

**EXCEPTION**  
OPEN MEETING AGENDA ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION  
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AZ CORP COMMISSION  
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Arizona Corporation Commission  
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DEC 10 2004

DOCKETED BY

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 Nos. T-04302A-04-0583  
T-03601A-04-0583  
T-03789A-04-0583  
T-04150A-04-0583

**EXCEPTION TO  
RECOMMENDED ORDER**

XO Arizona, Inc. ("XO Arizona"), Allegiance Telecom of Arizona, Inc. ("ALGX Arizona") and XO Communications Services, Inc. ("XO Communications"), all subsidiaries of XO Communications, Inc. ("XO") (collectively, the "XO companies"), submit the following exception to the recommended order prepared by Commission Staff and filed on December 2, 2004.

After acquiring the assets of ALGX Arizona in the first half of this year, XO adopted and began implementing a plan to reorganize the company. Pursuant to this plan, XO intends to transition ALGX Arizona and XO Arizona customers to XO Communications at the end of this month. The Commission's approval of this order at the December open meeting is critical to the reorganization plan. Staff has worked diligently with the XO companies to ensure that the timeframe for approval of this transaction can be met. The XO companies appreciate Staff's careful and accurate work in this case, particularly the steps taken by Staff to investigate and correctly

describe the proposed transaction. The XO companies concur with Staff's recommended order in this case with respect to all but a single issue: the performance bond required of XO.

### **The Bond Requirement**

The proposed order includes two performance bond options. Staff's first proposal is a \$3.4 million bond requirement, purportedly designed to reflect customer advances and deposits. XO Communications, however, does not (and will not) hold advances and deposits worth \$3.4 million. In fact, XO Arizona and ALGX Arizona combined hold only about \$83,000 in customer advances and deposits. The \$3.4 million figure is actually based on thirty day revenue figures for the two companies. As discussed in Section III below, use of this revenue figure as the basis for setting a performance bond is both inaccurate and unlawful.

Staff's second proposal – and the one Staff recommends the Commission adopt – requires XO Communications to maintain the \$352,500 bond it currently has in place for both XO Arizona and ALGX Arizona. Staff submits that the fact that XO Communications has a large investment in Arizona and serves only business customers supports this recommendation. While the XO companies believe that this amount is still exorbitant in comparison to the customer advances and deposits actually held by XO Arizona and ALGX Arizona, the XO companies support this recommendation as an interim solution.<sup>1</sup>

With respect to the Commission's ultimate bond policy, the XO companies believe that any form of bond is unnecessary, and requests that the Commission work expeditiously to eliminate all bonds imposed on telephone companies with substantial physical plant investment in Arizona.

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<sup>1</sup> Counsel for the XO companies was informed late yesterday that staff intends to modify the amount of the Staff recommended bond from \$352,000 to \$470,000. As is the case with the original \$352,000 bond, the XO companies believe this amount is excessive in comparison to the deposit amounts currently held by XO Arizona and ALGX Arizona, nevertheless, the XO companies support this recommendation as an interim solution.

**I. A Bond is Not Necessary for Facilities-Based CLECs**

The Commission “may require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers.” A.A.C. R14-2-1105(D). The Commission may also order that customer advances or deposits be held in escrow or trust. *Id.* Consistent with this rule, the Commission expressed its clear intent, beginning as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and very few had invested in equipment and facilities. The new competitive local exchange carriers (“CLECs”) did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal obligations.<sup>2</sup> Bonds were a reasonable way for the Commission to protect consumers from asset-less companies with few ties to Arizona.<sup>3</sup>

Now, five years later, the market is very different. Far fewer telecommunications companies remain, and those still standing have invested heavily in Arizona. These CLECs individually own switches, equipment and fiber cable valued in the millions. For the surviving CLECs it is no longer the case that customer deposits or advances are at risk if the company should

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<sup>2</sup> The purpose of the bond is to protect customers and the Commission in the event the CC&N holder files for bankruptcy or completely abandons the service area. A bond is not the appropriate vehicle for addressing customer service complaints. If a customer has a grievance against a carrier regarding service or product billing, that grievance can be brought to the Commission through a formal or informal complaint against the company.

<sup>3</sup> A bond may be appropriate for the reseller of telecommunications services with no assets in Arizona, or the provider that sells only prepaid calling cards. These categories of telecommunications carriers are easily distinguished from the facilities-based CLEC provider.

declare bankruptcy or abandon service. If a company with assets seeks bankruptcy protection (as did WorldCom, XO and GTE, for example), either the company will reorganize and emerge from bankruptcy with manageable debt, or the provider's equipment and customer base (deposits and all) will be purchased out of bankruptcy. The latter scenario is precisely what occurred in the ALGX Arizona bankruptcy. XO purchased those assets out of bankruptcy, and at no point were customer deposits or advances at risk. Indeed, customer deposits and advances are no more at risk with established, facilities-based CLECs than they are with Qwest, Cox, Sprint or AT&T – all of which operate in competition with facilities-based CLECs but carry no performance bonds.

Staff, in making its recommendation, correctly identified a distinction based on the type of customer served by the telecommunications provider. In Arizona, XO Arizona and ALGX Arizona serve only business customers. Unlike the traditional residential market where the choice of providers is limited and in some instances, non-existent, as Exhibit C to the Staff's transmittal memorandum indicates, there are numerous providers competing in the business market. Business customers are generally aware that there are an array of alternatives for voice and data services and are anxious to implement the newest and most efficient technologies. Product performance, price and reliable service are paramount. In the event a carrier ceases to provide telecommunications services, a business customer will not be left without choice of providers as inevitably a different facilities-based provider will endeavor to serve that customer. Unlike the current residential market, multiple CLECs are constantly vying for the same business customers. Consequently, business customers are better protected from the potential harm generally associated with an unexpected change in carrier.

Consistent with this lower risk of harm, is a national pattern of very low or non-existent bond requirements for facilities-based CLEC providers. A survey of bond policies conducted for

A.C.C. Docket No. T-03406A-99-0742 produced the following list of twenty-seven states that do not require a performance bond from a facilities based CLEC:

Alabama	Kansas	Montana	South Carolina
Arkansas	Kentucky	New Jersey	Texas
California	Maine	New Mexico	West Virginia
Georgia	Massachusetts	New York	Wyoming
Hawaii	Michigan	North Carolina	Washington
Indiana	Mississippi	Ohio	Wisconsin
Iowa	Missouri	Oregon	

Alaska requires a *de minimis* bond (\$1,000-\$5,000). It is thus evident that most states, including many with extensive CLEC telecommunications networks, do not see the need for the sort of performance bond that Staff is recommending. XO urges the Commission to reject any bond requirement for all facilities-based CLECs that have provided service to business customers in Arizona for three or more years. XO has clearly established through its investment in the state, and by virtue of its operating history, that customer deposits are not at risk.

## **II. Any Bond Requirement Should Be Reasonable**

If the Commission should choose to implement a bond requirement, the required bond should be: (a) easy to implement and audit; (b) non-discriminatory; and (3) proportionate to the risk. Under the Commission's current bond policy, there is no system for uniformly implementing and auditing the bonds imposed on telecommunications carriers.

The resulting inequities are alarming. Providers that compete side-by-side for customers are the subject of vastly different bond requirements. For example, even if the Commission were to accept Staff's option two (its recommended option) for XO Communications' bond, XO Communications would be required to maintain a significant bond while similarly situated companies such as Electric Lightwave, L.L.C. and Qwest, against whom XO Communications will directly compete, are not subject at all to a bond requirement.

Telecommunications providers in Arizona are increasingly aware of the Commission's developing bond policy. The risk associated with failing to obtain Commission approval for an Affiliated Interest Rules transaction now pales in comparison to the cost of posting the sort of bond suggested by the bonds recently proposed by Staff. A carrier that dutifully requests approval for increased debt assumption or reorganization, risks being ordered to obtain a bond that is many times larger than all of its other bond commitments combined. Faced with an unworkably large bond, CLECs will think twice about expanding services in Arizona and will likely decrease plant investment over time.

The XO companies are aware of only a few jurisdictions that require telecommunications providers to post a bond before collecting customer deposits or advances. Most of these jurisdictions require a bond that is capped somewhere between \$25,000 and \$50,000. Aside from Arizona, the state with the largest maximum pre-set bond is Utah. There the Commission requires applicants for authority to provide telecommunications services to obtain a bond of \$100,000, but commonly grants complete waivers for facilities-based CLECs.

The bond policy adopted by the Delaware Public Service Corporation is representative in scope and application of bond policies implemented in those few states that require bonds. The applicable portion of the Delaware Rule reads as follows:

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by the corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. . . . .

Rules for the Provision of Telecommunications Services Rule 4(f)(ii) (emphasis added). Under this rule, the total bond amount for any provider is capped at \$50,000. The Delaware Public Service

Commission concluded that this rule adequately protects consumers in the event that a small company files for bankruptcy or abandons service, but does not inordinately burden carriers that present no risk for fleeing with unearned customer revenue. In addition, Rule 4(f)(i) of the Delaware Public Service Commission allows for carriers to seek a reduction of the \$50,000 bond requirement to only \$10,000 if the carrier no longer seeks to collect deposits nor requires prepayments for services. The XO companies submit that this is a reasonable bond policy and would support the adoption of this policy, or a similar policy, in Arizona.<sup>4</sup> Attached at tab 1 are the surety bond policies for Delaware, Utah, and Oklahoma (which eliminates any bond requirement for Applicants with at least one million dollars net book value invested in telephone plant and /or telephone facilities located in Oklahoma).

### **III. The \$3.4 Million Bond Is Not Based on Advances or Deposits**

The system used in recent months by Staff for calculating the amount of a recommended bond is unworkable. Staff asserts that the bond amount is based on aggregate advances and deposits. In truth, the bond is actually based on company revenue. Staff has argued that because XO Arizona and ALGX Arizona bill in advance for monthly service, it must include in the aggregate bond amount 30 days of revenue for each company. Data requests propounded by Staff make plain Staff's position: "[s]ince monthly service charges are paid before telecommunications services are provided, monthly service charges are considered advances or prepayments." This is simply incorrect. Although XO Arizona and ALGX Arizona bill customers for some telecommunications services in advance, this does not mean all service charges are paid before services are provided. Indeed, some recurring charges are billed and paid for in arrears. All usage

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<sup>4</sup> Attached at tab 1 are the surety bond policies for Delaware, Utah, and Oklahoma. The Oklahoma policy eliminates any bond requirement for Applicants with at least one million dollars net book value invested in telephone plant and /or telephone facilities located in Oklahoma.

billing (e.g. a toll call) are billed in arrears and thus the service is provided before any payment is rendered. Also, non-recurring charges are paid by the customer after the service is provided. (No interest or late penalty, however, is assessed while XO awaits payment for any of these services.)

With respect to recurring charges, monthly charges are billed before services are provided, however, billed amounts and monies collected are not synonymous. An actual customer bill will help explain this distinction. Attached at tab 2 is a bill sent to an XO Arizona customer. As the bill reflects, the specific XO Arizona customer is billed on the 21<sup>st</sup> of each month for service that begins the 21<sup>st</sup> and ends on the 20<sup>th</sup> of the following month. While the dates of the billing cycle may differ from customer to customer, the billing principles are the same. In the case of this customer, the September bill was sent out on September 21<sup>st</sup> and payment was due on October 20, 2004. The company received payment from the customer on October 19<sup>th</sup>. Contrary to Staff's position on revenue, XO Arizona did not have thirty days' use of unearned revenue. To the contrary, by the time the customer made payment, the revenue was almost fully earned. As you would expect, customers pay at all different points during the billing cycle. However, neither XO Arizona nor the Commission can easily predict from month to month what revenue XO Arizona will have by virtue of early customer payment. The XO companies submit that this revenue is not relevant for purposes of setting a bond amount. Payments made in the midst of a billing cycle are not "advances" or "deposits" and should not be used in calculating a performance bond intended to cover advances and deposits. XO companies are not permitted to assess any late payment charges or interests on this customer until after October 20, 2004 and, arguably, payments received for services not yet rendered are offset by usage services provided, but not yet billed. Logically, these amounts could be understood to offset one another. Clearly, XO Arizona's billing processes are not tantamount to the collection of advances from customers in Arizona. In sum, the \$3.4 million dollar proposed bond option is not based on accurate unearned revenue calculations.

Additionally, such a large bond in this very competitive telecommunications environment is, in effect, a requirement that has the effect of prohibiting competition in violation of the Telecommunication Act of 1996 ("the Act"), 47 U.S.C. §253(a). Under Section 253(a) of the Act, a state or local regulation may not prohibit or have the effect of prohibiting any entity from providing "telecommunications services."<sup>5</sup> A bond in an amount similar to those amounts proposed by Staff in this proceeding has the possible effect of prohibiting the provision of telecommunications services in Arizona. CLECs like XO Communications cannot affordably compete in Arizona if they must set aside 30 days of revenue to secure the face value of the bond, while competing with carriers that face no such requirement. This bond amount is not warranted by any risk presented by the XO companies' financial condition or its policies, nor is it reasonable in light of the XO companies' investment in Arizona. Commission Staff have offered no justification for this discriminatory treatment of similarly situated providers in Arizona. The continued application of this bond policy in light of the disproportionate application on competitive carriers in Arizona is not justified. As such, the XO companies respectfully request that the Commission eliminate entirely the bond requirement proposed by Staff, or alternatively reduce the bond requirement to \$50,000.

