

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

XO COMMUNICATIONS, INC.,

Debtor.

)
) Chapter 11
)

) Case No. 02-12947 (AJG)
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)

**ORDER AUTHORIZING THE EMPLOYMENT
OF PROFESSIONALS UTILIZED IN THE ORDINARY
COURSE OF THE DEBTOR'S BUSINESS**

Upon the motion (the "Motion"), dated June 17, 2002, of the debtor and debtor in possession (the "Debtor") in the above-captioned case, for entry of an order, pursuant to sections 105(a), 327, 328, 331 and 1107(b) of the Bankruptcy Code¹ and Bankruptcy Rule 2014, (i) authorizing the Debtor to retain and compensate special counsel and other professionals to provide legal and other services arising in the ordinary course of business, and (ii) establishing procedures pursuant to which such professionals are to be compensated; and it being found that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and parties in interest; and notice having been provided as set forth in the Motion; and it appearing that no other or further notice need be given; and upon consideration of the Affidavit of Wayne M. Rehberger Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First-Day Motions; and after due deliberation and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted on an interim basis; and it is further

¹ Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Motion.

ORDERED, that within the ordinary course of its business, the Debtor is authorized to retain and employ the Ordinary Course Professionals, including, but not limited to, those law firms and other professionals listed on Exhibit A annexed to the Motion; provided, however, that:

- a. For each Ordinary Course Professional retained by the Debtor, a Retention Affidavit shall be filed with the Court and served (by first class mail) upon the Notice Parties within twenty (20) days after the Retention Date.
- b. Each Retention Affidavit shall comply with Bankruptcy Rules 2014 and 5002. If, for any reason, such compliance is not possible, the relevant Retention Affidavit shall explain why the affiant believes departure from the Bankruptcy Rules is justified under the circumstances.
- c. The acceptance of employment by any Ordinary Course Professional shall constitute a representation by such Ordinary Course Professional, verified by the Retention Affidavit, that:
 - (i) Such Ordinary Course Professional does not represent or hold any interest adverse to the Debtor or its estate concerning the matter(s) upon which such Ordinary Course Professional is to be employed; and
 - (ii) Such Ordinary Course Professional agrees to be compensated by the Debtor based on hourly or other rates not greater than are customarily charged by such Ordinary Course Professional for its professional and paraprofessional services, and a schedule of such hourly or other rates shall be included with the Retention Affidavit; and
 - (iii) Such Ordinary Course Professional shall be entitled to reimbursement only for actual and necessary expenses incurred in connection with its representation of the Debtor.

; and it is further

ORDERED, that any party in interest shall have the right to file an objection to the retention of an Ordinary Course Professional within ten (10) days of the date of filing and service of that firm's Retention Affidavit; provided, however, that if the Court, after a hearing, does not approve the retention of the Ordinary Course Professional, such Ordinary Course Professional shall still be entitled to apply for compensation for the period from the date the

Debtor directed work to be commenced through the date of the Court's decision, upon appropriate application to the Court; and it is further

ORDERED, that upon submission to the Debtor of an appropriate invoice setting forth in reasonable detail the nature of services rendered, the Debtor is authorized to pay one hundred percent (100%) of the fees and disbursements to each Ordinary Course Professional, up to a monthly total of \$25,000 per Ordinary Course Professional, without the necessity of filing any interim or final fee applications on account of such fees and disbursements; and it is further

ORDERED, that monthly amounts in excess of \$25,000 shall be carried to the following month, provided, however, that as set forth in the preceding paragraph no monthly amount in excess of \$25,000 may be paid to an Ordinary Course Professional without further order of the Court; and it is further

ORDERED, that if fees and disbursements for any Ordinary Course Professional exceed in the aggregate \$300,000 over a twelve-month period commencing on or after the Petition Date, the amount in excess of \$300,000 shall only be paid and/or reimbursed, and interim and/or final fee applications in connection therewith shall be filed, in accordance with any administrative order establishing procedures for monthly and interim compensation and reimbursement of professionals, if entered; and it is further

ORDERED, that all fees awarded in this case to a Ordinary Course Professional which exceed \$300,000 over a twelve-month period commencing on or after the Petition Date in the aggregate shall be subject to final approval of the Court upon application therefor in accordance with sections 330 and 331 of the Bankruptcy Code or as otherwise provided in the Bankruptcy Rules, Local District Court Rules, Local Bankruptcy Rules or Orders of this Court; and it is further

ORDERED, that this Order shall be without prejudice to the Debtor's rights to apply to the Court, upon appropriate notice, for authority to modify the terms hereof; and it is further

ORDERED, that any objection to the relief requested by the Motion on a permanent basis must be filed with the court, One Bowling Green, New York, New York 10004-1408, by no later than July 5, 2002 at 4:00 p.m. and served on: (i) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attention: Paul Schwartzberg, Esq.; (ii) Willkie Farr & Gallagher, attorneys for the Debtor, 787 Seventh Avenue, New York, New York 10019-6099, Attention: Tonny K. Ho, Esq.; (iii) XO Communications, Inc., 11111 Sunset Hills Road, Reston, Virginia 20190, Attention: Gary D. Begeman, Esq.; and (iv) counsel to any official committee(s) appointed in this case, so as to be actually received by such filing deadline; and it is further

ORDERED, that if timely objections are received there shall be a hearing held on July 9, 2002 at 11:00 a.m. to consider such timely objections to the proposed retention herein; and it is further

ORDERED, that if no objections to the Motion are timely filed, served and received in accordance with this Order, this Order shall be deemed a final order without further notice or hearing, and the Motion shall be granted in its entirety, and the relief granted by this Order shall be made effective on a permanent basis nunc pro tunc to the date of the commencement of this chapter 11 case; and it is further

ORDERED, that the Court shall retain jurisdiction over any matters arising from
or relating to the implementation or interpretation of this order.

Dated: New York, New York
June 18, 2002

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE