

**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 Application of Xspedius Management Co. of Kansas City, LLC for a Certificate of Service Authority to Provide Basic Local Telecommunications Service In Portions of the State of Missouri and to Classify Said Services and the Company as Competitive.)
)
)
)
)
)
)

Case No. CA-2007-0473

ORDER GRANTING CERTIFICATES TO PROVIDE BASIC LOCAL, NONSWITCHED LOCAL, AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES, AND DECLINING TO ADDRESS TARIFFS

Issue Date: August 2, 2007

Effective Date: August 11, 2007

This order grants certificates of service authority to provide basic local, nonswitched local, and interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive, waives certain statutes and regulations, and declines to address the company's tariffs in this docket.

On June 7, 2007, Xspedius Management Co. of Kansas City, LLC (Xspedius KC), applied for 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. The company seeks certification to provide interexchange service throughout the state and basic local service in portions of Missouri that are currently being served by Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, CenturyTel, Spectra and Embarq. Xspedius KC is authorized to do business in Missouri by

the Missouri Secretary of State. Xspedius KC filed supplements to its June 7, 2007 application on July 13 and July 23.

Xspedius KC filed this application 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 (Merger Application). That application was assigned Commission Case No. TM-2007-0472. 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.¹ 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.

On June 12, 2007, the Commission issued its Notice of Applications, establishing a 15-day deadline for intervention. No applications to intervene were received.

On June 28, 2007, Xspedius KC filed an Application for Waiver requesting that the Commission grant it a waiver of Subsections A, B, C, and D of 4 CSR 240-3.510(1)(D)1. The Commission directed its Staff to review and provide a recommendation concerning Xspedius KC's waiver request by its order dated June 29, 2007. On July 10, 2007, Staff advised the Commission that had no objection to Xspedius KC's requested waiver of 4 CSR 240-3.510(1)(D)1 in this case, and recommended granting the

¹ 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.

requested waiver. However, Staff advised the Commission that its position on the waiver request was based upon the specific facts in this case.

On July 30, 2007, the Staff of the Commission filed its official recommendation and supporting memorandum in this case. Staff recommended that the requested certificates, conditioned upon certain access rate provisions, be granted. Staff further recommended that the companies classification requests and waivers, including waivers of Subsections A, B, C, and D of 4 CSR 240-3.510(1)(D)(1), be granted.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory requirements,² and that the grant of authority is in the public interest.³ Based on the verified application and Staff's uncontested recommendation, the Commission finds that Xspedius KC satisfies the requirements for certification and that granting such certificates is in the public interest.

Xspedius KC also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.⁴ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁵ The Commission may waive

² See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

³ Sections 392.430 and 392.440.

⁴ Section 392.361.2.

⁵ Section 392.361.3.

the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁶

The Commission finds that the intrastate interexchange market is competitive and that the interexchange services Xspedius KC will offer are subject to competition. In addition, Xspedius KC will compete with incumbent local exchange carriers, as well as other competitive local exchange carriers in the exchanges in which it provides basic local telecommunications service. The Commission finds that Xspedius KC will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Xspedius KC will offer are qualified for classification as competitive services.

The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of Section 392.361 to 392.520 and the purposes of this chapter.”⁷ The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange and interexchange carriers. The Commission finds that the waiver of those statutes and regulation is consistent with the purposes of Chapter 392, and will waive those provisions for Xspedius KC.

The Commission also finds it appropriate to grant Xspedius KC a waiver of Subsections A, B, C, and D of 4 CSR 240-3.510(1)(D)(1) which require the filing of supportive financial data and information and pro forma statements in conjunction with an application to provide basic local exchange service. The Commission agrees with the company and its Staff that good cause exists to grant Xspedius KC the requested waiver as

⁶ See Sections 392.185, 392.361.3 and 392.420.

⁷ Sections 392.361.5 and 392.420.

authorized under Commission Rule 4 CSR 240-2.60(4). Specifically, the Commission finds that: 1) The companies involved are not start-up companies and have been operating already for a number of years; 2) in light of the companies' established history, they are unlikely to cease providing service unexpectedly in the near future; 3) Time Warner Telecom, Inc. backs them and it is a large, well-known company; 4) the company has provided its 10-K; 5) the public will be protected from an under capitalized CLEC even if Staff does not review their financials because the company has a proven track record and well-maintained financial records; and 6) the company does not compile financials on an operating company, state-specific basis. The Commission's granting of this additional waiver is based upon the unusual fact-specific situation in this case and does not indicate that the Commission will grant a similar waiver request in the future absent an identical factual situation.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that Xspedius KC's application be granted subject to certain restrictions regarding switched access rates. These conditions are routinely recommended by Staff and Xspedius KC accepted them in its application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

On July 12, 2007, subsequent to filing its application, Xspedius KC submitted proposed tariff sheets including an adoption notice, adopting Xspedius Switched Services' currently effective Missouri P.S.C. Tariff No. 5 and a revised title page. The company filed revised tariff pages on, July 17th and July 19th. The tariff originally carried an effective date of August 1, 2007, but Xspedius KC subsequently extended the tariff effective date until August 11, 2007. Staff recommends that the tariff be approved. However, because the

tariff sheets at issue were also filed as part of a larger tariff filing in the companion case, TM-2007-0472, the Commission declines to address those tariff sheets in this case. Further, the tariff sheets in question bear the name, "Time Warner Telecom of Kansas City LLC," that Xspedius KC seeks Commission authority to adopt in TM-2007-0472. Accordingly, it would not be appropriate to approve those tariff sheets in this case. The Commission shall instead address them along with the full tariff filing in Case No. TM-2007-0472.

The Commission places Xspedius KC on notice that failure to comply with certain obligations pursuant to law may result in penalties being assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.5, RSMo Cum. Supp. 2006, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS ORDERED THAT:

1. Xspedius Management Co. of Kansas City, LLC is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, Century Tel, Spectra and Embarq, subject to the conditions and recommendations contained in the Staff's Memorandum.

2. Xspedius Management Co. of Kansas City, LLC is granted certificates of service authority to provide nonswitched local exchange and interexchange telecommunications services in the state of Missouri.

3. Xspedius Management Co. of Kansas City, LLC and its services are granted competitive classification.

4. Xspedius Management Co. of Kansas City, LLC's originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within

whose service area Xspedius KC seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo.

5. The certificates and competitive service classification for switched exchange access are granted conditioned on the continued applicability of Section 392.200, RSMo, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Section 392.200 and 392.230, RSMo, and not Section 392.500 and 392.510, RSMo.

6. If the directly-competing incumbent local exchange carrier, in whose service area Xspedius Management Co. of Kansas City, LLC, is operating, decreases its originating or terminating access service rates, Xspedius KC shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

7. Application of the following statutes and Commission rules is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-3.550(5)(C) - exchange boundary map
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-3.510(1)(D)(1)(A), (B), (C) and (D)
 - financial information requirements

8. The following tariff sheets, assigned file numbers YC-2007-0961, YX-2007-0962 and YC-2008-0027 will be addressed in Commission Case TM-2007-0472:

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

MO PSC No. 7

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

9. The certification granted herein is conditioned upon the company's compliance with the regulatory obligations set out in this order

10. This order and Xspedius Management Co. of Kansas City, LLC's certificates shall become effective on August 11, 2007.

11. This case shall be closed on August 12, 2007.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

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

Voss, Regulatory Law Judge