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COMMISSION CLERK

DATE: NOVEMBER 21, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (HAWKINS) OFFICE OF THE GENERAL COUNSEL (KEATING, B.)

RE: DOCKET NO. 020251-TP - APPLICATION FOR APPROVAL OF TRANSFER OF CONTROL OF XO COMMUNICATIONS, INC., SOLE SHAREHOLDER OF XO LONG DISTANCE SERVICES, INC., (HOLDER OF IXC CERTIFICATE NO. 7290) AND XO FLORIDA, INC. (HOLDER OF IXC CERTIFICATE NO. 3505 AND ALEC CERTIFICATE NO. 5648), PURSUANT TO CORPORATE RESTRUCTURING INVOLVING THE ISSUANCE AND SALE OF NEW COMMON STOCK FROM CRAIG O. MCCAWE AND EXISTING SHAREHOLDERS OF XO TO SHAREHOLDERS OF RESTRUCTURED AND RECAPITALIZED XO COMMUNICATIONS, INC.

AGENDA: 12/02/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020251.RCM

CASE BACKGROUND

The above docket was initiated pursuant to a request filed on March 19, 2002. By Order No. PSC-02-0946-PAA-TP, issued on July 15, 2002, and consummated by Order No. PSC-02-1072-CO-TP issued on August 8, 2002, the Commission approved the transactions.

By letter dated October 31, 2002, XO Communications, Inc. (XO), Forstmann Little & Co. (Forstmann Little) and Telefonos de Mexico, S.A. de C.V. (Telmex) have requested that Order No. PSC-02-0946-PAA-TP and Consummating Order No. PSC-02-1072-CO-TP be vacated because the restructuring plan did not go forward. (Attachment)

DOCUMENT NUMBER-DATE

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Said companies have reached an agreement pursuant to which the Purchase Agreement will be terminated and any potential claims relating to the Purchase Agreement or its termination will be settled. The termination of the Purchase Agreement is subject to bankruptcy court approval, which was applied for on October 15, 2002.

As stated in the letter, XO's bankruptcy filing contained an alternate reorganization plan. In light of the pending termination of the Purchase Agreement, it plans to proceed with this alternate plan - the "Stand-Alone Plan", which is being addressed in Docket No. 021117-TP.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.33 and 364.337, Florida Statutes.

Therefore, staff is requesting that Order No. PSC-02-0946-PAA-TP, issued October July 15, 2002, and Consummating Order No. PSC-02-1072-CO-TP issued August 8, 2002, be vacated.

DISCUSSION OF ISSUES

ISSUE 1: Should Order No. PSC-02-0946-PAA-TP issued July 15, 2002, and Order No. PSC-02-1072-CO-TP issued August 8, 2002, be vacated?

RECOMMENDATION: Yes, the Commission should vacate Order No. PSC-02-0946-PAA-TP, issued July 15, 2002, and Order No. PSC-02-1072-CO-TP issued August 8, 2002. **(HAWKINS)**

STAFF ANALYSIS: Since the requested transaction did not take place, staff is requesting that Order Nos. PSC-02-0946-PAA-TP and PSC -02-1072-CO-TP be vacated.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon the issuance of the Commission's vacating Order. **(KEATING, B.)**

STAFF ANALYSIS: This docket should be closed upon the issuance of the Commission's vacating Order.

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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Attachment
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October 31, 2002

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Public Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Request to Reopen Docket No. 020251-TP and Vacate Order PSC-02-1072-CO-TP Issued on August 8, 2002 and Close Docket No. 020251-TP

Dear Ms. Bayo:

On August 8, 2002, in Order No. PSC-02-1072-CO-TP issued by the Commission in Docket No. 020251-TP, the Commission approved a transfer of control of XO Communications, Inc. ("XO"), the sole shareholder of XO Long Distance Services, Inc. ("XO Long Distance") and XO Florida, Inc. ("XO Florida"), pursuant to a reorganization plan that contemplated the issuance of stock of XO to funds affiliated with Forstmann Little & Co. ("Forstmann Little") and to an indirect, wholly owned subsidiary of Telefonos de Mexico, S.A. de C.V. ("Telmex") (the "Forstmann Little/Telmex Plan"). The Forstmann Little/Telmex Plan was premised on the terms of a Stock Purchase Agreement dated January 15, 2002 ("Purchase Agreement"). While the application in Docket No. 020251-TP was pending, XO notified the Commission that on June 17, 2002, XO had filed a petition with the U.S. Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") pursuant to Chapter 11 of the U.S. Bankruptcy Code, seeking temporary protection from claims of creditors while the Company reorganized its operations and restructured its finances. Although the reorganization of XO according to the Forstmann Little/Telmex Plan was confirmed by the Bankruptcy Court on August 26, 2002, and the Federal Communications Commission granted XO's applications on October 3, 2002, the Forstmann Little/Telmex Plan will not be implemented. XO, Forstmann

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DIVISION OF
COMPETITIVE SERVICES

Ms. Blanca S. Bayo, Director
Division of Public Records and Reporting
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Little and Telmex have reached an agreement pursuant to which the Purchase Agreement will be terminated and any potential claims relating to the Purchase Agreement or its termination will be settled. The termination of the Purchase Agreement is subject to Bankruptcy Court approval, which was applied for on October 15, 2002.

The bankruptcy filing developed by XO contained an alternate reorganization plan. In light of the pending termination of the Purchase Agreement, XO plans to proceed with this alternate plan – the “Stand-Alone Plan” – to emerge from bankruptcy. Consequently, XO is filing on this date a new application requesting Commission approval of the transfer of control of XO, and thus of XO Long Distance and XO Florida, to XO as it will be reorganized pursuant to the Stand-Alone Plan.

By this letter, the applicants in Docket No. 020251-TP respectfully request, as a direct result of the Forstmann Little/Telmex Plan not being implemented and the submission of a new application to implement the Stand-Alone Plan, that Docket No. 020251-TP be reopened, that Order PSC-02-1072-CO-TP issued therein be vacated and that thereupon, Docket No. 020251-T be closed.

Enclosed please find an original and fifteen (15) copies of this letter for filing with the Commission. Also enclosed is a duplicate copy of this letter, and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Should you have any questions concerning this matter, please contact the undersigned at the above number.

Respectfully submitted,



Erin Weber Emmott

Enclosures

cc: Ms. Brenda Hawkins
Ms. Dana Shaffer