

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
)
XO MISSOURI, INC., ALLEGIANCE)
TELECOM OF MISSOURI, INC., And)
XO COMMUNICATIONS SERVICES, INC.) Case No. _____
)
For Approval of an Internal Corporate)
Reorganization.)

APPLICATION

XO Missouri, Inc. (“XO Missouri”), Allegiance Telecom of Missouri, Inc. (“ALGX Missouri”) and XO Communications Services, Inc. (“XO Communications”) (collectively “Applicants” or “XO Subsidiaries”), all subsidiaries of XO Communications, Inc. (“XO”)¹, the ultimate parent corporation, by their attorneys and pursuant to Section 392.300 RSMo., 4 CSR 240-3.525, and generally applicable Commission rules and regulations, hereby respectfully request that the Missouri Public Service Commission (“Commission”) approve or grant such authority as may be necessary for an internal corporate reorganization whereby the existing operating subsidiaries of XO in Missouri will be merged into a single operating subsidiary, XO Communications.² Upon consummation of this reorganization, XO Communications will provide service to the existing customers of XO Missouri and ALGX Missouri. This internal reorganization will simplify the XO corporate structure, streamlining XO’s operations in

¹ XO’s acquisition of ALGX Missouri was consummated on June 23, 2004. The Applicants notified the Commission on February 24, 2004 of the transfer of control of ALGX Missouri. Accordingly, ALGX Missouri currently is a direct, wholly owned subsidiary of XO.

² As explained further below, XO Communications became the new name of XO Domestic Holdings, Inc. on June 29, 2004.

Missouri, eliminating administrative redundancy and improving overall efficiency. The consolidation in Missouri will occur after receipt of the required regulatory approvals in Missouri; thus, the Applicants request that the Commission take any action necessary to approve this application at its earliest possible convenience. Pursuant to 4 CSR 240-33.100, Applicants also seek a waiver of 4 CSR 240-33.150 regarding the internal corporate changes in customers' providers that are part of the transactions described herein.

Specifically, as described below, the Applicants propose that XO Communications continue to serve XO Missouri's intrastate customer base after the merger pursuant to name change under XO Missouri's certificates of authority and tariffs. The proposed transaction is not expected to result in any loss or impairment of service to the XO Missouri customers. XO end users will continue to receive service under the same tariffs and will continue to see the "XO" name on their bills.

Similarly, ALGX Missouri's intrastate customer base will be served by XO Communications. Upon completion of the merger, ALGX Missouri requests that its certificate be cancelled. Again, the proposed transaction is not expected to result in any loss or impairment of service to the ALGX Missouri customers. Applicants intend to grandfather ALGX Missouri's existing tariffs, as adopted by XO Communications, so that existing ALGX Missouri end users will continue to receive the same services at the same rates, terms and conditions as at present.

In support of this Application, the Applicants provide the following information:

I. The Applicants

1. XO Communications, Inc. is a Delaware corporation. The principal office and place of business of XO and the Applicants is located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339, with the following additional contact information: telephone:703-547-

2000; fax: 703-547-2025. The company's stock is publicly traded on the Over the Counter Bulletin Board under the symbol "XOCM.OB." XO is a leading facilities-based provider of broadband telecommunications services. The company offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. The company also is one of the nation's largest holders of fixed wireless spectrum, covering 95% of the population of the 30 largest U.S. cities. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States.

2. XO is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and is authorized to provide competitive local exchange services in 47 states. In Missouri, XO Missouri provides local and interexchange telecommunications services pursuant to authorizations issued by the Commission.³ XO Missouri is a Washington corporation authorized to conduct business in Missouri as demonstrated by the attached certification from the Missouri Secretary of State. Thus, XO Missouri and its corporate parent, XO, have been found by this Commission to possess the requisite financial, managerial and technical qualifications necessary to operate as a provider of intrastate telecommunications services in Missouri.⁴ XO is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies.

³ See TA-99-48 dated January 12, 1999 (local) and TA-99-220 dated January 29, 1999 (interexchange).

⁴ XO's most recent Annual Report and Form 10-Q which contains the consolidated financial statements of XO and subsidiaries can be accessed at www.xo.com.

3. ALGX Missouri is a corporation organized under the laws of the State of Delaware and authorized to conduct business in the State of Missouri as demonstrated by the attached certification from the Missouri Secretary of State. In furtherance of the reorganization of Allegiance Telecom, Inc., Debtor-in-Possession (“Allegiance”), and subsidiaries, including ALGX Missouri, under chapter 11 of the U.S. Bankruptcy Code, the parties agreed that XO would acquire substantially all of the assets of Allegiance, including the stock of ALGX Missouri. As noted above, the Applicants notified the Commission of the transfer of control on February 24, 2004, and the transaction was consummated on June 23, 2004. As a result, ALGX Missouri became a wholly owned, direct subsidiary of XO.

4. XO’s acquisition of Allegiance has resulted in a combined competitive carrier that holds sufficient financial, managerial, operations and technical resources to compete on a national basis against established and incumbent local exchange carriers and long distance companies. Prior to the transfer of control, Allegiance, through its operating subsidiaries, provided facilities-based telecommunications products and services to over 100,000 small and medium-sized business customers, large business enterprises (e.g., national customers with multiple locations), governmental entities, and other institutional users in 36 metropolitan areas in 24 states, including in Missouri, and the District of Columbia.⁵ By acquiring ownership of Allegiance and its subsidiaries and substantially all of their assets, XO has pooled the resources of XO and Allegiance such that the combined company can compete more effectively in the markets in which they operate, provide new services and expand into new markets, and achieve economies of scope and scale. Moreover, the acquisition ensures that ALGX Missouri’s current customers will continue to receive the high quality services that they currently receive.

⁵ See TA-2000-427 dated March 3, 2000 (interexchange and non switched local exchange telecommunications services) and TA-2000-1 dated October 19, 1999 (local).

5. To further streamline and simplify its corporate structure, XO intends to merge both ALGX Missouri and XO Missouri into XO Communications. After completion of the consolidation, XO will remain the ultimate corporate parent and it will have only one XO subsidiary operating in Missouri. Like ALGX Missouri and XO Missouri, XO Communications is a direct, wholly owned subsidiary of XO. XO Communications, currently being renamed from XO Domestic Holdings, Inc., is authorized to transact business in Missouri as a foreign corporation as demonstrated by the attached certification from the Missouri Secretary of State. Its name changed on June 29, 2004 and documentation regarding approval of the name change by the Missouri Secretary of State will be submitted during the course of this proceeding.

6. None of the Applicants have any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, related to any action, judgment or decisions occurring within the previous three years from the date of this Application.

7. None of the Applicants have any overdue annual reports or assessment fees to the Commission.

II. Designated Contacts

8. The designated contacts for questions concerning this Application are:

Carl J. Lumley
Leland B. Curtis
CURTIS, HEINZ, GARRETT & O'KEEFE, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
314-725-8788
314-725-8789 (fax)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

M. Nicole Oden, Esq.
Melissa Smith Conway, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Tel. (202) 955-9785
Fax (202) 955-9792

Copies of any correspondence also should be sent to the following designated representative of the Applicants:

Doug Kinkoph
Vice President Regulatory and External Affairs
XO COMMUNICATIONS, INC.
Two Eastern Oval
Suite 300
Columbus, Ohio 43219
Tel. (614) 416-1468
Fax (614) 416-9268

Notices, correspondence, communications, orders, decisions, and other papers may be served upon Applicants' attorneys and such service shall be deemed to be service upon Applicants in this matter.

III. Description of the Reorganization

9. The reorganization and consolidation of the XO Subsidiaries into a single operating entity, XO Communications, is anticipated to occur via a number of mergers. Corporate organizational charts showing XO's corporate structure before and after the consolidation are appended hereto as *Exhibit A*. The Applicants propose that XO Communications will serve XO Missouri's intrastate customer base under its certificates of authority and tariffs through a merger of XO Missouri into XO Communications. After the merger, XO Missouri will cease to exist by operation of law, and XO Communications will

assume all of XO Missouri's assets and operations and will provide telecommunications services to XO Missouri's customers pursuant to XO Missouri's tariffs, amended with the new name XO Communications.

10. In connection with the merger, the telecommunications authorizations currently held by XO Missouri will become held by XO Communications. The Applicants respectfully request that the Commission authorize and approve the merger of XO Missouri with and into XO Communications and change the name on XO Missouri's certificates of authority to XO Communications so that XO Communications can continue XO Missouri's service to customers. The Commission has already examined the financial, managerial, technical and operational qualifications of XO to provide telecommunications services – XO Communications is backed by the same qualifications as XO Missouri and will provide the same high quality services to customers.

11. The proposed merger of XO Missouri into XO Communications will be virtually transparent to consumers in Missouri and will have no adverse impact on them. XO will remain the parent corporation, and the name that customers see on their telecommunications invoice will remain "XO." Further, the same services will be provided to end users under the same tariffs. Because XO Missouri and XO Communications are managed by the same team of experienced telecommunications personnel, day-to-day operations will continue to function as they have in the past. Customer service functions will be provided by the same team of qualified consumer representatives. Thus, XO Missouri's end user customers will continue to receive high quality services from the same qualified personnel under the same tariffs.

12. Similarly, the Applicants propose to serve ALGX Missouri's intrastate customer base through XO Communications by means of a merger of ALGX Missouri into XO

Communications. After the merger, ALGX Missouri will cease to exist by operation of law, and XO Communications will assume all of ALGX Missouri's assets and operations and will provide telecommunications services to ALGX Missouri's end users. Applicants intend to grandfather ALGX Missouri's existing tariffs, amended with the new name XO Communications, so that existing ALGX Missouri end users will continue to receive the same services at the same rates, terms and conditions.

13. The telecommunications authorizations currently held by ALGX Missouri will be surrendered, upon completion of the mergers. The Applicants respectfully request that the Commission authorize and approve the merger of ALGX Missouri with and into XO Communications so that XO Communications can serve ALGX Missouri's customer base, and accept the surrender of ALGX Missouri's authorization upon the completion of the merger.

14. The proposed merger of ALGX Missouri into XO Communications will have no adverse impact on customers. XO will remain the parent corporation. Current ALGX Missouri end users will continue to receive service under the same rates, terms and conditions that currently apply to their services. As a result, the proposed transfer will be virtually transparent to customers in terms of the services, rates, terms and conditions that they receive. In order to facilitate a seamless transfer, the ALGX Missouri tariffs will be grandfathered so that existing ALGX Missouri end users will continue to receive the same services at the same rates, terms and conditions. Further, to prevent customer confusion, XO Communications will include the Allegiance name in addition to the XO name on customer bills for the existing ALGX Missouri customers for a few months immediately following the restructuring.

15. In accordance with applicable FCC and state carrier change requirements, advance written notice will be sent to affected customers informing them of the proposed

transaction and giving them an opportunity to switch to another service provider without penalty. Pursuant to 4 CSR 240-33.100, Applicants seek a waiver of application of 4 CSR 240-33.150 for good cause, in that customer's providers are not changing in a practical way, but only in terms of corporate organization. No public utility will be adversely affected by the waiver.

IV. Public Interest Analysis

16. The proposed internal corporate reorganization is in the public interest. As noted above, the reorganization will generally be transparent to customers and will have no adverse impact on them. Current ALGX Missouri customers will be properly notified of the change in their service provider from ALGX Missouri to XO Communications. Current XO Missouri customers will continue to see "XO" on their invoices and the consolidation will be entirely transparent to them. This proposed consolidation will provide significant reductions in legal, accounting and tax administrative burdens and will simplify the XO companies' corporate structure, eliminating administrative redundancy and improving the companies' overall efficiency thereby enhancing the company's ability to compete in Missouri and elsewhere. Over time, consumers in Missouri will benefit from a greater number of product and service options as well as more efficient prices resulting from the enhanced competitive ability of the streamlined company.

17. As reflected on the ownership charts appended hereto, upon completion of the reorganization, the ownership of XO Communications will be identical to its current ownership and the ownership of XO Missouri and ALGX Missouri. Thus, there should be no question about the qualifications of XO Communications and its parent, XO, to operate in the public interest as the reorganization will not cause any meaningful change in the ownership, financial condition or services of the utility entities.

18. Applicants seek leave to file the appropriate adoption notices and revised tariff pages described herein upon approval of the mergers.

19. Pursuant to 4 CSR 240-3.525(2)(F), Applicants state that the merger will have no impact upon the tax revenues of the political subdivisions in which any structures, facilities, or equipment of the Applicants are located.

WHEREFORE, the Applicants respectfully request that the Commission grant them authority to reorganize as described herein, and for such other and further relief as may be necessary to carry out the reorganization described herein.

Respectfully submitted,

XO MISSOURI, INC., ALLEGIANCE TELECOM
OF MISSOURI, INC. AND XO
COMMUNICATIONS SERVICES, INC.

BY:

/s/ CARL J. LUMLEY

Carl J. Lumley #32869
Leland B. Curtis #20550
CURTIS, HEINZ, GARRETT &
O'KEEFE, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
314-725-8788
314-725-8789 (fax)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

Their Attorneys

Certificate of Service

A true and correct copy of the foregoing document was mailed this 21st day of July, 2004, to the persons listed on the attached list, by placing same in the U.S. Mail, postage paid.

Dan Joyce, General Counsel
Missouri Public Service Commission
200 Madison, Suite 800
P.O. Box 360
Jefferson City, MO 65102

Michael Dandino
Office of Public Counsel
P.O. Box 2223
Jefferson City, MO 65102

/s/ Carl J. Lumley

EXHIBIT A

CORPORATE ORGANIZATIONAL CHARTS