

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

FACSIMILE

(202) 342-8451

www.kelleydrye.com

August 26, 2012

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 E. Capitol Avenue  
Pierre, South Dakota 57501

*electronically filed*

Re: XO Communications Services, Inc. Notice of Change to  
the Company's Operating Name in South Dakota

Dear Ms. Van Gerpen:

XO Communications Services, Inc. ("XOCS" or the "Company") respectfully notifies the South Dakota Public Utilities Commission ("Commission") that it has been converted from a Delaware corporation into a Delaware limited liability company and, as a result, its name has been changed to XO Communications Services, LLC. The effects of this conversion are pro forma in nature and, as a practical matter, are transparent to customers. They effect no change whatsoever to the Company's ownership or to its operations. They do, however, result in a minor change to the Company's name. Consequently, XOCS requests that the name on its operating certificate in South Dakota be changed accordingly and requests such approvals as are necessary in connection with this change.

### ***The Company***

XOCS, which is located at 13865 Sunrise Valley Drive, Herndon, Virginia 20171, (703) 547-2000, is a direct, wholly-owned subsidiary of XO Communications, LLC (“XO LLC”) which, in turn, is a direct wholly-owned subsidiary of XO Holdings, a Delaware general partnership. XO LLC, a Delaware limited liability company, is a leading national provider of local and long distance telecommunications services to businesses, large enterprises and telecommunications carriers. XO LLC is authorized by the Federal Communications Commission to provide interstate and international telecommunications services. Through its subsidiaries – primarily XOCS – XO LLC is authorized to provide intrastate interexchange services in 49 states and to provide competitive local exchange services in 48 states as well as the District of Columbia. Through a number of intermediary companies, Carl C. Icahn, a U.S. citizen, holds 100% ownership of XO Holdings, XO LLC and the Company. XOCS is authorized by the Commission to provide competitive intrastate telecommunications services in South Dakota.<sup>1</sup>

### ***The Transaction***

For internal corporate purposes, the Company has been converted from a Delaware corporation into a Delaware limited liability company.<sup>2</sup> In conjunction with this conversion, the Company’s name has been changed to XO Communications Services, LLC. Under Delaware law, this conversion is treated as a continuation of the original corporate entity. The ownership interests in the entity have been converted from corporate stock to membership interests; however, the entities holding the ownership of XOCS have not changed. XO, LLC continues to hold 100% direct ownership of XOCS and Carl C. Icahn continues to hold 100% ultimate ownership of XOCS. Similarly, there has been no change whatsoever to the assets and obligations which XOCS holds as a result of these changes. Finally, XOCS, as a limited liability company, will continue to be subject to the Commission’s rules and orders exactly as it was prior to the conversion and change of operating name.

---

<sup>1</sup> XOCS was authorized to provide local exchange and interexchange services in Docket No. TC04-145 on Dec. 29, 2004.

<sup>2</sup> A copy of the Delaware conversion documents is provided as *Exhibit A*.

The converted entity has been registered with the South Dakota Secretary of State as a foreign limited liability company and thus is qualified to do business in the state.<sup>3</sup>

### ***Procedural Matters***

*Customer Notice.* The conversion of the Company into a limited liability company does not involve any change whatsoever in the rates, terms or conditions of services provided to customers, or in the facilities used to provide such services. Consequently, the conversion is essentially transparent to the Company's customers, except for the minor name change from "Inc." to "LLC." This transparency notwithstanding, the Company has sent notice of the conversion and resulting name change to its customers via bill messages.

*Tariff.* XOCS has an access services tariff filed with the Commission. Pursuant to discussion with Staff, the Company understands that it is not necessary to refile its tariff at this time solely for purposes of reflecting the minor change to its operating name. If the Company's understanding is incorrect or if Staff prefers at a future time that the entire tariff be reissued to incorporate the Company's name change, XOCS will promptly refile its tariff.

### ***Public Interest Considerations***

The conversion described above serves the public interest, as it enhances the strategic and financial flexibility of the Company. This flexibility benefits customers of the Company in South Dakota and elsewhere. At the same time, the conversion and resulting name change hold no adverse consequences for consumers. But for the minor change from "Inc." to "LLC" in the Company's name, the conversion is entirely transparent to the Company's customers. There is no change to the ownership, management or operations of the Company as a result of this change. There is no change to the services provided to customers nor to the terms and conditions under which these services are delivered. Finally, there is no change to the Company's overall operational and financial qualifications to provide competitive telecommunications services as a result of the conversion or change of operating name.

---

<sup>3</sup> A copy of the Secretary of State documentation is appended as *Exhibit B*.

***Conclusion***

The Company is submitting this filing for the Commission's information and to facilitate the necessary change to its certificate. Should the Commission have any questions or believe that further information is required, please contact Winafred Brantl at (202) 342-8819 or via email at [wbrantl@kelleydrye.com](mailto:wbrantl@kelleydrye.com).

Respectfully submitted,

**XO Communications Services, LLC**



Brad E. Mutschelknaus  
Winafred Brantl  
Kelley Drye & Warren LLP  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007

Its Counsel

*Exhibit A*

Delaware Conversion Documentation

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "XO COMMUNICATIONS SERVICES, INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "XO COMMUNICATIONS SERVICES, INC." TO "XO COMMUNICATIONS SERVICES, LLC", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF AUGUST, A.D. 2011, AT 6:35 O'CLOCK P.M.

3154937 8100V

110966974

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



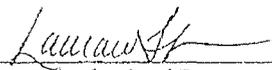
  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9001019

DATE: 08-30-11

STATE OF DELAWARE  
CERTIFICATE OF CONVERSION  
FROM A CORPORATION TO A  
LIMITED LIABILITY COMPANY PURSUANT TO  
SECTION 18-214 OF THE LIMITED LIABILITY ACT

- 1.) The jurisdiction where the Corporation first formed is DELAWARE.
- 2.) The jurisdiction immediately prior to filing this Certificate is DELAWARE.
- 3.) The date the corporation first formed is 1/5/2000.
- 4.) The name of the Corporation immediately prior to filing this Certificate is XO COMMUNICATIONS SERVICES, INC.
- 5.) The name of the Limited Liability Company as set forth in the Certificate of Formation is XO COMMUNICATIONS SERVICES, LLC.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the  
30 day of AUGUST, A.D. 2011.

By:   
Authorized Person

Name: Laura W. THOMAS  
Print or Type

# Delaware

PAGE 2

*The First State*

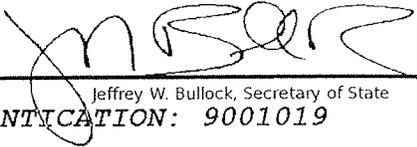
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF CERTIFICATE OF FORMATION OF "XO COMMUNICATIONS SERVICES, LLC" FILED IN THIS OFFICE ON THE THIRTIETH DAY OF AUGUST, A.D. 2011, AT 6:35 O'CLOCK P.M.



3154937 8100V

110966974

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9001019

DATE: 08-30-11

STATE of DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE of FORMATION

First: The name of the limited liability company is \_\_\_\_\_  
XO COMMUNICATIONS SERVICES, LLC

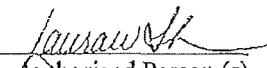
Second: The address of its registered office in the State of Delaware is \_\_\_\_\_  
2711 Centerville Road, Suite 400 in the City of Wilmington  
Zip code 19808. The name of its Registered agent at such address is  
Corporation Service Company

Third: (Use this paragraph only if the company is to have a specific effective date of  
dissolution: "The latest date on which the limited liability company is to dissolve is  
\_\_\_\_\_.")

Fourth: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation this

30 day of August, 2011.

By:   
Authorized Person (s)

Name: Laura W. Thomas

*Exhibit B*

South Dakota Conversion Documentation

# State of South Dakota



OFFICE OF THE SECRETARY OF STATE

## Certificate of Authority Limited Liability Company

ORGANIZATIONAL ID #: FL005875

I, **Jason M. Gant**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of **XO COMMUNICATIONS SERVICES, LLC (DE)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application for certificate of authority.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this September 13, 2011.



**Jason M. Gant**  
Secretary of State

CertAuthLLC Merge

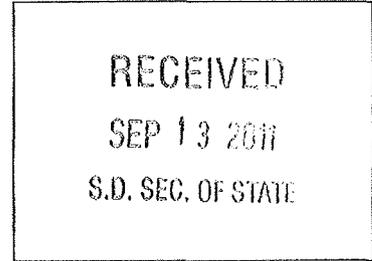
Secretary of State Office  
500 E Capitol Ave  
Pierre, SD 57501  
(605)773-4845

# APPLICATION FOR CERTIFICATE OF AUTHORITY FOREIGN LIMITED LIABILITY COMPANY

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

**FILING FEE: \$750** payable to SECRETARY OF STATE



Telephone # \_\_\_\_\_  
FAX # \_\_\_\_\_

Filed this 13<sup>th</sup> day of Sept. 2011  
*Jason Fant*  
SECRETARY OF STATE

Application must be accompanied by a one page original certificate of existence issued by the Secretary of State or other official having custody of the organizational records in the state or country under whose law it is organized.

1. The name of the company is XO Communications Services, LLC

The name must include limited liability company, limited company or the abbreviation L.L.C., LLC, L.C. or LC. Limited may be abbreviated as Ltd. and company may be abbreviated as Co.

2. The name of the state or country under whose laws it is organized is Delaware

3. The period of its duration perpetual

4. The address of its principal office (this is the address of the executive offices of the corporation).

13865 Sunrise Valley Dr., Herndon VA 20171

Street Address City State ZIP+4

Mailing Address (Optional) City State ZIP+4

5. The South Dakota Registered Agent name Corporation Service Company

503 South Pierre Street, Pierre, SD 57501

Street Address or Rural Route Box Number in This State and City State ZIP+4

Mailing Address in This State, if Different from Street Address City State ZIP+4

When listing a Commercial Registered Agent, please state their CRA #. This number can be obtained from the Commercial Registered Agent.	CR000003
--	----------

6. Please check one:

- The company is member managed.
- The company is manager managed.

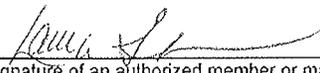
If this company is manager managed, please state the name and address of each manager.

Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4
Manager	Street Address	City	State	ZIP+4

7. Whether one or more of the members of the company are to be liable for its debts and obligations under a provision similar to SDCL 47-34A-303 (c)

The application must be signed by a Manager so stated in question number 6 or a Member if the company is member managed.

Dated 9/8/2011

  
\_\_\_\_\_  
(Signature of an authorized member or manager)  
XO Communications, LLC, represented by Laura W. Thomas  
(Printed Name)  
Member  
(Title)

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### Certificate of Withdrawal

ORGANIZATIONAL ID #: FB029051

I, **Jason M. Gant**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the application for Withdrawal from South Dakota for **XO COMMUNICATIONS SERVICES, INC. (DE)** duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Withdrawal and attach hereto a duplicate of the Application for Withdrawal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City this September 13, 2011.



Jason M. Gant  
Secretary of State

Secretary of State Office  
500 E Capitol Ave  
Pierre, SD 57501  
(605)773-4846

## APPLICATION FOR CERTIFICATE OF WITHDRAWAL FOREIGN BUSINESS CORPORATION

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

FILING FEE: \$10 payable to SECRETARY OF STATE

RECEIVED

SEP 13 2011

S.D. SEC. OF STATE

Filed this 13<sup>th</sup> day of Sept, 2011  
*Jane Sant*  
SECRETARY OF STATE

Telephone # \_\_\_\_\_

FAX # \_\_\_\_\_

1. The name of the corporation is XO Communications Services, Inc (corp ID FB029051 )

Note: This must be the exact corporate name.

2. It is incorporated under the laws of the state of Delaware

3. It is not transacting business in this state and it surrenders its authority to transact business in this state.

4. It revokes the authority of its registered agent to accept service on its behalf.

5. The address of its principal office (this is the address of the executive offices of the corporation),

13865 Sunrise Valley Dr., Herndon, VA 20171

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP+4 \_\_\_\_\_

Mailing Address (Optional) \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP+4 \_\_\_\_\_

The application must be signed by an authorized officer of the corporation.

Dated 8/30/2011

*Laura W. Thomas*  
\_\_\_\_\_  
(Signature of an authorized officer)

Laura W. Thomas  
(Printed Name)

Senior Vice President, CFO  
(Title)