

WILLIAM A. MUNDELI
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



OPEN MEETING ITEM

ORIGINAL 22

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: August 8, 2002
DOCKET NO: T-04112A-02-0450 et al.
T-04112A-02-0451
TO ALL PARTIES: T-04112A-02-0452

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

ACSI LOCAL SWITCHED SERVICES, INC. et al.
(CC&N/TRANSFER OF ASSETS)

The ten day period for filing exceptions has been waived.

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

AUGUST 16, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

AUGUST 20 AND 21, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE JOINT APPLICATION OF ACSI LOCAL SWITCHED SERVICES, INC., D/B/A E.SPIRE AND AMERICAN COMMUNICATION SERVICES OF PIMA COUNTY, INC. D/B/A E.SPIRE AND XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES LLC AND XSPEDIUS MANAGEMENT CO. OF PIMA COUNTY, L.L.C. FOR EXPEDITED APPROVAL OF (I) THE TRANSFER OF SUBSTANTIALLY ALL OF THE ASSETS, INCLUDING THE CUSTOMER CONTRACTS, OF THE E.SPIRE OPERATING ENTITIES TO THE XSPEDIUS OPERATING ENTITIES; (II) THE DISCONTINUANCE OF TELECOMMUNICATIONS SERVICES IN ARIZONA BY THE E.SPIRE OPERATING ENTITIES.

DOCKET NOS. T-04112A-02-0450
T-04113A-02-0450
T-03597A-02-0450
T-03411A-02-0450

IN THE MATTER OF THE APPLICATION OF XSPEDIUS MANAGEMENT CO. OF PIMA COUNTY, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE ALL FORMS OF COMPETITIVE RESOLD AND FACILITIES BASED LOCAL EXCHANGE, EXCHANGE ACCESS, AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04112A-02-0451

IN THE MATTER OF THE APPLICATION OF XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE ALL FORMS OF COMPETITIVE RESOLD AND FACILITIES BASED LOCAL EXCHANGE, EXCHANGE ACCESS, AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04112A-02-0452

OPINION AND ORDER

DATE OF HEARING: August 6, 2002
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Teena Wolfe

...

APPEARANCES:

Michael W. Patten, Roshka, Heyman & DeWulf, PLC, on behalf of Applicants American Communication Services of Pima County, Inc. dba e.spire, ACSI Local Switched Services, Inc. dba e.spire, Xspedius Management Co. of Pima County, and Xspedius Management Co. Switched Services, LLC; and

Jason Gellman, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 19, 2002, American Communication Services of Pima County, Inc. dba e.spire (“ACSI Pima”) and ACSI Local Switched Services, Inc. dba e.spire (“ACSI Switched”) (the “e.spire Operating Entities”); and Xspedius Management Co. of Pima County, LLC (“Xspedius Pima”) and Xspedius Management Co. Switched Services, LLC (“Xspedius Switched”) (the “Xpedius Operating Entities”) (collectively, “Applicants”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned joint application for authority pursuant to A.R.S. § 40-285 to transfer substantially all the assets of the of the e.spire Operating Entities to the Xspedius Operating Entities, for the purpose of allowing the Xspedius Operating Entities to provide service to the customers of the e.spire Operating Entities without interruption of service (“Joint Application”). The Joint Application also requests authority for the e.spire Operating Entities to discontinue the provision of local exchange service, pursuant to A.A.C. R14-2-1107. The Joint Application arises out of the voluntary petition for Chapter 11 protection that the e.spire Operating Entities filed with the United States Bankruptcy Court for Delaware (“Bankruptcy Court”) on March 22, 2001, and a proposed transaction approved by the Bankruptcy Court in a Sale Order entered on June 5, 2002.

Also on June 19, 2002, Xspedius Pima and Xspedius Switched each filed an application for a new CC&N to provide competitive resold and facilities based local exchange, exchange access, and interexchange telecommunications service in the State of Arizona (“CC&N Applications”).

Applicants requested expedited treatment of their filings to avoid the possibility of interruptions in service to the customers should the e.spire Operating Entities be forced to convert from operating under Chapter 11 of the U.S. Bankruptcy Code to Chapter 7.

On July 1, 2002, the Commission’s Utilities Division Staff (“Staff”) docketed letters notifying Xspedius Pima and Xspedius Switched of deficiencies in their CC&N Applications and requesting

1 submission of additional data.

2 On July 5, 2002, Staff filed in the above-captioned dockets a Motion to Consolidate and
3 Request for Evidentiary Hearing. In its motion, Staff requested that the Commission rule on the
4 e.spire Operating Entities' request for discontinuance of service following a Decision on the issues
5 relating to the CC&N Applications and on the transfer of assets. Applicants did not oppose Staff's
6 request. A Procedural Order issued on July 11, 2002, consolidated these matters and adopted Staff's
7 procedural recommendations.

8 On July 24, 2002, Staff docketed letters notifying Xspedius Pima and Xspedius Switched that
9 their CC&N Applications were administratively complete.

10 On July 25, 2002, by Procedural Order, the CC&N Applications and the request for authority
11 to transfer assets were set for hearing. The July 25, 2002 Procedural Order also set a deadline of
12 September 27, 2002, for the filing of a Staff Report on the e.spire Operating Entities' request for
13 discontinuance of service, and established other procedural deadlines.

14 * * * * *

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On June 19, 2002, ACSI Pima, ACSI Switched, Xspedius Pima, and Xspedius
19 Switched filed the Joint Application. The Joint Application requests authority pursuant to A.R.S. §
20 40-285 to transfer substantially all the assets of ACSI Pima and ACSI Switched to Xpedius Pima and
21 Xspedius Switched. The Joint Application also requests authority for the e.spire Operating Entities to
22 discontinue the provision of local exchange service, pursuant to A.A.C. R14-2-1107.

23 2. Also on June 19, 2002, Xpedius Pima and Xpedius Switched filed applications for
24 authority to provide the services currently provided by ACSI Pima and ACSI Switched.

25 3. ACSI Pima was granted a CC&N by Commission Decision No. 60078 (February 19,
26 1996) to provide intrastate competitive telecommunications services in Arizona, including local
27 exchange services and intraLATA toll services. ACSI Pima currently provides service to
28 approximately 280 customers.

1 4. ACSI Switched was granted a CC&N by Commission Decision No. 60711 (February
2 27, 1998) to provide local switched services in Arizona. ACSI Switched currently provides service to
3 approximately 260 customers.

4 5. Xspedius Pima and Xspedius Switched are Delaware limited liability companies that
5 have authority to transact business in Arizona.

6 6. On March 27, 2001, the e.spire Operating Entities filed a voluntary petition for
7 Chapter 11 protection with the Bankruptcy Court. A Sale Order entered by the Bankruptcy Court on
8 June 5, 2002, approved the sale of the e.spire Operating Entities' assets to the Xspedius Operating
9 Entities.

10 7. Applicants assert that the proposed asset transfer, and the grant of CC&Ns to Xspedius
11 Pima and Xspedius Switched, would allow the Xspedius Operating Entities to provide uninterrupted
12 service to the customers of the e.spire Operating Entities.

13 8. The tariffs proposed in the CC&N Applications are identical to the existing tariffs of
14 the e.spire Operating Entities in every respect but the company names on the tariffs. The Joint
15 Application and the CC&N Applications were structured so that parallel entities would continue to
16 provide service to the customers after the requested asset transfer. The Joint Application and the
17 CC&N Applications request no changes in rates, terms, or conditions of service from those currently
18 in place for the customers of the e.spire Operating Entities.

19 9. The Xspedius Operating Entities are currently negotiating interconnection agreements
20 with Qwest Corporation.

21 10. On July 5, 2002, Staff filed in the above-captioned dockets a Motion to Consolidate
22 and Request for Evidentiary Hearing, requesting that the Commission rule on the e.spire Operating
23 Entities' request for discontinuance of service following a Decision on the issues relating to the
24 CC&N Applications and on the transfer of assets. Applicants did not oppose Staff's request.

25 11. A Procedural Order issued on July 11, 2002, consolidated these matters and adopted
26 Staff's procedural recommendations.

27 12. On July 24, 2002, Staff docketed letters notifying Xspedius Pima and Xspedius
28 Switched that their CC&N Applications were administratively complete.

1 13. On July 25, 2002, a Procedural Order set the CC&N Applications and the request for
2 authority to transfer assets for hearing. The July 25, 2002 Procedural Order also set a deadline of
3 September 27, 2002, for the filing of a Staff Report on the e.spire Operating Entities' request for
4 discontinuance of service, and established other procedural deadlines.

5 14. On August 2, 2002, Staff filed a Staff Report on the CC&N Applications and on the
6 request for authority to transfer assets. In the Staff Report, Staff recommended approval of the
7 CC&N Applications subject to certain conditions and made other recommendations. Staff also
8 recommended that the transfer of assets be approved as soon as possible due to the emergency nature
9 of the request.

10 15. On August 5, 2002, Applicants filed a Notice of Filing Proof of Mailing to Customers
11 and a Notice of Filing of Affidavit of Publication, verifying that Applicants provided public notice of
12 the hearing as required by the July 25, 2002 Procedural Order.

13 16. No requests to intervene were received, and no members of the public appeared to
14 make public comment.

15 17. On August 6, 2002, a hearing was held as scheduled on Applicants' request to transfer
16 assets and on the CC&N Applications. Applicants and Staff appeared through counsel and presented
17 evidence.

18 18. Staff states that Xspedius Pima and Xspedius Switched have demonstrated that they
19 possess the technical capability to provide the services proposed in the CC&N Applications.

20 19. The Xspedius Operating Entities state that they will rely on their ultimate parent
21 company, Xspedius Management Co., LLC for financial support, and state its pro forma equity for
22 the period ending June 1, 2002 at \$75 million. The Xspedius Operating Entities provided pro forma
23 financial statements for the period ending June 1, 2002, listing Xspedius Switched's assets at \$2.3
24 million, and Xspedius Pima's assets at \$13.6 million. For the year ending June 30, 2003, Xspedius
25 Switched projects its net income to be \$1.3 million and Xspedius Pima projects its net income to be
26 \$412,943.

27 20. Staff recommends that the Xspedius Operating Entities' proposed services be
28 classified as competitive. Staff recommends that the CC&N Applications be approved, subject to the

1 following Staff recommendations:

- 2 (a) that, unless the Xspedius Operating Entities provide services solely through the
3 use of their own facilities, that they be ordered to procure Interconnection
4 Agreements, within 90 days of the Decision in this matter, that must remain in
5 effect until further order of the Commission;
- 6 (b) that the Xspedius Operating Entities be ordered to file with the Commission,
7 within 90 days of the Decision in this matter, their plans to have their
8 customers' telephone numbers included in the incumbent's Directories and
9 Directory Assistance databases;
- 10 (c) that the Xspedius Operating Entities be ordered to pursue permanent number
11 portability arrangements with other LECs pursuant to Commission rules,
12 federal laws and federal rules;
- 13 (d) that the Xspedius Operating Entities be ordered to abide by and participate in
14 the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996
15 (Docket No. RT-T-03905A-00-0513E-95-0498);
- 16 (e) that the Xspedius Operating Entities be ordered to abide by the quality of
17 service standards that were approved by the Commission for Qwest in Docket
18 No. T-0151B-93-0183;
- 19 (f) that in areas where they are the sole provider of local exchange service
20 facilities, the Xspedius Operating Entities be ordered to provide customers
21 with access to alternative providers of service pursuant to the provisions of
22 Commission rules, federal laws and federal rules;
- 23 (g) that the Xspedius Operating Entities be ordered to certify, through the 911
24 service provider in the area in which they intend to provide service, that all
25 issues associated with the provision of 911 service have been resolved with the
26 emergency service providers within 90 days of the Decision in this matter,
27 which certification must remain in effect until further Order of the
28 Commission;
- (h) that the Xspedius Operating Entities be ordered to abide by all the Commission
decisions and policies regarding CLASS services;
- (i) that the Xspedius Operating Entities be ordered to provide 2-PIC equal access;
- (j) that the Xspedius Operating Entities be required to notify the Commission
immediately upon changes to their addresses or telephone numbers;
- (k) that the Xspedius Operating Entities be ordered to comply with all
Commission rules, orders, and other requirements relevant to the provision of
intrastate telecommunications service;
- (l) that the Xspedius Operating Entities be ordered to maintain their accounts and
records as required by the Commission;
- (m) that the Xspedius Operating Entities be ordered to file with the Commission all
financial and other reports that the Commission may require, and in a form and
at such times as the Commission may designate;

- 1 (n) that the Xspedius Operating Entities be ordered to maintain on file with the
2 Commission all current tariffs and rates, and any service standards that the
3 Commission may require;
- 4 (o) that the Xspedius Operating Entities be ordered to cooperate with Commission
5 investigations of customer complaints; and
- 6 (p) that the Xspedius Operating Entities be ordered to participate in and contribute
7 to a universal service fund, as required by the Commission.

8 21. Staff further recommended that the Xspedius Operating Entities be subject to the
9 Commission's rules governing interconnection and unbundling and the 1996 Telecommunications
10 Act and the rules promulgated thereunder, and that in the event that they provide essential services or
11 facilities that potential competitors need in order to provide their services, they should be required to
12 offer those facilities or services to those providers on non-discriminatory terms and conditions
13 pursuant to federal laws, federal rules, and state rules.

14 22. Staff further recommended that the CC&N Applications be granted subject to the
15 following conditions:

- 16 (a) Applicant be ordered to file conforming tariffs within 90 days of the Decision
17 in this matter, and in accordance with the Decision;
- 18 (b) In order to protect Applicant's customers:
 - 19 (1) the Xspedius Operating Entities should each be ordered to procure a
20 performance bond equal to \$235,000. The minimum bond amount of
21 \$235,000 should be increased if at any time it would be insufficient to
22 cover prepayments or deposits collected from each entity's customers. The
23 bond amount should be increased in increments of \$117,500 whenever the
24 total amount of the advances, deposits and prepayments is within \$23,500
25 of the bond amount;
 - 26 (2) if the Xspedius Operating Entities desire to discontinue service, they
27 should be required to file an application with the Commission pursuant to
28 A.A.C. R14-2-1107;
 - (3) the Xspedius Operating Entities should be required to notify each of their
local exchange customers and the Commission 60 days prior to filing an
application to discontinue service pursuant to A.A.C. R14-2-1107, and any
failure to do so should result in forfeiture of the performance bond;
 - (4) the Xspedius Operating Entities should each docket proof of the
performance bond within 90 days of the Decision in this matter, and the
bonds must remain in effect until further Order of the Commission;

1 (5) if at some time in the future the Xspedius Operating Entities do not collect
2 from their customers an advance, deposit, and/or prepayment, Staff
3 recommends that they be allowed to file a request for cancellation of the
4 established performance bond regarding resold interexchange service.
Such request should be filed with the Commission for Staff review. Upon
5 receipt of such filing and after Staff review, Staff will forward its
6 recommendation to the Commission; and

7 (c) If any of the above timeframes are not met, that the CC&N should become null
8 and void without further Order of the Commission, and no extensions for
9 compliance should be granted.

10 23. Staff's recommendations, as set forth in Findings of Fact Nos. 20, 21 and 22 above, are
11 reasonable.

12 24. Staff obtained fair value information from the Xspedius Operating Entities. Based on
13 that information, Staff recommends that the Commission determine Xspedius Pima's fair value rate
14 base to be \$13.6 million and Xspedius Switched's fair value rate base to be \$2.3 million. Staff
15 believes that due to the nature of the competitive market and other factors, a fair value analysis is not
16 necessarily representative of the Xspedius Operating Entities' operations. Staff stated that the rates to
17 be ultimately charged by the Xspedius Operating Entities will be heavily influenced by the market.

18 25. Currently there are several incumbent providers of local exchange and exchange
19 access services in the service territory requested by the Xspedius Operating Entities, and numerous
20 other entities have been authorized to provide competitive local exchange services in all or portions
21 of that territory.

22 26. Staff believes that the Xspedius Operating Entities lack the market power to adversely
23 affect the local exchange or interexchange telecommunications markets by either restricting output or
24 raising prices. Staff has recommended that the Xspedius Operating Entities' services be classified as
25 competitive and thus subject to the flexible pricing authority allowed by the Commission's
26 Competitive Telecommunications Services rules.

27 27. Staff believes that the Xspedius Operating Entities' lack of market power and the
28 existence of a competitive marketplace for their services should result in rates that are just and
reasonable.

1 28. It is appropriate to classify all of the Xspedius Operating Entities' proposed services as
2 competitive.

3 29. Xspedius Pima's fair value rate base is determined to be \$13.6 million, and Xspedius
4 Switched's fair value rate base is determined to be \$2.3 million for purposes of this proceeding.

5 30. On June 7, 2002, Applicants notified the customers of the e.spire Operating Entities of
6 the proposed discontinuance and transfer of service to the Xspedius Operating Entities as required by
7 the Federal Communications Commission. The June 7, 2002 letter informed customers that they
8 need not take any action, or pay any change charges, to be transferred to Xspedius, but that if they
9 choose to change providers, the terms and conditions of their e.spire contract will still apply,
10 including any applicable termination liability or change charges.

11 31. Staff recommended in the Staff Report and at the hearing that the e.spire Operating
12 Entities ensure that the affected customers receive proper discontinuance of service notification in
13 full compliance with A.A.C. R14-2-1107, and that upon such notice, that the customers be allowed to
14 elect within 90 days of a Decision in this matter to continue or discontinue service, in the customer's
15 discretion, without prejudice or regard to contractual obligation. Staff cited Commission Decision
16 No. 64740 (April 17, 2002), which gave customers 90 days to elect to continue or discontinue
17 service. Staff believes that re-notification of the e.spire Operating Entities is required.

18 32. Applicants stated at the hearing that the proposed asset purchase was based on the
19 existing customer contracts, and that the asset purchase will not alter the contracts but that they
20 understand the basis of Staff's recommendation and will abide by it if required. However, Applicants
21 asserted that in order to adequately plan their operations after the requested transfer, it is important
22 that they know the actual size of their customer base as soon as possible. Applicants would therefore
23 prefer that customers notify them of their intent to discontinue service within 30 days rather than the
24 90 days recommended by Staff.

25 33. Existing customers of the e.spire Operating Entities should be allowed to find another
26 provider if they do not wish to be transferred to the Xspedius Operating Entities, and should not
27 suffer any contractual penalties, such as termination liability or change charges, for making this
28 choice, under the circumstances of this case. We will therefore order Applicants to notify the

1 existing customers of the e.spire Operating Entities of their option to discontinue service, with no
2 contractual penalties, if the customers do not wish to be transferred to the Xspedius Operating
3 Entities.

4 34. Applicants have structured the transaction in a way that will protect the existing
5 customers from an interruption of service, with no change in rates, terms, or conditions of service.

6 35. Continued reliable service will benefit the existing customers of the e.spire Operating
7 Entities if they choose to transfer their service to the new provider.

8 36. The Xspedius Operating Entities should be given an opportunity to adequately plan
9 their operations for continued, reliable service to their customers following the transfer of assets. The
10 interests of the existing customers in having an opportunity to discontinue service with no contractual
11 penalties, under the special circumstances of this case, should be balanced with the Xspedius
12 Operating Entities' need to plan for reliable continued operations following the transfer of assets.
13 Allowing a 60 day period, following customer notification, for existing customers to elect to
14 discontinue service, free of any otherwise applicable termination liability or change charges, balances
15 the existing customers' interests with those of the Xspedius Operating Entities.

16 CONCLUSIONS OF LAW

17 1. Applicants are public service corporations within the meaning of Article XV of the
18 Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

19 2. The Commission has jurisdiction over Applicants and the subject matter of this
20 proceeding.

21 3. Notice of the hearing was given in accordance with the law.

22 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
23 Certificate to provide competitive telecommunications services.

24 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
25 Statutes, it is in the public interest for the Xspedius Operating Entities to provide the
26 telecommunications services set forth in the Joint Application.

27 6. The Xspedius Operating Entities are fit and proper entities to receive Certificates
28 authorizing them to provide competitive facilities-based and resold local exchange and exchange

1 access telecommunications services in Arizona as conditioned by Staff's recommendations.

2 7. The transfer of assets as proposed in the Joint Application and as conditioned herein is
3 in the public interest and should be approved.

4 8. The telecommunications services that the Xspedius Operating Entities intend to
5 provide are competitive within Arizona.

6 9. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,
7 it is just and reasonable and in the public interest for the Xspedius Operating Entities to establish
8 rates and charges that are not less than their total service long-run incremental costs of providing the
9 competitive services approved herein.

10 10. The competitive rates, as set forth in the Xspedius Operating Entities' proposed tariffs,
11 are just and reasonable and should be approved.

12 Staff's recommendations, as set forth in Findings of Fact Nos. 20, 21 and 22 above, are
13 reasonable and should be adopted.

