

EXHIBIT B

ASSET PURCHASE AGREEMENT

by and among

ALLEGIANCE TELECOM, INC.

And

ALLEGIANCE TELECOM COMPANY WORLDWIDE

jointly and severally as Sellers

And

XO COMMUNICATIONS, INC.

as Buyer

February 18, 2004

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EXHIBITS

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT is dated as of February 18, 2004 by and among Allegiance Telecom, Inc., a Delaware corporation ("ATI"), Allegiance Telecom Company Worldwide, a Delaware corporation ("ATCW" and, together with ATI, "Sellers" and each individually, a "Seller"), and XO Communications, Inc., a Delaware corporation ("Buyer")

WITNESSETH

WHEREAS, Sellers (together with the Operating Subsidiaries, "Allegiance") are engaged in the business of providing certain telecommunication products and services, including local and long-distance voice services, broadband and other Internet and data services and wholesale services, to business, government and other institutional users in major metropolitan areas across the United States (excluding any Excluded Asset (as defined herein), the "Business"),

WHEREAS, on May 14, 2003, each of ATI and ATCW and their direct and indirect Subsidiaries commenced a case (collectively, the "Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), which cases are jointly administered under Case No. 03-13057,

WHEREAS, the sale of assets and certain liabilities of the Business are subject to the supervision and control of Sellers subject to the approval of the Bankruptcy Court,

WHEREAS, Sellers wish to sell to Buyer and Buyer wishes to purchase from Sellers substantially all of the assets and to assume from Sellers certain liabilities of the Business, pursuant to, inter alia, sections 105, 363, 365, 1122, 1129 and 1146(c) of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure, provided, however, that in the event Sellers shall have delivered an Early Closing Election, Sellers shall not seek to sell the assets pursuant to sections 1122 and 1129 of the Bankruptcy Code;

WHEREAS, in connection with issuance of the XO Common Stock (as defined herein), Buyer's shareholder approval (as described in this Agreement) may be required, and as a condition precedent to Sellers' execution and delivery of this Agreement, Cardiff Holding LLC, the holder of a majority of the capital stock of Buyer, has entered into a Voting and Lockup Agreement (the "Voting Agreement") (attached hereto as Exhibit B) and the Voting Agreement remains in full force and effect;

WHEREAS, the Board of Directors of each Seller has determined that it is advisable and in the best interests of Sellers' estates and the beneficiaries of such estates to consummate the transactions contemplated by this Agreement, upon the terms and conditions provided for herein, and

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Defined Terms As used herein, the terms below shall have the following respective meanings

“Adjustment Escrow Amount” means the greater of (i) Seven Million Dollars (\$7,000,000) and (ii) the sum of Five Million Dollars (\$5,000,000) plus, to the extent positive, the Initial Working Capital Adjustment

“Affiliate” means any Person directly or indirectly controlling, controlled by or under common control with another Person where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that under no circumstances shall creditors of Allegiance be considered Affiliates of Allegiance solely by virtue of their ownership of creditor claims against Allegiance

“Affiliated Group” means any affiliated group of corporations within the meaning of Section 1504 of the Internal Revenue Code that joins in the filing of (or is otherwise required to file) a federal consolidated Tax Return, as well as any other group of corporations filing (or otherwise required to file) consolidating, combined or unitary Tax Returns under state, local or foreign Law, of which a Seller is or was a member

“Agreement” means this Asset Purchase Agreement (together with all schedules and exhibits referenced herein), as the same may be amended from time to time

“Bankruptcy Plan” means Allegiance’s chapter 11 plan of reorganization that includes the sale of the Acquired Assets to Buyer as contemplated hereby, in a form reasonably acceptable to Buyer, unless an Early Closing Election shall have been delivered.

“Base Working Capital” means the Net Working Capital as of September 30, 2003 equal to \$16,099,016.

“Bidding Procedures Order” means that certain order dated January 15, 2004 (A) establishing bidding procedures and bid protections in connection with the sale of substantially all of the assets of Sellers, (B) approving the form and manner of notices in connection with such sale and (C) setting a sale hearing date

“Business Day” means any day other than a Saturday, Sunday or a legal holiday on which banking institutions in the State of New York are not required to open.

“COBRA” means section 4980B of the Internal Revenue Code and Part 6 of Subtitle B of Title I of ERISA.

“Communications Licenses” means the FCC Licenses and the State PUC Licenses

“Confidentiality Agreement” means the agreement entered into by and between ATI and XO Communications, Inc. dated December 9, 2003

“Confirmation Order” means a final, nonappealable order to be entered by the Bankruptcy Court in the Cases confirming the Bankruptcy Plan pursuant to section 1129 of the Bankruptcy Code

“Contract” means any contract, agreement, indenture, note, bond, loan, instrument, lease, commitment or other arrangement or agreement, including all amendments thereof and supplements thereto.

“Cure Amounts” means all amounts payable in order to effectuate, pursuant to section 365 of the Bankruptcy Code, the assumption by Sellers and the assignment to the Buyer of any Assumed Contract

“Disclosure Schedules” means the various disclosure schedules referred to herein.

“Employee” means each active employee, full-time or part-time, temporary or regular, of Allegiance. An “active employee” shall include any current employee on Allegiance’s payroll records, regardless of whether such employee is absent from work, including due to short term or long term disability, military leave, leave of absence, illness, vacation or workers’ compensation injury

“Environmental Laws” means all Laws relating to the protection of the environment, or to any emission, discharge, generation, processing, storage, holding, abatement, existence, Release, threatened Release or transportation of any Hazardous Substances, including all Laws pertaining to reporting, licensing, permitting, investigation or remediation of emissions, discharges, Releases or threatened Releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport or handling of Hazardous Substances.

“Environmental Permits” means any Licenses required pursuant to Environmental Laws for operation, installation or modification of equipment, processes, facilities or for occupancy of any of the real property owned or leased by Sellers or the Operating Subsidiaries.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended and the regulations promulgated thereunder.

“Executory Contract” means any Contract that can be assumed or rejected in accordance with the Bankruptcy Code.

“Expense Reimbursement” means an amount payable to Buyer in accordance with Section 8 2 or Section 8 3, to reimburse Buyer for reasonable and documented out-of-pocket costs and expenses (including reasonable legal, accounting and financial advisors’ fees and expenses) incurred by Buyer or its Affiliates in connection with the investigation, negotiation, execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the participation in and monitoring of the Cases, such expenses to be set forth in a reasonably detailed written itemization of such expenses (the “Expense Reimbursement Statement”)

“Expense Reimbursement Statement” shall have the meaning ascribed to such term in the definition of “Expense Reimbursement.”

“FCC” means the Federal Communications Commission.

“FCC Consent” means the grant by the FCC of its consent to the transfer of the FCC Licenses in connection with the consummation of the transactions contemplated hereby.

“FCC Licenses” means all Licenses issued by the FCC held by Sellers or the Operating Subsidiaries, as set forth on Schedule 2 1(d) of the Disclosure Schedules.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Governmental Entity” means any federal, state, local or foreign government or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof or any federal, state, local or foreign court, tribunal or arbitrator (including the Bankruptcy Court)

“Hazardous Substances” means any substance or material that: (1) is or contains asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum or petroleum-derived substances or wastes, radon gas or related materials, or (11) requires investigation, removal or remediation under any Environmental Law, or is defined, listed or identified as a “hazardous waste,” “hazardous substance,” “toxic substance” or words of similar import thereunder

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any successor law and the rules and regulations promulgated thereunder or under any successor law.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Law” means any federal, state, local, municipal or foreign statute, law, ordinance, regulation, rule, code, order, principle of common law or judgment enacted, promulgated, issued, enforced or entered by any Governmental Entity, or other requirement or rule of law.

“Liabilities” means, as to any Person, all debts, adverse claims, liabilities, commitments, responsibilities, damages and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, of such Person, whether accrued, vested or otherwise, whether known or unknown and whether or not actually reflected, or required to be reflected, in such Person’s balance sheets or other books and records

“License” means all licenses, franchises, permits, consents, waivers, registrations, certificates, and other governmental or regulatory permits, authorizations or approvals required to be issued or granted by a Governmental Entity for the operation of the Business and for the ownership, lease or operation of Sellers’ or the Operating Subsidiaries’ properties

“Lien” means any lien, lease, right of first refusal, servitude, claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust or any other encumbrance, restriction or limitation whatsoever.

“Litigation” means any claim, action, suit, investigation or proceeding before any court, arbitrator or other Governmental Entity.

“Material Adverse Effect” means any event, effect or change, individually or in the aggregate with such other events, effects or changes, that has had, has or could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), Liabilities, properties, assets (including intangible assets) or results of operations of Allegiance or the Business, in either case taken as a whole; provided that none of the following shall be deemed to constitute and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: any adverse event, effect or change arising from or relating to (1) general business or economic conditions; (2) national or international political conditions, including the engagement of the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States; (3) financial, banking or securities market conditions (including any disruption thereof and any decline in the price of any security (including any security or creditor claims of or with respect to Allegiance) or any market index); (4) changes in GAAP or any application of accounting standards after the date hereof, including the American Institute of Certified Public Accountants Statement of Position 90-7 “Financial Reporting by Entities in Reorganization Under the Bankruptcy Code” and Financial Accounting Standards Board in Statement of Financial Accounting Standards No. 144 “Accounting for the Impairment or Disposal of Long-Lived Assets;” (5) the taking of any action specifically contemplated by this Agreement and the other agreements contemplated

hereby or the announcement of the transactions contemplated by this Agreement, or (6) changes in Law or binding directives issued by any Governmental Entity.

“Net Working Capital” for any date of determination, means as of the close of business on such date, Working Capital Assets minus Working Capital Liabilities.

“Operational Restructuring Activities” means Sellers’ actions taken with the intent to preserve cash, improve the efficiency and reduce the costs of the Business consisting of (i) reducing the number of Employees to approximately 3,000 as of September 30, 2003; (ii) rejecting Executory Contracts in the Cases (and from and after the date hereof, solely in accordance with this Agreement); (iii) waiving, decommissioning or abandoning assets and other rights that are not material to the operation of the Business and in instances in which the estimated cost of salvaging or selling such assets exceeds the anticipated proceeds, (iv) marketing and seeking to sell certain Excluded Assets, and (v) taking other actions in the Cases specifically approved by the Bankruptcy Court prior to the date hereof, whether such action occurs prior to, on or subsequent to the date hereof.

“Order” means any judgment, order, injunction, writ, ruling, decree, stipulation or award of any Governmental Entity

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business by Sellers and the Operating Subsidiaries as debtors and debtors-in-possession in the Cases consistent with past practice through the date hereof

“Out of Region Business” means the operations of the Business conducted outside of the states of Arizona, Colorado, Oregon, Washington and Minnesota.

“Permitted Lien” means (i) any Lien for Taxes not yet due or delinquent; (ii) any statutory Lien arising in the Ordinary Course of Business or by operation of Law with respect to a Liability that is not yet due or delinquent; (iii) easements, leases, reservations, licenses or other matters of record affecting any property or assets of Allegiance, provided that such easements, leases, reservations, licenses or other matters do not materially detract from the value of or impair the use of such property or assets; and (iv) Liens on Acquired Assets in favor of Allegiance’s secured lenders to be released at Closing.

“Person” means an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a joint stock company, a labor union, an estate, a *Governmental Entity* or any other entity

“post-Petition” means any time after the commencement of the Cases.

“pre-Petition” means any time prior to the commencement of the Cases.

“Regulatory Transition Process” means the process as set forth in this Agreement, the Operating Agreement, the Transition Plan and other related documents for obtaining all approvals, consents (including assignments of any permits and rights of way), certificates, waivers and other authorizations required to be obtained from, or filings or other notices required to be made with or to, any Governmental Entities having jurisdiction over any of the Acquired Assets in order to consummate the transactions contemplated by this Agreement and the other Transaction Documents and the transfer of such Acquired Assets, including the Non-Transferred Assets, to Buyer upon the receipt of such approvals

“Release” means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, groundwater or air, or otherwise entering into the environment

“Representative” means, with respect to any Person, such Person’s officers, directors, employees, agents and representatives (including any investment banker, financial advisor, accountant, legal counsel or expert retained by or acting on behalf of such Person or its Subsidiaries)

“Retail Ending Lines” means the number of lines in service from Allegiance’s billing systems based upon line equivalency and consistent with the methodology used to report retail ending lines on Allegiance’s monthly flash reports. Line equivalency is defined per product and is maintained by Allegiance’s Product Hierarchy database. For example, a fully-utilized data T-1 is counted as 24 lines.

“Sale Delay” means the failure to adhere to the timeline attached hereto as Exhibit J with respect to the Sale Order Approval Date.

“Sale Hearing” means the hearing to be scheduled and conducted by the Bankruptcy Court to consider approval and entry of the Sale Order.

“Sale Motion” means the motion or motions of Sellers seeking approval and entry of the Bidding Procedures Order and the Sale Order.

“Sale Order” means an order in the form of Exhibit C hereto, and otherwise in form and substance reasonably acceptable to ATI and Buyer.

“Sale Order Approval Date” means the date the Bankruptcy Court approves the Sale Order.

“Scheduled Future Disconnects” means scheduled backlog of line disconnects from Allegiance’s backlog report as determined by Sellers in accordance with past custom and practice

“Scheduled Future Installs” means scheduled backlog of line installs from Allegiance’s backlog report as determined by Sellers in accordance with past custom and practice.

“Sellers’ Knowledge” and any similar terms used herein means the actual knowledge of Royce J Holland, C. Daniel Yost, Thomas M. Lord, G. Clay Myers, Christopher MacFarland, J Timothy Naramore, Anthony J Parella or Mark B. Tresnowski, without any duty to investigate

“Shared Technologies” means Shared Technologies Allegiance, Inc., a wholly owned Subsidiary of ATCW

“State PUC” means any state and local public service and public utilities commission having regulatory authority over the Business, as conducted in any given jurisdiction

“State PUC Consent” means the grant by any State PUC of its consent to the assignment of the State PUC Licenses or any Non-Transferred Assets associated with such Licenses, in connection with the consummation of the transactions contemplated hereby.

“State PUC Licenses” means all Licenses issued or granted by the State PUC held by Sellers or any Operating Subsidiary in each applicable jurisdiction, as set forth on Schedule 2 1(d) of the Disclosure Schedules.

“Subsidiary” means, with respect to any particular Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

“Tax” or “Taxes” means all taxes, charges, fees, duties, levies or other assessments, including income, gross receipts, net proceeds, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, license, payroll, unemployment, environmental, customs duties, capital stock, disability, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational and interest equalization, windfall profits, severance and employees’ income withholding and Social

Security taxes imposed by the United States or any other country or by any State, municipality, subdivision or instrumentality of the United States or of any other country or by any other tax authority, including interest, penalties or additions to tax attributable to such Taxes or any Tax Return, and shall include any transferee or successor liability in respect of Taxes (whether by contract or otherwise) and any liability in respect of any Taxes as a result of being a member of any Affiliated Group.

“Tax Return” means any statement, report, return or other information required to be filed with respect to any Tax (including any attachments thereto and any amendment thereof) including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, consolidating, combined or unitary returns in which any Seller or Operating Subsidiary is or was included or includable

“Transaction Documents” means this Agreement, the Transition Services Agreement, the Purchase Price Escrow Agreement, the Master Services Agreement, the Operating Agreement, the Voting Agreement, the Adjustment Escrow Agreement and all Disclosure Schedules, certificates, contracts and agreements being delivered or entered into pursuant to this Agreement.

“Transfer Tax” or “Transfer Taxes” means any federal, state, county, local, foreign and other sales, use, transfer, conveyance, documentary transfer, recording or other similar tax, fee or charge imposed upon the sale, transfer or assignment of property or any interest therein or the recording thereof, and any penalty, addition to tax or interest with respect thereto, but such term shall not include any tax on, based upon or measured by, the net income, gains or profits from such sale, transfer or assignment of the property or any interest therein

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any successor law, and the rules and regulations promulgated thereunder and under any successor law, and any similar state, local or foreign law, regulation or ordinance

“Working Capital Assets” means the consolidated current assets of Allegiance set forth on Exhibit G, determined in accordance with GAAP applied on a basis consistent with the most recent balance sheet included in the Financial Statements to the extent they are included in the Acquired Assets.

“Working Capital Liabilities” means the consolidated current liabilities of Allegiance set forth on Exhibit G, determined in accordance with GAAP applied on a basis consistent with the most recent balance sheet included in the Financial Statements to the extent they are included in the Assumed Liabilities.

1.2 Other Defined Terms. The following additional terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
Accounting Referee	3.4(d)
Acquired Assets	2.1
Additional Amount	3.6(d)
Adjustment Escrow Account	3.2(b)(iii)
Adjustment Escrow Agent	3.2(b)(ii)
Adjustment Escrow Agreement	3.2(b)(iii)
Allegiance	Recitals
Allocation Schedule	3.7
Antitrust Laws	6.14(b)
Approval Motions	6.3(a)
Assumed Contracts	3.5(d)
Assumed Contracts List	3.5(d)
Assumed Liabilities	2.3
ATCW	Preamble
ATI	Preamble
Avoidance Actions	2.2(e)
Balance Sheet	4.6(a)
Balance Sheet Date	4.6(a)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
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Business	Recitals
Buyer	Preamble
Buyer Group	9.7
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Cash and Cash Equivalents	2.2(a)
Cash Purchase Price	3.2(a)
Claim Over	9.7
Claims	2.1(f)
Closing	3.1(a)
Closing Date	3.1(a)
Committee	6.5(c)
Competing Transaction	6.17(a)
Deposit Adjustment Amount	3.5(b)
Designated Change	6.14(b)
Disclosure Statement	6.3(a)
Early Closing Election	8.3(c)
Early Funding Date	3.1
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Purchase Price Escrow Agent	3.2(b)
Purchase Price Escrow Agreement	3.2(b)
Purchase Price Escrow Amount	3.2(b)
Purchase Price Stock Escrow	3.2(b)
Real Property Leases	2.1(a)
Required Interconnection Agreements	2.5
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Securities Act	6.28
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Term	Section
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Sellers' Intentional Breach	8.2
Senior Credit Agreement	4.12
Shared Hosting Business	6.1
Shareholder Approval	6.29
Third Person	9.7
Total Gross End User Revenue	3.6(a)
Total Retail Net Ending Lines	3.6(a)
Transferred Employees	6.8(b)
Transition Plan	6.2(a)
Transition Services Agreement	7.3(d)
Voting Agreement	Recitals
XO Common Stock	3.2(a)

ARTICLE II
TRANSFER OF ASSETS AND LIABILITIES

2.1 Assets to be Sold. Subject to Sections 2.2, 2.5, 2.6, 2.7 and 6.2, the other provisions of this Agreement and the Sale Order, at the Closing, Sellers shall sell, convey, assign, transfer and deliver to Buyer or a designee of Buyer free and clear of all Liens and Liabilities (other than Permitted Liens of the type included in clause (iii) of the definition of Permitted Liens), and Buyer shall purchase, acquire, and accept all of Sellers' right, title and interest in and to all of Sellers' properties, assets and rights of every nature, kind and description, tangible and intangible (including goodwill), whether real, personal or mixed, whether accrued, contingent or otherwise and whether now existing or hereafter acquired, including the following (collectively, the "Acquired Assets")

(a) The leases or subleases and all amendments thereto under which any of Sellers is a lessor or lessee or sublessor or sublessee of real property (collectively, the "Real Property Leases") as set forth on the Assumed Contracts List, including all improvements, fixtures and other appurtenances thereto and rights in respect thereof and any related security deposits,

(b) The furniture, fixtures, equipment, machinery, supplies, vehicles, inventory, and other tangible personal property, including the network equipment assets and facilities owned or used by Sellers (collectively, the "Equipment");

(c) The leases which relate to Equipment and leases of dark fiber (collectively, the "Personal Property Leases") as set forth on the Assumed Contracts List,

(d) All Communications Licenses and any other Licenses, including those listed on Schedule 2.1(d) of the Disclosure Schedules, to the extent the same are transferable or assignable pursuant to section 365 of the Bankruptcy Code or as

otherwise permitted by Law (or, to the extent not transferable or assignable, all right, title and interest in such Licenses, to the fullest extent such right, title and interest may be transferred or assigned); provided, that to the extent that Buyer does not require any such Communications License or Licenses, it may in its sole discretion decline to acquire such Communications License or Licenses by providing written notice to Sellers prior to the Closing Date, in which case such a License shall not be an Acquired Asset hereunder

(e) The Assumed Contracts not described in Section 2.1(a) or 2.1(c) above, including any related security deposits (including the deposits described in Section 3.5(b) hereof), advance payments, customer advances and customer deposits;

(f) Except as set forth in Section 2.2(e) and 2.2(f), all rights, demands, claims, actions, rights of set off, counterclaims and causes of action of any kind (collectively, the "Claims") brought by or for the benefit of any Seller or Operating Subsidiary relating to the operation of the Business;

(g) Accounts, notes and other receivables of Sellers (other than pre-Petition carrier gross accounts receivable, including those of ILECs which were recorded on the books and records of Sellers as of May 14, 2003, in an amount up to \$58.3 million),

(h) Any books, records, files or papers of Sellers, whether in hard copy or computer format, relating to the Acquired Assets or the Non-Transferred Assets (upon such assets becoming Acquired Assets) or to the operation of the Business, including management information systems or software owned by Sellers, engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, personnel and employment records, customer lists, customer information, vendor lists, catalogs, research material, source codes, carrier identification codes, technical information, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same but excluding any books, records, files or papers that relate to any Taxes of Sellers that are Excluded Liabilities;

(i) Any of Sellers' right, title or interest in or to any of Sellers' patents, patent registrations, patent applications, trademarks (including "*allegianttelecom,inc*" and design), trademark registrations, trademark applications, tradenames, copyrights, copyright applications, and copyright registrations relating to the Business and the rights to sue for, and remedies against, past, present and future infringements thereof and the rights of priority and protection of interests therein under applicable laws (collectively, the "Intellectual Property"),

(j) Any computer software programs and databases used by any Seller or Operating Subsidiary, whether owned, licensed, leased, or internally developed to the extent the same are transferable or assignable pursuant to section 365 of the Bankruptcy Code or as otherwise permitted by Law (or, to the extent not transferable or

assignable, all right, title and interest in such programs and databases, to the fullest extent such right, title and interest may be transferred or assigned),

(k) All taxation matrixes utilized by Sellers in the determination of the taxability of products sold by Sellers, other than those which are commercially available;

(l) Any telephone numbers, electronic mail addresses, carrier identification codes and local exchange codes used by Sellers in the conduct of the Business,

(m) All of Sellers' currently allocated, assigned, used and unused internet protocol addresses, domain names, and autonomous system numbers from applicable authorities governing the use and structure of the Internet, including the American Registry for Internet Numbers,

(n) All bank accounts and lock-boxes, including those listed on Schedule 2 1(n) of the Disclosure Schedules;

(o) All transferable rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets;

(p) All rights of Sellers under non-disclosure, confidentiality, non-compete or non-solicitation agreements with employees or agents of Sellers or with third parties,

(q) All insurance claims and insurance proceeds (other than with respect to any director and officer, errors and omissions, fiduciary and commercial crime policies) in respect of an Acquired Asset or an Assumed Liability, and with respect to insurance proceeds, to the extent received by Allegiance after the Early Funding Date,

(r) All security, vendor, utility and other deposits;

and

(s) All equity interests including capital stock held by ATCW in each of its direct and indirect reorganized Subsidiaries, other than the stock of Shared Technologies, and the corporate books and records relating to the organization and existence of each such reorganized direct and indirect Subsidiary (collectively, without including Shared Technologies, the "Operating Subsidiaries").

2.2 Excluded Assets The Acquired Assets shall not include any of Sellers' or the Operating Subsidiaries' right, title or interest in or to any assets or properties of Sellers or the Operating Subsidiaries that are expressly enumerated below (collectively, the "Excluded Assets")

(a) Subject to Section 2.1(q), cash and cash equivalents, short-term and long-term investments, or similar type investments, uncollected checks and funds in transit to the extent there is a corresponding reduction in accounts receivable included in Acquired Assets, Treasury bills and other marketable securities existing as of the Closing Date (“Cash and Cash Equivalents”);

(b) Bank accounts and lock-boxes described as “Excluded Assets” on Schedule 2.1(n) of the Disclosure Schedules,

(c) Any security, vendor, utility or other deposits (but only to the extent such deposits specifically relate to Excluded Assets or Excluded Liabilities),

(d) Any Contracts other than the Assumed Contracts,

(e) All Claims that Sellers or any of their respective Affiliates may have against any third party, including any Governmental Entity, for causes of action based on Chapter 5 of the Bankruptcy Code (“Avoidance Actions”) and for refund or credit of any type with respect to Taxes accrued or paid with respect to periods (or any portion thereof) ending on or prior to the Closing Date;

(f) All Claims which Sellers or any of their respective Affiliates may have against any third Person with respect to any Excluded Asset or Excluded Liability;

(g) The capital stock of Shared Technologies, which is a Subsidiary of ATCW, but is not a Seller hereunder, its assets, and assets used primarily in the Shared Technology business and set forth in Schedule 2.2(g) of the Disclosure Schedules,

(h) The Shared Hosting Business, including Contracts, accounts receivable, equipment and Intellectual Property specifically related thereto,

(i) The capital stock of each Seller and each Seller’s corporate books and records relating to its organization and existence;

(j) Any director and officer, errors and omissions, fiduciary or commercial crime insurance policies and related insurance claims and insurance proceeds;

(k) All insurance policies;

(l) Any real property which is owned by any of Sellers (“Owned Real Property”) including any proceeds received in connection with the sale thereof,

(m) Any loans or notes payable to any Seller or Operating Subsidiary from any employee of any Seller or Operating Subsidiary, other than Ordinary Course of Business employee advances;

(n) Pre-Petition carrier gross accounts receivable, including those of ILECs, which were recorded on Allegiance's books and records as of May 14, 2003, in an amount up to \$58.3 million, and

(o) Any assets set forth in Schedule 2.2(o) of the Disclosure Schedules

2.3 Liabilities to be Assumed by Buyer Subject to Sections 2.4, 2.5 and 6.2, upon the transfer of the Acquired Assets on the Closing Date, Buyer shall assume only the following Liabilities of Sellers (collectively, the "Assumed Liabilities"):

(a) Liabilities arising out of or relating to the ownership of the Acquired Assets and the operation of the Business by Buyer or any of its assignees, including Liability for personal injury of customers or employees, but in each case only to the extent that the event or state of facts giving rise to such Liability occurs after the Early Funding Date,

(b) (i) Liabilities under the Assumed Contracts, but only to the extent that the event or state of facts giving rise to such Liability occurs after the Early Funding Date, and (ii) any post-Petition Liabilities under the Assumed Contracts incurred in the Ordinary Course of Business but only to the extent such Liabilities are reflected in Allegiance's financial statements as of the Early Funding Date and taken into account in the determination of Closing Working Capital;

(c) (i) Liabilities under trade accounts payable arising in the Ordinary Course of Business and (ii) current Liabilities arising in the Ordinary Course of Business under the accounts set forth on Exhibit K, and in each case only to the extent that (x) the event or state of facts giving rise to such Liability occurs post-Petition and (y) such Liabilities are reflected in Allegiance's financial statements as of the Early Funding Date and taken into account in the determination of Closing Working Capital; provided, however, that Buyer shall not assume any of Sellers' Liabilities for professional fees and other related costs of administering the Cases;

(d) Liabilities for fifty percent (50%) of any and all Transfer Taxes due as a result of the transactions contemplated by this Agreement as set forth in Section 6.10;

(e) Liabilities for severance costs (the amount thereof in accordance with Allegiance's currently existing severance policy and past practice as described in Exhibit L) related to non-Transferred Employees who are Employees on the date hereof or hired in the Ordinary Course of Business thereafter and are terminated at Buyer's request after the date hereof and Liabilities to Allegiance's employees pursuant to Section 6.8(b), provided, however, that in no event shall Buyer be responsible for more than six (6) months of severance per Employee,

(f) Liabilities associated with customers of the Business, including credits or refunds due such customers for any reason, to the extent that the event or state of facts giving rise to such Liabilities occurs after the Early Funding Date; and

(g) Liabilities related to any obligations under Section 4980B of the Internal Revenue Code to provide continuation of group medical coverage on and after the Early Funding Date with respect to any employee or former employee employed in connection with the Business or other qualified beneficiary but only to the extent Buyer may be required to assume any such Liability by Law.

2.4 Excluded Liabilities Buyer shall not assume, and shall not be deemed to have assumed, any Liabilities of Sellers, and Sellers shall be solely and exclusively liable and shall indemnify and hold harmless Buyer and its Affiliates with respect to all Liabilities of Sellers other than the Assumed Liabilities, including those Liabilities set forth below (collectively, the “Excluded Liabilities”):

- (a) Any Liabilities which arise, whether before, on or after the Closing, out of, or in connection with, the Excluded Assets, including any Contract which is not an Assumed Contract;
- (b) Any Liabilities under the Assumed Contracts or accounts payable to the extent not assumed pursuant to Section 2.3,
- (c) Any Liabilities arising from a breach of an Assumed Contract to the extent that the event or state of facts giving rise to such Liability occurs prior to the Early Funding Date;
- (d) Any Liabilities arising out of, or in connection with, any pending or threatened Litigation arising out of the operation of the Business to the extent that the event or state of facts giving rise to such Liability occurs prior to the Early Funding Date,
- (e) Any Liabilities arising out of or in connection with any indebtedness of Sellers or any of their respective Affiliates to their lenders, noteholders or otherwise (other than, to the extent provided in Section 2.3, post-petition Liabilities relating to Assumed Contracts which are characterized as capital leases by Sellers);
- (f) Any Liabilities for which Sellers have received an invoice which is not taken into account in the determination of Early Funding Date Working Capital,
- (g) Liabilities related to Shared Technologies or the Shared Hosting Business;
- (h) Liabilities related to the Owned Real Property;
- (i) Any Liabilities of Sellers or any Affiliate thereof (or any predecessor thereto) relating to Taxes (other than Transfer Taxes referred to in Section 2.3(d) and Taxes described on Exhibit K), including all Taxes attributable to or incurred in any period (or portion thereof) ending on or before the Early Funding Date;
- (j) All Liabilities of any Seller, any of their Affiliates or any predecessor of any Seller resulting from, caused by or arising out of, directly or

indirectly, the conduct of the Business or any Sellers' or any of their Affiliates ownership, operation or lease of any properties or assets or any properties or assets previously used in the Business by any Seller, any of their Affiliates or any predecessor of any Seller or any of their Affiliates at any time prior to the Early Funding Date, that constitute, may constitute or are alleged to constitute a violation of or Liability arising under any Environmental Law or other Law including any state or federal communications law or regulation;

(k) All Liabilities arising from or relating to the employment, or termination of employment, of any Employee, former Employee, independent contractor or contingent worker with respect to the Business, including pursuant to Employee Benefit Plans, other than those specifically assumed pursuant to Section 2.3 and 6.8 herein, and

(l) All Liabilities arising from or relating to any collective bargaining agreement, including any obligation for benefits to employees covered thereunder and, specifically, any Multiemployer Plan liability

2.5 Non-Transferred Assets. Notwithstanding the foregoing provisions of Article II, and subject to Section 6.2 and the Operating Agreement, the parties agree that, to the extent that as of the Closing (i) certain of the Acquired Assets cannot be transferred to Buyer pending the issuance of further FCC Consents or State PUC Consents or (ii) certain of the Acquired Assets are associated with one or more interconnection agreements, for which the ILEC's consent is required and which are reasonably necessary, in Buyer's sole discretion, to the operation of the Acquired Assets ("Required Interconnection Agreements") and receipt of any ILEC consents or expiration of any notice periods necessary to assign such Required Interconnection Agreements remains pending as of the Closing, Sellers shall retain such assets (the "Non-Transferred Assets") pending receipt of such consents or expiration of such notice periods. For the avoidance of doubt, Buyer shall have the right, in its sole discretion, to designate any Acquired Asset (including any Required Interconnection Agreement) as a Non-Transferred Asset. During the period that the Non-Transferred Assets are held by Sellers, Buyer will provide management services to Sellers pursuant to the Operating Agreement. Upon receipt from time to time of any such necessary consents, such Non-Transferred Assets as are subject to such consents shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities, and within five (5) Business Days of Buyer's written request, Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets and related Assumed Liabilities had otherwise been transferred to and assumed by Buyer at the Closing. With respect to assets that are designated by Buyer as Non-Transferred Assets and which are not subject to obtaining any further consents after the Closing, such Non-Transferred Assets shall be transferred to Buyer and Buyer will assume all related Assumed Liabilities, within five (5) Business Days of Buyer's written request, at which time Sellers will deliver a bill of sale and the requirements of Section 3.1 below shall have been deemed to be satisfied as if such Non-Transferred Assets had otherwise been transferred to Buyer at the Closing. In addition, Non-Transferred Assets shall include all of the Seller Marks, which shall be licensed to Buyer upon the Closing as set forth in the

Operating Agreement. After the expiration or termination of the Operating Agreement, upon the written request of Buyer, all right, title and interest in and to the Seller Marks shall be transferred to and vest in Buyer.

2.6 Contract Assignment. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that there shall be excluded from the Acquired Assets any Assumed Contract that is not assignable or transferable pursuant to the Bankruptcy Code without the consent of any Person other than Sellers or any Affiliate of Sellers, to the extent that such consent shall not have been given on or prior to the Closing, provided, however, that Sellers shall use commercially reasonable efforts (including prosecution of appropriate motions pursuant to Section 365 of the Bankruptcy Code) to endeavor to obtain all necessary consents to the assignment thereof, and, upon obtaining the requisite consents thereto, such Acquired Asset shall be assigned to Buyer. Notwithstanding any provision to the contrary herein, Buyer and Sellers agree that all reasonable out-of-pocket costs and expenses (other than Cure Amounts) incurred relating to Sellers' assignment to Buyer of the Assumed Contracts set forth on Schedule 2.6 of the Disclosure Schedules shall be shared equally between Buyer on the one hand and Sellers on the other hand.

2.7 Alternative Structure. Notwithstanding Section 2.1, after the Sale Order Approval Date, Buyer shall have the right, on at least fifteen (15) Business Days notice to ATI, to require Sellers to transfer immediately prior to the Closing, some or all of the Equipment or other Acquired Assets to one or more newly formed Delaware limited liability companies to be formed and owned by one or more Sellers. If Buyer gives such notice, the membership interests in such limited liability companies shall be deemed Acquired Assets hereunder and Buyer shall acquire such membership interests at the Closing without the payment of any additional consideration. Buyer shall be permitted to give one or more notices pursuant to this Section 2.7. In addition, at Buyer's option, a similar procedure will apply to any Equipment or other Acquired Assets which constitutes a Non-Transferred Asset. Fifty percent (50%) of all reasonable out-of-pocket costs and expenses incurred in connection with Sellers' performance of this Section 2.7 shall be borne by each of Buyer on the one hand and Sellers on the other hand.

ARTICLE III CLOSING

3.1 Closing, Transfer of Possession; Certain Deliveries.

(a) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, the closing of the transactions contemplated herein (the "Closing") shall take place no later than the fifth (5th) Business Day following the date on which the conditions set forth in Article VII have been satisfied or waived (other than those conditions with respect to actions of the parties to be taken at the Closing itself, but subject to the satisfaction or waiver of such conditions), or on such other date as the parties hereto shall mutually agree; provided, however, that if the Closing would be scheduled to occur less than two (2) Business Days after the receipt of the performance

reports for the prior month referred to in Section 6.5(d) hereof, Buyer shall not be required to close until two (2) Business Days after its receipt of such performance reports. The Closing shall be held at the offices of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, at 5.00 p.m., local time, unless the parties hereto otherwise agree. The actual time and date of the Closing are herein called the "Closing Date."

(b) At the Closing, Sellers shall deliver to Buyer.

(i) A duly executed bill of sale substantially in the form attached hereto as Exhibit D,

(ii) A certified copy of the Sale Order,

(iii) The officer's certificate required to be delivered pursuant to Section 7.2(c) hereof,

(iv) Assignments of lease and customary title affidavits;

(v) A certification of non-foreign status for each Seller in the form required under Treasury Regulation Section 1.1445-2(b); and

(vi) All other instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer and Sellers, as may be necessary to convey the Acquired Assets to Buyer or Buyer's designee

(c) At the Closing, Buyer and Sellers shall take the actions specified in Section 3.2(c) and Buyer shall deliver to ATI (on behalf of Sellers):

(i) All certificates required by all relevant taxing authorities that are necessary to support any available exemption from the imposition of Transfer Taxes,

(ii) Certified resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated by this Agreement;

(iii) To the extent shareholder approval is required, certified resolutions of shareholders of Buyer authorizing the execution, delivery and performance of the Transaction Documents and the transactions contemplated by this Agreement;

(iv) The officer's certificate required to be delivered pursuant to Section 7.3(c); and

(v) An assumption agreement substantially in the form attached hereto as Exhibit E.

(d) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, no later than the fifth (5th) Business Day following the date on which the conditions set forth in Sections 7.1, 7.2 and 7.3 have been satisfied or waived, or at such other date as the parties hereto shall mutually agree (the "Early Funding Date"), (i) Buyer shall (A) deliver (1) the Cash Purchase Price, plus or minus, the applicable adjustments to the Purchase Price as set forth in Section 3.2(b) below and (2) the XO Common Stock, into escrow as described in Section 3.2, (B) execute and deliver the Operating Agreement and (C) commence operation of the Business under the terms of the executed Operating Agreement, (ii) Seller shall execute and deliver the Operating Agreement and (iii) upon the Early Funding Date, the risk of loss shall transfer to Buyer, and Buyer's obligation to close the transactions contemplated hereby shall become unconditional and irrevocable

3.2 Purchase Price.

(a) The "Purchase Price" consists of: (i) Three Hundred Eleven Million and Two Hundred Thousand Dollars (\$311,200,000.00) (the "Cash Purchase Price"), as such amount is adjusted pursuant to Section 3.2(b), and (ii) 45,380,000 shares of common stock of Buyer, par value \$.01 per share (the "XO Common Stock") (subject to adjustment for stock splits, stock dividends, share exchanges, recapitalizations, share combinations and reorganizations and other similar transactions occurring after the date hereof)

(b) In the event of an Early Funding Date, Buyer shall (i) wire transfer the sum of:

- (1) the Cash Purchase Price, plus or minus
 - (2) the Initial Working Capital Adjustment (if any) set forth in Section 3.4(f), minus
 - (3) the Adjustment Escrow Amount, minus
 - (4) the Earnest Money Deposit, minus
 - (5) the portion of the Performance Adjustment Amount that is to be settled in cash (if any) as determined in accordance with Section 3.6(a), plus
 - (6) the Deposit Adjustment Amount (if any), plus
 - (7) the Non-ILEC Cure Adjustment set forth in Section 3.5(c) (the Cash Purchase Price, as so adjusted is referred to herein as the "Adjusted Cash Purchase Price") and
- (ii) deliver 45,380,000 shares of XO Common Stock (subject to adjustment for stock splits, stock dividends, share exchanges, recapitalizations, share

combinations and reorganizations and other similar transactions occurring after the date hereof) (the "Purchase Price Escrow Stock" and together with the Adjusted Cash Purchase Price, the "Purchase Price Escrow"), in each case into an escrow account (the "Purchase Price Escrow Account") with a bank to be mutually agreed upon to act as escrow agent (the "Purchase Price Escrow Agent") pursuant to an escrow agreement, to be entered into on the Early Funding Date (the "Purchase Price Escrow Agreement"), among ATI, ATCW, Buyer and the Purchase Price Escrow Agent, substantially in the form of Exhibit F-1 hereto, and otherwise in form and substance reasonably acceptable to ATI, ATCW and Buyer. After the Early Funding Date and until the Closing Date, Buyer shall make additional deposits of common stock of Buyer in the event of any stock splits, stock dividends, share exchanges, recapitalizations, share combinations and reorganizations and other similar transactions occurring after the Early Funding Date.

(iii) wire transfer the Adjustment Escrow Amount into an escrow account (the "Adjustment Escrow Account") with a bank to be mutually agreed upon to act as escrow agent (the "Adjustment Escrow Agent") pursuant to an escrow agreement, to be entered into on the Early Funding Date (the "Adjustment Escrow Agreement"), among ATI, ATCW, Buyer and the Adjustment Escrow Agent, substantially in the form of Exhibit F-2 hereto, and otherwise in form and substance reasonably acceptable to ATI, ATCW and Buyer.

Any payment Sellers are obligated to make to Buyer pursuant to Sections 3.4 and/or 3.6 shall be paid from the Adjustment Escrow Amount plus accrued interest thereon. After payment of any required amounts pursuant to Sections 3.4 and 3.6, the Adjustment Escrow Agent shall release the residual amounts of the Adjustment Escrow Amount remaining in the Adjustment Escrow Account to ATI. Notwithstanding the provisions of this Section 3.2(b), in the event the Closing occurs before the Early Funding Date, the Closing Date shall be substituted for the Early Funding Date for all purposes and for all of the provisions of this Section 3.2(b).

(c) Upon the Closing Date, (i) Buyer shall, subject to the terms and conditions of this Agreement, assume the Assumed Liabilities, and (ii) Buyer and Sellers shall deliver a joint written notice to the Purchase Price Escrow Agent directing the Purchase Price Escrow Agent to pay to ATI (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by ATI (on behalf of Sellers) the Adjusted Cash Purchase Price and the Earnest Money Deposit, to deliver to ATI (on behalf of Sellers) the Purchase Price Escrow Stock and deliver to Buyer all earnings accrued thereon in the Purchase Price Escrow Account.

3.3 Earnest Money Deposit. On February 9, 2004, Buyer paid an earnest money deposit equal to Thirty Million Dollars (\$30,000,000) (the "Earnest Money Deposit") in immediately available funds, by wire transfer to ATI. Within five (5) Business Days following the execution of this Agreement, Sellers will deposit the Earnest Money Deposit into the Purchase Price Escrow Account. At the Early Funding Date, the Earnest Money Deposit shall be deducted from the Cash Purchase Price in accordance with Section 3.2(b). If Buyer terminates this Agreement in breach of Section 8.1 hereof or if ATI terminates this Agreement pursuant to Section 8.1(b) (when Buyer

does not have the right to terminate this Agreement pursuant to Section 8.1(b) due to breach of the Agreement by Buyer) or Section 8.1(d) pursuant to a breach by Buyer, then Buyer and Sellers shall within two (2) Business Days of such termination (i) deliver a joint written notice to the Purchase Price Escrow Agent to deliver the Earnest Money Deposit to Sellers and (ii) deliver the accrued interest thereon to Buyer, by wire transfer of immediately available funds, and Sellers shall have no further obligations to Buyer, provided, that in no event shall the payment of the Earnest Money Deposit limit any other remedies Sellers may have against Buyer in the event of any such termination. If this Agreement is terminated for any other reason, then Buyer and Sellers shall within two (2) Business Days of such termination deliver a joint written notice to the Purchase Price Escrow Agent to deliver the Earnest Money Deposit plus accrued interest thereon to Buyer by wire transfer of immediately available funds.

3.4 Working Capital Purchase Price Adjustment

(a) Not less than five (5) Business Days prior to the Early Funding Date, Sellers will prepare and deliver to Buyer a good faith estimate of the Net Working Capital as of the close of business on the day immediately preceding the Early Funding Date (the "Estimated Early Funding Date Working Capital"). Sellers will prepare the Estimated Closing Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003.

(b) As promptly as practicable, but no later than sixty (60) Business Days after the Early Funding Date, Buyer will prepare and deliver to ATI a good faith calculation of Net Working Capital as of the Early Funding Date (the "Early Funding Date Working Capital") Buyer will prepare the Early Funding Date Working Capital in accordance with GAAP and consistent with ATI's preparation of its unaudited balance sheet as of September 30, 2003. Attached as Exhibit G is a schedule showing the calculation of Base Working Capital.

(c) If Sellers disagree with Buyer's calculation of Early Funding Date Working Capital, Sellers may, within fifteen (15) Business Days after delivery by Buyer of the statement pursuant to Section 3.4(b), deliver a notice to Buyer disagreeing with such calculation and setting forth Sellers' calculation of such amount. Any such notice of disagreement shall specify those items or amounts as to which Sellers disagree, and Sellers shall be deemed to have agreed with all other items and amounts contained in the calculation of the Early Funding Date Working Capital. If Sellers do not raise any objections to the Early Funding Date Working Capital within the period described herein, the Early Funding Date Working Capital will become final and binding upon Buyer and Sellers.

(d) If a notice of disagreement shall be duly delivered pursuant to Section 3.4(c), Buyer and Sellers shall, during the fifteen (15) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of Early Funding Date Working Capital. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause representatives from the

Dallas office of Ernst & Young LLP (or, if the Dallas office of Ernst & Young LLP is not independent of Buyer and Sellers, then an alternative "Big Four" accounting firm mutually agreeable to Buyer and Sellers) which representatives have not been engaged or employed within the past five (5) years by Buyer, Sellers or any of their Affiliates (or, if Sellers and Buyer agree to another nationally recognized independent accounting firm, such other firm) (the "Accounting Referee") to review this Agreement and the disputed items or amounts for the purpose of calculating Early Funding Date Working Capital (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator). In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed. The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than thirty (30) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(e) Buyer and Sellers shall, and shall cause their respective Representatives to, cooperate and assist in the calculation of Early Funding Date Working Capital and in the conduct of the review referred to in Section 3.4(d), including providing reasonable and timely access to the books, records, work papers and personnel involved in preparing these calculations.

(f) If Estimated Early Funding Date Working Capital (i) exceeds Base Working Capital, then at the Early Funding Date, Buyer shall pay into the Adjustment Escrow Account an additional amount of cash equal to such excess or (ii) is less than Base Working Capital, then the Cash Purchase Price will be reduced by an amount equal to such deficiency. Any adjustment pursuant to this Section 3.4(f) is referred to herein as the "Initial Working Capital Adjustment."

(g) If Final Working Capital equals Estimated Early Funding Date Working Capital, and if no further payments are or may become due pursuant to Section 3.6 hereof, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Buyer and Sellers shall deliver a joint written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers.

(h) If Final Working Capital exceeds Estimated Early Funding Date Working Capital, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Buyer shall pay such amount (by wire transfer of immediately available funds) to Sellers and, if no further payments are or may become due pursuant to Section 3.6 hereof, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the

Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers.

(i) If Final Working Capital is less than Estimated Working Capital, then within three (3) Business Days of the later of the Closing Date or the final determination of such amount pursuant to this Section 3.4, Sellers and Buyer shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay such deficit amount plus the accrued interest thereon out of the Adjustment Escrow Account (by wire transfer of immediately available funds) to Buyer, provided that the Adjustment Escrow Account shall be the sole source of payment for any such deficiency and in no event shall Sellers be otherwise liable for any such deficiency. To the extent any Adjustment Escrow Amount remains after payment of any such deficit, and if no further payments are or may become due pursuant to Section 3.6 hereto, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the remaining Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Sellers. For purposes of this Agreement, "Final Working Capital" means Early Funding Date Working Capital (i) as shown in Buyer's calculation delivered pursuant to Section 3.4(b) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.4(c); or (ii) if such a notice of disagreement is delivered, (A) as agreed by Buyer and Sellers pursuant to Section 3.4(d) or (B) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 3.4(d).

(j) Any adjustment under this Section 3.4 shall be treated as an adjustment to the Purchase Price for federal, state and local income Tax purposes

3.5 Cure Price Adjustment.

(a) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under Allegiance's interconnection agreements with incumbent local exchange carriers ("ILECs"), together with any other payments made to settle pre-Petition disputes between any of Sellers or the Operating Subsidiaries and ILECs under such agreements, under tariffs or otherwise after the date hereof (the "ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(a). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers or the Operating Subsidiaries owed by ILECs (the "ILEC Set Off Amounts") shall be set off against the ILEC Cure Amounts and thereby used as currency to pay the ILEC Cure Amounts. Sellers shall pay all ILEC Cure Amounts (whether in cash or by application of the ILEC Set Off Amounts). Buyer and Sellers agree that subject to this Section 3.5(a), Buyer should have standing in the Cases with regard to ILEC Cure Amounts and the parties shall take such position in the Cases.

Notwithstanding anything herein to the contrary (including Section 6.1(k)), prior to the Sale Order Approval Date, as between Buyer and Sellers, Sellers shall have sole control over their business relationships, including without limitation, the exclusive right to negotiate and settle with the ILECs, and shall be permitted to terminate, adopt and amend interconnection agreements but shall not prior to such time settle any ILEC Cure Amounts in a manner which would be injurious in any material respect to Buyer without Buyer's consent (which will not be unreasonably withheld) or take any action (including as specified above) if the intent or reasonably anticipated consequence thereof is or would be to injure in any material respect to Buyer's continuing relationship with such ILEC after the Closing Date. Buyer shall be permitted to participate in any such negotiations and shall be kept reasonably informed by Sellers of the process.

(b) If deposits are required by ILECs in connection with establishing new interconnection agreements for the Business between the date hereof and the Early Funding Date and such deposits are outstanding at the time of the Early Funding Date, the Cash Purchase Price shall be increased by an amount (the "Deposit Adjustment Amount") equal to seventy-five percent (75%) of the first \$13 million of such deposits and one hundred percent (100%) of the deposits above \$13 million.

(c) The Cure Amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults, if any, under the Assumed Contracts, other than the ILEC Cure Amounts (the "Non-ILEC Cure Amounts") shall be resolved in accordance with this Section 3.5(c). Buyer and Sellers shall work cooperatively and in good faith with respect to paying, objecting to and settling the Non-ILEC Cure Amounts, it being understood that all pre-Petition accounts receivable of Sellers and the Operating Subsidiaries owed by non-ILECs (the "Non-ILEC Set Off Amounts") shall be set off against the Non-ILEC Cure Amounts and thereby used as currency to pay the Non-ILEC Cure Amounts. Buyer and Sellers agree that given this Section 3.5(c), Buyer should have standing in the Cases with regard to Non-ILEC Cure Amounts and the parties shall take such position in the Cases. The treatment of the Non-ILEC Cure Amounts and all matters related thereto under the Bankruptcy Plan shall be reasonably acceptable to Buyer. Sellers shall pay all Non-ILEC Cure Amounts (whether in cash or by application of the Non-ILEC Set Off Amounts), provided that if the Non-ILEC Cure Amounts are more than \$11 million, the Cash Purchase Price shall be increased by an amount equal to the lesser of (A) two-thirds of the amount by which the Non-ILEC Cure Amounts exceed \$11 million and (B) \$8 million.

The adjustment to the Cash Purchase Price pursuant to this Section 3.5(c) is referred to herein as the "Non-ILEC Cure Adjustment." If as of the time of the Early Funding Date any reserves are established with respect to disputed Non-ILEC Cure Amounts pending resolution of such disputes, the Purchase Price adjustment provided in this Section 3.5(c) shall be made, with respect to the agreed Non-ILEC Cure Amounts, at the Early Funding Date, and with respect to any such reserved amounts, within two (2) Business Days following the resolution of the disputes.

(d) Subject to Section 8.3, (i) on February 13, 2004, Buyer designated the (A) Real Property Leases identified on Schedule 4.21 of the Disclosure

Schedules and (B) other Executory Contracts that are designated with an asterisk on Schedule 4.20 that are to be assumed by Allegiance and not rejected pursuant to section 365 of the Bankruptcy Code and (ii) at least (20) days prior to the date of the Bankruptcy Court's confirmation of the Bankruptcy Plan, Buyer shall designate other Executory Contracts that are to be assumed by Allegiance and not rejected pursuant to section 365 of the Bankruptcy Code (collectively, the "Assumed Contracts List") (those Contracts ultimately set forth on the Assumed Contracts List and as Additional Assumed Contracts pursuant to Section 8.3, if applicable are referred to herein as the "Assumed Contracts") Such assumption and, in the case of Assumed Contracts to which either Seller is a party, assignment by Sellers shall be made at the Closing; provided, however, that the assignment to Buyer of any Assumed Contract related to Non-Transferred Assets shall occur on the later of (i) the Closing or (ii) State PUC Consent or FCC Consent, as applicable At Buyer's discretion, Allegiance agrees to assume or reject any Executory Contract, in whole or in part, to the extent portions of such Executory Contracts are severable Buyer and Sellers agree to keep confidential and not disclose to anyone except (x) legal counsel for the Creditors Committee in the Cases and the agent to Sellers' senior lenders, provided, that, such counsel and agent have executed confidentiality agreements reasonably acceptable to Buyer and Sellers prior to such disclosure and (y) as otherwise required by Law, the Executory Contracts that are identified by Buyer as Assumed Contracts.

3.6 Performance Price Adjustment.

(a) At least two (2) Business Days prior to the Early Funding Date, ATI shall prepare and deliver to Buyer a certificate setting forth the following: (i) total Retail Ending Lines as determined by ATI in accordance with past custom and practice, as of the last day of the last full calendar month prior to the date of the Early Funding Date plus Scheduled Future Installs less Scheduled Future Disconnects as of such day ("Total Retail Net Ending Lines") and (ii) total gross end user revenue for the last full calendar month prior to the date of the Early Funding Date (the "Total Gross End User Revenue") The Purchase Price shall be reduced by the greater of the following (the "Performance Adjustment Amount"). (x) the product of \$625.00 and the amount, if any, by which the Total Retail Net Ending Lines for Allegiance's Out of Region Business is less than 730,000; and (y) the product of fifteen (15) and the amount, if any, by which Total Gross End User Revenue for Allegiance's Out of Region Business is less than \$28 million. To the extent Cash and Cash Equivalents immediately prior to the Early Funding Date exceed One Hundred Eighty Seven Million Dollars (\$187,000,000), the Performance Adjustment Amount (if any) shall reduce the Cash Purchase Price. To the extent such Cash and Cash Equivalents immediately prior to the Early Funding Date are less than or equal to One Hundred Eighty Seven Million Dollars (\$187,000,000), any remaining portion of the Performance Adjustment Amount shall be a reduction in the number of shares of the XO Common Stock (calculated using a \$7.625 per share value). ATI's certificate shall include a calculation of the Performance Adjustment Amount.

(b) If Buyer disagrees with the certificate delivered by ATI pursuant to Section 3.6(a) hereof, Buyer may, within thirty (30) days after Early Funding Date, deliver a notice to ATI disagreeing with the calculations contained in such certificate

and setting forth Buyer's calculations. Any such notice of disagreement shall specify those items or amounts as to which Buyer disagrees, and Buyer shall be deemed to have agreed with all other items and amounts contained in the calculation of the Performance Adjustment Amount. If Buyer does not raise any objections to the Performance Adjustment Amount within the period described herein, the Performance Adjustment Amount will become final and binding upon Buyer and Sellers (the "Final Performance Adjustment Amount") In such event, if no further payments are or may become due pursuant to Section 3.4 hereof, ATI, ATCW and Buyer shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Adjustment Escrow Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to ATI

(c) If a notice of disagreement shall be duly delivered pursuant to Section 3.6(b), Buyer and Sellers shall, during the five (5) days following such delivery, use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the Final Performance Adjustment Amount. If during such period, Buyer and Sellers are unable to reach such agreement, they shall promptly thereafter cause the Accounting Referee to review the disputed items or amounts for the purpose of calculating the Final Performance Adjustment Amount (it being understood that in making such calculation, the Accounting Referee shall be functioning as an expert and not as an arbitrator) In making such calculation, the Accounting Referee shall consider only those items or amounts as to which the parties have disagreed The Accounting Referee shall deliver to Buyer and Sellers, as promptly as practicable (but in any case no later than fifteen (15) days from the date of engagement of the Accounting Referee), a report setting forth such calculation. Such report shall be final and binding upon Buyer and Sellers. The cost of such review and report shall be borne by Buyer and Sellers in the reverse proportion that the aggregate dollar amounts of disputed items which are resolved in favor of Buyer or Sellers (as applicable) bears to the aggregate dollar amount of all disputed items resolved by the Accounting Referee.

(d) If the parties hereto agree, or the Accounting Referee determines, that the Final Performance Adjustment Amount is greater (the "Additional Amount") than the amount set forth in ATI's certificate delivered pursuant to Section 3.6(a), then within two (2) Business Days of such determination pursuant to this Section 3.6, Buyer and Sellers shall deliver a written notice to the Adjustment Escrow Agent pursuant to the Adjustment Escrow Agreement instructing the Adjustment Escrow Agent to pay the Additional Amount plus the accrued interest on such amount (by wire transfer of immediately available funds) to Buyer, and, if no further payments are or may become due pursuant to Section 3.4 hereof, the balance of the Adjustment Escrow Amount plus the accrued interest thereon to ATI. The Adjustment Escrow Account shall be the sole source of payment for any payment obligation of Sellers pursuant to Section 3.6.

3.7 Allocation of Purchase Price Buyer shall, within 120 days after the Closing Date, prepare and deliver to Sellers a schedule (the "Allocation Schedule") allocating the Purchase Price and the Assumed Liabilities among the Acquired Assets in

accordance with Treasury Regulation Section 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. ATI may propose to Buyer specific changes in the Allocation Schedule within ten (10) days of the receipt thereof. If no such changes are proposed in writing to Buyer within such time, Sellers will be deemed to have agreed to the Allocation Schedule. If such changes are proposed, Buyer and ATI will negotiate in good faith and will use their best efforts to agree upon the Purchase Price allocation. If Buyer and ATI cannot mutually resolve ATI's reasonable objections to the Allocation Schedule within ten (10) days after Buyer's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to the Accounting Referee, on the next day for a decision that shall be rendered by the Accounting Referee within thirty calendar days thereafter and shall be final and binding upon each of the parties. The fees, costs and expenses incurred in connection therewith shall be shared in equal amounts by Buyer, on the one hand, and Sellers, on the other hand. Buyer and Sellers each shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby, jointly and severally, represent and warrant to Buyer that as of December 18, 2003 (unless another date is specified).

4.1 Existence; Good Standing and Power. Each Seller and Operating Subsidiary is a corporation validly existing and in good standing under the laws of the state of its incorporation, and has all requisite power and authority to own, lease and operate the Acquired Assets to be sold hereunder and to carry on its business as presently conducted. Each Seller and Operating Subsidiary is qualified or licensed to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires qualification, except where the failure to be so qualified, licensed or in good standing would not reasonably be expected to have a Material Adverse Effect. Each Seller has all requisite power and authority (a) to execute and deliver this Agreement and the other Transaction Documents and (b) subject to entry of the Sale Order, to perform its obligations hereunder and thereunder.

4.2 Authority. The execution, delivery and performance of this Agreement and the other Transaction Documents by each Seller, the performance of Sections 6.17(a) and 6.17(b) by each Seller, and subject to entry of the Sale Order, the performance by each Seller of its other obligations hereunder and thereunder and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of each Seller.