

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE FILING FOR )</b>	<b>ORDER GRANTING</b>
<b>APPROVAL OF TRANSFER OF CERTIFICATE )</b>	<b>TRANSFER OF</b>
<b>OF AUTHORITY FROM XO NETWORK )</b>	<b>CERTIFICATE OF</b>
<b>SERVICES, INC. TO XO COMMUNICATIONS )</b>	<b>AUTHORITY AND ORDER</b>
<b>SERVICES, INC. )</b>	<b>GRANTING PETITION FOR</b>
<b>)</b>	<b>WAIVER</b>
<b>)</b>	<b>TC04-145</b>

On August 2, 2004, the Public Utilities Commission (Commission) received a joint application for the transfer of a certificate of authority from XO Network Services, Inc. (XO Network) to XO Communications Services, Inc. (XO Communications). On December 14, 2004, the Commission received a request from XO Communications for approval of its intrastate switched access tariff and for an exemption from the requirement to develop intrastate switched access rates based on company specific costs and a waiver of the use of the formula in ARSD 20:10:27:12, so as to mirror the Qwest Corporation tariffed access rates. XO Communications also requested a waiver of ARSD 20:10:27:07.

XO Communications proposes to offer interexchange and local exchange telecommunications services in South Dakota. A proposed tariff was filed by XO Communications.

On August 5, 2004, the Commission electronically transmitted notice of the filing and the intervention deadline of August 20, 2004, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled December 28, 2004, meeting, the Commission considered the request for transfer of certificate of authority. The Commission also considered XO Communications' request for approval of its intrastate switched access tariff no. 1, an exemption from establishing switched access rates based on company specific costs, and a waiver of the use of the formula in ARSD 20:10:27:12, so as to mirror the Qwest Corporation tariffed access rates. Commission Staff recommended transferring the certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards. Staff recommended approving the switched access tariff no. 1 and granting the exemption for three years.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-18, 49-31-19, 49-31-69, 49-31-71 and ARSD 20:10:24:04.01, 20:10:24:04.02, 20:10:27:07, 20:10:27:11, 20:10:27:12, and 20:10:32:03. The Commission finds that XO Communications has met the legal requirements established for the granting of a certificate of authority. XO Communications has, in accordance with SDCL 49-31-3 and 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to grant a waiver of ARSD 20:10:27:07, grant the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11 for three years, grant a waiver of the use of the formula in ARSD 20:10:27:12 so as to mirror the Qwest Corporation tariffed access rates, and approve XO Communications' intrastate switched access tariff.

The Commission approves the application for transfer of certificate of authority from XO Network to XO Communications, subject to a continuous \$25,000 surety bond, and subject to rural safeguards, grants a waiver of ARSD 20:10:27:07, grants the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11 for three years, grants a waiver of the use of the formula in ARSD 20:10:27:12 so as to mirror the Qwest Corporation tariffed access rates, and approves XO Communications' intrastate switched

access tariff. The certificate of authority for XO Communications shall authorize it to offer local exchange services in South Dakota, except in those areas served by a rural telephone company. In the future, should XO Communications choose to provide local exchange services statewide, with respect to rural telephone companies, XO Communications will have to come before the Commission in another proceeding before being able to provide local service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). It is therefore

ORDERED, that the application for transfer of certificate of authority from XO Network to XO Communications is hereby granted, effective December 28, 2004, subject to a continuous \$25,000 surety bond; and it is

FURTHER ORDERED, that XO Communications shall file informational copies of tariff changes with the Commission as the changes occur; and it is

FURTHER ORDERED, that the Commission shall authorize XO Communications to offer its local exchange services in South Dakota, except in those areas served by a rural telephone company; and it is

FURTHER ORDERED, that XO Communications' request for a waiver of ARSD 20:10:27:07 is granted, its request to be exempt from establishing company specific cost-based switched access rates is granted, its request for a waiver of the use of the formula in ARSD 20:10:27:12, so as to mirror the Qwest Corporation tariffed access rates is granted, its intrastate switched access tariff is approved; and it is

FURTHER ORDERED, that XO Communications shall, within three years of the date of this order, file a petition to continue the exemption granted in this proceeding or file cost-based intrastate switched access rates.

Dated at Pierre, South Dakota, this 29th day of December, 2004.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: _____
Date: _____
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
ROBERT K. SAHR, Chairman

\_\_\_\_\_  
GARY HANSON, Commissioner

\_\_\_\_\_  
JAMES A. BURG, Commissioner