

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 15, 2006

IN RE:

**JOINT APPLICATION OF XSPEDIUS
MANAGEMENT CO. SWITCHED SERVICES, LLC,
XSPEDIUS MANAGEMENT CO. OF
CHATTANOOGA, LLC, XSPEDIUS
COMMUNICATIONS, LLC AND TIME WARNER
TELECOM INC. FOR APPROVAL OF A CHANGE
IN OWNERSHIP OF AUTHORIZED
TELECOMMUNICATIONS PROVIDERS IN
CONNECTION WITH A MERGER AND DEBT
ISSUANCE TRANSACTION**

**DOCKET NO.
06-00206**

**ORDER APPROVING TRANSFER OF AUTHORITY AND FINANCING
TRANSACTION**

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 25, 2006 for consideration of the *Application for Approval of Proposed Merger and Issuance of Debt* ("Application") filed on August 11, 2006 by Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Chattanooga, LLC (together, "Xspedius Certificated Subsidiaries"), Xspedius Communications, LLC ("Xspedius Parent," and together with Xspedius Certificated Subsidiaries, "Xspedius") and Time Warner Telecom, Inc. ("Time Warner Telecom") (Xspedius and Time Warner Telecom collectively, the "Applicants").

BACKGROUND OF THE APPLICANTS

Xspedius, LLC ("Xspedius Parent")

Xspedius Parent is a Delaware limited liability company that provides advanced, integrated telecommunications services targeted to small and medium-sized business customers, including local and long distance telephone services in combination with enhanced communication features. Through its subsidiaries, Xspedius Parent currently offers competitive local and long distance telecommunications services in 20 states, and the District of Columbia, including Tennessee. As of March 31, 2006, the Xspedius network includes approximately 2,800 fiber route miles of fiber optic facilities located in 43 markets. Xspedius Parent is authorized to provide both domestic interstate and international telecommunications services by the Federal Communications Commission ("FCC").

At a regularly scheduled Authority Conference on August 24, 2000, in Docket No. 00-00572, this Authority authorized Xspedia, Corp. to provide facilities based local exchange, exchange access and interexchange telecommunications services within Tennessee, and an Order evidencing same was issued on August 25, 2000. Subsequently, on January 23, 2001, at a regularly scheduled Authority Conference, in Docket No. 00-01145, the panel found that the Company had met all TRA requirements for changing its name and approved Xspedia, Corp. to change its name to Xspedius, Corp. On May 7, 2002, at a regularly scheduled Authority Conference, in Docket No. 02-00476, the panel found that the Company had met all TRA requirements for changing its name and approved Xspedius, Corp. to change its name to Xspedius, LLC.¹

On July 23, 2002, at a regularly scheduled Authority Conference, the panel in Docket No. 02-00714 approved the transfer of all of the assets, including customer base and authority pursuant to T.C.A. §65-4-113, of American Communication Services of Chattanooga, Inc. and

¹ At this time, the parent company of Xspedius, LLC is Xspedius Holding Co.

ASCI Local Switched Services, Inc. to Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC, respectively.²

On December 6, 2002, Xspedius, LLC submitted an *Application for Approval of a Corporate Reorganization Resulting in a Change in Control* with the TRA. At a regularly scheduled Authority Conference on December 16, 2002, in Docket No. 02-01279, the panel found that the Company had met all TRA requirements pursuant to T.C.A. §65-4-113 and approved the transfer of Xspedius, LLC, from Xspedius Holding Co., its current parent, to Xspedius Management Co., LLC, an affiliate of Xspedius, LLC. The result of this transfer was the creation of a co-parent relationship of Xspedius, LLC; specifically, that Xspedius Management Co., LLC owned fifty-five percent (55%) of Xspedius, LLC and Xspedius Holding Co. owned forty-five percent (45%) of Xspedius, LLC.

Footnote 2 of the December 6, 2002 *Application* of Xspedius, LLC sets out the corporate structure of Xspedius, LLC, prior to its proposed reorganization as follows, “XMC [Xspedius Management Co., LLC] is currently the parent company of two other certified CLEC’s operating in Tennessee: Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC. See TRA Docket 02-00714.” The footnote continues, “As part of this corporate reorganization, ownership of these two entities will be transferred to XLLC [Xspedius, LLC] but will remain under the effective control of Xspedius Management Co., LLC...” Therefore, simultaneous with the transfer of Xspedius, LLC to Xspedius Management Co., LLC, Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC, became subsidiaries of Xspedius, LLC, although effective control of these entities remained with Xspedius Management Co., LLC (the ultimate parent retaining 55% control over the Xspedius Certificated Subsidiaries consisting of Xspedius, LLC, Xspedius

² At this time, the parent company of Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC is Xspedius Management Co., LLC.

Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC).

On September 25, 2006, at a regularly scheduled Authority Conference, in Docket No. 06-00227, the panel found that Xspedius, LLC had met all TRA requirements for changing its name and approved Xspedius, LLC to change its name to Xspedius Communications, LLC. The panel further found that the Company had been operating under the name of Xspedius Communications, LLC since 2003, and approved a waiver of Tenn. Comp. R. & Regs. 1220-4-1-.8(1)(a).

Time Warner Telecom Inc. ("Time Warner Telecom")

Time Warner Telecom is a publicly held Delaware corporation headquartered in Littleton, Colorado. Through its operating subsidiaries, Time Warner Telecom is a leading provider of voice and/or data networking solutions to business customers in 25 states; including Tennessee and 44 metropolitan areas. Time Warner Telecom also supplies dedicated Internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers and enterprise organizations in the healthcare, finance, higher education, manufacturing, and hospitality industries.

In Tennessee, Time Warner Telecom of the Mid-South, LLC, an operating subsidiary of Time Warner Telecom, was certificated as a facilities-based telecommunications carrier by the Tennessee Public Service Commission in Docket No. 93-02980 on August 24, 1995. Time Warner Telecom is also authorized to provide both domestic interstate and international telecommunications services by the FCC. Time Warner Telecom and its subsidiaries will not be affected by the proposed transfer, except to the extent their assets are pledged in relation to the proposed financing transaction.

THE APPLICATION

In their *Application*, the Applicants request approval to transfer authority of the Xspedius Certificated Subsidiaries as a result of the acquisition of Xspedius Parent by Time Warner Telecom.³ The proposed transaction is a parent holding company level transaction that will occur as a result of an Agreement and Plan of Merger (“Agreement”) dated July 27, 2006, among Time Warner Telecom, Xspedius Parent and various affiliated entities.⁴ Also, the Applicants seek approval of a proposed financing transaction to provide security in connection with the transfer to restructure its existing debt. Xspedius and Time Warner Telecom (“Applicants”) currently have a Domestic Section 214 Application pending before the FCC regarding the transfer of control of Xspedius and its subsidiaries to Time Warner Telecom in WC Docket No. 06-158.

The *Application* further states that pursuant to the terms of the Agreement, and following the receipt of the necessary regulatory approvals, Xspedius Parent will become a wholly-owned subsidiary of Time Warner Telecom. To facilitate the transaction, Time Warner Telecom created a wholly-owned subsidiary named XPD Acquisition, LLC (“XPD”), established for the purpose of completing the change and/or transfer of control transaction and other transactions contemplated by the Agreement. Pursuant to the Agreement, XPD will merge with and into Xspedius Parent, with Xspedius Parent continuing as the surviving corporation and a wholly-owned subsidiary of Time Warner Telecom (“the Transaction”). At the close of the Transaction, all of the ownership interest of Xspedius Parent shall cease to exist in exchange for consideration consisting of Time Warner Telecom stock and cash received by the owners of Xspedius Parent. As a result of XPD merging into

³ Time Warner Telecom also has an operating subsidiary in Tennessee, Time Warner Telecom of the Mid-South LLC, that is certificated to provide local and long distance telecommunications services in Tennessee. This entity is not affected by the proposed transfer and/or change of control. The *Application* states that it will continue to operate pursuant to its existing authorization and ownership.

⁴ The affiliated entities are XPD Acquisition, LLC, Xspedius Management Co., LLC and Xspedius Holding Corp.

Xspedius Parent, Time Warner Telecom will own 100% of the membership interests of Xspedius Parent. The surviving parent company of the Xspedius Certificated Subsidiaries is Xspedius Parent.

