PUBLIC NOTICE

Federal Communications Commission
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DA 04-624
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COMMISSION SEEKS COMMENT ON APPLICATION FOR TRANSFER OF CONTROL OF ALLEGIANCE TELECOM, INC., TO XO COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-45

Comments Due: March 19, 2004
Reply Comments Due: March 26, 2004

On February 20, 2004, Allegiance Telecom, Inc., Debtor-in-Possession, (ATI) (with operating subsidiaries, Allegiance) and XO Communications, Inc. (XO) (Allegiance and XO, collectively, the Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,[1] for consent to transfer control of ATI's subsidiaries that hold authority under section 214 of the Act to provide domestic interstate services to XO.[2]

Applicants request streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because: the proposed transaction will result in XO having a market share in the interstate, interexchange market of less than 10 percent; XO would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier (LEC) that is not a party to the transaction; and neither of the Applicants is dominant with respect to any service.[3]

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[1] 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

[2] Applicants have also filed a transfer of control application related to international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications. A previous section 214 application regarding Allegiance's assets was dismissed without prejudice. *See Domestic and International Section 214 Applications Filed for Acquisition of Allegiance Telecom by Qwest Communications International Inc.*, Order, WC Docket No. 04-13 and IB No. ITC-ASG-20040112-00012, DA 04-581 (rel. Mar. 2, 2004).

[3] 47 C.F.R §§ 63.03(b)(2)(i). For purposes of the streamlining rules, the term "carrier" includes any affiliates of such entities. *See* 47 C.F.R. § 63.03(b)(3). *See* Letter from Joan M. Griffin, Counsel to XO, to Marlene K. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-45 (filed March 2, 2004) (March 2 Letter).

ATI is a Delaware corporation with principal offices located in Dallas, Texas. Through its subsidiaries, Allegiance provides telecommunications products and services to small and medium-sized business customers, large businesses, governmental entities, wholesale customers, and other institutional users in 36 metropolitan areas in 24 states and the District of Columbia. Allegiance offers its customers a variety of services, including local, long distance and international voice services, broadband and other Internet and data services, integrated local/long distance/Internet access offerings, and wholesale services to other regional and national service providers. Allegiance provides services primarily through the use of its own switches and routing equipment, leased transport facilities, fiber optic networks, and local loops obtained from incumbent LECs.

XO is a Delaware corporation whose principal office and place of business is in Reston, Virginia. XO provides local and long distance services, both bundled and standalone, other voice-related services such as XO's conferencing, domestic and international toll free services and voicemail, as well as services related to prepaid calling cards. XO provides data services that include Internet access and private data networking, including dedicated transmission capacity on XO's networks, virtual private network services, Ethernet services and web hosting services. XO provides these services to small, medium and large retail businesses, multi-location businesses and carrier or wholesale customers. XO operates a network comprised of a series of rings of fiber optic cables located in the central business districts of numerous metropolitan areas that are connected by intercity fiber optic cables. XO operates 37 metro fiber networks in 22 states and the District of Columbia.

Cardiff, a Delaware limited liability company, will hold 54 percent of the equity and voting interests in XO after closing. Cardiff is ultimately controlled by Carl C. Icahn through his control and ownership of its general and limited partners. Amalgamated Gadget, L.P. (Amalgamated) will hold 11 percent of the equity and voting interests in XO post-closing. Amalgamated is controlled by its general partner, Scepter Holdings, which has only one shareholder, Geoffrey Raynor. Neither Carl C. Icahn nor Geoffrey Raynor holds 10% or greater ownership interest in any communications company other than XO.[4]

On May 14, 2003, ATI and certain operating subsidiaries commenced cases under chapter 11 of the Bankruptcy Code.[5] No trustee or examiner has been appointed in the chapter 11 cases, and Allegiance is authorized to operate its businesses and manage its properties as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As debtor-in-possession, Allegiance has retained possession of its property and businesses during the reorganization process, and there have been no significant changes in its management as a result of the chapter 11 cases.

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4 *See* March 2 Letter at 1-2.

5 *In re Allegiance Telecom, Inc., et al.,* Chap. 11 Case Nos. 03-13057-rdd, *et seq.* (Bankr. S.D.N.Y., filed May 14, 2003). The bankruptcy cases of ATI and its subsidiaries have been consolidated for procedural purposes and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

On February 18, 2004, following the completion of a court-supervised auction, ATI and XO executed the Purchase Agreement (Agreement), by and among Allegiance Telecom, Inc., Allegiance Telecom Company Worldwide, and XO Communications, Inc., whereby XO agreed to acquire indirect subsidiaries of ATI, including substantially all of these companies' assets and certain assets of ATI. In consideration of these assets, XO will deliver to ATI approximately $311 million in cash and approximately 45.38 million shares of XO common stock. After closing of the proposed transaction, companies controlled by Carl C. Icahn will hold 54 percent of the ownership, and therefore will continue to hold a controlling interest in XO. The Bankruptcy Court entered a sale order on February 20, 2004.[6]

Applicants contend that grant of the proposed transaction will serve the public interest. First, Applicants argue that the combination of Allegiance and XO will create a strong competitive LEC that will provide competition in the local services market to U.S. business consumers. Specifically, Applicants argue that the addition of Allegiance's facilities will result in the combined company having the largest nationwide network of any competitive LEC and increase the density of XO's points of presence in local markets that will enable XO to provide better service delivery to its customers, reduce network costs, reduce dependency on incumbent LECs, and improve operating results. Applicants state that the combined company will be better situated to sell last mile and metro services to other long distance companies, thus enhancing competition in this market as well. Second, Applicants maintain that the proposed transaction will improve service to Allegiance's existing customers and will not result in any degradation or cessation of services for the existing customers of Allegiance. Finally, Applicants claim that the combination of XO and Allegiance will not result in any anticompetitive effects. Applicants state that the combined company will achieve economies of scope and scale which will enhance its ability to roll out new products and services and expand into new markets. Although XO and Allegiance provide service in many of the same geographic markets, Applicants assert that neither has significant market share in any of these markets and that existing incumbent LECs have a virtual monopoly in each of these service areas.

GENERAL INFORMATION

The transfer of control and authorization transfer identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before March 19, 2004** and **reply comments on or before March 26, 2004** of

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6 *See In re Allegiance Telecom, Inc., et al.*, Case No. 03-13057-rrd, Order (I) Approving the Sale Free and Clear of All Liens, Claims, and Encumbrances to the Successful Bidder, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (Bankr. S.D.N.Y. Feb. 20, 2004), *attached to* Letter from Joan M. Griffin, Counsel to XO, to Marlene K. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-45 (filed Mar. 1, 2004).

this notice.[7] Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.[8] 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. 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 an 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 file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. 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, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street,

[7] *See* 47 C.F.R. § 63.52(b).

[8] Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

S.W., Room 5-C437, Washington, D.C. 20554; e-mail: Tracey.Wilson-Parker@fcc.gov;

(3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: Dennis.Johnson@fcc.gov;

(4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: William.Dever@fcc.gov;

(5) David Krech, International Bureau, 445 12th Street, S.W., Room 7-A664, Washington, D.C. 20554; e-mail David.Krech@fcc.gov;

(6) Cynthia Bryant, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 7-A623, Washington, D.C. 20554; email: Cynthia.Bryant@fcc.gov; and

(7) Ann Bushmiller, Office of General Counsel, 445 12th Street, S.W., Room 8-A831, Washington, D.C. 20554; e-mail: Ann.Bushmiller@fcc.gov.

(8) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail Julie.Veach@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Dennis Johnson (Wireline Competition Bureau), at (202) 418-0809, or Julie Veach (Wireline Competition Bureau), at 418-1558.

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