

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of August, 2007.

In the Matter of the Joint Application of)	
)	
Xspedius Management Co. of Kansas City, LLC)	
and)	
Xspedius Management Co. Switched Services, LLC)	<u>Case No. TM-2007-0472</u>
)	Tariff Nos.: YC-2007-0961
)	YX-2007-0962
for Approval of a Merger, and Approval of a)	YX-2008-0018
Name Change of the Surviving Corporation to)	YC-2008-0027
Time Warner Telecom of Kansas City, LLC.)	

**ORDER APPROVING TRANSFER OF ASSETS, NAME CHANGE
AND TARIFF**

Issue Date: August 2, 2007

Effective Date: August 11, 2007

Syllabus: This order approves a Joint Application for approval of a merger of Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, with Xspedius Management Co. of Kansas City as the survivor, approves the name change of the surviving corporation to Time Warner Telecom of Kansas City, LLC, and directs Xspedius Management Co. Switched Services, LLC, to surrender its current authorizations to provide telecommunications services in Missouri upon completion of the transfer. The order also approves Xspedius Management Co. of Kansas City, LLC's tariff, effective August 11, 2007.

Background and Procedural History

On June 7, 2007, Xspedius Management Co. of Kansas City, LLC (Xspedius KC) and Xspedius Management Co. Switched Services, LLC (Xspedius Switched Services) filed an application, pursuant to Section 392.300, RSMo,¹ and 4 CSR 240-3.520 through 3.535, requesting that the Commission grant them the authority necessary to merge Xspedius Switched Services with and into Xspedius KC, and asks the Commission to cancel Xspedius Switched Services' certificate of service authority upon consummation of the restructuring. Along with their application, Xspedius KC and Xspedius Switched Services requested Commission approval of a name change of the surviving corporation to Time Warner Telecom of Kansas City, LLC (Time Warner KC).

Xspedius KC and Xspedius Switched Services are both wholly owned subsidiaries of Time Warner Telecom, Inc., a publicly-held corporation organized under the laws of the State of Delaware.

Xspedius KC is a limited liability corporation organized under the laws of the State of Delaware. Xspedius KC is a competitive provider of interexchange and nonswitched local exchange telecommunications services in Missouri. The Commission granted Xspedius KC a certificate to provide interexchange and non-switched local exchange telecommunications services in Case No. XA-2002-1154.

Xspedius Switched Services is a limited liability company organized under the laws of the State of Delaware. Xspedius Switched Services is a competitive provider of basic local exchange, interexchange and non-switched local exchange telecommunications services in Missouri. The Commission granted Xspedius Switched Services a certificate to

¹ All statutory references throughout this order are to RSMo 2000 unless otherwise noted.

provide basic local telecommunications services in Case No. CA-2002-1153 and a certificate to provide interexchange and non-switched local exchange telecommunications services in Case No. LA-2003-0001.

In conjunction with this case, Xspedius KC filed an application seeking certificates of service authority to provide basic and nonswitched local exchange, as well as interexchange telecommunications services within the state of Missouri, and for competitive classification. That application was assigned Commission Case No. CA-2007-0473. While both merger applicants hold certificates of service authority to provide interexchange and non-switched local exchange service, only Xspedius Switched Services holds a basic local certificate.² Accordingly, as the surviving company, Xspedius KC must obtain a basic local certificate 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.

Description of the Asset Transfer

Xspedius KC and Xspedius Switched Services state that, if the proposed merger is approved, Xspedius KC will adopt the basic local exchange tariff of Xspedius Switched Services as part of its CLEC application in Case No. CA-2007-0473. Thus, Xspedius KC (as Time Warner KC) will simply absorb the basic local exchange services currently being provided by Xspedius Switched Services, and will continue to provide the same services under the same terms and conditions of both Xspedius entities.

² Xspedius Switched Services was granted its certificate of service authority to provide basic local exchange service by Commission order issued March 20, 2003, in Commission Case No. CA-2002-1153.

Applicants' Position

The applicants state that the proposed transaction is not detrimental to the public interest. They contend that the proposed consolidation will reduce the administrative burdens associated with operating multiple entities whose businesses and operations overlap and thus are duplicative. Applicants further contend that the consolidation will allow the company to devote additional resources to the provision of improved services to end users and thereby strengthen Xspedius KC's (as Time Warner KC's) competitive position and promote competition in the telecommunications market.

Applicants assert that the proposed transfer of customers to Xspedius KC will have no adverse impact on customers, because the affected customers will continue to receive their existing services at the same rates, terms and conditions as before the transfer, and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. Xspedius KC represents that it will provide advance written notice to the affected customers at least thirty (30) days prior to the transfer, explaining the change in service provider in accordance with applicable Federal Communications Commission and Commission requirements for changing a customer's presubscribed carrier. The Applicants further state that the proposed transactions will not have any impact on the tax revenues of political subdivisions in Missouri, that the companies have no pending or final judgments against them from any state or federal agency that involve customer service or rates, and that they are current with Missouri assessments and fees and with filing their annual reports.

Staff Recommendation

On February 27, 2007, the Commission's Staff filed its verified recommendation regarding the application. Staff's recommendation and supporting memorandum indicate Staff has closely examined the proposed transaction in this case, and Xspedius KC's pending certification request in Case No. CA-2007-0473. Staff notes that Section 392.300, RSMo 2000, governs mergers. The Commission may approve an asset transfer if it is "not detrimental to the public interest."³ Staff agrees with the applicants that Commission approval of the merger would not be detrimental to the public interest, provided the Commission grant Xspedius KC the certificate of service authority requested in Commission Case No. CA-2007-0473 and order Xspedius KC to notify its customers of the change of name at or before the next billing cycle and file a copy of the notice with the Commission.

To effectuate the requested transfer, name change, and avoid any interruption of service to Xspedius Switched Services' existing customers, Staff recommends the Commission grant Xspedius KC the certificate requested in Case No. CA-2007-0473, approve the pending tariff sheets Xspedius filed in this case and cancel Xspedius Switched Services certificates and tariff once the merger is complete.⁴ In support of its recommendation, Staff notes that this transaction involves only competitively classified companies, that the customers involved will receive advance notice, that these customers will retain the option to switch to another provider, and that these customers will continue to receive the same service at the same rates, terms and conditions of their current service providers.

³ *State ex rel. Fee Fee Trunk Sewer, Inc. v Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980).

⁴ See: *Staff Recommendation and Memorandum*, Case No. TM-2007-0472 and *Staff Recommendation and Memorandum*, Case No. CA-2007-0473.

Additionally Staff states that the transaction will have no effect on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F).

Staff also recommends that the Commission approve the applicants' request to change the name of the surviving corporate entity, Xspedius KC, to "Time Warner Telecom of Kansas City LLC." Specifically, Staff advised the Commission that the applicants have fulfilled the requirements of the Commission's rule governing name changes, 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.

Decision

Having reviewed the verified Staff Recommendation, Joint Application, and Supplement to Application, which are hereby admitted into evidence, the Commission finds that the proposed transaction is not detrimental to the public interest and that the Commission should therefore approve it. The Commission notes the proposed merger involves competitively classified telecommunications companies. The Commission further notes that Xspedius KC (as Time Warner KC) will survive the merger and continue to provide service to its Missouri customers under Commission-approved tariffs.

The Commission also finds that the applicants have fulfilled the requirements of the Commission's rule governing name changes, 4 CSR 240-2.060(5), and that applicants' request to change the name of the surviving corporate entity, Xspedius KC, to "Time Warner Telecom of Kansas City LLC," should be approved.

The Commission also finds that Xspedius KC's proposed tariff sheets should be approved to become effective on August 11, 2007, and Xspedius Switched Services' certificate and tariff should be cancelled upon completion of the merger.

IT IS ORDERED THAT:

1. The Joint Application for approval of a merger of Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, with Xspedius Management Co. of Kansas City as the survivor, is approved.

2. The Joint Applicants' request to change the name of Xspedius Management Co. of Kansas City, LLC, to Time Warner Telecom of Kansas City, LLC, is approved.

3. Xspedius Management Co. of Kansas City, LLC, shall notify its customers of its name change to Time Warner Telecom of Kansas City, LLC, at or before the billing cycle following the effective date of this order, and file a copy of the notice in this case.

4. The proposed tariff sheets submitted by Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, in this case are approved to become effective on and after August 11, 2007. The specific sheets approved are:

Mo PSC No. 4

Original Adoption Notice
Second Revised Sheet No. 1, Replacing First Revised Sheet No. 1

Missouri P.S.C. No. 5

Original Adoption Notice
First Revised Sheet No. 1, Replacing Original Sheet No. 1

P.S.C. MO. No. 6

First Revised Title Page, Replacing Original Title Page

MO PSC No. 7

Original Adoption Notice
First Revised Title Page, Replacing Original Title Page

5. Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, shall notify the Commission when their merger is completed.

6. Upon receipt of notice that the merger of Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, is completed, the Commission shall issue an order cancelling Xspedius Management Co. Switched Services, LLC's certificates, as well as its tariff sheets that have not been previously adopted by Xspedius Management Co. of Kansas City, LLC.

7. This order shall become effective on August 11, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Voss, Regulatory Law Judge