

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**April 24, 2006**

<b>IN RE:</b>	)	
	)	
<b>INFORMATION FILING REGARDING A</b>	)	<b>DOCKET NO.</b>
<b>PRO FORMA INTERNAL RESTRUCTURING</b>	)	<b>05-00334</b>
<b>INVOLVING XO COMMUNICATIONS SERVICES, INC.</b>	)	

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2006 for consideration of the Informational Filing Regarding a Pro Forma Internal Restructuring Involving XO Communications Services, Inc. ("Informational Filing" or "Petition").

**Petition**

XO Communications Services, Inc. ("XOCS" or "Petitioner") filed an Informational Filing notifying the Authority of a pro forma internal restructuring on December 13, 2005. On December 20, 2005, Authority Staff issued a Data Request to the company indicating that based on an initial review, the transfer referenced in the Informational Filing should be approved by the Authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) and, therefore, the Authority would proceed with the December 13, 2005 filing as though it were a petition.

XO Communications, Inc. ("XO"), a Delaware corporation, currently has approximately 10,804 customers in Tennessee and is a leading national provider of local and long distance telecommunications services to businesses, large enterprises and telecommunications carriers. XO delivers its services over its own 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. In addition, XO's wholly-owned subsidiary, LMDS Holdings, Inc. ("LMDS"), holds wireless licenses as well as related fixed broadband wireless spectrum assets.

XO is authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services. Through XOCS and other subsidiaries of XO, XO is authorized to provide intrastate interexchange services virtually nationwide, and to provide competitive local exchange services in 47 states. In Tennessee, XOCS, formerly known as Signal Communications of Tennessee, LLC, was granted certificate of public convenience and necessity ("CCN") to provide competitive telecommunications services in Docket No. 95-02502 on September 29, 1995. The Authority approved a transfer of authority of XOCS's parent company, XO Communications, Inc., Debtor-In-Possession, to a newly organized XO Communications, Inc. on December 13, 2002, in Docket No. 02-01202. As a result, the Authority recognized that the majority of stock of XO would be held by High River Limited Partnership, owned and controlled by Carl C. Icahn. On October 7, 2004, the Authority approved a transfer of authority from XO Tennessee, Inc. to XOCS in Docket No. 04-00212.

The Petition states that the pro forma restructuring of XOCS will occur in connection with a larger overall transaction whereby XO will spin off its wireless business from its wireline business. The Petitioner maintains the businesses will be structurally separate, but both will be ultimately majority owned and controlled by Carl C. Icahn. Pursuant to an Equity Purchase Agreement ("Equity Purchase Agreement") entered into by XO, XO Holdings, Inc.<sup>1</sup> ("Holdings"), and Elk Associates, LLC ("Elk") on November 4, 2005, XO will sell its national wireline telecommunications business to Elk.<sup>2</sup> To accomplish the sale, XO has created two wholly-owned

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<sup>1</sup> XO Holdings, Inc. is a newly-formed subsidiary of XO.

<sup>2</sup> On April 17, 2006, the Petitioner filed a letter with the Authority indicating that although the Restructuring Merger has been consummated, the sale to Elk would not be consummated.

subsidiaries, Holdings and XO Communications, LLC<sup>2</sup> ("XO LLC"). XO will merge with XO LLC, XO LLC will become the surviving entity, and XOCS will become a subsidiary of XO LLC (the "Restructuring Merger").

The Petitioner asserts that the "XO Communications" brand name will be transferred to XO LLC once the transactions close and, therefore, will remain with the wireline business. Holdings will retain the fixed broadband wireless spectrum licenses and other assets through its ownership of LMDS and will commence operations under a new name. The Petition states that the proceeds from the sale of the wireline business will be used to repay XO's outstanding long-term debt; to offer to redeem, at closing of the sale, XO's outstanding preferred stock; and to fund growth and development of the wireless business.

According to the Petition, the transactions contemplated by the Equity Purchase Agreement, are pro forma and the proposed transactions will be effectively transparent to XOCS's customers. The Petitioner asserts that XOCS's ultimate ownership will remain the same, its authorization to provide telecommunications services will remain in place, and its customers will not be affected in any way because customers will continue to be offered the same services by the same service provider with the same name at the same rates, terms and conditions as at present.

The Petition maintains that approval of the proposed transactions would provide XO with the flexibility to arrange its ownership in the manner it deems most appropriate to carry on its business and thus assure the presence of numerous telecommunications competitors in Tennessee. In addition, the Petitioner asserts that the restructuring will not affect the managerial, technical or financial qualifications of XOCS as all managerial, technical and financial resources previously available to it will continue to be available. The restructuring will be entirely transparent to customers because they will continue to receive the same services by the same service provider with the same name at the same rates, terms and conditions as at the present.

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<sup>2</sup> XO LLC is a direct subsidiary of Holdings.

The transaction will not harm the public interest, it will be transparent to customers, and no customer letter or notice is required.

In response to a data request from the Authority as to whether the parties will enter into any financing transactions related to the proposed restructuring, XOCS certified that it will not be signatory, pledge assets or provide a guarantee or any other security in connection with any financing transaction.

**January 23, 2006 Authority Conference**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the January 23, 2006 Authority Conference, the panel found that Tenn. Code Ann. § 65-4-113 (2004) applies to this transaction because the merger of XO Communications, Inc. and XO Communications, LLC, results in an indirect transfer of the CCN held by XO Communications Services, Inc. The panel also found that based on the representations of XO Communications Services, Inc. the transfer furthers the public interest such that, but not limited to, the fact that the consolidation will not reduce the number of providers in the state and will be

transparent to consumers. Based on the findings and the record in this matter, the panel voted unanimously to approve the Petition.

**IT IS THEREFORE ORDERED THAT:**

The proposed *pro forma* internal restructuring of XO Communications Services, Inc. as described in the Informational Filing Regarding a Pro Forma Internal Restructuring Involving XO Communications Services, Inc. and discussed herein is approved.

  
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Ron Jones, Chairman

  
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Pat Miller, Director

  
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Sara Kyle, Director