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Docket No. 14-00028

March 18, 2014

*via Electronic Mail and Overnight Delivery*

Chairman, Tennessee Regulatory Authority  
c/o Sharla Dillon, Dockets and Records Manager  
502 Deaderick Street, 4th Floor  
Nashville, Tennessee 37243

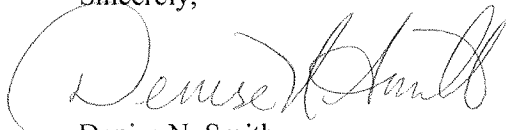
Re: XO Communications Services, LLC  
Petition for Authority to Provide Security in Connection with Financing

Dear Ms. Dillon,

On behalf of XO Communications Services, LLC ("XOCS," or the "Company"), enclosed for filing with the Tennessee Regulatory Authority ("Authority"), please find an original and four (4) copies of XOCS' Petition for Authority to Provide Its Security in Connection with Financing ("Petition") along with a check in the amount of \$50.00 for the filing fee. This Petition also has been submitted today, to your attention, via electronic mail.

Please date stamp the enclosed duplicate copy of the filing and return it in the prepaid envelope provided. Should there be any questions with respect to this filing, please contact me at (202) 342-8614 or via email at [dsmith@kelleydrye.com](mailto:dsmith@kelleydrye.com). Thank you for your assistance with this matter.

Sincerely,



Denise N. Smith

*Counsel for XO Communications Services, LLC*

Enclosures

**Before the  
STATE OF TENNESSEE  
Regulatory Authority**

Petition of	)
XO Communications Services, LLC	)
	)
For Authority to Provide Its Security	)
in Connection with Financing	)

**PETITION**

XO Communications Services, LLC (“XOCS” or “Petitioner”), by its counsel, hereby respectfully requests approval from the Tennessee Regulatory Authority (“Authority”) to provide its guarantee, pledge its equity interests and assets, or to otherwise provide security in connection with financings being arranged for its parent company, XO Communications, LLC (“XO” and, together with XOCS, the “Companies”), as described below. The Companies request this authority pursuant to Tenn. Code Ann. § 65-4-109 and to the extent it may be necessary.<sup>1</sup>

In support of this Petition, XOCS provides the following information:

**I. THE PETITIONER**

XO and XOCS are Delaware limited liability companies located at 13685 Sunrise Valley Drive, Herndon, Virginia 20171, (703) 547-2000. XO is a leading national provider of local and long distance telecommunications services, interexchange access services, advanced communications, managed network and IT infrastructure services to business, large enterprise

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<sup>1</sup> Although the Companies are seeking any necessary approval for their participation in this financing transaction, the Companies are doing so without prejudice to their right to assert that this transaction is beyond the jurisdiction of the state commissions. *See, e.g., State ex rel. Utils. Comm’n v. S. Bell Tel. & Tel.*, 207 S.E.2d 772, *aff’d* 217 S.E.2d 543 (N.C. 1975).

and wholesale customers. 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. XO is wholly owned by XO Holdings ("XO Holdings"), a Delaware general partnership and a holding company. Through its subsidiaries, primarily XOCS, XO is authorized to provide intrastate interexchange services in 49 states and to provide competitive local exchange services in 48 states and the District of Columbia. In Tennessee, XOCS is authorized to provide intrastate telecommunications services.<sup>2</sup> XOCS is also authorized to provide interstate and international telecommunications services.

## **II. DESIGNATED CONTACTS**

The designated contact for questions concerning this Petition is:

Denise Smith  
KELLEY DRYE & WARREN LLP  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8614  
Facsimile: (202) 342-8451  
[dsmith@kelleydrye.com](mailto:dsmith@kelleydrye.com)

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

Rex Knowles  
Executive Director, Regulatory  
XO Communications Services  
8851 Sandy Parkway  
Sandy, UT, 84070  
Telephone: (801) 983-1504  
Facsimile: (801) 951-2133  
[rex.knowles@xo.com](mailto:rex.knowles@xo.com)

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<sup>2</sup> See Docket No. 04-00212, October 7, 2004.

### III. DESCRIPTION OF THE TRANSACTION

The Companies propose that XOCS provide its guarantee, pledge its equity interests and assets, or otherwise provide security in connection with financing that will be undertaken by its parent, XO, as further described below. XO is arranging to obtain this financing through one or more arrangements with banks, other financial institutions and/or other types of investors. The currently planned financing, to be obtained through a syndicate of lenders, includes an initial \$500 million senior secured term loan facility, with the ability to add an incremental facility or facilities in an aggregate amount equal to the sum of \$250 million plus a projected amount of \$600 million based on XO's ratio of first lien indebtedness to EBITDA.<sup>3</sup>

*Funding Providers:* As currently planned, UBS AG as administrative agent and collateral agent for a syndicate of banks, financial institutions, and other institutional lenders. The participants in the syndicate may change over the life of the Financing.

*Amount:* XO's planned financing will consist of an initial \$500 million term loan facility, with the ability to add an incremental facility or facilities in an aggregate amount equal to the sum of \$250 million plus a projected amount of \$600 million based on XO's ratio of first lien indebtedness to EBITDA. These incremental amounts may be in the form of term loan facilities and/or revolving credit facilities.

*Maturity:* The planned financing is expected to mature in 2021.

*Interest:* Interest for the planned financing will be tied to market rates for similar financings. At XO's option, interest will be determined either as (a) a base rate (highest of (i) the Federal Funds Rate plus 0.50%, (ii) the current prime commercial lending rate of UBS AG / Stamford Branch; or (iii) LIBOR plus 1.00 % and not less than 2.00 % per annum) plus applicable interest margin; or (b) a rate equal to the London Interbank Offered Rate (LIBOR) plus applicable interest margin.

*Security:* The loans to XO are expected to be secured by perfected first priority pledges of the equity interests in certain of XO's direct and indirect subsidiaries, including XOCS, and perfected first priority security interests

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<sup>3</sup> EBITDA is an accounting acronym for Earnings Before Interest, Taxes, Depreciation and Amortization.

and mortgages on the tangible and intangible assets of XO and the guarantors, including XOCS.

*Use of Proceeds:* Proceeds will be available for investment in telecommunications assets, capital expenditures, general corporate purposes and working capital.

To the extent specific Authority approval is required for XOCS to participate in the planned financing in the manner described, such authority is hereby requested.

#### **IV. PUBLIC INTEREST ANALYSIS**

Approving this Petition will serve the public interest by enhancing the ability of XOCS to grow and compete in the highly competitive markets for telecommunications services in Tennessee and nationwide. The XO financing transaction described herein is not expected to have any direct effect upon the rates of XOCS, nor to have any adverse effect whatsoever upon the services provided by the Companies. Moreover, consummation of the transaction will not result in any change in control of XOCS. Instead, the financing arrangement will provide the XO companies, including XOCS, with the financial resources needed to further grow and expand their business and to compete in today's highly competitive telecommunications environment. Indeed, the primary purpose of the borrowing is for investment in the XO network. Approval of the XOCS commitments discussed herein will directly serve these purposes.

The Petitioner competes in Tennessee and other markets with numerous other interexchange carriers and enhanced service providers as well as the incumbent local exchange carrier(s) and other competitive local exchange carriers. Because XOCS is a non-dominant carrier, it is not subject to rate of return regulation and its capital structure should not be a matter of concern to the Authority. In addition, because of the highly competitive environment in which it operates, the rates charged customers are subject to market discipline and the services offered generally are available from numerous other carriers. As a result, the source of funds and

capital structure of XOCS have little effect on customers in Tennessee or elsewhere. In the unlikely event that XOCS' capital structure becomes too costly, leading to an increase in its rates, customers may simply migrate to other carriers with more competitive rates. Thus, any adverse consequences that might arise from financing decisions such as described above would impact XOCS' equity interest holders rather than its customers, while any favorable consequences will benefit both consumers and equity interest holders through improved service offerings and competitive standing.


Moreover, as the Authority has recognized and asserted on many occasions, the public interest in Tennessee is best served by assuring the presence of numerous telecommunications competitors. Towards that goal, it is important to provide such competitors with the flexibility to arrange financing in the manner they deem most appropriate to carry on their businesses provided there is no adverse impact on the public. To deny such flexibility would discourage new competitors from entering the state and would encourage existing competitors in Tennessee to seek a more favorable regulatory environment elsewhere, neither of which developments would enhance the public interest. In contrast, approving the access of competitive carriers to adequate and flexible financing arrangements such as discussed in this Petition will measurably benefit Tennessee consumers.

WHEREFORE, XOCS respectfully requests that the Authority approve, to the extent necessary, its participation in the financing transaction described herein and further relief as the Authority may deem appropriate.

Respectfully submitted,

**XO Communications Services, LLC**

By:



Thomas Cohen  
Denise N. Smith  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, DC 20007  
Tel. (202) 342-8400  
Fax (202) 342-8451

Its Counsel

Date: March 18, 2014

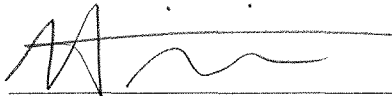
## **VERIFICATION**




**VERIFICATION**

I, Navid C. Haghighi, state that I am Executive Vice President, General Counsel & Secretary of XO Communications, LLC; that I am authorized to represent XO Communications, LLC and its subsidiaries, and to make this verification on their behalf; that the statements in the foregoing document relating to XO Communications, LLC and its subsidiaries, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Navid C. Haghighi  
XO Communications, LLC

Subscribed and sworn to before me this 14<sup>th</sup> day of March 2014.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 8/31/2016

