

April 22, 2016

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

RE: WC Docket No. 16-70, In the Matter of XO Holdings and Verizon Communications, Inc.

Dear Ms. Dortch:

On April 20, 2016, Harold Feld and John Gasparini of Public Knowledge met with the following Federal Communications Commission (“Commission”) staff: Linda Ray, Mary Claire York, John Schauble, Jim Schlichting, Catherine Matraves, and Nadja Sodos-Wallace of the Wireless Telecommunications Bureau, and Michael Ray and Daniel Kahn of the Wireline Competition Bureau, regarding the above-captioned proceeding.

We expressed concerns regarding several aspects of the proposed transaction. With regard to the acquisition of fiber assets, we raised concerns regarding the impact of market concentration on competition for business broadband services, particularly in the multihoming context – a situation in which the need for multiple robust competitors in a marketplace is particularly significant. Further, this issue not only impacts this transaction, but also the development of 5G technology, and the shift toward small-cell network densification, creating the potential for increased consolidation in the high-capacity broadband industry. It is important that these issues be considered not only in this transaction, but also going forward.

Regarding the wireless spectrum aspects of this transaction, we raised two connected issues. First is the question of the applicability of any spectrum holdings evaluation or spectrum screen to spectrum used for 5G technologies. This question is being examined as part of the Spectrum Frontiers proceeding,¹ but may not be fully resolved prior to the conclusion of this transaction. The Commission should make clear that, whatever 5G spectrum holdings rules it adopts, they should apply equally to the spectrum included in this transaction. The Commission should provide clarity that this spectrum will be properly attributed to Verizon in the future, under any 5G rules the Commission adopts.

Second, we raised questions regarding the “lease with option to buy” component of the transaction.² The Commission should scrutinize the terms of the deal to determine whether it is, in effect, a purchase. The Commission may consider applying a standard similar to that used in

¹ See *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, Notice of Proposed Rulemaking*, GN Docket No. 14-177, FCC 15-138, at ¶¶ 190-192 (rel. Oct. 23, 2015).

² See *Cellco Partnership D/B/A Verizon Wireless And Nextlink Wireless, Llc, A Subsidiary Of Xo Holdings, Seek FCC Consent To A Long-Term De Facto Transfer Spectrum Leasing Arrangement Involving Local Multipoint Distribution Service And 39 GHz Spectrum, Public Notice*, DA 16-394 (Apr. 12, 2016).

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the post-AWS-3 Auction evaluation of the DISH-affiliated entities.³ The extent to which Verizon is in fact the owner of the entity from whom it has an option to purchase the licenses should be relevant to the Commission's review of this transaction, as well as future transactions of this nature. This issue is particularly important with regard to license that carry an expectation of renewal. The Commission should take a close look at whether arrangements of this type might better be examined holistically and treated as 5G licenses.

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Sincerely,

/s/ John Gasparini
Policy Fellow
Public Knowledge

Cc: Linda Ray
Mary Claire York
John Schauble
Jim Schlichting
Catherine Matraves
Nadja Sodos-Wallace
Michael Ray
Daniel Kahn

³ See generally In the Matter of Northstar Wireless LLC & SNR Wireless LicenseCo, LLC, *Memorandum Opinion and Order*, 30 FCC Rcd. 8887 (Aug. 18, 2015) (describing & applying one method for evaluating *de facto* control over a corporate entity)