

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of )  
**Xspedius Management Co.** )  
**of Kansas City, LLC** )  
for a Certificate of Service Authority ) Case No. CA-2007-0473  
to provide Basic Local Telecommunications )  
Service in portions of the State of Missouri )  
and to Classify Said Services and the )  
Company as Competitive )

**APPLICATION FOR WAIVER**

**COMES NOW Xspedius Management Co. of Kansas City, LLC** ("Applicant" or "Xspedius KC"), by its undersigned counsel and, pursuant to 4 CSR 240-2.060 (4), 4 CSR 240-3.015 and 4 CSR 240-3.510, files this *Application for Waiver* requesting that the Missouri Public Service Commission (hereinafter, "the Commission") issue an order that waives Subsections A, B, C and D of 4 CSR 240-3.510 (1) (D) 1 in this case, for good cause, under 4 CSR 240-2.060 (4). In support of its *Application for Waiver*, Applicant states the following:

1. On June 7, 2007, Applicant (Xspedius KC) filed its *Application for Certificate of Service Authority and for Competitive Classification* with the Commission in this case seeking certificate of service authority from the Commission to provide basic local exchange (CLEC) telecommunications services in the State of Missouri.

2. As explained therein, the CLEC Application in this case was filed in concert with a Joint Application filed by Xspedius KC and its affiliated, sister company, Xspedius Management Co. Switched Services, LLC, ("Xspedius Switched Services"), seeking Commission approval of a merger of the two entities into Xspedius KC. Since both companies are wholly-owned subsidiaries of Time Warner Telecom Inc., the Joint

Application also requests Commission approval of a change of name of the surviving company to “Time Warner Telecom of Kansas City LLC.” (See, Case No. TM-2007-0472.)

3. While both Xspedius entities hold certificates of service authority to provide interexchange and non-switched local exchange service, only Xspedius Switched Services holds a basic local certificate. Since certificate of service authority cannot be transferred in Missouri, the surviving company, Xspedius KC, requires its own certificate of service authority to provide basic local telecommunications service, so that the merged firm may continue to provide all the services that each Xspedius entity is providing currently.

4. Thus, the object of the Application in the instant case is for Xspedius KC, as the surviving entity following the merger, to have the certificate of service authority to be able to assume and provide all basic local exchange services currently provided by its affiliated company, Xspedius Switched Services, under the latter’s existing basic local exchange certificate of service authority. (Case No. CA-2002-1153, order issued March 20, 2003, effective March 30, 2003).

5. In point of fact, if the merger had been structured in the opposite direction, with Xspedius KC merging into Xspedius Switched Services, there would have been no need for a basic local exchange certificate application to be filed, since Xspedius Switched Services already has such certificate of service authority. However, since Xspedius Switched Services operates in several states, and the company wants a single state entity for business reasons, the transaction was structured with Xspedius Switched Services merging into Xspedius KC.

6. Since neither Xspedius KC nor Time Warner Telecom is a start-up company, and neither is new to the Commission, Applicant seeks a waiver of subsections A, B, C and D of 4 CSR 240-3.510 (1) (D) 1 regarding “supportive financial information”. This

waiver is sought under the provisions of 4 CSR 240-2.060 (4). Good cause for such a waiver exists because of the unique circumstances of the instant Application, explained herein (and in the underlying Application of June 7, 2007) and because of the unnecessary delay and expense that preparation and filing of the information would cause.

7. 4 CSR 240-3.510 (1) (D) 1 requires that an application for basic local exchange service authority shall include a statement that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. The CLEC Application in this case includes the required statements.

8. **Subpart A** of that provision (4 CSR 240-3.510 (1) (D) 1. A.) further requires specific “supportive financial information” including twelve (12) months of historical financial statements (balance sheet and income statement) for both the applicant and “any company that will be providing financial support to the applicant.” **Subpart B** (4 CSR 240-3.510 (1) (D) 1. B.) also requires *pro forma* financial statements (balance sheet and income statement) for at least twelve (12) months. **Subpart C** (4 CSR 240-3.510 (1) (D) 1. C.) says the aforementioned financial statements “shall reflect Missouri specific information to the extent such information is available.” **Subpart D** (4 CSR 240-3.510 (1) (D) 1. D.) establishes alternative tests that must be met by the financial statements: either a capital ratio with no greater than 62% debt, and a pretax interest coverage of at least 2.3 times, *or* a demonstration that the applicant has a cash or cash equivalent balance of at least four (4) months operating expenses inclusive of interest expense and taxes.

9. The obvious purpose of these requirements is to try to ensure that start-up CLECs are well-enough capitalized that they will be able to provide reliable service to customers and are unlikely to be forced out of business during the first year or two of their

existence, causing their customers to have to switch to another telecommunications carrier.

10. However, in the instant case, both Xspedius entities have been successfully in business in Missouri for about five years now. Thus, the fundamental purpose of the requirements of 4 CSR 240-3.510 (1) (D) 1. A through D, of protecting the public from undercapitalized start-up CLECs, would not be served by application of these provisions to the Xspedius KC Application in this case.

11. In addition, since 2006, both Xspedius KC and Xspedius Switched Services have been wholly-owned subsidiaries of Time Warner Telecom Inc. With a strong and well-known parent company now standing behind both Xspedius entities, there should be far less concern about the financial ability of Xspedius KC to provide basic local telecommunications service than existed in 2002, when the existing CLEC certificate was granted to Xspedius Switched Services, or than typically exists in the case of a new, start-up company seeking basic local authority.

12. Time Warner Telecom is a leading provider of managed networking solutions to a wide array of businesses and organizations in 75 markets spanning 30 states and the District of Columbia. Time Warner Telecom began its business in 1993 as a joint venture with Time Warner Cable (now a unit of Time Warner Inc.). In July 1998, Time Warner Telecom became a separate entity apart from Time Warner Cable and was reorganized into Time Warner Telecom LLC. In May 1999, Time Warner Telecom LLC issued an IPO and became Time Warner Telecom Inc.

13. Time Warner Telecom Inc. is a publicly-held Delaware corporation whose stock is traded on the NASDAQ under the symbol "TWTC". As recited in the Application in this case, a copy of Time Warner Telecom's most recent SEC Form 10-K can be found at:

[http://www.twtelecom.com/Documents/Announcements/Financial\\_Docs/2006/10K\\_TWTC\\_as\\_filed-2006.pdf](http://www.twtelecom.com/Documents/Announcements/Financial_Docs/2006/10K_TWTC_as_filed-2006.pdf)

14. Time Warner Telecom does not compile financials on an operating company (state-specific basis). Rather, all financials are consolidated, as is evidenced by the 10K financials on the company's website. In order to meet the requirements of the Commission's rule, Time Warner Telecom would have to reassign internal personal, or hire outside accountants, to develop financial statements conforming to the Commission's rule, solely for the purpose of meeting the technical requirements of that rule, as though Xspedius KC were a new, start-up applicant. State-specific financial statements have not been required in any of the other nineteen (19) states affected by the Xspedius consolidation. In fact, those other states, to the extent they have required financials, have relied on Time Warner Telecom's 10K financials. This additional time and expense would impose an unnecessary and costly administrative burden on Time Warner Telecom and its Xspedius subsidiaries.

15. In point of fact, the basic local telecommunications service that Applicant will be providing will be exactly the service already being provided by its sister corporation, Xspedius Switched Services, with which it is in the process of merging. Xspedius Switched Services previously demonstrated its financial capability to provide basic local telecommunications service in Case No. CA-2002-1153. Upon the approval of the merger of Xspedius Switched Services into Xspedius KC, the existing basic local exchange telecommunications service being provided by Xspedius Switched Services will simply be

absorbed into Xspedius KC, the Applicant herein. No other change will occur in how basic local service is provided.

16. Xspedius KC and Xspedius Switched Services have regularly and timely filed Annual Reports with the Missouri Public Service Commission since receiving certificate of service authority from the Commission. Applicant respectfully submits that those Annual Reports, the SEC Form 10-K cited above for Time Warner Telecom, and the successful operation of Xspedius KC and Xspedius Switched Services in Missouri since 2002, should provide adequate evidence to the Commission that Applicant possesses sufficient financial resources and abilities to continue to provide the basic local telecommunications services currently provided by Xspedius Switched Services after the two firms are consolidated.

17. As suggested above, the CLEC Application in this case is only necessitated by the fact that certificate of service authority may not be transferred in Missouri. Thus, in order to accomplish the merger of the two Xspedius entities, Xspedius KC (as the surviving entity) must hold its own CLEC certificate of service authority. If Xspedius Switched Services was to be the surviving entity, no new financial information would have to be developed and filed. The Commission has no other reason for requiring specialized Missouri financial statements to be created and filed as to the Xspedius entities at this time, except for the technical requirements of a rule designed to ensure that new, start-up CLECs are sufficiently capitalized. Applicant is not in that category.

**WHEREFORE**, Applicant Xspedius Management Co. of Kansas City, LLC, respectfully requests that the Commission grant it a waiver of 4 CSR 240-3.510 (1) (D) 1., subdivisions A-D), and grant its Application in this case.

Respectfully submitted,

**/s/ William D. Steinmeier**

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ATTORNEYS FOR APPLICANT  
Xspedius Management Co. of Kansas City, LLC

**Dated:** June 28, 2007

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov), and on the General Counsel's office at [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov) this 28<sup>th</sup> day of June 2007.

***/s/ William D. Steinmeier***

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William D. Steinmeier