

## BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
	)	Case No.
XO MISSOURI, INC.'S	)	
Application for Authorization of	)	
Issuance of NXX Codes.	)	

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### APPLICATION FOR AUTHORIZATION OF ISSUANCE OF NXX CODES

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XO Missouri, Inc ("XO"), by and through the undersigned counsel, hereby submits this Application for Authorization of Issuance of NXX Codes to the Missouri Public Service Commission ("Commission") pursuant to FCC rule 47 CFR 52.15, Missouri rules 4 CSR 240-2.060 and 2.080, and other applicable state and federal statutes, rules and regulations, and decisions, and requests that the Commission authorize XO to obtain telephone number (NXX) codes in certain rate centers in order to meet a specific customer request.

In support of this Application, XO states as follows:

1. XO is a leading facilities-based competitive provider of telecommunications services formed under the laws of the State of Washington and having its principal place of business in Missouri at 2020 Westport Center Drive, Saint Louis, Missouri 63146. Email regarding this application can be sent to XO care of: rex.knowles@xo.com or david.lafrance@xo.com. XO can be reached by telephone at (801) 983-1624 and by fax at (801) 951-2023 regarding this application. XO offers a complete set of telecommunications services, including local and long distance voice services, as well as data services. In Missouri, XO is authorized by the Commission to provide local exchange and long distance communications

services pursuant to Case Nos. TA-99-48 and TA-99-220. A certificate of good standing from the Missouri Secretary of State is attached hereto as Exhibit 1. XO has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer services or rates, which action, judgment or decision has occurred within three (3) years of the date of this application. XO has no overdue annual reports or assessment fees.

2. All communications, filings, and related submissions in this proceeding, including but not limited to, correspondence, notices, inquiries, and orders, should be served upon the following designated contacts for XO:

Carl J. Lumley  
Leland B. Curtis  
CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.  
130 S. Bemiston, Suite 200  
St. Louis, Missouri 63105  
Telephone (314) 725-8788  
Facsimile: (314) 725-8789  
clumley@cohgs.com  
lcurtis@cohgs.com

with a copy to:

Rex Knowles  
David LaFrance  
XO Missouri, Inc.  
111 E. Broadway, Suite 1000  
Salt Lake City, Utah 84111  
Telephone: (801) 983-1504  
Facsimile: (801) 514-0589  
rex.knowles@xo.com  
david.lafrance@xo.com

3. XO recently received an order from an existing customer requesting a large amount of telephone numbers to meet the customer's business needs. Although XO may have some telephone numbers available for assignment to this customer, XO does not have enough telephone numbers in its inventory to meet the customer's entire request. XO is unable to obtain numbers from the Pooling Administrator to fulfill this customer's order in several rate centers where XO requires growth numbering resources because XO currently does not meet the required utilization threshold in such rate centers.<sup>1</sup> Thus, in order to fulfill the customer's order, XO is requesting that the Commission grant this request for relief so that XO may obtain necessary numbering resources in the rate centers where it does not meet the utilization threshold.

4. The FCC has stated in numerous decisions that consumers should never be foreclosed from exercising their choice of carrier because the carrier does not have access to numbering resources. The FCC has recognized that there may be instances in which exceptions to its number assignment rules are warranted. It considered a situation, similar to that currently faced by XO, in which a carrier needed additional numbering resources to meet a customer need, but could not obtain the numbers because the carrier did not meet the FCC's utilization threshold. The FCC therefore delegated authority to state commissions to "grant requests by

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<sup>1</sup> The Federal Communications Commission's ("FCC") number assignment rule 47 CFR 52.15(h) requires applicants for growth numbering resources to meet a seventy percent (70%) utilization threshold in the rate center where the growth numbering resource is requested.

carriers that receive a specific customer request for numbering resources that exceeds their available inventory.”<sup>2</sup>

5. Specifically, in instances in which a carrier has neither the inventory to satisfy a specific customer request nor the utilization for obtaining more numbers, the FCC held that state commissions may grant relief to carriers with a “verifiable need due to the carrier’s inability to satisfy a specific customer request.”<sup>3</sup> The FCC said that carriers could demonstrate this need by providing to the states “documentation of the customer request and current proof of utilization in the rate center.”<sup>4</sup>

6. Thus, in support of its request, XO has attached the following documentation demonstrating XO’s need for relief:

- 1) a copy of the executed Move-Add-Change Agreement evidencing the customer’s national need for telephone numbers from XO (Exhibit 2);
- 2) a Month-to-Exhaust form containing XO’s current utilization level for each Missouri rate center where XO seeks a waiver (Exhibit 3); and
- 3) a list of the Missouri rate centers and the number of associated NPA-NXXs that XO requires to meet its customer’s needs (Exhibit 4).

