

**DT 04-217**

**XO COMMUNICATIONS SERVICES INC.  
XO LONG DISTANCE SERVICES INC.**

**Joint Application to Transfer Assets and to Re-Assign Competitive  
Local Exchange Carrier Authority to Operate in New Hampshire**

**Order Granting Re-assignment of CLEC Certification and  
Acknowledging Transfers of Control and Customer Base**

**ORDER NO. 24,453**

**April 7, 2005**

**I. BACKGROUND**

On November 23, 2004, XO Communications Services Inc. (XO Communications) and XO Long Distance Services Inc. (XO Long Distance) (collectively, the Petitioners) filed with the Commission notification of the intent to transfer substantially all of the assets, including any customers, of XO Long Distance to XO Communications. The petition includes a complete application for Competitive Local Exchange Carrier (CLEC) authority for XO Communications. The Petitioners aver that upon the approval of the Commission, XO Long Distance will cease operating in the State of New Hampshire and those operations authorized by the Commission will be undertaken by XO Communications.

XO Long Distance is an authorized CLEC operating under authority granted by Commission Order *Nisi* No. 24,207 with an effective date of October 6, 2003, and as a CTP under IXC No. 39779, effective December 1, 1999.

XO Communications, a Delaware corporation, is wholly owned by XO Communications, Inc. XO Communications is registered with the New Hampshire Secretary of State and is authorized to do business in the State. The Petitioners submit that XO

Communications has the managerial, technical and financial qualifications to be authorized as a CLEC and to conduct its operations.

The petition indicates that the Petitioners intend the transfer to have minimal effect on customers. The Petitioners aver that current customers will continue to receive service under the same rates, terms and conditions that currently apply. Their petition further avers that the transactions are not anticipated to materially change the current management team.

## **II. STAFF'S RECOMMENDATION**

Commission Staff (Staff) notes that the cessation of service by a CLEC is contingent upon the conditions established in New Hampshire Administrative Rule Puc 1304.03 (f), *Transfer or Lease of a CLEC or Right to Service a Customer*. Adopted pursuant to RSA 374:28-a, the rule protects customers against slamming, *i.e.*, the unauthorized change of carriers. Staff notes that the rule requires that the transferor provide a minimum of 14 days written notice to the customer that their local exchange provider will no longer be providing services and the date when that service will be terminated, and that a copy of said notice be forwarded to the Commission at the time it is mailed. The notice must also inform the customer that, absent the selection of an alternate carrier, the customer will be assigned to the transferee and that the change will be at no cost to the customer. Commission Rule Puc 1304.03 (g)(2)e.1., requires a clear statement of any difference in rates and/or terms and conditions of service and the rates and/or terms and conditions of service of the proposed transferee. Staff contends the Petitioners' plans to notify the customers described in the customer notification included with the petition are adequate to meet the requirements of the above-referenced rule. In accordance with Puc 1304.03 (g)(2), XO Communications must make the notification at least 14 days prior to the implementation of the transaction. Staff notes as well that Puc 1304.03

(g)(4) requires that within 30 days of the change, the company ceasing operations shall refund to its customers any applicable amounts owed. XO Long Distance will request withdrawal of their CTP authority upon consummation of the transaction.

Staff recommends that, to facilitate the orderly conduct of this proceeding and to preserve numbering resources, XO Long Distance's CLEC certification be reassigned to XO Communications rather than issuing a new certification. The reassignment should become effective concurrently and conditioned upon the consummation of the transaction. Staff understands that to authorize the transfer, the Commission will have to waive Puc 1304.03(e) pursuant to its authority under Puc 201.05. The CLEC application included with the Petition has satisfactorily provided all of the information required in Puc 1304.02 and provides evidence that XO Communications meets the standards for financial resources, managerial qualifications and technical competence. XO Communications will remain responsible for meeting the conditions imposed in Order *Nisi* No. 24,207 and as a CTP under IXC No. 39779.

Staff concludes that the transactions outlined in the petition appear to be in the public good as they ensure that customers maintain service without interruption and as they enhance the responsiveness of the free market.

### **III. COMMISSION ANALYSIS**

We agree with the Petitioners and the Staff that the transactions described will serve the public good. We also note that while the corporate organizational changes described in the petition do not require prior Commission approval, *see* RSA 374:22-o, XO Communications and XO Long Distance are nonetheless required to adhere to the notice provisions of RSA 374:28-a and Rule Puc 411.04(b)(1). Therefore, we will acknowledge the transfer of XO Long

Distance's assets, operational control and right to service customers to XO Communications on the condition that XO Long Distance notifies its customers in writing 14 days prior to the change in accordance with the conditions detailed in the proposed notification and that it provides any appropriate refunds to its customers.

The standard for waiving our rules is contained in Puc 201.05. Pursuant to subsection (a) of that rule, a waiver shall be granted when the Commission finds that the waiver serves the public interest and will not disrupt the orderly proceeding of the Commission. Subsection (e) provides that the Commission shall waive a rule if compliance would be onerous in the circumstances and if the purpose of the rule can be satisfied by an alternative method.

XO Communications requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, XO Communications submitted a sworn statement averring that it does not require deposits or advance payments from customers.

Inasmuch as XO Communications meets the qualifications for managerial and technical competence and for financial resources required for CLEC certification in New Hampshire, we find it appropriate to waive Puc 1304.03(e) and to order the transfer of CLEC status from XO Long Distance to XO Communications, as to do so will serve the public interest by conserving number resources of the 603 area code and will not disrupt the orderly proceeding of the Commission. We therefore grant authority for XO Communications to assume the privileges and responsibilities of operating as a CLEC under Order *Nisi* No. 24,207 and as a CTP under IXC No. 39779, conditioned upon and effective concurrently with the consummation of the transaction. We, therefore, approve the petition.

**Based upon the foregoing, it is hereby**

**ORDERED**, that XO Communication's request for waiver of Puc 1304.03(e) is GRANTED; and it is

**FURTHER ORDERED**, that the certification(s) of XO Long Distance to provide 1) local exchange service under Order *Nisi* No. 24,207 and 2) long distance services as a CTP under IXC No. 39779, is reassigned to XO Communications, which remains bound by the commitments and requirements of the prior certifications and Orders; and it is

**FURTHER ORDERED**, that XO Long Distance shall, upon consummation of the transaction, cease operations as CTP in the State of New Hampshire; and it is

**FURTHER ORDERED**, that XO Communications' request of a waiver of the surety bond requirement in Puc 1304.02(b) is GRANTED; and it is

**FURTHER ORDERED**, that XO Communications, within 30 days of the date of this Order, file tariff pages adopting the current tariffs of XO Long Distance.

By order of the Public Utilities Commission of New Hampshire this seventh day  
of April, 2005.

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Thomas B. Getz  
Chairman

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Michael D. Harrington  
Commissioner

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Graham J. Morrison  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary