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International Bureau

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

FEB 21 2002

FCC/MELLON

In the Matter of)
)
XO COMMUNICATIONS, INC.)
)
Application for Consent to Transfer)
of Control of a Company Holding an)
International Authorization Pursuant)
to Section 214 of the Communications Act)
of 1934, as Amended)

Streamlined ITC-T/C-20020221-00095
XO Communications, Inc.

APPLICATION

XO Communications, Inc. ("XO," the "Applicant," or the "Company"), pursuant to Section 63.18(e)(3)¹ of the Commission's Rules, hereby requests authority to transfer control of XO from Craig O. McCaw and the existing shareholders of XO to the new shareholders of XO, which will include, as 10 percent or greater shareholders, Forstmann Little & Co. Equity Partnership-VII, L.P. ("Forstmann Little Equity VII"), and Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. ("Forstmann Little MBO VIII") (Forstmann Little Equity VII and Forstmann Little MBO VIII, collectively "Forstmann Little") and an indirect wholly-owned subsidiary of Teléfonos de México, S.A. de C.V. ("Telmex"). XO currently holds an international global facilities-based and global resale authorization that was

¹ 47 C.F.R. § 63.18(e)(3).

granted by the Commission pursuant to Section 214 of the Communications Act of 1934 as amended (“Section 214 authorization”).²

As set forth in the *Application and Petition for Declaratory Ruling*, filed simultaneously with this Application, this transfer of control will occur as a result of a restructuring of XO, which will include the issuance of additional voting common stock in XO to Telmex and Forstmann Little in exchange for a total aggregate investment in XO of \$800 million. Telmex is a foreign carrier from Mexico and is affiliated under the Commission’s Rules with foreign carriers from Guatemala and Argentina. Forstmann Little Equity VII and Forstmann Little MBO VIII are affiliated with Forstmann Little & Co., a private equity firm that was formed in 1978 and that has made numerous acquisitions and significant equity investments through several limited partnerships that are ultimately controlled by individual general partners. Upon completion of this transaction, Telmex and Forstmann Little each will hold a non-controlling minority interest in 40 percent of the outstanding equity in XO. No single shareholder will control XO, and it is not anticipated that any other shareholder will hold more than a 10 percent interest in the Company. Because Mr. McCaw currently controls (primarily through control of Eagle River Investments LLC) or has rights to vote shares of common stock that in the aggregate represent more than 50 percent of the voting power of XO common stock, the proposed transaction will result in a transfer of control of XO from Mr. McCaw to the new shareholders of XO.³

² 47 U.S.C. § 151 *et seq.* A number of wholly-owned subsidiaries of XO currently provide service under XO’s Section 214 authorization pursuant to Section 63.21(i) of the Commission’s Rules. A list of these subsidiaries is provided in Attachment A.

³ XO believes that, to the extent Mr. McCaw holds any equity interest in XO following consummation of the transactions contemplated by the Purchase Agreement, such interest will represent a very small percentage of its voting power (less than 10 percent), and Mr. (continued...)

This investment in XO is critical to the Company's financial survival. Funds received from this investment will support the continued development of XO's network and for general working capital purposes. Consummation of this transaction is subject to regulatory approval and to the successful restructuring of XO's existing balance sheet.⁴ Further detail regarding the transaction, including a public interest statement, is provided in the *Application and Petition for Declaratory Ruling*.

Pursuant to Section 63.18(e)(3) of the Commission's Rules, XO sets forth the following information in support of this Application:

- (a) The name, address, and telephone number of the Applicant is:

XO Communications, Inc.
11111 Sunset Hills Road
Reston, VA 20190-5339
(703) 547-2000
(703) 547-2881 (facsimile)

- (b) XO is a company organized under the laws of the State of Washington.

- (c) Correspondence concerning this Application should be sent to:

Cathleen A. Massey
Vice President – External Affairs/Asst. General Counsel
XO COMMUNICATIONS, INC.
1730 Rhode Island Ave. NW, Suite 1000
Washington, DC 20036
Telephone: (202) 721-0983
Fax: (202) 721-0995
cathy.massey@xo.com

(...continued)

McCaw will have neither control of XO's Board of Directors nor the right to elect any of its directors.

⁴ XO expects that it will file for bankruptcy pursuant to Chapter 11 of the Bankruptcy Code to effectuate any agreement reached with its creditors regarding XO's balance sheet restructuring or if it cannot reach agreement with its creditors. If this occurs, XO will submit to the Commission appropriate *pro forma* applications for transfer of control of XO to a debtor-in-possession and will amend this Application accordingly.

with copies to:

Brad E. Mutschelknaus
Joan M. Griffin
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9600
Fax: (202) 955-9792
mutsb@kelleydrye.com
grifj@kelleydrye.com

- (d) XO received its global facilities-based and global resale Section 214 authority from the Commission on December 15, 2000 in File No. ITC-214-20001117-00674. XO's subsidiary, XO Long Distance Services, Inc., received its global resale Section 214 authority on June 4, 1999 in File No. ITC-214-19990402-00197.
- (e) This Application is filed pursuant to Section 63.18(e)(3) of the Commission's Rules.
- (f) No response required.
- (g) Not applicable.
- (h) Upon consummation of the transfer of control, the following entities directly or indirectly will hold ten percent or greater ownership interest in XO:

Teléfonos de México, S.A. de C.V.
Parque Via 190
Colonia Cuauhtemoc
06599 Mexico, D.F.
Citizenship: Mexico
Principal Business: Telecommunications
Will own 40 percent of outstanding equity in XO through an intermediate holding company, Teninver, S.A. de C.V., a Mexican entity with the same address as Telmex.

Carso Global Telecom, S.A. de C.V. ("CGT")
Insurgentes Sur 3500
Colonia Pena Pobre Tlalpan
14060 Mexico, D.F.
Citizenship: Mexico
Principal Business: Holding company for telecommunications-related investments
CGT controls Telmex through an approximate 31 percent stockholding (total capital stock). Approximately 67 percent of the shares of CGT are held in trust for investment purposes for Carlos Slim Helú and his family members, all of whom are Mexican citizens.

Forstmann Little & Co. Equity Partnership-VII, L.P.
767 Fifth Avenue
New York, New York
Citizenship: U.S.
Principal Business: Investment
Will own 25 percent of outstanding equity in XO. The general partner of Forstmann Little Equity VII is FLC XXXII Partnership, L.P., a New York limited partnership. The general partners of FLC XXXII Partnership are Theodore J. Forstmann, Sandra J. Horbach, Winston W. Hutchins, Thomas H. Lister, Jamie C. Nicholls, and Gordon A. Holmes. With the exception of Mr. Holmes, who is a citizen of the Republic of Ireland, all of the general partners are U. S. citizens.

Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P.
767 Fifth Avenue
New York, New York
Citizenship: US
Principal Business: Investment
Will own 15 percent of outstanding equity in XO. The general partner of Forstmann Little MBO VIII is FLC XXXIII Partnership, L.P., a New York limited partnership. The general partners of FLC XXXIII Partnership are Theodore J. Forstmann, Sandra J. Horbach, Winston W. Hutchins, Thomas H. Lister, Jamie C. Nicholls, and Gordon A. Holmes. With the exception of Mr. Holmes, who is a citizen of the Republic of Ireland, all of the general partners are U. S. citizens.

Board members for XO as restructured have not yet been elected and thus at this time it is not clear whether there will be any interlocking directors with foreign carriers. XO will amend or supplement this Application if any interlocking directors are elected to XO's Board.


- (i) As evidenced by the signature to this Application, XO certifies that following consummation of the transaction, XO will be affiliated with foreign carriers in Mexico, Argentina, and Guatemala.
- (j) As evidenced by the signature to this Application, XO certifies that following consummation of this transaction, XO will continue to provide international telecommunications services to various foreign countries, including Mexico, Argentina, and Guatemala. As noted previously, after consummation of the transaction between XO, Telmex, and Forstmann Little, Telmex will hold indirectly more than 25 percent of XO. Telmex is a foreign carrier from Mexico and is affiliated under the Commission's Rules with foreign carriers from Guatemala and Argentina. Specifically, America Telecom, S.A. de C.A., a holding company sharing the same ownership as Carso Global Telecom, controls America Movil, S.A. de C.V., a Mexican telecommunications company that controls Telecomunicaciones de Guatemala, the Guatemalan telecommunications company, and Techtel LMDS Comunicaciones Interactivas, S.A. ("Techtel"), a new Argentine competitor.
- (k) Mexico, Argentina and Guatemala are members of the World Trade Organization ("WTO").
- (l) XO will file quarterly traffic reports as required by Section 43.61(c) of the Commission's Rules on the U.S.-Mexico and U.S.-Guatemala routes. With respect to the U.S.-Argentina route, a showing that satisfies the requirements of Section 63.10(a)(3) is provided in item (m) below.
- (m) XO agrees to be classified as a dominant carrier on both the U.S.-Mexico and the U.S.-Guatemala routes. With respect to Argentina, Techtel is a new competitor in Argentina and thus has substantially less than 50 percent market share in the Argentine international transport and local access market. Telmex's indirect, wholly-owned subsidiary Telmex USA, L.L.C. ("Telmex USA") is authorized to provide international switched resale services in the U.S. and thus is also affiliated with Techtel. The Commission has not imposed dominant carrier treatment on Telmex USA on the U.S.-Argentina route. *See* File No. FCN-NEW-20000908-00051. Accordingly, XO is eligible for non-dominant treatment on the U.S.-Argentina route as well.
- (n) As evidenced by the signature to this Application, XO certifies that following the consummation of this transaction, no party to this Application will accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and no party to this Application will enter into such agreements in the future.
- (o) As evidenced by the signature to this Application, XO certifies that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

- (p) XO requests streamlined processing for this Application. This Application is eligible for streamlined processing under Section 63.12 of the Commission's Rules because, on every route on which XO provides service, either (1) XO is not affiliated with a foreign carrier in the destination market; (2) XO will be affiliated under the Commission's Rules with a foreign carrier in the destination market following consummation of the proposed transaction, but the destination market is a WTO Member country and XO qualifies for a presumption of non-dominance under Section 63.10(a)(4) of the Commission's Rules (*i.e.*, Argentina); or (3) XO will be affiliated under the Commission's Rules with a foreign carrier in the destination market following consummation of the proposed transaction, but the destination market is a WTO Member country and XO agrees to be classified as a dominant carrier on the route (*i.e.*, Mexico and Guatemala). XO represents that its Section 214 authorization will not be transferred unless and until the Commission grants the related domestic Section 214 and wireless license transfer applications, and agrees that streamlined grant of this Application will in no way prejudice the outcome of the related transfer applications. *See* "International Authorizations Granted," Report No. TEL-00495, DA No. 02-358, released February 14, 2002, at 2 (grant of CEI Networks, Inc. transfer of control application in File No. ITC-T/C-20011227-00655).

For these reasons, XO respectfully requests that the Commission grant this Application.

Respectfully submitted,

XO COMMUNICATIONS, INC.

By: 
R. Gerard Salemm
Senior Vice President – External Affairs
XO COMMUNICATIONS, INC.
1111 Sunset Hills Road
Reston, Virginia 20190
(202) 721-0983

Brad E. Mutschelknaus
Joan M. Griffin
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W. Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

Dated: February 20, 2002

Attachment A

Subsidiaries Through Which XO Communications, Inc. Operates

| |
|---|
| Telecommunications of Nevada, L.L.C (dba XO Nevada) |
| XO Arizona, Inc. |
| XO California, Inc. |
| XO Colorado, L.L.C. |
| XO Connecticut, Inc. |
| XO DC, Inc. |
| XO Delaware, Inc. |
| XO Florida, Inc. |
| XO Georgia, Inc. |
| XO Idaho, Inc. |
| XO Illinois, Inc. |
| XO Indiana, Inc. |
| XO Kansas, Inc. |
| XO Kentucky, Inc. |
| XO Louisiana, Inc. |
| XO Maryland, L.L.C. |
| XO Massachusetts, Inc. |
| XO Michigan, Inc. |
| XO Minnesota, Inc. |
| XO Mississippi, Inc. |
| XO Missouri, Inc. |
| XO New Jersey, Inc. |
| XO New Mexico, Inc. |
| XO New York, Inc. |
| XO North Carolina, Inc. |
| XO Ohio, Inc. |
| XO Oregon, Inc. |
| XO Pennsylvania, Inc. |
| XO Tennessee, Inc. |
| XO Texas, Inc. |
| XO Utah, Inc. |
| XO Virginia, L.L.C. |
| XO Washington, Inc. |
| XO West Virginia, Inc. |
| XO Wisconsin, Inc. |

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No. 1 of 2

(1) LOCKBOX # 358115

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Kelley Dye & Warren LLP

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

\$1,630.00

(4) STREET ADDRESS LINE NO. 1
1200 19th Street, NW #500

(5) STREET ADDRESS LINE NO. 2

(6) CITY
Washington

(7) STATE (8) ZIP CODE
DC 20036

(9) DAYTIME TELEPHONE NUMBER (include area code)
(703) 918-2320

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)
0003-7201-58

(12) PAYER (TIN)
0135335107

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME
XO Communications, Inc.

(14) STREET ADDRESS LINE NO. 1
1111 Sunset Hills Road

(15) STREET ADDRESS LINE NO. 2

(16) CITY
Reston

(17) STATE (18) ZIP CODE
VA 20190-5339

(19) DAYTIME TELEPHONE NUMBER (include area code)
(703) 547-2000

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)
0006-2759-45

(22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE
CUT

(25A) QUANTITY
2

(26A) FEE DUE FOR (PTC)
\$815.00

(27A) TOTAL FEE
\$1,630.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, **Winifred Brantl**, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE **Winifred Brantl** DATE **2/20/02**

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31) MASTERCARD

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION DATE:

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE _____ DATE _____

| |
|--------------|
| SPECIAL USE |
| FCC USE ONLY |

| USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT | | | |
|---|-----------------|--------------------------------------|------------------------------------|
| SECTION BB - ADDITIONAL APPLICANT INFORMATION | | | |
| (13) APPLICANT NAME XO Long Distance Services. Inc. | | | |
| (14) STREET ADDRESS LINE NO. 1 1111 Sunset Hills Road | | | |
| (15) STREET ADDRESS LINE NO. 2 | | | |
| (16) CITY Reston | | (17) STATE VA | (18) ZIP CODE 20190-5339 |
| (19) DAYTIME TELEPHONE NUMBER (include area code) (703) 547-2000 | | (20) COUNTRY CODE (if not in U.S.A.) | |
| FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED | | | |
| (21) APPLICANT (FRN) 0004-3369-96 | | (22) APPLICANT (TIN) | |
| IF MORE BOXES ARE NEEDED, USE ADDITIONAL FCC 159-C CONTINUATION SHEETS TO LIST EACH SERVICE | | | |
| SECTION CC - PAYMENT INFORMATION | | | |
| (23A) CALL SIGN/OTHER ID | | (24A) PAYMENT TYPE CODE | (25A) QUANTITY |
| (26A) FEE DUE FOR (PTC) | (27A) TOTAL FEE | FCC USE ONLY | |
| (28A) FCC CODE 1 | | (29A) FCC CODE 2 | |
| (23B) CALL SIGN/OTHER ID | | (24B) PAYMENT TYPE CODE | (25B) QUANTITY |
| (26B) FEE DUE FOR (PTC) | (27B) TOTAL FEE | FCC USE ONLY | |
| (28B) FCC CODE 1 | | (29B) FCC CODE 2 | |
| (23C) CALL SIGN/OTHER ID | | (24C) PAYMENT TYPE CODE | (25C) QUANTITY |
| (26C) FEE DUE FOR (PTC) | (27C) TOTAL FEE | FCC USE ONLY | |
| (28C) FCC CODE 1 | | (29C) FCC CODE 2 | |
| (23D) CALL SIGN/OTHER ID | | (24D) PAYMENT TYPE CODE | (25D) QUANTITY |
| (26D) FEE DUE FOR (PTC) | (27D) TOTAL FEE | FCC USE ONLY | |
| (28D) FCC CODE 1 | | (29D) FCC CODE 2 | |
| (23E) CALL SIGN/OTHER ID | | (24E) PAYMENT TYPE CODE | (25E) QUANTITY |
| (26E) FEE DUE FOR (PTC) | (27E) TOTAL FEE | FCC USE ONLY | |
| (28E) FCC CODE 1 | | (29E) FCC CODE 2 | |
| (23F) CALL SIGN/OTHER ID | | (24F) PAYMENT TYPE CODE | (25F) QUANTITY |
| (26F) FEE DUE FOR (PTC) | (27F) TOTAL FEE | FCC USE ONLY | |
| (28F) FCC CODE 1 | | (29F) FCC CODE 2 | |

KELLEY DRYE & WARREN LLP
1200 19TH STREET, N.W.
WASHINGTON, DC 20036

007286

15-122/540
BRANCH 00460

DATE February 20, 2002

PAY TO THE ORDER OF Federal Communications Commission

\$ 1,630.00

Sixteen hundred thirty and no/100

Security Features
DOLLARS

FIRST UNION
First Union National Bank
firstunion.com
Org. 052 #1705-4001220

Alfred K. Jankel

⑆00007286⑆ ⑆054001220⑆ 2000031690853⑆

DETACH AND RETAIN THIS STATEMENT
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.
KELLEY DRYE & WARREN LLP

| DATE | DESCRIPTION | AMOUNT |
|---------|--|----------|
| 2/20/02 | FCC Filing Fee 3 of 3 XO/FCC Restructuring 047035.0073 Exp. Code 000208 J.M. Griffin 04084 Section 214 International Authorization Transfer of Control Applications for: XO Communications, Inc. XO Long Distance Services, Inc. | 1,630.00 |