

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of transfer of CLEC Certificate No. 4722 from Xspedius Management Co. of Jacksonville, LLC d/b/a Xspedius Communications to Time Warner Telecom of Florida, L.P., and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

DOCKET NO. 070329-TX

In re: Petition for approval of transfer of CLEC Certificate No. 5474 from Xspedius Management Co. Switched Services, LLC d/b/a Xspedius Communications to Time Warner Telecom of Florida, L.P., and request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.

DOCKET NO. 070330-TX

In re: Acknowledgment of registration as intrastate interexchange telecommunications company, effective May 21, 2007, and request for waiver of carrier selection requirements of Rule 25-4.118, FAC, to allow Time Warner Telecom of Florida, L.P. to acquire assets and customer base of Xspedius Management Co. Switched Services, LLC d/b/a Xspedius Communications.

DOCKET NO. 070331-TI

ORDER NO. PSC-07-0587-PAA-TX

ISSUED: July 17, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION  
ORDER FOR APPROVAL OF TRANSFER OF CLEC CERTIFICATES AND WAIVER OF  
CARRIER SELECTION REQUIREMENTS OF RULE 25-4.118, FAC TO ALLOW TIME  
WARNER TELECOM OF FLORIDA, L.P. TO ACQUIRE ASSETS AND CUSTOMER  
BASES OF XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC D/B/A  
XSPEDIUS COMMUNICATIONS AND XSPEDIUS MANAGEMENT CO. OF  
JACKSONVILLE, LLC D/B/A XSPEDIUS COMMUNICATIONS

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BY THE COMMISSION:

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

### **Case Background**

On May 21, 2007, Xspedius Management Co. of Jacksonville, LLC d/b/a Xspedius Communications and Xspedius Management Co. Switched Services, LLC d/b/a Xspedius Communications (collectively, Xspedius), and Time Warner Telecom of Florida, L.P. (TWT), submitted joint requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. This petition also requested the transfer of Xspedius' CLEC certificates to TWT. Xspedius Management Company of Jacksonville, LLC holds competitive local exchange telecommunications company (CLEC) Certificate No. 4722, and Xspedius Management Company Switched Services, LLC holds CLEC Certificate No. 5474 and intrastate interexchange company (IXC) Registration No. TJ690.

TWT is acquiring approximately 2,537 business customers currently served by Xspedius. TWT seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, TWT can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer. Xspedius will not continue providing local and long distance service in Florida.

This Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes.

### **Analysis**

Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part;

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section this Commission is authorized to waive.

TWT has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Our staff has reviewed the notice that will be sent to Xspedius' customers and found it to be adequate. The customers shall not experience any interruption of service, rate increase, or switching fees. In addition, TWT has agreed to resolve any customer complaints that arise from issues occurring prior to and after the transfer.

Further, neither TWT nor Xspedius has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certifications. TWT will pay all 2007 regulatory assessment fees owed by Xspedius within 30 days of this Commission's approval of the rule waiver request.

We find that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local and long distance services. Furthermore, we believe that granting this waiver will avoid unnecessary slamming complaints during this transition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petitions of transfer of CLEC Certificate Nos. 5474 and 4722 from Xspedius Communications Management Co. of Jacksonville, LLC D/B/A Xspedius Communications to Time Warner Telecom of Florida, L.P. and request for waiver for carrier selections requirements to rule 25-4.118 is hereby approved. It is further

ORDERED by the Florida Public Service Commission that the petitions of transfer of CLEC Certificate No. TJ690 from Xspedius Communications Management Co. Switched Services, LLC D/B/A Xspedius Communications to Time Warner Telecom of Florida, L.P. and request for waiver for carrier selections requirements to rule 25-4.118 is hereby approved. It is further

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

ORDERED that if this Order is not protested, it shall be closed within 21 days of the issuance of the Order. It is further

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

By ORDER of the Florida Public Service Commission this 17th day of July, 2007.



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ANN COLE  
Commission Clerk

( S E A L )

VSM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 7, 2007.

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

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