

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

ORIGINAL

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE: (202) 887-1228

EMAIL: LBaheri@kelleydrye.com

RECEIVED-FPSC  
JUN 17 PM 1:04  
COMMISSION CLERK

NEW YORK, NY  
TYSONS CORNER, VA  
LOS ANGELES, CA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM  
HONG KONG

AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MANILA, THE PHILIPPINES  
MUMBAI, INDIA  
TOKYO, JAPAN

June 14, 2002

VIA UPS

Ms. Blanca Bayo  
Commission Clerk & Administrative Services Director  
Florida Public Service Commission  
2540 Shuman Oak Blvd.  
Tallahassee, Florida 32399-0850

020535 - TP

Re: Application of Xspedius management Co. Switched Services, LLC for  
Transfer of an Existing Certificate for Alternative Local Exchange Service

Dear : Ms. Bayo

Enclosed, please find an original and six copies of the above referenced  
Application. Please date-stamp the additional copy enclosed and return in the date-stamped  
envelope enclosed. If you have any questions, please do not hesitate to contact be at (202) 887-  
1228.

Sincerely,

Leila M. Baheri

This claim of confidentiality was filed by or on behalf of a "telco"  
for Confidential DN 020535-02. The document is in  
locked storage pending advice on handling. To access the material,  
your name must be on the CASR. If undocketed, your division  
director must obtain written EXD/Tech permission before you can  
access it.

Check received with filing and  
forwarded to Fiscal for deposit.  
Fiscal to forward a copy of check  
to RAR with proof of deposit.

Initials of person who forwarded check:

02 JUN 17 AM 10:32

DISTRIBUTION CENTER

DC01/BAHEL/187099.1

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06264 JUN 17 02

FPSC-COMMISSION CLERK

**\*\* FLORIDA PUBLIC SERVICE COMMISSION \*\***

**DIVISION OF REGULATORY OVERSIGHT**  
**CERTIFICATION SECTION**

**APPLICATION FORM**  
**for**  
**AUTHORITY TO PROVIDE**  
**ALTERNATIVE LOCAL EXCHANGE SERVICE**  
**WITHIN THE STATE OF FLORIDA**

---

Instructions

- ◆ This form is used as an application for an original certificate and for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Page 12).
- ◆ Print or type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.
- ◆ Use a separate sheet for each answer which will not fit the allotted space.
- ◆ Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of **\$250.00** to:

**Florida Public Service Commission**  
***Division of Records and Reporting***  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6770**

- ◆ If you have questions about completing the form, contact:

**Florida Public Service Commission**  
**Division of Regulatory Oversight**  
**Certification Section**  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6480**

4



## APPLICATION

**1. This is an application for  (check one):**

- Original certificate** (new company).
- Approval of transfer of existing certificate:** Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.
- Approval of assignment of existing certificate:** Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.
- Approval of transfer of control:** Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

**2. Name of company:**

Xspedius Management Co. Switched Services, LLC ("Xspedius")

**3. Name under which the applicant will do business (fictitious name, etc.):**

Xspedius Management Co. Switched Services, LLC

**4. Official mailing address (including street name & number, post office box, city, state, zip code):**

P.O. box 1116  
O'Fallon, MO 63366

**5. Florida address (including street name & number, post office box, city, state, zip code):**

Corporate Service Company  
1201 Hays Street  
Tallahasee, FL 32301

**6. Structure of organization:**

- |   |  |
|---|--|
| <input type="checkbox"/> Individual                     | <input type="checkbox"/> Corporation         |
| <input checked="" type="checkbox"/> Foreign Corporation | <input type="checkbox"/> Foreign Partnership |
| <input type="checkbox"/> General Partnership            | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Other                          |  |

**7. If individual, provide:**

Name: Not Applicable

Title:

Address:

City/State/Zip:

Telephone No.: \_\_\_\_\_ Fax No.:

Internet E-Mail Address:

Internet Website Address:

**8. If incorporated in Florida, provide proof of authority to operate in Florida:**

(a) **The Florida Secretary of State corporate registration number:**

Not Applicable

**9. If foreign corporation, provide proof of authority to operate in Florida:**

(a) The Florida Secretary of State corporate registration number:

Applicant is currently seeking authorization to operate in Florida and will provide this information as soon as it is available.

**10. If using fictitious name-d/b/a, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:**

(a) The Florida Secretary of State fictitious name registration number:

Not Applicable.

**11. If a limited liability partnership, provide proof of registration to operate in Florida:**

(a) The Florida Secretary of State registration number:

Not Applicable

**12. If a partnership, provide name, title and address of all partners and a copy of the partnership agreement.**

Name: Not Applicable

Title:

Address:

City/State/Zip:

Telephone No.: \_\_\_\_\_ Fax No.:

Internet E-Mail Address:

Internet Website Address:

**13. If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable.**

(a) The Florida registration number: Not Applicable

4

14. Provide F.E.I. Number(if applicable): \_\_\_\_ To be provided

15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. Provide explanation.

To be provided

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

To be provided

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: Leila Baheri  
Title: Associate,  
Address: Kelley Drye & Warren, 1200 19<sup>th</sup> Street, N.W., Suite 500  
City/State/Zip: Washington, D.C. 20036  
Telephone No.: (202) 887-1228 Fax No: (202) 955-9792  
Internet E-Mail Address: lbaheri@kelleydrye.com  
Internet Website Address: www.kelleydrye.com

4

(b) Official point of contact for the ongoing operations of the company:

Name: Chad Pifer  
Title: Director of Regulatory & Legal Affairs, Xspedius  
Address: 901 Lakeshore Drive, Floor 2  
City/State/Zip: Lake Charles, LA 70601  
Telephone No: (337) 312-5240 Fax No.: (337) 310-2976

Internet E-Mail Address: N/A  
Internet Website Address: N/A

(c) Complaints/Inquiries from customers:

Name: Chad Pifer

Title: Director of Regulatory & Legal Affairs

Address: Xspedius, 901 Lakeshore Drive, Floor 2

City/State/Zip: Lake Charles, LA 70601

Telephone No: (337) 312-5240 Fax No: (337) 310-2976

Internet E-Mail Address: N/A  
Internet Website Address: N/A

**17. List the states in which the applicant:**

(a) has operated as an alternative local exchange company.

None

(b) has applications pending to be certificated as an alternative local exchange company.

None

(c) is certificated to operate as an alternative local exchange company.

None



- (d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

None

- (e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

None

- (f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

None

**18. Submit the following:**

- A. Managerial capability: give resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.**

See Attachment A

- B. Technical capability: give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.**

See Attachment A

4

### C. Financial capability.

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

As a privately held limited liability Company, Applicant does not have audited financial statements.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer **affirming that the financial statements are true and correct** and should include:

1. the balance sheet:
2. income statement: and
3. statement of retained earnings.

**NOTE:** *This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. **written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.
3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

Xspedius, through its parent company Xspedius Management Co., LLC has the requisite financial qualifications to provide telecommunications services in Florida. Attached and incorporated herein by reference is filed *under seal Exhibit B* the *Pro Forma* Balance Sheet of Xspedius Management Co., LLC, for the period ending June 1, 2002. Because Xspedius and Xspedius Management Co., LLC are privately owned limited liability companies, Xspedius requests confidential treatment of its financial information. As a privately held company, Xspedius does not issue annual reports or submit any financial filings with the United States Securities and Exchange Commission, and is not under any obligation to prepare or release public financial statements and ownership information. Because public disclosure of this financial information would result in significant

competitive and business harm to Xspedius, confidential treatment of Xspedius Management Co., LLC's financial data is appropriate.

**THIS PAGE MUST BE COMPLETED AND SIGNED**

**APPLICANT ACKNOWLEDGMENT STATEMENT**

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

**UTILITY OFFICIAL:**

**Mark W. Senda**

Print Name

Signature See attached verification

**Chief Executive Officer**

Title

Date June 14, 2002

**(337) 312-5240**

Telephone No.

Fax No.

**Address:**

**Xspedius Management Co., LLC  
P.O. Box 1116  
O'Fallon, MO 63366-1116**

4

**THIS PAGE MUST BE COMPLETED AND SIGNED**

**AFFIDAVIT**

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

**Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."**

**UTILITY OFFICIAL:**

**Mark W. Senda**

**Print Name**

**Signature See attached verification**

**Chief Executive Officer**

**Title**

**Date June 14, 2002**

**(337) 312-5240**

**Telephone No.**

**Fax No.**

**Address:**

**Xspedius Management Co., LLC  
P.O. Box 1116  
O'Fallon, MO 63366-1116**

**4**

INTRASTATE NETWORK (if available)

Chapter 25-24.825 (5), Florida Administrative Code, requires the company to make available to staff the alternative local exchange service areas only upon request.

1. **POP:** Addresses where located, and indicate if owned or leased.

1) \_\_\_\_\_ 2)

\_\_\_\_\_

3) \_\_\_\_\_ 4)

\_\_\_\_\_

2. **SWITCHES:** Address where located, by type of switch, and indicate if owned or leased.

1) \_\_\_\_\_ 2)

\_\_\_\_\_

3) \_\_\_\_\_ 4)

\_\_\_\_\_

3. **TRANSMISSION FACILITIES:** POP-to-POP facilities by type of facilities (microwave, fiber, copper, satellite, etc.) and indicate if owned or leased.

POP-to-POP

OWNERSHIP

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_

4) \_\_\_\_\_

**CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT**

I, (Name) James C. Falvey  
(Title) Senior Vice President of  
(Name of Company) ACSI Local Switching Services, Inc. d/b/a e.spire  
and current holder of Florida Public Service Commission Certificate Number #  
5474, have reviewed this application and join in the petitioner's request for a:

- ( ) sale
- ( X ) transfer
- ( ) assignment

of the above-mentioned certificate.

**UTILITY OFFICIAL:**

**James C. Falvey**  
Print Name

Signature: see attached verification

**Senior V.P.**  
Title

Date June 14, 2002

**(301) 361-4298**  
Telephone No.

**(301) 361-4277**  
Fax No.

**Address:**

**e.spire Communications, Inc.**  
**7125 Gateway Drive, Suite 200**  
**Columbia, MD 21406**

**Attachment A**

**Management Resumes**



### **James Allen - Chairman**

James C. Allen has been a director of WorldCom since March 1998. Mr. Allen is currently an investment director and member of the general partner of Meritage Private Equity Fund, a venture capital fund specializing in the telecommunications industry. Mr. Allen is the former Vice Chairman and Chief Executive Officer of Brooks Fiber Properties where he served in such capacities from 1993 until its merger with WorldCom January 1998. Mr. Allen served as President and Chief Operating Officer of Brooks Telecommunications Corporation, a founder of Brooks Fiber Properties, from April 1993 until it was merged with Brooks Fiber Properties in January 1996. Mr. Allen serves as a director of Completel LLC, Xspedius, LLC, Masergy, Inc., David Lipscomb University and Family Dynamics Institute.

### **Mark W. Senda – Chief Executive Officer**

Mark W. Senda has been a key contributor and leader in the competitive communications industry over the past two decades in North America. He has had an uncanny ability to stay in front of the trends emerging in the rapidly changing communications services sector during a period of pre- and post-deregulation. More recently, as President of Local Services for AT&T Canada, he ran a \$200m+ business unit growing in excess of 100% per annum. AT&T Canada was the successor to MetroNet Communications where Mr. Senda was Chief Operating Officer for Canada's first national competitive communications company. Prior to his work in Canada, Mr. Senda implemented and operated competitive local access and exchange networks in the United States, first with MFS Communications in various progressive management responsibilities leading up to Senior Vice President of Network Services and later with Brooks Fiber Properties as their Senior Vice President of Operations & Engineering. Prior

to 1991, Mr. Senda spent nearly nine years with MCI Communications Corp. in various management roles. During this time, he was a key team member responsible for deploying MCI's enhanced messaging systems and services worldwide. Mr. Senda holds a BS in Business from The University of the State of New York and a MS in Telecommunications Policy from The George Washington University.

**Dan Lensgraf – Chief Executive Officer**

Daniel Lensgraf currently serves as Chief Financial Officer of Xspedius, LLC joined Xspedius in August 2000, as Chief Financial Officer. In this capacity, he is responsible for all financial operations of the company. Lensgraf also plays a key role in the day-to-day, business development, and strategy of the company. From August 1995 until joining Xspedius, Lensgraf served as Chief Financial Officer of Satellink Communications, Inc.; an Atlanta based communications provider. During his tenure with Satellink, Lensgraf facilitated thirteen acquisition transactions and was involved in numerous debt and equity fund raising transactions.

Lensgraf earned a Bachelor's Degree in Business Administration from the University of Oklahoma and an MBA from Duke University.

**Ines LeBow – Senior Vice President, Operations**

Ms. LeBow has twenty years experience in management, operations, engineering, finance and project management in telecommunications, wireless, long distance, competitive access and competitive local exchange. In her last position, Ms. LeBow was Executive Vice President, Operations and Engineering at Conversent Communications; in that capacity, she developed a six-state region in the Northeast, managed the P&L, set company policy, deployed switches, established service delivery flows and OSS systems, built a Network Management Center, created a switched-services field organization and customer service. Former positions include

Vice President, Global Network Operations for Viatel, a multinational long distance carrier; with management responsibility for 150 people in 14 cities worldwide. At Brooks Fiber Communications, Ms. LeBow served as Vice President, Implementation with responsibility for 22 new cities. Prior to Brooks, Ms. LeBow has similar responsibilities at MFS, GTE Spacenet and Contel ASC.

Ms. LeBow is a graduate of American University, Washington, DC and received a MA. in Languages and Linguistics and a MA. in Administration and Education.

**Michael Miller – President, Xspedius Management Co. Network Technologies, Inc.**

Michael P. Miller is currently serving as President of ACSI Network Technologies, Inc., **e.spire's** network design, construction and consulting subsidiary, a position he has held since January 2000. He previously served as ACSI Network Technologies' Senior Vice President, responsible for sales and operations support system outsourcing. He joined **e.spire** in 1996 to assume the position of Regional Vice President and General Manager, responsible for sales and operations in the eastern United States. Before joining **e.spire**, he was Senior Vice President for Sales and Marketing for Trescom International. Mr. Miller has also held positions with ITT-USTS and LDDS (now, MCI/WorldCom). He has more than 19 years of management experience with telecommunications companies.

**Randall Muench – Executive Vice President of Sales and Marketing**

Randall P. Muench is currently serving as **e.spire** Executive Vice President, Sales and Marketing, and manages the retail and wholesale sales force, alternate channels, customer service, technical consulting and training. Mr. Muench is also responsible for product marketing, brand marketing, new media and **e.spire's** outbound marketing programs. He was promoted to

this position in January 2000. He previously served as Senior Vice President, Sales and Marketing and Vice President of Marketing. He joined **e.spire** in March of 1998 as Vice President of Sales Operations and Customer Service. Before joining **e.spire**, Mr. Muench was Director of Marketing and Finance for MCI's State Government and University Markets, a position he held for three years

**James C. Falvey – Senior Vice President of Regulatory Affairs**

James C. Falvey is currently serving as **e.spire** Senior Vice President of Regulatory Affairs and is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and municipal rights-of-way issues. He was promoted to his current position in March 2000. He joined **e.spire** in May 1996 as Vice President of Regulatory Affairs and has been instrumental in developing regulatory strategy; establishing interconnection agreements; pursuing reciprocal compensation and other regulatory complaints; managing certification, franchise, and compliance issues; and advocating **e.spire's** interests relating to regulatory and policy matters. Prior to joining **e.spire**, Mr. Falvey practiced law with the Washington, D.C. law firm of Swidler & Berlin, where he represented competitive local exchange providers in state and federal proceedings. Prior to his employment at Swidler & Berlin, Mr. Falvey practiced antitrust litigation in the Washington office of Johnson & Gibbs, and worked as a legislative assistant for Senator Harry M. Reid of Nevada. He is a *cum laude* graduate of Cornell University, received his law degree from the University of Virginia School of Law, and is admitted to practice law in the District of Columbia and Virginia. He is a member of the CompTel Board of Directors and ALTS Operating Board.

**EXHIBIT B**

**Pro Forma Balance Sheet**

**CONFIDENTIAL – FILED UNDER SEAL**