

NEW APPLICATION
ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
MIKE GLEASON
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
KRISTIN K. MAYES
COMMISSIONER

Arizona Corporation Commission

DOCKETED

AUG 06 2004

DOCKETED BY *AK*

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 AUG -6 P 2:04

RECEIVED

IN THE MATTER OF THE JOINT APPLICATION OF)
XO ARIZONA, INC.)
ALLEGIANCE TELECOM OF ARIZONA, INC.)
AND XO COMMUNICATIONS SERVICES, INC.)
FOR APPROVAL OF AN INTERNAL)
CORPORATE REORGANIZATION AND)
FOR APPROVAL, AS NECESSARY,)
OF RELATED TRANSACTIONS)

Docket No. T-04302A-04-0583
T-03601A-04-0583
T-03789A-04-0583
T-04150A-04-0583

JOINT APPLICATION

XO Arizona, Inc. ("XO Arizona"), Allegiance Telecom of Arizona, Inc. ("ALGX Arizona") and XO Communications Services, Inc. ("XO Communications") (collectively "Applicants" or "XO Subsidiaries"), all subsidiaries of XO Communications, Inc. ("XO")¹, the ultimate parent corporation, by their attorneys and pursuant to A.A.C. R14-2-803 and A.R.S. 40-285, hereby respectfully request that the Arizona Corporation Commission ("Commission") approve or grant such authority as may be necessary for an internal corporate reorganization whereby the existing operating subsidiaries of XO in Arizona will be merged into a single operating subsidiary, XO Communications.² Upon consummation of this reorganization, XO

¹ XO's acquisition of ALGX Arizona was consummated on June 23, 2004. The Commission approved the transfer of control of ALGX Arizona in Docket Nos. T-04150A-04-0130 and T-03789A-04-0130, Decision No. 67006, on May 24, 2004. Accordingly, ALGX Arizona currently is a direct, wholly owned subsidiary of XO.

² XO Communications became the new name of XO Domestic Holdings, Inc. on June 29, 2004. XO is in the process of obtaining the necessary documentation from the Arizona

Communications will provide service to the existing customers of XO Arizona and ALGX Arizona. This internal reorganization will simplify the XO corporate structure, streamlining XO's operations in Arizona, eliminating administrative redundancy and improving overall efficiency. The Applicants anticipate that the consolidation in Arizona will occur after receipt of the required regulatory approvals in Arizona; thus, the Applicants request that the Commission take any action necessary to approve this application at its earliest possible convenience.

Specifically, as described below, the Applicants propose that XO Arizona's intrastate customer base, tariff and certificate of authority to provide telecommunications services in Arizona be transferred to its affiliate, XO Communications. XO Arizona's tariff will be amended to reflect the name change and will be late filed with the Commission. Applicants will submit the necessary documentation from the Arizona Secretary of State showing the new name as soon as it is available. The proposed transaction is not expected to result in any loss or impairment of service to the XO Arizona customers that would be affected by consummation of the proposed transaction. XO end users will continue to receive service at substantially similar rates, terms and conditions and will continue to see the "XO" name on their bills.

Similarly, ALGX Arizona's intrastate customer base will be transferred to XO Communications. Advance written notice of the customer transfer will be sent to affected ALGX Arizona customers and those customers will have the option of switching to another service provider without penalty. Upon the transfer of XO Arizona's certificate to XO Communications and completion of the customer transfer, ALGX Arizona requests that its certificate be cancelled. Current ALGX Arizona customers will be given sufficient notification of the proposed change of their service provider to XO Communications pursuant to the FCC's

Secretary of State showing the name change and will late-file the documentation and any necessary additional request for name change approval.

slamming rules and any applicable state carrier-to-carrier migration rules. Again, the proposed transaction is not expected to result in any loss or impairment of service to the ALGX Arizona customers. Applicants intend to grandfather ALGX Arizona's existing tariff, amended with the new name XO Communications, so that existing ALGX Arizona end users will continue to receive the same services at the same rates, terms and conditions as at present.

In support of this Application, the Applicants provide the following information:

I. The Applicants

XO Communications, Inc. is a Delaware corporation whose principal office and place of business is located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339. The company's stock is publicly traded on the Over the Counter Bulletin Board under the symbol "XOCM.OB." XO is a leading facilities-based provider of broadband telecommunications services. The company offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. The company also is one of the nation's largest holders of fixed wireless spectrum, covering 95% of the population of the 30 largest U.S. cities. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States.

XO is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and is authorized to provide competitive local exchange services in 47 states. In Arizona, XO Arizona is authorized to provide competitive local exchange and interexchange services pursuant to its authorization issued by the

Commission.³ Thus, XO Arizona and its corporate parent, XO, have been found by this Commission to possess the requisite financial, managerial and technical qualifications necessary to operate as a provider of intrastate telecommunications services in Arizona.⁴ XO is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies.

ALGX Arizona is a corporation organized under the laws of the State of Delaware. In furtherance of the reorganization of Allegiance Telecom, Inc., Debtor-in-Possession ("Allegiance"), and subsidiaries, including ALGX Arizona, under chapter 11 of the U.S. Bankruptcy Code, the parties agreed that XO would acquire substantially all of the assets of Allegiance, including the stock of ALGX Arizona. As noted above, the Commission approved the transfer of control on May 24, 2004, and the transaction was consummated on June 23, 2004. As a result, ALGX Arizona became a wholly owned, direct subsidiary of XO.

XO's acquisition of Allegiance has resulted in a combined competitive carrier that holds sufficient financial, managerial, operations and technical resources to compete on a national basis against established and incumbent local exchange carriers and long distance companies. Prior to the transfer of control, Allegiance, through its operating subsidiaries, provided facilities-based telecommunications products and services to over 100,000 small and medium-sized business customers, large business enterprises (e.g., national customers with multiple locations), governmental entities, and other institutional users in 36 metropolitan areas in 24 states, including Arizona, and the District of Columbia.⁵ By acquiring ownership of Allegiance and its subsidiaries and substantially all of their assets, XO has pooled the resources of XO and

³ See Docket No. T-03601-A-98-0417, Decision No. 61373.

⁴ XO's most recent Annual Report and Form 10-Q which contains the consolidated financial statements of XO and subsidiaries can be accessed at www.xo.com.

Allegiance such that the combined company can compete more effectively in the markets in which they both operate, provide new services and expand into new markets, and achieve economies of scope and scale. Moreover, the acquisition ensures that ALGX Arizona's current customers will continue to receive the high quality services that they currently receive.

To further streamline and simplify its corporate structure, XO intends to collapse both ALGX Arizona and XO Arizona into XO Communications. After completion of the consolidation, XO will remain the ultimate corporate parent and it will have only one XO subsidiary operating in Arizona. Like ALGX Arizona and XO Arizona, XO Communications is a direct, wholly owned subsidiary of XO. XO Communications, currently being renamed from XO Domestic Holdings, Inc., is authorized to transact business in Arizona as a foreign corporation, but it is not licensed to provide telecommunications services in any state at this time.

II. Designated Contacts

The designated contacts for questions concerning this Application are:

Counsel to XO

Joan S. Burke
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012
Telephone: (602) 640-9356
Facsimile: (602) 640-6074
jburke@omlaw.com

Of Counsel

Erin Weber Emmott, Esq.
Melissa Smith Conway, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9766
Facsimile: (202) 955-9792

⁵ See, Docket No. T-03789A-99-0586, Decision No. 62737.

Copies of any correspondence also should be sent to the following designated representative of the Applicants:

Doug Kinkoph
Vice President Regulatory and External Affairs
XO COMMUNICATIONS, INC.
Two Eastern Oval, Suite 300
Columbus, OH 43219
Telephone: (614) 416-1468
Facsimile: (614) 416-9268

III. Description of the Reorganization

The reorganization and consolidation of the XO Subsidiaries into a single operating entity, XO Communications, is anticipated to occur via a number of mergers. Corporate organizational charts showing XO's corporate structure before and after the consolidation are appended hereto as *Exhibit A*. The Applicants propose to transfer XO Arizona's intrastate customer base, tariff and certificate to provide telecommunications services to XO Communications through a merger of XO Arizona into XO Communications. After the merger, XO Arizona will cease to exist by operation of law, and XO Communications will assume all of XO Arizona's assets and operations and will provide telecommunications services to XO Arizona's customers pursuant to XO Arizona's tariff, amended with the new name XO Communications.

In connection with the merger, the certificate of convenience and necessity currently held by XO Arizona will be transferred to XO Communications. The Applicants respectfully request that the Commission authorize, to the extent necessary, the merger of XO Arizona with and into XO Communications together with the transfer of XO Arizona's certificate, tariff and customer base to XO Communications.

The proposed transfer of operating authority from XO Arizona to XO Communications will be virtually transparent to consumers in Arizona and will have no adverse impact on them.

XO will remain the parent corporation, and the name that customers see on their telecommunications invoice will remain "XO." Further, the same services will be provided to end users at substantially similar rates, terms and conditions. Because XO Arizona and XO Communications are managed by the same team of experienced telecommunications personnel, day-to-day operations will continue to function as they have in the past. Customer service functions will be provided by the same team of qualified consumer representatives. In order to facilitate a seamless transfer, XO Communications will file a revised tariff, as required, to reflect its slightly changed name. Thus, XO Arizona's end user customers will continue to receive high quality services from the same qualified personnel, at substantially similar rates, terms and conditions.

Similarly, the Applicants propose to transfer ALGX Arizona's intrastate customer base to XO Communications through a merger of ALGX Arizona into XO Communications. After the merger, ALGX Arizona will cease to exist by operation of law, and XO Communications will assume all of ALGX Arizona's assets and operations and will provide telecommunications services to ALGX Arizona's end users. Applicants intend to grandfather ALGX Arizona's existing tariff, amended with the new name XO Communications, so that existing ALGX Arizona end users will continue to receive the same services at the same rates, terms and conditions.

In connection with the merger, the telecommunications authorizations currently held by ALGX Arizona will be surrendered, upon completion of the transfer of ALGX Arizona customers to XO Communications. In conjunction with the surrender of the ALGX Arizona authorization, the Applicants seek permission to discontinue local exchange service for current Allegiance customers and cancel the ALGX certificate of convenience and necessity. (While

customer contracts will be grandfathered and services will continue to be provided pursuant to the ALGX Arizona tariffs currently on file with the Commission (amended to reflect the name of XO Communications), the corporate entity providing service will cease to exist and thus technically Allegiance will be discontinuing local and interexchange service.) In accordance with A.A.C. R14-2-1107, the Applicants provide the following information.

1. ALGX Arizona will discontinue service to customers because it was acquired by XO and XO plans to serve all customers via a new single corporate subsidiary.
2. All ALGX Arizona customers have been notified of the XO acquisition and all will again be notified of their ability to remain with XO Communications or choose another provider, without penalty. The initial notice letter is attached as *Exhibit B*. Numerous alternative providers of local exchange and interexchange are available to ALGX Arizona customers.
3. ALGX Arizona does not collect customer deposits. Customer prepayments are credited directly to a customer's account and used during the term of the contract.
4. Attached as *Exhibit C* is a list of the alternative utilities providing local and interexchange service in the ALGX service area.

Allegiance will publish legal notice of the application to discontinue service and will submit that notice in this docket as soon as it is available.

The Applicants respectfully request that the Commission authorize, to the extent necessary, the merger of ALGX Arizona with and into XO Communications together with the transfer of ALGX Arizona's, customer base to XO Communications and the surrender of ALGX Arizona's authorization and tariff upon the completion of the customer transfer. The proposed transfer of operating authority from ALGX Arizona to XO Communications will have no

adverse impact on customers. XO will remain the parent corporation. Current ALGX Arizona end users will continue to receive service 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. As a result, the proposed transfer will be virtually transparent to customers in terms of the services, rates, terms and conditions that they receive. In accordance with applicable FCC and state carrier change requirements, advance written notice will be sent to affected customers informing them of the proposed transaction and giving them an opportunity to switch to another service provider without penalty. In order to facilitate a seamless transfer, the ALGX Arizona tariff will be grandfathered so that existing ALGX Arizona end users will continue to receive the same services at the same rates, terms and conditions. Further, to prevent customer confusion, XO Communications will include the Allegiance name in addition to the XO name on customer bills for the existing ALGX Arizona customers for a few months immediately following the restructuring.

IV. Public Interest Analysis

The proposed internal corporate reorganization and transfer of operating authority is in the public interest. As noted above, the reorganization will generally be transparent to customers and will have no adverse impact on them. Current ALGX Arizona customers will be properly notified of the change in their service provider from ALGX Arizona to XO Communications. Current XO Arizona customers will continue to see "XO" on their invoices and the consolidation will be entirely transparent to them. This proposed consolidation will provide significant reductions in legal, accounting and tax administrative burdens and will simplify the XO companies' corporate structure, eliminating administrative redundancy and improving the

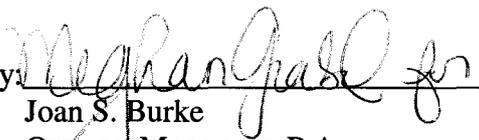
companies' overall efficiency thereby enhancing the company's ability to compete in Arizona and elsewhere. Over time, consumers in Arizona will benefit from a greater number of product and service options as well as more efficient prices resulting from the enhanced competitive ability of the streamlined company.

As reflected on the ownership charts appended hereto, upon completion of the reorganization, the ownership of XO Communications will be identical to its current ownership and the ownership of XO Arizona and ALGX Arizona. Thus, there should be no question about the qualifications of XO Communications and its parent, XO, to operate in the public interest as the reorganization will not cause any meaningful change in the ownership, financial condition or services of the utility entities.

WHEREFORE, the Applicants respectfully request that the Commission grant them authority, to the extent necessary, to reorganize, as described herein, and for such other and further relief as may be necessary to carry out the reorganization described herein.

Respectfully submitted,

XO ARIZONA, INC., ALLEGIANCE TELECOM
OF ARIZONA, INC., AND XO
COMMUNICATIONS SERVICES, INC.

By: 

Joan S. Burke
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012
Tel: (602) 640-9356
Fax: (602) 640-6074
jburke@omlaw.com

Of Counsel:

Brad E. Mutschelknaus
Melissa S. Conway
Erin W. Emmott
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9600
eemmott@kelleydrye.com

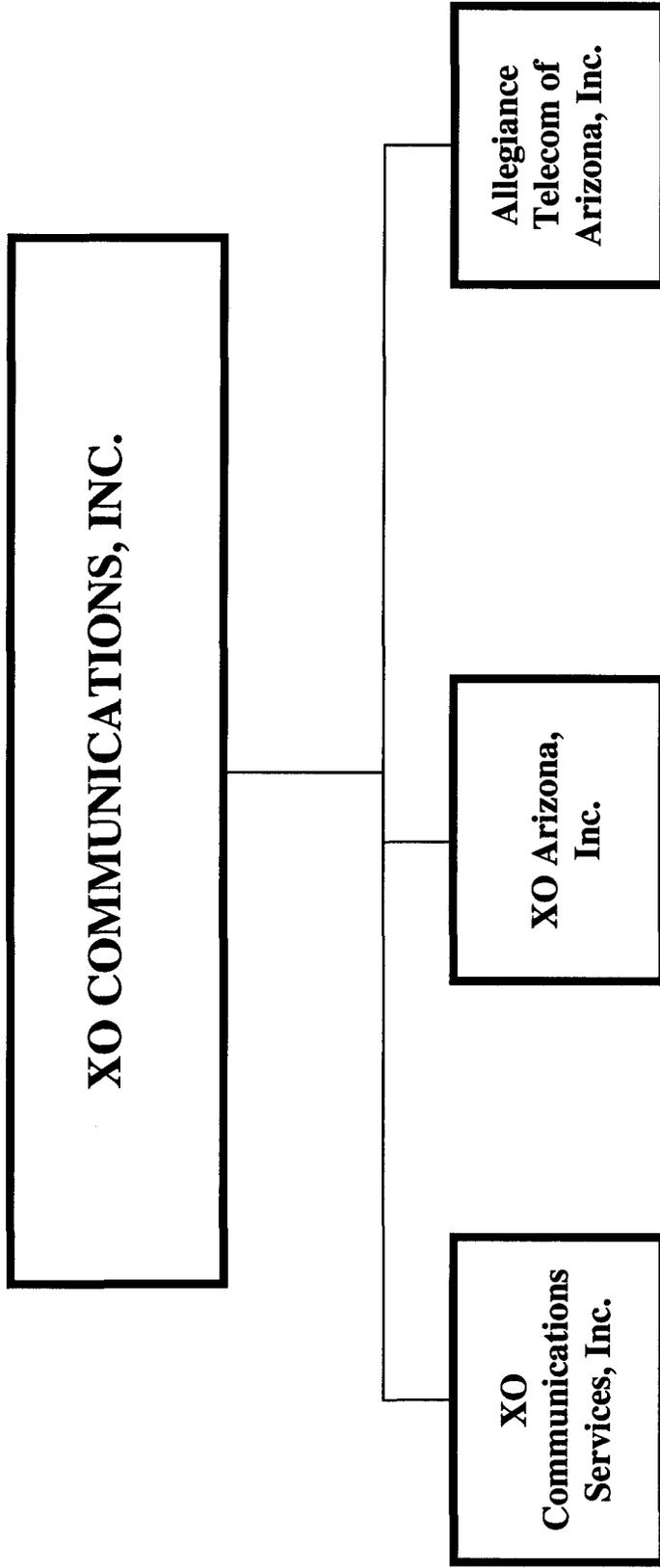
Their Attorneys

Dated: August 6, 2004

EXHIBIT A

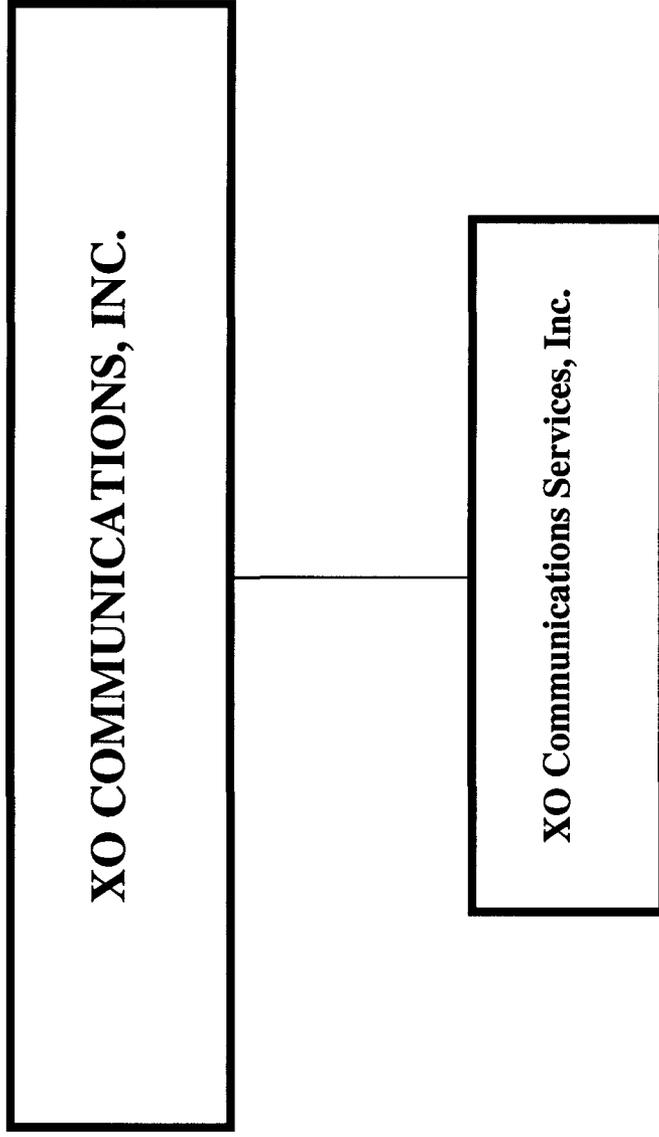
CORPORATE ORGANIZATIONAL CHARTS

EXISTING CORPORATE STRUCTURE¹



¹ Each entity is 100% owned by the entity immediately above it..

CORPORATE STRUCTURE AFTER RESTRUCTURING¹



¹ Each entity is 100% owned by the entity immediately above it..

EXHIBIT B
NOTICE LETTER



June 23, 2004

Welcome to XO™!

Dear Valued Customer:

XO is proud to announce the successful completion of our Allegiance Telecom acquisition. With the addition of Allegiance's network assets and valued customers like you, XO is now one of the nation's premier national local telecommunications services providers – giving you a choice in facilities-based providers beyond the regional Bell operating companies (RBOCs).

XO now has more nationwide connections to the RBOCs than any other Competitive Local Exchange Carrier (CLEC). XO can serve more businesses – and more of your business locations – than ever before. And all with one-stop shopping for maximum simplicity. In short, you can now think of XO as the National Local Exchange Carrier™.

What This Means for You

Now, XO is bringing together the strengths of both companies and creating synergies that will help to benefit you – the customer. Joint XO-Allegiance teams are working to bring together the best from both companies in terms of people, network facilities, technology and business processes.

XO will honor your existing Allegiance contract, and we look forward to bringing you new and enhanced XO services like DSL and conferencing.

As we finalize the integration of our two companies, XO will continue to offer, support and bill services under the Allegiance name for approximately 60 to 90 days. You will even be able to access the online tools you use today at the same URLs.

XO is Focused on its Customers

During this transition period, we remain focused on our commitment to serve your current business telecommunications needs with the quality of service that you have come to expect. We are thankful for your continued commitment to us, and we look forward to servicing your business as it grows into the future.

To read more about the value that the new XO brings to customers like you, please visit www.xo.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl J. Grivner'. The signature is fluid and cursive.

Carl J. Grivner
Chief Executive Officer

XO Communications, Inc. • 11111 Sunset Hills Road • Reston, VA 20190

Allegiance Telecom is a subsidiary of XO Communications, Inc. XO, the XO design logo, Concentric, Allegiance and all related marks are registered trademarks of XO Communications, Inc.. All other trademarks are property of their respective owners.

EXHIBIT C

ALTERNATIVE PROVIDER LIST

ALTERNATE PROVIDER LIST¹

Air Band Communications, Inc.
AT&T Local Network Services, Inc.
Broadwing Local Service Inc.
Cox Arizona Telcom, Inc.
DSLNET Communications
E.L.I. Inc.
Eschelon Telecom of Arizona, Inc.
Jet Stream Unlimited
McLeod Telecommunications Services, Inc.
M.T.I., Inc.
Sprint Communications
Time Warner Telecom of Arizona LLC
SBC Communications, Inc.
Verizon Communications, Inc.
Worldcom Network Services, Inc.

¹ This is a non-exhaustive list of possible alternate providers.