

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)
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Applications Filed for the Transfer of)
Control of XO Communications, LLC to) WC Docket No. 16-70
Verizon Communications Inc.)
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COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice seeking comment on the applications of XO Communications, LLC (“XO”) and Verizon Communications, Inc. (“Verizon”) (collectively, the “Applicants”) to transfer control of certain licenses and authorizations from XO to Verizon.¹

I. Introduction

CCA represents the interests of nearly 100 competitive wireless carriers, many of which are small carriers who serve otherwise underserved portions of rural America. CCA also represents almost 200 associate members who include vendors and suppliers that provide products and services throughout the mobile communications supply chain.

¹ *Applications Filed for the Transfer of Control of XO Communications, LLC to Verizon Communications, Inc.*, Public Notice, DA 16-393, WC Docket No. 16-70 (rel. Apr. 12, 2016) (“*Public Notice*”). CCA filed comments on May 3, 2016, regarding the related application of Cellco Partnership d/b/a Verizon Wireless and Nextlink Wireless, LLC, a subsidiary of XO Holdings, to enter into a long-term *de facto* transfer leasing agreement.

CCA focuses its comments on the potential effect of the transaction on the marketplace for two critical inputs into competitive wireless service: numbering resources and business data services (“BDS”). At this time of transition to new network technologies, CCA urges the Commission to ensure that the proposed transaction does not diminish competitive carriers’ access to these inputs, and to proceed quickly with comprehensive efforts to update the U.S. numbering system and to reform the broken BDS market.²

II. The Proposed Transaction Should Not Compromise Access to Numbering Resources Before the United States Transitions to Nationwide Portability

For more than twenty years, the FCC has recognized the importance of placing critical numbering resources within the control of the consumer.³ As the Commission has observed, number portability allows consumers to “switch more freely among carriers,” unleashing “competitive pressure” that “will encourage carriers to compete for customers by offering lower prices and new services.”⁴

Although many consumers perceive that the current numbering system gives them the ability to port “any number, anywhere, to any provider,” the United States’ telephone numbering system provides for local—not nationwide—number portability. The local number portability

² See *Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, WC Docket No. 16-143, ¶ 5 (rel. May 2, 2016) (“*BDS FNPRM*”).

³ See, e.g., *Tel. No. Portability*, Memorandum Opinion and Order, 18 FCC Rcd. 20,971, ¶ 17 (2003) (“*Tel. No. Portability Memorandum and Order*”); *Tel. No. Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 23,697 (2003); *Tel. No. Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, ¶ 155 (1996).

⁴ *Tel. No. Portability Memorandum and Order* ¶ 17; Letter from Tom Wheeler, Chairman, FCC, to the Honorable Fred Upton, Chairman, House Committee on Energy and Commerce (dated July 27, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-334894A1.pdf (“*July 27, 2015 Wheeler Letter*”).

system only allows consumers to port numbers to a wireless carrier that has a facilities-based presence in the local area and transport area (“LATA”) associated with the number the customer seeks to have ported. As U.S. communications continue to evolve from legacy telephone networks and their geographic constraints, consumers now demand to keep their phone number regardless of where in the country they seek service.

Nationwide carriers, by virtue of their size, are able to provide the number portability that consumers expect, notwithstanding the limitations of the local number portability system. Competitive carriers, on the other hand, are often regional and rural providers with smaller geographic footprints. As a result, many competitive wireless carriers must rely on interim solutions to overcome the constraints of local portability pending comprehensive reform of the number portability system.⁵ Some competitive wireless carriers gain access to numbering resources outside their network footprint by entering into commercially negotiated agreements with third parties who have access to numbering resources outside of the competitive wireless carriers’ own network footprint. These agreements are typically negotiated with wireless providers not affiliated with incumbent local exchange carriers, interconnected VoIP providers, and, mostly, large competitive local exchange carriers (“CLEC”), including XO, that are

