# BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

## NASHVILLE, TENNESSEE

### January 24, 2003

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| IN RE: | ) | |
| | ) | |
| APPLICATION OF XSPEDIUS, LLC FOR APPROVAL OF | ) | **DOCKET NO.** |
| A CORPORATE REORGANIZATION RESULTING IN A | ) | **02-01279** |
| CHANGE OF CONTROL | ) | |
| | ) | |

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## ORDER APPROVING TRANSFER OF AUTHORITY

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This matter came before Director Deborah Taylor Tate, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on December 16, 2002 for consideration of the *Application of Xspedius, LLC* (the "*Application*") filed by Xspedius, LLC ("Xspedius"). The *Application* was considered pursuant to the provisions of Tenn. Code Ann. § 65-4-113, which requires Authority approval of a transfer of authority to provide utility services.

### Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

> (a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

> (b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

## The *Application*

In the *Application*, which was filed on December 9, 2002, Xspedius requests Authority approval of a transfer of control of Xspedius from Xspedius Holding Company ("XHC"), its current parent, to Xspedius Management Co., LLC ("XMC"), an affiliate of Xspedius. According to the *Application*, following a corporate reorganization, XMC will own fifty-five percent (55%) of Xspedius, and XHC will own forty-five percent (45%) of Xspedius. The *Application* states that Xspedius was granted authority to provide utility services in Tennessee by Order dated August 25, 2000 in Docket No. 00-00572 under the name Xspedius Corp. The Application further states that XMC is currently the parent company of two (2) other certified competing local exchange carriers operating in Tennessee, Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC.

## Public Interest Considerations

According to the *Application*, the proposed corporate reorganization will simplify the corporate structure of the Xspedius affiliates in Tennessee. The *Application* states that the proposed reorganization will have no impact on Tennessee rates and services and will be transparent to customers.
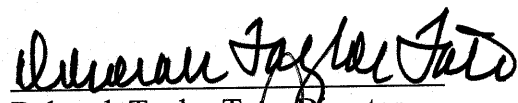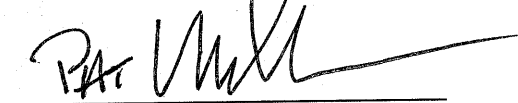
**Findings**

The Authority considered this matter at the December 16, 2002 Authority Conference. Based upon careful consideration of the *Application* and of the entire record of this matter, the Authority finds and concludes as follows:

1.  The Authority has jurisdiction over the subject matter of this *Application* pursuant to Tenn. Code Ann. § 65-4-113;

2.  Xspedius, LLC has been granted authority to provide telecommunications services in Tennessee;

3.  Majority ownership of Xspedius, LLC will be transferred from Xspedius Holding Company to Xspedius Management Co., LLC, resulting in a transfer of the authority granted Xspedius, LLC to provide utility services; and

4.  The transfer of authority will benefit the consuming public.

**IT IS THEREFORE ORDERED THAT:**

The *Application* of Xspedius, LLC for approval of the transfer of authority described herein is approved.

Deborah Taylor Tate, Director

Pat Miller, Director

Ron Jones, Director