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JAN 31 2005

PUBLIC SERVICE
COMMISSION

January 31, 2005

via Hand Delivery

Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Case 2005-00054

**Re: *Xspedius Management Company Switched Services, LLC's Petition
Requesting the Commission's Intervention in NANPA NXX Code
Assignments, (NPA 502)***

Dear Ms. O'Donnell:

Enclosed for confidential filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to 807 KAR 5:001, Section 7, is one original (containing the confidential information highlighted in yellow) and ten (10) redacted copies (not containing the confidential information) of Xspedius Management Company Switched Services, LLC's ("Xspedius") Petition for Intervention in NANPA NXX Code Assignments (NPA 502).

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/rk

Enclosure

cc: Pamela Rak
John E. Selent, Esq.

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31160/2

COPY

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

In the matter of:

XSPEDIUS MANAGEMENT COMPANY)
SWITCHED SERVICES, LLC'S PETITION)
REQUESTING THE COMMISSION'S)
INTERVENTION IN NANPA NXX CODE)
ASSIGNMENTS (NPA 502))

JAN 31 2005

PUBLIC SERVICE)
COMMISSION)
Case No. 2005-00054

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN PARTS OF THE
PETITION REQUESTING THE COMMISSION'S INTERVENTION
IN NANPA NXX CODE ASSIGNMENTS (NPA 502)**

Xspedius Management Company Switched Services, LLC ("Xspedius"), by counsel, pursuant to 807 KAR 5:001, Section 7, hereby petitions the Public Service Commission of the Commonwealth of Kentucky (the "Commission") for confidential treatment of the customer information and customer letter highlighted in yellow in the attached Petition Requesting the Commission's Intervention in NANPA [North American Numbering Plan Administration] NXX Code Assignments (NPA 502) (the "Petition for Intervention"). In support of its motion, Xspedius states as follows.

1. The customer information and customer letter provided in the Petition for Intervention are exempt from public disclosure pursuant to KRS 61.878(c)(1). This statute provides that "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" shall remain confidential unless otherwise ordered by a court of competent jurisdiction.

2. Xspedius notes that the telecommunications market is a competitive industry and that it has active competitors.

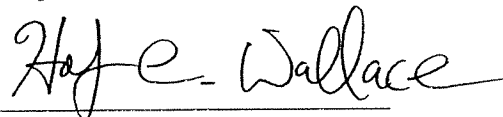
3. The public disclosure of the customer information and customer letter provided in the Petition for Intervention would permit an unfair advantage to Xspedius' competitors by identifying one of Xspedius' most important, and fastest growing, customers.

4. With the customer information and letter revealed in the attached Petition for Intervention, Xspedius' competitors would have inside information regarding the customer's business plan that would enable the competitors to target this customer in an effort to entice it to switch from Xspedius to one of the competitors. This information would give Xspedius' competitors a distinct competitive advantage due to the inability of Xspedius to likewise determine the identity and business plans of its competitors' customers.

5. Moreover, revelation of the customer's identity and business plan would provide the customer's competitors with an unfair commercial advantage because the customer is not able to likewise determine the business plans of its competitors.

WHEREFORE, pursuant to 807 KAR 5:001, Section 7, Xspedius requests the Commission issue an order directing that the attached customer information and customer letter in the Petition for Intervention be afforded confidential treatment.

Respectfully submitted,



John E. Selent
Holly C. Wallace
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Louisville, Kentucky 40202
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(502) 585-2207 (facsimile)
**Counsel to Xspedius Management
Company Switched Services, LLC**

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JAN 31 2005

**PUBLIC SERVICE
COMMISSION**

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**XSPEDIUS MANAGEMENT COMPANY)
SWITCHED SERVICES, LLC'S PETITION)
REQUESTING THE COMMISSION'S)
INTERVENTION IN NANPA NXX CODE)
ASSIGNMENTS (NPA 502))**

Case No. 2005-00054

**PETITION FOR REVIEW OF NXX CODE DENIAL
IN THE LOUISVILLE RATE CENTER**

Xspedius Management Company Switched Services, LLC (“Xspedius”), by counsel, pursuant to the rules adopted by the Federal Communications Commission (“FCC”) for challenging determinations of the North American Numbering Plan Administrator (“NANPA”), petitions the Public Service Commission of the Commonwealth of Kentucky (the “Commission”) for review of NANPA’s denial of Xspedius’ application for assignment of numbering resources in the Louisville rate center.

In support of this petition Xspedius states as follows:

1. Xspedius is a competitive local exchange carrier authorized to provide local exchange service in Kentucky as of August 4, 2002. Xspedius' principal place of business is located at 5555 Winshaven Boulevard, Suite 300, O’Fallon, Missouri 63366.
2. NANPA is an independent non-governmental entity that is responsible for administering and managing the North American Numbering Plan (“NANP”). *See* 47 C.F.R. §52.13 (a), (b).
3. On March 31, 2000, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking relating to numbering resource optimization (“FCC 00-104”). The goal of

FCC 00-104 was to implement uniform standards governing requests for telephone numbering resources in order to increase efficiency in the use of telephone numbers and to avoid further exhaustion of numbers under the NANP.

4. FCC 00-104 adopted a revised standard for assessing a carrier's need for numbering resources by requiring carriers to report rate-center based utilization data to NANPA, rather than switch-specific utilization data. The FCC further required that, to qualify for access to new numbering resources, applicants must establish that existing inventory within the applicant's rate center will exhaust within six (6) months of the application. The FCC reaffirmed this requirement in two subsequent orders. FCC 00-429 at para. 29 (rel. Dec. 29, 2000); FCC 01-362 at para. 48-49 (rel. Dec. 28, 2001).

5. The shift to a rate-center basis for determining the need for new numbering resources was intended to "more accurately reflect how numbering resources are assigned" and to allow carriers "to obtain numbering resources in response to specific customer demands." FCC 00-104, para. 105.

6. In addition to the months-to-exhaust ("MTE") requirement described above, the FCC's rules also require carriers to meet a rate center utilization threshold of seventy-five percent (75%) in order to receive additional numbering resources in a given rate center. FCC 00-429 at para. 22-26; FCC 01-362, para. 50. Based on the FCC's orders, carriers must meet both the MTE requirement and the utilization threshold requirement on a rate-center basis in order to obtain additional numbering resources.

7. On January 8, 2005, Xspedius submitted an application for a full NXX for a dedicated customer and a Months to Exhaust Utilization Certification Worksheet to NeuStar, Inc., the NANP and Pooling Administrator, for the assignment of an NXX code needed to meet

the numbering demands of _____ an Xspedius customer in the Louisville area. (The application and certification worksheet are attached hereto as Exhibit 1.)

8. Xspedius has requested and been denied the numbering resources required to serve _____ requiring *intermediate* numbers in this rate center. The intermediate number classification refers to a block of numbers given to another carrier or non-carrier entity for future assignment. *See* 47 C.F.R. §52.15(f)(1)(v). Although Xspedius requests the intermediate numbering resources and reports utilization and forecast data to NeuStar, Inc. ("NeuStar"), subsequent allocation of the numbers is relinquished to Xspedius' customer, which then assigns these numbers to its end users. Xspedius' current numbering resources cannot accommodate this customer's initial growth requirements, which calls for a complete NXX (comprised of ten consecutive uncontaminated thousands blocks) in this rate center to provide a new e-fax service to end-user customers. (*See* letter from _____ to Xspedius attached as Exhibit 2.) Even though Xspedius appears to possess sufficient numbering resources in the Louisville rate center, Xspedius does not own a pristine NXX block of 10,000 consecutive numbers that it can surrender to this customer for its internal use. Thus, in order for Xspedius to serve its customer, it must have the numbering resources requested in this waiver in an expedited timeframe. (*See* Affidavit of Daniel Klaas, Manager Switch Translations, attached as Exhibit 3.)

9. On January 8, 2005, NeuStar denied Xspedius' code request on the grounds that Xspedius had not met the rate-center based months-to-exhaust criterion now set forth in the Central Office (NXX) Guidelines. NeuStar denied Xspedius' code request despite the fact that Xspedius does not have adequate numbering resources to satisfy its customer's demands referenced above.

10. Xspedius' inability to provide this important customer with the requested numbers within the same NXX prevents Xspedius from providing the quality of service this customer desires, needs, and expects. If Xspedius is not assigned the code needed to meet the customer's request, Xspedius will be unable to provide the telecommunications services requested by the customer. NeuStar's refusal to grant numbering resources sufficient to meet

needs is inconsistent with the FCC's position that "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources." FCC 00-429 at para. 61.

11. Both the FCC's rules and the Central Office Code (NXX) Guidelines provide that state regulatory authorities have the power and authority to review NeuStar's decision to deny a request for numbering resources. *See* FCC 01-362, Appendix A, Final Rules, para. 52.1 5(g)(4) ("The carrier may challenge the NANPA's decision to the appropriate state regulatory commission.") FCC 01-362 at para. 61-66; Central Office Code (NXX) Guidelines para. 13.0 ("Appeals may include but are not limited to one or more of the following options: . . . C. The CO Code Administrator(s) and code holders/applicants may pursue the disagreement with the appropriate governmental/regulatory body.")

12. Prior to the FCC's orders and the resulting change in the Central Office Code (NXX) Assignment Guidelines, the MTE procedures used by NANPA permitted a carrier to receive a code assignment, even if the MTE requirement at the switch level was not met. These waivers or exceptions were granted where customer hardships could be demonstrated or where the service provider's inventory did not have a block of sequential numbers large enough to meet the customer's specific request. Under today's procedures, NANPA looks at the MTE for the

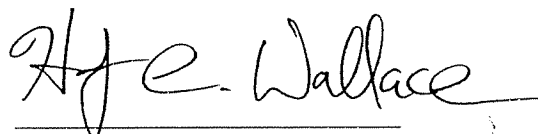
entire rate center without any exceptions. The FCC has determined, however, that states may grant relief “if a carrier demonstrates that it has received a customer request for numbering resources in a given rate center that it cannot meet with its current inventory.” FCC 01-362, para. 64. In addition, the FCC has ruled that, “States . . . may grant requests for customers seeking contiguous blocks of numbers.” *Id.*

13. Xspedius requests that the Commission reverse NeuStar’s decision to withhold numbering resources from Xspedius. Xspedius’ request for numbering resources would not materially impact exhaustion of the remaining NXXs available in the 502 area code.

WHEREFORE, Xspedius requests that the Commission:

1. Reverse the decision of NeuStar to deny Xspedius’ request for additional numbering resources;
2. Direct NeuStar to provide the requested numbering resources identified in Xspedius’ application; and
3. Grant the requested relief as soon as practicable.

Respectfully submitted,



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**Counsel to Xspedius Management
Company Switched Services, LLC**

Pooling Administration System

 holly.kuester@xspedius.com (SP)

[Sign Out](#)

Request Resources


State	<input type="text" value="KENTUCKY"/>
NPA	<input type="text" value="502"/>
Rate Center	<input type="text" value="LOUISVILLE"/>
OCN	<input type="text" value="7260-XSPEDIUS MGMT - KY"/>
Type of Application	<input type="text" value="Application for a full NXX for a Dedicated Customer"/>



NOTE:

If you are selecting a Rate Center that is moving to a new NPA due to a split, PAS will automatically migrate the request to the new NPA once the mandatory dialing date occurs.

Pooling Administration System

 [holly.kuester@xspedius.com \(SP\)](#)

[Sign Out](#)

Request Full NXX (Dedicated Customer)

Do you already have a block/code in this rate center? Yes No

Will all blocks be activated on the same switch? Yes No

[Back](#)

[Continue](#)

[Cancel](#)

Pooling Administration System

holly.kuester@xspedius.com (SP)

Sign Out

Months to Exhaust and Utilization Certification Worksheet - TN Level

Date **Saturday, January 8, 2005**

OCN **7260**

Company Name **XSPEDIUS MANAGEMENT CO SWITCHED SERVICES, LLC KY**

Rate Center **LOUISVILLE**

List all Codes NPA(s)-NXXs and Blocks NPA(s)-
NXX-X(s)

502-371-0,1,2,3,4,5,6,7,8,9
502-719-0,1,2,3,4,5,6,7,8,9

Name of Block Applicant **Mrs Holly Kuester**

Title **Network Engineer**

Telephone Number **(636) 625-7079**

Fax Number **(636) 625-7193**

E-Mail **holly.kuester@xspedius.com**

A. Available Numbers *

B. Assigned Numbers *

C. Total Numbering Resources *

D. Quantity of numbers activated in the past 90 days
and excluded from the Utilization calculation *

List excluded Code(s) or Block(s)

E. Growth History - Previous 6 months² *

Month 1	<input type="text" value="37"/>	Month 2	<input type="text" value="268"/>
Month 3	<input type="text" value="232"/>	Month 4	<input type="text" value="64"/>
Month 5	<input type="text" value="68"/>	Month 6	<input type="text" value="66"/>

F. Forecast - Next 12 months³ *

Month 1		Month 2	
---------	--	---------	--

	60000		50
Month 3	50	Month 4	50
Month 5	50	Month 6	50
Month 7	50	Month 8	50
Month 9	50	Month 10	50
Month 11	50	Month 12	50

G. Average Monthly Forecast (Sum of months # 1-6 (Part F above) divided by 6) **10041.667**

H. Months to Exhaust ⁴ (Numbers Available for Assignment to customers (A) / Average Monthly Forecast (G))

Block Requested	A. Available Numbers	H. Months to Exhaust
1	14138	1.408

I. Utilization⁵(Assigned Numbers (B)) / (Total Numbering Resources (C) - Excluded Numbers (D)) * 100 **29.310**


Explanation



1. A copy of this worksheet is required to be submitted to the Pooling Administrator when requesting additional numbering resources in a rate center. For auditing purposes, the applicant must retain a copy of this document.
2. Net change in TNs no longer available for assignment in each previous month, starting with the most distant month as Month #1, and Month #6 as the current month.
3. Forecast of TNs needed in each following month, starting with the most recent month as Month #1.
4. To be assigned an additional thousands-block (NXX-X) for growth, "Months to Exhaust" must be less than or equal to 6 months. (FCC 00-104, § 52.15 (g)(3)(iii)).
5. Newly acquired numbers may be excluded from the Utilization calculation (FCC 00104, section 52.15 (g)(3)(ii))



Pooling Administration System

 holly.kuester@xspedius.com (SP)

[Sign Out](#)

Months to Exhaust and Utilization Certification Worksheet - TN Level (Continued)

Your utilization calculates to 29.310 percent, while your State requires a utilization of 75.000 percent.

Select One Option and Submit

- Return to the Months To Exhaust Form
- Discard all the information provided for the request and start with a fresh Part 1A
- State Waiver Option



Mr. Jim Falvey
Sr. Vice President - Regulatory Affairs
Xpedius Communications, Inc.
555 Winhaven Blvd., Suite 300
O'Fallon, MO 63366

January 19, 2005

Dear Mr Falvey,

Thank you.

cc: Ms. Mamie Trecek – Xpedius Communications

Affidavit of Daniel Klaas

STATE OF MISSOURI

COUNTY OF ST. CHARLES

I, Daniel Klaas, Manager Switch Translations, for Xspedius Communications, LLC, parent company of Xspedius Management Co. Switched Services, LLC ("Xspedius") being duly sworn, state that in such capacity I am personally familiar with the facts in this application;

1. Xspedius currently does not have the numbering resources it requires in order to serve the growth needs of a customer requesting a dedicated NXX in the Louisville rate center for e-fax service;

2. The numbering resources Xspedius is requesting in this waiver will meet the immediate needs forecasted by the customer upon completion of its growth within the aforementioned rate center;

3. I have personal knowledge of the facts herein and certify that they are true and correct to the best of my knowledge.

D. Klaas

Signature of Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in State and County above-named this 11 day of January, 2005.

Nola Lamb

Notary Public in and for
The State of Missouri

My Commission expires on: 06-06-2005

