

State of Florida



Public Service Commission

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

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

DATE: June 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (M. Watts)
Office of the General Counsel (McKay)

RE: Docket No. 070329-TX – 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. 070330-TX – Petition for approval of transfer of CLEC Certificate No. 5744 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. 070331-TI – 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.

AGENDA: 06/19/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070329.RCM.DOC

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, in Docket Nos. 070329-TX, 070330-TX, and 070331-TI. 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.

The petitions also request the transfer of both CLEC certificates to TWT and registration of TWT as an IXC. This recommendation addresses only the requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, for the transfer of customers served pursuant to each certificate/registration.

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.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve the requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Xspedius Management Company of Jacksonville, LLC's and Xspedius Management Company Switched Services, LLC's customers to Time Warner Telecom of Florida, L.P. in Docket Nos. 070329-TX, 070330-TX, and 070331-TI?

Recommendation: Yes, the Commission should approve the requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in Docket Nos. 070329-TX, 070330-TX, and 070331-TI. **(M. Watts/McKay)**

Staff 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 IXC's.

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 the 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. Staff has reviewed the notice that will be sent to Xspedius' customers and found it to be adequate. The customers should 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 the Commission's approval of the rule waiver request.

Staff believes 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, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of Xspedius Management Company of Jacksonville, LLC's and Xspedius Management Company Switched Services, LLC's customers to Time Warner Telecom of Florida, L.P. in Docket Nos. 070329-TX, 070330-TX, and 070331-TI.

Issue 2: Should these dockets be closed?

Recommendation: No. These dockets should remain open pending the completion of other actions being taken in the dockets. If no person whose substantial interests are affected by the proposed agency action files a protest in Docket No. 070329-TX, 070330-TX, or 070331-TI, within 21 days of the issuance of its respective order, the Proposed Agency Action Order will become final and effective upon the issuance of the Consummating Order. These dockets will be closed administratively by staff upon completion all actions in the dockets. **(McKay)**

Staff Analysis: These dockets should remain open pending the completion of other actions being taken in the dockets. If no person whose substantial interests are affected by the proposed agency action files a protest in Docket No. 070329-TX, 070330-TX, or 070331-TI, within 21 days of the issuance of its respective order, the Proposed Agency Action Order will become final and effective upon the issuance of the Consummating Order. These dockets will be closed administratively by staff upon completion all actions in the dockets.