

**DIVIDER**  
STATE OF NORTH DAKOTA  
INFORMATION TECHNOLOGY DEPARTMENT  
SFN 2053 (4-2002)

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**DESCRIPTION**

**PU-04-454**  
**XO Communications Services, Inc.**  
**Local Exchange**  
**Public Convenience & Nece**  
**Filed 9/1/2004**      **Closed 11/22/2004**

04

**APPROVED**

MOTION

DATE. 12-1-04

KMF December 1, 2004

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No PU-04-454

I move the Commission bill XO Communications Services, Inc. for costs incurred to date in Case No PU-04-454, XO Communications Services, Inc , Local Exchange, Public Convenience and Necessity



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Tony Clark, President  
Susan E Wefald  
Kevin Cramer

Executive Secretary  
Illona A Jeffcoat-Sacco

600 E Boulevard Ave Dept 408  
Bismarck, North Dakota 58505-0480  
web www.psc.state.nd.us  
e-mail ndpsc@state.nd.us  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

December 1, 2004

Nicholaus G Leverett  
Melissa Smith Conway  
Kelley Drye & Warren LLP  
1200 19th St NW Ste 500  
Washington DC 20036

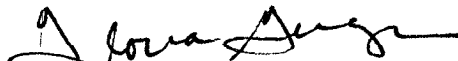
RE: Case No. PU-04-454  
XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Enclosed is a copy of the statement approved at the December 1, 2004 Public Service Commission meeting for the expenses incurred to date in Case No. PU-04-454.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission*.

Sincerely,

  
Gloria Geiger  
Admin Staff Officer  
701-328-2401

Enc.

c: Doug Kinkoph  
XO Communications Inc  
2 Eastern Oval Ste 300  
Columbus OH 43219

# Billing Statement

December 1, 2004

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-454

**Bill To:**

XO Communications Services, Inc.....\$140.75

**Expenses Incurred to Date:**

Advertising Costs \$140.75

**Send Payment and a Copy of this Statement To:**

Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480

**Federal Tax ID 45-0309764**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-454

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that

she is over the age of 18 years and not a party to this action and, on the **19th day of November, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of

**Order**

The envelope was addressed as follows

Nicholaus G Leverett  
Melissa Smith Conway  
Kelley Drye & Warren LLP  
1200 19th St NW Ste 500  
Washington D C 20036  
**Cert. No. 7003 2260 0001 3517 1347**

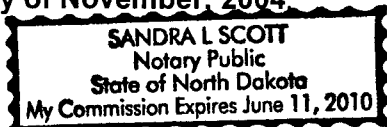
**Sharon Helbling** further deposes and says that on the **19th day of November, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

Doug Kinkoph  
XO Communications Inc  
2 Eastern Oval Ste 300  
Columbus OH 43219

Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me  
this **19th day of November, 2004**.

SEAL



*Sharon Helbling*  
\_\_\_\_\_  
*Sandra L Scott*  
\_\_\_\_\_  
Notary Public



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Tony Clark, President  
Susan E Wefald  
Kevin Cramer

Executive Secretary  
Ilona A Jeffcoat-Sacco

600 E Boulevard Ave Dept 408  
Bismarck, North Dakota 58505-0480  
web www.psc.state.nd.us  
e-mail ndpsc@state.nd.us  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

November 19, 2004

Nicholaus G Leverett  
Melissa Smith Conway  
Kelley Drye & Warren LLP  
1200 19th St NW Ste 500  
Washington D C 20036

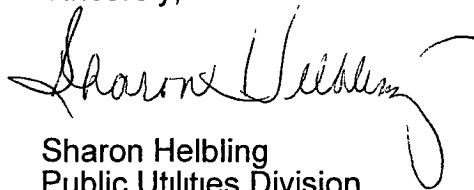
Dear Mr. Leverett:

On November 18, 2004, the Commission issued Certificate of Public Convenience and Necessity No. 5149 to XO Communications Services, Inc. to provide local exchange telecommunications services, with facilities, throughout North Dakota, Case No. PU-04-454.

The original certificate is enclosed for your files.

If you have any questions, please call me at 701-328-4076.

Sincerely,



Sharon Helbling  
Public Utilities Division

sdh

Enclosures

**APPROVED**

**MOTION**

DATE 11-18-04 **November 18, 2004**  
KMF

**XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-454**

I move the Commission adopt the Order granting the application of XO Communications Services, Inc. for a certificates of public convenience and necessity to provide telecommunication services in North Dakota.

JRL/sdh

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-454**

**ORDER**

**November 18, 2004**

On September 1, 2004, XO Communications Services, Inc. (XO Communications Services) of Reston, VA filed an application for a certificate of public convenience and necessity to provide facilities-based competitive local exchange telecommunication services throughout North Dakota.

On September 22, 2004, the Commission issued a Notice of Opportunity for Hearing that provided until October 25, 2004 for receiving comments or hearing requests. In accordance with North Dakota Century Code chapter 49-03.1 and North Dakota Administrative Code section 69-09-05-11(3), the Commission's notice identified the following issues to be considered in this matter:

1. Fitness and ability of the applicant to provide service.
2. Adequacy of the proposed service.
3. Technical, financial and managerial ability of the applicant to provide service.

On October 25, 2004, the Rural Telephone Company Group (RTCG) filed comments requesting limitations to preserve the rural exemption under 47 U.S.C. 251 (f). The RTCG stated that it did not oppose the application and was not requesting a hearing.

Also on October 25, 2004, the Public Service Commission's Director of Accounting filed a memorandum indicating that XO Communications Services has the financial ability to provide service.

On November 3, 2004, the Commission discussed the issues in this matter with the applicant and Commission staff at an informal hearing.

XO Communications Services is a wholly-owned subsidiary of XO Communications, Inc. (XO) and both are Delaware Corporations operating out of Reston, VA. XO and its subsidiaries are undergoing a corporate restructuring to collapse affiliate XO Network Services, Inc. (XO Network Services) into XO Communications Services. The cancellation of PC&N Certificate No. 5089 and reseller registration, Second Reissued Certificate Number 645, held by XO Network Services f/k/a XO Long Distance Services, Inc. F/k/a Nextlink Long Distance Services, Inc. has been docketed separately in Case No. PU-04-498.

XO, through its operating subsidiaries, provides bundled local and long distance as well as dedicated voice and data services primarily to business customers. XO

operates broadband networks within and between more than 70 markets throughout the U.S. and is one of the largest holders of fixed wireless spectrum with deployment covering 95% of the population of the 30 largest U.S. cities. XO is authorized to provide intrastate interexchange service virtually nation wide and competitive local exchange services in 47 states.

XO Communications Services states that the transfer of operations from XO Network Services will be transparent to consumers and will have no adverse impact on them. XO will file a revised tariff to reflect its slightly changed name, but the same services will be provided at substantially similar rates, terms and conditions. There will be no change in management and the name consumers see on their bills will remain "XO."

The Commission finds XO Communications Services' proposed service adequate.

The Commission finds XO Communications Services is fit, able, and has the technical, financial and managerial ability to provide service.


In this Case, as in other cases in which statewide authority was requested, the Commission will adhere to the precedent established in the AT&T certificate case, Case No. PU-453-96-83. In AT&T, the Commission held that its determination of the public interest with regard to the service territories of rural telephone companies is subject to any future proceedings under Section 251(f)(1) or (2) of the Telecommunications Act of 1996 (47 U.S.C. §251(f)(1) or (2)). The Commission also held that granting the certificate on a statewide basis is not a ruling that affects the rights of specific rural telephone companies under 47 U.S.C. §251(f).

### Order

The Commission Orders the application of XO Communications Services , Inc. for a certificate of public convenience and necessity to provide facilities-based competitive local exchange telecommunications services throughout North Dakota is GRANTED.

### PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
**Susan E. Wefald**  
Commissioner

  
\_\_\_\_\_  
**Tony Clark**  
President

  
\_\_\_\_\_  
**Kevin Cramer**  
Commissioner

**Public Service Commission**  
**STATE OF NORTH DAKOTA**

**Certificate of Public Convenience and Necessity**

**Certificate Number 5149**

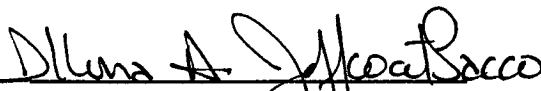
*This is to certify that public convenience and necessity require, and permission is granted for XO Communications Services, Inc., a telecommunications public utility, to provide statewide local exchange telecommunications services, with facilities, in North Dakota.*

*This certificate is issued in Case No. PU-04-454 and is conditioned upon XO Communications Services, Inc. securing the franchise or other authority of the proper municipal or other authority for the exercise of these rights and privileges.*

*Bismarck, North Dakota, November 18, 2004.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**North Dakota Public Service Commission**  
**INFORMAL HEARING**  
**November 3, 2004**

**XO Communications Services, Inc.**  
**Local Exchange**  
**Public Convenience & Necessity**

**Case No. PU-04-454**  
**Filed: 9/1/04**

**Summary of Proposal:** XO Communications, Inc. (XO) and its subsidiaries, are undergoing a corporate restructuring to collapse XO Network Services, Inc. (XO Network Services) into affiliate XO Communications Services, Inc. (XO Communications Services). As a result, XO Communications Services requests a certificate of public convenience and necessity to provide competitive local exchange telecommunications services throughout North Dakota.

**Procedural History:** On September 22, 2004, the Commission issued a Notice of Opportunity for Hearing that provided until October 25, 2004 for receiving comments or hearing requests. One response was received on October 25<sup>th</sup> from the Rural Telephone Company Group requesting limitations to preserve the rural exemption under 47 U.S.C. 251 (f).

The cancellation of PC&N Certificate No. 5089 and reseller registration, Second Reissued Certificate Number 645, held by XO Network Services f/k/a XO Long Distance Services, Inc. F/k/a Nextlink Long Distance Services, Inc. was docketed separately in Case No. PU-04-498.

**Discussion:** XO Communications Services is a wholly-owned subsidiary of XO and both are Delaware Corporations operating out of Reston, VA. XO Communications Services states that XO, through its operating subsidiaries, provides bundled local and long distance as well as dedicated voice and data services primarily to business customers. It operates broadband networks within and between more than 70 markets throughout the U.S. and is one of the largest holders of fixed wireless spectrum with deployment covering 95% of the population of the 30 largest U.S. cities. XO is authorized to provide intrastate interexchange service virtually nation wide and competitive local exchange services in 47 states.

The applicants state that transfer of authority from XO Network Services will be transparent to consumers in North Dakota and will have no adverse impact on them. XO will file a revised tariff to reflect its slightly changed name, but the same services will be provided at substantially similar rates, terms and conditions. There will be no change in management and the name consumers see on their bills will remain "XO."

A limited staff financial review (see staff memo dated October 25<sup>th</sup>) indicated that XO has the financial ability to provide service.

**Recommendation:** I recommend approval.

**Prepared by:** Jerry Lein

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-454

AFFIDAVIT OF SERVICE BY ORDINARY MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that

she is over the age of 18 years and not a party to this action and, on the **25th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with first class postage, fully prepaid, securely sealed and containing a photocopy of

**Staff Financial Memo**

The envelope was addressed as follows

Nicholaus G Leverett  
Melissa Smith Conway  
Kelley Drye & Warren LLP  
1200 123rd St NW Ste 500  
Washington D C 20036

**Sharon Helbling** further deposes and says that on the **25th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

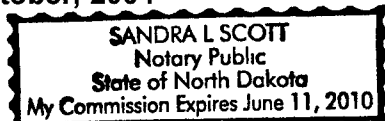
Doug Kinkoph  
XO Communications Inc  
2 Eastern Oval Ste 300  
Columbus OH 43219

Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me

this **25th day of October, 2004**

SEAL



*Sharon Helbling*  
\_\_\_\_\_  
*Sandra L Scott*  
\_\_\_\_\_  
Notary Public

10 PU-04-454

Pages 1

Affidavit of Service

by Public Service Commission

10/25/2004

CC Comm Legal Ilona Jerry Mike



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

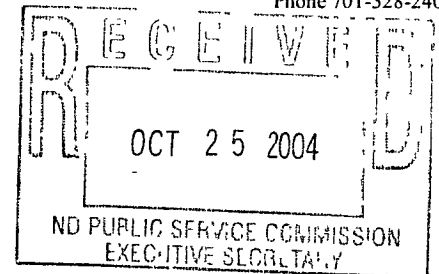
Tony Clark, President  
Susan E Wefald  
Kevin Cramer

Executive Secretary  
Illona A Jeffcoat-Sacco

600 E Boulevard Ave Dept 408  
Bismarck, North Dakota 58505-0480  
web www.psc.state.nd.us  
e-mail ndpsc@state.nd.us  
TDD 800-366-6888  
Fax 701-328-2410  
Phone 701-328-2400

## Memorandum

**To:** Illona Jeffcoat-Sacco, Executive Secretary  
**From:** Mike Diller, Director of Accounting *MD*  
**Date:** October 25, 2004  
**Re:** **XO Communications Services, Inc.**  
**Local Exchange PC&N**  
**Case No. PU-04-454**



The following is written to provide the commission with a very limited review of this case regarding the applicant's financial ability to provide service.

According to its application, XO Communications Services, Inc. is a wholly owned subsidiary of XO Communications, Inc. XO Communications, Inc. is a publicly owned company and currently trades about 140,000 shares per day for about \$3 a share under the symbol XOCM.OB. According to its filed 10-Q for the quarter ended June 30, 2004, XO reports positive stockholder equity of \$803 million.

The commission has used stockholder equity as a litmus test for showing financial ability to provide service in North Dakota. Based on its review, staff concludes that the applicant has access to sufficient equity through its parent company to provide service in North Dakota.

Staff sees no reason to deny this application.

In accordance with the Commission's wishes, staff will serve this document on the applicant.

DONALD A NEGAARD  
JAMES E NOSTDAHL  
CAROL K LARSON  
DAVID J HOGUE  
REED A SODERSTROM  
BRENT M OLSON  
DEBRA L HOFFARTH  
SCOTT M KNUDSVIG  
ERIKA L SLEGER  
RYAN D SANDBERG

**PH**  
LAW OFFICES OF  
**PRINGLE & HERIGSTAD, P.C.**

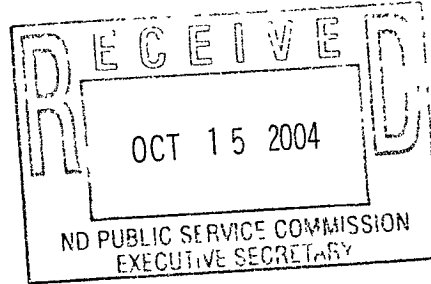
2525 ELK DRIVE  
POST OFFICE BOX 1000  
MINOT, NORTH DAKOTA 58702  
(701) 852-0381  
FAX (701) 857-1361  
E-mail pringle@srt.com

OF COUNSEL  
HERBERT L. MESCHKE

RETIRED  
THOMAS A WENTZ  
MARK F PURDY  
JAN M SEBBY

KENNETH G PRINGLE  
(1914-1983)  
ROGER O HERIGSTAD  
(1919-2003)

October 14, 2004



Ms Illona Jeffcoat-Sacco  
Executive Secretary  
PUBLIC SERVICE COMMISSION  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

**XO COMMUNICATIONS SERVICES, INC., LOCAL EXCHANGE PUBLIC CONVENIENCE  
AND NECESSITY  
CASE NO. PU-04-454**

**VCI COMPANY LOCAL EXCHANGE PUBLIC CONVENIENCE AND NECESSITY  
CASE NO. PU-04-465**

Enclosed herewith for filing in each of the above matters are an original and seven copies of the Comments of the Rural Telephone Company Group on the Applications for Certificate of Public Convenience and Necessity of XO Communications Services, Inc., Case No PU-04-454, and VCI Company, Case No. PU-04-465

A handwritten signature in black ink, appearing to be "Don Negaard", written over a horizontal line.

Don Negaard

jt

Enclosures

8

**PU-04-454**

Pages 1

Cover letter re Comments

by Rural Telephone Company Group by Don Negaard

10/15/2004 CC Comm Legal Illona Jerry Mike

8

**PU-04-465**

Pages 1

Cover letter re Comments

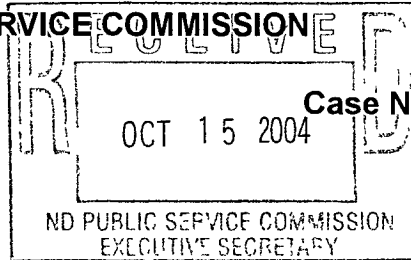
by Rural Telephone Company Group by Don Negaard

10/15/2004 CC Comm Legal Illona Jerry Mike

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity



Case No. PU-04-454

**COMMENTS OF THE RURAL TELEPHONE COMPANY GROUP ("RTCG")  
ON THE APPLICATION FOR CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
OF XO COMMUNICATIONS SERVICES, INC. ("XO")**

The Rural Telephone Company Group (RTCG) is a group of telecommunications carriers, each of which is an "incumbent local exchange carrier" and a "rural telephone company" under the federal Telecommunications Act of 1996 (the Act) and each has legal interests in this case under the Act

The RTCG includes

BEK Communications Cooperative  
Consolidated Telcom  
Dakota Central Telecommunications Cooperative and Dakota Central Telecom I  
Dickey Rural Telephone Cooperative, Dickey Rural Communications, Inc , and  
Dickey Rural Access, Inc  
Griggs County Telephone Company and Moore & Liberty Telephone Company  
Inter-Community Telephone Company, L L C  
Midstate Telephone Company and Midstate Communications, Inc  
Nemont Telephone Company and Missouri Valley Communications, Inc  
North Dakota Telephone Company  
Northwest Communications Cooperative  
Polar Communications Mutual Aid Corporation and Polar Telecommunications, Inc  
Red River Rural Telephone Association and Red River Telecom, Inc  
Reservation Telephone Cooperative  
SRT Communications, Inc  
United Telephone Mutual Aid Corporation and Turtle Mountain Communications  
West River Telecommunications Cooperative

In PSC Case No PU-453-96-83, AT&T applied for and was granted a Certificate of Public Convenience and Necessity to provide local telecommunications service throughout the state of North Dakota, subject to limitations in the Commission's Order

"8 Public convenience and necessity requires the granting of a statewide certificate to AT&T to provide local service. However, the Commission's determination of the public interest with regard to the service territories of rural telephone companies is subject to any future proceedings under §251(f)(1) or (2) of the Act

9 Granting AT&T's application for a statewide certificate is not a ruling that affects the rights of specific rural telephone company pursuant to 47 U S C §251(f) "

In PSC Case No PU-987-96-390, Sprint applied for and was granted a Certificate of Public Convenience and Necessity to provide local telecommunications service throughout the state of North Dakota, subject to limitations based on the precedent established in the AT&T case

"One issue which has been addressed in other Certificate of Public Convenience and Necessity cases was raised by the intervener, NDATEC. This issue concerns rural telephone companies and what effect the grant of a certificate would have on them. NDATEC identified its interest in this proceeding, and the interests of its members, as a concern that the grant of a certificate of public convenience and necessity not defeat the rural protections provided by the Telecommunications Act of 1996

The Commission agrees with NDATEC that the question is important and must be addressed. This issue will apply to all certificate requests affecting any service area of any rural telephone company in North Dakota. It is the opinion of the Commission that in all such cases, any determination of public interest is subject to future proceedings regarding rural protections or exemptions

In the instant case the Commission will adhere to the precedent established in the AT&T certificate case, Docket No PU-453-96-83, on this issue. In AT&T, the Commission held that its determination of the public interest with regard to the service territories of rural telephone companies is subject to any future proceedings under Section 251(f)(1) or (2) of the Telecommunications Act of 1996 (47 U S C §251(f)(1) or (2)). The Commission also held that granting the certificate on a statewide basis is not a ruling that affects the rights of specific rural telephone companies under 47 U S C §251(f). Both Sprint and NDATEC agree that the qualifications expressed in the AT&T case appropriately apply to Sprint's request for a statewide certificate of public convenience and necessity. The inclusion of these conditions satisfies NDATEC's concerns, and is not objectionable to Sprint "

The AT&T precedent has been cited at least one time following the Sprint case, in Case No PU-1693-97-269, where a statewide certificate was granted to Eclipse Communications Corp (a subsidiary of Western Wireless Corporation), subject to the rights of rural telephone companies under 47 U S C 251(f)

In reliance on the precedent established by the Commission in the AT&T, Sprint, and Eclipse/Western Wireless cases, the RTCG does not request intervention and does not request a hearing on the pending application. The RTCG does request that any order issued to grant the pending application should include limitations substantially the same as those in the AT&T, Sprint, and Eclipse/Western Wireless cases, to preserve the "rural safeguard" rights of rural telephone companies under 47 U S C 251(f)

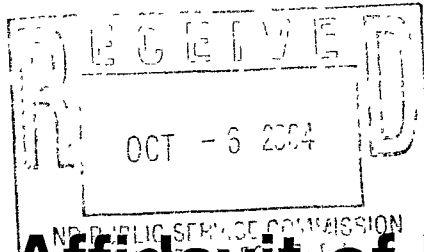
By the comments contained herein, none of the above-named companies shall be deemed to have waived its rights to claim that XO Communications Services, Inc, or its parent company are prohibited from competing with the RTCG or their subsidiaries

Dated at Minot, North Dakota, this 14th day of October, 2004

  
PRINGLE & HERIGSTAD, P C

---

By Don Negaard, ND Bar ID #03598  
Attorneys for RTCG  
2525 Elk Drive  
P O Box 1000  
Minot, ND 58702-1000  
(701) 852-3081



# Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:  
PSC, New Access - UCI Co, 1 time(s)  
as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

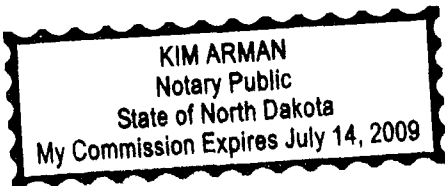
Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 5 day of October 20 04.

