



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner
BARRY WONG
Commissioner

Arizona Corporation Commission

DOCKETED

SEP 21 2006

DOCKETED BY nr

IN THE MATTER OF THE NOTICE OF
INTENT OR, ALTERNATIVELY, JOINT
APPLICATION FOR A LIMITED WAIVER
OF A.A.C R14-2-803, BY TIME WARNER
TELECOM OF ARIZONA LLC AND
XSPEDIUS COMMUNICATIONS, LLC.

DOCKET NOS. T-03943A-06-0495
T-04112A-06-0495
T-04113A-06-0495

DECISION NO. 68958
ORDER

Open Meeting
September 19 and 20, 2006
Phoenix, Arizona

BY THE COMMISSION:

Introduction

On July 31, 2006, Time Warner Telecom, Inc. ("Time Warner Telecom"), and Xspedius Communications, LLC ("Xspedius Parent"), jointly submitted an application to reorganize an existing public utility holding company in connection with the proposed merger involving Time Warner Telecom and Xspedius. The Applicants seek expedited review and approval of this transaction without a hearing under A.A.C. R14-2-803(B) or, alternatively, a limited wavier of A.A.C. R14-2-803.

On August 15, 2006, Time Warner Telecom, on behalf of both Applicants, waived the time periods set for Staff and the Commission by R14-2-803(B). The wavier was communicated via email.

...

1 On August 25, 2006, Time Warner Telecom, on behalf of both Applicants, responded to
2 Staff's First Set of Data Requests.

3 FINDINGS OF FACT

4 Background of Applicants

5 The Companies in their Application represent the following:

6 1. Time Warner Telecom is a Delaware corporation, headquartered in Littleton,
7 Colorado, that provides services within the telecommunications, healthcare, finance, higher
8 education, manufacturing, and hospitality industries to businesses in 24 states and 44 U.S.
9 metropolitan areas.

10 2. Time Warner Telecom of Arizona LLC ("TWTA") is a leading provider of
11 telecommunications services to business customers in the Phoenix and Tucson metropolitan areas.
12 In 2001, TWTA entered the Phoenix and Tucson markets by purchasing out of bankruptcy
13 substantially all of the assets of GST Telecommunications Inc.

14 3. XPD Acquisition, LLC ("XPD") is a Delaware limited liability company
15 established as a wholly-owned subsidiary of Time Warner Telecom for the purpose of completing
16 the Merger and other transactions contemplated by this Agreement and proposed Transaction.

17 4. Xspedius Parent is a Delaware limited liability company, headquartered in
18 O'Fallon, Missouri, and provides services to business customers in 20 states across the Southern
19 and Southwestern United States.

20 5. Xspedius Management Co. Switched Services, LLC and Xspedius Management Co.
21 of Pima County, LLC ("Xspedius Certificated Subsidiaries") are limited liability companies
22 formed under the laws of the State of Delaware, with their principal addresses at 5555 Winghaven
23 Boulevard, Suite 300, O'Fallon, Missouri 63368. Both companies were certified as Competitive
24 Local Exchange Carriers ("CLECs") by the Arizona Corporation Commission in Decision
25 No. 65124 (August 23, 2002). Xspedius Certificated Subsidiaries provide local, long distance,
26 integrated, and Internet access solutions to small and medium-sized business customers.

27 ...

28 ...

1 The Companies' Request

2 The Applicants represent the following:

3 6. The Agreement and Plan of Merger ("Agreement") provides that Xspedius Parent
4 will become a wholly-owned subsidiary of Time Warner Telecom. To facilitate this transaction
5 ("Merger"), Time Warner Telecom has created a wholly-owned subsidiary called XPD. Under the
6 Agreement, XPD will merge with and into Xspedius Parent, with Xspedius Parent continuing as
7 the surviving entity and as a wholly-owned subsidiary of Time Warner Telecom.

8 7. At the time of the Merger, all of the ownership interests of Xspedius Parent
9 immediately prior to the Merger shall cease to exist in exchange for consideration consisting of
10 Time Warner Telecom stock and cash received by the owners of Xspedius Parent pursuant to the
11 Merger.

12 8. As a result of XPD merging into Xspedius Parent, Time Warner Telecom will own
13 one hundred percent (100%) of the membership interest of Xspedius Parent. The surviving parent
14 company of the Xspedius Certificated Subsidiaries is Xspedius Parent, which will be wholly-
15 owned by Time Warner Telecom.

16 9. The Merger will not change the ownership of the Xspedius Certificated
17 Subsidiaries. The Merger will not affect the Commission's ability to regulate the intrastate
18 operations of these two Arizona subsidiaries. At the time of approval, customers of the Xspedius
19 Certificated Subsidiaries will continue to obtain service from these same certificated entities, but
20 the ownership of their parent company, Xspedius Parent, will change to Time Warner Telecom.
21 Upon consummation of the Merger, each subsidiary will continue to hold the same Certificates of
22 Convenience and Necessity ("CC&N") it held prior to the transaction. No assets will be
23 transferred from one certified carrier to another as a result of the Merger.

24 10. Immediately after close, Time Warner Telecom and its subsidiaries propose to
25 continue operating under the same tariffs, rates, contract terms and conditions as prior to the
26 Merger.

27 ...

28 ...

1 Staff's Analysis & Recommendations

2 11. The Applicants' Agreement states that the Merger must be completed by
3 January 31, 2007. However, the Applicants have indicated to Staff that they propose to close the
4 transaction by October 31, 2006. The accelerated date has been established to mitigate financial
5 consequences associated with market uncertainties created by a change of ownership and potential
6 impacts on customer communications, employee relations, and investor relations public
7 announcements. The Applicants also believe that the ability to achieve merger synergies, retain
8 employees, invest in the Xspedius operating entities, as well as the ultimate value of the stock
9 portion of the acquisition price are dependent on the closing date of the Merger.

10 12. The Applicants state that their investment in Arizona should not be adversely
11 impacted by the proposed transaction. The Applicants have indicated to Staff that since Xspedius
12 came into existence in September 2002, Xspedius has invested \$659,971 in its Arizona network.
13 From January 2001 through July 31, 2006, TWT invested approximately \$30 Million, mainly in
14 fiber optics, conduit, and network equipment.

15 13. While the Applicants have stated that the Merger hopes to achieve cost synergies of
16 approximately \$40 to \$50 million, within 12 to 18 months of closing, by leveraging existing local
17 and regional operating structures and optimizing network capabilities and costs, no calculation has
18 been performed on a state specific basis. Therefore, the Applicants have not been able to provide
19 Staff with any cost synergies directly associated with Arizona operations.

20 14. Confidential information provided in Annual Reports indicates that the Applicants
21 jointly serve a significant number of access lines to the Small and Enterprise Business markets in
22 Arizona. Staff believes the total lines served by the Applicants places the joint operations among
23 the top 10 business CLECs in Arizona.

24 15. At this time, the Applicants only provide services to business customers in Arizona.
25 As such, this proposed transaction does not pose any impact to Arizona's residence end-users.

26 16. Staff understands that to avoid customer confusion only Xspedius customers will
27 receive a customer notice regarding the proposed merger at this time. TWT has explained that
28 after the proposed merger is completed, the Applicants propose to seek permission to consolidate

1 Arizona subsidiaries into one provider. At that time, customers will receive the standard notice that
2 the Commission has typically required when customers are actually transferred. For that reason,
3 the customer notice provided to Staff is only for Xspedius customers (the only entity impacted by
4 this proposed transaction) and attempts to make clear that nothing will change as a result of the
5 proposed transaction in this application. A draft of the proposed customer notice is attached as
6 Exhibit A.

7 17. TWT currently employs 30 employees located in Phoenix and 18 employees
8 located in Tucson. Xspedius affiliates currently employ 16 employees located in Tucson and do
9 not have any employees in the Phoenix area. The Applicants have stated that this transaction
10 should not result in forced reductions that will reduce the Arizona employee base.

11 18. The Applicants have been found to be in compliance and good standing by the
12 Commission's Compliance and Consumer Services sections.

13 19. Staff recommends that the joint application of Time Warner Telecom and Xspedius
14 Parent to reorganize an existing holding company in connection with the proposed merger of Time
15 Warner Telecom, Inc. and Xspedius Communications, LLC be approved.

16 20. Staff further recommends that the joint application of Time Warner Telecom and
17 Xspedius Parent for expedited review and approval of this transaction without a hearing under
18 A.A.C. R14-2-803(B) be approved.

19 21. Staff further recommends that the Commission order include the following
20 conditions:

- 21 1. That for one year following acquisition close or until Time Warner Telecom, Inc.
22 and Xspedius Communications, LLC inform the Commission by filing an affidavit
23 with Docket Control that acquisition-related activities are completed, whichever
24 occurs last, Time Warner Telecom, Inc. and Xspedius Communications, LLC
25 provide written notification to the Director of the Utilities Division and to the
26 individual members of the Commission, at least 60 days in advance, of any planned
27 acquisition-related Arizona workforce layoffs; any planned acquisition-related
28 Arizona plant closings; and any planned acquisition-related Arizona facility
closings.
2. That within 18 months of closing the proposed transaction Time Warner Telecom,
Inc. and Xspedius Communications, LLC provide the Commission through
protective agreements an accounting of the merger synergies attributable to the state
of Arizona.

1 IT IS FURTHER ORDERED that for one year following acquisition close or until Time
2 Warner Telecom, Inc. and Xspedius Communications, LLC inform the Commission by filing an
3 affidavit with Docket Control, as a compliance item in this case, that acquisition-related activities
4 are completed, whichever occurs last, Time Warner Telecom, Inc. and Xspedius Communications,
5 LLC provide written notification to the Director of the Utilities Division and to the individual
6 members of the Commission, at least 60 days in advance, of any planned acquisition-related
7 Arizona workforce layoffs; any planned acquisition-related Arizona plant closings; and any
8 planned acquisition-related Arizona facility closings.

9 IT IS FURTHER ORDERED that within 18 months of closing the proposed transaction
10 Time Warner Telecom, Inc. and Xspedius Communications, LLC provide the Commission through
11 protective agreements an accounting of the merger synergies attributable to the state of Arizona.

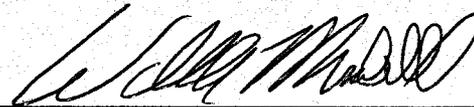
12 ...
13 ...
14 ...
15 ...
16 ...
17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that customer notices be mailed to all existing Xspedius
2 Communication, LLC customers within 30 days of a Commission decision in this application

3 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.
4

5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

6
7 
8 CHAIRMAN

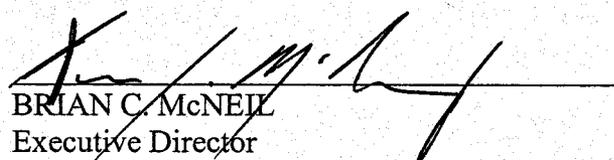

9 COMMISSIONER

10
11 
12 COMMISSIONER


13 COMMISSIONER


14 COMMISSIONER

15 IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto, set my hand and caused the official seal of this
18 Commission to be affixed at the Capitol, in the City of
19 Phoenix, this 21st day of September, 2006.

20 
21 BRIAN C. McNEIL
22 Executive Director

23 DISSENT: _____

24 DISSENT: _____

25 EGJ:AFF:lhM/RM
26
27
28

1 SERVICE LIST FOR: TIME WARNER TELECOM, INC. AND XSPEDIUS
COMMUNICATIONS, LLC
2 DOCKET NOS. T-03943A-06-0495, T-04112A-06-0495 and T-04113A-06-0495
3

4 Ms. Joan S. Burke
Osborn Maledon PA
5 2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012
6

7 Mr. Lawrence P. Beilenson
SVP & General Counsel
8 Xspedius Communications, LLC
5555 Winghaven Blvd., Suite 300
9 O'Fallon, Missouri 63368

10 Mr. Ernest G. Johnson, Esq.
Director, Utilities Division
11 Arizona Corporation Commission
12 1200 West Washington Street
Phoenix, Arizona 85007
13

14 Mr. Christopher Kempley
Chief Counsel, Legal Department
15 1200 West Washington Street
Phoenix, Arizona 85007
16

17

18

19

20

21

22

23

24

25

26

27

28

<<INSERT DATE>>

Exhibit A
[DRAFT NOTICE]

IMPORTANT NOTICE REGARDING YOUR TELEPHONE PROVIDER

Dear Xspedius Customers:

This notice is to advise you that Time Warner Telecom Inc. ("Time Warner Telecom") and Xspedius Communication, LLC ("Xspedius") have entered into an agreement and plan of merger. In this transaction, Time Warner Telecom will acquire Xspedius and its operating subsidiaries. Xspedius is the parent company of the following certified subsidiaries providing telecommunications service in Arizona: Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC ("Certified Subsidiaries"). Time Warner Telecom will acquire the parent of these Certified Subsidiaries. However, this will **not** change the customer's service provider without further regulatory action, nor will the transaction result in any change in the terms or condition of service provided to customers.

The Notice of Intent, filed by Time Warner Telecom and Xspedius (Applicants") with the Arizona Corporation Commission ("Commission") pursuant to Arizona Administrative Code R14-2-803, requests regulatory approval of the proposed merger of Time Warner Telecom and Xspedius. This Notice of Intent and subsequent filings in this proceeding are available for inspection during regular business hours at the offices of the Commission located at 1200 West Washington Street, Phoenix, Arizona 85007, and at the offices of Osborn Maledon, P.A., 2929 N. Central, Ste. 2100, Phoenix, AZ 85007.

Your service provider will not change as a result of this transaction. You will continue to receive the same telecommunications services you currently receive in accordance with the rates, terms and conditions of your existing contract or effective tariffs on file with the Arizona Corporation Commission. If, in the future, the Xspedius Certified Subsidiaries or Time Warner Telecom determines that rates, terms, or conditions require modification, they will follow the contract terms and the Arizona Corporation Commission rules regarding such changes, including, where required, written 30 day notice to customers. Additionally, if Time Warner Telecom seeks to reorganize its Certified Subsidiaries, including the Xspedius Certified Subsidiaries, it will seek approval of any such reorganization from the Commission and will again provide customers with notice of its intentions.

If you have any questions for the Commission about this Notice of Intent, or want information regarding this proceeding, 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 reasonable accommodations such as sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, lhogan@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

If you have any questions about Time Warner Telecom's plan to merge with Xspedius, please call Xspedius at 1-866-615-1647, or visit the Xspedius web-site at <http://www.xspedius.com> or the Time Warner Telecom web-site at www.twtelecom.com.

Cordially,

Decision No. 68958