



PUBLIC NOTICE

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Federal Communications Commission

445 12th St., S.W.
Washington, D.C. 20554

DA 04-438
February 20, 2004

**COMMENTS INVITED ON APPLICATION OF XO COMMUNICATIONS, INC.
TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES
WC Docket No. 04-39
Comp. Pol. File No. 675**

Comments Due: March 5, 2004

Section 214 Application

Applicants: XO Communications, Inc., XO California, Inc., XO New York, Inc.

On **February 10, 2004**, **XO Communications, Inc.**, located at **11111 Sunset Hills Road, Reston, Virginia, 20190**, filed an application with the Federal Communications Commission (FCC or Commission) on behalf of itself and certain of its subsidiaries including XO California, Inc., and XO New York, Inc. (collectively, XO or Applicants), requesting authority under section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue the provision of certain domestic telecommunications services to customers in certain geographic areas.

In its application, XO notes that it previously filed an application on January 12, 2004 seeking to discontinue service to approximately 160 business customers in California, New York, and Virginia.¹ XO states that the instant application addresses service to 16 business customers in California and one business customer in New York that did not receive notice as part of the initial application process.

In the instant application, XO indicates that it plans to consolidate its DSL network infrastructure by migrating DSL customers served out of certain central offices in California and New York from its DSL network to the network of its partner, Covad Communications (Covad). XO asserts that these customers will continue to receive service from XO, but on a different network. XO indicates that although all of the affected customers may be successfully migrated, it is possible that some of these customers will not wish to be migrated or will fail to respond to XO prior to the date by which customers must either agree to be migrated or be discontinued.

¹ Application of XO Communications, Inc. to Discontinue Domestic Telecommunications Services Comp. Pol. File No. 670 (granted February 16, 2004). This application was placed on public notice and granted by operation of law. *Comments Invited on Application of XO Communications, Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 04-10, Public Notice, DA No. 04-97 (released January 16, 2004).

XO states that it seeks authority in such cases to discontinue service to such customers. XO asserts that customers migrated to Covad's network will receive substantially the same service that they receive now, and that these customers will not be harmed by the potential discontinuance because they will also have an opportunity to migrate to other telecommunications carriers that continue to provide DSL in the affected areas. XO states that it plans to discontinue the provision of DSL service over its network to the remaining customers on March 22, 2004, and that it provided notice of the potential discontinuance to these customers by letters sent via U.S. mail, postage prepaid on February 6, 2004. XO indicates that service to affected customers will be suspended on that date, but XO states that it will maintain the circuits for another 7-10 days to allow customers to contact XO and reinstate their service at no extra charge.

In accordance with section 63.71(c) of the Commission's rules, the application will be deemed to be automatically granted on the thirty-first (31st) day after the release date of this notice, unless the Commission has notified Applicants that the grant will not be automatically effective. Accordingly, pursuant to section 63.71(c), absent further Commission action, XO may not terminate service until March 22, 2004. The Commission will normally authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200-1.1216. Comments objecting to this application must be filed with the Commission on or before **March 5, 2004**. Such comments should refer to **WC Docket No. 04-39 and Comp. Pol. File No. 675**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Two (2) copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 6-A207, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicants. Commenters are also requested to fax their comments to the FCC at (202) 418-2345, Attention: Carmell Weathers.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The application will be available for review and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at **qualexint@aol.com**.

For further information, contact Carmell Weathers, (202) 418-2325 (voice), **carmell.weathers@fcc.gov**, or John Adams, (202) 418-0394 (voice), **john.adams@fcc.gov**, of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484. For further information on procedures regarding Section 214 please visit **http://www.fcc.gov/wcb/cpd/other_adjud**.

-FEDERAL COMMUNICATIONS COMMISSION-