, the same responses apply: Xspedius is not currently providing
21 DS-3 transport along the routes named by Verizon, is not operationally
22 ready to self-provide or wholesale DS-3 transport over such routes, and is
23 not willing or able to provide DS-3 dedicated transport immediately over

1 its facilities on a widely available basis to other carriers over the Verizon
2 routes. To the extent that Verizon relies upon Xspedius transport routes, it
3 cannot meet the transport triggers.

4 **Dark Fiber Transport (§51.319(e)(3))**
5

- 6 14. Along what particular routes have three or more competing providers, not
7 affiliated with each other or the ILEC, deployed their own dark fiber
8 transport facilities?
9
- 10 15. For any particular route where at least three competing providers have
11 self-provisioned dark fiber dedicated transport facilities, do the competing
12 providers' facilities terminate in collocation arrangements at an ILEC
13 premise or a similar arrangement in a non-ILEC premise?
14
- 15 16. Along what particular routes have two or more competing providers, not
16 affiliated with each other or the ILEC, deployed their own dark fiber
17 transport facilities (including dark fiber obtained from an entity other than
18 the ILEC), are operationally ready to lease or sell those transport facilities
19 to provide transport along the route, and are willing to provide dark fiber
20 immediately over their facilities on a widely available wholesale basis to
21 other carriers?
22
- 23 17. For any particular route where at least two competing providers will
24 provide wholesale dark fiber, do both competing providers' facilities
25 terminate in collocation arrangements at an ILEC premise or a similar
26 arrangement in a non-ILEC premise? If so, can requesting carriers obtain
27 reasonable and nondiscriminatory access to those competing providers'
28 termination points through a cross-connect to the providers' collocations
29 either at the ILEC premise or similar arrangement if located at a non-ILEC
30 premise?
31
- 32 18. For any particular route where at least two competing providers will
33 provide such wholesale dark fiber, do these providers have sufficient
34 quantities of dark fiber available to satisfy current demand along that
35 route? If not, should the wholesale trigger for dark fiber be determined to
36 be satisfied along that route?
37

38 **Q. DOES THE NATURE OF THE XSPEDIUS NETWORK ALSO**
39 **MEAN THAT IT DOES NOT PROVIDE INTEROFFICE DARK**
40 **FIBER TRANSPORT?**

1 A. Yes, Xspedius also does not self-provide dark fiber interoffice transport.
2 As in the case of DS-1 and DS-3 transport, because of the nature of the
3 Xspedius network and business, Xspedius uses its handful of collocations
4 in Jacksonville, Ft. Lauderdale, and Miami to aggregate traffic from
5 unbundled loops and special access circuits and carry that traffic to the
6 Xspedius switch. Xspedius does not currently self-provide dark fiber
7 transport over the routes identified by Ms. Padgett in SWP-8. Xspedius's
8 limited ongoing investments are not dedicated to changing the current use
9 of its collocations. Xspedius is not currently commercially deploying dark
10 fiber transport and Xspedius and its investors are not willing to provide
11 dark fiber transport immediately over their own facilities on a widely
12 available basis to other carriers. As a result, contrary to the testimony of
13 Ms. Padgett, Xspedius is not operationally ready to provide dark fiber
14 transport over its existing collocations. See Ball Direct Testimony; see
15 also TRO Order at paras. 405, 406. Xspedius does not have dark fiber
16 circuits that terminate in the collocations identified by BellSouth.
17 Accordingly, those dark fiber routes that rely upon Xspedius and require
18 Xspedius to meet the threshold number of carriers, cannot meet those
19 thresholds.

20 **Q. DID XSPEDIUS INDICATE TO BELLSOUTH IN DISCOVERY**
21 **RESPONSES THAT IT DOES NOT PROVIDE DARK FIBER**
22 **TRANSPORT?**

1 A. Yes, in its discovery responses in November 2003, Xspedius plainly
2 indicated that it does not self-provide dark fiber transport. See Xspedius
3 Responses, Response to Interrogatory No. 1. But BellSouth makes no
4 mention of these responses when it included Xspedius as a dark fiber
5 transport trigger in SWP-8. As mentioned above, SWP-8 is therefore
6 inaccurate to the extent it references and relies upon Xspedius dark fiber
7 transport routes.

8 **Q. DOES XSPEDIUS PROVIDE DARK FIBER INTEROFFICE**
9 **TRANSPORT ON A WHOLESALE BASIS?**

10 A. No. As Xspedius responded to BellSouth in November discovery
11 responses (see JCF-1, Xspedius Responses, Response to Interrogatory No.
12 2), Xspedius does not self-provision dark fiber transport and does not
13 wholesale dark fiber transport. Again, Xspedius is not willing to alter its
14 business plans to create such wholesale operations, nor is it currently
15 operationally ready to provide wholesale dark fiber along the routes in
16 question. Xspedius is not willing or able to provide dark fiber dedicated
17 transport immediately over its facilities on a widely available basis to
18 other carriers.

19 **Q. WOULD YOU MAKE THE SAME STATEMENTS IN RESPONSE**
20 **TO VERIZON WITNESSES FULP AND WHITE'S CLAIM IN**
21 **THEIR JOINT SUPPLEMENTAL TESTIMONY THAT XSPEDIUS**
22 **IS A SELF-PROVIDER OF DARK FIBER (FULP/WHITE**
23 **SUPPLEMENTAL DIRECT AT 3)?**

1 A. Yes. With respect to both self-providing and wholesaling of dark fiber
2 transport, the same responses apply: Xspedius is not currently providing
3 dark fiber transport along the routes named by Verizon, is not
4 operationally ready to self-provide or wholesale dark fiber transport over
5 such routes, and is not willing or able to provide dark fiber dedicated
6 transport immediately over its facilities on a widely available basis to
7 other carriers over the Verizon routes. To the extent that Verizon relies
8 upon Xspedius transport routes, it cannot meet the transport triggers.

9 **Q. WHAT IS YOUR RESPONSE TO THE FULP/WHITE CLAIM**
10 **THAT IT WAS RELYING UPON ANSWERS TO STAFF'S**
11 **INTERROGATORIES AND DID NOT HAVE ACCESS TO**
12 **ANSWERS FILED BY XSPEDIUS?**

13 A. This was the first time Verizon raised the issue that it was relying upon
14 answers to Staff's interrogatories to make out its case. Xspedius responses
15 to Staff's interrogatories, which were filed on December 10, 2003, were
16 due at the earliest on December 30, 2003, a week after Direct Testimony
17 was due. Verizon did not file its own discovery until days before its Direct
18 Testimony was due. By contrast, BellSouth filed discovery weeks in
19 advance and received responses from Xspedius over a month before its
20 Direct Testimony was due. As the party bearing the burden in this case, it
21 seems extremely risky for Verizon to rely upon third party discovery
22 which was not even due until after its Direct Testimony was due to make
23 out its case. In any event, Xspedius has now in fact responded to Staff's

1 discovery and the bottom line is that it does not offer the types of
2 transport, wholesale or self-provided, claimed by Verizon. To the extent
3 that Verizon relies upon Xspedius transport routes, it cannot meet the
4 transport triggers.

5 **The Commission Should Be Very Cautious in Applying**
6 **The Potential Deployment Criteria**
7

- 8 4. If neither the self-provisioning or the wholesale triggers for DS-3 loops is
9 satisfied at a specific customer location, using the potential deployment
10 criteria specified in §51.319(a)(5)(ii), what evidence of non-impairment
11 for a DS-3 loop at a specific customer location exists? Is this evidence
12 sufficient to conclude that there is no impairment at a specific customer
13 location?
14
- 15 6. If the self-provisioning trigger for dark fiber loops is not satisfied at a
16 specific customer location, using the potential deployment criteria
17 specified in §51.319(a)(6)(ii), what evidence of non-impairment for dark
18 fiber loops at a specific customer location exists? Is this evidence
19 sufficient to conclude that there is no impairment at a specific customer
20 location?
21
- 22 13. If neither the self-provisioning nor the wholesale triggers for DS-3 level
23 dedicated transport is satisfied along a route, using the potential
24 deployment criteria specified in §51.319(e)(2)(ii), what evidence of non-
25 impairment for DS-3 level dedicated transport on a specific route exists?
26 Is this evidence sufficient to conclude that there is no impairment along
27 this route?
28
- 29 19. If neither the self-provisioning or the wholesale triggers for dark fiber
30 transport is satisfied along a route, using the potential deployment criteria
31 specified in §51.319(e)(3)(ii), what evidence of non-impairment for dark
32 fiber on a specific route exists? Is this evidence sufficient to conclude that
33 there is no impairment along this route?
34
35

