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May 27, 2016

EX PARTE PRESENTATION

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

Re: *Ex Parte Presentation in WC Docket No. 16-70, Applications of XO Communications, LLC and Verizon Communications Inc. for Transfer of Control of Licenses and Authorizations; ULS File No. 0007162285, Applications of CELLCO Partnership Verizon Wireless and Nextlink Wireless, LLC, a Subsidiary of XO Holdings, for Consent to a Long-Term De Facto Transfer Spectrum Leasing Arrangement Involving Local Multipoint Distribution Service and 39 GHz Spectrum*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") submits this letter summarizing a meeting on May 25, 2016 with Jon Wilkins, Chief, Wireless Telecommunications Bureau; Jim Schlichting, Senior Deputy Bureau Chief, Wireless Telecommunications Bureau; Mary Claire York, Legal Advisor, Wireless Telecommunications Bureau; Catherine Matraves, Deputy Chief, Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau; John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau; Linda Ray, Broadband Division, Wireless Telecommunications Bureau; Nadja Sodos-Wallace, Broadband Division, Wireless Telecommunications Bureau; Sara Mechanic, Economist, Wireless Telecommunications Bureau; and Monica DeLong, Attorney, Wireless Telecommunications Bureau. Present on behalf of DISH were Jeffrey Blum, Senior Vice President and Deputy General Counsel and Mariam Sorond, Vice President, Technology Development.

During the meeting, DISH urged the Commission to deny the proposed acquisition of XO Communications, LLC ("XO") by Verizon Communications Inc. ("Verizon") and the proposed long-term lease of spectrum from Nextlink Wireless, LLC ("Nextlink"), an XO subsidiary, to Verizon's subsidiary, Cellco Partnership. Verizon has not only failed to demonstrate that the proposed transactions would serve the public interest, it has failed to go through even such rudimentary motions of competitive analysis as meaningful product and geographic market definitions, and has failed to provide key information necessary for the Commission and the

public to evaluate the transactions. DISH explained, consistent with DISH’s Petition to Deny filed in the above-referenced proceedings,¹ that the transactions will impact the following:

Control over important 5G spectrum. The proposed lease of Nextlink’s LMDS and 39 GHz frequencies to Verizon will give the combined company control over important 5G spectrum. 5G requires dramatically increased amounts of bandwidth to support the service in the form of both traditional backhaul and emerging “fronthaul” architectures. In the Commission’s words, “provision of 5G-level service will require use of higher frequency bands in at least some places where traffic demands will exceed available capacity.”² The LMDS frequencies are among the most important next-frontier-spectrum for 5G technologies.³ Stated simply, if the lease arrangement goes forward, licensed millimeter wave (“mmWave”) spectrum in a critical frequency range will be controlled almost exclusively by Verizon.

Wireless- and fiber-based backhaul for mobile services. Backhaul facilities link a mobile wireless service provider’s cell sites to the switching centers that provide connections to the provider’s core network. As summarized by the Commission, “backhaul connections are an integral component of a wireless service provider’s network.”⁴ Because of increasing consumer demand for mobile broadband services, carriers have worked to complement wireless backhaul with fiber links, making Verizon’s acquisition of XO’s fiber assets particularly significant. Carriers are also working to deploy small cells to “densify” their networks to support both increased demand and 5G technologies.⁵ With many more cells comes a much greater need for backhaul, both fiber and wireless.⁶ The fiber and wireless backhaul assets the Applicants would acquire will be critical to support the very low latency and high data rate targets of 5G technologies.⁷ In addition, these fiber and wireless backhaul assets are critical to serve existing

¹ See DISH Network Corp., Petition to Deny, WC Docket No. 16-70, ULS File No. 0007162285 (May 3, 2016).

² *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, Notice of Inquiry*, 29 FCC Rcd. 13020, 13024 ¶ 4 (2014).

³ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, Notice of Proposed Rulemaking*, 30 FCC Rcd. 11878, 11908 ¶ 95 (2015) (“*Spectrum Frontiers NPRM*”) (proposing to “permit existing LMDS and 39 GHz licensees to exercise the full extent of these rights—including mobile rights— . . . because of the great benefits these new technologies could bring to consumers.”).

⁴ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Eighteenth Report*, 30 FCC Rcd. 14515, 14564 ¶ 69 (2015).

⁵ See Joey Jackson, *Dark Fiber Key to Future of Small Cells, Backhaul*, RCR Wireless News (Dec. 21, 2015), <http://www.rcrwireless.com/20151221/network-infrastructure/dark-fiber-key-to-future-of-small-cells-backhaul-tag20>; *Spectrum Frontiers NPRM*, 30 FCC Rcd. at 11952 ¶ 272.

⁶ See Sean Kinney, *Small Cells Becoming Integral Part of Wireless Networks*, RCR Wireless News (Jan. 12, 2016), <http://www.rcrwireless.com/20160112/network-infrastructure/small-cells-integral-to-wireless-networks-tag17> (“Fiber is the backhaul option of preference, but, as networks continuously grow more and more dense with deployment of small cells, getting access to fiber becomes increasingly tricky.”).

⁷ Sean Kinney, *Evolution Toward 5G, Small Cell Deployments and Dark Fiber All Impact Backhaul Outlook*, RCR Wireless News (Feb. 12, 2016), <http://www.rcrwireless.com/20160212/network-infrastructure/5g-backhaul-requirements-more-capacity-edge-intelligence-tag17> (“With the

backhaul requirements for 2G, 3G and 4G networks. As a result of this acquisition, Verizon will control both the current and future backhaul resources of the wireless industry. Today, the two companies' fiber networks compete head-on with one another in many geographic areas. This merger would cause the loss of competition in the national market too, as companies wishing to build a national backhaul network will have one less path for doing so. XO's dark fiber assets, and Verizon's control over them that would result from the transaction, will create a persistent bottleneck at yet another link of the mobile services vertical chain. This will reduce options for backhaul resellers and ultimately for CMRS providers—other than Verizon, of course.

Internet transit. Content providers rely on transit providers to deliver their content to consumers inside the terminating access network of Internet service providers (“ISPs”) like Verizon. Both Verizon and XO provide transit services, but XO is one of just a handful of independent high-capacity transit providers that counterbalance the power of ISPs. Verizon's acquisition of XO would eliminate a competitor in the transit marketplace, decrease the number of routes into Verizon's network, and enhance Verizon's power to charge interconnection fees or otherwise hinder the delivery of content into its network.

Enterprise and wholesale markets. Both Verizon and XO provide high-capacity data IP services to wholesale and enterprise customers in major markets throughout the United States. Verizon's acquisition of XO will remove one of the top providers of high-capacity data IP services to wholesale and enterprise customers. The transaction will also allow Verizon to reduce its dependency on leased fiber from competitors and further increase its historically strong position in the wholesale and enterprise markets.

To date, XO has been a competitive player, providing backhaul and transit capacity to anyone who needs it, including companies that compete with Verizon, or companies that turn to XO to avoid having to negotiate with Verizon. The instant transactions would eliminate this neutral presence, as well as one of the very few independent service providers with an expansive geographic footprint. DISH urges the Commission to set both Applications for a hearing, and deny them.

Respectfully submitted,

/s/ Jeffrey H. Blum

Jeffrey H. Blum

cc: Jon Wilkins
Jim Schlichting
Mary Claire York
Catherine Matraives
John Schauble
Linda Ray
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growth of small cells and the need for more backhaul to towers due to increased data demands, infrastructure providers know eventually there will be a market for the dormant fiber.”).

Sara Mechanic
Monica DeLong