

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-371T

IN THE MATTER OF THE APPLICATION OF XO COLORADO, LLC, ALLEGIANCE TELECOM OF COLORADO, INC. AND XO COMMUNICATIONS SERVICES, INC. FOR APPROVAL OF AN INTERNAL CORPORATE REORGANIZATION AND FOR APPROVAL, AS NECESSARY, OF RELATED TRANSACTIONS.

ORDER GRANTING APPLICATION

Mailed Date: September 7, 2004
Adopted Date: September 1, 2004

I. BY THE COMMISSION

A. Statement

1. On July 16, 2004, XO Colorado, LLC (XO Colorado), Allegiance Telecom of Colorado, Inc. (Allegiance Colorado), and XO Communications Services, Inc. (XO Services), filed an application requesting Commission approval of an internal corporate reorganization under which the existing operating subsidiaries of XO Communications, Inc. (XO Communications), will be merged into a single operating subsidiary, XO Services, pursuant to 4 *Code of Colorado Regulations* 723-25-8.

2. Under the internal reorganization plan described in the application, both Allegiance Colorado and XO Colorado will be collapsed into XO Services. After completion of the reorganization and consolidation, XO Communications will remain the ultimate corporate parent and will have only one Colorado subsidiary, XO Services.

3. The joint applicants propose to transfer XO Colorado's assets, including all certificates and operating authorities issued by the Commission and its intrastate customer base,

to XO Services through a merger of XO Colorado into XO Services. After the merger, XO Colorado will cease to exist by operation of law, and XO Services will assume all of XO Colorado's assets and operations. XO Services intends to adopt the existing tariff of XO Colorado so that XO Colorado's customers will continue to receive the same services at the same rates, terms, and conditions.

4. The joint applicants propose to transfer Allegiance Colorado's assets, including all certificates and operating authorities issued by the Commission and its intrastate customer base, to XO Services through a merger of Allegiance Colorado and XO Services. After the merger, Allegiance Colorado will cease to exist by operation of law, and XO Services will assume all of Allegiance Colorado's assets and operations. Allegiance Colorado intends to grandfather its existing tariff so that existing Allegiance Colorado customers will continue to receive the same services at the same rates, terms, and conditions.

5. Upon completion of the merger of Allegiance Colorado and XO Services, XO Services will assume control of all telecommunications certificates and operating authorities currently held by Allegiance Colorado.

6. On December 11, 1997, XO Colorado was granted a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange telecommunications services and a CPCN to provide emerging competitive telecommunications services. *See* Decision No. C97-1338 in Docket No. 97A-502T.

7. On February 5, 1999, Allegiance Colorado was granted a CPCN to provide local exchange telecommunications services and a CPCN to provide emerging competitive telecommunications services. *See* Decision No. C99-144 in Docket No. 98A-609T.

8. On April 7, 2004, the Commission approved the transfer of control of Allegiance Colorado to XO Services. *See* Decision No. C04-0362 in Docket No. 04A-077T. The transfer of control of Allegiance Colorado was consummated on June 23, 2004.

9. XO Services is authorized to transact business in Colorado as a foreign corporation, but is not licensed to provide telecommunications services in any state at this time.

10. The Commission has previously examined the financial, managerial, and technical qualifications of XO Colorado to provide telecommunications services. XO Services, the transferee, represents that it is backed by the same qualifications as XO Colorado.

11. On July 20, 2004, the Commission issued a Notice of Application Filed, giving notice to all interested parties. Interventions were due on or before August 19, 2004. No interventions were filed.

B. Discussion

12. The application is unopposed and may be considered without a hearing pursuant to § 40-6-109(5), C.R.S.

13. The Commission finds that the proposed transfer is not contrary to the public interest.

II. ORDER

A. The Commission Orders That:

1. The application of XO Colorado, LLC, Allegiance Telecom of Colorado, Inc., and XO Communications Services, Inc., is deemed complete.

2. The application requesting approval for an internal reorganization and merger of XO Colorado, LLC, Allegiance Telecom of Colorado, Inc., and XO Communications Services, Inc., is granted.

3. The transferee, XO Communications Services, Inc., is issued a Commission grant of authority, pursuant to 4 *Code of Colorado Regulations* 723-25-8.

4. Upon completion of the merger of XO Colorado, LLC and XO Communications Services, Inc., XO Colorado, LLC will cease to exist by operation of law. XO Communications Services, Inc., will adopt the existing tariffs of XO Colorado, LLC and will continue to provide local exchange services and emerging competitive services to existing customers of XO Colorado, LLC under those same rates, terms, and conditions, unless otherwise amended through an advice letter filing.

5. Upon completion of the merger of Allegiance Telecom of Colorado, Inc., and XO Communications Services, Inc., Allegiance Telecom of Colorado, Inc., will cease to exist by operation of law. XO Communications Services, Inc., will adopt the existing tariffs of Allegiance Telecom of Colorado, Inc., and will continue to provide local exchange services and emerging competitive services to existing customers of Allegiance Telecom of Colorado, Inc., under those same rates, terms, and conditions, unless otherwise amended through an advice letter filing.

6. Through the date on which the internal reorganization is completed and the merger is consummated, XO Colorado, LLC and Allegiance Telecom of Colorado, Inc., shall continue to have the obligation to file an annual report with the Commission and to contribute to all applicable Colorado funds, including the Public Utilities Commission's Fixed Utilities Fund,

the Colorado High Cost Support Mechanism, the Telecommunications Relay Services for the Disabled Telephone Users Program, and the Emergency Telephone Access Act Program.

7. Upon completion of the internal reorganization and consummation of the merger, XO Communications Services, Inc., shall assume the report filing requirements and payment obligations described in Paragraph 6 above.

8. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

9. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 1, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners