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June 17, 2002

**VIA FEDERAL EXPRESS**

Mr. Thomas M. Dorman, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfurt, Kentucky 40602-0615

Re: Notification of ACSI Local Switched Services, Inc., d/b/a e.spire, American Communication Services of Lexington, Inc., d/b/a e.spire, American Communication Services of Louisville, Inc., d/b/a e.spire; and Xspedius Management Co. Switched Services, LLC Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of the Transfer of Substantially All of the Assets, Including Customer Contracts, of the e.spire Operating Entities to the Xspedius Operating Entities and the Discontinuance of Telecommunications Services in Kentucky by the e.spire Operating Entities

Dear Mr. Dorman :

ACSI Local Switched Services, Inc. ("ACSI Local"), American Communication Services of Lexington, Inc. ("ACSI Lexington"), and American Communication Services of Louisville, Inc. ("ACSI Louisville") (the "e.spire Operating Entities"); and Xspedius Management Co. Switched Services, LLC ("Xspedius Switched"), Xspedius Management Co. of Lexington, LLC ("Xspedius Lexington"), and Xspedius Management Co. of Louisville, LLC (the "Xspedius Operating Entities") (collectively, the "Parties"), through their undersigned counsel, hereby respectfully notify the Kentucky Public Service Commission ("Commission") of their intent to consummate a transaction arising out of the e.spire Operating Entities' Chapter 11

of their assets to the Xspedius Operating Entities,<sup>2</sup> and to transfer the current customers of ACSI Local, ACSI Lexington, and ACSI Louisville to Xspedius Switched, Xspedius Lexington, and Xspedius Louisville, respectively, without interruption of service. Because the Xspedius Operating Entities will acquire the assets of the e.spire Operating Entities, and not the stock, upon completion of the transaction described herein, the e.spire Operating Entities no longer will provide telecommunications service in the State of Kentucky. Accordingly, the e.spire Operating Entities respectfully notify the Commission of their intent to discontinue the provision of telecommunications service in the State of Kentucky upon the complete transfer of their assets, including their customer accounts and contracts, to the Xspedius Operating Entities.

Pursuant to the terms of the transaction approved by the Bankruptcy Court on June 5, 2002 (the "Transaction"), the Xspedius Operating Entities will acquire substantially all of the assets of the e.spire Operating Entities, including most of their customer accounts and contracts.<sup>3</sup> By separate Applications, which are being filed simultaneously with this letter,

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<sup>2</sup> As the transaction is currently structured, the relevant assets will be initially transferred to Xspedius Management Co., LLC, and then immediately transferred to the Xspedius Operating Entities.

<sup>3</sup> The e.spire entities that are parties to the asset transfer transaction are: e.spire Finance Corporation; ACSI Network Technologies, Inc.; e.spireDATA, Inc.; ACSI Local Switched Services, Inc.; ACSI Long Distance, Inc.; e.spire Leasing Corporation; American Communication Services of Albuquerque, Inc.; American Communication Services of Amarillo, Inc.; American Communication Services of Atlanta, Inc.; American Communication Services of Austin, Inc.; American Communication Services of Baton Rouge, Inc.; American Communication Services of Birmingham, Inc.; American Communication Services of Charleston, Inc.; American Communication Services of Chattanooga, Inc.; American Communication Services of Colorado Springs, Inc.; American Communication Services of Columbia, Inc.; American Communication Services of Columbus, Inc.; American Communication Services of Corpus Christi, Inc.; American Communication Services of Dallas, Inc.; American Communication Services of D.C., Inc.; American Communication Services of El Paso, Inc.; American Communication Services of Fort Worth, Inc.; American Communication Services of Greenville, Inc.; American Communication Services of Irving, Inc.; American Communication Services of Jackson, Inc.; American Communication Services of Jacksonville, Inc.; American Communication Services of Kansas City, Inc.; American Communication Services of Las Vegas, Inc.; American Communication Services of Lexington, Inc.; American Communication Services of Little Rock, Inc.; American Communication Services of Louisiana, Inc.; American Communication Services of Louisville, Inc.; American Communication Services of Maryland, Inc.; American Communication Services of Miami, Inc.; American Communication Services of Mobile, Inc.; American Communication Services of Montgomery, Inc.; American Communication Services of Pima County, Inc.; American Communication Services of Rio Rancho, Inc.; American Communication Services of Roanoke, Inc.; American Communication Services of San Antonio, Inc.; American Communication Services of Savannah, Inc.; American Communication Services of Shreveport, Inc.; American Communication Services of Spartanburg, Inc.; American Communication Services of

Xspedius Switched, Xspedius Lexington, and Xspedius Louisville have requested the necessary authorizations to provide facilities-based and resold local exchange and interexchange telecommunications services in Kentucky, and, will provide such services to the former customers ACSI Local, ACSI Lexington, and ACSI Louisville pursuant to the new authorizations. The actual date for the transfer of customers currently served by the e.spire Operating Entities to the Xspedius Operating Entities cannot be determined at this time, as the completion of the Transaction requires various state and federal regulatory approvals. Accordingly, the Parties will notify the Commission when the transaction is complete. In the interim, the e.spire Operating Entities will provide continuous and uninterrupted telecommunications service to their current customers.

It is the Parties' understanding that no formal Commission approval is required to complete the Transaction described in this letter. The Parties therefore submit this letter for the Commission's information and request that it be retained in the appropriate file.

**I. PARTIES TO THE TRANSACTION**

**A. The Xspedius Operating Entities**

The Xspedius Operating Entities are subsidiaries of Xspedius Management Co., LLC ("Xspedius"). Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville are limited liability companies formed under the laws of the State of Delaware. The principal business address for the Xspedius Operating Entities is P.O. Box 1116, O'Fallon, MO 63366-1116. At the present time, the Xspedius Operating Entities are not authorized to provide telecommunications services in the State of Kentucky, although their affiliate, Xspedius Corp.,<sup>4</sup> currently is authorized to provide telecommunications services in Alabama, Louisiana, Mississippi, North Carolina, and Tennessee.

**B. The e.spire Operating Entities**

The e.spire Operating Entities are subsidiaries of e.spire Communications, Inc. ("e.spire"). ACSI Local Switched Services, Inc., d/b/a e.spire, American Communication Services of Lexington, Inc., d/b/a e.spire, and American Communication Services of Louisville, Inc., d/b/a e.spire, are Delaware corporations headquartered at Monument One, 12975 Worldgate Drive, Herndon, VA 20170. e.spire is an integrated telecommunications provider that, through its operating subsidiaries, offers traditional local and long distance service, dedicated Internet

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Tampa, Inc.; American Communication Services of Tulsa, Inc.; American Communication Services of Virginia, Inc.; American Communication Services International, Inc.; ACSI Local Switched Services of Virginia, Inc., Cybergate, Inc., and FloridaNet, Inc.

<sup>4</sup> Xspedius Corp. is an integrated communications provider authorized to provide local, long distance, and integrated services in five states. Xspedius Corp., for the time-being, will continue as a separate entity, wholly owned by Xspedius Management Co., LLC.

access, and advanced data solutions, including ATM and frame relay. e.spire's operating subsidiaries currently are authorized to provide facilities-based and resold competitive local exchange, competitive access, and intrastate interexchange telecommunications services throughout the United States. In Kentucky, the e.spire Operating Entities are authorized to provide intrastate special access and private line, as well as facilities-based local and interexchange telecommunications services.<sup>5</sup>

## II. BACKGROUND TO THE TRANSACTION

After their inception in 1994, e.spire and its operating subsidiaries, including the e.spire Operating Entities (collectively, the "e.spire Companies") grew quickly and enjoyed early success. The sudden collapse of the capital markets for technology companies, however, unexpectedly denied the e.spire Companies continued access to the capital necessary for the continued operation and expansion of their business. As a result, on March 22, 2001, the e.spire Companies filed a voluntary petition for Chapter 11 bankruptcy protection with the United States Bankruptcy Court for the District of Delaware. Although the bankruptcy filing temporarily relieved the e.spire Companies from their debt payment obligations, the e.spire Companies were unable to raise sufficient funding while in Chapter 11 to emerge from bankruptcy status. The e.spire Companies instead chose to auction their assets. The auction took place between May 20 and May 22, 2002. After the auction, the e.spire Companies and Xspedius agreed that Xspedius and its operating subsidiaries, including the Xspedius Operating Entities (collectively, the "Xspedius Companies"), would acquire substantially all of the e.spire Companies' telecommunications assets and existing customer base.<sup>6</sup>

After a final hearing on May 29, 2002, the Bankruptcy Court approved the Transaction, which provides for, *inter alia*: (i) the sale of certain assets of the e.spire Companies, including those of the e.spire Operating Entities, to the Xspedius Companies, including the Xspedius Operating Entities, as set forth in the Asset Contribution Agreement; (ii) the continued provision of telecommunications services to current customers of the e.spire Companies, including the e.spire Operating Entities, pending the necessary regulatory approvals, as set forth in the Management Agreement; and (iii) the transfer of the e.spire Companies' assets and customer base to the Xspedius Companies at such time as the necessary regulatory approvals are finally obtained.

To ensure the continuity of telecommunications service to the e.spire Operating Entities' current customers, the Management Agreement requires that the Xspedius Companies

<sup>5</sup> See Case Nos. 94-268, 95-361.

<sup>6</sup> The terms of the asset purchase agreement calls for the e.spire Companies to convey to Xspedius and its operating subsidiaries substantially all of the assets and properties of the e.spire Companies in all markets except New York and Philadelphia, together with certain specified obligations and liabilities. Once the entire transaction is consummated, Xspedius and its operating subsidiaries will possess substantially all of e.spire's assets, including but not limited to, telecommunications facilities, customer contracts, and state authorizations (to the extent permitted by applicable state law).

provide management services to the e.spire Companies, and fund the e.spire Companies' continued operations, pending the necessary regulatory approvals. At such time as the necessary federal and state regulatory approvals are obtained, the e.spire Operating Entities' assets and customer base will be transferred to the Xspedius Companies, including the Xspedius Operating Entities, except to the extent that the e.spire Operating Entities' current customers have chosen to designate a different carrier.

### **III. TRANSFER OF E.SPIRE'S CUSTOMERS**

Following completion of the Transaction, the Xspedius Operating Entities will provide the same local, long distance, and dedicated telecommunications services to the former customers of the e.spire Operating Entities' in the State of Kentucky. To ensure a seamless transition and avoid customer confusion or inconvenience, the Parties provided a written notification to the affected customers of the e.spire Operating Entities in Kentucky on June 7, 2002, at least thirty (30) days prior to the transfer of such customers to the Xspedius Operating Entities. The notification letter provided to the affected customers of the e.spire Operating Entities described the change in service provider, in accordance with the applicable rules of the Federal Communications Commission and the applicable requirements of the Commission for changing a customer's presubscribed carrier. A copy of that notification letter is attached hereto and incorporated herein by reference as *Exhibit A*.

The Xspedius Operating Entities will continue to provide the current customers of the e.spire Operating Entities the same telecommunications services, at the same rates, and pursuant to the same terms and conditions. The current customers of the e.spire Operating will not experience any change in their rates and service arrangements as a result of the Transaction, and therefore, the Transaction will be virtually transparent to the e.spire Operating Entities' Kentucky customers with regard to the rates, terms, and conditions of telecommunications service.

### **IV. DISCONTINUANCE OF SERVICE**

As noted above, upon completion of the Transaction, the e.spire Operating Entities will no longer provide telecommunications services in the State of Kentucky. Accordingly, ACSI Local, ACSI of Lexington, and ACSI Louisville respectfully notify the Commission of their intent to discontinue service upon completing the transfer of their customers to Xspedius Switched, Xspedius of Lexington, and Xspedius of Louisville. The e.spire Operating Entities respectfully request cancellation of their current telecommunications authorizations and tariffs, effective upon the transfer of their current customers to the Xspedius Operating Entities.

The Parties have complied (or are complying) with the Commission's rules governing the discontinuance of telecommunications service and transfer of customers. Moreover, as noted above, the Parties provided a written customer notification of the discontinuance of service by the e.spire Operating Entities and the transfer of the e.spire

Operating Entities' current customers on June 7, 2002.<sup>7</sup> A copy of the notification letter, which provides the affected customers of the e.spire Operating Entities at least thirty (30) days to select a different carrier of their choice, is attached hereto and incorporated herein by reference as *Exhibit A*.

V. **PUBLIC INTEREST CONSIDERATIONS AND REQUEST FOR EXPEDITED PROCESSING**

The Parties respectfully submit that the Transaction serves the public interest. Specifically, the Parties submit that: (1) the Transaction will eliminate the threat of disruption of service to the current customers of the e.spire Operating Companies who could lose service due to the bankruptcy; and (2) the Transaction will increase competition in the Kentucky telecommunications market by strengthening the position of the Xspedius Operating Entities' as an effective and multifaceted telecommunications carrier. Given the difficult times faced by the competitive telecommunications industry, it is all the more important to preserve existing competitive facilities-based options and robust local competition, with its attendant benefits of lower prices, higher quality service, and innovative services.

. As discussed above, the e.spire Operating Entities currently are operating in Chapter 11 but may soon be forced to convert to Chapter 7. If the e.spire Operating Entities were forced to convert, they could shut down operations, and the customers not already migrated to the Xspedius Operating Companies could lose service. The e.spire Operating Entities will have endeavored, and will continue to endeavor, to avoid this result. As the Commission is acutely aware, the e.spire Operating Entities are not alone in suffering recent financial hardship, which has plagued virtually the entire competitive carrier community. Recent bankruptcy filings by carriers, such as Teligent, Winstar, ICG, Covad, NorthPoint, Network Plus, and Net2000, coupled with numerous service discontinuance notifications/applications by countless other carriers, along with a general reduction in consumption of telecommunications services caused by unfavorable economic conditions, have eliminated a large number of new entrant competitors in the telecommunications market. Other new entrants have reported that negative economic factors have caused them to scale back the scope of their operations or cease offering new service entirely. In view of this, the Transaction will serve the public interest by enabling the Xspedius Companies to expand their operations in a cost-effective manner, thereby enhancing their competitive position and ability to provide high-quality services at more competitive rates to Kentucky consumers. The Xspedius Operating Entities represent a second generation of competitive local carriers in that they do not start the business with the significant debt load with which many new telecommunications entrants were burdened. By permitting the Xspedius Companies to strengthen their competitive position and to accelerate their entry into additional markets, the Transaction will preserve the existing customer base that has already chosen a

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<sup>7</sup> Pursuant to the notice, e.spire will discontinue service on July 8, 2002, soon thereafter as the necessary governmental approvals can be obtained.

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competitive provider, while creating more robust competition for telecommunications customers in the United States, including customers in the State of Kentucky.

The Parties emphasize that, following completion of the Transaction, the former customers of the e.spire Operating Entities will continue to receive services from experienced and qualified carriers, which will be consistent with the quality of services currently provided by the e.spire Operating Entities. Further, these customers have been, and will continue to be, sufficiently notified of the Transaction and their rights. Hence, the public interest will be served by permitting the Xspedius Operating Entities to take over the e.spire Operating Entities' customers.

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Kentucky Public Service Commission  
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In sum, the Transaction will serve the public interest by eliminating the threat of service interruption to existing customers of the e.spire Operating Entities and by furthering competition in the Kentucky telecommunications market as a result of the strengthened competitive position of Xspedius. The Parties desire to complete the proposed transaction as quickly as possible to avoid any interruption of service or inconvenience to e.spire's customers.

It is the Parties' understanding that no formal approval of the Transaction is required, and this information is therefore, being submitted solely to keep the Commission advised and its records current. Please find enclosed ten (10) copies of this letter, a duplicate and a self-addressed, stamped envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Should you have any questions regarding this filing or believe that further action is required, please do not hesitate to contact Brett Heather Freedson at (202) 887-1211.

Respectfully submitted,



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*Of Lexington, Inc.*  
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*Xspedius Management Co. Switched*  
*Services, LLC*  
*Xspedius Management Co. of Lexington, LLC*  
*Xspedius Management Co. of Louisville, LLC*

Enclosures



**EXHIBIT A**

**CUSTOMER NOTIFICATION LETTER**



**AN IMPORTANT NOTICE REGARDING YOUR  
TELECOMMUNICATIONS SERVICE FROM E.SPIRE AND XSPEDIUS**

June 7, 2002

Dear Valued Customer:

We want to thank you for your continued support of e.spire. We have provided you a quality telecommunications service and, together, we have built an excellent business relationship.

We are very excited to inform you that e.spire Communications, Inc. ("e.spire"), including its affiliates American Communications Services International, Inc. and various operating entities, is transferring virtually all of its local, long distance, international, data and Internet assets and services in the states of Alabama, Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Missouri, New Mexico, Nevada, Oklahoma, South Carolina, Tennessee, Texas and Virginia to Xspedius Management Co., LLC and its various operating entities ("Xspedius"). The anticipated date for the transfer of your service to Xspedius is **July 8, 2002**, or as soon thereafter as the necessary governmental approvals can be obtained. Upon completion of the transfer, Xspedius will provide your telecommunications and other services and e.spire will no longer be your local, long distance, international, data or Internet service provider.<sup>1</sup> As a customer of Xspedius, you will continue to receive all the features, terms and conditions of service, and current rates that you enjoy today through e.spire. Should there be any future changes in rates, terms and conditions of services, notice will be provided in writing or as otherwise permitted by law.

The combination of e.spire with Xspedius is a very positive change for you, our customer. Xspedius Management Company brings a seasoned management team and significant funding to the business. Xspedius has a fully funded business plan, with \$75 million in fresh capital and a virtually debt free balance sheet. The company will be led by Chairman Jim Allen

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<sup>1</sup> *The FCC will normally authorize e.spire's proposed discontinuance of service unless it is shown that customers would be unable to receive service or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554 referencing the §63.71 Application of e.spire Communications, Inc. Comments should include specific information about the impact of the proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.*

and CEO Mark Senda, founders of Brooks Fiber and industry veterans of more than 20 years each. Xspedius management's combination of experience, financing, and vision will allow us to provide excellent service to customers and ensure financial stability.

It has been the pleasure of e.spire to provide you with quality telecommunications services. Unless you choose another carrier within thirty (30) days of the date of this letter, as is your right, you will automatically become an Xspedius customer upon completion of this transaction. You do not need to take any action, or pay any change charges, to be transferred to Xspedius. Of course, if you change providers, the terms and conditions of your e.spire contract will still apply, including any applicable termination liability or change charges.

If you have placed a "freeze" on e.spire's long distance services to prevent their unauthorized transfer to another carrier, the freeze will be lifted when your e.spire services are transferred. At your request, Xspedius would be glad to re-establish freeze protection for you after the transfer of your account to Xspedius.

e.spire has been and remains committed to providing excellent service to you. e.spire will continue to be your single point of contact to address any issues or complaints you may have with your service through the time of this transfer. Xspedius is committed to a smooth transition of your account – your current telephone number(s) and account will be migrated to Xspedius in a seamless manner. The only change you may notice is the name of your new service provider on your bill once the transition is complete.

Thank you for your cooperation and patience during this transition. We will continue to communicate with you as we make progress toward combining our companies into Xspedius. If you have any questions or concerns, please feel free to contact us at **Xspedius at 1-877-XMC(962)-1900** or contact **e.spire at 1-800-9-espire (937-7473)**. Xspedius looks forward to building a long term telecommunications relationship with you.

Randall P. Muench  
Executive Vice President Sales & Marketing  
e.spire Communications, Inc.

Mark W. Senda  
Chief Executive Officer  
Xspedius Management Co., LLC