14 **ORDER**

15 IT IS THEREFORE ORDERED that the applications of Xspedius Management Co. of Pima
16 County, LLC and Xspedius Management Co. Switched Services, LLC for Certificates of
17 Convenience and Necessity for authority to provide competitive facilities-based and resold local
18 exchange and exchange access telecommunications services in Arizona shall be, and are hereby,
19 granted, conditioned upon timely compliance with the following two Ordering Paragraphs.

20 IT IS FURTHER ORDERED that Xspedius Management Co. of Pima County, LLC and
21 Xspedius Management Co. Switched Services, LLC shall each file conforming tariffs in accordance
22 with this Decision within 90 days of this Decision.

23 IT IS FURTHER ORDERED that Xspedius Management Co. of Pima County, LLC and
24 Xspedius Management Co. Switched Services, LLC shall each procure a performance bond equal to
25 \$235,000 within 90 days of this Decision. The minimum bond amount of \$235,000 shall be
26 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the
27 Applicant's customers. The bond amount shall be increased in increments of \$117,500. This
28 increase shall occur when the total amount of the advances, deposits, and prepayments is within

1 \$23,500 of the bond amount.

2 IT IS FURTHER ORDERED that if Xspedius Management Co. of Pima County, LLC fails to
3 meet the timeframes outlined in the Ordering Paragraphs above, that its Certificate of Convenience
4 and Necessity conditionally granted herein shall become null and void without further Order of the
5 Commission.

6 IT IS FURTHER ORDERED that if Xspedius Management Co. Switched Services, LLC fails
7 to meet the timeframes outlined in the Ordering Paragraphs above, that its Certificate of Convenience
8 and Necessity conditionally granted herein shall become null and void without further Order of the
9 Commission.

10 IT IS FURTHER ORDERED that if Xspedius Management Co. of Pima County, LLC fails to
11 notify each of its customers and the Commission at least 60 days prior to filing an application to
12 discontinue service pursuant to A.A.C. R14-2-1107, its Certificate of Convenience and Necessity
13 shall become null and void, and its performance bond shall be forfeited.

14 IT IS FURTHER ORDERED that if Xspedius Management Co. Switched Services, LLC fails
15 to notify each of its customers and the Commission at least 60 days prior to filing an application to
16 discontinue service pursuant to A.A.C. R14-2-1107, its Certificate of Convenience and Necessity
17 shall become null and void, and its performance bond shall be forfeited.

18 IT IS FURTHER ORDERED that Xspedius Management Co. of Pima County, LLC and
19 Xspedius Management Co. Switched Services, LLC shall comply with all of the Staff
20 recommendations set forth in Findings of Fact Nos. 20 and 21 above.

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1 IT IS FURTHER ORDERED that the joint request of American Communication Services of
 2 Pima County, Inc. dba e.spire, ACSI Local Switched Services, Inc. dba e.spire, Xspedius
 3 Management Co. of Pima County, and Xspedius Management Co. Switched Services, LLC for
 4 authority pursuant to A.R.S. § 40-285 to transfer substantially all the assets of the of the e.spire
 5 Operating Entities to the Xspedius Operating Entities, for the purpose of allowing the Xspedius
 6 Operating Entities to provide service to the customers of the e.spire Operating Entities without
 7 interruption of service is approved, provided that all customers currently receiving service from
 8 American Communication Services of Pima County, Inc. dba e.spire and ACSI Local Switched
 9 Services, Inc. dba e.spire receive proper notification, following this Decision, in full compliance with
 10 A.A.C. R14-2-1107. The notice shall inform those customers that they may elect, within 60 days of
 11 the notice, to continue or discontinue service at their discretion, without prejudice or regard to
 12 contractual obligation.

13 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17 CHAIRMAN

COMMISSIONER

COMMISSIONER

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19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 20 Secretary of the Arizona Corporation Commission, have
 21 hereunto set my hand and caused the official seal of the
 22 Commission to be affixed at the Capitol, in the City of Phoenix,
 23 this ____ day of _____, 2002.

24 _____
 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

25 DISSENT _____
 26 TW:mlj

1 SERVICE LIST FOR: ACSI LOCAL SWITCHED SERVICES, INC.

2 DOCKET NO. T-04112A-02-0450 et al.

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9 American Communication Services of Pima County, Inc. dba e.spire;
10 Xspedius Management Co. Switched Services, LLC
11 Xspedius Management Co. of Pima County, LLC

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