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BEFORE THE ARIZONA CORPORATION COMMISSION

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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, L.L.C., 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 No. T-04112A-02-0450  
T-04113A-02-0450  
T-03411A-02-0450  
T-03597A-02-0450  
(Consolidated)

Arizona Corporation Commission

DOCKETED

AUG 16 2002

DOCKETED BY *CMC*

IN THE MATTER OF THE APPLICATION OF XSPEDIUS MANAGEMENT CO. OF PIMA COUNTY, L.L.C. FOR A 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, L.L.C. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES

Docket No. T-04113A-02-0452

EXCEPTIONS OF XSPEDIUS OPERATING ENTITIES

Xspedius Management Co. Switched Services, L.L.C. and Xspedius Management Co. of Pima County, L.L.C. (together "Xspedius Operating Entities") submit their

1 exceptions to the Recommended Opinion and Order.

2 The Xspedius Operating Entities take exception to a single condition related to the  
3 transfer of assets – the requirement that customers whose service is being transferred from  
4 the e.spire Operating Entities to the Xspedius Operating Entities be allowed “to elect . . . to  
5 continue or discontinue service at their discretion, without prejudice or regard to contractual  
6 obligation.” [Recommended Opinion and Order at 13:10-12] The Xspedius Operating  
7 Entities object to this requirement (the “Fresh look” requirement) for several reasons.

8 First, the service contracts at issue are valuable assets that were purchased through  
9 the bankruptcy court auction and sale. Those contracts are an important factor in the  
10 Xspedius Operating Entities’ operations in the Tucson market where it will be providing  
11 service. Indeed, the physical assets, without the customers served over them, have  
12 significantly less value to the purchaser. The customers in question took literally years for  
13 e.spire to accrue. If one-third or one-half were to take advantage of the opportunity to  
14 escape from their contracts, it could take several years more for Xspedius to return to the  
15 same level of customers. By allowing customers to ignore their contracts, the Commission  
16 will create a situation where the Xspedius Operating Entities may suffer significant  
17 economic hardship. Such hardship may interfere with the Xspedius Operating Entities’  
18 ability to fully compete in the market and will harm competition in the Tucson.  
19 Importantly, the Xspedius Operating Entities intend to serve *all* e.spire customers. They  
20 will not “cherry-pick” only the more profitable customers. Therefore, this situation is  
21 significantly different from the single instance in which this “fresh-look” requirements was  
22 previously imposed;<sup>1</sup> there, the new CLEC intended to drop certain customers. Because the  
23 Xspedius Operating Entities will continue to serve *all* contract customers, it should receive  
24 the benefit of all those contracts. Moreover, the customers signed the contracts expecting to  
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26 <sup>1</sup> This “fresh look” requirement apparently has been applied in only one other telecom-  
27 munications asset transfer of which applicants are aware. [See Decision No. 64740 (April 17,  
2002)]

1 be bound by the term of the contracts. Customers will continue to receive the same services  
2 at the same rates under the transferred contracts. [See Proposed Opinion and Order,  
3 Findings of Fact ¶¶ 8, 24] Indeed, Xspedius is obligated to meet those service obligations  
4 under the contracts. If the Xspedius Operating Entities fail to meet those contractual  
5 obligations, the customers will be free to switch companies.

6 Second, the operational uncertainty created by this “fresh look” period will interfere  
7 with the stability of Xspedius Operating Entities’ business operations. As noted in the  
8 Recommendation Opinion and Order, it is important for Xspedius to be able to plan its  
9 operations to able to provide continuous and reliable service to its customers following the  
10 transfer of assets. The “fresh look” requirement throws a large monkey wrench into those  
11 plans. The Xspedius Operating Entities will not be able to determine their operational  
12 support needs until after the “fresh look” period passes. That uncertainty may delay  
13 necessary operational changes. It may also jeopardize employment opportunities at the  
14 Xspedius Operating Entities – particularly if many customers leave.

15 Third, this requirement was not imposed on a key competitor in the Tucson market –  
16 Time Warner Telecom – when it purchased GST’s assets. [See Decision No. 63262  
17 (December 14, 2000)] Discriminatory treatment between two competitors – both of whom  
18 have made investments in infrastructure to provide service – is inappropriate. This is  
19 particularly true in this case where Time Warner was not subject to this requirement, but  
20 will reap the benefits of the disparate treatment afforded Xspedius because it can now  
21 attempt to lure Xspedius customers away to obtain service off of the assets it recently  
22 purchased from GST.

23 In sum, the Xspedius Operating Entities submit that the “fresh look” requirement is  
24 not in the overall public interest because: (i) it interferes with the competitive market; (ii) it  
25 creates unnecessary instability for Xspedius and its employees; and (iii) it is discriminatory.

26 ...  
27 ...

1 THEREFORE, the Xspedius Operating Entities request the Recommended Opinion  
2 and Order be amended: (i) by deleting Paragraphs 33 and 36 of the Findings of Fact and (ii)  
3 by deleting the last sentence of the ordering paragraph on page 13.  
4

5 RESPECTFULLY SUBMITTED August 16, 2002.

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26 ORIGINAL + 10 COPIES of the foregoing  
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