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MEMORANDUM

TO: Docket Control

FROM: Ernest G. Johnson EA for EGJ
Director
Utilities Division

DATE: August 10, 2007

RE: 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 FOR AUTHORIZATION TO TRANSFER ASSETS; CANCEL CC&NS; AND ELIMINATION OF PERFORMANCE BONDS (DOCKET NOS. T-03943A-07-0205, T-04113A-07-0205, AND T-04112A-07-0205)

Attached is the Staff Report on the Joint Application of Time Warner Telecom of Arizona, LLC, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Pima County for approval of a transfer of assets, cancellation of CC&Ns, and elimination of performance bonds. Staff recommends approval of the Application.

EGJ:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen Copies

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STAFF REPORT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

TIME WARNER TELECOM OF ARIZONA, LLC, XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC, AND XSPEDIUS MANAGEMENT CO. OF PIMA COUNTY
DOCKET NOS. T-03943A-07-0205, T-04113A-07-0205, AND T-04112A-07-0205

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 FOR AUTHORIZATION TO TRANSFER ASSETS; CANCEL CC&NS; AND ELIMINATION OF PERFORMANCE BONDS

AUGUST 10, 2007

STAFF ACKNOWLEDGEMENT

The Staff Report for Time Warner Telecom of Arizona, LLC, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Pima County, Docket Nos. T-03943A-07-0205, T-04113A-07-0205, and T-04112A-07-0205, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of Time Warner Telecom of Arizona, LLC, Xspedius Management Co. Switched Services, LLC, and Xspedius Management Co. of Pima County Joint Application for authorization to transfer assets, cancellation of CC&Ns, and elimination of three performance bonds.

Pamela J. Genung

Pamela J. Genung
Public Utilities Analyst V

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Introduction

On March 30, 2007, Time Warner Telecom of Arizona, LLC ("TWTA"), Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC ("Xspedius Certified Subsidiaries") (collectively "Applicants" or "Companies"), all subsidiaries of Time Warner Telecom, Inc. ("Time Warner Telecom"), the ultimate parent corporation, filed a Joint Application for Arizona Corporation Commission ("Commission") expedited consideration and approval of a transfer of assets, including customer base, from the Xspedius Certified Subsidiaries to TWTA. The Joint Application also requests approval for the cancellation of Certificates of Convenience and Necessity ("CC&Ns") of the Xspedius Certified Subsidiaries and elimination of three performance bonds totaling $2.17 million dollars.

On May 30, 2007, the Applicants filed a Supplement to the Application and Notice of Filing of Affidavit of Publication. On June 22, 2007, the Applicants filed a Supplement to their Joint Application requesting a waiver of A.A.C. R14-2-2001-2007 and A.A.C. R14-2-1901-1913, which together prohibit any unauthorized change to a customer's carrier selection and prohibit unauthorized charges on a customer's bill.

The Parties

Time Warner Telecom, a Delaware Corporation, headquartered in Littleton, Colorado, provides voice and data communications services to business customers and enterprise organizations in the healthcare, finance, higher education, manufacturing, and hospitality industries. Time Warner is authorized to provide intrastate interexchange and competitive local exchange services in thirty-three states, Washington D.C. and the FCC/Interstate jurisdiction.

TWTA provides broadband data, voice, dedicated internet access, and dedicated web hosting services to business customers in the Phoenix and Tucson metropolitan areas. TWTA entered the Phoenix and Tucson markets by purchasing out of bankruptcy substantially all of the assets of GST-AZ Net, Inc. On December 14, 2000, in Decision No. 63262, the Commission approved the transfer of assets and transfer of CC&N of GST-AZ Net, Inc. to TWTA. Under this Decision, TWTA was granted authority to provide competitive local exchange and interexchange telecommunications services in Arizona.

The Xspedius Certified Subsidiaries are limited liability companies formed under the laws of the State of Delaware. On August 23, 2002, in Decision No. 65124, both Companies were certificated as Competitive Local Exchange Carriers ("CLECs") by the Commission. Under this Decision, the Xspedius Certified Subsidiaries were granted authority to provide competitive facilities-based and resold local exchange and exchange access telecommunications services in Arizona. The Xspedius Certified Subsidiaries provide local, long distance, integrated, and internet access solutions to small and medium-sized business customers. The Xspedius Certified Subsidiaries presently serve no residential customers.

