

**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 to Provide Basic Local)
Telecommunications Services in Portions)
of the State of Missouri and to Classify)
Said Services and the Company as)
Competitive.)

Case No. CA-2007-0473
Tariff No. YC-2007-0961,
YX-2007-0962, and YC-2008-0027

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. Xspedius Management Co. of Kansas City, LLC and Xspedius Management Co. Switched Services, LLC have filed a joint application for approval of a merger between the two companies, with Xspedius Management Co. Kansas City, LLC as the survivor, in Case No. TM-2007-0472. In conjunction with that case, Xspedius Management Co. Kansas City, LLC has filed the present case 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 Staff provides its recommendation at this time.

2. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Xspedius Management Co. of

¹ Application at 2, introductory paragraph.

Kansas City, LLC (Applicant), a certificate of service authority to provide basic local exchange telecommunications service in the service area of Southwestern Bell Telephone L.P. d/b/a AT&T Missouri; Embarq Missouri Inc. d/b/a Embarq; CenturyTel of Missouri, LLC; and Spectra Communications Group, LLC d/b/a CenturyTel, conditioned upon certain access rate provisions. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. (See §392.430 and §392.440 RSMo. (2000).)

3. Staff also recommends that the Commission classify the Applicant and its services as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. (See §392.361.2.) All the services a competitive company provides must be classified as competitive. (See §392.361.3.)

4. Staff also recommends that the Commission grant approval of the Applicant's proposed tariff sheets to adopt the existing basic local tariffs of Xspedius Management Co. Switched Services, LLC (MO PSC No. 4 and MO PSC No. 7), with proposed effective dates of August 11, 2007.

5. Staff has already addressed the background of Xspedius Management Co. Kansas City, LLC's *Application for Waiver* to waive the relevant paragraphs of 4 CSR 240-3.510(1)(D)1 in Staff's *Response to Order Directing Filing* submitted on July 10, 2007. Staff has no objection to the request for waiver and recommends the Commission waive those provisions.

WHEREFORE, Staff recommends that the Commission grant Xspedius Management Co. of Kansas City, LLC a certificate to provide basic local exchange telecommunications services, conditioned upon the access rate provisions described in the Staff memorandum; grant

competitive classification; grant a waiver of the statutes and regulations listed in the Commission's *Notice of Applications*, as well as of 4 CSR 240-3.510(1)(D)1; and approve the Applicant's proposed tariff sheets adopting the existing basic local tariffs of Xspedius Management Co. Switched Services, LLC (MO PSC No. 4 and MO PSC No. 7), with effective dates of August 11, 2007.

Respectfully submitted,

/s/ David A. Meyer

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed 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.