36 **Q. WHY SHOULD THE COMMISSION BE CAUTIOUS IN**
37
38 **APPLYING THE POTENTIAL DEPLOYMENT CRITERIA?**
39

- 40 A. In his Direct Testimony, Dr. Banerjee advocates for eliminating loop and
41 transport routes based upon the so-called “potential deployment” of

1 facilities. The Commission should be extremely cautious in applying this
2 test. Where the Commission eliminates unbundled loop or transport based
3 upon potential deployment, there are no real-world facilities for CLECs
4 to purchase. End users and carriers that need access to these buildings or
5 routes will have nowhere to turn, and consumers will suffer by being
6 deprived of competitive alternatives. It is critical for CLECs such as
7 Xspedius to have access to cost-based facilities, just as BellSouth and
8 Verizon will always have access to their own facilities at cost. The
9 Commission should also consider the current limited access to capital of
10 CLECs, and the great challenges that CLECs had to overcome to build the
11 network that is in fact in place today – building access issues, high cost of
12 capital, and in many cases, bankruptcy. While certain BellSouth and
13 Verizon witnesses may try to convince the Commission that carriers could
14 have or should have built more network, it is very telling that neither
15 RBOC has made significant out-of-region investment to build similar loop
16 and transport facilities themselves during the same time period. The
17 Commission should therefore ensure that there are legitimate, real-world
18 alternative facilities available where elements are delisted.

19 **A Transition Phase is Critical to This Proceeding**
20

21 20. If unbundling requirements for loops at customer-specific locations or
22 dedicated transport along a specific route are eliminated, what are the
23 appropriate transition period and requirements, if any, after which a
24 CLEC no longer is entitled to these loops or transport under Section
25 251(c)(3)?
26

1 **Q. WHY SHOULD TRANSITION ISSUES BE TREATED IN A**
2 **SEPARATE PHASE?**

3 A. By way of example, today, Xspedius cannot obtain a cross-connect to
4 another carrier in the same timeframe that it can purchase one to
5 BellSouth. There are no arrangements in place today from BellSouth to
6 coordinate ordering with third party loop or transport carriers. In addition,
7 the current Xspedius business plan assumes access to loop and transport
8 UNEs, and such access should be grandfathered where facilities are
9 already in place. These are just a few of the transition issues that need to
10 be addressed by the Commission. Given the heavy amount of evidence to
11 be sifted through in this proceeding, a follow-on proceeding is critical to
12 do justice to the many transition issues. BellSouth's suggestion that
13 facilities will still be offered at "market rates" is totally inadequate.
14 Padgett Direct at 27. The Commission, as in other contexts, must consider
15 what rates are in fact appropriate for delisted UNEs and what schedule
16 will apply to get to those rates. Likewise, the suggestion of a 90-day
17 transition is wholly inadequate given the much longer transitions for
18 switching and DSL providers. CLECs that have invested heavily in
19 Florida facilities deserve equal or better treatment as other carriers, and the
20 Commission should set aside a separate phase of this proceeding to work
21 through these many issues. All parties will be in a much better position to
22 discuss transition issues once we understand the breadth and detail of any
23 delisting arrived at by the Commission in this proceeding.

1 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.