⁵ This uneven system will remain in place until the Commission, the North American Numbering Council, and industry participants succeed in their efforts to implement true nationwide number portability for all carriers. *See July 27, 2015 Wheeler Letter* (calling for an “industry-driven” solution and committing to “deploy the full panoply of tools at the Commission’s disposal to facilitate wireless number porting”); Letter from Steven K. Berry, CEO, CCA, and Meredith Atwell Baker, President & CEO, CTIA, to Tom Wheeler, Chairman, FCC (dated Sept. 25, 2015), http://www.nanc-chair.org/docs/mtg_docs/Sep_15_CTIA_Letter_to_FCC_092515.pdf (identifying interim and long-term steps to implement nationwide number portability); Letter from Matthew DelNero, Chief - Wireline Competition Bureau, FCC, to Betty Anne Kane, Chairman, Public Service Commission of the District of Columbia (dated Nov. 16, 2015), http://www.nanc-chair.org/docs/mtg_docs/FCC_Letter_NANC_Wireless_Portability_Referral_111615.pdf (directing NANC to evaluate and propose solutions to implement nationwide number portability).

unaffiliated with nationwide wireless carriers. Because these agreements are strictly voluntary, their viability as an interim numbering solution depends on the presence of a sufficient number of willing providers in the marketplace. Without these interim solutions in place, competitive wireless providers risk losing consumers simply because they previously purchased telephone service in a LATA that is out of the carrier's footprint. These consumers, in turn, risk losing the choice of a regional provider whose pricing and service may best meet their needs.

In their application, Verizon and XO do not address the impact of the proposed transaction on these local numbering agreements, nor provide any assurance that these agreements will continue to be honored if Verizon assumes them. As the sole owner of Verizon Wireless, a nationwide wireless carrier, Verizon will have the incentive either to deny these resources to smaller wireless carriers and prevent customers from switching to competing providers, or to charge more for these services and raise the costs of its retail rivals. Either outcome would undermine "the Commission's longstanding policy objectives" with respect to portability, and cause "consumers and competition to suffer."⁶ Indeed, for wireless competition to improve price and quality of service, wireless consumers must be free to choose carriers on the basis of price and quality of service—and not the regulatory boundaries associated with their existing phone number.

Thus, as the Commission continues its efforts to bring nationwide portability to our numbering system, it must also ensure that cost-effective interim workarounds remain available from Verizon after closing of the proposed transaction.

III. The Proposed Transaction Should Not Compromise Access to Backhaul, and Underscores the Need for Prompt Action in the BDS Rulemaking.

⁶ July 27, 2015 Wheeler Letter at 1.

The Commission has recognized that BDS “is critical to the ability of wireless carriers to expand and operate their networks.”⁷ As CCA explained in the special access proceeding,⁸ wireless providers rely on BDS to provide the backhaul links that connect their cellular sites to mobile switching centers, and their networks to those of other providers. These backhaul purchases represent a significant cost center for wireless carriers—they account for “approximately 30 percent of the operating cost of providing wireless service.”⁹ Given their integral role in a carrier’s network architecture, backhaul connections also affect the overall performance and “capacity of a service provider’s wireless network.”¹⁰ Thus, increases in data consumption will “plac[e] pressure on the need for higher-capacity connections to cell sites.”¹¹

Technological changes and trends in the communications industry are making BDS “even more critical” to wireless carriers as they seek to “deliver high bandwidth wireless services.”¹² Dramatic increases in consumption of data-intensive services, and the proliferation of connected mobile devices, are driving wireless providers to densify their networks with additional cellular base stations—each of which will require a backhaul connection.¹³ The forthcoming transition to

⁷ *BDS FNPRM* ¶ 5.

⁸ Reply Comments of Competitive Carriers Association, WC Docket No. 05-25 (filed Feb. 19, 2016) (“CCA Reply Comments”).

⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 - Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Eighteenth Report, 30 FCC Rcd. 14,515, ¶ 69 (2015) (“Eighteenth Report”).

¹⁰ *Id.* ¶ 80 n.362.

¹¹ *BDS FNPRM* ¶ 78.

¹² *Id.* ¶ 5.

¹³ *See, e.g.*, Letter from INCOMPAS et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10953 (filed Apr. 21, 2016); CCA Reply Comments at 2-4; Comments of Sprint at 73-74, WC Docket No. 05-25 (filed Jan. 27, 2016); Letter from Paul Margie,

5G, and deployments of antennas operating on millimeter wave frequencies, will require further densification, and support the adoption of increasingly sophisticated connected applications that require demanding performance at each point of the network diagram.¹⁴

The two largest wireless providers—AT&T Mobility and Verizon Wireless—benefit from competitive advantages in the BDS marketplace relative to competitive wireless carriers. Importantly, AT&T and Verizon gain access to BDS for their wireless backhaul needs from their affiliated incumbent local exchange carriers (“ILECs”) while competitive wireless carriers must rely primarily on third-parties for backhaul. Since ILECs continue to dominate the BDS marketplace—indeed, they remain the sole supplier of BDS in the vast majority of the country¹⁵—competitive carriers remain heavily reliant on AT&T and Verizon in particular. Inadequately constrained by competition, the affiliated ILECs impose outrageous rates, terms, and conditions for wholesale BDS that competitive carriers use as backhaul. These exorbitant prices raise the costs of the ILEC wireless affiliates’ retail rivals. Indeed, as XO itself has explained, ILEC prices for BDS bear no relationship to comparable benchmarks, and are almost certainly supra-competitive.¹⁶

The proposed transaction will increase Verizon’s control in the BDS marketplace and ability to engage in tactics that diminish wireless competition. As a result of the transaction,

Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, at 1-2, WC Docket No. 05-25 (filed Sept. 23, 2015).

¹⁴ See Reply Comments of Sprint Corporation at 3-4, GN Docket No. 14-177 (filed Feb. 29, 2016) (“Sprint Reply Comments”).

¹⁵ See Declaration of Stanley M. Besen and Bridger M. Mitchell at 2, appended as Attachment B to Letter from Jennifer P. Bagg, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (filed Apr. 11, 2016).

¹⁶ Comments of XO Communications at 33-36, WC Docket No. 05-25 (filed Jan. 27, 2016); Reply Comments of XO Communications at 11, WC Docket No. 05-25 (filed Feb. 19, 2016) (“XO Reply Comments”).

competitive wireless carriers risk losing a competitive supplier even outside of Verizon's incumbent territory, as it seems unlikely Verizon will use XO's network to provide competitively-priced BDS to Verizon Wireless's retail competitors post-closing. Indeed, the Applicants make short shrift of the transaction's impact on the BDS marketplace, merely suggesting that any harm will be negated by the presence of nearby cable and/or CLEC facilities, some degree of overlap in fiber-connected buildings between XO and cable and CLEC providers, and the transition to Ethernet and 5G.¹⁷ These arguments ignore that competitive BDS providers cannot always extend their networks to ILEC-served locations cost effectively,¹⁸ and that the most ubiquitous cable networks, their coaxial networks, lack the speed, symmetry and latency specifications necessary for backhaul even where equipped with a fiber headend.¹⁹ The Applicants' arguments also ignore that genuine, price-disciplining competition requires numerous competitors and will suffer as the number of competitors decreases through consolidation.²⁰

Finally, the rapid changes in the telecommunications marketplace merely underscore the importance of ensuring that competitive providers of innovative wireless services can invest in those technologies today. As INCOMPAS explains, to "innovate and invest" in next generation

¹⁷ XO Holdings and Verizon Communications, Inc. Supplemental Letter, WC Docket No. 16-70 (filed Mar. 22, 2016).

¹⁸ *See, e.g.*, XO Reply Comments at 10-11 ("multiple competitors need to be in-building or, in combination with in building competitors, nearby—within 1,000 feet or less—to have competition for Ethernet channel terminations"); Sprint Reply Comment at 25 (citing Declaration of Ed Carey ¶ 9, attached as Exhibit A to Opposition to ILEC Direct Cases of Sprint Corporation, WC Docket No. 15-247 (filed Feb. 5, 2016)).

¹⁹ *See* Letter from Jennifer Bagg, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket No. 05-25 (filed Mar. 24, 2016).

²⁰ *See, e.g.*, XO Reply Comments at 12 (proposing a "new pricing flexibility trigger based on four in-building facilities-based providers").

services, competitive carriers must have “economically viable means of obtaining wholesale inputs”—including “reasonably priced special access services.”²¹ Thus, in addition to ensuring that the proposed transaction will not hinder the reform of vital inputs into wireless service, the Commission must act quickly to resolve the BDS proceeding.

IV. Conclusion

As discussed above, the proposed transaction threatens to restrict competitive carriers’ access to critical inputs and undermine wireless competition. CCA urges the Commission to consider carefully the impact of this transaction on the ability of competitive providers to overcome the constraints of the local numbering portability system, and to procure backhaul on just, reasonable, and nondiscriminatory terms now and in our 5G future. In addition to reviewing the transaction-specific effects of the transaction on these input markets, the Commission must also move quickly with its efforts to advance nationwide number portability and reform the broken BDS marketplace.

Respectfully submitted,

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²¹ Comments of INCOMPAS at 9, WC Docket No. 05-25 (filed Jan. 27, 2016).