

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of XO Communications)
Services, Inc., to Expand its Certificate of Basic Local)
Service Authority to include provision of Basic Local)
Exchange Telecommunications Service throughout)
the State of Missouri and to Continue to Classify the)
Company and its Services as Competitive.)

Case No. TA-2009-0108

ORDER APPROVING EXPANSION OF **CERTIFICATE OF SERVICE AUTHORITY**

Issue Date: October 9, 2008

Effective Date: October 18, 2008

Syllabus: This order expands XO Communications Services, Inc.'s certificate of service authority to provide basic local telecommunications services, continues to classify those services and the company as competitive, and waives certain statutes and regulations.

Procedural History

XO Communications applied to the Missouri Public Service Commission on September 19, 2008, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services to include all exchanges in the state of Missouri. XO Communications also sought to remain classified as a competitive company and asked the Commission to grant the "standard waivers"¹ as well as certain other statute and regulation waivers. Also, XO Communications asked the Commission to waive, for

¹ The "standard" waivers include waiver of the Revised Statutes of Missouri Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340; and Commission Rules 4 CSR 240-3.550(5)(C); 4 CSR 240-10.020; and 4 CSR 240-30.040.

purposes of this application, the requirement in 4 CSR 240-3.510(1)(D) to file certain financial data.

On September 24, 2008, the Commission issued a Notice of Application for Expansion of Certificate of Service Authority and Order Directing Filing. The notice told parties who wished to intervene to file their requests by October 3, 2008. No parties responded to the notice. The Staff of the Missouri Public Service Commission filed its Recommendation on October 3, 2008.

Findings of Fact

The Missouri Public Service Commission has considered all of the relevant factors and makes the following findings of fact. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. XO Communications is a foreign limited liability company organized under the laws of the State of Delaware.²
2. The Commission previously granted XO Communications a certificate to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone Company, n/k/a AT&T, CenturyTel of Missouri, LLC, and Sprint Missouri, Inc., as well as to provide interexchange telecommunications services and non-switched local exchange telecommunications services (limited to providing dedicated, nonswitched local exchange private line services) throughout the state of Missouri.³

² *Application of XO Communications Services, Inc. to Expand Certificate of Basic Local Service Authority*, (filed Sept. 19, 2008), hereinafter "Application," para. 4.

³ The certificate was granted in Commission Case No. LO-2005-0027.

3. That basic local certificate also classified XO Communications and its services as competitive and granted the “standard” Commission waivers.
4. XO Communications applied to the Missouri Public Service Commission on September 19, 2008, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in every exchange throughout the state of Missouri.
5. XO Communications is qualified to do business in the State of Missouri as evidenced by its Certificate of Authority from the Missouri Secretary of State.⁴
6. XO Communications provided names and addresses for contact purposes.⁵
7. XO Communications has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.⁶
8. XO Communications intends to file its amended tariff including the expanded service area prior to providing service in that area and subsequent to obtaining approved interconnection agreements in each incumbent’s service area.⁷ Its amended tariff will be similar to the tariff XO Communications currently has on file at the Commission.
9. XO Communications was previously found to be financially, managerially, and technically qualified to provide telecommunications services in the state of Missouri.⁸

⁴ *Application*, para. 4 (Exhibit 1).

⁵ *Application*, paras. 1-3.

⁶ *Application*, para. 12.

⁷ *Application*, para. 8.

⁸ Case No. LO-2005-0027; and *Application*, paras. 5 and 6.

10. XO Communications has successfully provided telecommunications services since 2004.⁹
11. XO Communications will comply with all applicable Commission rules, except those that are waived, will file and maintain tariffs, and meet applicable minimum standards.¹⁰
12. XO Communications will continue to offer basic local service as a separate and distinct service.¹¹
13. XO Communications will compete with all incumbent local exchange carriers in their respective service territories.¹²
14. The services XO Communications proposes to offer have previously been classified as competitive services.¹³
15. Granting the expansion of the certificate will benefit the public by increasing equitable access for Missourians, creating and enhancing competition, expanding customer service options, and increasing customer choice for telecommunications in the area.¹⁴
16. Granting the expansion of the application will also indirectly benefit the public because the competitive presence of XO Communications will increase the incentives for the

⁹ *Application*, paras. 5 and 6

¹⁰ *Application*, para. 10.

¹¹ *Application*, para. 7.

¹² *Application*, para. 7.

¹³ *Application*, para. 15; see also the order granting basic local certificate and competitive classification in Case No. LO-2005-0027.

¹⁴ *Application*, paras. 15 and 16.

incumbents and others to operate more efficiently, offer more innovative services, reduce prices, and improve the quality and coverage of services.¹⁵

17. Staff recommended that the Commission expand XO Communications' current basic local certificate, grant competitive classification, and grant the waivers requested.¹⁶
18. Staff recommended that the Commission grant XO Communications' expanded basic local certificate subject to the following conditions:
 - A. XO Communications' originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom XO Communications is competing pursuant to Sections 392.361.6 and 392.370, RSMo.
 - B. If the directly competing ILEC, in whose service area XO Communications is operating, decreases its originating and/or terminating access service rates, XO Communications shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.
19. XO Communications acknowledged in its application that it will not exceed the corresponding exchange access rates in effect for the incumbent local exchange companies in its service area. XO Communications also agreed that if one of those incumbents decreases its current originating and/or terminating access service rates, in accordance with the Commission's Report and Order in Case No. TO-99-596, XO Communications will file a tariff amendment to reduce its corresponding access rates in that service area within thirty days.¹⁷

¹⁵ *Application*, para. 15.

