

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
XO NETWORK SERVICES, INC. FOR A)	CERTIFICATE OF
CERTIFICATE OF AUTHORITY TO PROVIDE)	AUTHORITY
LOCAL EXCHANGE SERVICES IN SOUTH)	
DAKOTA)	TC03-187

On October 16, 2003, the Public Utilities Commission (Commission) received an application for a certificate of authority from XO Network Services, Inc. (XO Network Services) and for approval of its intrastate switched access tariff. Additionally, XO Network Services requested an exemption from the requirement to develop intrastate switched access rates based on company specific costs.

XO Network Services proposes to provide a full array of local exchange services, including, but not limited to, basic voice, exchange access, private line and data transmission services. Proposed local exchange and switched access tariffs were filed by XO Network Services.

On October 23, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of November 7, 2003, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled December 16, 2003, meeting, the Commission considered XO Network Services' request for a certificate of authority, and its intrastate switched access tariff and a waiver from establishing switched access rates based on company specific costs. Commission Staff recommended granting a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards. Commission Staff further recommended a waiver of ARSD 20:10:27:07 and 20:10:32:03(11). Staff recommended approving the switched access tariff and granting the exemption for three years.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-18, 49-31-19 and 49-31-69 and ARSD 20:10:27:11 and 20:10:32:03. The Commission finds that XO Network Services has met the legal requirements established for the granting of a certificate of authority. XO Network Services has, in accordance with SDCL 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 waive ARSD 20:10:27:07 and subparagraph (11) of ARSD 20:10:32:03 and grant the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11 for three years and approve XO Network Services' intrastate switched access tariff.

The Commission approves XO Network Services' application for a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards, and grants the petition for exemption from developing company specific cost-based

switched access rates pursuant to ARSD 20:10:27:11 for three years and approves XO Network Services' intrastate switched access tariff. The certificate of authority for XO Network Services 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 Network Services choose to provide local exchange services statewide, with respect to rural telephone companies, XO Network Services 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 XO Network Services' application for a certificate of authority to provide local exchange services is granted, subject to a continuous \$25,000 surety bond; and it is

FURTHER ORDERED, that XO Network Services 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 Network Services 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 the Commission waives ARSD 20:10:27:07 and subparagraph (11) of ARSD 20:10:32:03; and it is

FURTHER ORDERED, that XO Network Services' petition to be exempt from establishing company specific cost-based switched access rates is granted for three years and its intrastate switched access tariff is approved.

Dated at Pierre, South Dakota, this 23rd day of December, 2003.

CERTIFICATE OF SERVICE	
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:	<u>Melaine Kolbo</u>
Date:	<u>12/23/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner