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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission
DOCKETED
FEB 23 2006
DOCKETED BY

IN THE MATTER OF THE NOTICE OF INTENT AND REQUEST FOR EXPEDITED APPROVAL OF INTERNAL CORPORATE RESTRUCTURING BY XO COMMUNICATIONS SERVICES, INC.

DOCKET NO. T-04302A-05-0894

DECISION NO. 68495

ORDER

Open Meeting
February 14 and 15, 2006
Phoenix, Arizona

BY THE COMMISSION:

On December 16, 2005, XO Communications Services, Inc. ("XOCS") filed an application for expedited approval of internal corporate restructuring of XO Communications, Inc. ("XO"), the parent of XOCS, pursuant to Arizona Administrative Code R14-2-803. This application requests that the Commission grant such authority as may be necessary or required to permit XO to complete the proposed restructuring.

XOCS represents the proposed restructuring as purely internal and financial in nature, and will not impact the terms or conditions of services offered by XOCS. In the proposed restructuring of XO, Carl C. Icahn's equity and voting interest in XO will grow from 61 percent to 100 percent through the merger of XO and a newly formed entity, XO Communications, LLC ("XO LLC"). XO LLC will be wholly owned by Elk Associates LLC which is, in turn, wholly owned by Carl Icahn. XO LLC will merge into and replace XO. XOCS will then be a wholly owned subsidiary of XO LLC.

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FINDINGS OF FACT

Background

The Company in its Application represents the following:

1. 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.

2. XO is a national provider of local and long distance telecommunications services to businesses, large enterprises and telecommunications carriers through its network of metropolitan fiber rings and long haul fiber optic facilities and through the use of facilities and services leased or purchased from third party carriers, including incumbent local exchange carriers.

3. Through XOCS, and other subsidiaries, XO is authorized to provide intrastate interexchange services virtually nationwide, and to provide competitive local exchange carrier ("CLEC") services in 49 states and Washington, D.C[1].

4. Additionally, XO's wholly-owned subsidiary, LMDS Holdings, Inc. ("LMDS"), holds wireless licenses in the LMDS and 39 GHz bands as well as related fixed broadband wireless spectrum assets.

5. Cardiff Holding LLC ("Cardiff ') holds a beneficial interest of approximately 61 percent of the equity and voting interests in XO and is indirectly, wholly-owned and controlled by Carl C. Icahn, through his ultimate ownership and control of companies that hold ownership interests in Cardiff.

6. In 2003, the Commission approved the transfer of control of XO to Cardiff after XO emerged from bankruptcy[2].

7. During 2004, XO's telecommunications services were provided through Allegiance and XO Arizona. Decision No. 67460, on January 4, 2005, approved the consolidation of Allegiance and XO Arizona into XOCS.

8. In the current proposed internal restructuring, the ultimate ownership will not change. XOCS will continue to be majority owned and controlled by Mr. Icahn.

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[1] Applicant states 47 states at page 2 of its application. Information was revised in XO's response to STF 1.4

The Company's Request

9. XOCS seeks Commission approval of XO's internal and financial restructuring consisting of the following.

10. Included in the restructuring, XO will spin off its wireless business to XO Holdings. XO LLC will hold the wireline business. The businesses will be structurally separate, but both will be ultimately majority owned and controlled by Mr. Icahn. On November 4, 2005, XO entered into an Equity Purchase Agreement ("Equity Purchase Agreement") with XO Holdings, Inc. ("Holdings"), a newly-formed subsidiary of XO, and Elk. Under the Equity Purchase Agreement, XO will sell its national wireline telecommunications business to Elk. To implement the sale, XO will create two new wholly-owned subsidiaries - Holdings, a Delaware corporation that is a direct subsidiary of XO, and XO LLC, a Delaware limited liability company that is a direct subsidiary of Holdings. XO will merge with and into XO LLC, with XO LLC emerging as the surviving entity. XOCS will then be a subsidiary of XO LLC (the "Restructuring Merger").

11. Upon consummation of the Restructuring Merger, each share of common stock of XO that is outstanding immediately prior to the Restructuring Merger will be converted into the right to receive one share of common stock of Holdings, and each share of preferred stock, warrant, and stock option of XO outstanding immediately prior to the Restructuring Merger will be convertible at the option of the holder into shares of Holdings common stock on the same terms and conditions as applicable to such securities prior to the Restructuring Merger. Following these actions, all of the outstanding member interests in XO LLC will be sold to Elk for an aggregate purchase price of $700 million in cash, subject to certain adjustments. According to the applicant much of the amount will be used to retire debt of XO LLC. Closing is contingent on receipt of all necessary regulatory approvals, among other things. Diagrams showing the corporate organizational structure before and after closing were included in the application and are included here as Attachment 1.

12. The "XO Communications" brand name will be transferred to XO LLC at closing and will therefore remain with the wireline business. Holdings will retain the fixed broadband

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[2] See Decision No. 65520 (January 17, 2003); XO application filed October 28, 2002, page 2

wireless spectrum licenses and other assets through its ownership of LMDS Holdings, and will commence operations under a new name.

13. XOCS believes that the proposed transaction will be effectively transparent to XOCS's customers since its ultimate ownership will remain the same, its authorization to provide telecommunications services will remain in place, and its customers should not be affected in any way as they will continue to be offered the same services by the same service provider with the same name at the same rates, terms and conditions at present.

Staff's Analysis & Recommendations

14. The proposed transaction is structured as a sale of assets, which will have the result of Elk acquiring all of the interests of XO's minority stockholders in the CLEC business. At the closing, Holdings will utilize the $625 million cash purchase price paid by Elk to repay all but $75 million of the outstanding indebtedness of XO LLC.

15. In order to increase his current equity and voting interests from 61 percent to 100 percent, Mr. Icahn will obtain the 39 percent equity and voting interests in XO from the two largest minority stockholders - Allegiance Telecom Liquidating Trust, which owns approximately 24.5 percent of XO's outstanding common stock, and Amalgamated Gadget L.P., a Texas-based investment fund that owns approximately 7.7 percent of XO's outstanding common stock.

16. Annual report changes from 2003 to 2004 indicate that XOCS made an impressive improvement in its operations, growing Total Access Lines and Total Income from Arizona Operations by significant amounts. During the same period, the Value of XOCS Assets Used to Serve Arizona Customers declined. XOCS explained that "the final audited 2003 financial reports for both XO Arizona and Allegiance reflect large reorganization expenses that were incurred as the companies emerged from bankruptcy. While revenue for each company increased only modestly in 2004, net income appeared to increase more dramatically because the reorganization expenses booked in 2003, were not incurred in 2004."

17. XOCS reported assets exceeding several million "used to serve Arizona customers" in its 2004 Annual Report to the Commission. The investment serves business customers in the

Phoenix metro area. This investment includes three digital switches and is used to serve several thousand business access lines within Arizona. XO's plan to spin-off wireless assets would not appear to change this investment or service level.

18. In responding to Staff's data requests, XOCS states "XO LLC will retain all of XOC's competitive local exchange assets. XO LLC will, however, distribute or assign certain of its assets to Holdings prior to the closing. Such assets include all of XOC's current cash balance of approximately $180 million, XOC's LMDS 28GHz fixed wireless radio licenses, certain radio and routing equipment, and certain assets and liabilities associated with outstanding litigation matters to which XOC is a party. All of XOC's customers, vendors, fiber assets, switches, collocated facilities and equipment, data centers, network operations centers, and offices will remain with XOCS. Thus, the general day-to-day business operations of the wireline company will continue under the name XOCS." Since all financial changes are occurring in XOC rather than XOCS and XOCS will remain wholly-owned by essentially the same parent, Staff has no reason to believe that the restructuring and associated spin-off of the wireless company will have any impact on XOCS's telecommunications services in Arizona.

19. Under the proposed terms of what XOCS describes as a "Master Wireless Reserve Capacity Agreement", XO LLC will be entitled to purchase wireless communications services from Holdings (or an operating affiliate thereof) following the closing. In addition, under the proposed terms of a "Spectrum Lease Agreement", Holdings (or an operating thereof) will lease certain specified channels of radio spectrum to XO LLC for the purpose of providing wireless communications service to XO LLC customers. Holdings will also provide customary equipment maintenance and support for wireless communications equipment deployed to provide such services. None of the agreements above is exclusive, and XO LLC will be permitted to obtain substitute services from other vendors or carriers. With its wireless affiliate, XO may be in a position to provide bundles which include Wireline, Wireless, Broadband and VoIP elements, similar to may other major providers. At this time, however, XO only serves business customers.

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20. XOCS has 11 management and 44 non-management employees in Arizona and stated in response to Staff's data request that employee surpluses are not anticipated as a result of this transaction.

21. While no evidence exists that this transaction will provide direct or immediate benefits to Arizona's local exchange competitive situation, Staff generally agrees that any reorganization that improves the financial position of an established brand at a time when many well-known brands, e.g., SBC & AT&T and Verizon & MCI are being repositioned is a positive move. The application suggests that the financial position of the corporate brand – XO – is being improved, thereby indirectly improving the financial position of XOCS, a 100% subsidiary.

22. Staff does not believe that this transaction will impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

23. Staff recommends that the application of XOCS for request for expedited approval of internal corporate restructuring be granted with the following conditions.

1. That should XO enter into residence service at a future date, all XO Arizona residence consumers of telecommunications services should have the opportunity to arbitrate disputes over billing and unauthorized charges before the Commission. As such, XO shall be required to participate in a binding Arbitration Program administered by the Commission's Consumer Services Division. The Arbitration Program will apply to all Arizona residential customers of the surviving merged entity and its controlled affiliates that offer telecommunications services including, but not limited to, wireline, wireless and VoIP telephony.

2. That for one year following the date of this decision XO provide written notification to the Director of the Utilities Division and to the individual members of the Commission, at least 60 days in advance, of any transaction-related Arizona workforce layoffs; any transaction-related Arizona plant closings; and any transaction-related Arizona facility closings.

3. That XO be required to review its numbering resources in the 480, 520, 602, 623, and 928 NPAs. To the extent that the Company's numbering resources in these NPAs exceed a six month inventory, XO be required to, within sixty days of a Commission Decision in this matter, return to the Pooling Administrator all surplus thousands-blocks with less than ten percent contamination.

4. That the Commission's order in this matter does not eliminate the Company's obligation to comply with any and all requirements imposed by prior Commission orders.

CONCLUSIONS OF LAW

1. XO is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over XO and of the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 1, 2006, concludes that it is in the public interest to grant XO's application for expedited approval pursuant to R14-2-803 of the Arizona Administrative Code.

ORDER

IT IS THERFORE ORDERED that XOCS's request for expedited approval pursuant to R14-2-803 of the Arizona Administrative Code is granted.

IT IS FURTHER ORDERED that should XO enter into residence service at a future date, all XO Arizona residence consumers of telecommunications services should have the opportunity to arbitrate disputes over billing and unauthorized charges before the Commission.

IT IS FURTHER ORDERED that should XO enter into residence service at a later date XO shall be required to participate in a binding Arbitration Program administered by the Commission's Consumer Services Division. The Arbitration Program will apply to all Arizona residential customers of the surviving merged entity and its controlled affiliates that offer telecommunications services including, but not limited to, wireline, wireless and VoIP telephony.

IT IS FURTHER ORDERED that for one year following the date of this decision XO shall provide written notification to the Director of the Utilities Division and to the individual members of the Commission, at least 60 days in advance, of any transaction-related Arizona workforce layoffs; any transaction-related Arizona plant closings; and any transaction-related Arizona facility closings.

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IT IS FURTHER ORDERED that to the extent that the XO's numbering resources in the 480, 520, 602, 623, and 928 NPAs exceed a six month inventory, XO shall be required to, within sixty days of a Commission Decision in this matter, return to the Pooling Administrator all surplus thousands-blocks with less than ten percent contamination.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director 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 23rd day of February, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: ______________________

DISSENT: ______________________

EGJ:AFF:lhm/MAS

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DOCKET NO. T-04302A-05-0894

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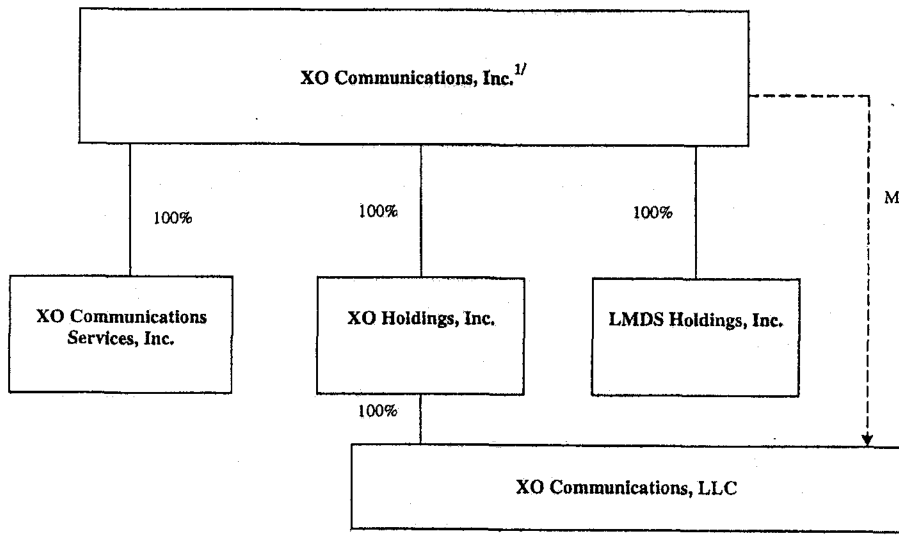
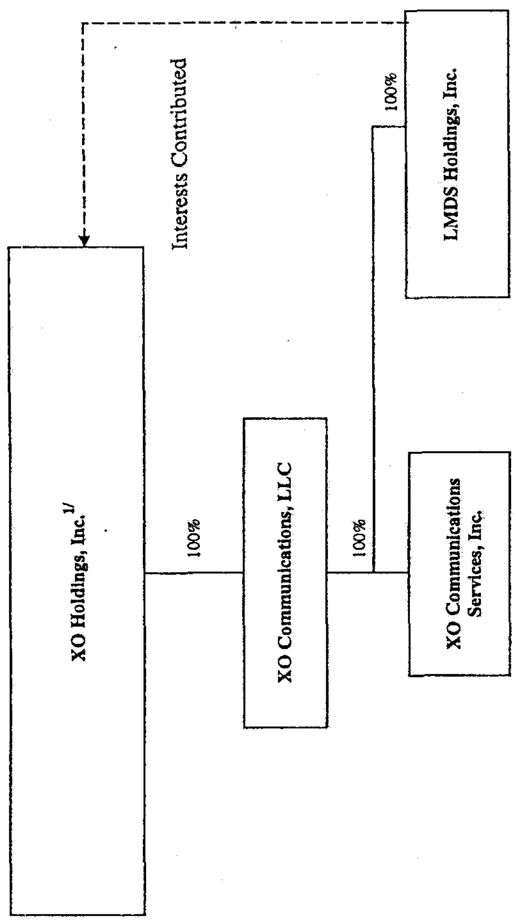
ATTACHMENT 1

STRUCTURE PRIOR TO RESTRUCTURING MERGER



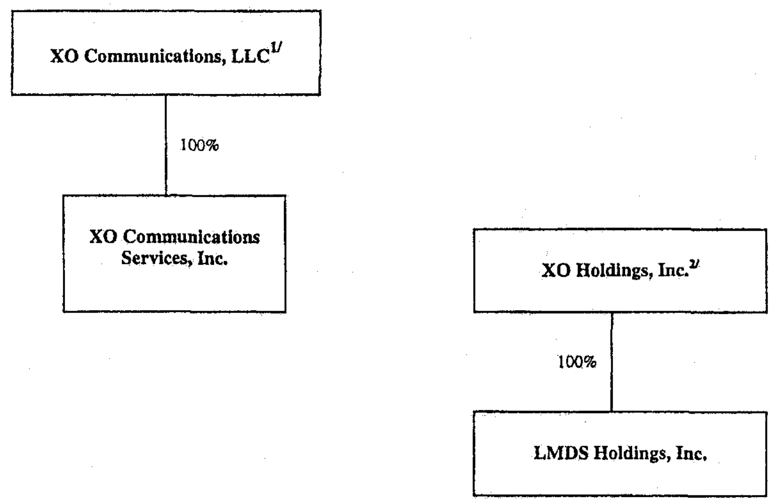
1/ Cardiff Holding LLC ("Cardiff") beneficially holds approximately 61% of the equity and voting interests in XO Communications, Inc. Cardiff is indirectly, wholly owned and controlled by Carl C. Icahn through his ownership and control of various intermediary companies that hold ownership interests in Cardiff.

STRUCTURE UPON CONSUMMATION OF RESTRUCTURING MERGER



1/ Cardiff will beneficially hold approximately 61% of the equity and voting interests in XO Holdings, Inc. Cardiff is indirectly, wholly owned and controlled by Carl C. Icahn through his ownership and control of various intermediary companies that hold ownership interests in Cardiff.

STRUCTURE FOLLOWING LMDS TRANSFER AND XO COMMUNICATIONS SALE TO ELK ASSOCIATES



1/ Elk Associates LLC ("Elk") will hold 100% of the issued and outstanding membership interests of XO Communications, LLC. Elk is wholly owned and controlled by Carl C. Icahn. Thus, Carl C. Icahn will retain ultimate majority ownership and control of the XO operating subsidiaries.

2/ Cardiff will beneficially hold approximately 61% of the equity and voting interests in XO Holdings, Inc. Cardiff is indirectly, wholly owned and controlled by Carl C. Icahn through his ownership and control of various intermediary companies that hold ownership interests in Cardiff.