

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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|----------------------------|---|-------------------------------------|
| Shaffer Lombardo Shurin, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | <u>Case No. TC-2005-0266</u> |
| |) | |
| Xspedius (formerly espire) |) | |
| |) | |
| Respondent. |) | |

ORDER DIRECTING FILING

On February 7, 2005, Shaffer Lombardo Shurin, a law firm with offices in Kansas City and St. Louis, filed its Complaint against "Xspedius (formerly espire)," seeking "a refund of the duplication of payments in the amount of \$19,710.27." Complainant seeks no other relief. The basis of Shaffer Lombardo Shurin's Complaint is that "espire (now Xspedius)," and Southwestern Bell Telephone L.P., doing business as SBC Missouri, failed to disconnect 11 telephone lines on May 11, 2001, as ordered, resulting in duplicate payments for a period of over a year, ending on June 26, 2002.

Xspedius Management Co. Switched Services, LLC, doing business as Xspedius Communications, timely filed its Answer and Motion to Dismiss on March 10. Xspedius states that, while it acquired the assets and customers of e.spire Communications, Inc., effective August 30, 2002, it did not acquire any of e.spire's liabilities. Xspedius points out that the conduct complained of occurred before Xspedius acquired e.spire's assets and customers and, in fact, before Xspedius was even certificated in Missouri. The duplicate payments complained of were paid to e.spire and not to Xspedius. Xspedius also asserts

that Complainant has erred in referring to it as "Xspedius (formerly espire)" because it is not a successor of e.spire.

Shaffer Lombardo Shurin did not file a reply to Xspedius' Answer and Motion to Dismiss.

The Complaint, apparently prepared by a non-attorney employee of Shaffer Lombardo Shurin, rather inartfully explains the factual basis of the Complaint. In May 2001, Shaffer Lombardo Shurin evidently decided to change the provider of 11 of its 17 telephone lines from SBC to e.spire. For some reason, both SBC and e.spire billed Shaffer Lombardo Shurin for those lines over the following 13 months and Shaffer Lombardo Shurin paid both SBC and e.spire, resulting in a duplicate payment of nearly \$20,000. Not long after the duplicate payment was discovered, Xspedius took over e.spire's role as service provider to Shaffer Lombardo Shurin when it purchased e.spire's customer base from a Bankruptcy Trustee. Shaffer Lombardo Shurin, meanwhile, pursued the Commission's informal complaint resolution process in an effort to recover the duplicate payment from SBC, e.spire or Xspedius. The present Complaint was brought against Xspedius, and not SBC, possibly due to the erroneous advice of an employee of the Consumer Services section of this Commission.

It appears that Shaffer Lombardo Shurin may have a meritorious claim against someone. It may be, as well, that some statute or rule or order of this Commission or some tariff provision was violated by SBC or e.spire or Xspedius in this matter. For these reasons, the Commission will direct its Staff to investigate the circumstances and file a report of its findings before it acts upon Xspedius' Motion to Dismiss.

IT IS THEREFORE ORDERED:

1. That the Staff of the Missouri Public Service Commission shall investigate the circumstances underlying this Complaint and file its report of its findings no later than 4:00 p.m. on Tuesday, April 26, 2005. In its report, in addition to its other findings, Staff shall advise the Commission whether any of the carriers involved in this matter violated any statute or Commission rule or order or tariff provision.

2. That this Order shall become effective on April 19, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of April, 2005.