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) Docket No.: 030852-TP
And Route-Specific Review for DS1, DS3,)
And Dark Fiber Transport)
_____)

**REVISED RESPONSES AND OBJECTIONS OF
XSPEDIUS COMMUNICATIONS, LLC
TO BELL SOUTH'S FIRST SET OF INTERROGATORIES (Nos. 1-13)**

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 provides these regionwide responses and objections to BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") First Set of Interrogatories to Xspedius, served on October 17, 2003, and, to the extent necessary, hereby moves the Florida Public Service Commission (hereinafter the "Commission") (and other commissions, as necessary) for a protective order. Pursuant to the separate agreement between BellSouth and Xspedius, Xspedius is providing its responses today and will provide to BellSouth certain confidential information, identified below, pursuant to the separate protective agreement of the parties. These responses revise the previously filed Florida responses of Xspedius Communications, LLC, which were Florida-specific, to provide regionwide responses. These responses are revised responses in Florida, but the first such responses provided to BellSouth in each of the other BellSouth states.

I. General Objections

Xspedius makes the following revised regionwide General Objections to BellSouth's First Set of Interrogatories, including the applicable definitions therein ("BellSouth discovery"), which as appropriate will be incorporated into each relevant response when Xspedius' responses are served on BellSouth.

1. Xspedius objects to the BellSouth 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 BellSouth 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 BellSouth discovery to apply to Xspedius' regulated intrastate operations in Florida and will limit its responses accordingly. To the extent that any BellSouth 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 BellSouth 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 BellSouth 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 BellSouth 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 BellSouth 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 BellSouth.

8. Xspedius objects to the BellSouth 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 BellSouth'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 BellSouth 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 BellSouth discovery purports to require more, Xspedius objects on the grounds that compliance would impose an undue burden or expense.

11. Xspedius objects to the BellSouth 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 BellSouth 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 BellSouth 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 BellSouth discovery, the development of Xspedius' positions and potentially responsive information to the BellSouth 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 BellSouth discovery. However, Xspedius does not assume an affirmative

obligation to supplement its answers on an ongoing basis, contrary to the BellSouth General Instruction.

15. Xspedius objects to the BellSouth 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 BellSouth 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 BellSouth 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 revised regionwide Specific Objections to the BellSouth discovery, which as appropriate will be incorporated into each relevant response when Xspedius' responses are served on BellSouth.

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

19. Xspedius objects to each and every 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.

20. Outside of the discovery request served by BellSouth on October 17, 2003, there have been discussions between BellSouth and some of the CLECs that this discovery is "regional" in nature and that BellSouth would prefer that the CLECs respond on a regional basis without additional service in these other states. At this point in time, without necessarily agreeing or disagreeing with BellSouth's request for regional answers, Xspedius reserves its rights to object to providing responsive information for states other than Florida. Further, in the event Xspedius does provide responsive information for states other than Florida pursuant to the October 17, 2003, discovery in this Florida docket, Xspedius reserves its rights to not provide such non-Florida information in the Florida FPSC case. Finally, in the event Xspedius does provide information for states other than Florida pursuant to the October 17, 2003, discovery in this Florida docket, Xspedius reserves its rights to provide such non-Florida information on a schedule other than that which is specified in the Florida PSC Procedural Order.

III. Regionwide Objections and Responses

25. Xspedius makes the foregoing general and specific objections and provides the following responses to BellSouth's First Set of Interrogatories and Request for Production of Documents regionwide in all states throughout the BellSouth region. Where Xspedius has already filed general or specific objections in Triennial Review proceedings in a particular state,

including but not limited to North Carolina or Tennessee, Xspedius hereby incorporates those general and specific objections.

26. To the extent the foregoing general or specific objections refer to "Florida", the Florida code, or Florida statutes, the same objection prevails in relation to the other BellSouth states.

INTERROGATORIES

INTERROGATORY 1. Affirm or deny that you have self-provided high capacity transport facilities that you own (i.e., any DS3 or greater facilities, including dark fiber) that provide transport along a route between a pair of ILEC central offices or wire centers in each/any of the nine Southeastern states for use in your own operations. The facilities must terminate to an active physical or virtual collocation (includes all types of collocation, not just those qualifying under section 2 51 (c)(6) at each end of the transport route) associated with each central office of the pair and be operationally ready to provide transport into or out of each office of the pair. Answer this question in the affirmative if you are self-providing such facilities. For purposes of this question, you "own" transport facilities if (i) you have legal title to the facility; or (ii) if you have obtained dark fiber under a long term (10 or more years) IRU and have attached your own optronics to light the facility. Facilities obtained through any other means, including but not limited to special access, unbundled network elements or other services or facilities obtained from third parties, should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius denies that it has self-provided such facilities nationwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Brian Butram, Director, Transmission Engineering, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366

INTERROGATORY 2. Affirm or deny that you offer to carriers on a wholesale basis DS1 or higher transport facilities, or dark fiber transport facilities that you own that provide a route between a pair of ILEC central offices or wire centers, to one or more pair of wire-centers, in each/any of the nine states. The facilities must terminate to an active physical or virtual collocation (includes all types of collocation, not just those qualifying

under section 251 (c)(6) at each end of the transport route) associated with each office of the pair and be operationally ready to provide transport into or out of each office in the pair. Answer this question in the affirmative if you are offering such facilities, or (ii) if you have obtained on a an unbundled, leased or purchased basis dark fiber and have attached your own optronics to light the facility and are serving customers using the facility. Facilities obtained through any other means, including but not limited to special access, other unbundled network elements or other services obtained from third parties, should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius denies that it has offered such facilities to carriers on a wholesale basis regionwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Nancy Gaudin, Director, Product Marketing, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 3. Affirm or deny whether you have acquired on a wholesale basis from a third party (other than the ILEC or a CLEC that is a party to this proceeding) DS1, DS3, or dark fiber transport between two or more ILEC central offices in each/any of the Southeastern states. The facilities must terminate to an active physical or virtual collocation (includes all types of collocation, not just hose qualifying under section 251 (c)(6)) at each end of the transport route) associated with each office of the pair and be operationally ready to provide transport into or out of each office in the pair.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius denies that it has acquired such facilities regionwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Steve Van Valin, Director, Access Cost Management, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 4. For each state in Question 1 that you answered in the affirmative (that you have deployed or self-provide high capacity transport for use in your own operations), provide a list of all the paired ILEC CO to ILEC CO routes on which you have deployed such facilities identifying:

- a. The CLLI codes of the paired ILEC CO locations that make-up each and every route. In each case show the "low alpha" (alphabetically first) CLLI code as Wire Center A and the "high alpha" CLLI code as Wire Center Z. (provide the full 11 character CLLI).

- b. Whether your self-provided transport facilities are terminated to collocations (includes all types of collocation, not just those qualifying under section 251 (c)(6) at each end of the transport route). Provide the customer name of record for the collocation arrangement and 11-character ACTL CLLI code for the collocation arrangement.
- c. Whether you self-provide transport facilities are provisioned entirely on facilities you own (as defined in Question 1).
- d. If any of your self-provided transport facilities include facilities obtained through third parties (Yes, No); if your response is yes, indicate the vendor name.
- e. Indicate whether the facility is provided over dark fiber you have obtained from BellSouth on an IRU basis. (Yes, No)
- f. Whether you are able to immediately provide transport along the particular route.
- g. The capacity deployed and the capacity active on the route as of September 30, 2003.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see response to Interrogatory No. 1.

Response provided by: Objections provided by Counsel. Substantive response provided by Brian Butram, Director, Transmission Engineering, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 5. For each state in Question 2 that you answered in the affirmative (that you offer at wholesale DS1, DS3 or higher, or dark fiber capacity transport) provide a list of all ILEC CO to ILEC CO routes along which you provide such transport identifying:

- a. The CLLI codes of the paired ILEC CO locations that make up the end points of each and every route. In each case show the "low alpha" (alphabetically first) CLLI code as Wire Center A and the "high alpha" CLLI code as Wire Center Z. (Provide the full 11 character CLLI.)
- b. Whether your wholesale transport facilities are terminated to collocations (includes all types of collocation, not just those qualifying under section 251 (c)(6) at each end of the transport route). Provide the customer name of record for the collocation arrangement and 11-character ACTL CLLI code for the collocation arrangement.
- c. Whether your wholesale transport facilities are provisioned entirely on facilities you own (as defined in Question 2).
- d. If any of your self-provided transport facilities include facilities obtained through third parties; indicate the vendor name.

- e. Indicate whether the facility is provided over dark fiber you have obtained from BellSouth on an IRU basis. (Yes, No)
- f. Whether you are willing and able to immediately provide transport along the particular route.
- g. The capacity deployed and the capacity active on the route as of September 30, 2003.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see response to Interrogatory No. 2.

Response provided by: Objections provided by Counsel. Substantive response provided by Nancy Gaudin, Director, Product Marketing, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 6. For each state in Question 3 that you answered in the affirmative (that you have acquired on a wholesale basis DS1, DS3 or higher, or dark fiber transport), provide the following in electronic format using the worksheet related to both self-provided (the Question 4 spreadsheet) and wholesale facilities (the Question 5 spreadsheet):

- a. The CLLI codes of the ILEC wire centers or COs of the starting and ending points of the transport routes;
- b. The name of the carrier or company from whom you received or purchased the transport;
- c. Whether you are operationally ready to provide transport using these facilities; and
- d. The capacity deployed and the capacity active on the route as of September 30, 2003.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see response to Interrogatory 3.

Response provided by: Objections provided by Counsel. Substantive response provided by Steve Van Valin, Director, Access Cost Management, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 7. If, in response to Questions 4 and 5, you denied any of the specified characteristics, explain in detail the basis for your response. For example, if your wholesale operations are affiliated with another provider, state the name of the provider with whom you are affiliated. State also whether there are other limitations on your wholesale operations; if so, describe in detail any such limitations.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see response to Interrogatories Nos. 4 and 5.

Response provided by: Objections provided by Counsel. Substantive response provided by Brian Butram and Nancy Gaudin, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 8. Affirm or deny that you have self-provided high capacity loop or dark fiber facilities that you own (i.e., any DS3 or greater facilities that provide connections between a switch, wire center, collocation, point of interconnection, etc., and a customer's premises) to one or more customer locations in each/any of the nine Southeastern states for use in your own operations in providing retail service to your customers. Answer this question in the affirmative if you are self-providing such facilities. For purposes of this question, you "own" a facility (i) if you have legal title to the facility, or (II) if it you have obtained dark fiber under a long term (10 or more years) IRU and have attached your own optronics to light the facility and are serving customers using the facility. Facilities obtained through any other means, including but not limited to, special access, unbundled network elements or other services or facilities obtained from third parties, should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius affirms that it does provide such facilities in several states in the BellSouth region.

Response provided by: Objections provided by Counsel. Substantive response provided by Brian Butram, Director, Transmission Engineering, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 9. Affirm or deny that you offer to carriers on a wholesale basis DS1, DS3, or higher capacity loop facilities or dark fiber that you own (i.e., any DS1 or greater facilities that provide connections between a switch, wire center, collocation, point of interconnection, etc., and a customer's premises) to one or more customer locations in each/any of the nine Southeastern states. Answer this question in the affirmative if you are offering such facilities. For purposes of this question, you "own" a facility if (i) you have legal title to the facility, or (ii) if you have obtained on an unbundled, leased or purchased basis dark fiber and have attached your own optronics to light the facility. Facilities obtained through any other means, including but not limited to special access, other unbundled network elements or other services obtained from third parties, should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8,

9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius denies that it offers to carriers on a wholesale basis such facilities regionwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Nancy Gaudin, Director, Product Marketing, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 10. Affirm or deny that you have obtained from a third party (other than the ILEC or a CLEC that is a party to this proceeding), high capacity loops or dark fiber loops for the provisioning of retail services to your customers, to one or more customer locations in each/any of the nine Southeastern states. Self-provided facilities that you "own" as defined in 8 above should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius has not obtained such loops regionwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Steve Van Valin, Director, Access Cost Management, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 11. Affirm or deny that you have obtained from a third party (other than the ILEC or a CLEC that is a party to this proceeding), high capacity loops or dark fiber loops for the provisioning of services on a wholesale basis to one or more customer locations in each/any of the nine Southeastern states. Self-provided facilities that you "own" as defined in 9 about should not be included in this response.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: Xspedius has not obtained such loops regionwide.

