

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Cellco Partnership d/b/a Verizon Wireless and)	ULS File No. 0007162285
Netxlink Wireless, LLC, a Subsidiary of XO)	
Holdings, Seek FCC Consent to a Long-Term)	
<i>De-Facto</i> Transfer Spectrum Leasing)	
Arrangement Involving Local Multipoint)	
Distribution Service and 39 GHz Spectrum)	
)	
Applications of XO Communications, LLC and)	WC Docket No. 16-70
Verizon Communications Inc. for Transfer of)	
Control of Licenses and Authorizations)	
)	

PETITION TO DENY AND COMMENTS OF PUBLIC KNOWLEDGE

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I. INTRODUCTION AND SUMMARY

Public Knowledge files this Petition to Deny in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice¹ regarding the applications of XO Holdings and Verizon Communications, Inc. ("Verizon") seeking approval to transfer control of various licenses and authorizations held by XO Communications, LLC from XO Holdings (collectively, "XO") to Verizon ("Verizon/XO Applications").²

Additionally, Public Knowledge files Comments in response to the Public Notice³ regarding the application of Verizon Wireless and Nextlink Wireless, LLC ("Nextlink") for consent to a *de facto* transfer of spectrum lease arrangement ("Verizon/Nextlink Application"),⁴ and urges the Commission to address a myriad of issues raised by the proposed lease arrangement.

Public Knowledge objects to splitting the Verizon/XO Applications and the Verizon/Nextlink Application into separate proceedings. The transactions are interrelated and have significant combined effects. The public interest benefits and the threats the transactions pose to consumers and competition should be considered together.

Because of the potential harm to competition from Verizon's proposed acquisition of XO, and because of the important issues raised by Verizon's associated lease of the Nextlink spectrum, the applicants have failed to meet the threshold requirement to demonstrate that the

¹ 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

² XO Holdings and Verizon Communications, Inc. Consolidated Applications to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 16-70 (filed March 4, 2016) ("Verizon/XO Applications").

³ See Applications filed for the Transfer of Control of XO Communications, LLC to Verizon Communications, Inc., WC Docket No. 16-70, *Public Notice*, DA 16-393 (rel. Apr. 12, 2016) ("*Verizon/XO PN*").

⁴ See Application of Cellco Partnership and Nextlink Wireless, LLC for Long-Term De Facto Transfer Leasing Arrangement, ULS File No. 007162285, Ex. 1 – Description of Transaction and Public Interest Statement (filed March 3, 2016).

proposed transactions will serve the public interest.⁵ The Commission cannot approve these transactions unless the concerns raised by these combined transactions are properly addressed.

II. THE VERIZON/XO TRANSACTION WILL POTENTIALLY REDUCE COMPETITION AND CONSUMER CHOICE IN MANY PRODUCT AND GEOGRAPHIC MARKETS AND DOES NOT SERVE THE PUBLIC INTEREST.

Verizon's proposed acquisition of XO's fiber assets will eliminate current and potential competition between Verizon and XO in the business data services ("BDS") market for mobile backhaul, both fiber and wireless, and for enterprise and wholesale services. Additionally, the transaction will eliminate one of the few independent Internet transit providers not affiliated with a last-mile Internet service provider. Eliminating competition in these markets will likely undermine the Commission's ongoing efforts to increase competition in the BDS market; reduce competition; thwart potential future competition; and harm enterprise customers, Internet edge providers, and ultimately consumers. Approval of the Verizon/XO Applications, as they are currently constituted, will not serve the public interest.

Additionally, the Commission must consider the potential loss of multihoming capability in the market. While a reduction from three-to-two might be acceptable generally, the loss of reliability and the constraint on pricing provided by multihoming between multiple independent providers may significantly affect enterprise customers more significantly than traditional competition analysis suggests.

⁵ See 47 U.S.C. § 310(d); Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90, *Memorandum Opinion and Order*, 30 FCC Rcd 9131, 9139 ¶ 18 (2015) ("*AT&T/DIRECTV Order*") (explaining that applicants bear the burden of demonstrating "that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity").

A. The Loss of Existing Competition and Potential Competition Between Verizon and XO Threatens the Public Interest.

The Commission recently recognized that competition is uneven in the (“BDS”) market.⁶ Consumer Federation of America recently released a report finding that incumbent telephone companies possess market power in the BDS market, and that overcharges and abusive pricing stemming from abuse of this market power totaled approximately \$75 billion over the past five years, and indirectly cost American consumers over \$150 billion since 2010.⁷ As a result, the Commission has proposed to take new steps to safeguard BDS customers in non-competitive markets, including BDS price regulation and prohibition of certain tying arrangements that harm competition.⁸

The proposed transaction will likely undermine the Commission’s efforts to address the lack of competition in the BDS market. There is significant overlap between the markets where Verizon and XO have fiber. While Verizon and XO assert that their fiber networks overlap in only 15% of XO’s footprint,⁹ DISH Network’s (“DISH”) Petition to Deny correctly points out that this overlap includes metropolitan areas in the nation’s most populated urban corridor with many of the nation’s largest business centers, including Washington, DC, Baltimore, Philadelphia, Pittsburgh, and Boston.¹⁰ As the Commission has explained, the benefits of competition include “lower prices, higher quality, greater output and faster innovation.”¹¹

⁶ Business Data Services in an Internet Protocol Environment, Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; WC Docket Nos. 16-143, 15-247, 05-25, RM-10593; *Tariff Investigation Order and Further Notice of Proposed Rulemaking*; FCC 16-54; at 3 ¶ 3 (rel. May 2, 2016) (“*BDS FNPRM*”).

⁷ MARK COOPER, CONSUMER FEDERATION OF AMERICA, THE SPECIAL PROBLEM OF SPECIAL ACCESS: CONSUMER OVERCHARGES AND TELEPHONE COMPANY EXCESSIVE PROFITS 1, 33-35 (2016), *available at* <http://consumerfed.org/wp-content/uploads/2016/04/4-16-The-Special-Problem-of-Special-Access.pdf>.

⁸ *See BDS FNPRM* at 5 ¶ 11.

⁹ Verizon/XO Applications at 13.

¹⁰ *See* Petition to Deny of Dish Network Corporation; WC Docket No. 16-70, ULS File No. 0007162285; at 10 (filed May 3, 2016) (“*DISH Petition*”).

¹¹ *BDS FNPRM* at 4-5 ¶ 10.

Allowing Verizon to acquire XO will eliminate competition in the overlapping BDS markets, as well as the benefits of competition between the firms.

Additionally, the Verizon/XO transaction will eliminate XO as a separate provider of backhaul for wireless carriers. Backhaul is a form of BDS used by wireless carriers that the Commission has recognized as “critical to the ability of wireless carriers to expand and operate their networks today and will be even more critical as the advent of the 5G wireless drives the creation of the dense thicket of cell sites that will be needed to deliver high bandwidth wireless services.”¹² Reducing competition in the backhaul market will likely slow deployment of competitive next-generation wireless networks and impede more robust mobile broadband competition, which is contrary to the public interest.¹³

Lastly, the Verizon/XO Applications will remove XO as an independent provider of Internet transit services. DISH correctly explains that this aspect of XO’s business creates significant vertical effects for the proposed combination. XO is one of a small number of providers of Internet transit that is not affiliated with a last-mile ISP. Transit providers interconnect with Internet service providers, such as Verizon, and deliver content from edge providers.¹⁴ Eliminating one of the few independent transit providers will reduce the number of providers in the Internet transit market, potentially raising transit costs for Internet edge

¹² *Id.* at 3-4 ¶ 5.

¹³ See Chairman Tom Wheeler, Testimony before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, at 69 (Nov. 17, 2015), *available at* <http://docs.house.gov/meetings/IF/IF16/20151117/104195/HHRG-114-IF16-Transcript-20151117.pdf> (stating, “you can’t have cell densification, which makes wireless networks work better, without backhaul, which requires special access”); Chairman Tom Wheeler, Federal Communications Commission, Remarks at INCOMPAS Policy Summit, at 1-2 (Apr. 11, 2016), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-338806A1.pdf (stating, “[w]ithout a healthy BDS market, we put at risk the enormous opportunity for economic growth, job creation and U.S. competitiveness that 5G represents”).

¹⁴ DISH Petition at 11-12 (citing Letter from Markham Erickson, Counsel to Netflix, Inc., to Marlene H. Dortch, Secretary, FCC; MB Docket No. 14-57, at 5 (Apr. 6, 2015) (“There are only six competitive options available to Netflix for transit to high-bandwidth customers in the United States: Cogent, Level 3, Tata, TeliaSonera, XO, and NTT”).

providers and, ultimately, the prices consumers pay for their goods and services, both online and offline.

B. Multihoming Provides Enterprise Customers With Reliability and Better Price Competition.

“Multihoming is the practice of connecting a host or a computer network to more than one network. This can be done in order to increase reliability or performance, or to reduce cost.”¹⁵ Having two networks with physical connections to the host computer provides enterprise customers with two important safeguards. First, it enhances reliability. In the event one carrier suffers congestion or a network outage, traffic can be automatically re-routed to the other network, minimizing disruption to the enterprise customer. Second, multihoming enhances the ability of a customer to avoid price increases. If one network provider raises prices, or fails to match a discount offered by the other connected network, the enterprise customer can shift traffic to the lower cost provider without incurring the transaction cost of searching for an alternative, building a connection, bringing the competing provider into the premises, and/or buying new equipment.

Accordingly, even if a third competitor exists in the market, enterprise customers may still lose reliability or experience increased cost where the transaction cost of bringing the remaining network provider into the premises is high. When the FCC considers the potential loss of competition and reliability in those markets where XO and Verizon overlap, it should consider whether additional reliability conditions or price conditions are necessary to protect enterprise customers losing an independent network for multihoming.

¹⁵ Wikipedia, “Multihoming”, <https://en.wikipedia.org/wiki/Multihoming>.

III. THE VERIZON/NEXTLINK TRANSACTION RAISES SIGNIFICANT ISSUES REGARDING THE DEPLOYMENT OF 5G SERVICES AND AGGREGATION OF MILLIMETER WAVE SPECTRUM.

As an initial matter, the Commission should scrutinize the Verizon/Nextlink transaction to determine whether the *de facto* lease agreement is actually, in effect, a purchase.

Next, the Commission should ensure that the Verizon/Nextlink Application will not undermine the deployment of next-generation 5G services in the millimeter wave (“mmW”) spectrum bands. The Commission should require that the licenses Verizon proposes to lease from Nextlink, with an option to purchase, are governed by the service rules the Commission adopts for the mmW bands in its ongoing *Spectrum Frontiers* proceeding.¹⁶ Additionally, the Commission should stringently review the Verizon/Nextlink transaction to make certain that the aggregation of valuable low-band spectrum that has hindered competition in the wireless market is not repeated in the mmW bands.

A. The Commission Should Determine Whether the Spectrum Lease Arrangement Is Actually a Spectrum Acquisition by Verizon Wireless.

The Commission’s review of the Verizon/Nextlink Application must begin with an inquiry into whether this proposal is, effectively, a purchase rather than a lease agreement. In the Verizon/Nextlink Application, Verizon Wireless seeks the Commission’s consent to a *de facto* transfer spectrum leasing arrangement for local multipoint distribution service (“LMDS”) spectrum and 39 GHz spectrum held by Nextlink.¹⁷ And at the same time, Verizon Wireless’s parent company, Verizon, seeks to acquire XO Holdings, the parent company of Nextlink.¹⁸ If the Commission approves the Verizon/XO Applications, it must consider whether Verizon’s

¹⁶ See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et. al.; GN Docket No. 14-177, IB Docket Nos. 15-256, 97-95, WT Docket No. 10-112, RM-11664; *Notice of Proposed Rulemaking*; 30 FCC Rcd 11878 (2015) (“*Spectrum Frontiers NPRM*”).

¹⁷ *Verizon/Nextlink PN* at 1.

¹⁸ *Id.*; *Verizon/XO PN* at 1.

control of Nextlink’s parent, from whom Verizon’s wireless subsidiary seeks to lease spectrum, will equate to Verizon and Verizon Wireless owning the Nextlink licenses.

To guide its analysis, the Commission should look to its at post-AWS-3 auction evaluation of the DISH affiliated entities and DISH’s *de facto* control of those companies. After the conclusion of the AWS-3 spectrum auction, the Commission declared Northstar Wireless, LLC (“Northstar”) and SNR Wireless LicenseCo, LLC (“SNR”) ineligible for a combined \$3.3 billion in small business bidding credits, finding that Northstar and SNR were effectively controlled by DISH Network (“*Northstar/SNR Order*”).¹⁹ The Commission’s analysis regarding what constitutes *de facto* control from the *Northstar/SNR Order* took special note of the fact that Northstar and SNR were 85% indirectly controlled by DISH, and that DISH had the power to control Northstar and SNR through a variety of mechanisms.²⁰

B. Any Acquisition of the Nextlink Millimeter Wave Spectrum Should Subject to the Forthcoming Rules for These Bands.

Last year, the Commission issued a Notice of Proposed Rulemaking (“*Spectrum Frontiers NPRM*”) seeking comment on approaches for innovative uses of spectrum above 24 GHz, or mmW spectrum. Because planning for this spectrum is underway in the *Spectrum Frontiers* proceeding, the Commission should make clear that if Verizon exercises its option to acquire the Nextlink spectrum, that transaction will be evaluated under the rules the FCC establishes for these bands. In addition to the Upper Microwave Flexible Use Service the Commission proposed in the *Spectrum Frontiers NPRM*, Public Knowledge supports three

¹⁹ See Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands; File No. 0006670613, File No. 0006670667, Report No. AUC-97AUC; *Memorandum Opinion and Order*; 30 FCC Rcd 8887 (2015) (“*Northstar/SNR Order*”).

²⁰ *Northstar/SNR Order* at 8889-90 ¶¶ 3, 6, 8910 ¶ 53; see also *id.* at 8909-8940 ¶¶ 50-128.

additional proposals to make the 39 GHz band more accessible to smaller operators, innovators, and the general public.²¹

First, the Commission should promote widespread access and efficient spectrum re-use in the 39 GHz band by adopting primarily unlicensed and dynamic spectrum sharing rules that permit unlicensed use of mmW spectrum for indoor-only use. Further, the Commission should facilitate opportunistic access to unused capacity in the licensed portions of mmW bands on a use-it-or-share-it basis to the extent technically feasible.²²

Second, the Commission should certify a mmW Spectrum Access System (“SAS”) to facilitate more widespread and intensive use of the 39 GHz band. The Commission should also establish a use-it-or-share-it obligation for the 39 GHz band that is effective once the SAS is operational. Use-it-or-share-it obligations will ensure the spectrum does not lie fallow, and a mmW SAS can ensure that other users are protected; facilitate more active and efficient secondary markets for licensed spectrum access; promote more robust use-or-share opportunistic access; and, if needed, enable registration of indoor-only use by property owners.²³

Third, the Commission should establish license areas for the 39 GHz band that are smaller than counties. Smaller licensing areas provide greater flexibility and liquidity to the functioning of the secondary market, and the targeted small cell capacity in-fill anticipated for 5G wireless use best fits smaller license areas that can be purchased or leased as needed. There is no downside for incumbent licensees whose licenses currently span larger areas. Spectrum held by current licensees will be subdivided, and the incumbent will retain its full rights and flexibility to all the subdivided licenses. Further, smaller licensing areas make it easier for the

²¹ See Comments of Open Technology Institute at New America and Public Knowledge; GN Docket No. 14-177, IB Docket No. 15-256, WT Docket No. 10-112, RM-11664; at 9-10, 24-27 (filed Jan. 28, 2016) (“PK and OTI Spectrum Frontiers Comments”).

²² *Id.* at 9.

²³ *Id.* at 11-12, 25-26.

FCC to identify unused spectrum and enforce performance requirements, making it more likely spectrum does not lie fallow.²⁴

C. The Commission Should Ensure the Verizon/Nextlink Transaction Will Not Lead to Excessive Spectrum Aggregation by Verizon Wireless in the Millimeter Wave Bands.

Lastly, the Commission has already acknowledged concerns about aggregation in the mmW spectrum bands and requested comment for how to address these concerns when reviewing secondary market transactions in these bands.²⁵ As the Competitive Carriers Association (“CCA”) points out, it is imperative that the FCC not allow the mmW bands to be dominated by the two largest carriers as the sub-1-GHz bands are today.²⁶

In the sub-1-GHz bands, the Commission has acknowledged that an overconcentration of low-band spectrum holdings by the nation’s two largest wireless carriers has harmed consumers and competition, and that consumers continue to demand more mobile broadband. As a result, the Commission adopted a more stringent review for secondary-market transactions involving aggregation of sub-1-GHz spectrum.²⁷ The Department of Justice has also expressed its concerns regarding the anti-competitive effects of overly concentrated low-band spectrum holdings by the nation’s two largest wireless carriers.²⁸ Most recently, the FCC’s latest report on competition in the wireless industry found that AT&T and Verizon Wireless combined hold 73% of all sub-1-GHz spectrum.²⁹

²⁴ *Id.* at 26-27.

²⁵ *See Spectrum Frontiers FNPRM* at 11934-35 ¶¶ 191-192 (2015).

²⁶ Comments of the Competitive Carriers Association, ULS File No. 007162285, at 5 (filed May 3, 2016) (“CCA Comments”).

²⁷ *See Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*; WT Docket No. 12-269, GN Docket No. 12-268; *Report and Order*; 29 FCC Rcd 6133, 6156-57 ¶ 45-47 (2014).

²⁸ *See Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (filed Apr. 11, 2013).

²⁹ *See 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*

At present, the Commission can evaluate the Verizon/Nextlink Application only pursuant to the general public interest standard of Section 310(d), rather than under the more developed policies governing low-band spectrum. Further, the very question of what set of rules will serve the public interest and prevent “excessive concentration of licenses,” in accordance with Section 309(j)(3)(B), remain subject to the pending *Spectrum Frontiers NPRM*. Indeed, Public Knowledge, Open Technology Institute at New America (“OTI”), Starry, and others, have urged the Commission to adopt sharing plans in the relevant bands rather than to replicate the traditional exclusive licensing regime employed in the lower bands for mobile 4G services.³⁰ Accordingly, Public Knowledge cannot, at this time, say that Verizon Wireless’s acquisition of Nextlink’s spectrum rights violates the public interest, and submits only comments on the proposed lease transaction.

Nevertheless, As CCA has correctly explained, market dominance is easily entrenched and difficult to change.³¹ Such an outcome would stifle competition and innovation, ultimately slowing deployment and adoption of 5G technologies. The Commission must therefore make crystal clear that whatever policies are ultimately adopted in the *Spectrum Frontiers* proceeding will apply to the spectrum use rights Verizon Wireless acquires in this transaction. Neither Verizon Wireless, nor any other provider that purchases or leases spectrum from an existing incumbent, may claim that their transaction is “grandfathered” from application of any policies the Commission may adopt. If the FCC adopts the spectrum re-use policies urged by Public Knowledge and OTI, it must make clear that Verizon Wireless (and any subsequent party

Services; WT Docket No. 15-125; *Eighteenth Report*; 30 FCC Rcd 14515, 14557, Table IV.A.2, 14559 ¶ 62 (2015) (“*Eighteenth Report*”).

³⁰ See PK and OTI Spectrum Frontiers Comments at 9-10, 24-27; Notice of *Ex Parte* of Starry, Inc; GN Docket No. 14-177, IB Docket Nos. 15-256, 97-95, WT Docket No. 10-112, RM-11664; Letter and Attached Presentation (filed May 5, 2016).

³¹ CCA Comments at 8.

acquiring spectrum rights in the relevant bands) will be subject to the same spectrum sharing regime as any other incumbent user.

IV. THE VERIZON/XO AND VERIZON/NEXTLINK TRANSACTIONS ARE CLEARLY INTERRELATED AND THE COMMISSION SHOULD CONSIDER THEM AND THEIR COMBINED EFFECTS TOGETHER.

Prior to reaching the merits of the Verizon/XO and Verizon/Nextlink Applications, the Commission should consolidate its review of the proposed transactions. Verizon has attempted to structure the transactions to avoid this. However, the applications are clearly interrelated, have significant combined effects, and should be considered together.

As noted above, there is significant confusion regarding the status of the spectrum lease arrangement between Verizon and Nextlink if Verizon successfully acquires XO Holdings, the parent company of Nextlink. The Commission must consider the applications together to correctly determine whether the Verizon/Nextlink agreement is in fact a lease, or if by virtue of its planned acquisition of XO Holdings, a pending sale of the Nextlink licenses to Verizon Wireless, a subsidiary of Verizon.

Further, as DISH explained, the two transactions will give Verizon, itself the nation's largest wireless carrier,³² control of resources, including XO's fiber network and Nextlink's LMDS and 39 GHz spectrum, that will be critical to the deployment of 5G mobile broadband services to companies competing with Verizon Wireless.³³ Together, these transactions could significantly reduce actual competition and impair potential competition in multiple product markets. Additionally, the applications affect the same relevant geographic markets.³⁴ For these reasons, the Commission should consolidate these proceedings.

³² *Eighteenth Report* at 14524, Table II.B.1, 14529, Table II.C.1-2 (2015).

³³ DISH Petition at ii-iii.

³⁴ Petition to Deny of INCOMPAS, ULS File No. 0007162285, at 2 (filed May 3, 2016) ("INCOMPAS Petition").

V. THE VERIZON, XO, AND NEXTLINK APPLICATIONS, AS FILED, DO NOT SERVE THE PUBLIC INTEREST.

The Verizon/XO and Verizon/Nextlink applications fail to demonstrate that the transaction will serve the public interest and does not adequately address the clear and substantial threats to consumers and competition the transaction poses. This is a threshold matter, and the Commission cannot approve these transactions until Verizon, XO, and Nextlink make the requisite public interest showing.

Under the Communications Act, Verizon, XO, and Nextlink must demonstrate that the transactions serve the “public interest, convenience, and necessity” to gain the Commission’s approval.³⁵ Verizon, XO, and Nextlink “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.”³⁶ If the Commission cannot find that the proposed combination serves the public interest, or if the record presents a substantial and material question of fact, the applications must be designated for hearing.³⁷

The Commission’s evaluation includes “a deeply rooted preference for preserving and enhancing competition ... promoting a diversity of information services and services to the public, and generally managing the spectrum in the public interest.”³⁸ And, the FCC’s competition analysis “considers how the transaction would affect competition by defining a

³⁵ See 47 U.S.C. § 310(d); *AT&T/DIRECTV Order* at 9139 ¶ 18 (explaining that applicants bear the burden of demonstrating “that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity”).

³⁶ *AT&T/DIRECTV Order* at 9140 ¶ 18; Applications of Cricket License Company, LLC, *et al.*, Leap Wireless International, Inc., and AT&T Inc. for Consent to Transfer Control of Authorizations, Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization; WT Docket No. 13-193; *Memorandum Opinion and Order*, 29 FCC Rcd 2735, 2742 ¶ 13 (2014).

³⁷ See 47 U.S.C. § 309(e); *AT&T/DIRECTV Order* at 9140 ¶ 18; Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4247-48 ¶ 22 (2011) (“*Comcast/NBCU Order*”).

³⁸ *AT&T/DIRECTV Order* at 9140 ¶ 19; *Comcast/NBCU Order* at 4248 ¶ 23.

relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies, if any, that may result from the transaction.”³⁹

Importantly, the Commission’s competition analysis is broader than the Department of Justice’s review because it includes the public interest standard. “[T]he Commission considers whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.”⁴⁰

As DISH explains, Verizon, XO, and Nextlink have failed to show in any detail how these transactions serve the public interest. The applications also fail to describe the relevant geographic and product markets affected by the transactions and to provide market definitions.⁴¹ The Commission should require Verizon, XO, and Nextlink to make comprehensive showings that allow the public and the Commission to appropriately evaluate the competitive implications of the transactions, including the combined effects of the transactions. Additionally, both the Verizon/XO and Verizon/Nextlink applications fail to address the competitive harms and concerns expressed herein, as well as the harms catalogued by CCA, DISH, INCOMPAS, and ViaSat.⁴²

If the Commission were nevertheless to move forward, it would need to provide suitable conditions to address these harms. In particular, the Commission must clarify that the spectrum use policies it will adopt in the *Spectrum Frontiers* proceeding will absolutely apply to Verizon Wireless when they go into effect. Spectrum leased from Nextlink will be fully attributable to Verizon Wireless, and any rules governing concentration of exclusive use spectrum will apply.

³⁹ *AT&T/DIRECTV Order* at 9140-41 ¶ 20; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, To Sirius Satellite Radio Inc., Transferee; MB Docket No. 07-57; *Memorandum Opinion and Order and Report and Order*; 23 FCC Rcd 12348, 12365 ¶ 32 (2008) (“*Sirius/XM Order*”)

⁴⁰ *AT&T/DIRECTV Order* at 9141 ¶ 21; *Comcast/NBCU Order* at 4248 ¶ 24; *Sirius/XM Order* at 12365-66 ¶ 32.

⁴¹ DISH Petition at 7-9.

⁴² See CCA Comments; DISH Petition; INCOMPAS Petition; Comments of ViaSat, Inc., ULS File No. 0007162285 (filed May 3, 2016).

Similarly, if the Commission adopts spectrum re-use and sharing policies, these policies will also apply to Verizon Wireless. Under no circumstances should Verizon Wireless be considered “grandfathered” based on any deployment it may make between the time the lease goes into effect and the time the Commission’s new rules for these bands go into effect.

With regard to the harms from concentration of BDS facilities, the Commission must carefully consider whether to require divestiture in overlapping markets, and whether additional conditions with regard to network robustness, or price increases are necessary in light of the loss of potential multihoming providers to enterprise customers.

VI. CONCLUSION

The Commission should consolidate the Verizon/XO and Verizon/Nextlink applications. The two transactions are clearly interrelated and have substantial combined effects. On the merits, the Commission should deny the Verizon/XO Applications in their current form and stringently review the Verizon/Nextlink Application to ensure that it does not result in the anti-competitive aggregation of valuable mmW spectrum in the hands of a small number of wireless providers. The Commission should also require Verizon’s use and control of the Nextlink spectrum to conform to any rules it adopts for mmW spectrum. Lastly, Verizon, XO, and Nextlink have failed to adequately demonstrate that these combinations will provide any public interest benefits and have not addressed significant competitive concerns raised in the proceedings. The Commission should require the applicants to remedy these shortcomings to satisfy the public interest test required of such license transfers.

Respectfully submitted,

/s/ Phillip Berenbroick
Counsel, Government Affairs
PUBLIC KNOWLEDGE

May 12, 2016

DECLARATION

Public Knowledge's Petition to Deny was prepared using facts of which I have personal knowledge or upon information provided to me. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed May 12, 2016

/s/ Phillip Berenbroick

Phillip Berenbroick
Counsel, Government Affairs
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CERTIFICATE OF SERVICE

I, Phillip Berenbroick, hereby certify that on May 12, 2016, I caused true and correct copies of the foregoing Petition to Deny and Comments to be served on the following via electronic mail.

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