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B. ARIZONA CORPORATION COMMISSION RECEIVED

1
2 WILLIAM A. MUNDELL
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5

2002 JUL 25 A 11: 29

AZ CORP COMMISSION
DOCUMENT CONTROL

6 IN THE MATTER OF THE APPLICATION OF
7 THE JOINT APPLICATION OF ACSI LOCAL
8 SWITCHED SERVICES, INC., D/B/A E.SPIRE
9 AND AMERICAN COMMUNICATION
10 SERVICES OF PIMA COUNTY, INC. D/B/A
11 E.SPIRE AND XSPEDIUS MANAGEMENT CO.
12 SWITCHED SERVICES LLC AND XSPEDIUS
13 MANAGEMENT CO. OF PIMA COUNTY, L.L.C.
14 FOR EXPEDITED APPROVAL OF (I) THE
15 TRANSFER OF SUBSTANTIALLY ALL OF THE
16 ASSETS, INCLUDING THE CUSTOMER
17 CONTRACTS, OF THE E.SPIRE OPERATING
18 ENTITIES TO THE XSPEDIUS OPERATING
19 ENTITIES; (II) THE DISCONTINUANCE OF
20 TELECOMMUNICATIONS SERVICES IN
21 ARIZONA BY THE E.SPIRE OPERATING
22 ENTITIES.

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

Arizona Corporation Commission
DOCKETED

JUL 25 2002

DOCKETED BY *CR*

15 IN THE MATTER OF THE APPLICATION OF
16 XSPEDIUS MANAGEMENT CO. OF PIMA
17 COUNTY, LLC FOR A CERTIFICATE OF
18 CONVENIENCE AND NECESSITY TO
19 PROVIDE ALL FORMS OF COMPETITIVE
20 RESOLD AND FACILITIES BASED LOCAL
21 EXCHANGE, EXCHANGE ACCESS, AND
22 INTEREXCHANGE TELECOMMUNICATIONS
23 SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04112A-02-0451

20 IN THE MATTER OF THE APPLICATION OF
21 XSPEDIUS MANAGEMENT CO. SWITCHED
22 SERVICES, LLC FOR A CERTIFICATE OF
23 CONVENIENCE AND NECESSITY TO
24 PROVIDE ALL FORMS OF COMPETITIVE
25 RESOLD AND FACILITIES BASED LOCAL
26 EXCHANGE, EXCHANGE ACCESS, AND
27 INTEREXCHANGE TELECOMMUNICATIONS
28 SERVICE IN THE STATE OF ARIZONA.

DOCKET NO. T-04112A-02-0452
3

PROCEDURAL ORDER

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 ("Xpedius Pima") and

1 Xspedius Management Co. Switched Services, LLC ("Xspedius Switched") (the "Xspedius Operating
2 Entities") (collectively, "Applicants") filed with the Arizona Corporation Commission
3 ("Commission") the above-captioned joint application for authority pursuant to A.R.S. § 40-285 to
4 transfer substantially all the assets of the of the e.spire Operating Entities to the Xspedius Operating
5 Entities, for the purpose of allowing the Xspedius Operating Entities to provide service to the
6 customers of the e.spire Operating Entities without interruption of service ("Joint Application"),
7 which also requests authority for the e.spire Operating Entities to discontinue the provision of local
8 exchange service, pursuant to A.A.C. R14-2-1107.

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

12 On July 1, 2002, the Commission's Utilities Division Staff ("Staff") docketed letters notifying
13 Xspedius Pima and Xspedius Switched of deficiencies in their CC&N Applications and requesting
14 submission of additional data.

15 On July 5, 2002, Staff filed in the above-captioned dockets a Motion to Consolidate and
16 Request for Evidentiary Hearing ("Motion").

17 Applicants have indicated that they are not opposed to the procedure outlined in Staff's
18 Motion. The Joint Application states that Applicants are complying with Commission Rules relating
19 to discontinuance of service. Applicants notified their customers of the proposed discontinuance and
20 transfer of service on June 7, 2002.

21 By Procedural Order of July 11, 2002, the Joint Application and the CC&N Applications were
22 consolidated. The Procedural Order stated that at such time that the CC&N Applications were
23 complete, that a hearing would be set on the CC&N Applications and on the transfer of assets portion
24 of the Joint Application.

25 On July 24, 2002, Staff docketed letters notifying Xspedius Pima and Xspedius Switched that
26 their CC&N Applications are administratively complete. Accordingly, a hearing should be set on the
27 CC&N Applications and on the transfer of assets portion of the Joint Application. The
28

1 discontinuance of service portion of the Joint Application will be considered following a Commission
2 Decision on the issues relating to the CC&N Applications and on the transfer of assets.

3 A procedural conference was held on this matter. At the procedural conference, Applicants
4 indicated that in order to expedite the hearing process, they are willing to waive the right to object to
5 any motions to intervene in this matter following publication of notice of the hearing.

6 Staff indicated that it would file a Staff Report on the hearing matters by July 26, 2002.

7
8 IT IS THEREFORE that the hearing on the transfer of assets portion of the Joint Application
9 and on the CC&N Applications shall commence on **August 6, 2002 at 11:00 a.m.** or as soon
10 thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Arizona 85007.

11 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
12 except that all motions to intervene must be filed on or before August 12, 2002.

