



PUBLIC NOTICE

Federal Communications Commission
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DA 06-1623

Released: August 11, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF XSPEDIUS COMMUNICATIONS, LLC AND ITS SUBSIDIARIES TO TIME WARNER TELECOM INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-158

Comments Due: August 25, 2006

Reply Comments Due: September 1, 2006

On August 1, 2006, Xspedius Communications, LLC ("Xspedius"), on behalf of itself and its subsidiaries, and Time Warner Telecom Inc. ("Time Warner Telecom") (together, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,¹ requesting authority to transfer control of Xspedius and its subsidiaries to Time Warner Telecom.²

Applicants submit that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in (i) Time Warner Telecom and its affiliates having a market share in the interstate, interexchange market of less than 10 percent; (ii) Time Warner Telecom and its affiliates providing competitive telephone exchange or exchange access services, if at all, exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction and; (iii) neither of the Applicants being dominant with respect to any service.³

¹ 47 C.F.R. § 63.04; see 47 U.S.C. § 214.

² Applicants filed a supplement to the Application on August 7, 2006. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

Xspedius, a Delaware limited liability company, provides competitive telecommunications services to small and medium-sized business customers, including local and long distance services in 20 states and the District of Columbia.⁴

Time Warner Telecom, a publicly held Delaware corporation, has operating subsidiaries that provide local and long distance services in 25 states.⁵ Time Warner Telecom wholly owns Time Warner Telecom Holdings Inc., a Delaware corporation, which wholly owns Time Warner Telecom Holdings II LLC, a Delaware limited liability company.⁶ Time Warner Inc., a publicly-held, media and entertainment corporation based in Delaware, owns 23.5 percent of Time

⁴ The following wholly-owned, U.S.-based subsidiaries of Xspedius Parent provide intrastate telecommunications services in Alabama, Arizona, Arkansas, Colorado, Washington, D.C., Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Nevada, New Mexico, Oklahoma, South Carolina, Tennessee, Texas and Virginia: Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. International, LLC, Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, Xspedius Management Co. of Montgomery, LLC, Xspedius Management Co. of Atlanta, LLC, Xspedius Management Co. of Lexington, LLC, Xspedius Management Co. of Louisville, LLC, Xspedius Management Co. of Chattanooga, LLC, Xspedius Management Co. of Albuquerque, LLC, Xspedius Management Co. of Austin, LLC, Xspedius Management Co. of Baton Rouge, LLC, Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Colorado Springs, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of D.C., LLC, Xspedius Management Co. of Dallas/Fort Worth, LLC, Xspedius Management Co. of El Paso, LLC, Xspedius Management Co. of Fort Worth, LLC, Xspedius Management Co. of Greenville, LLC, Xspedius Management Co. of Irving, LLC, Xspedius Management Co. of Jackson, LLC, Xspedius Management Co. of Jacksonville, LLC, Xspedius Management Co. of Kansas City, LLC, Xspedius Management Co. of Las Vegas, LLC, Xspedius Management Co. of Little Rock, LLC, Xspedius Management Co. of Louisiana, LLC, Xspedius Management Co. of Maryland, LLC, Xspedius Management Co. of Pima County, LLC, Xspedius Management Co. of San Antonio, LLC, Xspedius Management Co. of Shreveport, LLC, Xspedius Management Co. of South Florida, LLC, Xspedius Management Co. of Spartanburg, LLC, Xspedius Management Co. of Tampa, LLC, Xspedius Management Co. of Tulsa, LLC, Xspedius Management Co. of Virginia, LLC.

⁵ The following wholly-owned, U.S.-based subsidiaries of Time Warner Telecom provide telecommunications services in Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Minnesota, Mississippi, New Jersey, New York, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, and Wisconsin: TW Telecom, L.P., Time Warner Telecom of Florida, L.P., Time Warner Telecom of Hawaii, L.P., Time Warner Telecom of New Jersey, L.P., Time Warner Telecom of North Carolina, L.P., Time Warner Telecom of Wisconsin, L.P., Time Warner Telecom of California, L.P., Time Warner Telecom of Georgia, L.P., Time Warner Telecom of Indiana, L.P., Time Warner Telecom NY, L.P., Time Warner Telecom of Texas, L.P., Time Warner Telecom of Arizona, LLC, Time Warner Telecom of Idaho, LLC, Time Warner Telecom of Maine, LLC, Time Warner Telecom of Minnesota, LLC, Time Warner Telecom of New Mexico, LLC, Time Warner Telecom of Oregon, LLC, Time Warner Telecom of Utah, LLC, Time Warner Telecom of Colorado, LLC, Time Warner Telecom of Illinois, LLC, Time Warner Telecom of the Mid-South, LLC, Time Warner Telecom of Nevada, LLC, Time Warner Telecom of Ohio, LLC, Time Warner Telecom of South Carolina, LLC, Time Warner Telecom of Virginia, LLC, and Time Warner Telecom of Washington, LLC.

⁶ Applicants state that, after completion of the proposed transaction, Time Warner Holdings Inc. will remain the general partner and 1 percent owner of Time Warner Telecom's operating subsidiaries, and Time Warner Holdings II LLC will remain the limited partner and 99 percent owner of Time Warner Telecom's operating subsidiaries.

Warner Telecom.⁷ Applicants assert that no investor in Time Warner Inc. will own a 10 percent or greater interest in Xspedius.

Pursuant to the terms of an Agreement and Plan of Merger dated July 27, 2006, Time Warner Telecom will acquire the membership interests of Xspedius and its subsidiaries, which will become wholly-owned subsidiaries of Time Warner Telecom. To facilitate the transaction, Time Warner Telecom has created a wholly-owned subsidiary named XPD Acquisition, LLC, a Delaware limited liability company. XPD Acquisition, LLC will merge with and into Xspedius, with Xspedius continuing as the surviving corporation. Xspedius will also be the surviving parent corporation of its operating subsidiaries. At the time of the transaction, all of the ownership interests of Xspedius immediately prior to the transaction shall cease to exist in exchange for consideration consisting of Time Warner Telecom stock and cash received by the owners of Xspedius. Applicants state that the proposed transaction does not involve the transfer of any operating authority, assets, or customers. Immediately following the closing, the Xspedius operating subsidiaries and the Time Warner Telecom operating subsidiaries will continue to offer service to their customers at the same rates, terms, and conditions.⁸

Applicants assert that the proposed transaction will serve the public interest because (1) the combined company will benefit from increased financial resources, economies of scale, and cost synergies, and will be able to better compete in nationwide telecommunications markets; (2) the transaction will be transparent to customers, and (3) the transaction does not present any anti-competitive issues because, in the geographic markets in which the operations of the combined organization overlap, there are a number of other competitive and incumbent carriers.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before August 25, 2006 and reply comments on or before September 1,**

⁷ Time Warner Inc.'s cable segment and operating subsidiaries provide local and long distance Internet Protocol ("IP") voice services over cable systems and associated facilities. The Time Warner Inc. subsidiaries are certified local exchange carriers in 26 states: Arizona, Arkansas, California, Florida, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin. The subsidiaries have applications pending to provide competitive local exchange services in three states: Alabama, Georgia, and New Jersey. Through its operating subsidiaries, Time Warner Inc. provides IP voice services in 13 states: California, Georgia, Hawaii, Maine, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, Texas, and Wisconsin.

⁸ Applicants state that the combined company will continue to assess the benefits of post-close consolidations, market coverage, and/or mergers of the operating entities, and that if they pursue such plans, they will seek all appropriate regulatory approvals.

2006.⁹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.¹⁰ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

⁹ See 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: cecilia.seppings@fcc.gov;
- (3) Jodie May, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: jodie.may@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: jim.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com. For further information, please contact Cecilia Seppings at (202) 418-1588, or Jodie May at (202) 418-0913.

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