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BEFORE THE ARIZONA CORPORATION

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MARC SPITZER  
Chairman

JIM IRVIN  
Commissioner

WILLIAM A. MUNDELL  
Commissioner

JEFF HATCH-MILLER  
Commissioner

MIKE GLEASON  
Commissioner

Arizona Corporation Commission

DOCKETED

JAN 17 2003

DOCKETED BY *sd*

IN THE MATTER OF THE APPLICATION FOR )  
APPROVAL OF THE TRANSFER OF CONTROL )  
OF XO LONG DISTANCE SERVICES, INC., )  
AND XO ARIZONA, INC. FROM XO )  
COMMUNICATIONS, INC., DEBTOR-IN- )  
POSSESSION, TO A REORGANIZED XO )  
COMMUNICATIONS, INC. CONTROLLED BY )  
HIGH RIVER LIMITED PARTNERSHIP, AND )  
FOR APPROVAL OF NEW AND AMENDED )  
SECURED CREDIT FACILITIES )

DOCKET NOS. T-04150A-02-0814  
T-03775A-02-0814  
T-03601A-02-0814

DECISION NO. 65520

ORDER

Open Meeting  
January 14 and 15, 2003  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On October 28, 2002, XO Communications, Inc. ("XO") filed an application for approval of the transfer of control of XO Long Distance Services, Inc. ("XO Long Distance") and XO Arizona, Inc. ("XO Arizona") from XO Communications, Inc. to a reorganized XO Communications, Inc. controlled by High River Limited Partnership. XO also is requesting approval of new and amended secured credit facilities. On November 15, 2002, the U.S. Bankruptcy Court approved this transaction.

2. On August 23, 2002, the Commission approved an XO reorganization plan that contained an \$800 million investment by a subsidiary of Telefonos de Mexico, S.A. de C.V. ("Telmex") and by funds affiliated with Forstmann Little & Co. in exchange for about 80 percent of the reorganized company's equity and the elimination of most of the unsecured debt and all of its existing equity (Dec. 65127). However, the Forstmann Little/Telmex reorganization plan was

1 terminated and was not implemented.

2 3. At the time that XO's Forstmann Little/Telmex plan was filed with the Commission, an  
3 alternative restructuring proposal had been filed with the Bankruptcy Court. This alternative plan was  
4 known as the "Stand-Alone Plan." This Stand-Alone Plan is the plan outlined in this application.

5 4. Currently, XO is owned by three entities. These entities and their percentages of  
6 ownership are as follows: Craig O. McCaw (51 percent), Forstmann Little (8 percent), and other  
7 existing shareholders (41 percent). If the proposed transfer of ownership and control of XO and its  
8 operating subsidiaries is approved by the Commission, the resultant effect of the ownership structure  
9 will be as follows: High River Limited Partnership (80 percent), Meadow Walk Limited Partnership  
10 (1.4 percent); and other shareholders (18.6 percent). As with the Forstmann Little/Telmex plan, the  
11 Stand-Alone Plan would eliminate XO's unsecured debt and existing equity and would result in the  
12 issuance of new equity.

13 5. Staff reviewed this application under the Public Utility Holding Companies and  
14 Affiliated Interests rules. Staff directed XO to provide the information required by R14-2-803 to allow  
15 it to determine the potential effects of approval of the filing. Staff has received and reviewed the  
16 information required under these rules.

17 6. Both XO Long Distance and XO Arizona are authorized to provide interexchange  
18 services in Arizona. XO Arizona also provides local exchange services in Arizona. XO Arizona has  
19 1,624 local customers in Arizona. XO Long Distance has no customers in Arizona. The proposed  
20 reorganization and re-capitalization does not impair the operating subsidiaries from providing their  
21 authorized telecommunications services. The reorganization will not result in any changes to the rates,  
22 certifications, or management of XO Long Distance or XO Arizona. The reorganization will enable  
23 XO to emerge from bankruptcy.

24 7. Staff recommends that the Commission approve XO's application for the planned  
25 reorganization and recapitalization subject to the following conditions:

26 1. Upon request, XO Arizona, Inc. shall provide to the Commission, on a confidential  
27 basis, access in the Phoenix metropolitan area to its books and records. XO  
28 Communications, Inc. and its subsidiaries shall, upon request, provide to the

1 Commission, on a confidential basis, access to books and records reasonably related to  
2 their operations in Arizona, where such documents are maintained.

- 3 2. XO Arizona, Inc. shall not allow the reorganization to result in service degradation.  
4 The rate of service complaints should not increase, the response time to service  
5 complaints should not increase, and service interruptions should not increase as a result  
6 of the reorganization. For the first two years from the effective date of this order, XO  
7 Arizona, Inc. shall file a quarterly report with the Director of the Utilities Division  
8 describing the rate of service complaints.
- 9 3. XO Arizona, Inc. shall continue to maintain a fully operational local (Arizona) office  
10 so long as it provides facilities-based local exchange service in the state.
- 11 4. XO Arizona, Inc. shall refrain from filing any increases in its current rate (price) or  
12 maximum rates on file with the Commission for two years from the closing date of the  
13 reorganization. In the second year, XO Arizona, Inc. will have authority to file for  
14 increases in rates and/or prices based on competitive market conditions or changes.
- 15 5. XO shall procure a performance bond equal to \$235,000. The minimum bond amount  
16 of \$235,000 should be increased if at any time it would be insufficient to cover  
17 prepayments or deposits collected from the customers of XO Arizona, Inc. and XO  
18 Long Distance. The bond amount should be increased in increments of \$117,500. This  
19 increase should occur when the total amount of advances, deposits and prepayments is  
20 within \$23,500 of the bond amount. XO shall file proof of the performance bond in  
21 this docket within 60 days of the effective date of a Decision in this matter.
- 22 6. Before discontinuing service to a class of customers, XO will file an application to  
23 discontinue service with the Commission pursuant to A.A.C. R14-2-1107.
- 24 7. XO will notify each of its local exchange customers and the Commission at least 90  
25 days prior to a proposed discontinuance of service due to cessation of operations; and  
26 any failure to do so should result in forfeiture of XO's performance bond as well as any  
27 other penalties the Commission may by law impose.
- 28 8. XO will retain the majority of its current management or similarly qualified  
management for a minimum of two years from the effective date of a Decision in this  
matter.
9. In the event that XO, or any of its affiliates files an action in any court challenging this  
order, the Commission should automatically grant, pursuant to A.R.S. § 40-252, a re-  
examination of this entire matter, and the Hearing Division should set this matter for a  
full evidentiary hearing.

#### CONCLUSIONS OF LAW

1. XO Long Distance, Inc. and XO Arizona, Inc. are Arizona public service corporations

1 within the meaning of Article XV, Section 2, of the Arizona Constitution.

2       2.     The Commission has jurisdiction over XO Long Distance and XO Arizona and over the  
3 subject matter of the Application.

4       3.     The Commission has jurisdiction over the proposed transaction. The two XO  
5 subsidiaries, XO Long Distance and XO Arizona are Arizona public service corporations. According  
6 to A.A.C. R14-2-802, the Public Utility Holding Companies and Affiliated Interests Rules apply to all  
7 Class A investor-owned utilities. A telecommunications carrier that has Arizona jurisdictional  
8 revenues of more than \$1 million is considered to be a Class A utility. In the annual report of XO  
9 Arizona filed with the Commission, XO Arizona generated more than \$1.0 million of Arizona  
10 jurisdictional revenue. XO Arizona is a Class A investor-owned utility. The parent company, XO, is  
11 an Arizona public utility holding company. As a result, XO Arizona and XO Communications, Inc.  
12 are subject to A.A.C. R14-2-801 through 805 of the Public Utility Holding Companies and Affiliated  
13 Interests Rules.

14       4.     The Commission has the authority to impose the conditions in Finding of Fact No. 7.

15       5.     It is in the public interest to approve XO's application subject to the conditions in  
16 Finding of Fact No. 7.

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SERVICE LIST FOR: XO COMMUNICATIONS, INC., et al.  
1 DOCKET NOS. T-04150A-02-0814, T-03775A-02-0814, T-03601A-02-0814

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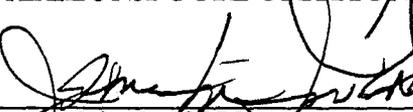
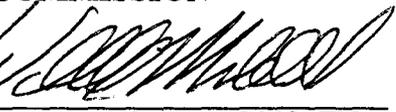
ORDER

IT IS THEREFORE ORDERED that XO's reorganization plan and recapitalization plan filed on October 28, 2002, are approved subject to the conditions in Finding of Fact No. 7.

IT IS THEREFORE ORDERED that if XO, or any of its affiliates files an action in any court challenging this order, the Commission shall automatically grant, pursuant to A.R.S. § 40-252, a re-examination of this entire matter, and the Hearing Division should set this matter for a full evidentiary hearing.

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

**BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 17<sup>th</sup> day of January, 2003.

DISSENT: \_\_\_\_\_

  
Brian C. McNeil  
Executive Secretary

EGJ:MGK:rdp/TS