

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-3534
Application of XO	)	
Communications Services,	)	
Inc., Salt Lake City, Utah,	)	GRANTED
seeking authority for a pro	)	
forma internal corporate	)	
restructuring.	)	Entered: February 22, 2006

BY THE COMMISSION:

On January 6, 2006, an application was filed by XO Communications Services, Inc. (XOCS), Salt Lake City, Utah, seeking authority for a pro forma corporate restructuring and transfer of control. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 11, 2005. No protests were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

O P I N I O N     A N D     F I N D I N G S

The Parties:

XO Communications, Inc. (XO) is a Delaware corporation with its headquarters in Reston, Virginia. XO is authorized through XOCS and other subsidiaries to provide intrastate interexchange services virtually nationwide and to provide competitive local exchange services in 47 states. XO is the corporate parent company of XOCS.

XOCS is a Delaware corporation with its headquarters in Salt Lake City, Utah. XOCS was authorized by this Commission to operate as a resale carrier of interexchange telecommunications services in Nebraska on December 7, 1999, in Application No. C-2147. Subsequently, on November 25, 2003, in Application No. C-3035, the Commission authorized XO Network to expand its authority to include competitive resold and facilities-based local exchange services in the US West/Qwest service area. On September 8, 2004, this authority was transferred to operate under the name XO Communications Services, Inc. (XOCS). XOCS is a wholly owned subsidiary of XO. XOCS currently is ultimately majority owned and controlled by Carl C. Icahn.

At present Cardiff Holding, LLC (Cardiff) beneficially holds approximately 61% of the equity and voting interests in XO. Cardiff is indirectly, wholly-owned and controlled by Carl C. Icahn, through his ownership and control of certain companies that hold ownership interests in Cardiff.

Elk Associates, LLC (Elk) is also involved in the transaction. Carl C. Icahn is the controlling shareholder of Elk.

XO Holdings, Inc. (Holdings) is also involved in the proposed transaction, and is a wholly owned subsidiary of XO.

XO Communications, LLC (XO LLC) is also involved in the proposed transaction, and is a wholly owned subsidiary of XO. XO LLC is also a direct subsidiary of Holdings.

#### The Transaction:

After the pro forma restructuring, XOCS will continue to be majority owned and controlled by Carl C. Icahn. XO has entered into an Equity Purchase Agreement with Holdings and Elk in which XO will merge into and with XO LLC, with XO LLC being the surviving entity, and XOCS becoming a subsidiary of XO LLC. XO LLC will then sell all of its outstanding membership interests to Elk. The "XO Communications" brand name will be transferred to XO LLC at closing and will therefore remain with the wireline business.

XOCS notes that the proposed transaction will be effectively transparent to XOCS's customers. 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 as they will continue to be offered the same service provider with the same name at the same rates, terms and conditions as at present.

The parties submit that the public interest will be served because XOCS will maintain the financial, managerial and technical qualifications it currently operates under. XOCS competes with numerous other local exchange carriers and enhanced network providers as well as the incumbent local exchange carriers and other competitive local exchange carriers. Because the public interest is best

served by assuring the presence of numerous telecommunications competitors, it is important to provide such competitors such as XO with the flexibility to arrange their ownership in the manner they deem most appropriate to carry on their business so long as there is no adverse impact on the public.

Based on the evidence, we find the application to be fair and reasonable and in the public interest. The application should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-3534 be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 22<sup>nd</sup> day of February, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director