

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> October 13, 2004	2. <u>BUREAU AGENDA NO.</u> OCT-2004-FUS-1380*
3. <u>BUREAU:</u> Fixed Utility Services	
4. <u>SECTION(S):</u> Finance/Tariff	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: R. A. Rosenthal <i>BW</i> Mgr/Spvr: R. F. Wilson <i>BW</i> Legal Review: <i>A Arnold</i>	October 22, 2004
7. <u>PERSONS IN CHARGE:</u> Glunz (5-4364)/ Watson (7-6476)	9. <u>EFFECTIVE DATE OF FILING:</u> N/A
8. <u>DOCKET NO.:</u> A-311331; A-310751 F2000; A-310758 F2000	

**DOCKETED**  
NOV 15 2004

10. (a) **CAPTION** (abbreviate if more than 4 lines)  
 (b) Short summary of history & facts, documents & briefs  
 (c) **Recommendation**

- (a) Joint Application for certification of XO Communications Services, Inc. to provide telecommunications services in PA, and approval of a corporate change in which XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. merge into XO Communications Services, Inc.
- (b) Joint application of XO Pennsylvania, Inc., Allegiance Telecom of Pennsylvania, Inc. and XO Communications Services, Inc. for approval of (a) the entry by XO Communications Services, Inc. as a reseller of interexchange toll services, (b) the merger of XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. into XO Communications Services, Inc., and (c) the abandonment of service by XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc.
- (c) The Bureau of Fixed Utility Services recommends that the Commission adopt the proposed Order.

10. MOTION BY: Commissioner Chm. Holland

Commissioner Thomas - Yes  
Commissioner Pizzingrilli - Yes  
Commissioner

SECONDED: Commissioner Bloom

CONTENT OF MOTION: Staff recommendation adopted.

**DOCUMENT  
FOLDER**



COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

October 27, 2004

REFER TO OUR FILE

A-311331  
 A-310751 F2000  
 A-310758 F2000

M NICOLE ODEN MELISSA SMITH CONWAY  
 KELLEY DRYW & WARREN LLP  
 1200 19<sup>TH</sup> STREET NW  
 SUITE 500  
 WASHINGTON DC 20036

**DOCKETED**  
 NOV 05 2004

Joint Application of XO Pennsylvania, Inc., Allegiance Telecom of Pennsylvania, Inc. and XO Communications Services, Inc. for approval of (a) the entry by XO Communications Services, Inc. as a reseller of interexchange toll services, (b) the merger of XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. into XO Communications Services, Inc., and (c) the abandonment of service by XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc.

To Whom It May Concern:

**DOCUMENT  
 FOLDER**

This is to advise you that an Order has been adopted by the Commission in Public Meeting on October 22, 2004 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

*James J. McNulty*  
 James J. McNulty  
 Secretary

Enclosure  
 Certified Mail  
 LJM

DOUG KINKOPH VP REGULATORY & EX AFFAIRS  
 XO COMMUNICATIONS INC  
 TWO EASTERN OVAL  
 SUITE 300  
 COLUMBUS OH 43219

THOMAS ROMINIECKI DIR  
 DEPT OF REVENUE  
 BUREAU OF CORP TAXES  
 STRAWBERRY SQUARE 6<sup>TH</sup> FL  
 HARRISBURG PA 17128

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held October 22, 2004

**Commissioners Present:**

Wendell F. Holland, Chairman  
Robert K. Bloom, Vice Chairman  
Glen R. Thomas  
Kim Pizzingrilli

**DOCKETED**  
NOV 05 2004

Joint application of XO Pennsylvania, Inc., Allegiance Telecom of Pennsylvania, Inc. and XO Communications Services, Inc. for approval of (a) the entry by XO Communications Services, Inc. as a reseller of interexchange toll services, (b) the merger of XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. into XO Communications Services, Inc., and (c) the abandonment of service by XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc.

Docket Nos.:  
A-311331  
A-310751 F2000  
A-310758 F2000

**ORDER**

**DOCUMENT  
FOLDER**

**BY THE COMMISSION:**

On July 23, 2004, pursuant to 66 Pa. C.S. § 1102(a)(3), XO Pennsylvania, Inc. (XO Pennsylvania), Allegiance Telecom, of Pennsylvania, Inc. (ALGX Pennsylvania) and XO Communications Services, Inc. (XO Communications), all subsidiaries of XO Communications, Inc. (XO), filed the above-docketed application seeking approval for an internal corporate reorganization whereby the existing operating subsidiaries of XO in Pennsylvania will be merged into a single operating subsidiary, XO Communications. Upon consummation of this reorganization, XO Communications will provide service to the existing customers of XO Pennsylvania and ALGX Pennsylvania. Copies of the

application were served upon the Office of Consumer Advocate and Office of Small Business Advocate. No protests or comments have been received.

XO is a Delaware corporation whose principal office and place of business is located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339. XO is a facilities-based provider of broadband telecommunications services and, through its subsidiaries, provides competitive telecommunications services in Pennsylvania and other areas of 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. XO's Pennsylvania subsidiary, XO Pennsylvania, Inc., has been certificated as a non-facilities based interexchange reseller of toll services at A-310758, a facilities-based competitive local exchange carrier at A-310758 F0002 and a competitive access provider at A-310758 F0003. XO is ultimately controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies.

ALGX Pennsylvania is a corporation organized under the laws of the State of Delaware. In furtherance of the reorganization of Allegiance Telecom, Inc., Debtor-in-Possession (Allegiance), and subsidiaries, including ALGX Pennsylvania, under chapter 11 of the U.S. Bankruptcy Code, the parties agreed that XO would acquire substantially all of the assets of Allegiance, including the stock of ALGX Pennsylvania. The Commission approved the transfer of control on May 7, 2004 and the transaction was consummated on June 23, 2004. As a result, ALGX Pennsylvania became a wholly owned, direct subsidiary of XO. ALGX Pennsylvania has been certificated as a reseller of interexchange toll services at A-310751, a facilities-based competitive local exchange carrier at A-310751 F0002, a competitive access provider at A-310751 F0003 and a facilities-based interexchange toll services carrier at A-310751 F0004.

In order to streamline its corporate structure, XO intends to collapse both ALGX Pennsylvania and XO Pennsylvania into XO Communications. After completion of the consolidation, XO will remain the ultimate corporate parent, and it will have only one subsidiary operating in Pennsylvania.

The applicants propose that XO Pennsylvania's intrastate customer base be transferred to its affiliate, XO Communications, and that XO Communications adopt XO Pennsylvania's tariff for those customers. Upon the certification of XO Communications and completion of the customer transfer, XO Pennsylvania requests that its certificate be cancelled.

Similarly, ALGX Pennsylvania's customer base will be transferred to XO Communications, and XO Communications will adopt ALGX Pennsylvania's tariff for those customers. Upon the certification of XO Communications and completion of the customer transfer, ALGX Pennsylvania requests that its certificate be cancelled.

The applicants request the ability to operate under the two existing tariffs for ALGX Pennsylvania and XO Pennsylvania, for a period of six (6) months while a revised tariff covering all of the services provided by each entity may be drafted and submitted to the Commission for approval.

Upon completion of the reorganization, the ownership of XO Communications will be identical to its current ownership and the ownership of XO Pennsylvania and ALGX Pennsylvania. Thus, there should be no question about the qualifications of XO Communications and its parent, XO, to operate in the public interest. The corporate structure will be simpler, and administrative redundancy will be eliminated. These advantages ensure that the consolidation provides an affirmative public benefit and satisfies the standard set by the *City of York v. Pa. P.U.C.*, 449 Pa. 136, 295 A.2d 825 (1972).

Having reviewed the instant application, we have determined that the entry by XO Communication Services, Inc. as an IXC reseller, a facilities-based competitive local exchange carrier, a competitive access provider and a facilities-based interexchange toll services carrier, the proposed consolidation of XO Pennsylvania, Inc. and Allegiance Pennsylvania, Inc. into XO Communications Services, Inc., and the abandonment of service by XO Pennsylvania, Inc. and Allegiance Pennsylvania, Inc. are necessary or proper for the service, accommodation, convenience, or safety of the public, and that the joint application should be approved; **THEREFORE,**

**IT IS ORDERED:**

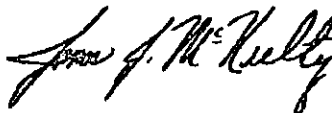
1. That the application of XO Communication Services, Inc. as a reseller of interexchange toll telecommunication services, a facilities-based competitive local exchange carrier, a competitive access provider and a facilities-based interexchange toll services carrier to residential and business customers throughout Pennsylvania is hereby approved.
2. That the transfer of assets from XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. to XO Communication Services, Inc. is hereby approved.
3. That the abandonment of all services by XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc. is hereby approved.
4. That within 30 days of this Order, XO Communication Services, Inc. file tariff adoption supplements by which it adopts as its own the tariffs currently in effect for XO Pennsylvania, Inc. and Allegiance Telecom of Pennsylvania, Inc.

5. That upon the receipt of the supplement required by Ordering Paragraph No. 4, above, certificates of public convenience be issued evidencing our approvals granted by Ordering Paragraphs No. 1, 2 and 3, above.

6. That upon the receipt of the supplement required by Ordering Paragraph No. 4, the Secretary's Bureau mark as closed all records concerning XO Pennsylvania, Inc. and Allegiance Pennsylvania, Inc., and that the Bureau of Administrative Services delete XO Pennsylvania, Inc. and Allegiance Pennsylvania, Inc. from the list of active utilities.

7. That a copy of this order be served upon the Pennsylvania Department of Revenue, Bureau of Corporation Taxes.

**BY THE COMMISSION**



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 22, 2004

ORDER ENTERED: **OCT 27 2004**

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29<sup>th</sup> day of October, 2004,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Order an official Commission document entered, issued, or otherwise promulgated under date of October 27, 2004 at Docket No. A-311331, A-310751 F2000 and A-310758 F2000 on behalf of:

~~THOMAS ROMINIECKI~~ DIRECTOR  
DEPARTMENT OF REVENUE  
BUREAU OF CORPORATION TAXES  
STRAWBERRY SQUARE 6<sup>TH</sup> FLOOR  
HARRISBURG PA 17128

*Michael Kane*

*Michael Kane*

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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