The proposed change in ownership and/or transfer of control transaction will be transparent to customers, and the proposed transaction does not involve the transfer of any operating authority, assets, or customers. The *Application* states that immediately after the completion of the Transaction, the Xspedius Certificated Subsidiaries and the Time Warner Telecom operating subsidiaries, will continue to offer their customers the same services at the same rates, terms and conditions pursuant to presently existing authorizations, tariffs, contracts, and published rates and charges. The only change will be that Xspedius will be under the ultimate ownership and control of Time Warner Telecom.

The *Application* further states that in connection with the above-referenced transaction, Time Warner Telecom, through its subsidiary Time Warner Telecom Holdings Inc., proposes to restructure its existing debt for the purpose of funding operational expenses and the cash consideration to be paid to the owners of Xspedius Parent in an amount of approximately \$213 million. The net effect of this restructure will be a maximum incremental increase of \$231 million in Time Warner Telecom's total debt. According to the *Application*, Time Warner will extinguish a portion of its existing debt and receive a more favorable interest rate for a portion of the remaining indebtedness.

As security for the debt financing, the *Application* states that Time Warner Telecom proposes to pledge all of the assets of all its wholly-owned subsidiaries, including the Tennessee operating entities, and all of the assets of the acquired Xspedius Certificated Subsidiaries, as collateral to secure the debt facilities. The pledged assets include, without limitation, all tangible and intangible assets, network facilities, equipment, and inventory.

SEPTEMBER 25, 2006 AUTHORITY CONFERENCE

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to

transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) provides:

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) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

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 authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Regarding the debt financing transaction, Tenn. Code Ann. § 65-4-109 (2004) states:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

In accordance with the above-referenced statutes, the Authority has a duty to approve the proposed transfer of authority and financing transaction if it is satisfied that the transactions are in accordance with applicable law and that the purposes thereof meet with the Authority's approval.

At the regularly scheduled Authority Conference held on September 25, 2006, the voting panel assigned to this docket considered the indirect transfer of authority requested in the *Application*. The panel found that Tenn. Code Ann. § 65-4-113 (2004), rather than § 65-4-112, applies to this transaction. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standards set forth in Tenn. Code Ann. § 65-4-113 and § 65-4-109 (2004), the panel

determined that the transactions further the public interest and voted unanimously to grant approval of the *Application*.⁵

IT IS THEREFORE ORDERED THAT:

1. The indirect transfer of authority of Xspedius Communications, LLC, Xspedius Management Co. of Chattanooga, and Xspedius Management Co. Switched Services to Time Warner Telecom, Inc. as described in the *Application for Approval of Proposed Merger and Issuance of Debt* and discussed herein is approved contingent upon the Federal Communications Commission's approval of the Domestic and International Section 214 Application for the Transfer of Control of Xspedius Communications, LLC, Xspedius Management Co. of Chattanooga, and Xspedius Management Co. Switched Services to Time Warner Telecom, Inc.

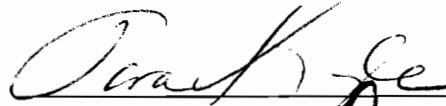
2. Because this transaction is an indirect transfer of authority, Xspedius Communications, LLC, Xspedius Management Co. of Chattanooga and Xspedius Management Co. Switched Services will become direct, wholly-owned subsidiaries of Time Warner Telecom, Inc. and each will retain its certificate of public convenience and necessity.

3. Time Warner Telecom, Inc. and its wholly-owned subsidiaries, including the newly-acquired Xspedius subsidiaries, are authorized to enter into the financing transaction to restructure its existing debt, which includes debt acquired in Tennessee Regulatory Authority Docket Nos. 04-00051 and 06-00094, as described in the *Application for Approval of Proposed Merger and Issuance of Debt* and discussed herein.

4. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or

⁵ Along with his concurrence of the panel decision, Director Jones stated the following additional findings: (1) the proposed financing transaction is expected to affect the Tennessee assets of the Tennessee certificated entity; (2) the Petitioners have filed similar petitions in other states and the FCC; (3) Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers; and (4) the burden of complying with Tenn. Code Ann. § 65-4-109 (2004) is minimal, and such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment.

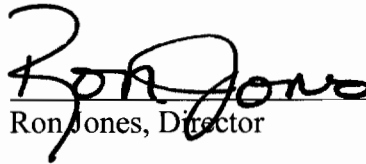
assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof for the transactions approved herein.



Sara Kyle, Chairman



Pat Miller, Director



Ron Jones, Director