

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Consolidated Applications to Transfer Control) WC Docket No. 16-70
of XO Communications, LLC from XO)
Holdings to Verizon Communications Inc.)

**JOINT OPPOSITION OF VERIZON AND XO HOLDINGS
TO PETITIONS TO DENY AND COMMENTS**

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The Commission should reject the assorted petitions to deny filed in connection with the proposed transfer of control of XO Communications, LLC (“XO Communications”) from XO Holdings to Verizon Communications, Inc. (“Verizon,”¹ and collectively with XO Holdings, “the Applicants”).

INTRODUCTION AND SUMMARY

The Applicants have shown that the proposed transaction will serve the public interest by growing Verizon’s fiber-based IP and Ethernet networks, allowing Verizon to better serve its enterprise and wholesale customers, and enhancing backhaul capacity for cell sites as Verizon densifies its mobile broadband network and moves quickly to develop and deploy 5G.

Opponents of the transaction have failed to identify transaction-specific harms.² Instead, they conjure up misguided claims, piling speculation upon speculation and recycling non-

¹ References to Verizon’s services and network herein refer to those of its wholly-owned operating subsidiaries.

² See Comments of the Competitive Carriers Ass’n (May 12, 2016) (“CCA Comments”); Petition to Deny of DISH Network Corp. (May 3, 2016) (“DISH Petition”); Petition to Deny of INCOMPAS (May 3, 2016) (“INCOMPAS Petition”); Comments of New America’s Open Technology Institute (May 12, 2016) (“OTI Comments”); Petition to Deny and Comments of Public Knowledge (May 12, 2016) (“Public Knowledge Petition”); Comments of Transbeam Inc.

transaction-specific policy arguments that are largely under consideration elsewhere.³ There can be no doubt that competition will continue to flourish in the dynamic marketplaces for business data services (“BDS”), fiber backbone and transit services, and wireless services after Verizon acquires XO Communications and its fiber assets. As but one example, of the 4,487 on-net XO Communications’ buildings nationwide to which Verizon will gain access, only 15% are within Verizon’s ILEC footprint – and, post-transaction, *there will be at least two competing providers in all but one building*. In most cases, there will be three or more.

Petitioners also improperly seek to conflate the transfer of control of XO Communications at issue here with Verizon’s separate spectrum lease arrangement with Nextlink Wireless, LLC (“Nextlink”). But the facts establish these two transactions are independent and involve different services, facilities, and business terms, and thus can and should be considered separately.

The Commission should reject Petitioners’ claims and promptly approve the proposed transfer of control without conditions. Any other action would harm the public interest by frustrating the Applicants’ efforts to enhance networks to the benefit of customers and competition.

(May 12, 2016) (“Transbeam Comments”); Comments of Windstream Services, LLC (May 12, 2016) (“Windstream Comments”) (collectively, “Petitioners”).

³ See, e.g., *General Motors Corp. and Hughes Electronics Corp.*, 19 FCC Rcd 473, 583 ¶¶ 244-45 (2004) (“*GM-Hughes*”) (finding that alleged harms that were “not transaction-specific” did not “provide a basis either for denying their Application or for imposing regulatory conditions”); *Cricket License Co., LLC*, 29 FCC Rcd 2735, 2767 ¶ 74 & n.259 (WTB/IB 2014) (“*Cricket License*”) (same); *AT&T Inc. and Atlantic Tele-Network, Inc.*, 28 FCC Rcd 13670, 13719 ¶ 90 (WTB/IB 2013) (“*AT&T-ATN*”) (same).

DISCUSSION

I. THE ACQUISITION OF XO COMMUNICATIONS WILL ADVANCE THE PUBLIC INTEREST

Contrary to the unsupported claims of Petitioners,⁴ the Applicants have demonstrated that the proposed transaction will serve the public interest.⁵ Demand for fiber bandwidth continues to grow rapidly, with businesses requiring more advanced and innovative technologies and comprehensive solutions. To help serve this increasing demand, XO Communications' network will expand Verizon's ability to reach more customers with fiber, increase innovative offerings, and provide XO Communications' current customers with a larger suite of product and service options.

The transaction will benefit competition in the enterprise and wholesale markets, which consist of sophisticated and knowledgeable customers and a variety of national and regional high-capacity service providers in competition with the Applicants. By reducing network dependency on more expensive leased fiber, enhancing Verizon's network reach, and improving its services, this transaction will allow Verizon to better serve multi-location enterprise customers and to deliver its world-class service to customers of every size. To be successful, a competitor must ensure it can meet growing demand for bandwidth and reliability; this transaction is part of the company's continuing investment to meet that demand.

The acquisition of XO Communications' fiber assets also will facilitate Verizon's densification of its mobile broadband network by allowing better and more efficient fiber

⁴ See DISH Petition at 6-9; Public Knowledge Petition at 12-14.

⁵ See XO Holdings and Verizon Communications Inc. Consolidated Applications to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 16-70, Exhibit 1, at 6-12 (Mar. 4, 2016) ("Public Interest Statement").

backhaul connectivity for wireless cell sites. Densifying the network improves 4G performance and will help pave the way for Verizon to deploy 5G technology, which will involve small cell deployment and require widely available backhaul capability to connect those small cells to Verizon's core network. This network densification furthers Commission and industry efforts to meet exploding mobile broadband demand to benefit consumers and to optimize use of existing spectrum resources.

At the same time, the proposed transaction will result in multiple operational and economic efficiencies that benefit end users. Because XO Communications' network largely complements Verizon's network, rather than overlaps it, customers at all levels will gain access to a more expansive facilities-based network and receive more efficient and economical services. Verizon also will be able to provide the financial resources to better support the operations of XO Communications' network, which its parent, XO Holdings, has acknowledged has sometimes been difficult in certain ways. When fully implemented, the proposed transaction will yield synergies that Verizon estimates will result in total expense savings in excess of \$1.5 billion on a net present value basis.

No Petitioner specifically challenges these public interest benefits. Instead, Petitioners attempt to distort and invent new criteria for the standard of review that applies in this case.⁶ As the Commission has said time and time again, the appropriate inquiry is whether the Applicants have demonstrated that the public interest benefits generated by the transaction outweigh any

⁶ See, e.g., DISH Petition at 6-7 (arguing that the Applicants "must show that the transactions will enhance competition" and "affirmatively prove that it will benefit competition").

potential competitive or other public interest harms.⁷ Here, the transaction benefits competition and customers, and there are no material countervailing harms that outweigh these benefits. And DISH is wrong when it alleges that the Applicants have failed to provide the information the Commission and parties need to evaluate this transaction.⁸ In each alleged case, either the Applicants have provided the information (*e.g.*, Verizon’s wireline assets and geographic overlaps), the information is not in fact required (*e.g.*, copies of agreements⁹), or the requested data would add nothing of value to the Commission’s deliberations (*e.g.*, identification of third-party competitors when the Applicants have already disclosed the number of competitors in each building in which Verizon and XO Communications are located). These attempts to misdirect and delay the Commission should be rejected.

II. THE TRANSACTION WILL NOT HARM COMPETITION IN ANY MARKET FOR BUSINESS DATA SERVICES

A. The Transaction Will Not Materially Reduce Competition for Business Data Services in Verizon’s ILEC Footprint

Contrary to Petitioners’ claims,¹⁰ the proposed transaction will benefit BDS competition in Verizon’s ILEC footprint by expanding Verizon’s fiber-based IP and Ethernet networks and thereby improving Verizon’s ability to provide the advanced and innovative services that enterprise and wholesale customers demand. Petitioners are wrong in asserting that the transaction will harm competition in any geographic market: BDS competition will not be

⁷ See, *e.g.*, *AT&T Inc. and DIRECTV*, 30 FCC Rcd 9131, 9139-40 ¶ 18 (2015); *SoftBank Corp. and Clearwire Corp.*, 28 FCC Rcd 9642, 9650-51 ¶ 23 (2013); *Frontier Commc’ns Corp. and Verizon Commc’ns Inc.*, 25 FCC Rcd 5972, 5976-77 ¶ 9 (2010).

⁸ See DISH Petition at 8.

⁹ See 47 C.F.R. §§ 63.04, 63.18, 63.24 (setting the application requirements for transfers of control of domestic and international Section 214 authorizations).

¹⁰ See CCA Comments at 4-8; DISH Petition at 17-19, 24-27; INCOMPAS Petition at 4, 8-11; OTI Comments at 7-9; Public Knowledge Petition at 3-5.

adversely affected in any relevant market, as the data analysis below shows. Further, competitors will still be able to offer Ethernet over Copper (“EoC”) after the transaction. Claims of vertical effects/price squeezes lack merit, and the transaction will not harm XO Communications’ customers.

The Transaction Presents No Risk of Harm to Competition in Any Geographic Market.

The Applicants submitted data showing that the transaction will not result in any material competitive harm in any market, and indicated that they would continue to examine on-net buildings.¹¹ That continued examination further confirms that there is no potential for competitive harm. In the past, the Commission has expressed concern when two merging entities are the only carriers with direct connections to a building and where additional competitive entry is unlikely.¹² But neither is the case here. In *all but one building* there will be at least two competing alternatives post-merger, and in most cases there will be three or more competitors. Where, as here, “other competitive providers operate” in overlapping markets with the merger applicants and can “fill any void” left by the merged entity, there is “no significant risk of harm to competition.”¹³

¹¹ See Letter from Verizon and XO Holdings to Marlene H. Dortch, FCC, WC Docket No. 16-70 (Mar. 22, 2016) (“Verizon/XO Supplemental Filing”). “On-net buildings” are defined as buildings to which an Applicant has connectivity and has the ability to install electronics on either side. *Id.* at 2 n.5.

¹² See *SBC Commc’ns, Inc. and AT&T Corp.*, 20 FCC Rcd 18290, 18308 ¶ 32 (2005) (“*SBC-AT&T*”) (where merging entities are the only carriers with direct connections to a building, and barriers to entry make it unlikely that other carriers will build their own facilities, the merger is likely to have an anticompetitive effect); *Verizon Commc’ns Inc. and MCI, Inc.*, 20 FCC Rcd 18433, 18451 ¶ 32 (2005) (“*Verizon-MCI*”) (same).

¹³ See, e.g., *Qwest Commc’ns Int’l and CenturyTel, Inc.*, 26 FCC Rcd 4194, 4202 ¶ 15 (2011) (“*Qwest-CenturyTel*”) (finding “no significant risk of harm to competition” in markets in which two merging carriers both operate where “other competitive providers operate in both markets”); *SBC-AT&T*, 20 FCC Rcd at 18292 ¶ 3, 18308 ¶ 33 (finding no anticompetitive effect where,

As the Applicants have previously explained, Verizon will gain access to 4,487 XO Communications on-net buildings, of which only 691 (15%) are located within Verizon's ILEC footprint. The Applicants' more extensive review of these 691 buildings shows there will be no risk of competitive harm from the transaction, as customers in these buildings will continue to enjoy substantial competitive choice post-transaction.

Specifically, the data concerning these 691 buildings show that:

- *More than 99% (690 out of 691 buildings) are served by **at least one other CLEC or cable company** in addition to XO Communications.* This analysis does not even account for several other communications and cable providers who also likely serve some of these buildings but for whom information is not readily available. The single building that appears to be the exception has an address in East Texas, Pennsylvania. XO Communications ceased providing service to that building in 2011. The address is currently unrecognized by the United States Postal Service.
- *Nearly 60% (i.e., 410 buildings) are served directly by **at least two other CLECs and/or cable companies** in addition to XO Communications.* So post-transaction, there will be at least three providers in each of these buildings.
- *Nearly 98% of the remaining buildings (274 of 281 buildings) are served by **one other CLEC or cable company and are within 0.1 miles of fiber of at least one additional leading CLEC or cable company**.* Of the remaining seven buildings, all but one are served by at least one other CLEC or cable company in addition to XO Communications. Furthermore, two of these seven are located in zip codes served by legacy Time Warner Cable (Business Class), four are in cities served by Windstream, and the one remaining building is the unrecognizable address noted above located in East Texas, Pennsylvania.

All of the CLECs and nearly all of the cable companies providing service to these buildings offer Ethernet service. Although the Commission has tentatively concluded that best efforts services do not appear to be competitive substitutes for BDS,¹⁴ Verizon expects that the

post-merger, "other competitors with similar types of local facilities will remain post-merger to help mitigate the loss" of the merged entity); *Verizon-MCI*, 20 FCC Rcd at 18435 ¶ 3, 18451 ¶ 33 (same).

¹⁴ See *Business Data Services in an Internet Protocol Environment*, FCC 16-54, ¶ 160 (rel. May 2, 2016) ("*BDS Order and FNPRM*").

record will demonstrate that best efforts services are true substitutes for many business customers and are treated as such by market participants.

But even if the analysis is limited to CLECs and cable providers that the Applicants have confirmed offer Ethernet service to a building (thus excluding cable in any building where it may be offering best efforts service), there is no significant risk of competitive harm. Of the 691 buildings located within Verizon's ILEC footprint, 647 are on-net buildings for at least one other CLEC or cable provider offering Ethernet services. Of the remaining 44 buildings, 43 are within 0.1 miles of fiber of at least one additional leading CLEC (and each also has cable service, although the Applicants cannot confirm it to be Ethernet); the remaining building is the unrecognized building in East Texas, Pennsylvania noted above. And in the recent *BDS Order and FNPRM*, the Commission rejected claims that facilities must actually provide service in a building before being deemed significant to the competitive analysis and instead found that competitors at distances even greater than 0.1 miles are significant:¹⁵ “[W]e find that fiber-based competitive supply within at least half a mile generally has a material effect on prices of BDS with bandwidths of 50 Mbps or less.”¹⁶

Although Public Knowledge argues that the 15% building overlap in Verizon's ILEC footprint is of significance in that it includes major cities such as Baltimore, Boston, Philadelphia, Pittsburgh, and Washington, D.C.,¹⁷ a more granular analysis demonstrates that customers in these areas will continue to enjoy multiple competitive options, underscoring the absence of potential harm. There are 337 XO Communications on-net buildings in these cities.

¹⁵ See, e.g., INCOMPAS Petition at 10.

¹⁶ *BDS Order and FNPRM* ¶ 161.

¹⁷ Public Knowledge Petition at 3-4; see DISH Petition at 24.

Every one of these buildings is served by at least one other CLEC or cable company in addition to XO Communications, plus at least one additional provider that is within 0.1 miles in each case. Moreover, most of these buildings are served by at least *two* other CLECs and/or cable providers in addition to XO Communications:

- In Washington D.C., there are 151 XO Communications buildings; 101 of these buildings have two other CLECs and/or cable providers in addition to XO Communications.
- In Philadelphia, there are 102 XO Communications buildings; 50 have two other CLECs and/or cable providers in addition to XO Communications.
- In Boston, there are 56 XO Communications buildings; 47 have two other CLECs and/or cable providers in addition to XO Communications.
- In Pittsburgh, there are 18 XO Communications buildings; six have two other CLECs and/or cable providers in addition to XO Communications.
- In Baltimore, there are 10 XO Communications buildings; seven have two other CLECs and/or cable providers in addition to XO Communications.

And, as above, this analysis does not account for several other telecommunications and cable providers who may also serve or are in close proximity to some, if not most, of these buildings, given the dense urban environment.

In short, the data make clear that customers in Verizon's ILEC footprint will retain considerable competitive choice following the transaction – even under a conservative approach that does not take into account the likely presence of yet more competitors and competing offerings. Given this data, any argument that the transaction presents some sort of risk to competition and customers is untenable.

The Transaction Will Not Harm Competition for Ethernet-over-Copper Services.

Contrary to INCOMPAS's claim,¹⁸ following the transaction there will be just as much opportunity for EoC offerings in the marketplace as exists today. By way of background, EoC is

¹⁸ See INCOMPAS Petition at 4, 11, 20-21.

provided over an ILEC's copper facilities, which XO Communications and other providers access as unbundled network elements ("UNEs"). So post-acquisition, the very same types of copper loops that XO Communications uses today for EoC will remain available for any provider that seeks to offer EoC. And at least one other CLEC has collocated facilities in all but one of the Verizon central offices in which XO Communications is collocated (and most of the central offices have two or more alternative providers). Thus, at least one other provider has (and in most cases, many have) the opportunity to lease the types of copper facilities XO Communications uses to provide EoC service.¹⁹ And with respect to XO Communications' customers, Verizon will honor existing contractual obligations to XO Communications' customers after closing.

Petitioners' other arguments regarding EoC are similarly unavailing. Transbeam fails to explain how Verizon's copper retirement practices are relevant to a transaction-specific complaint.²⁰ The proposed transaction will not affect the supply of copper loops that can be used for EoC, and Verizon complies with the Commission's copper retirement rules, which will continue to apply to Verizon post-transaction.²¹ And Windstream's claim that it could not match XO's EoC speeds forms no basis for denying or conditioning this transaction.²² That claim (even if true) is not transaction-specific, but instead relates only to Windstream's failure to date to develop or implement technologies as effective as those developed by XO Communications.

¹⁹ Similarly, other inputs such as the "central office collocations and transport services" cited by INCOMPAS will not be lost following the transaction. *See id.* at 4.

²⁰ Transbeam Comments at 1-3.

²¹ *See Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by ILECs*, 30 FCC Rcd 9372 (2015). *See generally BDS Order and FNPRM.*

²² Windstream Comments at 7 n.18.

Finally, at bottom, arguments concerning EoC are inapposite. The Commission’s recent *BDS Order and FNPRM* dismissed the competitive effect of services provided over the ILEC’s facilities. According to the Commission: “While wholesale access can be a cost effective means for a competitive LEC to expand its reach, such a wholesale purchaser cannot place competitive pressure on supply of the underlying facility that it purchases, but rather can only compete by being more efficient at retailing.”²³ The Commission’s conclusion eviscerates any suggestion that the “loss” of an EoC competitor diminishes competition, where EoC is provided using copper facilities owned by the ILEC (Verizon) and leased by the CLEC (XO and others).

Verizon’s Acquisition of XO Communications’ Dark Fiber Will Not Negatively Impact Competition. Dark fiber exerts competitive force in the marketplace, and dark fiber’s availability is one of the reasons why the BDS marketplace is broadly competitive. But Petitioners are wrong to suggest that Verizon’s acquisition of XO Communications’ dark fiber will have a material effect on competition in the specific markets at issue here.²⁴ As shown above, existing competition – including in-building competition and fiber within 0.1 miles of Verizon-served buildings where XO Communications is also present – precludes any material loss of competitiveness in any location. And to the extent Petitioners claim that the transaction will reduce potential competition, their assertions are inconsistent with the arguments by INCOMPAS and others in the BDS proceeding that such competition is irrelevant, at least until it is imminent.²⁵

²³ See *BDS Order and FNPRM* ¶ 230.

²⁴ See, e.g., DISH Petition at 17-19, 24-25.

²⁵ See, e.g., INCOMPAS Special Access Reply Comments, WC Docket No. 05-25, RM-10593, at 10 (Feb. 19, 2016) (“[T]he incumbents’ claim that potential competition curbs the exercise of market power is nonsensical.”); Birch, EarthLink & Level 3 Special Access Reply Comments,

*Claims Raised By Petitioners Alleging Vertical Effects/Price Squeezes Have No Merit and Are Not Cognizable Here.*²⁶ At an industry-wide level, the Commission is considering a BDS regulatory framework to address allegedly discriminatory practices regarding high-capacity services.²⁷ Windstream, for example, raised its price squeeze argument in that pending rulemaking.²⁸ The Commission should consider such industry-wide questions in that proceeding, not in this limited adjudication.²⁹

In any case, Verizon will have neither the incentive nor the ability to raise rivals' costs as a result of the acquisition because numerous competitive alternatives to XO Communications' services will remain in virtually all locations. In a transaction proceeding, the only relevant question regarding vertical effects is whether the transaction creates materially greater anticompetitive risk, and the proposed transaction does not affect the competitive dynamic or create any increased risk of competitive harm.³⁰ Outside of its ILEC footprint, where Verizon is one of many competitors that provide BDS, the addition of XO Communications' operations

WC Docket No. 05-25, RM-10593, at 4-5 (Feb. 19, 2016) (potential competition only relevant if deployment is "timely, likely, and of sufficient scale to counteract a price increase by the incumbent LEC").

²⁶ See Windstream Comments at 4, 11-12; DISH Petition at 11-12.

²⁷ See *BDS Order and FNPRM*.

²⁸ See Comments of Windstream Services, LLC, WC Docket No. 05-25, at 49-56, 75-76, 102-03 (Jan. 27, 2016); Reply Comments of Windstream Services, LLC, WC Docket No. 05-25, at 3, 26-28 (Feb. 19, 2016).

²⁹ See *AT&T Inc. and Centennial Commc'ns Corp.*, 24 FCC Rcd 13915, 13969 ¶ 133 (2009) ("*AT&T-Centennial*"); *Verizon-MCI*, 20 FCC Rcd at 18462 ¶ 55; see also *S. New Eng. Telecomms. Corp. and SBC Commc'ns, Inc.*, 13 FCC Rcd 21292, 21306 ¶ 29 (1998) ("*SNET-SBC*"); *AT&T Inc. and BellSouth Corp.*, 22 FCC Rcd 5662, 5757-58 ¶ 194 (2007) ("*AT&T-BellSouth*").

³⁰ See *Pacific Telesis Group and SBC Commc'ns, Inc.*, 12 FCC Rcd 2624, 2649 ¶ 54 (1997) (recognizing that the "pertinent issue" is "the incremental increase in the scope of the price squeeze that the proposed transfer will make possible").

would not lessen the competition.³¹ So Verizon could not raise its rivals' costs in those areas. And even in the small number of in-footprint markets where XO Communications has fiber facilities, an ample supply of competitive high-capacity facilities from other major providers exists. Harmful discrimination by Verizon post-transaction would thus be nonsensical even if it were possible.³²

Claims of price squeeze are further undermined by the fact that a provider can only engage in such a practice if it has market power and is not subject to regulation that would prevent the anticompetitive use of that market power.³³ The Commission has proposed to institute price regulation in non-competitive BDS markets, which will remove any risk of a price squeeze. Verizon supports in principle these efforts to apply regulation in areas lacking sufficient competition as long as the regulation is applied fairly and to all in markets in which competition is insufficient to police provider behavior.³⁴ Given the Commission's plans to address these issues on an industry-wide basis in the coming months, special requirements on Verizon designed to curb alleged price squeezes or other vertical effects would be unnecessary in the context of this transaction. Either a market will be competitive, in which case the market will prevent the wholesale provider from leveraging its control over the retail input, or the input will be price-regulated, likewise eliminating any prospect for abuse.

³¹ See *Verizon-MCI*, 20 FCC Rcd at 18462 ¶ 55.

³² See *id.*

³³ The Supreme Court has rejected the notion of a price squeeze claim without the presence of below-cost pricing, which Petitioners do not assert exists here. See *Pacific Bell Tel. Co. v. linkLine Commc'ns, Inc.*, 555 U.S. 438, 448 (2009).

³⁴ See *Ex Parte* Letter of Verizon and INCOMPAS, WC Docket No. 05-25 (Apr. 7, 2016).

*XO Communications Customers Will Not Be Harmed.*³⁵ As Verizon has emphasized, XO Communications customers will not be harmed by the transaction; Verizon will meet XO Communications’ contractual and regulatory obligations.³⁶ The proposed acquisition will thus be seamless to those customers. This assurance, in and of itself, should be sufficient to dismiss any concern.³⁷ And while Verizon will honor existing contracts, XO Communications customers will remain free to opt out of those agreements, consistent with their terms. Public Knowledge’s speculation about the potential loss of multihoming capability for enterprise customers is improper and unavailing.³⁸ Public Knowledge makes no claim (much less a claim supported by empirical evidence) regarding the nature of the multihoming market, nor does it offer any basis for a finding that customers need one additional provider as a matter of competitive analysis on account of multihoming.

And, as the Applicants have discussed, XO Communications customers will affirmatively *benefit* from the transaction because they will gain access to Verizon’s broader array of services. These benefits are in addition to those related to the various technology and service

³⁵ See, e.g., Transbeam Comments at 2-3.

³⁶ Public Interest Statement at 12; Verizon/XO Supplemental Filing at 4.

³⁷ See, e.g., *Comcast Corp. and AT&T Corp.*, 17 FCC Rcd 23246, 23300 ¶ 136 (2002) (declining to impose conditions where the transferee voluntarily agrees to honor the transferor’s pre-merger agreements).

³⁸ Public Knowledge Petition at 5; see *David A. Schum et al.*, 29 FCC Rcd 804, 815 ¶ 25 (2014) (declining to credit “speculative and unsupported contention” raised in an assignment proceeding); *EchoStar Satellite Operating Co.*, 28 FCC Rcd 10412, 10419 ¶ 17 (2013) (rejecting claims alleging harm to competition where those claims were “speculative and based on unsupported assumptions”), *aff’d sub nom. Spectrum Five LLC v. FCC*, 758 F.3d 254 (D.C. Cir. 2014); *Affiliated Media, Inc.*, 28 FCC Rcd 14873, 14877 ¶ 11 (MB 2013) (finding that “the Applications do not propose a transaction that would violate any Commission rule or policy, and that the objections advanced ... are unsupported, or are otherwise speculative with regard to future harms”).

improvements that will be possible following Verizon’s acquisition of XO Communications’ fiber assets, as discussed above.

The Commission Should Not Consider Claims That Are Not Transaction-Specific. To the extent Petitioners bewail an alleged lack of competition in the BDS market, that is not a transaction-specific issue; it is being addressed in an active industry-wide proceeding. For example, CCA uses its filing to ask that the Commission “reform the broken BDS marketplace” and ensure that wireless providers can “procure backhaul on just, reasonable, and nondiscriminatory terms.”³⁹ Indeed, CCA spends several pages rehashing generic arguments already raised in the ongoing BDS rulemaking, and then tries to shoe-horn them in here. These claims have no place in the Commission’s analysis of the proposed acquisition of XO Communications.⁴⁰

Likewise, Windstream’s proposed conditions are unrelated to any alleged harms from Verizon’s acquisition of XO Communications and instead address industry-wide issues being considered in the Commission’s pending BDS rulemaking. Specifically:

- The bulk of Windstream’s filing is devoted to regurgitating arguments from the BDS proceeding, repurposed here in hopes of creating a competitive “replacement” for XO Communications – presumably, Windstream itself.⁴¹ The Commission should reject Windstream’s self-serving invitation to short-cut its resolution of those complex issues.
- There is no basis for Windstream’s demand that the Commission cap prices for all of Verizon’s wholesale last-mile services at the lower of the “best” prices applicable to

³⁹ See CCA Comments at 8.

⁴⁰ See *Cricket License*, 29 FCC Rcd at 2767 ¶ 74 & n.259; *AT&T-ATN*, 28 FCC Rcd at 13719 ¶ 90; *AT&T-Centennial*, 24 FCC Rcd at 13969 ¶ 133; *AT&T-BellSouth*, 22 FCC Rcd at 5757-58 ¶ 194; *Verizon-MCI*, 20 FCC Rcd at 18462 ¶ 55; *GM-Hughes*, 19 FCC Rcd at 583 ¶¶ 244-45; *SNET-SBC*, 13 FCC Rcd at 21306 ¶ 29.

⁴¹ See, e.g., Windstream Comments at 21 (referring to the need for “replacement competition” for XO Communications).

Verizon's retail services or XO Communications' comparable services.⁴² The concept of further rate regulation for BDS generally – and the specific issue of pegging wholesale prices in this context to retail prices – is already presented in the *BDS Order and FNPRM* and these issues are best resolved in a rulemaking of general applicability.⁴³ Moreover, the two precedents that Windstream cites are inapposite, as those transactions involved different competitive circumstances and policy considerations, and, even so, resulted in far narrower conditions than Windstream suggests here.⁴⁴

- Windstream has already asked the Commission for unbundled DS1 and DS3 capacity in its long-pending request for a declaratory ruling on the subject.⁴⁵ And Windstream likewise has already presented its concerns about special construction charges to the Commission in the pending rulemaking.⁴⁶ The Commission should examine those generic concerns in that proceeding on the record developed there. Windstream's discussions of these requests in its comments here do not mention any alleged harm regarding XO Communications or this transaction, underscoring the lack of any nexus.
- In seeking further restrictions on shortfall penalties,⁴⁷ Windstream fails to acknowledge that the Commission just found the use of such provisions permissible if they do not exceed expectation damages – and in so doing, it declined to go as far as Windstream now demands.⁴⁸ Windstream has offered no reason why its arguments should be revisited in this transaction proceeding just a few weeks later.

⁴² *Id.* at 14.

⁴³ *BDS Order and FNPRM* ¶¶ 441-446; *id.* ¶ 441 & n.956.

⁴⁴ See Windstream Comments at 17. Both transactions involved companies that, when combined post-transaction, would increase considerably in size and serve millions more residential customers in the voice, broadband, and video markets, which is not the case here. See, e.g., *Charter Commc'ns, Inc. and Time Warner Cable Inc.*, FCC 16-59, ¶ 115 (rel. May 10, 2016) (“*Charter-Time Warner Cable*”); *Qwest-CenturyTel*, 26 FCC Rcd at 4213-14 ¶ 43. In neither instance did the Commission impose categorical conditions on wholesale arrangements as Windstream seeks here.

⁴⁵ Compare Windstream Comments at 18 with Windstream Corporation Petition for Declaratory Ruling, GN Docket No. 13-5, at 1 (Dec. 29, 2014); see also *BDS Order and FNPRM* ¶ 57 & n.137.

⁴⁶ Compare Windstream Comments at 21-22 with *BDS Order and FNPRM* ¶ 432 & n.944.

⁴⁷ Windstream Comments at 25-28.

⁴⁸ *BDS Order and FNPRM* ¶ 115 (“[A] reasonable shortfall penalty allows the seller to recover from the purchaser an amount no greater than the amount the purchaser would have paid had it met its minimum commitment level for the service.”).

- Windstream’s peculiar request that Verizon be forced to comply with any additional requirements imposed on other price cap ILECs in the BDS rulemaking is wholly unnecessary.⁴⁹ Verizon has stated it will not oppose an order placing it on the same regulatory footing as other ILECs as long as it is fairly applied to all, as Windstream acknowledges.⁵⁰ And any rules that result from the BDS proceeding necessarily will apply to Verizon, so no condition here is needed or appropriate to secure that result.

B. The Transaction Will Not Materially Reduce Competition Outside of Verizon’s ILEC Footprint

The proposed acquisition of XO Communications will not result in any material reduction in competitive options, including for BDS, outside of Verizon’s ILEC footprint.⁵¹ Based upon the Applicants’ continued analysis of their respective facilities and service areas, they have determined that of the 3,796 on-net XO Communications buildings located out-of-region, Verizon has facilities in only 493 buildings. Of those, every last one is lit by another CLEC or a cable company offering Ethernet services in addition to XO Communications, and often other facilities-based competitors are present as well, based on available information. And since the ILEC is also likely in all 493 buildings, no building will have fewer than *three* providers post-transaction. In addition, 294 of those buildings are also located within 0.1 miles of at least one other CLEC’s fiber.

INCOMPAS’s claim that Verizon lacks incentive to use the XO Communications assets to compete in the provision of BDS out-of-region illustrates how far Petitioners must go in their quest to identify a problem with this proposed acquisition.⁵² Where service providers invest resources in network facilities, they have every incentive to use those facilities to provide service and collect revenues; letting the facilities lie fallow after purchase would make little sense.

⁴⁹ Windstream Comments at 29.

⁵⁰ *Id.* at 29-30.

⁵¹ *See* INCOMPAS Petition at 7, 11-13.

⁵² *See id.* at 12-13.

Verizon competes today against the in-region ILECs and others in the BDS market outside Verizon's ILEC footprint, and it will have every incentive to continue to do so with XO Communications' facilities.⁵³ And where XO Communications is using other ILECs' copper loops to provide EoC outside of Verizon's remaining ILEC footprint, the combined company may continue to provide such service – indeed, today, in some markets, Verizon (in its CLEC capacity) purchases EoC from XO Communications. Contrary to INCOMPAS's unfounded claim,⁵⁴ Verizon has consistently provided competitive offerings with former MCI services, and it is active and successful in marketing and selling those services within and outside its ILEC footprint.

Finally, the Commission should reject Windstream's speculative claim that Verizon "may well benefit" from coordinating with AT&T to raise rivals' costs and drive out competition in AT&T's ILEC region.⁵⁵ Windstream offers no evidence or support for its claim except to argue that Verizon will be somewhat larger post-transaction. The Commission just recently declined to credit that same specious reasoning in connection with Charter Communications' acquisition of Time Warner Cable;⁵⁶ it should do so here as well in this much smaller transaction.

⁵³ Any suggestion by INCOMPAS that post-closing the combined company would have market power in markets outside Verizon's ILEC footprint conflicts with INCOMPAS's claims elsewhere that ILECs are monopolists in the provision of in-region BDS. *See* INCOMPAS Special Access Reply Comments at 2.

⁵⁴ *See* INCOMPAS Petition at 12-13.

⁵⁵ Windstream Comments at 3-4; *see also id.* at 9 (referring to the "potential for coordinated behavior").

⁵⁶ *Charter-Time Warner Cable* ¶¶ 228-35 (dismissing the notion that, post-transaction, "New Charter" would coordinate with Comcast to harm competition on the national and local levels, finding that New Charter's mere increase in size "does not, in and of itself, constitute sufficient evidence" that a strategy of coordination is likely).

III. THE TRANSACTION WILL NOT HARM COMPETITION IN THE FIBER BACKBONE/TRANSIT MARKET

The marketplace for fiber backbone and transit services is highly competitive and decentralized. It features growing competition and emerging business models among a variety of providers, facilitating a well-functioning system of voluntary, commercially negotiated interconnection and traffic exchange agreements.

Against this backdrop, the portrayals offered by some commenters are inaccurate and outdated – DISH, for instance, relies on findings from the early and mid-2000s⁵⁷ – and offer no basis for any competitive concerns in connection with Verizon’s proposed acquisition of XO Communications. Indeed, the Commission previously has concluded that a merger of two “Tier 1” providers would not result in public interest harm, because transit and peering can readily be obtained from an increasing number of competitive providers – as many as 38 at the time – on a nationwide basis.⁵⁸ The Commission thus found that if the combined entity were to engage in anti-competitive practices (such as price increases or connection degradation), “a large percentage of its customer base would be able to transition easily to another provider.”⁵⁹ The same is true today. Customers can (and surely will) switch to another provider if any anti-competitive conduct were to occur.

Just last year, the Commission observed that “new business models of Internet traffic exchange have emerged,” for example, as “[c]ontent providers have come to rely on the services

⁵⁷ DISH Petition at 20-24; *see also* INCOMPAS Petition at 13-14; OTI Comments at 4-7.

⁵⁸ *Global Crossing Ltd. and Level 3 Communications, Inc.*, 26 FCC Rcd 14056, 14069 ¶¶ 28-29 (WCB/IB 2011) (“[W]e note that the number of Tier 1 ISPs appears to have grown since 2005. ... The emergence of several new Tier 1 peers in the past six years undercuts the argument that there are overwhelming barriers to entry into the Tier 1 market.”) (“*Global Crossing-Level 3*”).

⁵⁹ *Id.* at 14068-69 ¶ 27.

of commercial and private CDNs [content delivery networks] ... providing increased quality of service and avoiding transit costs.”⁶⁰ Indeed, as new business models have arisen, the Internet itself has shifted from a hierarchical network featuring large Internet backbones interconnecting with smaller backbones and (ultimately) the ISPs serving content providers and end users into a much more complex network in which providers interconnect in a multitude of ways. In contrast to Petitioners’ claims,⁶¹ the Commission itself has noted that the term “Tier 1” is “becoming less and less meaningful in the increasingly complex business relationships found on today’s Internet.”⁶² In any event, even using DISH’s outdated numbers, there would be nine U.S. Tier 1 providers following the transaction.⁶³ Whatever the number of providers required for a marketplace to be deemed competitive, there can be no question nine will be more than sufficient in the Internet backbone marketplace. And although DISH focuses on the size of XO Communications’ network,⁶⁴ XO Communications’ long-haul business actually relies entirely on indefeasible rights of use, none of which are leased from Verizon. The entities that own those facilities will thus continue to do so and, at the end of the current lease terms, may lease them to others following (and notwithstanding) this transaction.

There is also nothing unique about an “independent” transit provider – that is, one that does not also operate as an ISP.⁶⁵ No separate market exists for such independent providers (and

⁶⁰ *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, 5687-88 ¶¶ 196-97 (2015).

⁶¹ *See, e.g.*, DISH Petition at 20-21.

⁶² *Global Crossing-Level 3*, 26 FCC Rcd at 14068 ¶ 26 n.85 (quoting Clint Hepner, *A Baker’s Dozen 2010 Edition*, RENESYS BLOG (Jan. 10, 2011), <http://research.dyn.com/2011/01/a-bakers-dozen-2010-edition/>).

⁶³ *See* DISH Petition at 20-21 (citing source from 2006).

⁶⁴ *Id.* at 21.

⁶⁵ OTI Comments at 5-6; DISH Petition at 12; Public Knowledge Petition at 4-5.

no party has shown otherwise), so there is no plausible claim of consolidation with respect to entities meeting this profile. And with the large number of diverse backbone and interconnection alternatives as discussed above, no single provider, regardless of its affiliations, plays a heightened role in terms of disciplining the potential for anti-competitive behavior. For example, after Verizon acquires XO Communications, the marketplace will continue to reflect competition from other large backbone providers – many of which are not affiliated with an ISP, and the rest of which are affiliated with third-party ISPs (*e.g.*, AT&T or Comcast). In any event, they all will continue to provide a competitive check on each other, including Verizon. As a result, the transaction will not increase the likelihood of rate hikes for interconnection or discriminatory conduct.

INCOMPAS’s attempt to use this transaction as a forum to critique Verizon’s interconnection practices should be rejected out of hand, as they are not impacted by this transaction.⁶⁶ In any event, Verizon’s practices with respect to Internet traffic exchange and voice interconnection are lawful and reasonable – as they must be, given the competitive nature of the relevant marketplace discussed above. Verizon has hundreds of agreements involving the exchange of U.S. Internet traffic with last-mile and backbone networks. These include, but are not limited to, arrangements such as Internet access, transit, peering, colocation, hosting, and content distribution. The parties on the other side of these agreements include Internet backbone providers, transit providers, ISPs, CDNs, and edge providers – including INCOMPAS members such as Cogent,⁶⁷ Level 3,⁶⁸ and Netflix.⁶⁹

⁶⁶ INCOMPAS Petition at 14-20.

⁶⁷ Press Release, Cogent, *Cogent and Verizon Enter Into Interconnection Agreement* (May 1, 2015), <http://www.cogentco.com/en/news/press-releases/714-cogent-and-verizon-enter-into-interconnection-agreement>.

Notwithstanding INCOMPAS's claims, Verizon has entered into agreements containing a variety of terms and payment arrangements.⁷⁰ Verizon has some interconnection agreements under which it pays for interconnection, receives payment for interconnection, and/or interconnects on a settlement-free basis. In particular, Verizon's peering arrangements permit the settlement-free exchange of traffic in two ways: one, if traffic is within the agreed-upon ratio, and two, if traffic is below the agreed-upon traffic forecasts. In this regard, all of Verizon's interconnection arrangements contain the potential for settlement-free exchange of peering traffic for the terms of those agreements. The breadth and variety of these agreements reflect that there are many ways to reach Verizon's customers and that Verizon is a cooperative, good-faith player in the interconnection market. In any event, INCOMPAS's claim is not transaction-specific. Finally, OTI's categorical condemnation of interconnection charges as an abuse of market power is out of step with how this marketplace has long functioned.⁷¹ That such charges may apply is not an issue specific to the proposed acquisition of XO Communications.

IV. THE TRANSACTION WILL BENEFIT WIRELESS CONSUMERS

Verizon has explained that it will be able to use XO Communications' fiber assets to densify its mobile broadband network nationwide to provide wireless consumers with more capacity and enhanced network reliability – paving the way for Verizon's 5G deployment. Petitioners do not – and cannot – dispute this core public interest benefit, nor do they raise any

⁶⁸ Joint Press Release, Verizon and Level 3 Communications, *Level 3 and Verizon Enter Into Interconnection Agreement* (Apr. 23, 2015), <http://www.verizon.com/about/news/level-3-and-verizon-enter-interconnection-agreement>.

⁶⁹ Drew Fitzgerald, *Netflix Reaches Interconnection Deal With Verizon*, WALL ST. J., Apr. 28, 2014.

⁷⁰ INCOMPAS Petition at 19.

⁷¹ OTI Comments at 6.

other valid concerns regarding the impact of the proposed acquisition of XO Communications on wireless consumers.

First, contrary to CCA's claims, the loss of XO Communications as an independent provider of numbering resources will not affect non-nationwide wireless carriers' ability to obtain those resources outside their service areas.⁷² As CCA acknowledges, non-nationwide wireless carriers can and do obtain numbering resources from a wide variety of sources in addition to affiliated ILECs and nationwide wireless carriers, including other wireless providers, CLECs, and interconnected VoIP providers.⁷³ Verizon and other carriers have every incentive to continue to work with wireless carriers to ensure fluid number portability. Indeed, CTIA, on behalf of its members (including Verizon), joined with CCA to suggest the interim private contractual solution currently in place to ensure the availability of numbering resources for wireless carriers while the industry explores technical solutions for nationwide number portability.⁷⁴ In any event, as previously noted, post-acquisition, Verizon will continue to comply with XO Communications' contractual and regulatory obligations.

Concerns that the acquisition of XO Communications will affect the backhaul market for wireless cell sites by eliminating a competitor likewise are unfounded.⁷⁵ While XO Communications provides a variety of private data and network transport services to other carriers, those services do not currently include backhaul from cell sites for wireless carriers. In

⁷² See CCA Comments at 2-4.

⁷³ See *id.* at 3.

⁷⁴ See Letter from Steven K. Berry, CCA, and Meredith Attwell Baker, CTIA, to Tom Wheeler, Chairman, FCC (Sept. 25, 2015), http://www.nanc-chair.org/docs/mtg_docs/Sep_15_CTIA_Letter_to_FCC_092515.pdf.

⁷⁵ See CCA Comments at 6-7; DISH Petition at 3, 10; OTI Comments at 4, 8; Public Knowledge Petition at 2, 4.

fact, the proposed acquisition will enable Verizon to put the XO Communications fiber assets to use for backhaul to cell sites, helping to address America's exploding demand for mobile broadband.

V. THE COMMISSION SHOULD REVIEW VERIZON'S ACQUISITION OF XO COMMUNICATIONS ON ITS OWN MERITS, RATHER THAN COMBINING IT WITH THE SEPARATE LEASE OF SPECTRUM FROM NEXTLINK

There is no basis to combine the review of Verizon's proposed equity purchase of XO Communications with the separate and independent spectrum leasing arrangement between Verizon and Nextlink.⁷⁶ The Commission routinely refuses to consolidate independent transactions where, as here, they are not contingent on each other and it "could grant one application, both applications, or neither application."⁷⁷ The Commission's precedent is clear – the Commission should not consider multiple transactions involving a party in a single proceeding when the transactions are "neither interrelated nor dependent on one another," involve "different business terms," and "raise distinct issues that are properly dealt with separately."⁷⁸ In fact, in other cases the Commission has conducted separate reviews of the wireline and wireless elements of the same transaction.⁷⁹

⁷⁶ See DISH Petition at 4-6; INCOMPAS Petition at 2; Public Knowledge Petition at 11. To the extent Petitioners raise issues that address the spectrum lease, Verizon and Nextlink have already responded to those issues in that proceeding. See Joint Opposition of Verizon and Nextlink Wireless to Petitions to Deny and Comments, ULS File No. 0007162285 (May 13, 2016) ("Spectrum Lease Joint Opposition"). Public Knowledge untimely filed its petition to deny the spectrum leasing arrangement nine days after the May 3, 2016 deadline. 47 C.F.R. § 1.939.

⁷⁷ *Nextel Commc'ns, Inc. and OneComm Corp., N.A.*, 10 FCC Rcd 3361, 3364 ¶ 20 (WTB 1995) ("*Nextel-OneComm*"); see also *Commc'ns Satellite Corp.*, 2 FCC Rcd 7202, 7205 ¶ 22 (CCB 1987).

⁷⁸ *Nextel-OneComm*, 10 FCC Rcd at 3363-64 ¶¶ 18-20; see also, e.g., *AT&T Inc. and Qualcomm Inc.*, 26 FCC Rcd 17589, 17622 ¶ 8 (2011).

⁷⁹ See, e.g., *Domestic Section 214 Application Filed for the Transfer of Control of Oklahoma Western Telephone Company to KCL Enterprises, Inc.*, Public Notice, 30 FCC Rcd 14053 (WCB

Petitioners posit no valid reason, nor cite any relevant precedent, to justify the Commission diverging from these longstanding policies.⁸⁰ The proposed wireline transaction and the proposed lease arrangement each involves different services, facilities, and business terms – one concerning the purchase of a company that controls and operates a wireline IP and Ethernet network, the other concerning the lease of LMDS and 39 GHz spectrum.⁸¹ The transactions are not interdependent, and each will close (assuming Commission and other regulatory approvals) independent of the status of the other. The parties’ respective rights and obligations under each agreement do not impact the rights and obligations in the other transaction.

Arguments that the Commission should consider the transactions together because they may impact the backhaul market are wrong.⁸² As discussed above, the proposed transfer of control will not materially affect competition for backhaul services for wireless cell sites given

2015) (accepting domestic Section 214 application for filing); Public Notice, 31 FCC Rcd 87 (WCB 2016) (granting domestic Section 214 application); Form 603 Application for the Transfer of Control of Oklahoma Western Telephone Company to KCL Enterprises, Inc., File No. 0007034991, Public Notice, Rep. No. 10987, at 2 (rel. Dec. 2, 2015) (accepting wireless application for filing); Public Notice, Rep. No. 11287, at 12 (rel. Apr. 6, 2016) (granting wireless application).

⁸⁰ The two cases cited by DISH are inapposite. In the first, the Commission considered, in conjunction with applications to effectuate the merger of AT&T Wireless and Cingular, transactions that, unlike here, were contingent upon the consummation of the merger. *AT&T Wireless Servs., Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522 (2004). The second case involved only a single transaction – the transfer of control of ALLTEL and its Commission licenses, authorizations, and existing leases to Verizon. *Cellco P’ship d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444 (2008). Moreover, both cases involved mergers in which wireline and wireless assets were acquired in their entirety, whereas here Nextlink is not being acquired and will continue its wireless business with its own licenses.

⁸¹ While XO Communications holds various Common Carrier Fixed Point-to-Point Microwave licenses and one shared-use Millimeter Wave 70/80/90 GHz Service license, these are merely ancillary to its wireline business.

⁸² See DISH Petition at i-ii, 11-12, 19-20; INCOMPAS Petition at 4.

that XO Communications does not provide facilities for backhaul for wireless cell sites. Moreover, as explained by Verizon and Nextlink in the separate proceeding regarding the proposed leasing arrangement, the lease also will not affect competition for backhaul services.⁸³ And, to be clear, Verizon is not currently proposing to acquire XO Holdings, the parent of Nextlink, or to acquire Nextlink in this transaction, so there is no basis here to consider whether Verizon will “own” both XO Communications *and* the Nextlink licenses.⁸⁴

The Spectrum Lease Joint Opposition also described why consolidating these two proceedings would undermine the Commission’s policy goal to advance 5G technology.⁸⁵ As the Commission explained when denying a request to consolidate review of two other transactions, it must “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”⁸⁶ Here, the Commission should act independently on the wireline transfer of control and the spectrum lease transactions.

Neither DISH, nor INCOMPAS, nor Public Knowledge has carried its burden to establish standing for their petitions to deny. To establish standing, a petitioner must not only show that

⁸³ See Spectrum Lease Joint Opposition at 5-6, 12.

⁸⁴ DISH errs when it describes Nextlink as a “subsidiary” of XO Communications. DISH Petition at i. Rather, Nextlink and XO Communications are each direct subsidiaries of XO Holdings. While XO Holdings seeks Commission approval to sell XO Communications to Verizon, Nextlink will remain under the control of XO Holdings after consummation of that proposed sale. The two XO Holdings subsidiaries have pursued different business models. XO Communications provides local and long distance voice, Internet access, cloud connectivity, security, private line, Ethernet and other private data and network transport services for small and medium-sized companies, enterprises, national and government customers, and other carriers, both on a managed and wholesale basis. Nextlink, on the other hand, provides fixed-wireless services, either directly or by leasing spectrum.

⁸⁵ See Spectrum Lease Joint Opposition at 12-13.

⁸⁶ *AT&T, Inc., Cellco P’ship d/b/a Verizon Wireless, and Grain Spectrum, LLC*, 28 FCC Rcd 12878, 12883 ¶ 12 (WTB 2013) (citing 47 U.S.C. § 154(j) and *FCC v. Schreiber*, 381 U.S. 279 (1965)).

grant of the transaction will cause it “to suffer a direct injury,” but also must demonstrate “that it is likely, as opposed to merely speculative, that the alleged injury would be prevented or redressed” if the application is denied.⁸⁷ Each of these Petitioners fails to show that it or any other person or entity will suffer a direct injury from the grant of this transaction (nor is the INCOMPAS petition supported by an affidavit). The Commission should dismiss their petitions.

CONCLUSION

For the reasons set forth above and in the Applicants’ Public Interest Statement, the Commission should promptly approve the transfer of control of XO Communications to Verizon without conditions.

Respectfully submitted,

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⁸⁷ *NextWave Personal Commc’ns and Cingular Wireless LLC*, 19 FCC Rcd 2570, 2579-80 ¶ 21 (2004); *see also Paging Sys., Inc.*, 28 FCC Rcd 12606, 12608 ¶ 5 (WTB 2013).

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2016, the foregoing “Joint Opposition of Verizon and XO Holdings to Petitions to Deny and Comments” was served by email and first-class mail, postage prepaid, upon the following:

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