

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

3050 K STREET, N.W.

SUITE 400

WASHINGTON, D.C. 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DIRECT LINE: (202) 342-8552

EMAIL: mconway@kelleydrye.com

NEW YORK, NY  
TYSONS CORNER, VA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES  
MUMBAI, INDIA

August 11, 2006

**VIA UPS OVERNIGHT**

Ms. Stephanie Bell  
Secretary of the Commission  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

RECEIVED

AUG 14 2006

PUBLIC SERVICE  
COMMISSION

Re: *Informational Filing* Regarding a Change in Ownership of Authorized  
Telecommunications Providers in Connection with a Merger Transaction

Dear Ms. Bell:

Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, Xspedius Management Co. of Louisville, LLC (“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 “Parties”), by their counsel, hereby respectfully advise the Kentucky Public Service Commission (“Commission”) of a pending transfer of control of the Xspedius Certificated Subsidiaries as a result of the acquisition of Xspedius Parent by Time Warner Telecom.<sup>1</sup> Please note that this is a parent holding company level transaction; that is, the membership interests of the Xspedius Certificated Subsidiaries will remain wholly owned by Xspedius Parent and will not be directly affected by the pending transfer of control described herein. The Parties submit that the pending transfer of control does not require prior Commission approval pursuant to the exemptions set forth in Administrative

<sup>1</sup> Time Warner Telecom has an operating subsidiary in Kentucky, Time Warner Telecom of Ohio, LLC, that is authorized to provide telecommunications services, as noted below. This entity is not affected by the proposed transfer of control described herein. At this time, it will continue to operate pursuant to its existing authorization.

August 11, 2006

Page Two

Case Nos. 359 and 370, and thus, this information is being submitted to the Commission for informational purposes only.

Pursuant to the terms of an Agreement and Plan of Merger (“Agreement”) dated July 27, 2006 among Time Warner Telecom, Xspedius Parent and various affiliated entities,<sup>2</sup> as described in more detail below, Time Warner Telecom will acquire the membership interests of Xspedius Parent. As a result, Xspedius Parent will become a wholly-owned subsidiary of Time Warner Telecom. The pending transaction is not expected to result in any loss or impairment of service to any of the customers of Xspedius. The change in control does not involve a transfer of operating authority, assets or customers, and therefore, will not affect the identity of the utilities authorized to provide telecommunications services in Kentucky. Xspedius will continue to offer the same services at the same rates, terms and conditions as at present. Accordingly, the transaction will be transparent to consumers. The only change will be that the Xspedius Certificated Subsidiaries will be under the ultimate control of Time Warner Telecom.

In support of this notification, the Parties provide the following information:

### **The Parties**

**Time Warner Telecom Inc.** Through its operating subsidiaries, Time Warner Telecom Inc. (“Time Warner Telecom”) (NASDAQ:TWTC), a publicly held Delaware corporation headquartered in Littleton, Colorado, is a leading provider of voice and/or data networking solutions to business customers in 25 states and 44 U.S. 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. As of March 31, 2006, Time Warner Telecom’s fiber networks covered 13,913 local route miles and 7,015 regional route miles. Time Warner Telecom continues to expand its IP backbone data networking capability between markets supporting end-to-end Ethernet connections for customers, and has selectively interconnected existing service areas within regional clusters with fiber optic facilities that it owns or leases from other carriers. More information about Time Warner Telecom can be found at [www.twtelecom.com](http://www.twtelecom.com).

Time Warner Telecom’s operating subsidiaries offer local and long distance telecommunications services in 25 states, including Kentucky.<sup>3</sup> In Kentucky, Time Warner’s

---

<sup>2</sup> The Affiliated entities are XPD Acquisition, LLC, Xspedius Management Co., LLC and Xspedius Holding Corp.

<sup>3</sup> Operating subsidiaries of Time Warner Telecom are authorized to provide telecommunications services in the following states: Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana,

August 11, 2006  
Page Three

operating subsidiary is authorized to provide long distance and competitive local exchange telecommunications services.<sup>4</sup> Time Warner Telecom is also authorized to provide both domestic interstate and international telecommunications services by the Federal Communications Commission. As noted above, immediately after closing of the transaction, Time Warner Telecom and its subsidiaries are not affected by the proposed transfer of control described herein and will continue to operate under their same names, tariffs, rates, contract terms and conditions as at present.

A diagram showing the current corporate structure of Time Warner Telecom and its Kentucky operating subsidiary is appended hereto as **Exhibit A**.

**Xspedius Communications, LLC.** Xspedius Communications, LLC (“Xspedius Parent”) is a Delaware limited liability company that is privately-held and located at 5555 Winghaven Boulevard, O’Fallon, Missouri 63368-3626. Xspedius provides advanced, integrated telecommunications services targeted to small and medium-sized business customers, including local and long distance telephone services in combination with enhanced communications features. Through its subsidiaries, Xspedius Parent currently offers competitive local and long distance telecommunications services in 20 states, and the District of Columbia, including Kentucky, operating 2,800 fiber route miles (as of March 31, 2006) in 43 markets.<sup>5</sup> In Kentucky, the Xspedius Certificated Subsidiaries are authorized to provide long distance and competitive local exchange telecommunications services.<sup>6</sup> Xspedius Parent is also authorized to provide both domestic interstate and international telecommunications services by the Federal Communications Commission.

A diagram showing the current corporate structure of Xspedius is provided in **Exhibit B**.

**Description of the Transaction.**

The Agreement provides that Xspedius Parent will become a wholly owned subsidiary of Time Warner Telecom. To facilitate this transaction, Time Warner Telecom has created a wholly owned subsidiary called XPD Acquisition, LLC (“XPD”), a Delaware limited

---

Kentucky, Minnesota, Mississippi, New Jersey, New York, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Texas, Utah, Washington and Wisconsin.

<sup>4</sup> See Case No. 96-492, February 4, 1997.

<sup>5</sup> Subsidiaries of Xspedius Parent offer telecommunications services in the following states: Alabama, Arizona, Arkansas, Colorado, DC, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Nevada, New Mexico, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

<sup>6</sup> See Docket Nos. T 63-0785, T 63-0787, T 63-0786, August 4, 2002.

August 11, 2006  
Page Four

liability company that was established for the purpose of completing the 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 as a wholly owned subsidiary of Time Warner Telecom (the "Transaction").

At the time of the Transaction, all of the ownership interests of Xspedius Parent 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 Parent. Time Warner Telecom will not assume any Xspedius debt in connection with the Transaction. Time Warner Telecom will restructure and increase its existing debt instruments to facilitate the acquisition and operations of the businesses after closing. While the Xspedius and Time Warner Telecom assets in Kentucky will be pledged as security against certain debt instruments, no impact on rates is anticipated as a result of the Transaction. As a result of XPD merging into Xspedius Parent, Time Warner Telecom will own 100% of the membership interests of Xspedius Parent. The surviving parent company of the Xspedius Certificated Subsidiary is Xspedius Parent. Consummation of the Transaction is contingent on the receipt of the required regulatory approvals, among other things.

The pending Transaction does not involve the transfer of any operating authority, assets, or customers. Immediately following the closing, the Xspedius Certificated Subsidiaries and the Time Warner Telecom operating subsidiaries will continue to offer to their customers the same services at the same rates, terms and conditions as at present pursuant to existing authorizations, tariffs, contracts, and published rates and charges. Accordingly, the contemplated Transaction will be generally transparent to consumers. The only change will be that Xspedius will be under the ultimate ownership and control of Time Warner Telecom. The Commission has previously reviewed and passed on Time Warner Telecom's financial, managerial and technical qualifications to be a parent of an authorized telecommunications provider in Kentucky in connection with the certification docket of its Kentucky operating subsidiary, noted above. The combined company will continue to assess the benefits of post-close consolidations, market coverage and/or mergers of the operating entities. When and if the combined company determines that it will pursue such plans, it will seek all appropriate regulatory approvals.

A diagram showing the corporate structure of Time Warner Telecom and its subsidiaries post-close is provided in **Exhibit C**.

**Public Interest Considerations.** The proposed Transaction will serve the public interest. Xspedius Parent and Time Warner Telecom, and their respective subsidiaries, as a combined company, will be better equipped to devote resources to introducing new products and services, and expanding service offerings in their service territories. Time Warner Telecom's acquisition of Xspedius will invigorate Xspedius and allow it the financial resources necessary for it to continue to provide high quality services and aggressively compete for customers. The

August 11, 2006

Page Five

combined organization will benefit from increased economies of scale that will permit it to operate more efficiently, realize substantial financial synergies, and increase its operating income and free cash flow. The Transaction should achieve significant annualized cost synergies of approximately \$40 to \$50 million, within 12 to 18 months of closing, by leveraging existing local and regional operating structures and optimizing network capabilities and costs. The combination of Time Warner Telecom and Xspedius thus will promote competition in the provision of telecommunications services.

The Parties believe that the integration of the Time Warner Telecom and Xspedius networks will allow the combined company to improve delivery of services to customers, reduce network costs, improve operating results and better compete head-to-head with other telecommunications companies in the nationwide local telecommunications services markets. The post-close Time Warner Telecom will solidify Time Warner Telecom's position as one of the nation's largest independent competitive providers of national local telecommunications and broadband services, serving 75 markets. As such, the Transaction will strengthen an independent national competitor which will inure to the benefit of both existing and prospective Time Warner Telecom and Xspedius customers. In light of the recent Regional Bell Operating Company megamergers – Verizon/MCI and AT&T/SBC/BellSouth – CLECs such as Time Warner Telecom and Xspedius need to expand to a size that will allow them to compete with the vast resources of these new megacompanies. For example, even after the Transaction, Time Warner Telecom will be less than 1% of the size by revenues of the projected AT&T/SBC/BellSouth combination.

Further, immediately after consummation of the Transaction, the Xspedius Certificated Subsidiaries will continue to provide service to current customers without material change in rates, terms or conditions of service. Therefore, the Transaction will be virtually transparent to Xspedius customers. Any future changes in the entities providing service, their tariffs or names would be effected in accordance with all applicable Commission requirements.<sup>7</sup>

---

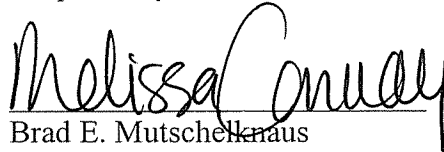
<sup>7</sup> The contemplated transfer of control does not raise any slamming concerns or necessitate compliance with FCC or state procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as the contemplated transaction does not involve any change in a customer's existing service provider. The Xspedius customers will remain with their respective companies and will continue to be served under their existing authorizations.

August 11, 2006  
Page Six

The Parties submit that no prior Commission approval is required for the Parties to consummate the proposed Transaction described herein. Should the Commission believe that any action is required, the Parties respectfully request that the Commission notify the undersigned at its earliest convenience. In the absence of any response from the Commission, the Parties will proceed with their plans to consummate the Transaction as contemplated.

Enclosed please find four (4) copies, a duplicate copy and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Should the Commission have any questions regarding this matter, please do not hesitate to contact Melissa Conway at (202) 342-8552.

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa Conway". The signature is written in a cursive style and is positioned above a horizontal line.

Brad E. Mutschellenhaus

Melissa Conway

KELLEY DRYE & WARREN LLP

3050 K Street NW

Suite 400

Washington, DC 20007

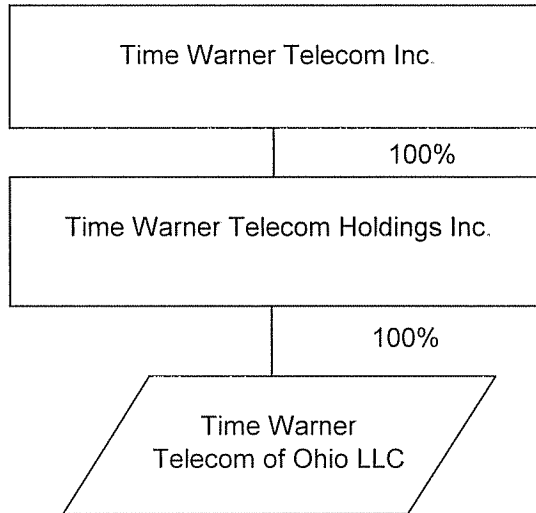
(202) 342-8552




mconway@kelleydrye.com

Counsel to the Parties

# **Exhibit A**

**Time Warner Telecom Inc. & Kentucky Subsidiaries  
Pre Merger Structure**

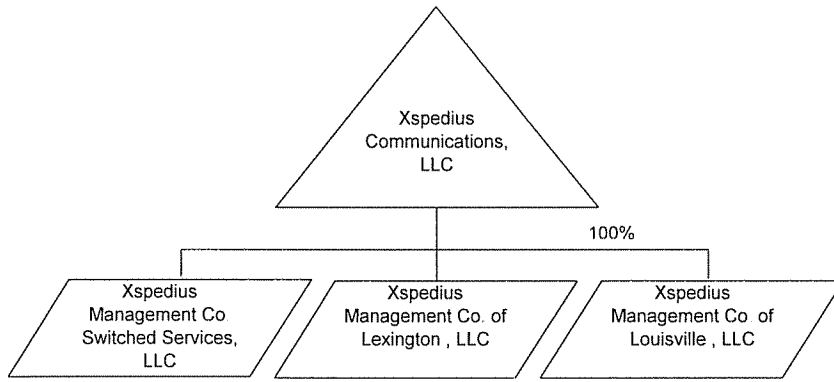





Legend	
Corporation:	
LLC Disregarded for Tax:	
LP Disregarded for Tax:	



# **Exhibit B**

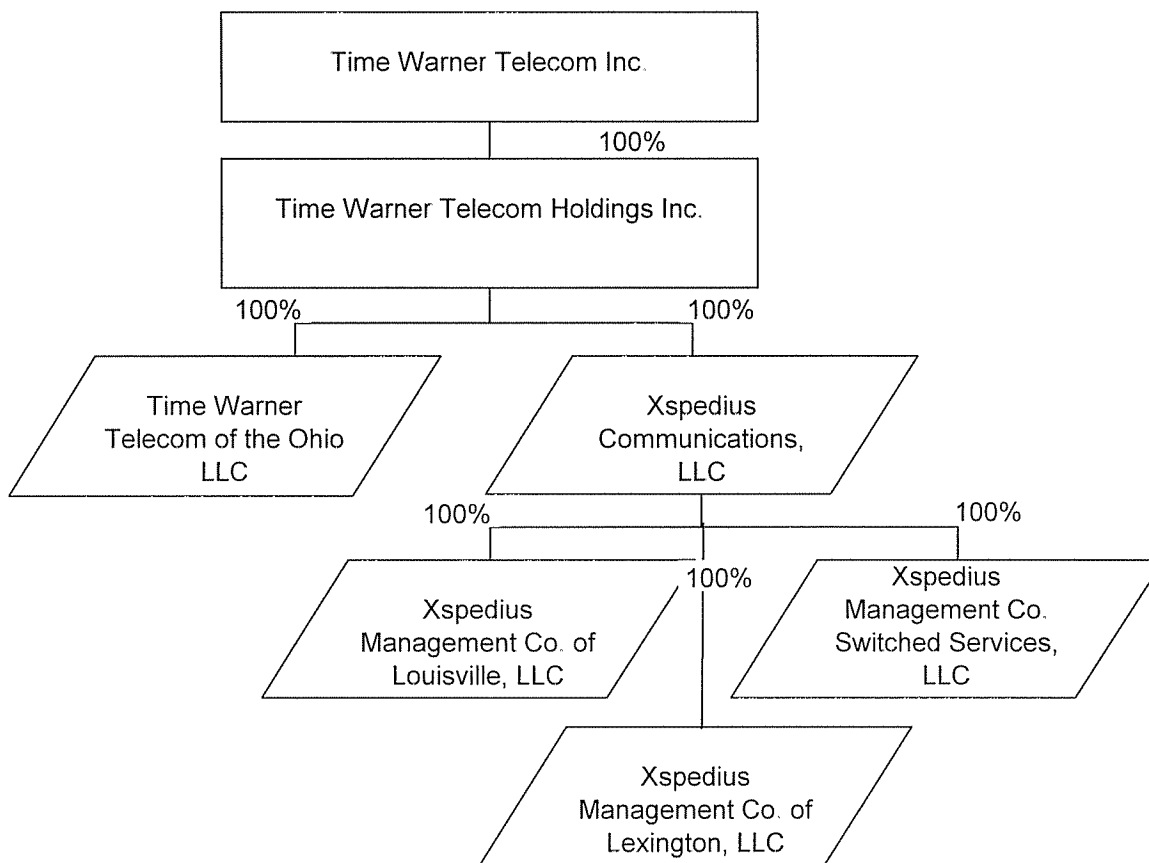
**Xspedius Communications, LLC & Kentucky Subsidiaries  
Pre Merger Structure**

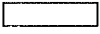
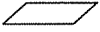


Legend	
Corporation:	
LLC Disregarded for Tax:	
LLC Partnership for Tax:	

# **Exhibit C**

**Time Warner Telecom Inc. & Kentucky Subsidiaries  
KY Proposed Post Merger Structure**



Legend	
Corporation:	
LLC Disregarded for Tax:	
LP Disregarded for Tax:	