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BEFORE THE ARIZONA CORPORATION COMMISSION

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BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION  
OF XO COMMUNICATIONS SERVICES,  
INC. AND ITS AFFILIATES FOR A  
LIMITED WAIVER OF THE RULES  
GOVERNING PUBLIC UTILITY HOLDING  
COMPANIES AND AFFILIATED  
INTERESTS

DOCKET NOS. T-04302A-12-0456

DECISION NO. 73671

ORDER

Open Meeting  
January 30 and January 31, 2013  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

- On November 6, 2012, XO Holdings ("XO Holdings"), XO Communications, LLC ("XO LLC") and XO Communications Services, Inc. ("XOCS") filed an application with the Arizona Corporation Commission ("Commission") for a limited waiver of A.A.C. R14-2-801, et seq. (the "Rules") – the rules governing public utility holding companies and affiliated interests.
- The limited waiver will be used in future transactions which meet the definition of a reorganization under Rule 14-2-801(5) and to consummate transactions otherwise subject to A.A.C. R14-2-804(B).
- XOCS is not requesting a waiver of A.A.C. R14-2-805 - Annual Filing Requirements of Diversification Activities and Plans.

1 Background

2 4. XOCS is authorized by the Commission to provide competitive local exchange  
3 services (including switched and dedicated access services), intraLATA toll services and  
4 intrastate interexchange telecommunications services within the State of Arizona.

5 5. XO LLC is the parent company to XOCS and a number of similar subsidiaries.  
6 XO LCC is a provider of local and long distance telecommunications to businesses, large  
7 enterprises and telecommunications carriers and is a direct wholly owned subsidiary of XO  
8 Holdings, a Delaware general partnership.

9 6. Under the Rules, Commission approval is required per A.A.C. R14-2-803(A)  
10 whenever a utility or an affiliate intends to reorganize an existing public utility holding  
11 company.

12 7. Prior approval is also required under R14-2-804(B) if a public utility wishes to  
13 "obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or  
14 assume the liabilities of such affiliate" or lend to any affiliate not regulated by the Commission  
15 \$100,000 or more for over one year.

16 8. When companies such as XO LLC or XO Holdings, with entities controlling  
17 assets and network facilities spread across the nation, add or replace an investor or participate  
18 in any sort of merger, financing, refinancing, reconfiguration, or consolidation, the Rules  
19 require Arizona Commission approval.

20 The Applicant's Request for Waiver of the Rules

21 The Applicant represents the following in its Application:

22 9. Given today's market conditions, and the opportunity for new funding and  
23 refinancing for competitive telecommunications networks, it is very likely XO Holdings and  
24 XO LLC will be parties to future transactions that would be considered "Reorganizations," as  
25 that term is broadly defined by the Rules.

26 10. Additionally, XO LLC and XO Holdings will continue to adjust the assets and  
27 debts of all of their subsidiaries and affiliates to maximize network quality, reach and  
28 efficiency. Financing and refinancing growth is an integral part of forward-looking strategic  
29 planning. A waiver of R14-2-803 and R13-2-804(B) will permit XO LLC and XO Holdings to

1 enter into certain transactions without first seeking ACC approval. XOCS seeks a waiver that  
2 would be applicable to it (XOCS) and all of its current and future affiliated entities.

3 11. XOCS is a national telecommunications provider with only a fraction of its  
4 revenues and investments in Arizona. In the coming years, XOCS will enter into transactions  
5 all over the United States that have no impact on Arizona operations. These transactions -  
6 reorganizations under the rules - will not result in any fundamental change in the affiliate  
7 entity that operates in Arizona and should not be subject to a Commission approval  
8 requirement.

9 12. XOCS is a non-dominant carrier and, as such, does not exercise monopoly  
10 power over a captive service territory or guaranteed revenue base. The Rules were  
11 promulgated to protect captive utility ratepayers from rates that "include costs associated with  
12 holding company structure, financially beleaguered affiliates, or sweetheart deals with  
13 affiliates."<sup>1</sup>

14 13. XOCS participates in a telecommunications services industry that is energized  
15 by market forces such as consumer demand, competitive pricing and the drive to increase  
16 market share through added value and technological innovation. Given that XOCS faces  
17 competition in all of the retail services it provides to Arizona customers, there exists virtually  
18 no incentive or opportunity for XOCS to attempt to extract from customers unduly high or  
19 above-market prices that could be used to subsidize unregulated, affiliated interests. The  
20 market effectively provides a natural safeguard against the improper exploitation of  
21 telecommunication service profits by XOCS.

22 14. Approval of a limited waiver will allow the market to realize the benefits of  
23 future reorganizations without a separate application to this Commission for each  
24 reorganization subject to the Rules. If every certified carrier in Arizona (and each national and  
25 international affiliate thereof) sought Commission approval before acquiring new debt,  
26 accepting new investment, or purchasing additional assets, the Commission Staff would be

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28 <sup>1</sup> T-04302A-12-0456, In the matter of the application of XO Communications Services, Inc. and its' affiliates for a limited waiver of the rules governing public utility holding companies and affiliated interests, page 6.

1 inundated by reorganization approval applications. Most of these transactions do not impact  
2 Arizona consumers and should not occupy scarce Commission resources. The Rules should be  
3 waived by the Commission for entities such as XOCS which: (1) operate nationally with many  
4 affiliates; (2) compete in end-user retail markets with alternative service providers; (3) have no  
5 guaranteed source of revenue; and (4) are subject to strong competitive pressures to keep  
6 prices low and service quality high.

7 Staff's Analysis and Conclusions

8 15. The Application cites seven examples of Commission decisions granting limited  
9 waivers for XOCS competitors in Arizona.<sup>2</sup> Three decisions pertaining to Competitive Local  
10 Exchange Carriers ("CLECs") were issued during a brief timeframe (May 17, 2000 – June 30,  
11 2000) and include similar Staff reasoning in support of a limited waiver - "Staff believes that  
12 actions taken by both federal and state regulatory bodies, including this Commission, are  
13 increasing competition in the telecommunications industry including basic local service."  
14 Most recently, the Commission stated similar reasoning in Decision No. 73245, dated June 26,  
15 2012, to grant a comparable waiver to tw telecom.<sup>3</sup> "...In this regulatory climate, Staff also  
16 believes that the Rules may be unnecessarily restrictive and expensive and that the market may  
17 replace the historical need for the Rules for some companies."<sup>4</sup>

18 16. The Application requests limited waivers of the Rules similar to those granted in  
19 Decision Nos. 58258 and 60728 for AT&T Communications of the Mountain States, Inc. and  
20 Teleport Communications Group and AT&T Corporation. Such waivers would waive the  
21 requirements of R14-2-804 and require XOCS to file a notice of intent only for those  
22 organizations or reorganizations that are likely to have a material adverse impact on XOCS's  
23 Arizona public utilities.

24  
25 <sup>2</sup> Qwest Corporation/CenturyLink, Decision No. 64654, March 25, 2002, reaffirmed in Decision No. 72493, July 25,  
26 2011; AT&T Communications of the Mountain States, Inc., Decision No. 58258, April 8, 1993; Teleport  
27 Communications Group and AT&T Corporation, Decision No. 60728, March 23, 1998; American Communications  
28 Services of Pima County, Inc., Decision No. 62616, June 9, 2000; MCI Communications Services, Inc., Decision No.  
62702, June 30, 2000; Cox Arizona Telcom L.L.C., Decision No. 62582, May 17, 2000.

<sup>3</sup> T-03943A-11-0462, In the matter of the application of tw telecom of arizona llc and tw telecom inc. and their  
affiliates for a limited waiver of the rules governing public utility holding companies and affiliated rules

<sup>4</sup> T-03943A-11-0462, In the matter of the application of tw telecom of arizona llc and tw telecom inc. and their  
affiliates for a limited waiver of the rules governing public utility holding companies and affiliated rules

1           17. Staff notes, however, that in each of the four most recent waivers<sup>5</sup> the  
2 companies are “required to file a notice of intent to enter into the transactions listed in A.A.C.  
3 R14-2-803 when a transaction is likely to result in (1) significant increased capital costs of the  
4 Arizona operations; (2) significant additional costs allocated or charged directly to the Arizona  
5 jurisdiction; or (3) a significant reduction of net income to the Arizona operations.” All four  
6 decisions also granted a limited waiver of A.A.C. R14-2-804 while ordering that companies  
7 “seek Commission approval for transactions that are likely to have a material adverse effect on  
8 Arizona operations.”

9           18. Staff research disclosed that the requests for limited waivers in past applications  
10 were not based on companies experiencing large numbers of past transactions but the  
11 expectations that many future transactions would arise from growing multi-state operations.  
12 Previous to Cox Arizona Telcom, L.L.C. (“Cox”) receiving its limited waiver in Decision  
13 62582 on May 17, 2000, Cox had only filed one application for approval of a transaction that  
14 was subject to the Rules. Previous to MCI Communications Services, Inc. (“MCI”) receiving  
15 its limited waiver in Decision 62702 on June 30, 2000, MCI had made no filings to request  
16 Commission approval of any transactions that were subject to the Rules. Previous to American  
17 Communications Services of Pima County, Inc. (“ACSI”) receiving its limited waiver in  
18 Decision 62616 on June 9, 2000, ACSI had not filed any transactions to which the Rules  
19 would apply.

20           19. Staff is not aware of any evidence that would call into question past  
21 Commission decisions that granted limited waivers of the Rules. No complaints have been  
22 filed against any party with a limited waiver of the Rules alleging conduct that could have  
23 been prevented by the Commission’s denial of limited waivers of the Rules. None of the  
24 companies receiving limited waivers of the Rules have filed any indications that the Rules, as  
25 waived, remain burdensome.

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28 <sup>5</sup> American Communications Services of Pima County, Inc., Decision No. 62616, June 9, 2000; MCI Communications Services, Inc., Decision No. 62702, June 30, 2000; Cox Arizona Telcom L.L.C., Decision No. 62582, May 17, 2000.



1 IT IS FURTHER ORDERED that XO Holdings, XO Communications, LLC and XO  
 2 Communications Services, Inc. are required to file a notice of intent to enter into the transactions  
 3 listed in A.A.C. R14-2-803 when a transaction is likely to result in – (1) significant increased  
 4 capital costs of the Arizona operations; (2) significant additional costs allocated or charged directly  
 5 to the Arizona jurisdiction; or (3) a significant reduction of net income to the Arizona operations.

6 IT IS FURTHER ORDERED that that XO Holdings, XO Communications, LLC and XO  
 7 Communications Services, Inc. be and hereby are granted a limited wavier of A.A.C. R14-2-804  
 8 on the condition that they seek Commission approval for transactions that are likely to have a  
 9 material effect on Arizona operations.

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

11 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

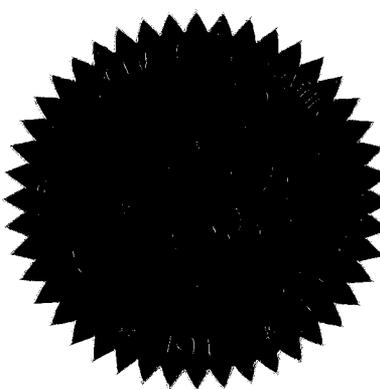
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 14 CHAIRMAN

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18 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
 19 Director of the Arizona Corporation Commission, have  
 20 hereunto, set my hand and caused the official seal of this  
 21 Commission to be affixed at the Capitol, in the City of  
 22 Phoenix, this 6<sup>th</sup> day of February, 2013.

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 23 \_\_\_\_\_  
 24 JODI JERICH  
 25 EXECUTIVE DIRECTOR

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

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

27 SMO:AFF:sms/BH

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