Respectfully submitted this 10<sup>th</sup> day of December 2004.

Osborn Maledon, P.A.

By



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<sup>5</sup> See 47 U.S.C. § 253(a).

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**Attorneys for the XO companies**

**CERTIFICATE OF SERVICE**

I certify that the original and 17 copies of EXCEPTION TO RECOMMENDED ORDER regarding Docket Nos. T-03601A-04-0583, T-03789A-04-0583, and T-04150A-04-0583 were hand delivered this 10 day of December 2004, to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, Arizona 85007

and that a copy of the foregoing was hand delivered this 10 day of December 2004, to the following:

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Brenda Wendt

**1**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE SALE, RESALE, )  
AND OTHER PROVISIONS OF INTRASTATE )  
TELECOMMUNICATIONS SERVICES ) PSC REGULATION DOCKET NO. 10  
(OPENED MAY 1, 1984; REOPENED )  
NOVEMBER 17, 1998; REOPENED )  
JULY 24, 2001) )

IN THE MATTER OF THE DEVELOPMENT OF )  
REGULATIONS FOR THE FACILITATION OF )  
COMPETITIVE ENTRY INTO THE TELECOM- ) PSC REGULATION DOCKET NO. 45  
MUNICATIONS LOCAL EXCHANGE SERVICE )  
MARKET (OPENED NOVEMBER 21, 1995; )  
REOPENED NOVEMBER 17, 1998; REOPENED )  
JULY 24, 2001) )

**FINDINGS, OPINION, AND ORDER NO. 5833**

**A. BACKGROUND**

1. In PSC Order No. 5767 (July 24, 2001), the Public Service Commission ("Commission") reopened Regulation Dockets Nos. 10 and 45 (as captioned above) in order to consider certain amendments to its *Rules For The Provision of Competitive Intrastate Telecommunications Services* ("Rules"), as proposed by Commission Staff. The proposed amendments address Staff's concerns regarding the application and bonding requirements for certification of competitive local exchange carriers and intrastate carriers. In addition, the proposed amendments reflect certain changes that have occurred in federal and state telecommunications laws.

2. By Order No. 5767, the Commission assigned the reopened dockets to a Hearing Examiner and directed the Commission Secretary to publish public notice of the reopening of the proceeding.<sup>[1]</sup> (Exhibit No. 1.) The public notice also included a deadline of August 31, 2001, for the filing of initial comments.

3. Verizon Delaware Inc. ("Verizon") and AT&T Communications of

(f) Bonds.

(i) Performance Bonds.

All applicants must post a \$10,000 performance bond with Delaware surety and renew such bond annually.

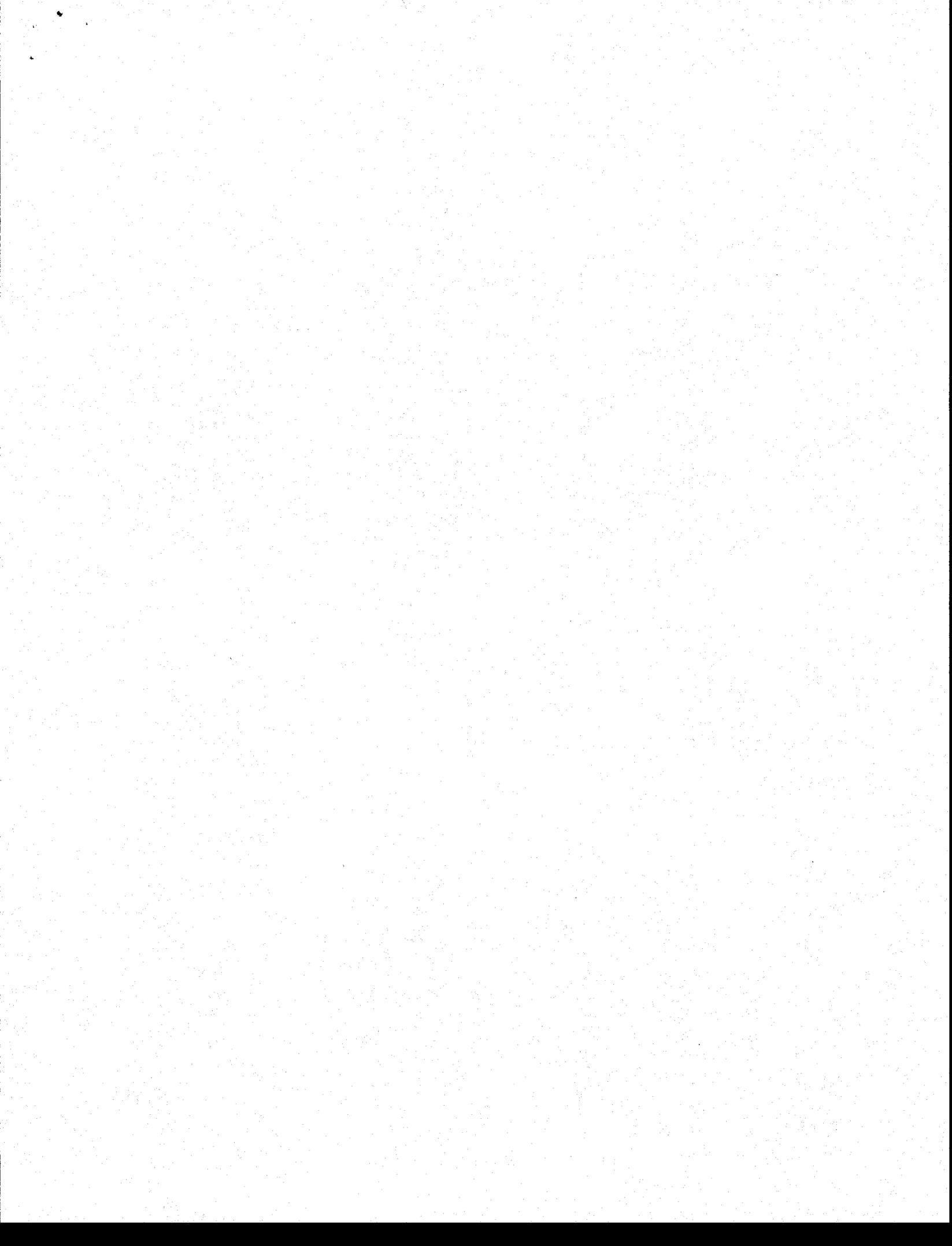
(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history

and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

- (i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;
- (ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;
- (iii) Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and
- (iv) An applicant may demonstrate cash or cash equivalent by the following:
  - (A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;
  - (B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
  - (C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for



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**Rule R746-349. Competitive Entry and Reporting Requirements.**

As in effect on November 1, 2004

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**[R746-349-1. Applicability.](#)**

These rules shall be applicable to each telecommunications corporation applying to be a competitor in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