On September 21, 2006, in Decision No. 68958, the Commission approved Time Warner Telecom's acquisition (by merger) of the Xspedius Certified Subsidiaries. Time Warner Telecom acquired ownership of Xspedius Communications, LLC, the Xspedius Certified Subsidiaries parent company, and its subsidiaries and substantially all of their assets. Time Warner Telecom, through its three Arizona subsidiaries, serves only business customers.

Transfer of Assets

Time Warner Telecom requests to transfer the assets and customers of the Xspedius Certified Subsidiaries into TWTA. After consolidation, Time Warner Telecom will remain the ultimate corporate parent and it will have only one subsidiary, TWTA, operating in Arizona. The corporate structure before and after the consolidation are attached as Exhibit A (pre-consolidation) and Exhibit B (post-consolidation). Upon completion of the proposed consolidation, TWTA will provide local, long distance, and dedicated telecommunications services to the current customers of TWTA, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC. The proposed consolidation is not expected to result in any loss or impairment of services to the Applicants' customers. The proposed internal consolidation will simplify the Time Warner Telecom corporate structure, streamline Time Warner Telecom's operations in Arizona, eliminate administrative redundancy and improve overall efficiency.

On October 16, 2006, TWTA sent a notice to customers of the Xspedius Certified Subsidiaries describing the merger and assuring customers that they will continue to receive the same telecommunications services they are currently receiving in accordance with the rates, terms, and conditions of their existing contracts or effective tariffs. TWTA will be providing another written notice to customers of the Xspedius Certified Subsidiaries explaining the asset consolidation, TWTA's plan for incorporating Xspedius products and services into its tariff and advising customers that they have the option of selecting a new service provider if they do not wish to become a customer of TWTA. On June 5, 2007, the Applicants provided Staff copies of the customer notices along with TWTA's responses to Staff's First Set of Data Requests. The customer notices are attached as Exhibit D and Exhibit E.

Pursuant to A.A.C. R14-2-1107, TWTA and the Xspedius Certified Subsidiaries published legal notice of the Joint Application in the Arizona Republic. The legal notice appeared in the April 30, 2007 edition. Staff received a copy of the legal notice and the Affidavit of Publication in a Supplement to the Application filed on May 30, 2007.

Cancellation of CC&Ns

In conjunction with the transfer of assets and upon completion of the transfer of the Xspedius Certified Subsidiaries' customers to TWTA, the CC&Ns currently held by the Xspedius Certified Subsidiaries will be surrendered. The Applicants seek permission to discontinue local exchange service for current Xspedius Certified Subsidiaries' customers, transfer those customers to TWTA, and cancel the Xspedius Certified Subsidiaries' CC&Ns. On

December 14, 2000, in Decision No. 63262, TWTA was granted authority to provide competitive local exchange and interexchange telecommunications services in Arizona.

Time Warner Telecom has indicated that it will continue to honor all Xspedius Certified Subsidiaries' customer service contracts for the duration of those service contracts. This particular niche market consists of business customers with the majority of the customers under contract or receiving service under a contract that has automatically extended for a short term by its terms. The customers of the Xspedius Certified Subsidiaries will not experience any change in their rates of service arrangements. No customer service contracts will be terminated as a result of the consolidation.

TWTA will continue to offer Xspedius Certified Subsidiaries' products and services to Xspedius Certified Subsidiaries' customers not under contract at the Xspedius Certified Subsidiaries' rates. TWTA expects to gradually replace the products and services offered by the Xspedius Certified Subsidiaries with new products and services offered by TWTA. TWTA will revise the TWTA tariff to incorporate the terms and conditions of service included in the Xspedius Certified Subsidiaries' tariffs. TWTA and the Xspedius Certified Subsidiaries expect that the transfer of customers will be transparent to customers of the Xspedius Certified Subsidiaries with respect to rates, terms, and conditions of service.

Pursuant to A.A.C. R14-2-1107, a list of alternative utilities providing local and interexchange services in the two Xspedius Certified Subsidiaries' service areas has been provided to the Commission in the Joint Application filed on March 30, 2007. The list is attached as Exhibit C.

Elimination of Performance Bonds

In its Joint Application, the Applicants request that the Commission eliminate the three performance bonds totaling $2.17 Million. TWTA presently maintains a $1.7 Million performance bond as required by Decision No. 67108. Xspedius Management Co. of Pima County maintains a $235,000 performance bond, and Xspedius Management Co. Switched Services, LLC maintains a $235,000 performance bond, both are requirements of Decision No. 65124.

TWTA and the Xspedius Certified Subsidiaries only provide services to business customers in Arizona. TWTA will be the only remaining entity at the completion of the transfer of assets. TWTA's current investment in Arizona well exceeds the $30 million that TWTA had invested from January 2001 through July 31, 2006 as indicated in merger Decision No. 68958 dated September 21, 2006. TWTA also has Docket No. T-03943A-04-0909 pending, in which it is requesting to reduce its performance bond requirements.

At the time of filing its Joint Application, TWTA indicated that it maintains deposits totaling less than $100,000, and the Xspedius Certified Subsidiaries, together, maintain deposits totaling less than $10,000. Pursuant to A.A.C. R14-2-1107, the Applicants have provided Staff

with its plan to refund customer deposits should the affected customers decide to switch service providers.

The Commission's current bond or irrevocable sight draft Letter of Credit requirements are $10,000 for resold long distance, $25,000 for resold local exchange, $100,000 for facilities-based long distance, and $100,000 for facilities-based local exchange services.

Public Interest Considerations

In the Application, it is the Companies belief that granting this Application would serve the public interest, be largely transparent to customers and will have no adverse impact on the services they receive. Current Xspedius Certified Subsidiaries end users will continue to receive services under the same rates, terms, and conditions that currently apply to their services and any future changes in the rates, terms, and conditions of those services will be made consistent with Commission requirements. For current TWTA customers, the consolidation will have no visible impact. The proposed consolidation will reduce legal, accounting and tax administrative burdens and will simplify the Time Warner Telecom corporate structure, eliminate administrative redundancy and improve the company's overall efficiency. The consolidation will not cause any meaningful change in the ownership or financial condition of the utility subsidiaries.

Request for Waiver of Slamming Rules

The Applicants filed a Supplement to their Joint Application on June 22, 2007, requesting a waiver of A.A.C. R14-2-2001-2007 and A.A.C. R14-2-1901-1913, which together prohibit any unauthorized change to a customer's carrier selection and prohibit unauthorized charges on a customer's bill.

On October 16, 2006, TWTA provided notice to the customers of the Xspedius Certified Subsidiaries describing the merger and assuring customers that they would continue to receive the same telecommunications services they are currently receiving in accordance with the rates, terms, and conditions of their existing contracts or effective tariffs. TWTA will be sending another written notice to all Xspedius Certified Subsidiaries' customers explaining the asset consolidation, TWTA's plan for incorporating Xspedius products and services into its tariff and advising customers that they have the option of selecting a new service provider if they do not wish to become a customer of TWTA.

Staff has reviewed the customer notification letters that TWTA provided and will be providing to the customers of the Xspedius Certified Subsidiaries. Because the notices inform customers that the rates, terms and conditions of service will not change as a result of this asset transfer and informs customers that they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming and Cramming rules should be waived in this matter.

Staff's Analysis

In its Joint Application, the Applicants are requesting approval from the Commission for a transfer of assets, including customer base, to TWTA. TWTA is authorized to provide competitive local exchange and interexchange telecommunications services in Arizona. The Xspedius Certified Subsidiaries' customers have been notified of the proposed transfer of assets and discontinuation of services by the Xspedius Certified Subsidiaries. Xspedius Certified Subsidiaries' customers have the option of switching to an alternate provider at any time.

The Applicants have requested cancellation of the Xspedius Certified Subsidiaries' CC&Ns. The customers of the Xspedius Certified Subsidiaries will be transferred to TWTA. Since the Xspedius Certified Subsidiaries will no longer be providing telecommunications services in the State of Arizona, the two CC&Ns of the Xspedius Certified Subsidiaries will no longer be necessary.

TWTA and the Xspedius Certified Subsidiaries have requested elimination of the three performance bonds. The Applicants have indicated in their Joint Application that they currently maintain performance bonds totaling $2.17 Million. TWTA maintains a performance bond of $1.7 Million, and the Xspedius Certified Subsidiaries, each, maintain performance bonds of $235,000. Since the two Xspedius Certified Subsidiaries will no longer be providing service in the State of Arizona and have requested cancellation of the two CC&Ns, the requirement for the two performance bonds, each in the amount of $235,000, will no longer be necessary.

Staff considered the following information in its analysis of TWTA's request for elimination of TWTA's performance bond: the Commission's current bond or irrevocable sight draft Letter of Credit requirements; services that TWTA will be providing in Arizona; amount of customer deposits currently being held; amount of financial investment in Arizona by TWTA; and an earlier Commission Decision No. 67460, dated January 4, 2005, in which XO Communications, Inc. was allowed a reduction in its performance bond. Based on the above information, Staff believes that a reduction in TWTA's performance bond, not an elimination of one, is appropriate. Since TWTA will be acquiring those customers of the Xspedius Certified Subsidiaries and is authorized to provide competitive local exchange and interexchange telecommunications services in Arizona, a minimum performance bond or irrevocable sight draft Letter of Credit for $235,000 should remain as a requirement of TWTA.

As of April 27, 2007, the Applicants have indicated that combined there are sixty-one total employees between their Phoenix and Tucson offices. As a result of this consolidation, TWTA does not foresee any Arizona workforce layoffs nor does it foresee any related Arizona plant facility closings.

TWTA and the Xspedius Certified Subsidiaries have been found to be in good standing by the Records Section of the Corporation Division. Consumer Services reports zero complaints for TWTA and Xspedius Management Switched Services, LLC. Although Consumer Services revealed twelve complaints From January 1, 2003 through April 13, 2007 for Xspedius

Management Company of Pima County, LLC, all issues have been resolved and closed. TWTA and the Xspedius Certified Subsidiaries are current on filing their 2006 Annual Reports with the Commission. The Compliance Division indicated a delinquency with the Annual Filing Requirements of Diversification Activities and Plans for TWTA. TWTA has since made that filing with Compliance on June 29, 2007 on behalf of TWTA and the Xspedius Certified Subsidiaries. An additional filing was made with Docket Control on July 9, 2007, on behalf of TWTA and the Xspedius Certified Subsidiaries in compliance with Decision No. 69392.

Staff's Recommendations

Staff recommends approval of the transfer of assets, including customers, of the Xspedius Certified Subsidiaries to TWTA.

Staff also recommends cancellation of the Xspedius Certified Subsidiaries' CC&Ns to provide telecommunications services in the State of Arizona.

Staff further recommends that the requirement for each of the $235,000 performance bonds currently held by Xspedius Management Co. of Pima County, LLC and Xspedius Management Co. Switched Services, LLC be eliminated. In addition, Staff recommends that the requirement for the $1.7 Million performance bond currently held by TWTA be reduced to $235,000. The remaining $235,000 performance bond or irrevocable sight draft Letter of Credit is the amount generally required from a provider of competitive local exchange and interexchange telecommunications services.

Current Xspedius Certified Subsidiaries' customers have 90 days following the date of the Commission's Decision to transfer to another carrier without prejudice or regard to contractual obligation. Staff further recommends approval of the Applicants' request for a waiver of A.A.C. R14-2-2001-2007 and A.A.C. R14-2-1901-1913 of the Commission's Slamming and Cramming rules in this matter.

Staff further recommends that TWTA be ordered to comply with the following:

a. Retain a performance bond or irrevocable sight draft Letter of Credit equal to $235,000. The minimum bond or draft amount of $235,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from TWTA's customers. The bond or draft amount should be increased in increments of $117,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within $23,500 of the bond or draft amount.

b. Docket proof of the performance bond or irrevocable sight draft Letter of Credit, as a compliance item in this docket, within 60 days of the effective date of a Decision in this matter. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission.

c. Docket proof that the customers of the Xspedius Certified Subsidiaries in Arizona received notification that they be allowed to elect, within 90 days of receiving the notice, to continue or discontinue service with TWTA, without prejudice or regard to contractual obligation.

d. Provide written confirmation to Staff that all funds held as prepayments, deposits, or advances have been refunded or credited to customers of the Xspedius Certified Subsidiaries who want to discontinue service with TWTA.

e. Provide Staff with written confirmation that it has transferred the Xspedius Certified Subsidiaries' assets into TWTA and that Xspedius Certified Subsidiaries' CC&Ns have been cancelled by the Commission. By providing Staff with documentation that the transfer of assets has been completed, the Xspedius Certified Subsidiaries will no longer be responsible for the requirements of Decision No. 65124.

f. Revise and file TWTA conforming tariffs, within 60 days of the effective date of a Decision in this matter, to incorporate the terms and conditions of service that were included in the Xspedius Certified Subsidiaries' tariffs.

Staff further recommends the following:

1. Upon Commission decision in this matter, administratively close Docket No. T-03943A-04-0909, of which is a request by TWTA for a reduction of performance bond requirements.