

OPEN MEETING ITEM  
ORIGINAL



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COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
DOCKETED

FEB 23 2007

DATE: FEBRUARY 23, 2007

DOCKET NOS: T-03943A-06-0691, T-04112A-06-0691 and T-04113A-06-0691

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Order on:

TIME WARNER TELECOM OF ARIZONA, LLC; XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC and XSPEDIUS MANAGEMENT COMPANY OF PIMA COUNTY, LLC.  
(ENCUMBER ASSETS)

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 **4:00 p.m.** on or before:

MARCH 5, 2007

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 Commission's Working Session and Open Meeting to be held on:

MARCH 13, 2007 AND MARCH 14, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE JOINT APPLICATION  
OF TIME WARNER TELECOM OF ARIZONA,  
LLC, XSPEDIUS MANAGEMENT CO.  
SWITCHED SERVICES, LLC AND XSPEDIUS  
MANAGEMENT CO. OF PIMA COUNTY, LLC  
FOR APPROVAL TO ENCUMBER ASSETS IN  
CONNECTION WITH NEW FINANCING.

DOCKET NO. T-03943A-06-0691  
DOCKET NO. T-04112A-06-0691  
DOCKET NO. T-04113A-06-0691

DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
March 13 and 14, 2007  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 26, 2006, Time Warner Telecom of Arizona, LLC ("TWT Arizona"), Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. (collectively "Applicants") filed a joint application with the Arizona Corporation Commission ("Commission") for authorization to encumber assets in the State of Arizona in connection with providing their guarantees and otherwise provide security in connection with a \$600 million senior secured bank term loan ("Term Loan") and a \$100 million secured bank revolving credit facility (collectively "loans"), on behalf of their parent, Time Warner Telecom Holdings, Inc. ("TWT Holdings"). The Applicants also request authorization for Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. to act as guarantors and encumber assets in conjunction with credit facilities previously approved by the Commission.

1           2.       On December 8, 2006, Applicants filed a Notice of Filing Affidavit of Publication  
2 which indicated that notice of the application was published in the December 8, 2006 edition of the  
3 *Arizona Republic*.

4           3.       On January 30, 2007, the Commission's Utilities Division ("Staff") filed a Staff  
5 Report recommending approval of the application to issue guarantees and pledge Arizona assets as  
6 security for TWT Holdings' proposed debt financing.

7           4.       TWT Arizona received a Certificate of Convenience and Necessity ("CC&N") from  
8 the Commission in Decision No. 63262 (December 14, 2000) and provides "last-mile" broadband  
9 data, voice, dedicated internet access, and dedicated web hosting to business customers in the  
10 Phoenix and Tucson metropolitan areas.

11          5.       Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of  
12 Pima County, LLC ("Xspedius Certificated subsidiaries") are certificated competitive local exchange  
13 carriers pursuant to Decision No. 65124 (August 23, 2002) and provide local, long distance,  
14 integrated, and internet access to small and medium-sized business customers. In Decision No.  
15 68958 (September 21, 2006), the Commission approved the acquisition of the Xspedius Certificated  
16 subsidiaries by Time Warner Telecom Inc.

17          6.       The Applicants are non-dominant telecommunications carriers in Arizona.

18          7.       According to the application, the applicants are not borrowers. The borrower on the  
19 loans is TWT Holdings, a subsidiary of Time Warner Telecom, Inc. ("Time Warner Telecom"). The  
20 proceeds from the Term Loan will restructure and increase Time Warner Telecom's overall debt by a  
21 maximum of \$231 million. TWT Holdings will pay off certain existing debt instruments and receive  
22 more favorable interest rates for others. Proceeds from the Term Loan will also be used to fund  
23 ongoing operations and finance the cash portion of the Xspedius acquisition.

24          8.       In Staff's financial analysis, Staff noted that the filing was consistent with A.R.S. §  
25 40-285, which requires public service corporations to obtain Commission authorization to encumber  
26 certain utility assets. The statute serves to protect captive customers from a utility's attempt to  
27 dispose of any of its assets that are necessary for the provision of service, and so it serves to prevent  
28 any service impairment due to disposal of assets essential for providing service.

1           9.       Staff reviewed the proposed financing arrangements and determined that they would  
2 not impair the financial status of the Applicants, would not impair their ability to attract capital, nor  
3 would they impair the ability of Applicants to provide safe, reasonable and adequate service.

4           10.       Staff stated that Applicants provide competitive services and that their customers have  
5 alternative service providers, but that customers may still have exposure to losses to the extent they  
6 have prepaid for service or made deposits. Therefore, Staff recommended that any authorization for  
7 encumbrances should provide customer protection for prepayments and deposits. Staff also noted  
8 that the Applicants indicate that Time Warner Telecom's Debt Service Coverage ("DSC") will  
9 increase from 3.44 to 3.53, and that such a DSC indicates that Applicants' encumbered Arizona  
10 assets might be protected by Time Warner's ability to meet the corporate debt obligations.

11           11.       The Staff Report indicated that Applicants are in good standing according to the  
12 Records Section of the Corporation Division of the Commission. Staff's search of its Consumer  
13 Services database from January 1, 2003 to November 14, 2006 showed that TWT Arizona and  
14 Xspedius Management Switched Services, LLC had no complaints, inquiries, or opinions. However,  
15 Staff noted that Xspedius Management Company of Pima County had twelve complaints, including  
16 two in 2006, and that all complaints have been resolved and closed.

17           12.       Staff recommended approval of the Applicants' request for Commission authorization  
18 to issue guarantees and pledge Arizona assets as security for TWT Holdings' new \$600 million Term  
19 Loan and a \$100 million secured revolving credit facility.

20           13.       Staff also recommended that the Commission approve Xspedius Certificated  
21 Subsidiaries requests' for authorization to pledge Arizona assets as security for TWT Holdings'  
22 existing debt.

23           14.       Staff recommended that the Applicants' customer deposits and prepayments in  
24 Arizona be secured by a performance bond, which is excluded from the pledged assets, and that the  
25 Applicants file the original performance bond with the Business Office and the appropriate copies in  
26 Docket Control as a compliance item in this docket, within 60 days of the decision in this matter.  
27 Staff noted that Decision No. 67108 (July 9, 2004) required TWT Arizona to maintain a performance  
28 bond equal to \$1.7 million, with increases dependent on the amount of advances, prepayments, or

1 deposits collected from Arizona customers. Decision No. 68662 (April 12, 2006) ordered TWT  
2 Arizona to retain the performance bond ordered in Decision No. 67108. Staff recommended that the  
3 Applicants maintain adequate performance bond(s) consistent with Decision No. 67108.  
4 Accordingly, if the Applicants' original bond(s) is not on file with the Commission's Business Office  
5 and the copies filed with Docket Control, then Applicants should make such filings within 60 days of  
6 this Decision.

7 15. Staff further recommended authorizing Applicant to engage in any transactions and to  
8 execute or cause to be executed any documents necessary to effectuate the authorizations requested  
9 with the application.

10 16. The Applicants did not file any objections to the recommendations contained in the  
11 Staff Report.

12 17. The Applicants should file copies of the executed loan closing and security documents  
13 pertaining to this authorization, with Docket Control, as a compliance item in this docket, within 60  
14 days of each transaction.

15 18. Staff's recommendations are reasonable and should be adopted.

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 and 285.

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

21 3. Applicants' request to encumber their assets is a transaction that requires Commission  
22 approval pursuant to A.R.S. § 40-285.

23 4. Notice of the application was given in accordance with the law.

24 5. Staff's recommendations are reasonable and should be adopted.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application by Time Warner Telecom of Arizona,  
27 LLC, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. for  
28 authorization to encumber assets in connection with new financing as provided for herein, shall be,

1 and hereby is, granted, conditioned upon their compliance with Staff's recommendations as described  
2 herein.

3 IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC, Xspedius  
4 Management Co. Switched Services, LLC and Xspedius Management Co. shall file with Docket  
5 Control, as a compliance item in this docket, a statement that all Arizona customer deposits and  
6 prepayments are secured by a performance bond, in conformance with Decision No. 67108 and  
7 Decision No. 68662, and which is not included in the pledged collateral, within 60 days of this  
8 Decision.

9 IT IS FURTHER ORDERED that Xspedius Management Co. Switched Services, LLC and  
10 Xspedius Management Co. are hereby authorized to act as guarantors and encumber assets in  
11 conjunction with credit facilities previously approved by the Commission

12 IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC, Xspedius  
13 Management Co. Switched Services, LLC and Xspedius Management Co. are hereby authorized to  
14 engage in any transactions and to execute any documents necessary to effectuate the authorization  
15 granted herein.

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1 IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC, Xspedius  
2 Management Co. Switched Services, LLC and Xspedius Management Co. shall file with the  
3 Commission copies of all executed financing documents and security documents pertaining to the  
4 authorization granted, with Docket Control, as a compliance item in this docket, within 60 days of  
5 each transaction.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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10 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11  
12 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

13  
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Director of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_ day of \_\_\_\_\_, 2007.

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20 \_\_\_\_\_  
21 BRIAN C. McNEIL  
22 EXECUTIVE DIRECTOR

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SERVICE LIST FOR:

TIME WARNER TELECOM OF ARIZONA, LLC,  
XSPEDIUS MANAGEMENT CO. SWITCHED  
SERVICES, LLC AND XSPEDIUS MANAGEMENT  
CO.

DOCKET NOS.:

T-03943A-06-0691, T-04112A-06-0691 and T-04113A-  
06-0691

Joan S. Burke  
OSBORN MALEDON, P.A.  
2929 N. Central Ave., Suite 2100  
Phoenix, AZ 85012

Brian D. Thomas  
TIME WARNER TELECOM  
223 Taylor Avenue North  
Seattle, WA 98109

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007