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October 22, 2002

FCC/NOTIFICATION
02-360
OCT 22 2002

Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appl.
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of XO Communications, Inc., Debtor-in-Possession and Certain
Subsidiary Companies: Application for Consent to Assign Blanket Domestic
Authorizations and to Transfer Control of Companies Holding Blanket Domestic
Authorizations Under Section 214 of the Communications Act

Enclosed for filing, on behalf of XO Communications, Inc., Debtor-in-Possession (“XO”), certain wholly-owned subsidiaries of XO, and High River Limited Partnership (“High River”) (collectively the “Parties”), please find an original and five copies of the above-captioned application. The Parties request authority for the assignment of the blanket domestic Section 214 authorization currently held by XO and for the transfer of control of the listed XO subsidiaries that hold blanket domestic Section 214 authorizations to a newly reorganized XO Communications, Inc. (“Reorganized XO”), pursuant to a plan of reorganization whereby High River, a limited partnership ultimately controlled by Carl C. Icahn, a U.S. citizen, will acquire majority control of Reorganized XO.

Remittance Form 159 and a check to cover the \$860 filing fee are appended. An additional copy of this filing for date-stamp and return has been provided as well. If there are any questions regarding this application, please contact Joan M. Griffin, counsel for XO, at (703) 918-2320 or Marissa G. Repp, Hogan & Hartson L.L.P., counsel for High River, at (202) 637-5600. Thank you in advance for your assistance with this matter.

Sincerely,

Winafred Brantl

enclosures
cc: Service List

SERVICE LIST

Jeffrey “Jeff” Tobias	FCC – Wireless Telecommunications
Brian O’Donnell	FCC – Wireless Telecommunications Bureau/PSPWD
Jackie Ruff	FCC – International Bureau
Imani Ellis-Cheek	FCC – International Bureau/TD
George Li	FCC – International Bureau
Neil Dellar	FCC – Office of General Counsel
James “Jim” Bird	FCC – Office of General Counsel
Henry L. Thaggert	FCC – Common Carrier Bureau/Policy Division
Elizabeth Yockus	FCC – Common Carrier Bureau/Policy Division
Marissa G. Repp	Hogan & Hartson L.L.P.

COPY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)
XO COMMUNICATIONS, INC.,)
DEBTOR-IN-POSSESSION,)
and certain subsidiary companies)

Application for Consent to Assign)
Blanket Domestic Authorizations)
and to Transfer Control of Companies)
Holding Blanket Domestic Authorizations)
Under Section 214 of the Communications Act)

File Nos. _____
WC 02-360

APPLICATION

XO Communications, Inc., Debtor-in-Possession (“XO or the “Company”), on behalf of itself and its subsidiary companies listed in Attachment A, and High River Limited Partnership (“High River”) (collectively, the “Parties”) hereby request authority, pursuant to Section 63.04¹ of the Commission’s Rules, for (1) the assignment of the blanket domestic Section 214 authorization currently held by XO, and (2) the transfer of control of XO subsidiaries (as listed in Attachment A) that hold blanket domestic Section 214 authorizations, to a newly reorganized XO Communications, Inc. (“Reorganized XO”) pursuant to a plan of reorganization whereby

¹ 47 C.F.R. § 63.04. Pursuant to Section 63.03(d)(2) of the Commission’s Rules, XO Communications, Inc. notified the Commission of the proforma assignment of XO Communications’ Section 214 authority and the *pro forma* transfer of control of the XO subsidiaries (as listed in Attachment A) holding Section 214 authority from XO Communications, Inc. to XO Communications, Inc., Debtor-in-Possession by letter dated June 19, 2002. XO Communications filed a voluntary petition for reorganization in the U.S. Bankruptcy Court for the Southern District of New York on June 17, 2002. See *In re XO Communications, Inc.*, Case No. 02-12947 (AJG) (Bankr.S.D.N.Y.), filed June 17, 2002.

High River, a Delaware limited partnership ultimately controlled by Carl C. Icahn, a U.S. citizen, will acquire majority control of Reorganized XO.²

Pursuant to Section 63.04(a) of the Commission's Rules, the Parties set forth the following information in support of this Application:

- (1) The name, address, and telephone number of the assignor/transferor is:

XO Communications, Inc., Debtor-in-Possession ("XU")
11111 Sunset Hills Road
Reston, VA 20190-5339
(703) 547-2000
(703) 547-2881 (facsimile)

The name, address, and telephone number of the assignee/transferee is:

XO Communications, Inc. ('Reorganized XU')
11111 Sunset Hills Road
Reston, VA 20190-5339
(703) 547-2000
(703) 547-2881 (facsimile)

The name, address, and telephone number of the transferee is:

High River Limited Partnership ("High River")
767 Fifth Avenue
47th Floor
New York, **NY** 10153
(212) 702-4300
(212-) 688-1158 (facsimile)

² The plan of reorganization will also result in Meadow Walk Limited Partnership ("Meadow Walk"), a Delaware limited partnership ultimately controlled by Carl C. Icahn, holding an approximate 1.4 percent equity interest in Reorganized XO. The majority and controlling interest in Reorganized XO, however, will be issued to High River. Shortly after High River and Meadow Walk acquire the stock of Reorganized XO, they may distribute such stock so that it will be held by Cardiff Holding LLC ("Cardiff"). Cardiff is a Delaware limited liability company which is ultimately controlled by Carl C. Icahn. Consequently, references in this Application to High River also refer, where appropriate, to Cardiff, as potential holder of the majority of the stock of Reorganized XO. To the extent necessary, this Application also requests approval to permit Cardiff, in lieu of High River, to hold the controlling stock interest in Reorganized XO.

- (2) XO is a company organized under the laws of the State of Delaware. Reorganized XO will be a company organized under the laws **of** the State **of** Delaware. High River is a partnership organized under the laws **of** the State **of** Delaware.
- (3) Correspondence concerning this Application should be sent to:

Cathleen A. Massey
Vice President – External Affairs/Asst. General Counsel
XO COMMUNICATIONS, INC.
1111 Sunset Hills Road
Reston, VA 20190-5339
Telephone: (703) 547-2000
Fax: (703) 547-2881
cathy.massey@xo.com

High River Limited Partnership
767 Fifth Avenue
47th Floor
New York, **NY** 10153
(212) 702-4300
(212-) 688-1158 (facsimile)

with copies to:

Brad E. Mutschelknaus
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
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mutsb@kellevdwe.com

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Fax: (202) 637-5910
PARohrbach@HHLAW.com
MGRRepp@HHLAW.com
AQFitzgerald@HHLAW.com

- (4) Upon consummation of the assignment and transfer of control, High River will hold no less than an 80 percent equity interest in Reorganized XO. The rights offering discussed in the *Application for Assignment of Licenses and Transfer of Control* may dilute High River's holdings of XO equity, but High River will continue to hold a majority of XO's shares and therefore will be in *dejure* and *defacto* control of Reorganized XO after the rights offering. High River is a Delaware limited partnership. Carl C. Icahn, a U.S. citizen, ultimately controls and has a majority ownership interest in High River through his ultimate control and ownership of its general and limited partners. The general partner of High River is Barberry Corp. ("Barberry"), a Delaware corporation. Carl C. Icahn owns 100 percent of Barbeny's stock. Barberry holds an approximately 1 percent partnership interest in High River. High River has two limited partners. One limited partner is Chelonian Corp. ("Chelonian"), a New York corporation. Carl Icahn controls either directly or indirectly approximately 99 percent of Chelonian's stock. Chelonian holds an approximately 91 percent partnership interest in High River. The other limited partner in High River is Highcrest Investors Corp. ("Highcrest"), a Delaware corporation. Carl C. Icahn controls either directly or indirectly approximately 99.5 percent of Highcrest's stock. Highcrest holds an approximately 8 percent partnership interest in High River.

High River, Barberry, Chelonian, Highcrest, and Mr. Icahn are all engaged in the business of buying, selling, investing, and holding securities and debt obligations. The address of High River, Barberry, Chelonian, Highcrest, and Mr. Icahn is 767 Fifth Avenue, 47th Floor, New York, New York 10153.

- (5) As evidenced by the signatures to this Application, the Parties respectively certify that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (6) As set forth in the *Application for Assignment of Licenses and Transfer of Control*, filed simultaneously with this Application, the assignment and transfer of control would occur as a result of a restructuring of XO pursuant to a plan of reorganization -

- the “Stand-Alone Plan.” Under the Stand-Alone Plan, the outstanding shares of stock of XO will be cancelled, and \$500 million of the \$1 billion in existing loans under XO’s secured credit facility will be converted into **95** percent of the new initial common stock of Reorganized XO, with the remaining \$500 million converted into a \$500 million pay-in-kind junior secured loan. XO noteholders and general unsecured creditors collectively will receive the remaining five percent of this initial common equity. Reorganized XO may seek to obtain funding through a \$200 million rights offering. Any shortfall from the rights offering may be covered by up to \$200 million in new senior secured loans ranking senior to the new junior secured debt, although no agreements for this financing have been reached. Consummation of the Stand-Alone Plan is subject to a number of conditions, including the preparation of definitive documentation and the receipt of Bankruptcy Court, bank, and regulatory approvals.

As a result of High River’s holdings in XO debt, High River would be issued no less than 80 percent of the new initial common stock of Reorganized XO (before giving effect to the exercise of the rights in the rights offering). No other shareholder is expected to hold 10 percent or more of the new initial common stock of Reorganized XO. High River will continue to hold a majority of XO’s shares and *de jure* and *de facto* control of Reorganized XO, even if the rights offering is fully subscribed.

³ The Company’s initial reorganization plan was based on a Stock Purchase Agreement (“Purchase Agreement”), dated January 15, 2002, by and between affiliates of Forstmann Little & Co. (“Forstmann Little”) and an affiliate of Teléfonos de México, S.A. de C.V. (“Telmex”) whereby those entities would invest \$800 million in exchange for 80 percent of the reorganized company’s equity (“Forstmann Little/Telmex Plan”). Consummation of that transaction would have resulted in a transfer of control of XO from Craig O. McCaw and the existing shareholders of XO to the new shareholders of Reorganized XO, which would have included, as 10 percent or greater shareholders, Forstmann Little and Telmex. That plan also called for modification of the terms of the secured bank debt, cancellation of most other debt, and elimination of existing equity. Applications were filed with the Commission and **various** state utility commissions to implement that plan. The reorganization according to the Forstmann Little/Telmex Plan was confirmed by the Bankruptcy Court on August 26, 2002, and the Commission granted **XO’s** applications for consent to this transfer of control, as well **as** a petition for declaratory ruling regarding foreign ownership, **on** October 3, 2002. *In re Applications of XO Communications, Inc. for Consent to Transfer of Control, IB Docket No. 02-50, Memorandum Opinion and Order*, DA 02-2512, rel. Oct. 3, 2002 (“XO Transfer Order”). However, the Forstmann Little/Telmex Plan will not be implemented. XO, Forstmann Little, and XO have reached an agreement pursuant to which the Purchase Agreement will be terminated and any potential claims relating to the Purchase Agreement will be settled. The termination of the Purchase Agreement is subject to Bankruptcy **Court** approval, which was applied for on October 15, 2002.

- (7) XO is a full service provider of communication and information services to business customers throughout the U.S. XO delivers these services over its own network of metropolitan fiber rings and long haul fiber optic facilities, and through the use of facilities or services leased or purchased from ILECs. More details about XO's services and service areas are provided in the *Application for Assignment of Licenses and Transfer of Control*, filed simultaneously with this Application, at Section II.A.2. Reorganized XO will provide the same services in the same geographic areas as XO.
- (8) This Application is presumed eligible for streamlined treatment under Section 63.03(b)(2) of the Commission's Rules because Reorganized XO will have a market share in the interstate, interexchange market of less than 10 percent, Reorganized XO will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and neither XO nor Reorganized XO is dominant with respect to any service.
- (9) Simultaneous with the submission of this Application, the Parties are filing the *Application for Assignment of Licenses and Transfer of Control* (mentioned previously) and the necessary individual applications to effectuate the assignment of XO's licenses and authorizations and the transfer of control of XO and its subsidiaries as holders of various licenses and authorizations. Copies of these applications are provided as annexes to the *Application for Assignment of Licenses and Transfer of Control*. The individual applications are: an application to assign the international Section 214 authorization held by XO; an application to transfer control of a wholly-owned subsidiary of XO, XO Long Distance Services, Inc. ("XO Long Distance"), that holds an international Section 214 authorization; and applications on Form 603 to transfer control of XO subsidiary XO LMDS Holdings No. 1, Inc. ("XO LMDS"), which holds 91 LMDS licenses and ten 39 GHz licenses, and to assign one Industrial/Business Pool, Conventional license, held by XO.
- (10) Because the reorganization of XO according to the Stand-Alone Plan is critical to XO's survival, as discussed in the *Application for Assignment of Licenses and Transfer of Control*, the Parties ask that the Commission consider this application, and all other applications related to the reorganization, on an expedited basis.
- (11) No waivers are being requested in connection with this transaction.
- (12) The Commission recognized in the XO Transfer Order that the reorganization of XO in accordance with the Purchase Agreement would likely result in public interest benefits, as it would allow a large competitive local exchange carrier ("CLEC") to remain as a valuable competitor and provider of telecommunications services.⁴ These public interest benefits would also be provided if XO were restructured in accordance with the Stand-Alone Plan. The reorganization of XO pursuant to the Stand-Alone

⁴ XO Transfer Order, *supra* note 2, at ¶ 42.

Plan would place Reorganized XO on firm financial footing and would thereby preserve and strengthen competition in the telecommunications industry, to the ultimate benefit of the public. At the same time, the procompetitive benefits of the Stand-Alone Plan would not be diminished by any anticompetitive effects. No competitors would be eliminated as a result of the transaction, and neither High River, Mr. Icahn, nor their affiliates control or hold a substantial interest in any other telecommunications carrier. Further details regarding the transaction, including a public interest statement, is provided in the *Application for Assignment of Licenses and Transfer of Control*.

For the foregoing reasons, the Parties respectfully request that the Commission grant this Application for consent to the assignment of blanket domestic Section 214 authority held by XO, and the transfer of control of XO subsidiaries that hold blanket domestic Section 214 authority, to Reorganized XO as expeditiously as possible.

Respectfully submitted.

<p>XO COMMUNICATIONS, INC., DEBTOR-IN-POSSESSION</p> <p>By: </p> <p>R. Gerard Salemm Senior Vice President – External Affairs XO COMMUNICATIONS, INC. 11111 Sunset Hills Road Reston, Virginia 20190 (703) 547-2000</p> <p>Brad E. Mutschelknaus KELLEY DRYE & WARREN LLP 1200-19th Street, N.W. Suite 500 Washington, D.C. 20036 (202) 955-9600</p> <p>Joan M. Griffin KELLEY DRYE & WARREN LLP 8000 Towers Crescent Drive, Suite 1200 Vienna, VA 22182 (703) 918-2300</p> <p>Their Attorneys</p>	<p>HIGH RIVER LIMITED PARTNERSHIP</p> <p>By: _____</p> <p>Edward E. Mattner Authorized Signatory of BARBERRY CORP., Which is the General Partner of HIGH RIVER LIMITED PARTNERSHIP 767 Fifth Avenue, 47th Floor New York, NY 10153</p> <p>Peter A. Rohrbach Marissa G. Repp Ari Q. Fitzgerald HOGAN & HARTSON L.L.P 555 Thirteenth Street, NW Washington, DC 20004-1109 (202) 637-5600</p> <p>Their Attorneys</p>
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Date: October 21, 2002

Respectfully submitted,

**XO COMMUNICATIONS, INC.,
DEBTOR-IN-POSSESSION**

By: _____

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Their Attorneys

HIGH RIVER LIMITED PARTNERSHIP

By: 

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Authorized Signatory of
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Their Attorneys

Date: October 22, 2002

Attachment A

Subsidiary Companies of **XO** Communications, Debtor-in-Possession
That Also Hold Blanket Section **214** Authority

Telecommunications of Nevada, L.L.C. (d/b/a XO Nevada)
XO Arizona, Inc.
XO California, Inc.
XO Colorado, L.L.C.
XO Connecticut, Inc.
XO DC, Inc.
XO Delaware, Inc.
XO Florida, Inc.
XO Georgia, Inc.
XO Idaho, Inc.
XO Illinois, Inc.
XO Indiana, Inc.
XO Kansas, Inc.
XO Kentucky, Inc.
XO Long Distance Services, Inc.
XO Louisiana, Inc.
XO Maryland, L.L.C.
XO Massachusetts, Inc.
XO Michigan, Inc.
XO Minnesota, Inc.
XO Mississippi, Inc.
XO Missouri, Inc.
XO New Jersey, Inc.
XO New Mexico, Inc.
XO New York , Inc.
XO North Carolina, Inc.
XO Ohio, Inc.
XO Oregon, Inc.
XO Pennsylvania, Inc.
XO Tennessee, Inc.
XO Texas, Inc.
XO Utah, Inc.
XO Virginia, L.L.C.
XO Washington, Inc.
XO West Virginia, Inc.
XO Wisconsin, Inc.