

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

In the matter of the Joint Application of)
Xspedius Management Co. of Kansas)
City, LLC and Xspedius Management Co.)
Switched Services, LLC for Approval of a)
Merger, and Approval of a Name Change)
of the Surviving Corporation to Time)
Warner Telecom of Kansas City, LLC)

Case No. TM-2007-0472
Tariff Nos. YC-2007-0961,
YX-2007-0962, YX-2008-0018,
and YC-2008-0027

STAFF RECOMMENDATION

COMES NOW the Staff of the Public Service Commission, and for its recommendation in this matter, states:

1. On June 7, 2007, Xspedius Management Co. of Kansas City, LLC and Xspedius Management Co. Switched Services, LLC jointly filed an application seeking approval of a merger of Xspedius Management Co. Switched Services, LLC into Xspedius Management Co. of Kansas City, LLC, with the latter company as the survivor.

2. In conjunction with this case, Xspedius Management Co. Kansas City, LLC has filed Case No. CA-2007-0473 to obtain a certificate of service authority to provide basic local telecommunications services so that "Xspedius KC, as the surviving entity following the merger, [may] 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".¹ Thus, Staff's positive recommendation in this matter is contingent upon a grant of a certificate in that case. Xspedius Management Co. Switched Services, LLC holds certificates of service authority to provide basic local telecommunications services from the Commission, granted in its order in

¹ Application in Case No. CA-2007-0473 at 2, introductory paragraph.

Case No. CA-2002-1153 and modified by adding a fictitious name in Case No. CN-2003-0462; and to provide and intrastate interexchange telecommunications services, initially granted in its order in Case No. LA-2003-0001 and modified by adding a fictitious name in Case No. XN-2003-0458. If the Commission approves the application in this case, these certificates should be cancelled at its conclusion (see below).

3. The transfer of assets is governed by Section 392.300 and 4 CSR 240-3.520. Applicable case law provides that the Commission may “not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo.App. E.D. 1980), citing to *State ex rel. City of St. Louis v. Public Serv. Comm’n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934).

4. In the attached Memorandum, the Staff summarizes its review of the transaction between the Applicants, and concludes that the transfer of assets will not be detrimental to the public interest. Staff recommends that the Commission approve the *Application*. Staff has provided the same recommendation in both this and the companion case to ensure all issues are addressed in each file.

5. In order to effectuate the transfer, Staff recommends the Commission approve the tariff sheets filed in Tariff No. YX-2007-0962 to permit Xspedius Management Co. of Kansas City, LLC to adopt the existing interexchange tariff of Xspedius Management Co. Switched Services, LLC (Missouri P.S.C. Tariff No. 5). Staff has filed its recommendation regarding the adoption of Xspedius Management Co. Switched Services, LLC’s basic local tariff in the companion case, Case No. CA-2007-0473.

6. An additional aspect to this transaction involves a change of name of the surviving corporate entity, Xspedius Management Co. of Kansas City, LLC, to "Time Warner Telecom of Kansas City LLC." The company has fulfilled the requirements of the Commission's rule governing name changes at 4 CSR 240-2.060(5) by submitting a certificate of good standing issued by the Missouri Secretary of State and by submitting an adoption notice and revised tariff title sheet identifying the new name.

7. The company has submitted new tariff sheets with an effective date of August 11, 2007 to effectuate the change of name for its existing access services tariff, P.S.C. MO. No. 6. Staff has reviewed the new tariff sheets and recommends that the Commission approve them.

7. Staff has recommends that the Commission order the company to notify its customers of this change of name at or before the next billing cycle and file a copy of the notice with the Commission.

**CANCELLATION OF XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES,
LLC'S CERTIFICATES AND TARIFFS**

8. In the *Application*, the Applicants stated that at the conclusion of the transaction, Xspedius Management Co. Switched Services, LLC will no longer be providing telecommunications services to consumers within Missouri and it will surrender its current authorization to the Commission after it has received all necessary regulatory approvals. See *Application* at page 4. Accordingly, Staff recommends that, should the Commission approve the application in Case No. CA-2007-0473 as well as the *Application* in this case, then Xspedius Management Co. Switched Services, LLC's certificates and tariff (Mo.P.S.C. No. 1) should also be cancelled.

WHEREFORE, Staff recommends that the Commission:

- approve the *Application*, contingent upon its approval of Xspedius Management Co. of Kansas City, LLC's application to obtain authority to provide telecommunications services in Missouri in Case No. CA-2007-0473;
- approve the tariff sheets filed in Tariff No. YX-2007-0962 to permit Xspedius Management Co. of Kansas City, LLC to adopt the existing interexchange tariff of Xspedius Management Co. Switched Services, LLC (Missouri P.S.C. Tariff No. 5);
- approve the change of name of Xspedius Management Co. of Kansas City, LLC to "Time Warner Telecom of Kansas City, LLC," and the tariff sheets filed for the access tariff (P.S.C. MO. No. 6) to effectuate that name change; and,
- if it approves the applications, then Staff recommends the Commission also cancel the certificates and tariff (Mo.P.S.C. No. 1) of Xspedius Management Co. Switched Services, LLC.

Respectfully submitted,

/s/ David A. Meyer

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Senior Counsel
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 30th day of July 2007.

/s/ David A. Meyer

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. TM-2007-0472 File No. YC-2007-0961
CA-2007-0473 YX-2007-0962
YX-2008-0018
YC-2008-0027

From: Sara Buyak, Telecommunications Department
William Voight 7-27-07 David Meyer 7-30-07
Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: July 27, 2007

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- Approve Merger
4 CSR 240-3.525
- Approve Consolidation
4 CSR 240-3.525
- Approve Sale of Assets
4 CSR 240-3.520
- Approve Name Change
4 CSR 240-3.545(20)
- Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo
- Approve Certificate(s) & Tariff(s)
4 CSR 240-3.510

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- This transaction solely involves competitively classified companies.
- Customers have/will receive advance notice.
- Customers can switch to another provider.
- Customers will continue to receive service at the same rates, terms and conditions.
- Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Time Warner Telecom of Kansas City LLC (New Name)		X							MO PSC NO 7
Xspedius Management Co. of Kansas City, LLC		X		X			A	MO PSC NO 1	X
Xspedius Management Co. Switched Services, LLC	X		X		C	C	C	X	

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company? No Yes

Customers have been notified.

Customers will be notified at least 30 days prior to being switched to a different company. (4 CSR 240-3.525)

Company Name Change Notification

Company has notified its customers of the name change.

Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? Yes No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items

Administrative:

Application solely involves competitively classified companies.

No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No. XA-2002-1154

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

- No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).
- A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations?

No

Yes

If yes, explain in an attachment.

- The Company is not delinquent in filing an annual report and paying the PSC assessment.
- The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
- (No annual report Unpaid PSC assessment. Amount owed:)

Attachment to Staff Recommendation

Is this transaction requesting the granting of certificates and approval of tariffs? No Yes
(If yes, see below. Attach additional sheets, if necessary.)

Applicant:

The applicant has met Staff's review of requirements for obtaining a certificate of service authority and tariff approval. Therefore, Staff recommends the applicant be granted the following certificate(s), as indicated below. The certificate shall be conditioned to become effective on the same date the tariff becomes effective; however no later than the approval date of the transaction involving the competitively classified companies.

certificate to provide basic local exchange telecommunications services. Granting the certificate should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

certificate to provide interexchange telecommunications services.

certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

No objection to adoption notice sheets taking effect MO P.S.C Tariff No. 4 and MO P.S.C. Tariff No. 5 and MO P.S.C. Tariff No. 7 (indicate PSC MO numbers) August 11, 2007 Effective Date.

No objection to name change sheets taking effect MO P.S.C Tariff No. 6 (indicate PSC MO numbers) August 11, 2007 Effective Date.

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers normally granted to competitively classified companies (392.210.2, 392.240.1, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, 392.340, 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-3.550(5)(C) (this last rule only applies to companies providing basic local telecommunications service).

Appendix A

Certificate applications, if applicable:

- Statement of character of business performed.
- Application includes an affidavit.
- Applicant seeks waivers of rules or statutes previously granted to a competitively classified company.
- Applicant shows that grant of authority is in the public interest.

Additional review items for CLEC applications, if applicable:

- Possesses sufficient technical, financial and managerial resources and abilities.
- Identifies geographic area (no smaller than an exchange).
- Statement that applicant will offer basic local service as a separate and distinct service.
- Statement that applicant will give equitable access to all Missourians.

Tariff review items (applicable for all competitively classified companies):

- The tariff complies with requirements reviewed by Staff for any competitive telecommunications company tariff filing.

Applicant requested the Commission grant it a waiver of Subsections A, B, C, and D of 4 CSR 240-3.510(1)(D)1. This requirement exempts the CLEC from submitting financial information. Utility services did not perform a financial analysis.

Xspedius Management Co of Kansas City LLC tariff MO PSC No. 1 is to be cancelled upon merger of Xspedius Management Co of Kansas City LLC and Xspedius Management Co. Switched Services, LLC and renaming surviving company Time Warner Telecom of Kansas City LLC, per request in paragraph 8 of Supplement to Applications filed 7/13/07 in TM-2007-0472 and Case No. CA-2007-0473. No customers are receiving service under this tariff.

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OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of)
Xspedius Management Co. of Kansas City,)
LLC and Xspedius Management Co.)
Switched Services LLC for Approval of a
Merger, Name Change, Certificate of
Service Authority to provide Basic Local
Telecommunications Services

Case No. TM-2007-0472

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.




Sara Buyak

Subscribed and affirmed before me this 26th day of July 2007 .
I am commissioned as a notary public within the County of Callaway,
State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942088



NOTARY PUBLIC