Kim Arman



- 6 **PU-04-423** Pages 1  
Affidavit of Publication  
by North Dakota Advertising Service, Inc  
10/06/2004 CC Comm Legal Ilona Jerry Mike
- ✓6 **PU-04-454** Pages 1  
Affidavit of Publication  
by North Dakota Advertising Service, Inc  
CC Comm Legal Ilona Jerry Mike
- 6 **PU-04-465** Pages 1  
Affidavit of Publication  
by North Dakota Advertising Service Inc  
10/06/2004 CC Comm Legal Ilona Jerry Mike



# North Dakota Newspaper Association

1435 Interstate Loop

Bismarck, ND 58503-0567

Ph (701) 223-6397 • Fax (701) 223-8185

OCT - 3 2004  
ND PUBLIC SERVICE COMMISSION  
EXECUTIVE SECRETARIAT

## INVOICE

E C E  
OCT -  
ND PUBLIC SER  
EXECUT

Order **19641-04101PP0** Invoice # **44467**

October 5, 2004

Attn: ILLONAA. JEFFCOAT-SACCO  
PUBLIC SERVICE COMMISSION  
600 E. BOULEVARD AVE.  
STATE CAPITOL  
BISMARCK, ND 58505

Advertiser **Public Utilities Division**

P O # **PU-04-423, 454, 465**

Amount Due **\$422.26**

Amount Paid

Voice 701-328-4076

Please detach and return this portion with your payment

Public Utilities Division Invoice # 19641-04101PP0-44467 PO# PU-04-423, 454, 465

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
<b>DAILY</b>							
<b>Bismarck Tribune (Bismarck ND)</b>							
65 00	SPR2	0 64	41 60	0 00	New Access - VCI Co		09/29/04
<b>Devils Lake Daily Journal (Devils Lake ND)</b>							
67 00	SPR2	0 63	42 21	0 00	New Access - VCI Co		09/29/04
<b>Dickinson Press (Dickinson ND)</b>							
71 00	SPR2	0 57	40 47	0 00	New Access - VCI Co		09/29/04
<b>Fargo, The Forum (Fargo ND)</b>							
61 00	SPR2	0 71	43 31	0 00	New Access - VCI Co		10/04/04
<b>Grand Forks Herald (Grand Forks ND)</b>							
62 00	SPR2	0 69	42 78	0 00	New Access - VCI Co		09/30/04
<b>Jamestown Sun (Jamestown ND)</b>							
76 00	SPR2	0 54	41 04	0 00	New Access - VCI Co		09/29/04
<b>Minot Daily News (Minot ND)</b>							
77 00	SPR2	0 54	41 58	0 00	New Access - VCI Co		09/29/04
<b>Valley City Times-Record (Valley City ND)</b>							
68 00	SPR2	0 61	41 48	0 00	New Access - VCI Co		09/29/04
<b>Wahpeton Daily News (Wahpeton ND)</b>							
92 00	SPR2	0 51	46 92	0 00	New Access - VCI Co		09/29/04
<b>Williston Herald (Williston ND)</b>							
67 00	SPR2	0 61	40 87	0 00	New Access - VCI Co		09/29/04

Gross Advertising	422 26	Total Misc	0 00	Amount Paid	0 00
Agency Discount		Tax	0 00	Adjustments	0 00
Other Discount	0 00	Total Billed	422 26	Payment Date	
Service Charge	0 00	Unbilled	0 00	Balance Due	422 26

**6 PU-04-454** Pages 1

Affidavit of Publication

**6 PU-04-423** Pages 1

Affidavit of Publication

**6 PU-04-465** Pages 1

Affidavit of Publication

by North Dakota Advertising Service, Inc

by North Dakota Advertising Service, Inc

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**New Access Communications LLC  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-423**

**XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-454**

**VCI Company  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-465**

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **23rd day of September, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**Notice of Opportunity for Hearing**

The envelope was addressed as follows.

Patrick D Crocker  
Early Lennon Crocker & Bartosiewicz PLC  
900 Comerica Bldg.  
Kalamazoo MI 49007

**Cert. No. 7003 2260 0001 3517 0340**

Nicholaus G Leverett  
Melissa Smith Conway  
Kelley Drye & Warren LLP  
1200 123rd St NW Ste 500  
Washington D C 20036

**Cert. No. 7003 2260 0001 3517 0401**


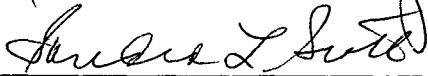
Stacey A Klinzman  
Miller Isar Inc  
7901 Skansie Ave Ste 240  
Gig Harbor WA 98335  
**Cert. No. 7003 2260 0001 3517 0418**

**Sharon Helbling** further deposes and says that on the **23rd day of September, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

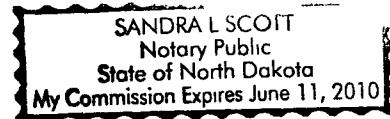
Doug Kinkoph  
XO Communications Inc  
2 Eastern Oval Ste 300  
Columbus OH 43219

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **23rd day of September, 2004**.

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

SEAL



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

New Access Communications LLC  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-423

XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-454

VCI Company  
Local Exchange  
Public Convenience and Necessity

Case No. PU-04-465

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Sharon Helbling** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **23rd day of September, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of

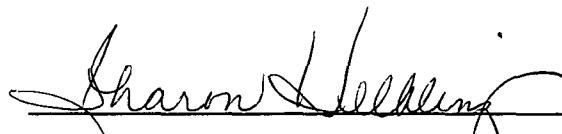
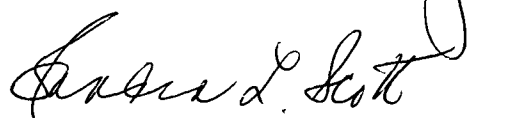
**Notice of Opportunity for Hearing**

The envelopes were addressed as follows.

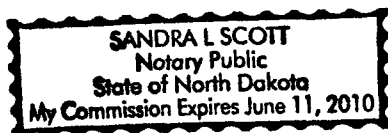
***See Attached List***

Each address shown is the respective addressee's last reasonably ascertainable post office address

Subscribed and sworn to before me  
this **23rd day of September, 2004**.

  
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Dennis Houston  
Universal Network Services of ND  
1572 North Batavia St Ste 1A  
Orange CA 92867

Val-Ed Joint Venture LLP  
702 Main Ave  
Moorhead MN 56560

VarTec Telecom Inc  
1600 Viceroy Dr  
Dallas TX 75235

Randy Houdek  
Venture Communications Inc  
PO Box 157  
Highmore SD 57345-0157

David Armev  
Verizon Communications  
600 E Hidden Ridge HQE02i33  
Irving TX 75038

Molli Harper  
Verizon Wireless  
6350 E Crescent Pkwy Ste 200  
Greenwood Village CO 80111

West River Coop Telephone Co  
P O Box 39  
Bison SD 57620-0039

Darrell Henderson  
West River Coop Telephone Company  
PO Box 39  
Bison SD 57620-0039

Doris Cooper  
West River Long Distance Co  
PO Box 467  
Hazen ND 58545-0467

Mick Grosz  
West River Telecomm Coop  
PO Box 467  
Hazen ND 58545-0467

Western CLEC Corporation  
3650 131st Ave SE #400  
Bellevue WA 98006

WTC Competitive Services Inc  
P O Box 129  
Wolverton MN 56594

XO Network Services Inc  
11111 Sunset Hills Rd  
Reston VA 20190

Z-Tel Communications Inc  
601 S Harbour Island Blvd Ste 220  
Tampa FL 33602-5925

**Helbling, Sharon D.**

---

**From:** Helbling, Sharon D  
**Sent:** Thursday, September 23, 2004 7 52 AM  
**To:** ndna (ndna)  
**Subject:** Attached Notice of Opportunity for Hearing

Colleen Park  
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Opportunity for Hearing published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item Only" article as well.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, call me at 328-4076, or e-mail.

Thank you.

Sharon Helbling  
Public Utilities Division



**1.doc (39  
KB)**

**MOTION**

**September 22, 2004**

**APPROVED**

DATE: 9-22-04  
KMF

**New Access Communications LLC  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-423**

**XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-454**

**VCI Company  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-465**

I move the Commission issue a Notice of Opportunity for Hearing in the captioned applications for certificates of public convenience and necessity to provide telecommunication services in North Dakota.

JRL/sdh

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**New Access Communications LLC  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-423**

**XO Communications Services, Inc.  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-454**

**VCI Company  
Local Exchange  
Public Convenience and Necessity**

**Case No. PU-04-465**

**NOTICE OF OPPORTUNITY FOR HEARING**

**September 22, 2004**

On August 19, 2004, New Access Communications LLC. of Minneapolis, MN filed an application for certificates of public convenience and necessity to provide facilities-based competitive local exchange telecommunication services in all North Dakota exchanges currently served by Qwest Corporation.

On September 1, 2004, XO Communications Services, Inc. of Reston, VA filed an application for a certificate of public convenience and necessity to provide facilities-based competitive local exchange telecommunication services throughout North Dakota.

On September 3, 2004, VCI Company of Lakewood, WA filed an application for certificates of public convenience and necessity to provide facilities-based competitive local exchange and interexchange telecommunication services throughout North Dakota.

The issues to be considered in these matters are:



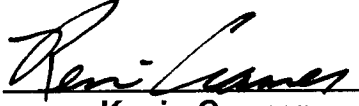
1. Fitness and ability of the applicant to provide service.
2. Adequacy of the proposed service.
3. Technical, financial and managerial ability of the applicant to provide service.

Those interested are invited to comment on the application in writing. Persons desiring a hearing must file a written request identifying their interest in the proceeding and the reasons for requesting a hearing. Comments and requests for hearings must be received by **October 25, 2004**. If deemed appropriate, the Commission can determine the matter without a hearing.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888

TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona Jeffcoat-Sacco, Executive Secretary.

**PUBLIC SERVICE COMMISSION**

 _____ Susan E. Weald Commissioner	 _____ Tony Clark President	 _____ Kevin Cramer Commissioner
------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W

SUITE 500

WASHINGTON, D.C 20036

(202) 955-9600

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www.kelleydrye.com

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EMAIL nleverett@kelleydrye.com

NEW YORK, NY  
TYSONS CORNER, VA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM

AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MUMBAI, INDIA  
TOKYO, JAPAN

August 31, 2004



**VIA UPS**

Mr. John Mielke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard, Dept 408  
Bismarck, ND 58505-0480


Re. Supplemental Filing: XO Communications, Inc. Reseller Registration, Application for Certificate of Public Convenience and Necessity, and Notification of Transfer of Assets

Dear Mr. Mielke:

A few weeks ago I filed a Reseller Registration Form, and an application for a Certificate of Public Convenience and Necessity and Notification of Transfer of Assets on behalf of XO Communications, Inc. ("XO") and its subsidiaries. Staff has requested an original certificate of good standing from the North Dakota Secretary of State as well as a copy of the application filed with the Secretary of State for authority to transact business. Enclosed please find those documents.

Enclosed are an original, seven (7) copies and a duplicate of this filing. Please do not hesitate to contact me if you have any questions regarding this matter. Thank you for your kind assistance.

Sincerely,

  
Nicholaus G. Leverett

Enclosures

1

PU-04-454

Pages 21

Local Exchange PC&N application

by XO Communications Services Inc by

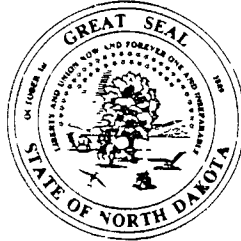
09/01/2004

CC Comm Legal Illona Jerry Mike

DC01/LEVEN/223586 2

# *State of North Dakota*

## SECRETARY OF STATE



### CERTIFICATE OF GOOD STANDING OF

XO COMMUNICATIONS SERVICES, INC.

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that XO COMMUNICATIONS SERVICES, INC , a Delaware corporation, authorized to transact business in the State of North Dakota on August 13, 2004, and according to the records of this office as of this date, has paid all fees due this office as required by North Dakota statutes governing foreign corporations.

**ACCORDINGLY** the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing to

XO COMMUNICATIONS SERVICES, INC.

Issued: August 26, 2004

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger  
Secretary of State



CERTIFICATE OF AUTHORITY FOREIGN CORPORATION APPLICATION SECRETARY OF STATE SFN 13100A (13100 + 7974) (7-99)

RECEIVED

1 AUG 13 2004 SEC OF STATE

FOR OFFICE USE ONLY

ID # 16.907.400 F WO # 156697 Filed 8-13-04 By UF

SEE REVERSE SIDE FOR FEES, FILING AND MAILING INSTRUCTIONS

- 1.A. The application MUST be accompanied by ALL of the following:
- Filing fee of \$125 if a Foreign Business or Professional Corporation
- Filing fee of \$40 if a Foreign Nonprofit Corporation
- Signed Consent of Registered Agent and fee of \$10
- Current, ORIGINAL CERTIFICATE OF GOOD STANDING OR CERTIFICATE OF EXISTENCE verifying corporate existence certified by the incorporating officer of the state or country of incorporation.
B. The following MAY be required:
- Certification of professional license from the North Dakota licensing board for the profession
- Signed consent to use of name and fee of \$10
- Trade Name Registration and fee of \$25

TYPE OR PRINT LEGIBLY For reference, see North Dakota Century Code, Section 10-19.1-135 or 10-33-126.

2. Type of corporation applying for Certificate of Authority: (check one)

- [X] Foreign Business [ ] Foreign Professional [ ] Foreign Nonprofit

3.A. Name of corporation EXACTLY as it appears on Certificate of Good Standing from state of origin

B. Federal ID # 91-2019476

XO Communications Services, Inc.

C. If the corporation chooses to use a name other than its corporate name, that name is a trade name and must be registered with the North Dakota Secretary of State. (SEE INSTRUCTION 3 C) If applicable, provide the trade name below and complete the Trade Name Registration form if the selected trade name is not already registered in North Dakota

D. If the corporation has been notified by the North Dakota Secretary of State that its corporate name is the same as, or deceptively similar to a name already registered, this application for Certificate of Authority must be accompanied by one of the following: (check one)

- [ ] Consent to use of name from the conflicting name holder(s)
[ ] An application for registration of a trade name for use in transacting business in North Dakota. The trade name adopted is:

[ ] Certified copy of a final decree of a court of competent jurisdiction establishing prior right of this corporation to use of the name in North Dakota

4. Complete mailing address of principal executive office which may not only be a post office box (Street/RR, and PO Box if applicable, city, state, zip +4) 11111 Sunset Hills Road, Reston, VA 20190

5.A. STATE or country where incorporated Delaware

B. EXACT date incorporated (Month, day, AND year) 1/5/2000

C. Duration of corporation [X] Perpetual [ ] Other (Specify)

D. Telephone # 703-547-2273

E. Toll-free telephone # NA

5.A. Name of required registered agent in NORTH DAKOTA (SEE INSTRUCTION 6.A.) Corporation Service Company

B. Federal ID/social security # of registered agent 51-000-9810

C. Address of registered agent in NORTH DAKOTA which may not only be a post office box number (Street/RR, and PO Box if applicable, city, state, zip +4) 316 North Fifth Street, P.O. Box 1695, Bismarck, North Dakota 58502

7. Nature of business or activities the corporation intends to conduct in the State of North Dakota telecommunications

Table with 4 columns: OFFICE, NAME, Street/RR, PO Box, City, State, Zip +4. Rows include PRESIDENT, VICE PRESIDENT, SECRETARY, TREASURER, DIRECTOR. All cells are empty except for the header.

8. The undersigned, a person authorized by the corporation to sign this application, knows the contents thereof, and believes the statements made to be true.

Original signature Benjamin R. Pauster

Date July 27, 2004

10. Name of person to contact about this application Kate Carey/Corporation Service Company

Daytime telephone # 800-927-9800

**XO COMMUNICATIONS SERVICES, INC.**

Officers / Directors Rider (Address for all below)  
11111 Sunset Hills Road, Reston, VA, 20190

**SLATE OF DIRECTORS**

Carl J. Grivner  
Wayne M. Rehberger

**SLATE OF OFFICERS**

Carl J. Grivner  
Wayne M. Rehberger  
William Garrahan  
Lee Weiner  
Ron Scott  
Kathy Isaac  
Michael O'Day  
Kristi Jung  
Ben Preston

President & Chief Executive Officer  
Executive Vice President, Chief Operations Officer  
Acting Chief Fin. Officer & SVP of Corp. Dev. & Strat. Planning  
Senior Vice President, General Counsel & Secretary  
Vice President, Real Estate  
Vice President, Controller  
Chief Tax Officer  
Treasurer  
Corporate Counsel, Director of Legal Affairs & Asst. Secretary



REGISTERED AGENT  
CONSENT TO SERVE  
SECRETARY OF STATE  
SFN 13100A (7874 + 13100) (7-99)

RECEIVED

AUG 13 2004

SEC OF STATE

FOR OFFICE USE ONLY

ID #	16.907.400
File #	—
WO #	156697
Filed	8-13-04
By	UF

SEE REVERSE SIDE FOR FILING AND MAILING INSTRUCTIONS

1. FILING FEE: \$10.00

TYPE OR PRINT LEGIBLY

2. Name of the organization for which the registered agent is to serve (corporation, limited liability company, limited liability partnership, limited partnership, limited liability limited partnership or real estate investment trust)

XO Communications Services, Inc.

3. Name of the registered agent

Corporation Service Company

4. Registered agent is (Check one)

- An individual North Dakota resident
- A corporation
- A limited liability company
- A limited liability partnership

5. Federal ID # or social security # of registered agent

51-000-9810

6. An individual appointed as registered agent must sign a consent to serve in that capacity. When a corporation, a limited liability company, or limited liability partnership is named as registered agent, an officer or someone authorized by the organization may sign on behalf of the corporation, limited liability company, or limited liability partnership.

"The undersigned, as the newly appointed registered agent, agrees to act as the registered agent for this organization until a change, or resignation, is submitted to the Secretary of State under the provisions of North Dakota law."

Corporation Service Company

By:

*Ann R. Kelling* 8/12/04

Original signature of registered agent

Date

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N W

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

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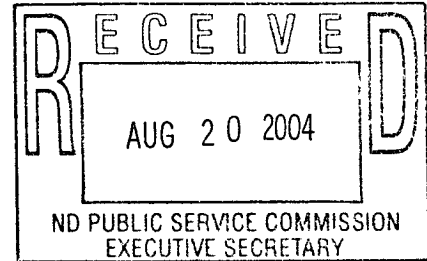
FACSIMILE  
(202) 955-9792  
www.kelleydrye.com

DIRECT LINE (202) 887-1212  
EMAIL nleverett@kelleydrye.com

July 29, 2004

VIA UPS

Mr. John Mielke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480



Re: Supplemental Filing: XO Communications, Inc. Reseller Registration, Application for Certificate of Public Convenience and Necessity, and Notification of Transfer of Assets

Dear Mr. Mielke:

A few weeks ago I filed, on behalf of XO Communications, Inc. ("XO") and its subsidiaries XO Communications Services, Inc. ("XO Communications") and XO Long Distance Services, Inc. ("XO Long Distance") a Reseller Registration Form, and an application for a Certificate of Public Convenience and Necessity and Notification of Transfer of Assets. In those documents I indicated that the Certificate of Authority issued by the North Dakota Secretary of State would be late-filed. Accordingly, enclosed please find a copy of that document.

Enclosed are an original, seven (7) copies and a duplicate of this filing. Please do not hesitate to contact me if you have any questions regarding this matter. Thank you for your kind assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Leverett", written over a horizontal line.

Nicholaus G. Leverett

Enclosure

# *State of North Dakota*

## SECRETARY OF STATE



### CERTIFICATE OF AUTHORITY OF

XO COMMUNICATIONS SERVICES, INC.  
Secretary of State ID#: 16,907,400

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that an application of

XO COMMUNICATIONS SERVICES, INC.

for a Certificate of Authority to transact business in this State, duly signed and verified pursuant to the provisions of the North Dakota Century Code, have been received in this office and are found to conform to law.

**ACCORDINGLY** the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Authority to

XO COMMUNICATIONS SERVICES, INC.

to transact business in this State under the name of

XO COMMUNICATIONS SERVICES, INC.

Issued: August 13, 2004

Alvin A. Jaeger  
Secretary of State

# Delaware

PAGE 1

## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "XO COMMUNICATIONS SERVICES, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWELFTH DAY OF AUGUST, A.D. 2004.

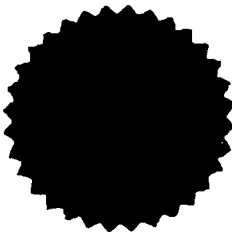
AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "XO COMMUNICATIONS SERVICES, INC." WAS INCORPORATED ON THE FIFTH DAY OF JANUARY, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

3154937 8300

040589807



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3290988

DATE: 08-12-04

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N W

SUITE 500

WASHINGTON, D C 20036

(202) 955-9600

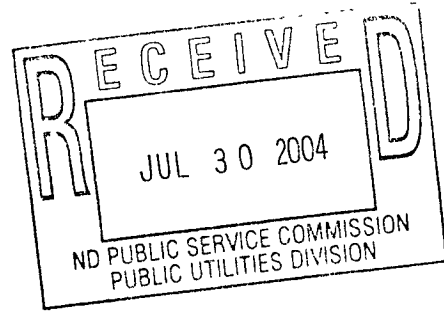
NEW YORK, NY  
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DIRECT LINE (202) 887-1212  
EMAIL nleverett@kelleydrye.com

July 29, 2004



**VIA UPS**

Mr John Mielke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: XO Communications, Inc Reseller Registration, Application for  
Certificate of Public Convenience and Necessity, and Notification of  
Transfer of Assets

Dear Mr. Mielke:

Enclosed please find, on behalf of XO Communications, Inc ("XO") and its subsidiaries XO Communications Services, Inc. ("XO Communications") and XO Long Distance Services, Inc ("XO Long Distance") a Reseller Registration Form, and an application for a Certificate of Public Convenience and Necessity and Notification of Transfer of Assets. It is my understanding that these two items will be docketed separately.

As explained in more detail in the Application, XO Communications intends to become registered as a reseller and also seeks approval to operate as a local provider in North Dakota. Once XO Communications has received proper authorization, XO Long Distance and all of its assets will be merged into XO Communications.

Enclosed are an original, seven (7) copies and a duplicate of this filing. Because the Reseller Registration Form and the Application will be docketed separately, I have included two postage paid envelopes. Kindly date stamp and return the Reseller Registration Form in one envelope and this cover letter and the Application in the other envelope.

KELLEY DRYE & WARREN LLP

Mr. John Mielke  
July 29, 2004  
Page Two

Please do not hesitate to contact me if you have any questions regarding this matter. Thank you for your kind assistance

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Leverett", with a stylized flourish at the end.

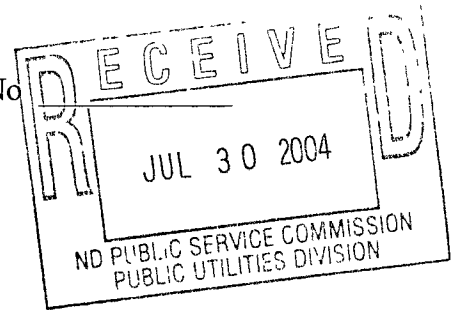
Nicholaus G. Leverett

# ORIGINAL

## Before the NORTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of the Application of )  
 )  
 XO NETWORK SERVICES, INC AND )  
 XO COMMUNICATIONS SERVICES, INC. )  
 )  
 For a Certificate of Public Convenience )  
 And Necessity and Notification of an )  
 Internal Corporate Reorganization )

Case No



### APPLICATION

XO Network Services, Inc (“XO Network Services”) and XO Communications Services, Inc (“XO Communications”) (collectively “Applicants” or “XO Subsidiaries”), both subsidiaries of XO Communications, Inc. (“XO”), the ultimate parent corporation, by their attorneys and pursuant to N.D. Cent. Code §§ 49-03.1-03 and 49-03.01-04 and N.D Admin. Code § 69-09-05-11, hereby respectfully request that the North Dakota Public Service Commission (“Commission”) grant XO Communications a Certificate of Public Convenience and Necessity and approve an internal corporate reorganization whereby XO Network Services will be merged into XO Communications.<sup>1</sup> Upon consummation of this reorganization, XO Communications will provide service to the existing customers of XO Network Services. This internal reorganization will simplify the XO corporate structure, streamlining XO’s operations in North Dakota, eliminating administrative redundancy and improving overall efficiency. The Applicants anticipate that the consolidation in North Dakota will occur after receipt of the required regulatory approvals in North Dakota; thus, the Applicants request that the Commission take any action necessary to approve this application at its earliest possible convenience.

<sup>1</sup> XO Communications became the new name of XO Domestic Holdings, Inc. on June 29, 2004. XO is in the process of obtaining the necessary documentation from the North

Specifically, as described below, the Applicants propose that XO Network Services' intrastate customer base and tariff be transferred to its affiliate, XO Communications. Because the Commission does not permit the assignment or transfer of certificates, as part of this application, XO Communications seeks certification to provide the same types of services as XO Network Services. Applicants will submit the necessary documentation from the North Dakota Secretary of State showing the new name as soon as it is available. Upon the certification of XO Communications and completion of the customer transfer, XO Network Services requests that its certificate and tariff be cancelled. The proposed transaction is not expected to result in any loss or impairment of service to the XO Network Services customers that would be affected by consummation of the proposed transaction. XO end users will continue to receive service at substantially similar rates, terms and conditions and will continue to see the "XO" name on their bills.

In support of this Application, the Applicants provide the following information.

**I. The Applicants**

XO Communications, Inc. is a Delaware corporation whose principal office and place of business is located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339. The company's stock is publicly traded on the Over the Counter Bulletin Board under the symbol "XOCM.OB." XO is a leading facilities-based provider of broadband telecommunications services. The company offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO provides service through its facilities-based broadband networks and Tier One Internet peering relationships. The company also is one of the

---

Dakota Secretary of State showing the name change and will late-file the documentation and any necessary additional request for name change approval

nation's largest holders of fixed wireless spectrum, covering 95% of the population of the 30 largest U.S. cities. XO currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States

XO is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and is authorized to provide competitive local exchange services in 47 states. In North Dakota, XO Network Services provides both local and long distance services pursuant to its authorization issued by the Commission.<sup>2</sup> Thus, XO Network Services and its corporate parent, XO, have been found by this Commission to possess the requisite financial, managerial and technical qualifications necessary to operate as a provider of intrastate telecommunications services in North Dakota.<sup>3</sup> XO is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies.

To further streamline and simplify its corporate structure, XO intends to collapse XO Network Services into XO Communications. After completion of the consolidation, XO will remain the ultimate corporate parent and it will have only one XO subsidiary operating in North Dakota. Like XO Network Services, XO Communications is a direct, wholly owned subsidiary of XO. XO Communications, currently being renamed from XO Domestic Holdings, Inc. is not licensed to provide telecommunications services in any state at this time.

## **II. Designated Contacts**

The designated contact for questions concerning this Application is:

---

<sup>2</sup> XO Network Services received authorization from this Commission to provide long distance services on August 25, 1999 in Case No. 99-C-1112. It received authority to provide local services on January 28, 2004 in Case No. PU-2957-03-624.

<sup>3</sup> XO's most recent Annual Report and Form 10-Q which contains the consolidated financial statements of XO and subsidiaries can be accessed at [www.xo.com](http://www.xo.com).

Nicholaus G. Leverett, Esq  
Melissa Smith Conway, Esq.  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
Tel. (202) 887-1212  
Fax (202) 955-9792

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

Doug Kinkoph  
Vice President Regulatory and External Affairs  
XO COMMUNICATIONS, INC.  
Two Eastern Oval  
Suite 300  
Columbus, Ohio 43219  
Tel. (614) 416-1468  
Fax (614) 416-9268

### **III. Description of the Reorganization**

The reorganization and consolidation of the XO Subsidiaries into a single operating entity, XO Communications, is anticipated to occur via a number of mergers. Corporate organizational charts showing XO's corporate structure before and after the consolidation are appended hereto as **Exhibit A**. Once XO Communications has received authority to provide telecommunications services, the Applicants propose to transfer XO Network Services' intrastate customer base and tariff to XO Communications through a merger of XO Network Services into XO Communications. After the merger, XO Network Services will cease to exist by operation of law, and XO Communications will assume all of XO Network Services' assets and operations and will provide telecommunications services to XO Network Services' customers pursuant to XO Network Services' tariff, amended with the new name XO Communications

In connection with the merger, the telecommunications authorizations currently held by XO Network Services will be terminated once replacement authorizations for the same types of services are issued to XO Communications. The Applicants respectfully request that the Commission authorize, to the extent necessary, the merger of XO Network Services with and into XO Communications together with the issuance of a new certificate to XO Communications to cover the same services and type of authority that XO Network Services currently holds so that XO Communications can receive and serve the current customers of XO Network Services. The Commission has already examined the financial, managerial, technical and operational qualifications of XO to provide telecommunications services – XO Communications is backed by the same qualifications as XO Network Services and will provide the same high quality services to customers. Upon grant of the new certificate to XO Communications and completion of the customer transfer, the Applicants request that XO Network Services' certificate and tariff be cancelled.

The proposed transfer of operating authority from XO Network Services to XO Communications will be transparent to consumers in North Dakota and will have no adverse impact on them. XO will remain the parent corporation, and the name that customers see on their telecommunications invoice will remain "XO." Further, the same services will be provided to end users at substantially similar rates, terms and conditions. Because XO Network Services and XO Communications are managed by the same team of experienced telecommunications personnel, day-to-day operations will continue to function as they have in the past. Customer service functions will be provided by the same team of qualified consumer representatives. In order to facilitate a seamless transfer, XO Communications will file a revised tariff, as required, to reflect its slightly changed name. Thus, XO Network Services' end user customers will

continue to receive high quality services from the same qualified personnel, at substantially similar rates, terms and conditions.

#### **IV. Public Interest Analysis**

The proposed internal corporate reorganization and transfer of operating authority is in the public interest. As noted above, the reorganization will generally be transparent to customers and will have no adverse impact on them. Current XO Network Services customers will continue to see "XO" on their invoices and the consolidation will be entirely transparent to them. This proposed consolidation will provide significant reductions in legal, accounting and tax administrative burdens and will simplify the XO companies' corporate structure, eliminating administrative redundancy and improving the companies' overall efficiency thereby enhancing the company's ability to compete in North Dakota and elsewhere. Over time, consumers in North Dakota will benefit from a greater number of product and service options as well as more efficient prices resulting from the enhanced competitive ability of the streamlined company.

As reflected on the ownership charts appended hereto, upon completion of the reorganization, the ownership of XO Communications will be identical to its current ownership and the ownership of XO Network Services. Thus, there should be no question about the qualifications of XO Communications and its parent, XO, to operate in the public interest as the reorganization will not cause any meaningful change in the ownership, financial condition or services of the utility entities.

WHEREFORE, the Applicants respectfully request that the Commission grant them authority, to the extent necessary, to reorganize, as described herein, and for such other and further relief as may be necessary to carry out the reorganization described herein.

Respectfully submitted,

XO NETWORK SERVICES, INC AND XO  
COMMUNICATIONS SERVICES, INC.

By. 

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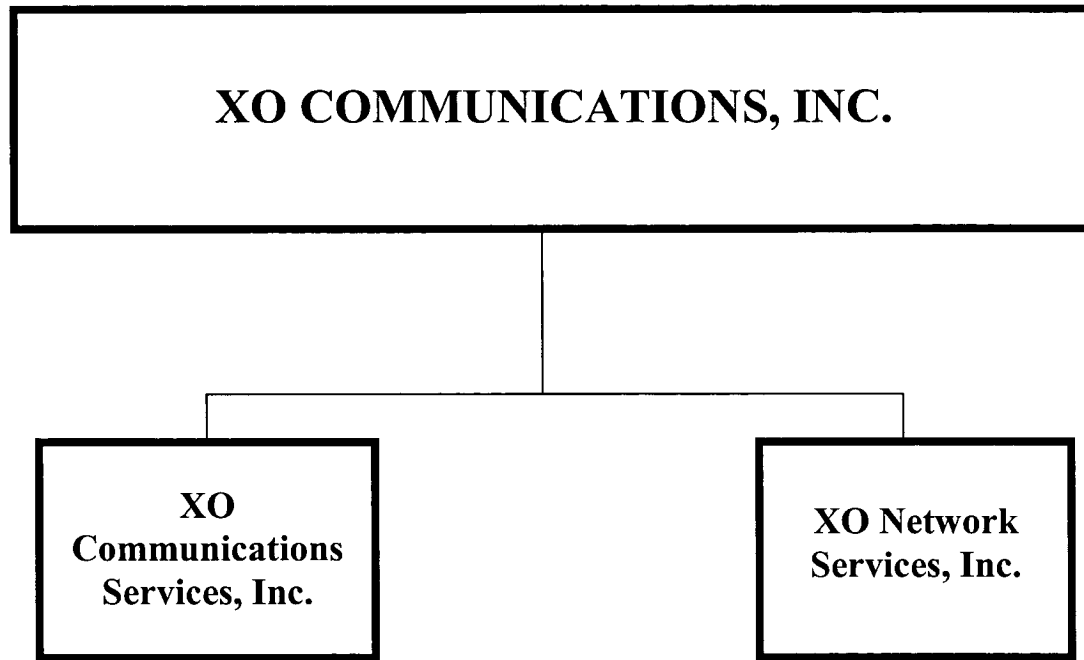
Their Attorneys

Dated: July 28, 2004

**EXHIBIT A**

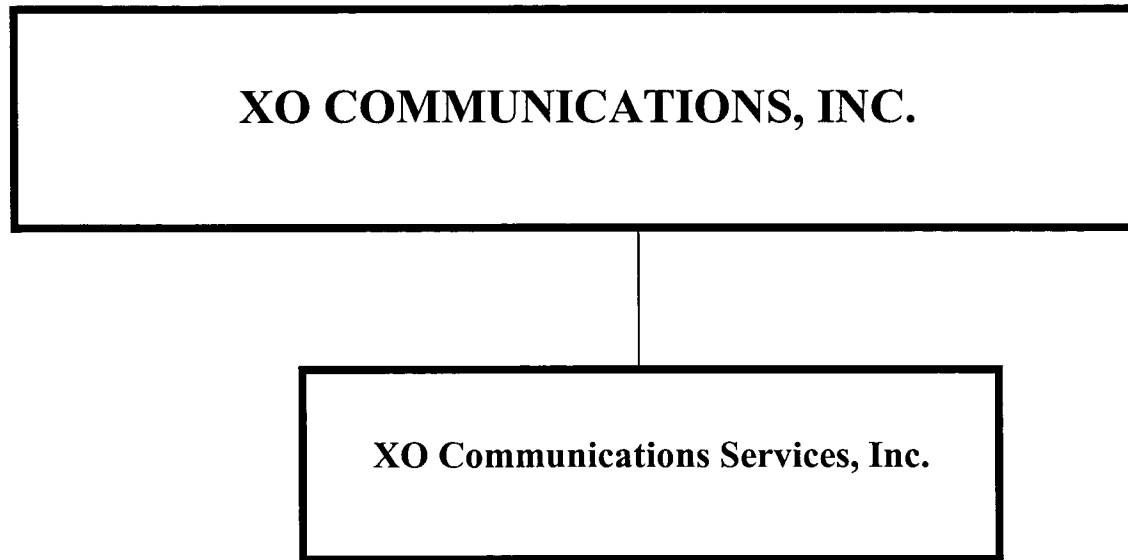
**CORPORATE ORGANIZATIONAL CHARTS**

# EXISTING CORPORATE STRUCTURE<sup>1</sup>



<sup>1</sup> Each entity is 100% owned by the entity immediately above it, unless otherwise indicated


# CORPORATE STRUCTURE AFTER RESTRUCTURING<sup>1</sup>



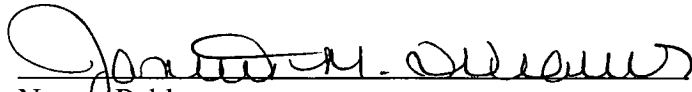
<sup>1</sup> Each entity is 100% owned by the entity immediately above it, unless otherwise indicated

VERIFICATION

I, LEE WEINER, am authorized to represent XO Communications, Inc. and its subsidiaries, and to make this verification on their behalf. The statements in the foregoing document relating to XO Communications, Inc. and its subsidiaries, except as otherwise specifically attributed, are true of my own knowledge, except as to matters that are stated herein on information or belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

  
Name: LEE WEINER  
Title: Sr. Vice President, General Counsel  
and Secretary

Subscribed and sworn to before me on this 24<sup>th</sup> day of June, 2004.

  
Notary Public

My commission expires: 03-31-05

- SEAL -

