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November 10, 2003

FILED

NOV 10 2003

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: LA-2004-0133

Application of Time Warner Cable Information Services (Missouri), LLC,
for a Certificate of Service Authority to Provide Local and Interexchange
Voice Service in Portions of the State of Missouri

Dear Mr. Roberts:

Enclosed please find an original and five (5) copies of the Application to Intervene Out of Time of Xspedius Communications for filing with the Commission in the above-referenced case.

Thank you for assistance in processing this filing. Please contact me at 659-8672 if there are any questions.

Sincerely,



William D. Steinmeier

Enclosure

cc: General Counsel
Office of the Public Counsel
Counsel for Parties of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED

NOV 10 2003

In the Matter of the Application of)
Time Warner Cable Information Services)
(Missouri), LLC for a Certificate of Service)
Authority to Provide Local and Interexchange)
Voice Service in Portions of the State of)
Missouri and to Classify said Services and)
The Company as Competitive)

Missouri Public
Service Commission

Case No. LA-2004-0133

**APPLICATION TO INTERVENE OUT OF TIME
OF
XSPEDIUS COMMUNICATIONS**

COME NOW Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, and Xspedius Management Co. of Kansas Cty, LLC, d/b/a Xspedius Communications, hereinafter referred to as "Xspedius," by and through counsel, and file their Application to Intervene Out of Time in this case pursuant to Section 386.420 RSMo and 4 CSR 240-2.075. In support of this application, Xspedius states as follows:

1. Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, and Xspedius Management Co. of Kansas Cty, LLC, d/b/a Xspedius Communications are Delaware limited liability companies authorized to do business in the State of Missouri. Documentation from the Missouri Secretary of State's office is on file with the Commission in Case Nos. TA-2002-1153, TA-2002-1154, XN-2003-0463 and CN-2003-0462, and is incorporated by reference herein.

2. The principal place of business address for Xspedius Communications is 5555 WingHaven Boulevard, Suite 300, O'Fallon, Missouri (MO) 63366. Its telephone number is 636-625-7000 and its fax number is 636-625-7191.

3. All communications and pleadings in this case should be served on:

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and

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4. Pursuant to 4 CSR 240-2.075(2), Xspedius Communications states that it does not have sufficient information to state whether it supports or opposes Time Warner's Application at this time.
5. By virtue of orders issued by the Commission on November 4, 2003 in Case No. TO-2004-0172 and in the instant case, the Commission established that issues relating to Voice over Internet Protocol (VOIP) would not be addressed by the Commission in a generic docket at this time because those issues were pending in the instant case.
6. Xspedius Communications has an interest in issues relating to Voice over Internet Protocol.
7. Because of its interest in VOIP issues, Xspedius had been monitoring Case No. TO-2004-0172. It was only when the Commission issued its "Order

Denying Motion to Open Case” in TO-2004-0172 on November 4, 2003 and, on the same day, issued its “Order Granting Applications to Intervene and Setting Prehearing Conference” in the instant case, that Xspedius became aware that the instant case included issues related to the classification and regulatory treatment of VOIP services in Missouri and that this case, and not TO-2004-0172, was going to become the forum for the Commission’s consideration of those important public policy issues.

8. Accordingly, Xspedius respectfully submits that good cause exists for granting its application to intervene filed after the intervention dates in this case, pursuant to 4 CSR 240-2.075(5). Xspedius will accept the case and its current schedule as it stands, and will be prepared to participate at the Prehearing Conference now scheduled for November 21, 2003. No party will be prejudiced by the granting of this Application to Intervene Out of Time.

9. As a certificated provider of basic local exchange, interexchange and local exchange telecommunications services in Missouri, Xspedius has an interest in this case which is different from that of the general public, and Xspedius’ interests could be adversely affected by a final order arising from this case. In addition, no other party to this proceeding will adequately protect the interests of Xspedius herein. Furthermore, granting this Application to Intervene will serve the public interest because Xspedius will bring to this proceeding its expertise in the areas being investigated and its experience as a competitive telecommunications provider. As stated in the Commission’s Order of November 4 in this case, “Inclusion of the proposed intervenors in an examination of VoIP

can only serve to address more fully issues surrounding VoIP. Consequently, the public interest would be better served by a full examination of this service. The Commission will therefore grant intervention to the proposed intervenors.” (*Order Granting Applications to Intervene and Setting Prehearing Conference*” at pp. 4-5).

10. Xspedius respectfully suggests that the States, including Missouri, should refrain from addressing VOIP until the Federal Communications Commission completes its consideration of the issue. Xspedius respectfully suggests further that dockets concerning applications for certificates of service authority are not the best forum for consideration of regulatory issues related to VOIP. However, since the Commission has determined that this docket will address such issues, Xspedius has a strong interest in participating.

WHEREFORE, Xspedius Communications respectfully requests that the Commission issue an order, for good cause shown, authorizing its intervention out of time in the above-captioned case.

Respectfully submitted,



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COUNSEL FOR XSPEDIUS
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been hand delivered or mailed, postage prepaid, this 10th day of November 2003, on the Office of Public Counsel, the Commission's General Counsel, and counsel for all parties of record in this matter.


William D. Steinmeier

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