13 IT IS FURTHER ORDERED that Applicants shall provide public notice of the hearing on the
14 transfer of assets portion of the Joint Application and on the CC&N Applications, in the following
15 form and style, with the heading in no less than 16 pt. type and the body in no less than 12 pt. type:

16 **PUBLIC NOTICE OF HEARING ON THE APPLICATIONS OF AMERICAN**
17 **COMMUNICATION SERVICES OF PIMA COUNTY, INC. D/B/A E.SPIRE AND ACSI**
18 **LOCAL SWITCHED SERVICES, INC. D/B/A E.SPIRE FOR AUTHORITY TO TRANSFER**
19 **ASSETS, AND BY XSPEDIUS MANAGEMENT CO. OF PIMA COUNTY, LLC AND**
20 **XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC FOR CERTIFICATES OF**
21 **CONVENIENCE AND NECESSITY**
22 **DOCKET NOS. T-04112A-02-0450 ET AL.**

23 Xspedius Management Co. of Pima County, LLC and Xspedius Management Co.
24 Switched Services, LLC ("Companies") have filed with the Arizona Corporation
25 Commission ("Commission") Applications for Certificates of Convenience and
26 Necessity ("CC&Ns") to provide competitive resold and facilities based local
27 exchange, exchange access, and interexchange telecommunications service in the State
28 of Arizona. These Applications have been consolidated with an application filed
jointly by the Companies and American Communication Services of Pima County,
Inc. dba e.spire, and ACSI Local Switched Services, Inc. dba e.spire ("e.spire
Entities") for authority pursuant to A.R.S. § 40-285 to transfer substantially all the
e.spire Entities' assets to the Companies and to discontinue the e.spire Entities'
provision of competitive local exchange service, pursuant to A.A.C. R14-2-1107.

The consolidated Applications are available for inspection during regular business
hours at the offices of the Commission in Phoenix, at 1200 West Washington Street,
Phoenix, Arizona, and at the Companies' offices, [insert Companies' address(es)].

1 The Commission will hold a hearing on the requested asset transfers and CC&N
2 Applications beginning **August 6, 2002 at 11:00 a.m.** at the Commission's offices,
1200 West Washington, Phoenix, Arizona. Public comments will be taken on the first
3 day of the hearing.

4 You may have the right to intervene in the proceeding. If you do not want to
5 intervene, you may appear at the hearing and make a statement on your own behalf.
6 Intervention will be permitted to any person entitled by law to intervene and having a
7 direct and substantial interest in the matter. Persons desiring to intervene must file a
8 written motion to intervene with the Commission. Such motion should also be sent to
9 the Companies or their counsel and to all parties of record, and must, at the minimum,
10 contain the following:

- 11 1. The name, address, and telephone number of the proposed intervenor
12 and of any party upon whom service of documents is to be made if
13 different than the intervenor.
- 14 2. A short statement of the proposed intervenor's interest in the
15 proceeding (e.g., a customer of the Companies or the e.spire Entities, a
16 stockholder of the Companies or the e.spire Entities, a competitor, etc.).
- 17 3. A statement certifying that a copy of the motion to intervene has been
18 mailed to the Companies and the e.spire Entities or their counsel and to
19 all parties of record in the case.

20 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
21 that all motions to intervene in the hearing matters must be filed on or before **August**
22 **12, 2002.** The granting of intervention, among other things, entitles a party to present
23 sworn evidence at hearing and to cross-examine other witnesses. However, failure to
24 intervene will not preclude any person or entity from appearing at the hearing and
25 making a public statement, or from filing written comments in the record of this
26 proceeding.

27 If you have any questions about this application, or want information on intervention
28 or the filing of written comments, you may contact the Consumer Services Section of
the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-
800-222-7000.

The Commission does not discriminate on the basis of disability in admission to its
public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, as well as request this document in an alternative
format, by contacting Shelly Hood, ADA Coordinator, voice phone number 602/542-
3931, E-mail shood@cc.state.az.us. Requests should be made as early as possible to
allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Applicants shall cause the above notice to be mailed to all
current customers of the e.spire Operating Entities, and shall cause the above notice to be published
once in newspapers in all counties that the e.spire Operating Entities currently serve and in all

1 counties that the Xspedius Operating Entities desire to serve, with the mailing and publication to be
2 completed no later than July 29, 2002.

3 IT IS FURTHER ORDERED that Applicants shall file certification of mailing and publishing
4 as soon as practicable after the mailing and publication has been completed, but not later than August
5 2, 2002.
6

7 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and
8 publication, notwithstanding the failure of an individual to read or receive the notice.

9 IT IS FURTHER ORDERED that Staff shall file a Staff Report on the transfer of assets
10 portion of the Joint Application and on the CC&N Applications on or before July 26, 2002.

11 IT IS FURTHER ORDERED that Applicants shall file any disagreements with the Staff
12 Report on the transfer of assets portion of the Joint Application and on the CC&N Applications on or
13 before August 2, 2002.
14

15 IT IS FURTHER ORDERED that Staff shall file a Staff Report on the discontinuance of
16 service portion of the Joint Application on or before September 27, 2002.

17 IT IS FURTHER ORDERED that Applicants shall file any disagreements with the Staff
18 Report on the discontinuance of service portion of the Joint Application on or before October 11,
19 2002.
20

21 IT IS FURTHER ORDERED that as this matter is now set for hearing, the Ex Parte Rule
22 (A.A.C. R14-3-113-Unauthorized Communications) applies to this proceeding and shall remain in
23 effect until the Commission's Decision in this matter is final and non-appealable.

24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 25th day of July, 2002.

4
5 
6 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

7 Copies of the foregoing mailed/delivered
8 this 25th day of July, 2002 to:

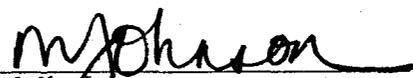
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ARIZONA REPORTING SERVICE, INC
2627 N. Third Street, Suite Three
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27 By: 
28 Molly Johnson
Secretary to Teena Wolfe