

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

In the Matter of)
Application of Cellco Partnership d/b/a Verizon) ULS File No. 0007765708
Wireless and XO Holdings)
For Consent to Transfer Control of Local)
Multipoint Distribution Service and 39 GHS)
Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: November 29, 2017

Released: November 29, 2017

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless, and together with XO Holdings, the Applicants) and XO Holdings for Commission consent to the transfer of control of Local Multipoint Distribution Service (LMDS), 39 GHz, 3650-3700 MHz, and common carrier fixed point-to-point microwave licenses held by XO Holdings' subsidiary, Nextlink Wireless, LLC (Nextlink). Verizon Wireless currently leases from Nextlink spectrum associated with Nextlink's LMDS licenses and 39 GHz licenses. Verizon Wireless and XO Holdings state that Verizon Wireless has exercised its option, under a separate agreement entered into at the same time as the leasing arrangement, to purchase from XO Holdings all of its interests in Nextlink. After carefully evaluating the likely competitive effects of the proposed transfer of control, we find that the likelihood of any competitive harms at this point in time is low. Verizon Wireless's post-transaction spectrum holdings across the LMDS (28 GHz) and 39 GHz bands do not raise any particular competitive concerns in light of the current state of the marketplace. Further, we find that some public interest benefits are likely to be realized, such as the expeditious use of this spectrum for the potential introduction of innovative 5G services to the benefit of American consumers. After our careful review, we find that this transaction serves the public interest, convenience, and necessity, and therefore we consent to the transaction.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. Description of the Applicants. Verizon Wireless, a Delaware general partnership, provides nationwide voice and data services across an extensive wireless network. XO Holdings is a

1 Applications of Cellco Partnership d/b/a Verizon Wireless and Nextlink Wireless, LLC for Consent to Long-Term De Facto Transfer Spectrum Leasing Arrangement, Memorandum Opinion and Order, 31 FCC Rcd 7767 (WTB 2016) (Verizon-Nextlink Leasing Order) (granting consent to leasing arrangement).

2 Application of Cellco Partnership and XO Holdings for Transfer of Control of Licenses, ULS File No. 0007765708 (filed May 11, 2017) (Application), Ex. 1 – Description of Transaction and Public Interest Statement at 2 (Public (continued...))

Delaware general partnership that is indirectly wholly owned and controlled by Carl C. Icahn.³ Nextlink, a Delaware limited liability company, is a wholly-owned subsidiary of XO Holdings. Nextlink provides enterprise and wireless carrier customers with last mile access, cell tower backhaul, and small cell backhaul services.⁴

3. *Description of the Transaction.* On May 11, 2017, Verizon Wireless and XO Holdings filed the Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁵ seeking Commission consent to the transfer of control of 92 LMDS, nine 39 GHz, two 3650-3700 MHz, and 50 common carrier fixed point to point microwave licenses held by Nextlink. Verizon Wireless currently leases from Nextlink spectrum associated with its LMDS and 39 GHz licenses. The Applicants state that Verizon Wireless has exercised its option, under a separate agreement entered into at the same time as the leasing arrangement, to purchase from XO Holdings all of its interests in Nextlink.⁶

4. On June 5, 2017, the Wireless Telecommunications Bureau released a Public Notice seeking comment on the proposed transfer of control.⁷ The Competitive Carriers Association (CCA) filed a petition to deny and reply, and Skyriver Communications, Inc. (Skyriver) filed a petition to hold in partial abeyance and reply in response to the Accepted for Filing Public Notice.⁸ Verizon Wireless and XO Holdings filed a joint opposition to the petitions.⁹

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Interest Statement). Verizon Wireless is a wholly-owned subsidiary of Verizon Communications Inc., a publicly-traded holding company incorporated in Delaware. *Id.*

³ *Id.* at 1.

⁴ *Id.*

⁵ 47 U.S.C. § 310(d).

⁶ Public Interest Statement at 2. The Applicants state that the leasing arrangement will terminate when the proposed transfer of control has been completed. *Id.*

⁷ *Cellco Partnership d/b/a Verizon Wireless and XO Holdings Seek FCC Consent to the Transfer of Control of Local Multipoint Distribution Service and 39 GHz Licenses Held by XO Holdings Subsidiary Nextlink Wireless LLC*, ULS File No. 0007765708, Public Notice, 32 FCC Rcd 4723 (WTB 2017) (Accepted for Filing Public Notice).

⁸ Competitive Carriers Association Petition to Deny (filed June 26, 2017) (CCA Petition); Skyriver Communications, Inc. Petition to Hold in Partial Abeyance (filed June 26, 2017) (Skyriver Petition); Reply of Competitive Carriers Association (filed July 11, 2017) (CCA Reply); Skyriver Reply to Joint Opposition to Petition (filed July 11, 2017) (Skyriver Reply).

Additionally, CCA filed two *ex parte* submissions. Letter from Courtney Neville, Policy Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, IB Docket Nos. 15-296 & 97-95, RM-1164, WT Docket No. 10-112; ULS File Nos. 0007652635 & 0007652637; ULS File No. 0007765708; ULS File No. 0007783428 (dated October 20, 2017); Letter from Courtney Neville, Policy Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, IB Docket Nos. 15-296 & 97-95, RM-1164, WT Docket No. 10-112; ULS File Nos. 0007652635 & 0007652637; ULS File No. 0007765708; ULS File No. 0007783428 (dated October 24, 2017).

Verizon Wireless also filed an *ex parte* submission. Letter from Adam D. Krinsky, Counsel to Verizon, to Marlene H. Dortch, ULS File No. 0007765708; ULS File No. 0007783428 (dated November 20, 2017).

CCA also filed, on June 13, 2017, a motion to consolidate review of the Application with that of the application of Verizon Communications, Inc. (Verizon Communications) and Straight Path Communications, Inc. (Straight Path) for consent to the transfer of control of Straight Path Spectrum, LLC, ULS File No. 0007783428 (filed June 1, 2017) (CCA Motion to Consolidate). The CCA Motion to Consolidate was denied. *Application of Cellco Partnership*

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III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

5. Pursuant to Section 310(d) of the Act,¹⁰ the Commission must determine whether the proposed transfer of control of the licenses held by XO Holdings's subsidiary Nextlink will serve the public interest, convenience, and necessity. In making this determination, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.¹¹ If the proposed transaction does not violate a statute or rule, then the Commission considers whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹²

6. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹³ The Department of Justice (DOJ) has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader. Notably, the Commission may impose and enforce narrowly tailored, transaction-specific conditions that address the potential harms of a transaction.¹⁴ Specifically, the Commission has repeatedly held that it will impose conditions "only to remedy harms that arise from the transaction (i.e., transaction-specific harms)" and "related to the Commission's responsibilities under the

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d/b/a Verizon Wireless and XO Holdings and Application of Verizon Communications, Inc. and Straight Path Communications, Inc., Memorandum Opinion and Order, DA 17-610 (WTB Broadband Division rel. June 22, 2017).

⁹ Verizon Wireless and XO Holdings Joint Opposition to Petitions (filed July 3, 2017) (Joint Opposition).

¹⁰ 47 U.S.C. § 310(d). Section 310(d) of the Act requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under Section 308 of the Act, 47 U.S.C. § 308. See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T-BellSouth Order*).

¹¹ 47 U.S.C. § 310(d); *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 17-142, at 5, para. 8 (Oct. 30, 2017) (*CenturyLink-Level 3 Order*) (citing *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40, para. 18 (2015) (*AT&T-DIRECTV Order*)); *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247, para. 22 (2011) (*Comcast-NBCU Order*); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*).

¹² *CenturyLink-Level 3 Order* at 5, para. 9 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Comcast-NBCU Order*, 26 FCC Rcd at 4247, para. 22; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25).

¹³ *CenturyLink-Level 3 Order* at 5, para. 9 (citing *Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*)); see also *Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

¹⁴ *CenturyLink-Level 3 Order* at 5-6, para. 9 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 10 (2011) (*Qwest-CenturyLink Order*)).

Communications Act and related statutes,” and it “will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.”¹⁵

7. If the Commission has determined that a transaction raises no public interest harms or any such harms have been ameliorated by narrowly tailored conditions, the Commission next considers a transaction’s public interest benefits. Notably, the Commission has long recognized the clear public interest benefits in a license or authorization holder being able to assign or transfer control of its license or authorization freely.¹⁶ Indeed, the Commission has adopted streamlining procedures—including the automatic approval of a transaction—when a “transaction is unlikely to raise public interest concerns.”¹⁷ The Commission also will review other claimed public interest benefits of a transaction, with the applicants bearing the burden of proving those benefits by a preponderance of the evidence.¹⁸

8. Finally, if the Commission is able to find that narrowly tailored, transaction-specific conditions are able to ameliorate any public interest harms and the transaction is in the public interest, it may approve the transaction as so conditioned.¹⁹ In contrast, if the Commission is unable to find that a proposed transaction even with such conditions serves the public interest or if the record presents a

¹⁵ *CenturyLink-Level 3 Order* at 6, para. 9 (citing *SBC Communications Inc. and AT&T Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18303, para. 19 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations et al.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21545-46, para. 43 (2004)); *see also Applications of Nextel Partners, Inc. Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7361, para. 9 (2006); *Applications of AT&T Inc. and CellCo Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8747, para. 101 (2010).

¹⁶ *CenturyLink-Level 3 Order* at 6, para. 10 (citing *Amendment of Section 73.3596 of the Commission’s Rules (Applications for Voluntary Assignments or Transfers of Control)*, Memorandum Opinion and Order, 4 FCC Rcd 1710 (1988), affirming 59 RR 2d 1081 (1982) (affirming elimination of requirement that broadcast licenses be held three years before they can be assigned or transferred, stating “the public interest is usually best served by allowing station sales transactions to be regulated primarily by marketplace forces,” and holding that the listening public benefits from freely allowing sales to new owners); *id.*, 55 RR 2d at 1087-88 (holding buyer who is willing to pay market price more likely to deliver service audiences desire and recognizing public benefit of ready market for broadcast licenses); *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10841-44 (2003) (eliminating anti-trafficking policy for satellite licenses expedites service to the public by facilitating the transfer of licenses to those parties that have the greatest incentive and ability to construct a satellite system; enables satellite spectrum to move more efficiently to its highest and best use; and helps licensees mitigate risk thereby encouraging investment)).

¹⁷ *CenturyLink-Level 3 Order* at 6, para. 10 (citing *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5533-35, paras. 29-34 (2002)).

¹⁸ 47 U.S.C. § 309(e); *see CenturyLink-Level 3 Order* at 6, para. 10 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors, to Time Warner Cable Inc., Assignees*, 21 FCC Rcd 8203, 8217, para. 23 (2006); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25)).

¹⁹ *CenturyLink-Level 3 Order* at 6, para. 11 (stating that “[a]lthough the Commission has suggested in the past that it may employ a ‘balancing test,’” *see, e.g., AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18, or a ‘sliding scale approach,’” *see, e.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 203, “in practice the Commission has not allowed potential competitive harms to go unremedied nor allowed them to be offset by benefits that are not transaction-specific, i.e., benefits that do not naturally arise from the transaction at issue.”).

substantial and material question of fact, then it must designate the application for hearing.²⁰

IV. QUALIFICATIONS OF APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

9. Section 310(d) of the Act requires that we make a determination as to whether the Applicants have the requisite qualifications to hold Commission licenses.²¹ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”²² Therefore, as a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualification requirements to hold and transfer licenses under Section 310(d) of the Act and the Commission’s rules.²³

10. We note that no issues were raised with respect to the basic qualifications of Verizon Wireless, XO Holdings or Nextlink. In addition, Verizon Wireless has repeatedly been found qualified to hold Commission licenses.²⁴ We therefore find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications of Verizon Wireless under the Act and our rules, regulations, and policies.²⁵

11. The proposed transaction also must comply with the Act, other applicable statutes, and the Commission’s rules before we can find that it is in the public interest.²⁶ We find that the proposed transaction will not violate any statutory provision or Commission rule.

V. POTENTIAL PUBLIC INTEREST HARMS AND BENEFITS

1. Potential Public Interest Harms

²⁰ 47 U.S.C. § 309(e); *CenturyLink-Level 3 Order* at 6-7, para. 11 (citing *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20562-63, para. 3). Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, *see ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but may do so if we find that a hearing would be in the public interest.

²¹ 47 U.S.C. § 310(d).

²² 47 U.S.C. §§ 308, 310(d); *see also AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24; *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199, para. 11; *AT&T-BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *SBC-AT&T Order*, 20 FCC Rcd at 18379, para. 171.

²³ *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24; *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199, para. 11; *AT&T-BellSouth Order*, 22 FCC Rcd at 5756, para. 191.

²⁴ *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent To Assign AWS-1 Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 10698, 10714, para. 17 (2012); *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3777, para. 26 & nn.108-09 (2008).

²⁵ 47 U.S.C. § 310(d); 47 C.F.R. § 1.948. The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing. *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 25; *Applications of Sprint Nextel Corp. and SoftBank Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9653, para. 27 (2013).

²⁶ *AT&T-DIRECTV Order*, 30 FCC Rcd at 9154, para. 52.

12. We find no evidence in the record to support a finding that the transaction will result in potential public interest harms. We therefore deny the CCA Petition to Deny. We also reject CCA's requests that we condition the transaction, because we find its claims of harm to be speculative.

13. *Positions of the Parties.* The Applicants claim that the proposed transaction does not raise any competitive or other public interest concerns. They assert that the proposed transaction is part of intense competition among wireless providers to develop and deploy fifth-generation (5G) services.²⁷ They further assert that the proposed transaction would not result in any additional spectrum aggregation.²⁸ The Applicants state that Verizon Wireless currently does not hold any licenses in millimeter wave (mmW) bands, other than a non-exclusive license in the 70/80/90 GHz bands, and does not lease any mmW spectrum other than the spectrum that it currently leases from Nextlink.²⁹ Moreover, the Applicants assert that, with the instant transaction, Verizon Wireless would not exceed the 1250 MHz threshold established in the *Spectrum Frontiers Order*³⁰ for secondary market transactions involving mmW spectrum.³¹ The Applicants also state that Verizon Wireless will honor the terms and conditions of Nextlink's existing leases and agreements with third parties making use of spectrum associated with the licenses being transferred.³²

14. CCA argues that service providers will need access to diverse spectrum resources in order to meet future demand and to make 5G a reality, and it asserts that the proposed transaction represents a significant step in the direction of anti-competitive aggregation of mmW spectrum.³³ CCA argues that, if the Application is not denied, the Commission should condition consent to ensure that mmW spectrum bands are not dominated by AT&T and Verizon Wireless.³⁴

15. Skyriver currently leases 39 GHz and LMDS spectrum from Nextlink in six markets, involving spectrum associated with six of the licenses included in the Application.³⁵ While Skyriver does not object to the proposed transaction as a whole, it claims to have a right of first refusal under its leasing arrangements with Nextlink and contends that Nextlink has failed to comply with the applicable provisions of their leasing agreement.³⁶ Accordingly, Skyriver asks the Commission to not consent to the transfer of control of the licenses that are subject to the claimed dispute until and unless the parties notify the Commission that the matter of Skyriver's asserted rights of first refusal has been resolved to their mutual satisfaction.³⁷

²⁷ Public Interest Statement at 5-6.

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ *Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8081 n.486 (2016) (*Spectrum Frontiers Order*).

³¹ Public Interest Statement at 6.

³² *Id.*; Joint Opposition at 10.

³³ CCA Petition at 4-5.

³⁴ *Id.* at 6-8.

³⁵ Skyriver Petition at 2.

³⁶ *Id.* at 2.

³⁷ *Id.* at 2-3.

16. The Applicants respond that CCA's objections are based on speculation regarding future events and potential Commission policies.³⁸ The Applicants further contend that CCA fails to identify any potential competitive or other public interest harms that would result under current market circumstances; they further argue that CCA's generalized claims fail to point to any specific facts.³⁹ The Applicants also argue that CCA's claims that aggregation of mmW spectrum will preclude 5G competition rests on an invalid premise that competitive 5G service cannot be offered on spectrum bands other than the 28 GHz and 39 GHz bands, and they note that T-Mobile and Sprint, both CCA members, have announced plans to use 600 MHz and 2.5 GHz, respectively, for 5G service.⁴⁰ As to Skyriver's Petition, the Applicants state that Nextlink disagrees that this transaction triggered any particular contractual right of Skyriver, but that in any case, Skyriver has raised a private contractual issue that is outside the scope of the Commission's secondary market transactions review.⁴¹

17. *Discussion.* In reviewing proposed transactions, the Commission evaluates the potential public interest harms, and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.⁴² Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the mobile wireless marketplace.⁴³

18. Although the Commission's spectrum screen historically has not included the mmW bands,⁴⁴ the Commission in the *Spectrum Frontiers Order* found that the mmW bands are likely to be a critical component in the development of 5G services,⁴⁵ and it concluded that proposed secondary market transactions, such as this one, should be analyzed on a case-by-case basis using a mmW spectrum threshold as an initial analytical tool to aid in identifying certain markets for further review.⁴⁶ In the *Spectrum Frontiers Order*, the Commission adopted a mmW spectrum threshold of 1250 megahertz for proposed secondary market transactions, out of the total of 3250 megahertz of mmW spectrum made

³⁸ Joint Opposition at 3.

³⁹ *Id.* at 3-4.

⁴⁰ *Id.* at 7-8.

⁴¹ *Id.* at 10-11.

⁴² See, e.g., *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3635-36, para. 9 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2745, para. 20 (WTB, IB 2014) (*AT&T-Leap Order*).

⁴³ See, e.g., *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015); *AT&T-Leap Order*, 29 FCC Rcd at 2745-46, para. 21.

⁴⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

⁴⁵ *Spectrum Frontiers Order*, 31 FCC Rcd at 8081, para. 184.

⁴⁶ *Id.*, 31 FCC Rcd at 8082, para. 185.

available at that time.⁴⁷

19. We begin by noting that the spectrum associated with the licenses being transferred is already attributed to Verizon under the existing long-term *de facto* transfer lease.⁴⁸ We observe that post-transaction, Verizon Wireless would remain below the spectrum threshold of 1250 megahertz.⁴⁹ In a recent order, the Commission also added additional mmW spectrum in the 24 GHz and 47 GHz bands to the mmW spectrum threshold. This will increase the threshold to 1850 megahertz in the near future.⁵⁰ Considering that this transaction does not trigger the currently-effective mmW spectrum threshold, and based on our careful review of the record and examining the various factors present in this case, we find that Verizon Wireless's post-transaction spectrum holdings across the LMDS (28 GHz) and 39 GHz bands do not raise concerns in light of the current state of the marketplace.

20. We are not persuaded otherwise by CCA's allegations of foreclosure and spectrum aggregation. CCA's allegations of harm are speculative, generalized, and not specific to this transaction. Moreover, CCA's allegations are premised on the view that we should, in effect, combine our review of the instant transaction with those of two separate and pending transactions—one between Verizon Communications and Straight Path and one between AT&T Mobility and FiberTower.⁵¹ We decline to do so.⁵² CCA's allegations of stunted 5G development because of potential holdings of mmW spectrum by Verizon Communications and AT&T Mobility through other transactions provide no basis for denying the instant Application or imposing conditions. We find that Verizon Wireless's acquisition of the licenses at issue is unlikely to foreclose rival service providers from obtaining access to sufficient spectrum for their own development of innovative new products and services. As noted above,⁵³ the Commission has recently made additional mmW spectrum available for wireless use. Moreover, we find that mmW spectrum is not, as CCA appears to contend, the only spectrum that may be useful for developing and providing 5G services. For these reasons, we find that the likelihood of competitive harm from this particular transaction is unlikely.

21. We also deny the Skyriver Petition. Skyriver acknowledges that the Commission does

⁴⁷ *Id.*, 31 FCC Rcd at 8081-84, paras. 184-85, 189. The Commission recently adopted rules to make available an additional 1700 megahertz of mmW spectrum, in the 24 GHz and 47 GHz bands. This will increase the total available mmW spectrum to 4950 megahertz. *Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, FCC 17-152, 24, para. 74 (Nov. 22, 2017) (*Second Spectrum Frontiers Order*).

⁴⁸ *Verizon-Nextlink Leasing Order*, 31 FCC Rcd at 7775-76, para. 20.

⁴⁹ Verizon Wireless does not currently hold or lease any other spectrum in the LMDS or 39 GHz bands, and it would acquire from Nextlink 92 LMDS licenses and nine 39 GHz licenses covering 920 counties, or approximately 63 percent of the U.S. population in all or parts of 289 Cellular Marketing Areas. *Verizon-Nextlink Leasing Order*, 31 FCC Rcd at 7775-76, para. 20 & n.63; Public Interest Statement at 2, 6. Post-transaction, Verizon Wireless would hold a maximum of 1050 megahertz of mmW spectrum, or less than one-fourth of the spectrum that the Commission made available in the *Spectrum Frontiers Order* and the *Second Spectrum Frontiers Order* for flexible use, including mobile services. *Spectrum Frontiers Order*, 31 FCC Rcd at 8018, para. 4; *Second Spectrum Frontiers Order* at 23-24, paras. 73-74.

⁵⁰ *Second Spectrum Frontiers Order* at 22, 24, paras. 70, 74 & n.189.

⁵¹ *Applications of AT&T Mobility LLC (AT&T Mobility) and FiberTower Corporation (FiberTower) for Transfer of Control of Licenses*, ULS File Nos. 0007652635, 0007652637 (filed Feb. 13, 2017).

⁵² We previously denied the CCA Motion to Consolidate, which requested consolidation of the review of the instant application with that of Verizon and Straight Path. *See supra* note 8.

⁵³ *See supra* note 47.

not adjudicate in transaction proceedings private contractual disputes such as its dispute with Nextlink over rights of first refusal claimed by Skyriver under its lease agreement with Nextlink.⁵⁴ Skyriver's claim that there is a public interest in our holding the Application in partial abeyance pending resolution of its contractual dispute because, according to Skyriver, a material question exists as to Verizon Wireless's willingness to honor its stated commitment to honor Nextlink's existing third-party leases is without foundation.⁵⁵ The only support Skyriver offers for that allegation is Nextlink's disagreement that Skyriver's contractual rights have been violated, which is precisely the private contractual dispute that Skyriver acknowledges is not within the scope of our transaction review process.

2. Potential Public Interest Benefits

22. Having found there are no significant potential public interest harms of the transaction, we next review the public interest benefits of the particular transaction, beyond fostering the free transferability of licenses and authorizations. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms only "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."⁵⁶ Specifically, the Commission finds a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction⁵⁷—and verifiable, and is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost."⁵⁸

23. *Claims of the Applicants.* According to the Applicants, Verizon Wireless's continuing use of the mmW frequencies that it is currently leasing would facilitate 5G development and deployment.⁵⁹ The Applicants maintain that Verizon Wireless has been driving the 5G ecosystem towards rapid commercialization with testing, standards development, fiber deployment and acquisitions for backhaul, and planned launches of pre-commercial 5G service trials.⁶⁰ The Applicants also maintain that the transfer of the mmW licenses will further the Commission's objective to foster innovation in 5G technologies and facilitate rapid deployment of 5G services and products to the benefit of American consumers and the United States economy.⁶¹ The Applicants assert that Verizon Wireless's leasing of Nextlink's mmW spectrum has allowed testing of 5G equipment and devices, as well as 5G research and development more generally.⁶² The Applicants state that Verizon Wireless is committed to being the first to market with commercial deployment of 5G in 2018,⁶³ and they assert that acquiring the Nextlink

⁵⁴ Skyriver Petition at 2; Skyriver Reply at 1.

⁵⁵ Skyriver Reply at 2.

⁵⁶ *CenturyLink-Level 3 Order* at 24, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5760, para. 201).

⁵⁷ *CenturyLink-Level 3 Order* at 24, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 202 (stating "[o]r as the Commission has previously put it, 'more likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects'")).

⁵⁸ *CenturyLink-Level 3 Order* at 24, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 202).

⁵⁹ Joint Opposition at 1, 4.

⁶⁰ Public Interest Statement at 1, 3-5; Joint Opposition at 4.

⁶¹ Public Interest Statement at 3; Joint Opposition at 4.

⁶² Public Interest Statement at 3.

⁶³ *Id.* at 1.

mmW licenses will advance Verizon Wireless's commitment to the continued deployment of 5G technology, providing the certainty to proceed with long-term planning and investments.⁶⁴

24. *Discussion.* We have reviewed the Applicants' claimed public interest benefits and find that, as a direct result of the transaction, Verizon Wireless likely would be better able to continue advancing 5G development to the benefit of American consumers. As discussed in the *Spectrum Frontiers Order*, the 28 GHz and 39 GHz spectrum that is included in the proposed transaction is likely to be crucial to 5G deployment.⁶⁵ Verizon Wireless has publicly committed to an aggressive schedule in developing and deploying 5G technology and services and, without continued access to the spectrum that it has been leasing and using in its development efforts to date, it would be severely hampered in its efforts. We believe therefore that consenting to the subject transaction will allow Verizon Wireless, which does not currently hold licenses to any of this spectrum, to continue to develop potentially important uses and new technology for these mmW spectrum bands.

VI. CONCLUSION

25. Based on our careful evaluation of the likely competitive effects, we find that the transaction is unlikely to result in any significant public interest harms. In addition, we find that the record provides general support for the Applicants' assertions that the transaction likely would result in certain public interest benefits. As a result, based on our review of the record before us, we find that consent to the proposed transfer of control would serve the public interest, convenience, and necessity.

VII. ORDERING CLAUSES

26. Accordingly, having reviewed the application and the record in this matter, **IT IS ORDERED** that, pursuant to Sections 4(i)-(j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 303(r), 309, 310(d), the application for consent to the transfer of control filed by Verizon Wireless and XO Holdings **IS GRANTED**.

27. **IT IS FURTHER ORDERED** that, pursuant to Sections 63.10, 63.13, and 1.939 of the Commission's Rules, 47 C.F.R. §§ 63.10, 63.13, 1.939, the petition of CCA to deny the application and the petition of Skyriver to hold the application in partial abeyance **ARE DENIED** as discussed above.

28. **IT IS FURTHER ORDERED** that the above grant shall include authority for Verizon Wireless, consistent with the terms of this Memorandum Opinion and Order, to acquire control of: (1) any licenses and authorizations issued to Nextlink during the Commission's consideration of the Application and the period required for consummation of the transaction following approval; (2) any applications that have been filed by Nextlink that are pending at the time of consummation of the transaction; and (3) licenses that may have been inadvertently omitted from the Application that are held by Nextlink at the time of consummation of the transaction.

29. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon release. Petitions for Reconsideration under Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

30. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

⁶⁴ *Id.* at 5.

⁶⁵ *Spectrum Frontiers Order*, 31 FCC Rcd at 8081, para. 184.

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Chief
Wireless Telecommunications Bureau