Response provided by: Objections provided by Counsel. Substantive response provided by Steve Van Valin, Director, Access Cost Management, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 12. For each state in Questions 8 and 10 that you answered in the affirmative (that you have self-provided or obtained from a third party other than the ILEC or a CLEC that is a party to this proceeding high capacity loops or dark fiber for use in your own operations in providing retail service to your customers) provide a list of

the customer locations to which you have deployed such loops, (in electronic format using the attached spreadsheets) identifying:

- a. The RSAG valid address of each customer location.
- b. The CLLI code of the CLEC switch, wire center, collocation, point of interconnection, etc., from which the loop is extended to the customer location. (Provide the full 11-character CLLI).
- c. Indicate whether the facility is wholly owned by you (yes, No); if no, provide the name of the vendor from whom you have purchased all or a portion of the facilities.
- d. Indicate whether the facilities is provided over dark fiber you have obtained from BellSouth on an IRU basis (Yes, No).
- e. Indicate whether or not you have the unrestricted ability to serve all customers at that location if it is a multi-tenant location. (Yes, No, NA). this includes access to all units in the building, access to all buildings in a campus environment and equivalent access to the same minimum point of entry (MPOE), common space, house and riser and other intrabuilding wire as the ILEC. If no, explain in detail any restrictions on your ability to serve customers and explain any and all actions you have taken to address such restrictions.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see response to Interrogatory No. 10. With respect to Interrogatory No. 8, Xspedius provides certain responsive confidential information on the attached Confidential document XSPEDIUS ALL-LOOP-INT-1(a) through (g) respectively.

Response provided by: Objections provided by Counsel. Substantive response provided by Brian Butram, Director, Network Transmission, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

INTERROGATORY 13. For each state in Questions 9 and 11 that you answered in the affirmative (that you offer at wholesale DS1, DS3 or higher capacity loops) provide a list of the customer locations to which you have provided such loops (in electronic format using the attached spreadsheets) identifying:

- a. The RSAG valid address of each customer location.
- b. The CLLI code of the location from which the loop is extended to the customer location. (Provide the full 11-character CLLI)
- c. Indicate whether the facility is wholly owned by you (Yes or No); if no, provide the name of the vendor from whom you have purchased all or a portion of the facilities.

- d. Indicate whether the facility is provided over dark fiber you have obtained from BellSouth on an IRU basis or UNE basis (yes, No).
- e. Indicate whether or not you have the unrestricted ability to serve all customers at that location if it is a multi-tenant location. (yes, No, NA). This includes access to all units in the building, access to all buildings in a campus environment and equivalent access to the same minimum point of entry (MPOE), common space, house and riser and other intra building wire as the ILEC. If no, explain in detail any restrictions on your ability to serve customers and explain any and all actions you have taken to eliminate such restrictions.

XSPEDIUS RESPONSE: Xspedius adopts and incorporates its General Objections 1, 2, 5, 6, 8, 9 and 16 and its Specific Objection 20, as if set forth herein verbatim. Subject to, and without waiving these objections, Xspedius states as follows: see responses to Interrogatories 9 and 11.

Response provided by: Objections provided by Counsel. Substantive response provided by Nancy Gaudin and Karen Crabtree, Xspedius Communications, 5555 Winghaven Blvd., O'Fallon, MO 63366.

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Attorneys for Xspedius Communications, LLC

Docket 030852-TP
Witness: Falvey
Exhibit ____ (JCF-2)
Xspedius ALL-LOOP-INT
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THIS EXHIBIT IS PROPRIETARY

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 21st day of January, 2004.

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