

ORIGINAL

Richard A. Chapkis
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February 3, 2005

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED: F/SC
05 FEB - 3 AM 10: 15
COMMISSION
CLERK

Re: Docket No.
Petition for Approval of Amendment No. 1 to the Interconnection Agreement
between Verizon Florida Inc. and Xspedius Management Co. Switched Services,
L.L.C. and Xspedius Management Co. of Jacksonville, L.L.C. d/b/a Xspedius
Communications

Dear Ms. Bayo:

Enclosed for filing are an original and five copies of the above-referenced Petition. The
amendment consists of a total of three pages. Service has been made as indicated on
the Certificate of Service. If there are any questions regarding this filing, please contact
me at 813-483-1256.

Sincerely,

Richard A. Chapkis

RAC:tas

Enclosures

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
01258 FEB-3 05
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Amendment No. 1)
to Interconnection Agreement Between)
Xspedius Management Co. Switched Services,)
L.L.C. and Xspedius Management Co. of)
Jacksonville, L.L.C. d/b/a Xspedius)
Communications and Verizon Florida Inc.)
_____)

Docket No. 050098-TP
Filed: February 3, 2005

PETITION OF VERIZON FLORIDA INC. FOR APPROVAL OF
AMENDMENT NO. 1 TO INTERCONNECTION AGREEMENT WITH
XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, L.L.C. AND
XSPEDIUS MANAGEMENT CO. OF JACKSONVILLE, L.L.C.
D/B/A XSPEDIUS COMMUNICATIONS

Verizon Florida Inc. (Verizon) (formerly, GTE Florida Incorporated) files this petition before the Florida Public Service Commission (Commission) seeking approval of Amendment No. 1 to its interconnection agreement with Xspedius Management Co. Switched Services, L.L.C. and Xspedius Management Co. of Jacksonville, L.L.C. d/b/a Xspedius Communications (Xspedius).

Xspedius' adoption of the Verizon/AT&T interconnection agreement was approved by the Commission on January 5, 2000 in Docket No. 991807-TP. The attached amendment conforms the agreement to the FCC's Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) and the FCC's Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. Section 160(c) from Application of the ISP remand Order*, WC Docket No. 03-171, (adopted October 8, 2004).

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Verizon respectfully requests that the Commission approve the attached amendment and that Verizon be granted all other relief proper under the circumstances.

Respectfully submitted on February 3, 2005.

By: Richard A. Chapkis
Richard A. Chapkis
P. O. Box 110, FLTC0717
Tampa, Florida 33601-0110
Telephone No. (813) 483-1256

Attorney for Verizon Florida Inc.

AMENDMENT NO. 1

Between

XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, L.L.C.
AND XSPEDIUS MANAGEMENT CO. OF JACKSONVILLE, L.L.C.,
D/B/A XSPEDIUS COMMUNICATIONS

And

VERIZON FLORIDA INC.

This Amendment No. 1 (the "Amendment") is entered into by and between Verizon Florida Inc. ("Verizon") and Xspedius Management Co. Switched Services, L.L.C., and Xspedius Management Co. of Jacksonville, L.L.C., d/b/a Xspedius Communications ("Xspedius") and is effective December 14, 2004 (the "Effective Date"). Verizon and Xspedius may be referred to herein collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, e.spire Communications ("e.spire") opted into the interconnection agreement between Verizon and AT&T Communications of the Southern States Inc. that was approved by the Florida Public Service Commission (the "Commission") as an effective agreement in the state of Florida in Order No. PSC-97-0864-FOF-TP (the "Agreement").

WHEREAS, e.spire transferred to Xspedius substantially all of its assets and assigned the Agreement to Xspedius, pursuant to an Asset Contribution Agreement dated as of May 23, 2002.

WHEREAS, the Parties desire to amend the Agreement to conform it to the FCC's Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, *remanded sub nom. WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (the "Order on Remand"), and the FCC's Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. Section 160(c) from Application of the ISP Remand Order*, WC Docket No. 03-171, (Adopted October 8, 2004) (the "Internet Forbearance Order").

NOW THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. **Definitions.** For the purposes of this amendment, "ISP-bound Traffic" shall have the meaning provided for it in the Order on Remand. "Section 251(b)(5) Traffic" shall

mean traffic subject to the provisions of Section 251(b)(5) of the Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996). The Parties agree that the foregoing definitions and the other terms of this Amendment shall not be offered or presented by either Party in any proceeding before a court or the Commission as evidence of a concession or waiver of any position taken or represented by the other Party during any negotiation or arbitration of replacement terms for the Agreement.