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<sup>2</sup> See In the Matter of Numbering Resource Optimization Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 Telephone Number Portability, , *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and in CC Docket No. 99-200, FCC 01-362* (2001) (“Third Report and Order”), at par. 61.

<sup>3</sup> *Id.* at par. 64.

<sup>4</sup> *Id.* at par. 64.

Exhibit 2 is highly confidential inasmuch as it identifies privileged and competitively sensitive customer information regarding services offered in competition with others. It is not public information and XO would suffer competitive harm if it were to be disclosed. For that reason, XO has filed Exhibit 2 under seal and requests that Exhibit 2 be kept out of the public file. To that end, XO has submitted herewith a motion for issuance of a standard protective order.

7. Granting XO's request for relief is justified in this case as this matter is exactly what the FCC had in mind when it delegated authority to state commissions to grant relief to carriers with a verifiable need for such relief. More importantly, granting XO's request is warranted because relief by the Commission is the *only* means for XO to obtain the numbers necessary to meet its customer's needs, thereby ensuring that XO's customer will not be foreclosed from receiving services from its carrier of choice, XO.

8. XO's customer has committed to use the requested central office codes in the rate centers identified in the attachment hereto as soon as they become effective in the Local Exchange Routing Guide to launch an electronic facsimile service where users can forward faxed documents to an email address. The attached fully executed Move-Add-Change Order (Exhibit 2) supplements an existing Service Agreement to add direct inward dial numbers necessary for the efax application to utilize ISDN PRI circuits already purchased by the customer.

9. XO recognizes that this request is not typical in that XO is requesting a large amount of telephone numbers. XO is making this request in order to fulfill the service needs of an existing customer who has demonstrated in the past that it will fully utilize the telephone numbers XO assigns to it. XO's customer's services have been positively received by consumers and therefore its customer is expanding into new markets and experiencing rapid growth in its existing footprint.

WHEREFORE, for the reasons stated above, XO has demonstrated a verifiable need for relief due to XO's inability to satisfy a specific customer request. XO therefore requests that the Commission grant this request and such other and further relief as to the Commission seems meet and proper in the premises.

Respectfully submitted,

/s/ Carl J. Lumley

By: \_\_\_\_\_

Carl J. Lumley, #32869

Leland B. Curtis, #20550

Curtis, Heinz, Garrett & O'Keefe, P.C.

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St. Louis, Missouri 63105

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clumley@cohgs.com

lcurtis@cohgs.com

*Counsel for XO Missouri, Inc.*

## **CERTIFICATE OF SERVICE**

I, **Carl J. Lumley**, do hereby certify that I have, on this **15th** day of **April**, 2004 caused to be served upon the following individuals, by first class U.S. mail, postage prepaid, a copy of the foregoing pleading:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65101

Office of Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65101-2230

/s/ Carl J. Lumley

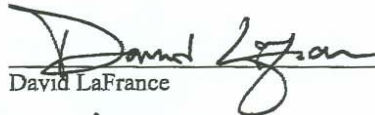
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STATE OF UTAH

COUNTY OF \_\_\_\_\_


)  
) SS.  
)VERIFICATION

I, David LaFrance, first being duly sworn, state on my oath that I am over the age of twenty-one years, sound of mind, and the regulatory manager of XO Communications, Inc. I am authorized to act on behalf of its subsidiary XO Missouri, Inc. regarding the foregoing document. I have read the document and I am informed and believe that the matters contained therein are true. Further, I hereby confirm that Carl J. Lumley, Leland B. Curtis, and Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, Clayton, Missouri 63105, are authorized to sign all pleadings and documents necessary to obtain the decision of the Missouri Public Service Commission on the foregoing application, and to represent XO Missouri, Inc. in this proceeding.

  
David LaFrance

On this 14<sup>th</sup> day of April, 2004, before me, a Notary Public, personally appeared David LaFrance, and being first duly sworn upon his oath stated that he is over twenty-one years, sound of mind and the regulatory manager of XO Communications, Inc., he signed the foregoing document as regulatory manager of XO Communications, Inc. on behalf of its subsidiary XO Missouri, Inc., and the facts contained therein are true and correct according to the best of his information, knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above-written.

  
Notary Public

My Commission Expires: 2/5/05