

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

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| In the Matter of |) | |
| |) | |
| Application of Cellco Partnership d/b/a Verizon Wireless and XO Holdings |) | File No. 0007765708 |
| |) | |
| For Consent to Transfer of Control of Nextlink Wireless, LLC |) | |
| |) | |
| Application of Verizon Communications, