

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-077T

IN THE MATTER OF THE JOINT APPLICATION OF ALLEGIANCE TELECOM, INC.,
DEBTOR-IN-POSSESSION, TRANSFEROR, AND XO COMMUNICATIONS, INC.,
TRANSFeree, FOR APPROVAL OF A CHANGE IN OWNERSHIP OF AN AUTHORIZED
TELECOMMUNICATIONS PROVIDER AND REQUEST FOR WAIVERS TO THE EXTENT
REQUIRED.

ORDER GRANTING APPLICATION

Mailed Date: April 7, 2004
Adopted Date: April 7, 2004

I. BY THE COMMISSION

A. Statement

1. On February 23, 2004, Allegiance Telecom, Inc. (ATI), and XO Communications, Inc. (XO), filed a joint application to execute a transfer of ultimate control of ATI's Colorado operating subsidiary, Allegiance Telecom of Colorado, Inc. (Allegiance Colorado), to XO. 4 *Code of Colorado Regulations* (CCR) 723-25-8.

2. On February 5, 1999, Allegiance 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. C99-144 in Docket No. 98A-609T.

3. On December 11, 1997, XO Colorado, LLC (formerly known as Nextlink Colorado) (XO Colorado), was granted a 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.

4. The proposed transfer of control will result from a transaction whereby XO will acquire substantially all of the assets of ATI, including the stock of Allegiance Colorado. The joint application was filed in furtherance of the reorganization plan of ATI under Chapter 11 of the U.S. Bankruptcy Code.

5. The application does not seek the transfer of operating authority. Throughout the transfer process and after the consummation of the transaction, XO and ATI, through their respective Colorado operating subsidiaries, XO Colorado and Allegiance Colorado, will continue to provide uninterrupted services to Colorado customers. Upon completion of the transfer of control, XO Colorado and Allegiance Colorado will continue to provide intrastate telecommunications services in Colorado under their respective names and pursuant to their existing authorities and tariffs.

6. No assets of Allegiance Colorado or XO Colorado are being transferred as a result of this transaction. Only ultimate control of Allegiance Colorado is changing. Specifically, all assets held by Allegiance Colorado and XO Colorado, including their CPCNs, will continue to be held by those respective entities after the transfer of control is completed.

7. In an abundance of caution, the joint applicants have requested a waiver of the Commission's slamming rules at 4 CCR 723-2-25.1.2. However, the joint applicants do not believe that such a waiver is necessary because customers will not experience any changes in their service or the identity of their service provider as a result of this transaction.

8. The joint applicants have requested a waiver of the Commission's transfer rules at 4 CCR 723-25-8.1.5. The joint applicants plan to close this transaction as soon as possible after all necessary approvals have been obtained and other conditions have been satisfied. However,

the agreement provides that ATI or XO may terminate the transaction if it does not close by August 18, 2004.

9. On February 25, 2004, the Commission issued a Notice of Application Filed, giving notice to all interested parties. Interventions were due on or before March 26, 2004. No interventions were filed.

B. Discussion

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

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

II. ORDER

A. The Commission Orders That:

1. The joint application of Allegiance Telecom, Inc., and XO Communications, Inc., is deemed complete.

2. The joint application for the transfer of control of Allegiance Telecom of Colorado, Inc., from Allegiance Telecom, Inc., to XO Communications, Inc., is granted.

3. The request for a waiver of the Commission's slamming rules is not necessary because the transfer of control will be transparent to end-use customers of Allegiance Telecom of Colorado, Inc. Therefore, the request for waiver is denied as moot.

4. The request for a waiver of the Commission's requirement to provide an exact transfer date is granted. The joint applicants are ordered to notify the Commission if the proposed transaction does not close by August 18, 2004.

5. Upon consummation of the transfer of control, Allegiance Telecom of Colorado, Inc., and XO Colorado, LLC will continue to provide local exchange services and emerging competitive telecommunications services under their existing authorities and tariffs.

6. Allegiance Telecom of Colorado, Inc., and XO Colorado, LLC 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. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 7, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners