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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

MAR 22 2007

DOCKETED BY nr

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. 69392

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, an attested statement that all Arizona customer deposits
6 and 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

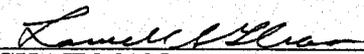
12 IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC, Xspedius
13 Management Co. Switched Services, LLC and Xspedius Management Co. are hereby authorized to
14 engage in any transactions and to execute any documents necessary to effectuate the authorization
15 granted herein.

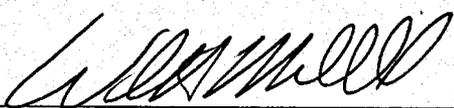
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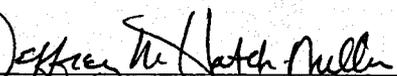
1 IT IS FURTHER ORDERED that Time Warner Telecom of Arizona, LLC, Xspedius
2 Management Co. Switched Services, LLC and Xspedius Management Co. shall file with the
3 Commission copies of all executed financing documents and security documents pertaining to the
4 authorization granted, with Docket Control, 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.

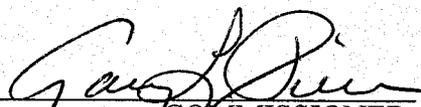
7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
9 
10 CHAIRMAN

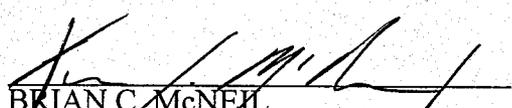

COMMISSIONER

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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 22nd day of March, 2007.

19 
20 BRIAN C McNEIL
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

1
2 SERVICE LIST FOR:

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

4 DOCKET NOS.:

T-03943A-06-0691, T-04112A-06-0691 and T-04113A-
5 06-0691

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