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WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

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ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

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. 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 XPEDIUS 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

Arizona Corporation Commission

DOCKETED

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DOCKETED BY *CAK*

IN THE MATTER OF THE APPLICATION OF XPEDIUS MANAGEMENT CO. OF PIMA COUNTY; LLC AND IT PETITION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES

DOCKET NO. T-04112A-02-0451

IN THE MATTER OF THE APPLICATION OF XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC AND ITS PETITION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES

DOCKET NO. T-04113A-02-0452

MOTION TO CONSOLIDATE AND REQUEST FOR AN EVIDENTIARY HEARING

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby respectfully requests that all of the above cases be consolidated under one

1 procedural track for the reasons that are described below. Staff makes this motion pursuant to A.A.C.
2 R14-3-109(H). Staff states the reasoning for its request as follows:

3 First: Applicant, American Communication Services of Pima County, Inc. (“ACSI of
4 Pima County”) and ACSI Local Switched Services, Inc. (“ACSI Local”), which will together be
5 known as the “e.spire Operating Entities”, are seeking to have substantially all of their assets
6 transferred to Xspedius Management Co. of Pima County, LLC (“Xspedius of Pima County”) and
7 Xspedius Management Co. Switched Services, LLC (“Xspedius Switched), which will
8 together be known as the “Xspedius Operating Entities.” All of these entities, who will be known
9 hereinafter as “Applicants”, have filed an application under Docket Nos. T-04112A-02-0450, T-
10 04113A-02-0450, T-03597A-02-0450, and T-03411A-02-045002-0450 (collectively “02-0450”) seeking
11 approval by this Commission under A.R.S. § 40-285 for the transfer of assets described
12 in their application. In the same application, Applicants are seeking discontinuance of the
13 certificates of convenience and necessity (“CC&N”) of the e.spire Operating Entities, pursuant to
14 A.A.C. R14-2-1107.

15 Second: In Docket No. T-04112A-02-0451 (“02-0451”), Xspedius of Pima County is
16 requesting a CC&N to provide competitive telecommunications service in accordance with A.A.C.
17 14-2-1103. In Docket No. T-04113A-02-0452 (“02-0452”), Xspedius Switched is requesting a
18 CC&N to provide competitive telecommunications service in accordance with A.A.C. R14-2-1103.

19 Based on all of the above applications, and after consultation with counsel for the Applicants
20 on all three cases, it appears that Applicants are essentially seeking a transfer of the competitive
21 telecommunications CC&Ns from the e.spire Operating Entities (“e.spire”) to the Xspedius
22 Operating Entities (“Xspedius”). This transfer comprises transferring the assets from e.spire to
23 Xpedius pursuant to A.R.S. § 40-285, and having the CC&Ns approved as described above pursuant
24 to A.A.C. R14-2-1103. After both of those steps were complete, e.spire would seek discontinuance
25 of their CC&Ns pursuant to A.A.C. R14-2-1107.

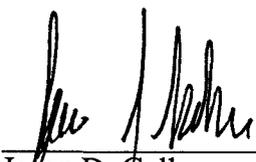
26 Because all the above cases are inextricably related to one another, Staff believes it is
27 appropriate to consolidate all three dockets under one procedural track. Staff believes the issues in
28 these matters are substantially related and no parties’ rights will be prejudiced by consolidation.

1 Because multiple items and issues are involved in this case, Staff proposes the following procedure
2 as one possible method to deal with the subject matter:

- 3 1. Set a procedural order for an evidentiary hearing to occur on the transfer of assets
4 portion of Docket Nos. 02-0450, and on the new CC&N applications under 02-0451
5 and 02-0452. A staff report would be issued regarding recommendations, terms and
6 conditions. Notice and procedural matters would be handled in accordance with
7 A.A.C. R14-3-101 through A.A.C R14-3-113 inclusive, as well as A.A.C 14-2-1103
8 and A.R.S. § 40-281 through 40-285 and all other applicable Arizona law.
- 9 2. The Administrative Law Judge could issue a recommended opinion and order on the
10 above issues, which would proceed to the next available open meeting for a
11 Commission decision.
- 12 3. Depending on the Commission decision on the above issues, a proceeding would then
13 commence on the discontinuance portion of the application under Docket No. 02-
14 0450 in accordance with A.A.C. R14-2-1107 and Arizona Law. This portion may or
15 may not need an evidentiary hearing and could proceed straight to open meeting.

16 Staff believes all of the above cases are related and are appropriate for consolidation. Staff
17 further believes that consolidation could be achieved via the above method without having to disturb
18 any applicable regulation or statute. Staff would further request a procedural order for an evidentiary
19 hearing on all three cases as described above. Staff believes that such a request is in the public
20 interest.

21 RESPECTFULLY SUBMITTED this 5th day of July, 2002.

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24 
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1 Pursuant to R14-3-204 the
2 ORIGINAL and twenty-five
3 copies were filed this 5th day of
4 July, 2002 with:

5 Docket Control
6 Arizona Corporation Commission
7 1200 West Washington Street
8 Phoenix, Arizona 85007

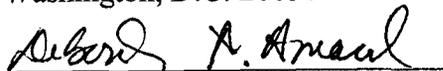
9 COPY of the foregoing was
10 mailed/hand-delivered this 5th
11 day of July, 2002, to:

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