

Summary

None of the objections raised in the Petition to Deny filed by RCN Corporation (“RCN”) provides a basis on which to deny XO Communications’ (“XO’s”) transfer of control applications or request for a declaratory ruling pursuant to Section 310(b)(4) of the Act. Accordingly, the Commission should deny RCN’s Petition.

In its Petition, RCN argues that allowing Teléfonos de México, S.A. de C.V. (“Telmex”) to acquire a non-controlling interest in XO would pose a “very high risk” to competition that cannot be adequately addressed by the Commission through the use of conditions or safeguards. However, RCN fails to overcome the strong presumption that the entry of Telmex – a carrier from Mexico, which is a WTO Member country – into the U.S. telecommunications market through XO will serve the public interest. *First*, the Commission has recognized that there is no threat to competition when a foreign carrier acquires less than a controlling interest in a U.S. carrier. That is the case here. *Second*, the arguments advanced by RCN to make its case do not withstand scrutiny. RCN relies on a Notice of Apparent Liability for Forfeiture (“NAL”) issued against Telmex USA, and on the alleged difficulties of Megacable Comunicaciones de México, S.A. de C.V. (“Megacable”), RCN’s local exchange carrier affiliate in Mexico, in negotiating an interconnection agreement with Telmex for the termination of local traffic. However, RCN ignores the fact that the Commission cancelled the NAL without imposing a forfeiture. Furthermore, Megacable’s difficulties are within Megacable’s control to remedy, and these alleged difficulties are not relevant to competition in the U.S. telecommunications market, since they relate only to the termination of local traffic in Mexico. *Finally*, RCN fails to demonstrate that safeguards or conditions would be ineffective to prevent competitive harm.

In its Petition, RCN also argues that XO’s applications should be denied to give USTR

“leverage” in trade policy negotiations with Mexico, and because Telmex entry into the U.S. telecommunications market through investment in XO would precipitate RBOC entry into the interstate market in-region. Both of these arguments have been previously rejected by the Commission.

Approximately 130 individuals filed brief comments in this proceeding. The individual commentors are largely shareholders who raise various concerns about the value of their investment in light of the proposed transaction. The Commission has previously recognized that these types of concerns are more appropriately addressed in other fora, such as at the SEC or in shareholder lawsuits.

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

In the Matter of)	
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)	
XO COMMUNICATIONS, INC.,)	IB Docket No. 02-50
)	
)	
Application for Consent to Transfer of Control)	
of a Company Holding Licenses and)	
Authorizations Pursuant to Section 214 and)	
310(d) of the Communications Act and for)	
Declaratory Ruling Pursuant to Section)	
310(b)(4) of the Communications Act)	

**OPPOSITION TO PETITION TO DENY
AND REPLY TO COMMENTS**

I. INTRODUCTION

XO Communications, Inc. (“XO” or “Company”) hereby opposes the Petition to Deny (“Petition”) filed by RCN Corporation (“RCN”) and responds to the brief comments filed by approximately 130 individuals in the proceeding captioned above. In this proceeding, XO has requested the Commission’s consent, pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ to the transfer of control of XO from Craig O. McCaw and the existing shareholders of XO to the new shareholders of XO, which will include, as 10 percent or greater shareholders, Forstmann Little & Co. Equity Partnership-VII, L.P. (“Forstmann Little Equity VII”), Forstmann Little & Co. Subordinated Debt and Equity Management Buyout Partnership-VIII, L.P. (“Forstmann Little MBO VIII”) (Forstmann Little

¹ 47 U.S.C. §§ 214, 310(d).

Equity VII and Forstmann Little MBO VIII, collectively “Forstmann Little”), and an indirect wholly-owned subsidiary of Teléfonos de México, S.A. de C.V. (“Telmex”). XO has also requested a declaratory ruling pursuant to Section 310(b)(4) that it will not serve the public interest to prohibit indirect foreign ownership of XO’s wireless licenses in excess of the statutory 25 percent foreign ownership benchmark by Telmex and a general partner of Forstmann Little, Gordon A. Holmes.

As discussed below, none of the objections raised in RCN’s Petition or in the individual comments provide a basis for denying XO’s applications and request for declaratory ruling. The arguments set forth by RCN in its Petition are not relevant to XO’s applications, misconstrue key facts, or have been previously rejected by the Commission. RCN’s interest in this proceeding relates solely to the activities of its Mexican affiliate and issues that either are within its control or are entirely within the purview of the Mexican government. The individual commentors are largely shareholders who, in anticipation of an impending bankruptcy filing, raise various concerns regarding the value of their investment in light of the proposed transaction. These concerns are best addressed in other forums. Accordingly, the Commission should deny RCN’s Petition.²

² XO submits this filing on the assumption that its proposed transaction with Forstmann Little and Telmex will be consummated as proposed in XO’s applications. However, there is continuing uncertainty about the details of XO’s corporate restructuring, and discussions are ongoing with other possible investors. Should XO’s proposed transaction with Forstmann Little and Telmex be cancelled or should any material terms thereof be modified, XO will withdraw or modify all pending applications as well as this filing as appropriate.

II. THE MISLEADING, IRRELEVANT, AND PREVIOUSLY REJECTED ARGUMENTS RAISED BY RCN IN ITS PETITION DO NOT SUPPORT THE DENIAL OF XO'S APPLICATIONS.

RCN contends in its Petition that grant of XO's applications would be "flatly inconsistent" with the public interest. As shown below, the arguments raised by RCN in support of its position are irrelevant and misleading, or have been previously rejected by the Commission. None of these arguments provides a basis for denying XO's applications and thus for depriving XO of the funding it requires to compete in the market for local exchange services – a market in which RCN also competes. As such, the Commission must deny RCN's Petition as "flatly inconsistent" with the public interest.

A. RCN fails to demonstrate that grant of XO's applications would pose a "very high risk" to competition that cannot be addressed by the Commission through use of safeguards or conditions.

The first argument that RCN makes in support of its Petition is that allowing Telmex to acquire a significant, but non-controlling ownership interest in XO would pose a "very high risk" to competition that cannot be adequately addressed by the Commission through the use of conditions or safeguards. As such, RCN contends that the Commission cannot grant XO's applications consistent with the principles for foreign carrier entry into the U.S. telecommunications market that the FCC established in its *Foreign Participation Order*.³ As discussed below, this argument does not withstand scrutiny. RCN fails to overcome the strong presumption that the entry of Telmex – a carrier from Mexico, which is a WTO Member country – into the U.S. telecommunications market through XO will serve the public interest.

³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

1. There is no threat to competition when a foreign carrier acquires less than a controlling interest in a U.S. carrier – as is true in this case.

As an initial matter, RCN completely ignores the fact that Telmex is not acquiring a controlling interest in XO. In the *Foreign Participation Order*, the Commission effectively rejected the notion that the acquisition of less than a controlling interest in a U.S. carrier by a foreign carrier would pose a competitive risk that the FCC could not address.⁴ Even assuming Telmex's acquisition of a non-controlling interest in XO posed a minute risk to competition, that risk is made even more remote by the fact that Forstmann Little would be an equal partner in the governance of XO post-closing. If Telmex were to attempt to leverage its interest in XO for the benefit of its operations in Mexico, Forstmann Little could block this action through XO's board of directors.

2. The Notice of Apparent Liability issued against Telmex USA was cancelled by the Commission and thus does not prove that Telmex has any propensity to engage in anticompetitive behavior.

RCN bases its claim that Telmex's investment in XO will pose a very high risk to competition on the Commission's issuance of a Notice of Apparent Liability for Forfeiture ("NAL") against Telmex USA,⁵ and on the alleged difficulties of Megacable Comunicaciones de México, S.A. de C.V. ("Megacable"), RCN's local exchange carrier affiliate in Mexico, in negotiating an interconnection agreement with Telmex for the termination of local traffic. RCN presumes that the NAL and the alleged difficulties of Megacable prove that Telmex will use any

⁴ *Foreign Participation Order, supra* note 3, at ¶ 52 ("we find it highly unlikely that acquisition of less than a controlling interest in a U.S. carrier by a foreign carrier would pose a competitive risk that we could not address").

⁵ *Telmex International Ventures USA, Inc., Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 714 (2000) ("NAL").

market power it may have in Mexico to engage in behavior that will harm competition in the U.S. telecommunications market.

In relying on the NAL, RCN ignores the fact that the Commission cancelled the NAL without imposing a forfeiture.⁶ Per the Commission, mere allegations that a foreign carrier has failed to abide by FCC rules and policies are not enough to justify the denial of that carrier's application for entry into the U.S. telecommunications market – particularly when the Commission has found those allegations to be insufficient.⁷ Under these circumstances, the Commission would be hard pressed to base its denial of XO's applications on the now-cancelled NAL.

3. Megacable's problems are not relevant to competition in the U.S. telecommunications market.

With respect to Megacable, the information provided by Telmex shows that RCN (and Megacable in its complaints to the USTR) has omitted certain salient facts demonstrating that Megacable's difficulties with respect to interconnection with Telmex are within Megacable's control to remedy.⁸ Megacable does, in fact, have a valid interconnection agreement with Telmex for the termination of local traffic.⁹ There is an ongoing dispute between Telmex and Megacable regarding the implementation of the billing provisions of the agreement that is currently being resolved by the Mexican courts. However, Telmex has represented that during

⁶ See *Telmex International Ventures USA, Inc., Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 16 FCC Rcd 14446 (2001).

⁷ *Foreign Participation Order*, *supra* note 3, at ¶ 53.

⁸ The declaration of Sergio Rodriguez Molleda, Deputy General Counsel of Telmex, as to the accuracy of the facts contained in this section is provided in Attachment 1.

⁹ This agreement was executed in 1999 and its original term expired in 2000, but the agreement has been automatically extended in accordance with the agreement's

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the pendency of this dispute, Telmex has never denied interconnection services to Megacable.

As a separate matter, more than a year ago Telmex asked Megacable to execute a standard interconnection agreement, the same interconnection agreement that Telmex has signed with six other local carriers, including the WorldCom-affiliated Avantel and the AT&T-affiliated Alestra. To date, however, Megacable has rejected Telmex's offer, apparently because Telmex's proposed terms of local interconnection exclude ISP-bound traffic from the provisions governing reciprocal compensation for the exchange of telecommunications services traffic.¹⁰ The ultimate resolution of the reciprocal compensation issue as it relates to ISP-bound traffic is currently being considered by the Mexican regulators and courts, and there is no reason for the Commission to become involved in this dispute.¹¹ Telmex has stated that it remains willing to enter into a standard local interconnection agreement with Megacable.

In any event, any alleged difficulties of Megacable in obtaining a local service interconnection agreement in Mexico do not demonstrate a potential for Telmex to engage in

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provisions.

¹⁰ Megacable targets ISPs as customers. Megacable offers, in particular, its "I-Box" service, which combines telecommunications services with equipment leasing, purchasing and network management services. See, e.g., <<http://www.mcmtelecom.com.mx/productos/ibox.html>> ("I-Box es una solución para Proveedores de Servicio de Internet (ISP's) que integra: accesos digitales conmutados; servidores de acceso; ruteadores; [y] conexión redundante al backbone de Internet") ("I-Box is a solution for Internet Service Providers (ISPs) that is comprised of digital switched access; access servers; routers; [and] redundant connection to the Internet backbone").

¹¹ To the contrary, the resolution of this domestic Mexican issue belongs in Mexico, and in a variety of proceedings involving Megacable and other carriers, Mexican regulators and Mexican courts are currently making the difficult public policy choices that these issues raise for the development of the Mexican telecommunications market. There is no basis for believing that the Mexican regulators and courts are not able to address these issues, much less any basis for concluding that the Commission should attempt to resolve these issues for them – and particularly not in the context of the restructuring of a U.S. CLEC.

behavior that poses a threat to competition in the U.S. The dispute between Megacable and Telmex concerns an agreement for the termination of *local traffic* in Mexico. The inability of Megacable to obtain a local service interconnection agreement with Telmex, for whatever reason, has no relevance to the availability or price of international service terminations in Mexico, because the termination of international traffic in Mexico is subject to a separate agreement. Thus, Megacable's alleged difficulty in obtaining a local service interconnection agreement with Telmex has no bearing on U.S. consumers or the U.S. telecommunications market. RCN's contention that the problems of Megacable prove that U.S. consumers will pay higher rates for international terminations in Mexico if Telmex is allowed to invest in XO is a *non sequitur*.

What is relevant to the Commission's analysis of whether Telmex's investment in XO poses a "very high risk" to competition is the fact that accounting rates on the U.S.-Mexico route are at benchmark.¹² More importantly, accounting rates substantially below the benchmark have been agreed by Telmex and its U.S. correspondents, including WorldCom and AT&T, and petitions for waivers of the international settlements policy in order to implement these accounting rate reductions are currently pending before the Commission.¹³ WorldCom has

¹² In May 2001, Telmex had agreed with most of its U.S. correspondents to reduce settlement rates to \$0.155 per minute for 2001, \$0.135 for 2002, and \$0.10 for 2003, and to set settlement rates by free-market negotiations for 2004. Telmex has advised XO that the Mexican regulator approved this agreement in June 2001.

¹³ See Petition of WorldCom for Waiver of the International Settlements Policy in File No. ARC-MOD-20020322-00015, filed Mar. 22, 2002 ("MCI Petition"). AT&T filed a petition for waiver as well on April 19, 2002. Per Telmex's agreement with the U.S. carriers, the settlement rate would drop to \$0.155 in each direction for the period January 1, 2001 through December 31, 2001, and then decrease again for the period January 1, 2002 through February 28, 2002 to \$0.135 in each direction. For the period March 1, 2002 through December 31, 2003, different settlement rates would apply for southbound (U.S. carrier to Mexican carrier) and northbound (Mexican carrier to U.S. carrier) traffic.
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estimated the cost savings associated with the proposed accounting rate changes at over \$550 billion for the U.S. telecommunications industry.¹⁴ The Commission has recognized that the ability of foreign carriers to engage in anticompetitive behavior is significantly diminished when settlement rates are at or below benchmark.¹⁵

4. RCN fails to demonstrate that safeguards or conditions would be ineffective to prevent competitive harm.

Finally, even if XO were to accept for the sake of argument that Telmex's entry into the U.S. market through XO poses a risk to competition, RCN has not demonstrated that dominant carrier safeguards or other conditions on the grant of XO's applications cannot satisfactorily address such risks. To prove that dominant carrier safeguards are not enough, RCN simply points to the NAL. But as noted above, the NAL was cancelled by the Commission, and thus the NAL proves nothing.

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Specifically, all northbound traffic would be settled at a rate of \$0.055 per minute. The applicable southbound settlement rate would depend on the termination location and type of traffic, but would range from \$0.055 for IMTS traffic terminating in the three largest cities in Mexico (Mexico City, Guadalajara, and Monterrey), to \$0.085 for IMTS traffic terminating in the next roughly 200 large and medium-sized cities in Mexico, to \$0.1175 for IMTS traffic terminating in any other location in Mexico. Telmex has reached agreement on these reductions with all of its U.S. correspondents. The agreement also contemplates changes in Mexico's rules so as to enable free-market negotiations for the termination of international traffic as of January 1, 2004.

¹⁴ MCI Petition at 2.

¹⁵ See *In Re International Settlement Rates*, Report and Order, FCC 97-280, rel. Aug. 18, 1997, at ¶ 34; Report and Order on Reconsideration and Order Lifting Stay, FCC 99-124, rel. June 11, 1999, at ¶ 33.

B. RCN's argument that XO's applications must be denied to aid USTR in achieving its trade policy objectives has been previously rejected by the Commission as unlawful and contrary to the public interest.

Having failed to demonstrate that Telmex's investment in XO poses a very high risk to competition that cannot be addressed through safeguards or conditions, RCN argues that XO's applications should be denied to give USTR "leverage" in trade policy negotiations in Mexico.¹⁶ Even ignoring for the moment that RCN is in no position to speak for USTR, this argument fails as well. In adopting its policies on foreign carrier participation in the U.S. telecommunications market, the FCC expressly rejected arguments that it should tie foreign carrier entry requirements to the extent to which a foreign country has implemented its market opening commitments under the WTO Basic Telecoms Agreement.¹⁷ As the Commission recognized, it does not need to condition foreign carrier entry on implementation of market-opening commitments, because the USTR has the ability to enforce a Member country's commitments through the WTO dispute resolution process.¹⁸ The Commission also recognized in the *Foreign Participation Order* that tying foreign carrier entry to a foreign country's implementation of its WTO commitments could be perceived as a violation of U.S. obligations under GATS,¹⁹ could damage relations with U.S.

¹⁶ Petition of RCN at 8-9.

¹⁷ See *Foreign Participation Order*, *supra* note 3, at ¶ 39.

¹⁸ See *Foreign Participation Order*, *supra* note 3, at ¶¶ 39-41. Indeed, at the request of USTR, the Dispute Settlement Body of the WTO recently established a dispute settlement panel to examine U.S. claims regarding Mexico's compliance with its WTO Basic Telecoms Agreement commitments. See Office of the United States Trade Representative, *WTO Dispute Settlement Regarding Telecommunications Trade Barriers in Mexico*, Docket No. WTO/DS-204, Notice and Request for Comments, 67 FR 20195, Apr. 24, 2002.

¹⁹ Specifically, the Commission found that a policy of discriminating among carriers based on their WTO commitment could be interpreted by other WTO Members as discriminating among "like" service suppliers based solely on foreign market conditions, which could be perceived as a violation of Article II of the GATS. See *Foreign*

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trading partners, and would set a poor example for other countries also implementing their market opening commitments.²⁰ In light of these facts, this argument deserves no further consideration.

C. RCN’s “Chicken Little” argument that Telmex entry into the U.S. telecommunications market through investment in XO would precipitate RBOC entry into the interstate market in-region has been previously rejected by the Commission and should be rejected once again.

Finally, RCN contends that XO cannot reconcile its opposition to RBOC entry into the interstate market in-region with its support for Telmex’s investment in XO. Arguing that Telmex’s behavior is “far worse” than the RBOCs, RCN also suggests that granting XO’s applications under these circumstances would send the wrong “message” to the RBOCs.²¹ This argument is totally irrelevant to XO’s applications and should be summarily dismissed. The Commission has *twice* rejected the argument that adoption of the foreign carrier entry standards set forth in the *Foreign Carrier Participation Order* is inconsistent with or somehow necessitates the adoption of equally open entry standards for those RBOCs seeking to provide interstate service in-region.²² In so doing, the FCC recognized the obvious: that foreign carrier entry into the U.S. telecommunications market is subject to entirely different laws, standards and policies than RBOC entry into the interstate market in-region, and that the Commission is “not obligated

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Participation Order, supra note 3, at ¶40.

²⁰ See *Foreign Participation Order, supra* note 3, at ¶ 40.

²¹ RCN Petition at 10-11.

²² See *Foreign Participation Order, supra* note 3, at ¶ 58; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order on Reconsideration, FCC 00-339, rel. Sept. 19, 2000, at ¶16 (“*Foreign Participation Reconsideration Order*”).

to apply identical public interest presumptions to clearly non-analogous situations.”²³

III. THIS IS NOT THE APPROPRIATE FORUM TO RESOLVE SHAREHOLDERS’ CONCERNS ABOUT THE IMPACT OF THE PROPOSED TRANSACTION ON THEIR SECURITIES.

Approximately 130 individuals filed brief comments on XO’s applications in this proceeding. Many indicate in their comments that they hold XO’s existing common stock, which would be eliminated by the proposed restructuring.²⁴ Virtually all of these commentors object to the proposed transaction as unfair, unreasonable, or otherwise not in the public interest due largely to its impact on their stock portfolios, and ask the Commission to deny the applications.²⁵

XO respectfully suggests that this proceeding is not the appropriate forum for addressing the concerns raised in these comments. The Commission has previously recognized in other proceedings that complaints of shareholders regarding the ramifications of a proposed transaction on a company’s stock or the company’s compliance with the nation’s securities laws are more appropriately addressed by the SEC, in shareholder lawsuits, or by bankruptcy courts.²⁶

²³ *Foreign Participation Reconsideration Order, supra* note 3, at ¶ 16.

²⁴ *See, e.g.,* Comments of Richard A. May; Comments of Andre La Rosa; Comments of Dan Bowman; Comments of John Kinney.

²⁵ *See, e.g.,* Comments of Shawn Piccione; Comments of Jeff Abrams; Comments of Jack H. Anderson; Comments of Daniel D. Fitzsimmons; Comments of Kevin Wagner.

²⁶ *See, e.g., Jackson Cellular Telephone Co., Inc., Assignor, and Jackson Cellular Partnership, Assignee; For Consent to Assign the License of Domestic Public Cellular Radio Telecommunications Service Station KNKA685 in Modesto, California and Jackson Cellular Partnership, Assignor, and Jackson Cellular Telephone Co., Inc., Assignee; For Consent to Assign the License of Domestic Public Cellular Radio Telecommunications Service Station KNKA799 in Jackson, Mississippi, 5 FCC Rcd 96, File No. 02459-CL-AL-1-89; File No. 02460-CL-AL-1-89, (rel. Jan. 5, 1990), Memorandum Opinion and Order (“The Commission has consistently refused to allow*
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Numerous shareholder lawsuits concerning the proposed transaction are currently pending in various jurisdictions,²⁷ and those lawsuits are the appropriate fora in which to resolve the shareholder comments filed in this proceeding. And, to the extent the transaction ultimately requires the approval of the bankruptcy court, shareholders will be able to raise their objections before that court as well.

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aggrieved minority owners to prevent the assignment of facilities based on grounds of an alleged breach of fiduciary duty or monetary harm."); *In re Application of Robert J. Kile for Consent to the Assignment of the License for Station KNKA598 Ft. Myers, Fla. MSA*, 3 FCC Rcd 1087, File No. 00376-CL-AL-87 (rel. Mar. 8, 1988), Order (affirming Commission holding that "minority owners cannot prevent the transfer of control of facilities on the basis that the transfer will cause them monetary harm. This is a matter for a private cause of action and generally does not fall within the jurisdiction of this Commission."); *In Re Application of John R. Kingsberry, E.G. Kingsberry, Henry B. Tippie et al (Transferors) and Mid-Texas Broadcasting, Inc. (Transferee) For Voluntary Transfer of Control of the Licensee of Stations KHFI-FM and KTVV (TV), Austin, Texas* File No. BTC-8718 (rel. May 9, 1979) Memorandum Opinion and Order (noting that claims of minority stockholders who might incur monetary damages from a proposed transfer of station license "are a matter of private dispute . . . beyond our regulatory jurisdiction" and should be addressed in local courts or "other appropriate forums").

²⁷ See *In re XO Communications, Inc. Securities Litigation*, No. 01-1156-A (E.D. Va. filed Dec. 4, 2001); *Riley v. Daniel Akerson*, No. 19353-NC (Del. Ch. filed Jan. 16, 2002); *Beavers v. XO Communications, Inc.*, No. 01-018708 (N.Y. Sup. Ct. filed Dec. 11, 2001); *Land v. XO Communications, Inc.*, No. 01-018481 (N.Y. Sup. Ct. filed Dec. 11, 2001); *Schoenfeld v. XO Communications, Inc.*, No. 01-018358 (N.Y. Sup. Ct. filed Dec. 5, 2001).

IV. CONCLUSION.

For these reasons, XO respectfully requests that the Commission deny RCN's Petition to Deny.

Respectfully submitted,

XO COMMUNICATIONS, INC.

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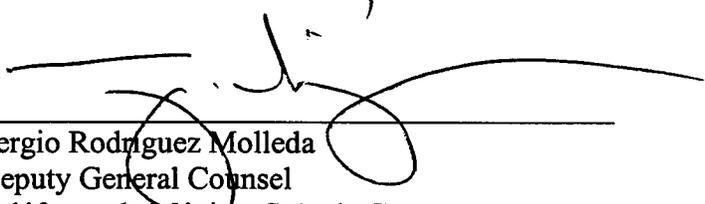
DECLARATION

The undersigned declares as follows:

I declare under penalty of perjury under the laws of the United States of America that the factual assertions relating to Megacable Comunicaciones de México, S.A. de C.V. contained in the foregoing "Opposition to Petition to Deny and Reply to Comments" are true and correct to the best of my knowledge, information and belief.

Executed this 2^o day of May, 2002.

By:



Sergio Rodriguez Molleda
Deputy General Counsel
Teléfonos de México, S.A. de C.V.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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XO COMMUNICATIONS, INC.,)

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Application for Consent to Transfer of Control)
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Declaratory Ruling Pursuant to Section)
310(b)(4) of the Communications Act)

OPPOSITION TO PETITION TO DENY
AND REPLY TO COMMENTS

AFFIDAVIT

I, R. Gerard Salemmme, am authorized to represent XO Communications, Inc. ("XO") and to make this Affidavit on its behalf. Except as otherwise specifically attributed, the statements in the foregoing document relating to XO (the "OPPOSITION TO PETITION TO DENY AND REPLY TO COMMENTS") are true of my own knowledge, other than as to matters that are stated therein on information or belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.



R. Gerard Salemmme
Senior Vice President – External Affairs
XO Communications, Inc.

District of Columbia:SS

Subscribed and sworn to before me this 6th day of May, 2002.



Notary Public, Marla J. Davis
Washington, DC

My Commission expires: Oct. 31, 2002.

CERTIFICATE OF SERVICE

I, Charles "Chip" M. Hines III, hereby certify that a true and correct copy of the foregoing "**XO Opposition To Petition To Deny And Reply To Comments; IB Docket No. 02-50**" was delivered this 6th day of May 2002 to the individuals in the following list:

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A handwritten signature in black ink, appearing to read 'Charles M. Hines III', written in a cursive style. The signature is positioned above a horizontal line.

Charles "Chip" M. Hines III