**[R746-349-2. Definitions.](#)**

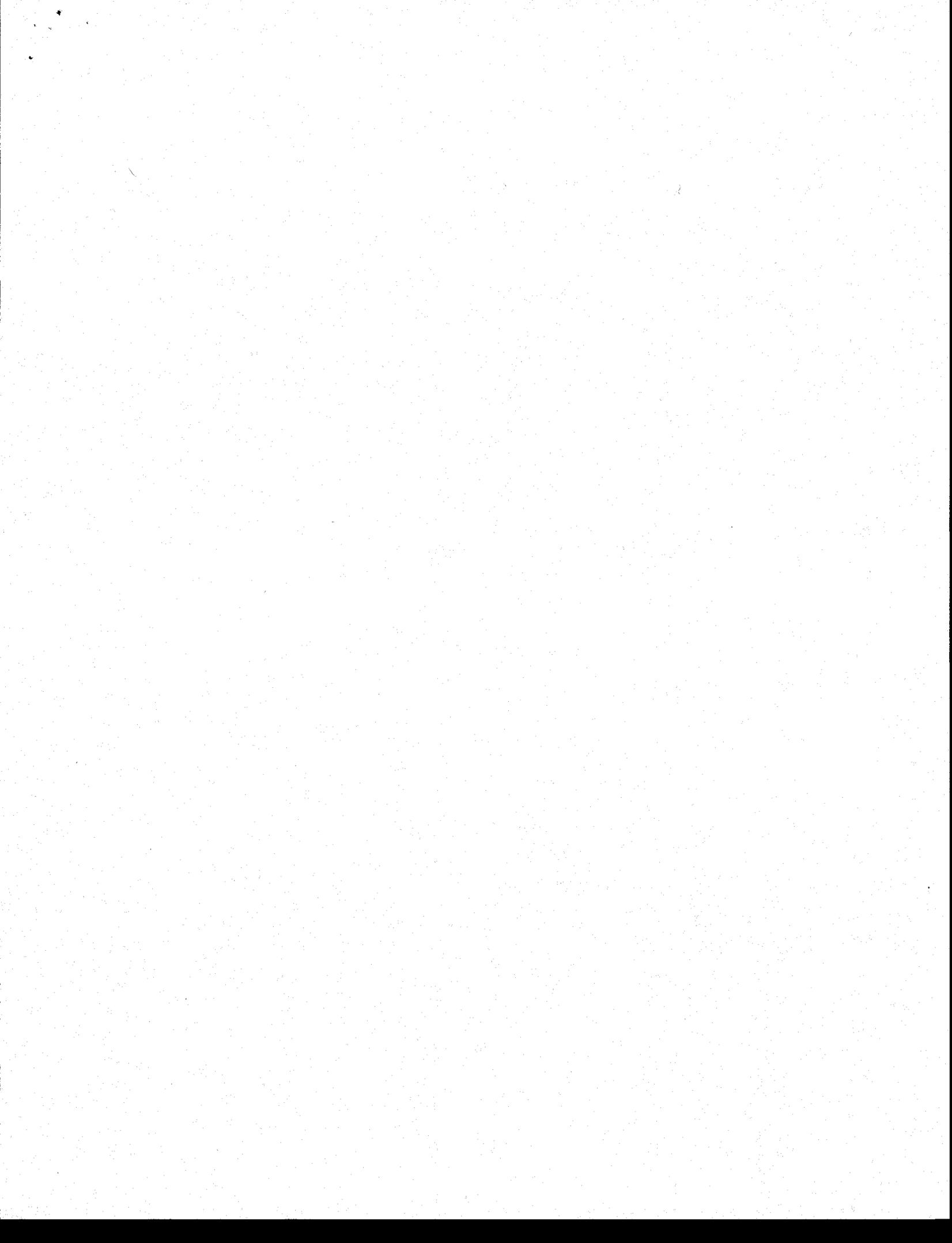
As used in these rules:

- A. "CLEC" means competitive local exchange carrier.
- B. "Division" means the Division of Public Utilities.
- C. "GAAP" means generally accepted accounting principles.

**[R746-349-3. Filing Requirements.](#)**

A. In addition to any other requirements of the Commission or of 63-46b and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;
2. proof of a bond in the amount of \$100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer liabilities;
3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;
4. a statement regarding the services to be offered including:
  - a. which classes of customer the applicant intends to serve,
  - b. the locations where the applicant intends to provide service,
  - c. the types of services to be offered;
5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;
6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;
7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;
8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;
9. a chart of accounts that includes account numbers, names and brief descriptions;
10. financial statements that at a minimum include:
  - a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,
  - b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,
  - c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,
  - d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;



**TITLE 165. CORPORATION COMMISSION**  
**CHAPTER 55. TELECOMMUNICATIONS SERVICES**  
**PERMANENT RULES**  
**AMENDED, EFFECTIVE 7-1-2004**

**Last Amended**  
**The Oklahoma Register**  
**Volume 21, Number 16**  
**June 15, 2004 Publication**  
**Pages 1921-2642**

NOTE: These rules are provided for the convenience of those who are affected by the jurisdiction of the Oklahoma Corporation Commission. Although the text of these rules is the same as the text on file in the Office of Administrative Rules, they are not the official version of the Oklahoma Administrative Code. Official rules are available from the Office of Administrative Rules of the Oklahoma Secretary of State.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) The final contract(s), if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such contract(s) become available. Protective relief may be sought pursuant to 51 O.S. § 24A.22.

(d) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

(e) **Notice requirements of CCN applications.** Applicants for a Certificate of Convenience and Necessity shall provide Notice of the Application to be given by mail or personal service to the Attorney General of the State of Oklahoma. In addition, at the time the Application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days.

(f) **Approval requirement.** The Commission shall approve or deny such application within one hundred twenty (120) days of the date the application is filed. No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing.

(g) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To insure the protection of the applicant's end-users, the applicant, that intends to collect deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars (\$1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(h) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

[Source: Amended at 10 Ok Reg 2651, eff 6-25-93; Amended at 13 Ok Reg 2437, eff 7-1-96; Amended at 15 Ok Reg 3054, eff 7-15-98; Amended at 16 Ok Reg 2261, eff 7-1-99; Amended at 18 Ok Reg 2415, eff 7-1-01; Amended at 19 Ok Reg 1990, eff 7-1-02; Amended at 20 Ok Reg 2302, eff 7-15-03; Amended at 21 Ok Reg 2107, eff 7-1-04]

### **165:55-3-2. Notice of hearing for Certificate of Convenience and Necessity**

Notice of a hearing concerning the merits of an application for a Certificate of Convenience and Necessity shall be given by publication. At least thirty (30) days prior to the hearing, the applicant shall cause notice of the hearing to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each exchange where service will be offered. Publication shall be at the expense of the applicant and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. A "Proof of Publication" document shall be filed in the cause with the Commission's Office of the Court Clerk within seven (7) days of the last publication date.

[Source: Added at 13 Ok Reg 2437, eff 7-1-96]

### **165:55-3-3. Approval of initial tariffs**

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:55-3-1, a telecommunications service provider, or IXC shall file an application requesting approval of a complete set of proposed initial tariffs, unless filed pursuant to OAC 165:55-3-1(c)(2)(L), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter.

(b) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by Commission.

(c) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(d) With the application requesting approval of a complete set of proposed initial tariffs, the telecommunications service provider, or IXC, shall file proof that the third-party surety bond, surety bond or letter of credit required in OAC 165:55-3-1(f) has been obtained, if applicable.

(e) Failure to comply with this Section may result in the filing of a Motion to Cease and Desist and could result in revocation of the telecommunications service provider's, or

**2**

REDACTED

Your XO Phone Bill  
Customer 1000000065209

BILLING PERIOD: 10.21.2004

back to XTools...

(The fax feature is not available at this time 12/21/2000.)

(Please try sending via email or send hard copy until the feature is back up.)

(We apologize for any inconveniences that may have been caused due to this unavailability.)

SEND EMAIL

(The entire file will be FAXed or MAILED.)

previous 100000  
8851 Sandy Pkwy  
Sandy, UT 84070

lines 1 to 100000

next 100000

INVOICE NUMBER: 0104471363

DESCRIPTION	AMOUNT
Previous Balance	\$1,291.55
Payments Applied thru 10/20/04	\$1,291.55
Net Balance	\$ .00
Adjustments	\$ .00
Current Charges	\$1,268.36

DUE DATE: 11/20/04

TOTAL AMOUNT DUE: \$1,268.36

AMOUNT PAID:

Account Number:0010000000:

PHOENIX, AZ 85034

0010000000 06AZ01 102104 112004 0000126836 0000000000 0000000000 5

Detach Here - Return Top Portion with Payment

REDACTED

PHOENIX, AZ 85034



NEWS:

EARN XO BILL CREDITS!

Your business has unlimited earning potential in the XO Connections customer referral program. Refer a business colleague to XO and earn 50% of the first month's recurring charges for new customers referred by you. Act now because there is no LIMIT to how many customers you can refer! Refer a customer today at [www.xo.com/referralonbill](http://www.xo.com/referralonbill).

CALLING CARD INTERNATIONAL ACCESS NUMBER CHANGES

If you have an XO Calling Card with International origination capabilities, you may be aware that International Access numbers occasionally change. To ensure that you have availability to the most up-to-date numbers, XO has posted it's most current list of more than 125 countries and access numbers at [www.xo.com/callingcard/accessnumbers](http://www.xo.com/callingcard/accessnumbers) and will continue to update that site as changes occur. Although you may continue to use the printed International Calling Card wallet guide, XO recommends that you always check [www.xo.com](http://www.xo.com) before an overseas trip so that you have the latest updates.

CORRESPONDENCE

Please do not include correspondence or cash with your payment. Payment inquiries and other account issues should be directed to Customer Care at the number on this invoice.

MOVING?

To ensure a smooth transition of services to your new location, please give us at least 45 days notice by calling the Customer Care number on this invoice.

REDACTED

Customer Service Inquiries: 1-888-575-6398

Mail To:

19111004292921

XO Communications  
P.O. Box 31001-0429  
Pasadena, CA 91110-0429

REDACTED

Customer Service Inquiries: 1-888-575-6398

PAGE: 2  
INVOICE DATE: 10/21/04

ACCOUNT NAME:  
ACCOUNT NUMBER: 0010000000  
INVOICE NUMBER: 0104471383

STATEMENT OF ACCOUNT:

PRIOR BALANCE	1,291.55	(1,291.55)
Payment on	10/19/04	
BALANCE BEFORE NEW CHARGES:		.00

[http://xtools/cgi-bin/billing/billonline\\_temp1.pl/1000000](http://xtools/cgi-bin/billing/billonline_temp1.pl/1000000) /10.21.2004/1/100000

12/2/2004

REDACTED

PRODUCT CHARGES:	FR DATE TO DATE	QUANTITY	EACH	AMOUNT
Automatic Callback	10/21/04	11/20/04		1
Call Forwarding	10/21/04	11/20/04		5
Call Transfer	10/21/04	11/20/04		4
Additional Directory Listing	10/21/04	11/20/04		1
Hunting	10/21/04	11/20/04		3
Toll Free Number Charge	10/21/04	11/20/04		1
4000 LD Minutes Included	10/21/04	11/20/04		1
VoiceMail w Message Waiting	10/21/04	11/20/04		1
XOptions bCentral Retail Pkg	10/21/04	11/20/04		1
Ded Internet Access up to 768kb	10/21/04	11/20/04		1
Web Hosting X2-B	10/21/04	11/20/04		1
Voice Line	10/21/04	11/20/04		6
XOption #7A Integrated Access	10/21/04	11/20/04		1
3 Way Calling	10/21/04	11/20/04		4

Total Product Charges

USAGE:	CALLS	MINUTES	AMOUNT
Local Area	849		.00
Intra-State Long Distance	1		.00
Inter-State Long Distance	9		.00
800/888 Service	111		.00
Directory Assistance	1		.00

Total Usage Charges

FEDERAL SURCHARGES AND TAXES:	AMOUNT
Number Portability Charge	2.58
Long Distance Access Charge	25.86
Fed Universal Service Charge	14.99
Fed Reg Fee and Property Tax	3.37
Federal Excise Tax	17.80

Total Federal Surcharges and Taxes

64.60

STATE AND LOCAL SURCHARGES AND TAXES:

Arizona 911	2.22
Universal Service Fund	0.06
Universal Service Fund	0.05
TDD Surcharge	3.88
Sales Tax	44.30

REDACTED

Total State and Local Surcharges and Taxes

TOTAL CURRENT CHARGES

TOTAL AMOUNT DUE:

Customer Service Inquiries: 1-888-575-6398  
Call Detail Report - 800 Service

ACCOUNT NAME:  
ACCOUNT NUMBER: 0010000000  
INVOICE NUMBER: 0104471383  
PAGE: 3  
INVOICE DATE: 10/21/04

SERVICE LOCATION:  
CALL TO:

DATE	TIME	CALL FROM	NUMBER	CALL TYPE	MINUTES	AMOUNT
09/21	01:25 PM	DANVERS MA	(978) 774-9391	TF	0.2	.00
09/21	02:48 PM	LAS VEGAS NV	(702) 641-8641	TF	0.3	.00
09/21	04:16 PM	MT GILEAD NC	(910) 439-4795	TF	0.3	.00
09/21	06:35 PM	ANNARHIM CA	(714) 412-8637	TF	0.6	.00
09/22	02:39 PM	LAS VEGAS NV	(702) 641-8641	TF	0.5	.00
09/22	07:09 PM	LAS VEGAS NV	(702) 641-8641	TF	0.6	.00
09/23	06:56 PM	LAS VEGAS NV	(702) 641-8641	TF	0.5	.00
09/23	07:12 PM	LAS VEGAS NV	(702) 641-8641	TF	0.1	.00
09/23	08:23 PM	LAS VEGAS NV	(702) 641-8641	TF	0.2	.00
09/24	10:24 AM	LAS VEGAS NV	(702) 641-8641	TF	3.5	.00
09/24	11:04 AM	LAS VEGAS NV	(702) 641-8641	TF	0.3	.00
09/25	12:35 PM	LAS VEGAS NV	(702) 641-8641	TF	0.2	.00
09/26	08:03 AM	LAS VEGAS NV	(702) 641-8641	TF	0.6	.00
09/26	12:55 PM	LAS VEGAS NV	(702) 641-8641	TF	0.2	.00
09/26	06:18 PM	LAS VEGAS NV	(702) 641-8641	TF	0.4	.00