¹⁶ *Staff Recommendation*, (filed Oct 3, 2008).

¹⁷ *Application*, para. 11.

20. XO Communications is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.¹⁸

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no proper party requested the opportunity to present evidence.¹⁹ Notice was issued in this case and no hearing has been requested.
2. XO Communications is an “alternative local exchange telecommunications company” as that term is defined by Section 386.020, RSMo.
3. The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates where it is in the public interest.²⁰
4. XO Communications was certificated to provide basic local telecommunications service prior to August 28, 2008.
5. XO Communications has requested that the Commission grant it an expansion of its certificate to provide basic local exchange telecommunications services to include all exchanges in the state of Missouri. XO Communications has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently, the

¹⁸ *Staff Recommendation*, Memorandum p. 2; See also, *Application*, para. 14.

¹⁹ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

²⁰ Sections 392.430, 392.450 and 392.455, RSMo.

Commission concludes that XO Communications has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.

6. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange telecommunications company which was certificated to provide basic local telecommunications service as of August 28, 2008, as long as the alternative local exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.²¹ XO Communications “is in good standing, in all respects, with all applicable commission rules and requirements.”²² Therefore, the Commission shall grant the certificate expansion.
7. XO Communications requests that it and its basic local services continue to be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.²³ The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.²⁴
8. XO Communications has been found to be a competitive company in prior Commission cases. Furthermore, all the services to be provided by XO Communications in the state will be competitive. The Commission also found that

²¹ Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²² Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²³ Section 392.361.2 and 4, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

the expansion of XO Communications' certificate will benefit the public and will be in direct competition with the incumbent basic local provider. Considering these findings, the Commission concludes that XO Communications will be subject to a sufficient level of competition to justify a lesser degree of regulation and its services and the company shall continue to be classified as competitive.

9. In addition to the Commission's "standard waivers," XO Communications requests that the Commission waive all of Section 392.300, RSMo, 4 CSR 240-3.550(4) and (5)(A), 32.060, 32.070, 32.080, 33.040 (except (4)), 33.045, 33.080(1), and 33.130(1), (4), and (5).²⁵ The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.²⁶ In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.²⁷ XO Communications has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that XO Communications has met the requirements of Section 392.450.2(2).

²⁴ Section 392.361.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²⁵ *Application*, para. 10.

²⁶ Subsection 392.420, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²⁷ Section 392.450.2(2), RSMo.

11. XO Communications has complied with each of the Commission's application requirements with the exception of filing its financial information under 4 CSR 240-3.510(1)(D) for which it requests a waiver.²⁸ There was no objection to the grant of this waiver, XO Communications has successfully operated as a telecommunications company since 2004, and the Commission has examined XO Communications' qualifications in a previous certificate case. Therefore, the Commission concludes that for purposes of this application, good cause to waive 4 CSR 240-3.510(1)(D) exists and the waiver shall be granted.
12. The Commission may also "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."²⁹ Staff recommends that XO Communications' application be granted subject to the conditions set out above.³⁰ XO Communications has agreed to these conditions.³¹ The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and shall be adopted.
13. Prior to providing telecommunications service in the expanded area, XO Communications shall have in effect a tariff authorizing it to provide service in the area.³²

²⁸ *Application*, para. 11.

²⁹ Section 392.361.6, RSMo.

³⁰ See Finding of Fact 18.

³¹ See Finding of Fact 19.

³² Section 392.450.2(1).

14. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless XO Communications has exercised its authority under that certificate.³³
15. The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:
 - A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
 - B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
 - C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.
 - D) The obligation to keep the Commission informed of its current address and telephone number.

³³ Section 392.410.5, RSMo Cum. Supp. 2007.

THE COMMISSION ORDERS THAT:

1. For the purposes of this case, XO Communications Services, Inc., is granted a waiver of 4 CSR 240-3.510(D) requiring it to submit certain financial information with its application.
2. XO Communications Services, Inc., is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include all exchanges in the state of Missouri subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.
3. XO Communications Services, Inc., and its telecommunications services are classified as competitive.
4. XO Communications Services, Inc.'s originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom XO Communications is competing pursuant to Sections 392.361.6 and 392.370, RSMo.
5. If the directly competing incumbent local exchange company in whose service area XO Communications Services, Inc., is operating decreases its originating and/or terminating access service rates, XO Communications shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

6. With regard to XO Communications Services, Inc., the application of the following statutes and Commission regulations is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - just and reasonable rates
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300 - transfer of property and acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-3.550(4) - records of applications
- 4 CSR 240-3.550(5)(A) - quality of service quarterly report
- 4 CSR 240-3.550(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.060 - engineering and maintenance
- 4 CSR 240-32.070 - quality of service
- 4 CSR 240-32.080 - service objectives and surveillance levels
- 4 CSR 240-33.040(1)-(3) and (5)-(10) - billing and payment standards
- 4 CSR 240-33.045 - customer bills
- 4 CSR 240-33.080(1) - company name for billing disputes
- 4 CSR 240-33.130(1), (4), and (5) - operator service

7. Prior to delivering services under its expanded certificate of service authority, XO Communications Services, Inc., shall file tariff sheets with an effective date which is not fewer than 45 days from the issue date, and which reflect the rates, rules, regulations, and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

8. This order shall become effective on October 18, 2008.
9. This case may be closed on October 19, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Nancy Dippell, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 9th day of October, 2008.