

REDACTED – FOR PUBLIC INSPECTION

October 27, 2016

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW Washington, DC 20554

**Re: Applications of XO Holdings LLC and Verizon Communications Inc. for
Transfer of Control of Licenses and Authorizations, WC Docket No. 16-70**

Dear Ms. Dortch:

DISH Network Corp.’s (“DISH”) recent filing objects to Verizon Communications Inc.’s (“Verizon”) proposed acquisition of XO Communications LLC (“XO”) on the grounds that the transaction will decrease “investment and competition in the industry” and that “the claimed benefits” of the transaction “are either speculative or not transaction-specific.”¹ It is wrong on both scores. We address DISH’s two points below and urge the Commission to promptly approve Verizon’s acquisition of XO.²

The Commission has held that cost savings and network efficiencies resulting from avoiding duplicative infrastructure investment can serve as important public interest benefits that support approval of transactions.³ Here, Verizon envisions eliminating planned investment

¹ Letter from Stephanie Roy, Counsel to DISH, to Marlene H. Dortch, Sec’y, FCC, WC Docket No. 16-70, at 1 (filed Oct. 5, 2016) (“DISH Letter”).

² References to Verizon’s services and network herein refer to those of its wholly-owned operating subsidiaries.

³ See, e.g., *Applications of GCI Communication Corp. For Consent To Assign Licenses to the Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10472 ¶ 99 (2013) (“With regard to the Applicants’ claims about network efficiencies that would result from the proposed transaction, we conclude that the Applicants’ claims of reduction in capital and operating expenditures resulting from the elimination of redundant CDMA network facilities are reasonable given the CDMA network coverage overlap of the Applicants. Additionally, we find that the cost savings associated with redundant cell towers and network overlap should include costs avoided for AWN’s future site projections, as the requirements for the combined network likely would be less than the total of the number of future sites for which GCI and ACS Wireless had projected individually.”); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18389 ¶ 196 (“[W]e credit certain cost reductions as benefits resulting from the merger.”); *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14016 ¶ 137 (2005) (citing “capital investment required for a wireless carrier to deploy a next generation network” as “a capital expense that Nextel will be able to

in duplicative network deployments – a rational plan that will benefit customers by facilitating more efficient investment without harming consumers or competition or negatively affecting the availability of broadband. DISH, however, tries to cast these savings as a transaction-specific harm. Notably, DISH cites no instance in which the Commission has found that reducing capital expenditures for duplicative network investment would be a public interest merger harm.

In addition to being wrong on the law, DISH is also wrong on the facts. It dramatically overstates the amount of any reduction in network spending resulting from the transaction. For instance, DISH’s reference to **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] wrongly suggests network investment savings of that size. As other documents produced in this proceeding show, that figure is comprised of a number of line items from both Verizon and XO, such as cost savings related to **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** that do not relate to the XO “OnNet Program” buildout plan that DISH references.⁵ In fact, cost savings from the OnNet Program represent roughly one-fourth of the capex figure that DISH cites – a total of **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** – through 2019.⁶ And contrary to DISH’s claims, those cost savings will not “halt” network expansion or otherwise harm competition, but instead will just eliminate unnecessary and inefficient investment.⁷

More generally, given the enormous capital outlay that Verizon has maintained over the years, any suggestion that the anticipated efficiencies will materially cut back on overall network investment is not credible. In 2015, for instance, Verizon’s total capital expenditures were \$17.8 billion.⁸ Verizon planned for similar levels of expenditures in 2016 – originally projecting \$17.2 billion to \$17.7 billion total.⁹ The network investment savings at issue here – **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] – is not a material change in Verizon’s wireline network capital expenditure plans. In short, DISH’s speculation that Verizon will reduce investment, or will embark on investment strategies that are somehow inferior to XO’s today, are unfounded.

avoid” as a result of the transaction).

⁴ DISH Letter at 3.

⁵ Capex Summary-EL-01-10-16, *available at* VZXO-11-00008289.

⁶ *Id.* (stating estimated capital savings of **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]).

⁷ DISH Letter at 3.

⁸ Verizon 2015 Annual Report at 13 (2015), http://www.verizon.com/about/sites/default/files/-annual/verizon-annual-2015/downloads/15_vz_ar.pdf.

⁹ *Id.*

Likewise, DISH's claim that the transaction will result in less competition due to "a direct 2-to-1 reduction in competition for some businesses" is groundless.¹⁰ While DISH offers no support for its claim, Verizon and XO have engaged in a rigorous review of fiber overlaps using a building-by-building analysis, and the evidence in the record shows that competing providers exist in or nearby *every* overlap building.¹¹ The reality is that numerous alternative providers already compete in all these geographic markets and for all relevant services, and there are no material barriers to additional entry.

Finally, DISH's contention that the benefits of the transaction are either speculative or not transaction-specific is equally unavailing.¹² For example, Verizon submitted a declaration explaining in detail that Verizon will utilize XO's fiber assets to expand 4G and deploy upcoming 5G services more quickly and efficiently than if Verizon were to build redundant fiber or attempt to lease it from a third party.¹³ That declaration provides specific examples of how XO's fiber will enable faster and more extensive network densification for both 4G and 5G and will allow Verizon to expand its 5G test footprint¹⁴ – clear, tangible transaction-specific benefits. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]. DISH ignores these benefits and instead narrowly focuses on whether Verizon could light up XO dark fiber faster than XO. That is beside the point. And looking beyond XO's fiber assets to other transaction-specific benefits, Verizon and XO already have explained that XO customers will be far better off following the transaction, as they will gain access to all of Verizon's high-quality services in addition to having continued access to their XO services.¹⁶

For these reasons, the Commission should reject DISH's latest objections and approve the proposed transaction.

¹⁰ DISH Letter at 2.

¹¹ See Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (Oct. 14, 2016); Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (Oct. 6, 2016).

¹² DISH Letter at 4-5.

¹³ See, e.g., Declaration of Ronald W. Hicks, Jr. ¶¶ 3-4 ("Hicks Decl."), attached to Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Sept. 30, 2016).

¹⁴ *Id.* ¶¶ 18-25.

¹⁵ Letter from Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70, at 3 n.5 (filed Sep. 14, 2016)

¹⁶ See, e.g., Joint Opp. to Petitions to Deny and Comments, WC Docket No. 16-70, at 14-15 (filed May 27, 2016).

Please contact the undersigned should you have further questions.

Respectfully submitted,

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