

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

<b>In the Matter of the Application of</b>	)	
	)	
<b>LMDS Holdings, Inc.</b>	)	
	)	<b>Case No. _____</b>
<b>for Authority to Provide</b>	)	
<b>Competitive Basic and Non-switched</b>	)	
<b>Local Exchange and</b>	)	
<b>Interexchange Telecommunications</b>	)	
<b>Services</b>	)	

**APPLICATION FOR CERTIFICATES OF SERVICE AUTHORITY AND FOR  
COMPETITIVE CLASSIFICATION OF LMDS HOLDINGS, INC., AND FOR RELATED WAIVERS OF  
CERTAIN STATUTES AND REGULATIONS**

Comes now LMDS Holdings, Inc. (“Applicant”, “Company” or “Holdings”), by its attorneys and pursuant to the Federal Telecommunications Act of 1996 ("Act"), §§392.361, 392.410, 392.420, 392.430, 392.440, 392.450, and 392.455 RSMo., and 4 CSR 240-2.060 and 4 CSR 240-3.510, and all other relevant Rules and Regulations of the Missouri Public Service Commission (“Commission”), respectfully requests that the Commission grant it a Certificate of Service Authority to provide facilities-based and resold basic and non-switched local exchange and interexchange telecommunications services in the State of Missouri. Additionally, Holdings requests that the Company and said services be classified as competitive and that the Commission waive the application of certain statutes and regulations as to the Company and its services. In support thereof, Applicant provides the following information:

## **I. Identification of the Applicant**

1. Applicant's full name is LMDS Holdings, Inc. and it is headquartered at 11111 Sunset Hills Road, Reston, Virginia, 20190-5339. Its contact telephone and fax numbers and email addresses are listed below. Applicant's principal officers, located at the same address, are:

**Carl J. Grivner, Chief Executive Officer**

**Wayne Rehberger, Chief Operating Officer**

**Bill Garrahan, Acting Chief Financial Officer and Senior Vice President, Corporate Development**

**Heather Burnett Gold, Senior Vice President, Government Relations**

**Doug Sobieski, Vice President, Fixed Broadband Wireless Services**

**Terri Burke, Vice President, Human Resources**

**Rob Geller, Chief Information Officer**

2. Holdings was incorporated under Delaware law on November 4, 2005 and is a wholly owned subsidiary of XO Communications, Inc., a publicly traded Delaware corporation, in which Carl C. Icahn holds a majority interest.<sup>1</sup>

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<sup>1</sup> XO Communications, Inc. is in the process of a *pro forma* restructuring merger. As a result of this restructuring, XO Communications, Inc. will be merged into XO Communications, LLC and removed from the ownership structure of Holdings. This will leave XO Holdings, Inc. in the place of XO Communications, Inc. as parent-company to Holdings. Holdings will share the same ultimate owner with XO Communications, LLC, Carl C. Icahn. A notice of this transaction will be filed with the Commission under separate cover. A press release describing this transaction can be found at <http://www.xo.com/news/278.html>, a copy of which is attached as *Exhibit B*.

3. Applicant is qualified to conduct business within the State of Missouri as a foreign corporation. A copy of documentation confirming that authorization is attached hereto as ***Exhibit A.***

4. Holdings is not currently authorized to provide local exchange and interexchange telecommunications services in other states; however, it is in the process of applying for authority in the following jurisdictions: Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Washington and Wisconsin. It has already obtained necessary authorization from the FCC. Although this is the first time Holdings is applying for certification in Missouri, it is important to note that none of Applicant's affiliates have been denied a request for certification to provide telecommunications services by any jurisdictional authority.

## **II. Designated Contacts**

5. The designated contacts for this application are:

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

Brad E. Mustchelknaus  
Katherine E. Barker Marshall  
KELLEY, DRYE AND WARREN, LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Telephone: (202) 955-9669  
Facsimile: (202) 955-9792  
KBarker@KelleyDrye.com

6. Copies of all correspondence, notices, inquiries and orders in relation to this Application also should be sent to the following person:

David LaFrance  
Regulatory and External Affairs  
LMDS HOLDINGS, INC.  
11111 Sunset Hills Road  
Reston, VA 20190-2000  
Telephone: (703) 547-2682  
Facsimile: (703) 547-2881  
david.lafrance@xo.com

Copies of all correspondence, notices, inquiries and orders relating to consumer issues, billing issues, technical service quality issues, and customer complaint issues should be sent to:

Tamie Whitefoot  
LMDS Holdings, Inc.  
4800 Concentric Blvd.  
Saginaw, MI 48604  
Telephone: (877) 714-6398  
Facsimile: (989) 758-6510  
Email: tamie.whitefoot @xo.com

Copies of all correspondence, notices, inquiries and orders relating to tariff or pricing issues should be sent to:

David LaFrance  
Regulatory and External Affairs  
LMDS HOLDINGS, INC.  
11111 Sunset Hills Road  
Reston, VA 20190-2000  
Telephone: (703) 547-2682  
Facsimile: (703) 547-2881  
david.lafrance@xo.com

7. Holdings' registered agent in Missouri is:

CSC Lawyers Incorporation Service Company  
221 Bolivar Street  
Jefferson City, MO 65101

### **III. Description of Network and Authority Requested**

8. By this Application, Holdings seeks authority to provide telecommunications transport services, as a facilities-based and resale competitive local exchange and interexchange carrier, to business customers and other carriers in the State of Missouri. The Applicant plans to initially offer dedicated point-to-point transport and data services to enterprise customers and other common carriers. At a later date, Holdings may expand its service offerings, to include a broader range of products and services. Accordingly, Holdings is requesting the Commission to authorize Holdings to provide a full range of local exchange and interexchange services.

9. Initially, Company intends to focus on deploying technology to provide a core set of communications transport services tailored to meet specific needs of carriers, particularly commercial mobile radio service (CMRS) providers and enterprise business

customers with high capacity point-to-point digital data communication needs. Further, as business and economic circumstances dictate, Company intends to provide additional local exchange, exchange access and dedicated transport services.

10. With respect to geographic coverage area for its intended services, Holdings requests authority to operate as a competitive non-switched local exchange carrier and interexchange carrier on a statewide basis and as a basic local exchange carrier in the exchanges of SBC Missouri aka AT&T Missouri. Holdings' exchanges will follow the boundaries of the incumbent's exchanges and will not be smaller than the incumbent's exchanges. Holdings will offer basic local service as a separate and distinct service. Holdings will give equitable access for Missourians, regardless of where they live or their income, to affordable telecommunications services.

11. Holdings will provide its data-only broadband managed network solutions primarily through a combination of traditional wireline elements and its FCC-licensed, Local Multipoint Distribution Service ("LMDS") spectrum. The company will provide high-capacity access alternatives to the exclusive use of existing copper and fiber optic based telecommunications services. These services will include point-to-point data connectivity at speeds ranging from T1 through OC-3 levels. The company's primary services will include Ethernet service using 10Mbps and 100Mbps interfaces and dedicated high speed Internet access. The equipment Holdings has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet protocol ports for Ethernet services.

12. Pending Actions: Holdings does not 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 customer rates, which action, judgment, or decision has occurred within three years of the date of this Application.

Annual Reports and Fees: Holdings does not have any overdue annual reports or assessment fees.

#### **IV. Qualifications of the Applicant**

13. As demonstrated below, Holdings is well-qualified managerially, technically and financially to provide the competitive telecommunications services for which authority is requested in this Application.

14. Applicant's management team includes individuals with substantive experience in successfully developing and operating telecommunications business. Consequentially, the Company has the adequate internal technical resources to support its Missouri operations. This expertise in the telecommunications industry makes Applicant's management team well-qualified to operate its local exchange and interexchange operations in Missouri. Specific details of the business and technical experience of Holdings' officers and management personnel are attached as ***Exhibit C***, which also contain biographies and a brief description of the business experiences of key management personnel who will be responsible for Applicant's telecommunications services in Missouri and throughout the United States.

15. As is evident from the information contained in ***Exhibit C***, Applicant is managed by persons with substantial technical expertise in operating telecommunications networks. This wealth of expertise will enable Holdings to provide its interexchange customers with advanced, state-of-the-art technology, for its telecommunications services.

16. Applicant is a recently-formed entity, and as such does not have a significant financial history of its own, and has submitted projected financial statements as *Exhibit D, under seal*. Applicant will receive an additional infusion of capital once the transaction outlined in Footnote 1 is completed.

17. Company currently is a wholly owned subsidiary of XO Communications, Inc., a publicly traded company that has funded Applicant's operations. XO Communications, Inc.'s Securities and Exchange Commission Form 10K for the calendar years 2004 and 2005 are included as *Exhibit E*.

18. Applicant will bill all of its end-user customers directly. Holdings does not intend to utilize a billing agent in issuing bills for services rendered to end users. Applicant will not use a "billing clearinghouse" or other outside entity to issue bills to its customers. All bills sent to end-user customers will bear the Company's name and provide a toll-free number for customer inquiries and complaints.

19. Holdings has a toll free number available for its customers to contact the Company with billing and service related issues: 1-877-714-6398.

20. Customers may contact the Company with billing-related issues twenty four (24) hours a day, seven (7) days a week by using the toll free number provided in Paragraph 19. In addition, customers may request assistance for any billing questions or general customer inquiries on-line via [https://www.businesscenter.xo.com/ecustomer\\_enu](https://www.businesscenter.xo.com/ecustomer_enu) or for repair issues or other requests, including billing support, Customers may send an e-mail to [cr-snaops@xo.com](mailto:cr-snaops@xo.com).

21. Holdings' proposed initial tariff is attached hereto as *Exhibit F*. Holdings exercises its option and requests a temporary waiver of 4 CSR 240-3.510(1)(c), which requires that an application for a certificate of service authority to provide basic local exchange service



shall include a proposed basic local tariff with a 45-day effective date, but allows applicants the option of postponing tariff submittal. Holdings needs to complete the process of obtaining an approved interconnection agreement with SBC Missouri before formally submitting basic local tariff provisions with an effective date. Holdings will file such tariffs in a manner consistent with the Commission's practices in similar cases before providing basic local service.

22. Switched Access Rates: Notwithstanding the provisions of Sections 392.500 and 392.510 R.S.Mo., as a condition of the requested certification and competitive classification, Holdings agrees that, unless otherwise ordered by the Commission, Holdings originating and terminating switched exchange access rates in the new service area will be no greater than the lowest Commission-approved corresponding access rates in effect for SBC in its service area. Additionally, pursuant to the Commission's Report and Order in Case No. TO-99-596, Holdings agrees that if SBC decreases its current originating and/or terminating access service rates, Holdings shall file an appropriate tariff amendment to reduce its corresponding originating and/or terminating access rates within thirty (30) days of SBC's reduction of its originating and/or terminating access rates in order to maintain aforesaid cap on switched exchange access rates. Holdings agrees that, absent contrary legal authority, any increase in switched access rates above the aforesaid maximum shall be subject to Section 392.200 RSMo and cost-justified pursuant to Sections 392.220 and 392.230 RSMo.

## **V. Requested Regulatory Treatment**

23. Applicant hereby agrees to abide by all applicable statutes and all applicable Orders, Rules, and Regulations entered and adopted by the Commission. Additionally, as a competitive provider of telecommunications services in Missouri, Applicant

respectfully requests that it be subject to the same streamlined regulatory treatment applicable to other competitive carriers.

24. Holdings is willing to comply with all applicable Commission rules, and is willing to meet all relevant minimum service standards established by the Commission, including but not limited to, billing, quality of service, and tariff filing and maintenance. However, consistent with the Commission's treatment of other certificated competitive telecommunications companies, Holdings requests that the following statutes and regulations be waived for its competitive service offerings::

#### **STATUTES**

Section 392.210.2	--	Uniform System of Accounts
Section 392.240(1)	--	Setting Just and Reasonable Rates
Section 392.270	--	Valuation of Property (Ratemaking)
Section 392.280	--	Depreciation Accounts
Section 392.290	--	Issuance of Securities
Section 392.300.2	--	Acquisition of Stock
Section 392.310	--	Stock and Debt Issuance
Section 392.320	--	Stock Dividend Payment
Section 392.330	--	Issuance of Securities, Debts and Notes
Section 392.340	--	Reorganization(s)

#### **RULES**

4 CSR 240-10.020	--	Income on Depreciation Fund Investments
4 CSR 240-30.040	--	Uniform System of Accounts
4 CSR 240-3.550(5)(C)	--	Exchange Boundary Maps

25. The above-referenced rules and statutory provisions, or their predecessor sections, have been waived with regard to other interexchange carriers and competitive local exchange companies. These rules or statutory provisions are principally designed to apply to non-competitive telecommunications carriers. No other public utility would be affected by the

requested waivers. As a result, it would be inconsistent with the goals and purposes of Chapter 392 to apply them to a competitive telecommunications carrier such as Applicant, and, for this reason, Holdings respectfully requests that the Commission waive the application of these statutes and rules to Holdings.

26. Holdings will comply fully with all applicable Commission rules except those that are specifically waived by the Commission pursuant to the Applicant's request herein.

27. Applicant respectfully requests that this Petition be given expedited consideration as stated in the Motion for Expedited Treatment filed herewith.

## **VI. Public Interest**

28. A decision by the Commission to grant Applicant authority to provide competitive local exchange and interexchange telecommunications services is in the public interest. Applicant is well qualified to operate as such a service provider in Missouri. Consumers of telecommunications services in Missouri will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the local exchange and interexchange telecommunications market. Granting Holdings' Application would enhance the development of competition in the local exchange and interexchange markets and provide the consumers of Missouri with all of the benefits described above.

WHEREFORE, Applicant respectfully requests that the Commission grant it a Certificate of Service Authority to provide competitive basic and non-switched local exchange and interexchange telecommunications services in the State of Missouri.

Respectfully submitted,

**LMDS HOLDINGS, INC.**

/s/ Carl J. Lumley

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

Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.  
130 South Bemiston, Suite 200  
St. Louis, Missouri 63105  
Telephone: (314) 725-8788  
Facsimile: (314) 725-8789  
clumley@lawfirm email.com

Brad E. Mustchelknaus  
Thomas C. Cohen  
Katherine E. Barker Marshall  
KELLEY, DRYE AND WARREN, LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Phone: (202) 955-9600  
Fax: (202) 955-9792  
KBarker@KelleyDrye.com

Its Attorneys

#### CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either e-mailed, faxed or mailed this 20th day of December, 2005 to the persons on the attached list.

/s/ Carl J. Lumley

\_\_\_\_\_  
Carl J. Lumley

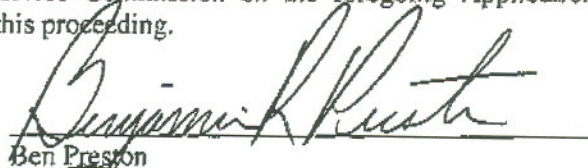
Office of Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

STATE OF WA )  
COUNTY OF Yonkers ) SS.

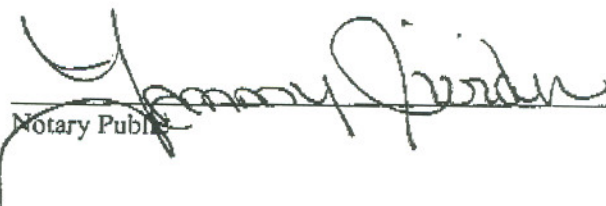
### VERIFICATION

I, Ben Preston, first being duly sworn, state on my oath that I am over the age of twenty-one years, sound of mind, and the Corporate Counsel, Director of Legal Affairs and Assistant Secretary of LMDS Holdings, Inc., I am authorized to act on behalf of LMDS Holdings, 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 LMDS Holdings, Inc., in this proceeding.

  
Ben Preston

On this 20th day of December, 2005, before me, a Notary Public, personally appeared Ben Preston, and being first duly sworn upon his oath stated that he is over twenty-one years, sound of mind and the Corporate Counsel, Director of Legal Affairs and Assistant Secretary of LMDS Holdings, Inc., he signed the foregoing document as Corporate Counsel, Director of Legal Affairs and Assistant Secretary of LMDS Holdings, 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:



My Commission Expires December 31, 2009