

ORIGINAL

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED FPSC

MAY 19 AM 9:53

COMMISSION CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: May 17, 2005

TO: Jason P. Rojas, Attorney, Office of the General Counsel

FROM: Catherine S. Beard, Regulatory Analyst I, Division of Competitive Markets & Enforcement
 Robert J. Casey, Regulatory Analyst Supervisor, Division of Competitive Markets & Enforcement

RE: Docket No. 050298-TX - Request for expedited review of growth code denials by Number Pooling Administrator for Xspedius Management Co. Switched Services, LLC d/b/a Xspedius Communications.

CSB by PJ

[Handwritten signature]

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.

MP _____

COM _____

TR _____

CR _____

CL _____

PC _____

MS _____

CA _____

CR _____

EC 1

TH _____

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%.

DOCUMENT NUMBER-DATE

04883 MAY 19 03

FPSC-COMMISSION CLERK

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 the Commission requesting review of the code denial. 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, 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 staff believes that the complexity of the case warrants a more thorough analysis in a recommendation to be considered on the regular agenda schedule, staff will contact the company to discuss the matter. If discussions with the company do not resolve the concerns, 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. Staff believes 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 staff's concerns, and in accordance with Order No. 01-1973-PCO-TL, staff contacted Xspedius on May 5, 2005, to discuss its request. 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). Staff's 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, staff has 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.

Since the three criteria of Order No. PSC-02-0352-PAA-TL have been met, please prepare an administrative Proposed Agency Action (PAA) Order to be issued within seven business days of this memorandum (May 26, 2005), as outlined in the expedited code denial process orders. NeuStar should be directed to provide Xspedius with one (1) 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.

Please allow staff to review the PAA before it is issued. If you have any questions, please call Bob Casey at (850) 413-6974.

cc: Division of Competitive Markets (Bulecza-Banks)
Office of General Counsel (B. Keating)
Division of Commission Clerk & Administrative Services (Docket No. 050298-TX)