PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 1418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: http:/lwww fcc gov
ftp fcc.gov

DA 03-201
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DOMESTIC SECTION 214 APPLICATION FILED FOR CONSENT TO TRANSFER CONTROL OF XSPEDIUS, LLC FROM XSPEDIUS HOLDING CORP. TO XSPEDIUS MANAGEMENT CO., LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-17

On December 26, 2002, Xspedius Holding Corp. ("XHC") – the existing sole shareholder of Xspedius, LLC ("Xspedius") – and Xspedius Management Co., LLC ("XMC"), filed an application, pursuant to section 63.04 of the Commission's rules,[1] for consent to transfer majority ownership and control of Xspedius from XHC to XMC. The applicants state that this transaction will result in the combination of the telecommunications businesses of Xspedius and XMC.[2]

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the transferee, XMC, and its affiliates will have a market share in the interstate, interexchange market of less than 10 percent. will provide competitive telephone exchange services or exchange access service (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and neither the applicants, nor any of their affiliates, are dominant with respect to any service.[3]

Xspedius is a Delaware limited liability company that is wholly owned by XHC, a privately-held company. Xspedius provides local and interexchange telecommunications services in Alabama, Louisiana, Mississippi, North Carolina, and Tennessee. XMC is a privately-held Delaware limited liability company whose subsidiaries recently acquired most of the assets and customers of e.spire Communications, Inc. XMC subsidiaries are authorized to provide telecommunications services in 20 states and the District of Columbia, including each of

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

2 The applicants have also filed an application for international section 214 authorization, which will be processed separately. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

3 *See* 47 C.F.R. § 63.03(b)(2)(i).

the states in which Xspedius is offering service. XMC is principally owned by Thermo Telecom Partners LLC (98%). Although they have different ownership, Xspedius and XMC are operated on a day-to-day basis by substantially the same management team and one of the purposes of the instant transaction is to reorganize the companies for more efficient operation.

As a result of the ti-ansaction described herein. the businesses of Xspedius and XMC will bc combined. XMC will acquire a 55% interest in Xspedius, and XHC will retain the remaining 45% interest. In return for its 55% interest. XMC will transfer the ownership of its current limited liability company operating subsidiaries to Xspedius so they will become subsidiaries of Xspedius. although still under the ultimate control of XMC due to its controlling interest in Xspedius.

In addition to these structural changes, at closing or shortly thereafter, Xspedius's existing customers will be transferred to the appropriate XMC subsidiary operating in the state in which the Xspedius customers are located. Finally, at closing. Xspedius will change its name to Xspcdius Communications, LLC and will function only as a holding company. In the future, the operating companies will provide service under the trade name Xspedius Communications.

Applicants state that the proposed transaction will serve the public interest through the enhanced competitive posture of the combined companies. Applicants state that by permitting them to combine and reorganize their business as proposed herein, their operations should become more efficient, and their ability to attract capital should be enhanced. Applicants assert that this will, in turn. permit the combined companies to provide improved and innovative services. Applicants assert furthermore that the proposed transaction will result in no harm to, or adverse effect upon, customers of the two companies.

GENERAL INFORMATION

The transfer of control application 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. Interested parties may file comments within **14 days** and **reply** comments **within 21 days** of this notice.[4] Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines *or* authorization to operate on the 31" day after the date of this notice.' Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings, 63* Fed. Reg. 24121 (1998).

' *See* 47 C.F.R. § 63.03(a)

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

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

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 appear in the caption of this proceeding, commenters 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). The Commission's contractor, Vistronix, Inc., 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All** filings must be addressed to the Commission's Secretary. Office of the Secretary, Federal Communications Commission.

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

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tuilson@fcc.gov, and

(3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and

(4) William Dever. Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room , 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and

(5) Imani Ellis-Cheek. Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: iellis@fcc.gov; and

(6) Nandan Joshi. Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@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, SW, Room CY-A257, Washington, DC. 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International. Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, **or** William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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