

FCC/MELLON

DEC 26 2002

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
 Xspedius Holding Corp., Transferor)
 And)
 Xspedius Management Co., LLC, Transferee)
)
 Joint Application for Consent to the Transfer of)
 Control of Xspedius, LLC, a Company Holding)
 a Blanket Domestic Authorization and an)
 International Authorization Under Section 214 of the)
 Communications Act of 1934, as Amended)

JOINT APPLICATION FOR TRANSFER OF CONTROL

Xspedius Holding Corp. ("XHC"), the existing sole shareholder of Xspedius, LLC ("Xspedius") and Xspedius Management Co., LLC ("XMC"), pursuant to Sections 63.04(a) and (b) and Section 63.24 of the Commission's rules, hereby request consent to transfer majority ownership and control of Xspedius from XHC to XMC. As provided in Section 63.04(b) of the rules, this Joint Application seeks approval of both the domestic and international aspects of this transfer of control. This transaction, described more fully below, will result in the combination of the telecommunications businesses of Xspedius and XMC. As part of this transaction, two pro forma changes not requiring Commission approval also will occur as set forth below. Xspedius and XMC both currently hold blanket domestic interstate authorizations under Section 214 of the Communications Act of 1934 as amended¹ as well as authorizations to provide international service. ("Section 214 authorizations").

¹ 47 U.S.C. § 151 *et seq.*

Pursuant to Section 63.04(b) of the Commission's rules, the applicants are providing below the information required by Sections 63.24 and 63.18 of the rules and in Attachment 1 hereto, the information requested by Section 63.04(a) of the rules.

Description of the Transaction

Xspedius, LLC is a Delaware limited liability company that is wholly owned by Xsepedius Holding Corp., a privately-held holding company. Xspedius provides local and interexchange telecommunications services in Alabama, Louisiana, Mississippi, North Carolina and Tennessee. It provides domestic interstate service pursuant to §63.01 blanket authority and international service pursuant to Section 214 authority.²

Xspedius Management Co., LLC 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 the states in which Xspedius is now offering service. XMC, through its subsidiaries, provides domestic interstate service pursuant to §63.01 blanket authority and international service pursuant to Section 214 authority.³ 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.

² ITC-214-20010326-00153, Granted 4/18/01 (Global and limited global facilities-based and resale service). Effective 12/31/01 Xspedius Corp., to whom this authorization was originally issued, was converted into a limited liability company.

³ Xspedius Management Co. International, LLC; ITC-ASG-20020711-00372, Granted 8/16/02.

As a result of the transaction described herein, the businesses of Xspedius and XMC will be combined. XMC will acquire a 55% interest in Xspedius, and Xspedius Holding Corp. 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. Because this second transfer is to an entity under common control, the change in ownership constitutes only a pro forma change and is discussed here only to provide the Commission with a full understanding of the proposed transaction.

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.⁴ This change also is pro forma as the customers and lines are being switched to a company under common ownership. Finally, at closing, Xspedius, LLC will change its name to Xspedius 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. Organizational charts showing the structure of the companies before and after the transaction are attached as Exhibit 1.

⁴ The customers have been notified of the change in carrier in accordance with Section 64.1120(e) of the Commission's rules.

Requirements of Section 63.18

In accordance with Sections 63.24 and 63.18 of the Commission's rules, the Applicants submit the following information in support of this Joint Application:

- (a) The name, address and telephone number of the Transferor is:

Xspedius Holding Corp. (and Xspedius, LLC)
901 Lake Shore Dr.
Lake Charles, LA 70601
(337) 312-5240

The name, address and telephone number of the Transferee is:

Xspedius Management Co., LLC
5555 Winghaven Blvd.
O'Fallon, MO 63366
(636) 625-7080

- (b) XHC is a privately-held Delaware corporation.

Xspedius is a Delaware Limited Liability Company.

XMC is a Delaware Limited Liability Company

- (c) Correspondence regarding this Joint Application should be addressed to:

James J. Freeman, Esq.
Kelley, Drye & Warren LLP
1200 19th Street, N.W.,
Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9778
Fax: (202) 955-9792
Email: jfreeman@kelleydrye.com

Copies of any correspondence relating to the Transferor also should be sent to the following designated representative:

Chad Pifer
Director, Regulatory
Xspedius, LLC
901 Lake Shore Dr.
Lake Charles, LA 70601
p: 337-312-5240
f: 337-310-2976

Copies of any correspondence relating to the Transferee also should be sent to the following designated representative:

Jim Falvey
Senior Vice President, Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Dr.
Columbia, MD 21046
p: 301-361-4298
f: 301-361-7654
jim.falvey@espire.net

- (d) Xspedius, LLC (and indirectly XHC) holds only the Section 214 authorization identified in footnote 2 above. XMC's subsidiary, Xspedius Management Co. International, LLC holds only the Section 214 authorization identified in footnote 3 above.
- (e) Applicants are applying for authority to assign Section 214 authority pursuant to Section 63.18(e)(3) of the Commission's rules.
- (h) XMC is principally owned by :

Thermo Telecom Partners LLC
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 98%

Which is wholly-owned by:

James Monroe III's Grantor Trust
James Monroe, Trustee
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 100%

100% interest in the Trust is held by:

James Monroe III
644 Governor Nicholls Street
New Orleans, LA 70116
Citizenship: US
Principal business: investment
Percentage ownership: 100%

XMC has no interlocking directorates with any foreign carrier.

- (i) By its signature to this Joint Application, XMC certifies that it is not a foreign carrier itself and is not affiliated with a foreign carrier.
- (j) By its signature to this Joint Application, XMC certifies that none of the foreign affiliations identified in Section 63.18(j) of the FCC rules are applicable to it.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) By its signature to this Joint Application, XMC certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) By its signature to this Joint Application, XMC certifies that no party to this Joint Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a.
- (p) The Applicants request streamlined processing for this Joint Application. Streamlined processing is appropriate under Section 63.12 because the Transferee is not affiliated either with any foreign carriers or with a dominant U.S. carrier. Further, XMC does not seek authority to provide switched basic services over private lines to countries for which the Commission has not previously authorized such services.

For the reasons stated above, the Applicants respectfully requests that the Commission grant this Joint Application.

Respectfully submitted,

XSPEDIUS HOLDING CORP.

By: _____
(Title)

XSPEDIUS MANAGEMENT Co., LLC

By: _____
(Title)

James J. Freeman
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W. Suite 500
Washington, D.C. 20036
(202) 955-9778

Dated: December [], 2002

Additional Information Required by Section 63.04(b)**(6) Description of the Transaction**

Xspedius, LLC is a Delaware limited liability company that is wholly owned by Xspedius Holding Corp., a privately-held holding company. Xspedius provides local and interexchange telecommunications services in Alabama, Louisiana, Mississippi, North Carolina and Tennessee. It provides domestic interstate service pursuant to §63.01 blanket authority and international service pursuant to Section 214 authority.⁵

Xspedius Management Co., LLC 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 the states in which Xspedius is now offering service. XMC, through its subsidiaries, provides domestic interstate service pursuant to §63.01 blanket authority and international service pursuant to Section 214 authority.⁶ 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 transaction described herein, the businesses of Xspedius and XMC will be combined. XMC will acquire a 55% interest in Xspedius, and Xspedius Holding Corp. will

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⁶ Xspedius Management Co. International, LLC; ITC-ASG-20020711-00372, Granted 8/16/02.

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. Because this second transfer is to an entity under common control, the change in ownership constitutes only a pro forma change and is discussed here only to provide the Commission with a full understanding of the proposed transaction.

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.⁷ This change also is pro forma as the customers are being switched to a company under common ownership. Finally, at closing, Xspedius, LLC will change its name to Xspedius 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. Organizational charts showing the structure of the companies before and after the transaction are attached as Exhibit 1 to the Joint Application.

(7) Description of Areas Served and Services Provided.

XMC, through its subsidiaries, provides service to primarily business customers in 20 states and the District of Columbia through its acquisition of most of the assets and customers of espire Communications, Inc. These services primarily consist of local and intrastate interexchange service, interstate and international service and competitive access service.

(8) Eligibility for Streamlined Treatment

This Application is presumed eligible for streamlined treatment under Section 63.03(b)(2) 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 services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and neither Applicant nor any of its affiliates is dominant with respect to any service.

(9) None

(10) The Applicants are not requesting special consideration.

(11) There are no waiver requests.

(12) Public Interest Showing

The proposed transfer of control will serve the public interest through the enhanced competitive posture of the combined companies. By permitting them to combine and reorganize their businesses as proposed herein, their operations should become more efficient and their ability to attract capital should be enhanced. This in turn will permit the combined companies to provide improved and innovative services. As there is no harm to or adverse effect upon customers of the two companies, this transaction will clearly serve the public interest by enhancing the competitive posture of the individual companies.

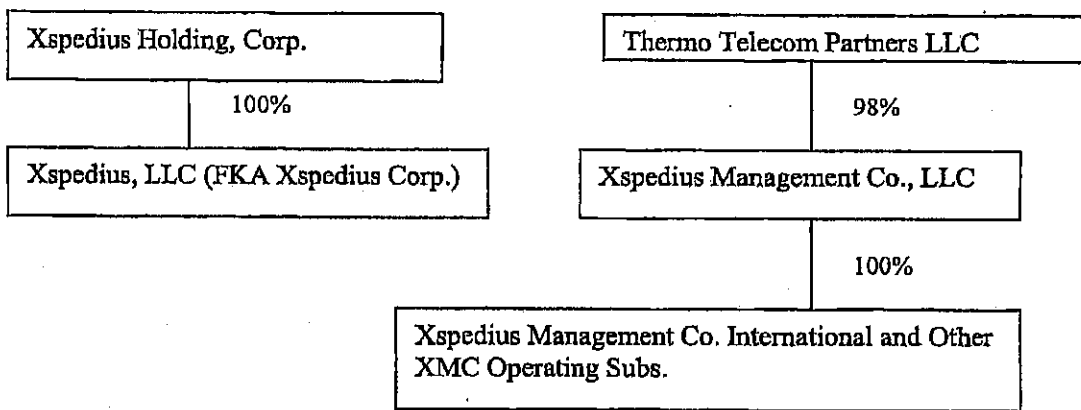
(...continued)

The customers have been notified of the change in carrier in accordance with Section 64.1120(e) of the Commission's rules.

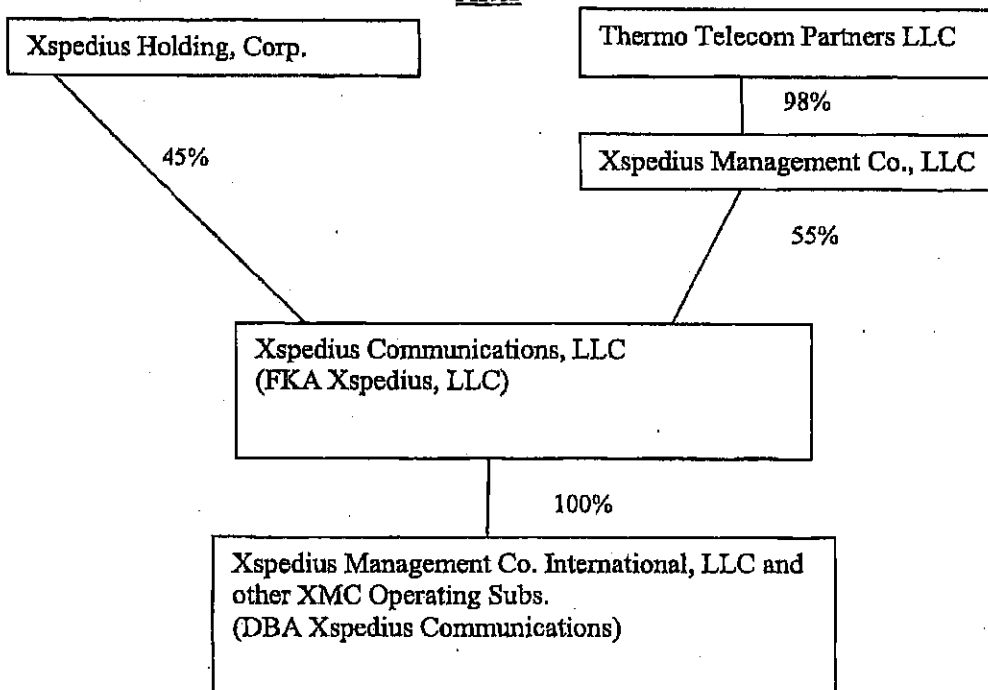
Exhibit 1

Organizational Chart

Before



After



KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

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NEW DELHI, INDIA

TOKYO, JAPAN

JAMES J. FREEMAN

OF COUNSEL

DIRECT LINE (202) 955-9778

E-MAIL: jfreeman@kelleydrye.com

January 2, 2003

BY HAND DELIVERY

Marlene H. Dortch, Secretary
 Federal Communications Commission
 Office of the Secretary
 445 12th Street, S.W.
 Washington, D.C. 20554

RECEIVED

JAN - 2 2003

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Re: **CC Docket No. 00-257: In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Notification of Transfer of Subscriber Base Pursuant to 47 C.F.R. §64.1120**

Dear Secretary Dortch:

Xspedius Management Co., LLC, hereby encloses a copy of the notification letters mailed to customers of Xspedius, LLC. These customers are proposed to be transferred to utility subsidiaries of Xspedius Management Co., LLC operating in their area. Switched services will be provided by Xspedius Management Co. Local Switched Services, LLC and special access service will be provided by the Xspedius Management Co., LLC subsidiary operating in that market.

Xspedius Management Co., LLC provides the following information pursuant to Section 64.1120(e):

Parties to the Transaction: The service providers involved are Xspedius Management Co., LLC operating through Xspedius Management Co. Local Switched Services, LLC and various subsidiaries of Xspedius Management Co., LLC that provide special access services in different markets. These companies will provide the services under the brand name Xspedius Communications.

Marlene H. Dortch
January 2, 2003
Page 2

KELLEY DRYE & WARREN LLP

Types of Telecommunications Services Provided to the Affected Subscribers: The transfer affects customers' local exchange, intraLATA toll, interstate long distance, international and special access services.

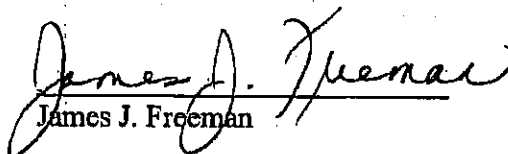
Date of Transfer of the Subscribers to Acquiring Carrier: The migration of subscribers from Xspedius, LLC to Xspedius Communications is expected to occur on or after January 30, 2003 upon receipt of other regulatory approvals.

Certification of Compliance: Appended hereto as *Attachment A* is Xspedius Management Co., LLC's certification required pursuant to Section 64.1120(e)(1) of the Commission's Rules.

Copy of Notice Sent to Affected Subscribers: A copy of the notice sent to the customers of Xspedius, LLC is enclosed as *Attachment B*.

Should you have any questions about these matters, please communicate with this office.

Sincerely,


James J. Freeman

JJF/mbf
Attachments



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
[ftp.fcc.gov](ftp://ftp.fcc.gov)

DA 03-551
Released: February 25, 2003

NOTICE OF STREAMLINED DOMESTIC 214 APPLICATIONS GRANTED

WC Docket Nos. 03-4, & 03-17

The applications listed in this notice have been granted pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications. 47 C.F.R. § 63.03. The Wireline Competition Bureau has determined that grant of these applications serves the public interest.¹ For purposes of computation of time for filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this notice.²

1. Domestic Section 214 Application Filed for Transfer of Control of ICG Telecom Group, Inc., WC Docket No. WC 03-4, DA 03-287 (rel. Jan 13, 2003).

Effective Date of Grant: 2/13/03

2. Domestic Section 214 Application Filed for Consent to Transfer Control of Xspedius, LLC from Xspedius Holding Corp. to Xspedius Management Co., LLC., WC Docket No. 03-17, DA 03-201 (rel. Jan 24, 2003).

Effective Date of Grant: 2/24/03

For further information, please contact Tracey Wilson, at (202) 418-1394 or Bill Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517, 5529 (2002), para. 22.

² *Id.*; see 47 C.F.R. § 1.4 (Computation of time).

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TOKYO, JAPAN

December 26, 2002

VIA COURIER

Federal Communications Commission
International Bureau – Telecommunications
P.O. Box 358115
Pittsburgh, PA 15251-5115

Re: Joint Application for Transfer of Control
of International and Domestic Carrier Pursuant
to Section 63.04(b).

Gentlemen and Ladies:

Enclosed herewith please find an original and ten copies of an application being submitted pursuant to Sections 63.04(b) and 63.24 of the Commission's Rules seeking consent to the transfer of control of Xspedius, LLC (formerly known as Xspedius, Corp.), which provides both international and domestic long distance telecommunications service. Section 63.04 of the rules permits an applicant to file a single joint application for approval of the transfer of control of an entity providing both international and domestic service. Although the rules do not indicate that additional copies of a joint application are required, we are submitting five additional copies out of an abundance of caution (for a total of ten copies). Form 159 and a check for the requisite filing fee also are attached.

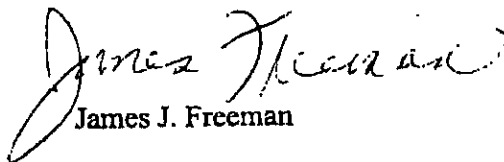
Please note that a request for "Streamlined Processing" pursuant to Sections 63.12 and 63.03 of the rules is included in the Joint Application.

KELLEY DRYE & WARREN LLP

Federal Communications Commission
December 26, 2002
Page Two

Should there be any questions about this matter, please contact this office.

Sincerely,



James J. Freeman

JJF:mb1