2. **Treatment of ISP-bound Traffic - General.** Subject to changes in applicable law, the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of ISP-bound Traffic shall be governed by the Order on Remand and the Internet Forbearance Order, in which the FCC determined, *inter alia*, that as of October 8, 2004 it would forbear from applying the growth caps rule set forth in paragraph 78 of the Order on Remand and the new markets rule set forth in paragraph 81 of the Order on Remand.

3. **Construction of Amendment.** Sections 4 and 5 of this Amendment contain terms which summarize the Parties' understanding of certain provisions of the Order on Remand and the Internet Forbearance Order. However, such terms shall not be construed to either expand or diminish the rights or obligations of either Party under the Order on Remand or the Internet Forbearance Order.

4. **Application of the FCC's 3:1 Ratio.** Consistent with the rebuttable presumption established in the Order on Remand, the Parties shall use the FCC's 3:1 ratio to identify Section 251(b)(5) traffic and ISP-bound Traffic, as follows:

- 4.1 All combined Section 251(b)(5) traffic and ISP-bound Traffic delivered to one Party by the other Party that exceeds a 3:1 ratio of terminating to originating minutes of use shall be presumed to be ISP-bound Traffic.
- 4.2 All combined Section 251(b)(5) traffic and ISP-bound Traffic delivered to one Party by the other Party that does not exceed a 3:1 ratio of terminating to originating minutes of use shall be presumed to be Section 251(b)(5) Traffic.
- 4.3 As set forth in Paragraph 79 of the Order on Remand, either Party may rebut the presumption that traffic exceeding the 3:1 ratio is ISP-bound Traffic (or that traffic not exceeding the 3:1 ratio is Section 251(b)(5) Traffic) by demonstrating to the Commission that traffic above the 3:1 ratio is not ISP-bound Traffic (or, conversely, that traffic below the 3:1 ratio is ISP-bound Traffic). During the pendency of any rebuttal proceeding, the Parties shall pay compensation based upon the presumed volumes of ISP-bound Traffic and Section 251(b)(5) Traffic (the Commission approved reciprocal compensation rate for Section 251(b)(5) traffic and the FCC's interim rates for ISP-bound Traffic), subject to true-up upon the conclusion of the rebuttal proceeding.

5. Rates Applicable to ISP-bound Traffic and Section 251(b)(5) Traffic. Subject to Section 4.3, presumed ISP-bound Traffic received by one Party from the other shall be compensated at the applicable rate set forth in the Order on Remand (currently .0007/mou), subject to changes in applicable law. Subject to Section 4.3, all presumed Section 251(b)(5) Traffic shall be subject to the state approved reciprocal compensation rates set forth in the Agreement.

6. Scope of Amendment. Except to the extent set forth in Sections 1 through 5 of this Amendment, the rates, charges and other provisions of the Agreement shall remain in full force and effect after the Effective Date. Nothing in this Amendment shall be deemed to extend the term of the Agreement. This Amendment is not intended to modify the term of the Agreement or to affect either Party's actual exercise or right to exercise any right of termination it may have under the Agreement.

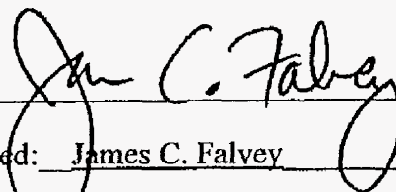
7. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the rates, charges and other provisions of the Agreement to the extent necessary to give effect to the rates, charges and other provisions of this Amendment. In the event of a conflict between a rate, charge or other provision of this Amendment and a rate, charge or other provision of the Agreement, this Amendment shall govern.


8. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives.

**Xspedius Management Co. Switched
Services, L.L.C., and
Xspedius Management Co. of
Jacksonville, L.L.C.,
d/b/a Xspedius Communications**

Verizon Florida Inc.

By: 
Printed: James C. Falvey

By: 
Printed: Jeffrey A. Masoner

Title: Sr. Vice President, Regulatory
Affairs

Title: Vice President, Interconnection
Services Policy & Planning

Date: 12-15-04

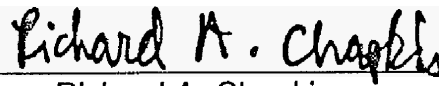
Date: 01-26-05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via overnight delivery(*)
on February 2, 2005 and U.S. mail(**) on February 3, 2005 to:

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

Xspedius Communications(**)
Attention: James C. Falvey
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046



Richard A. Chapkis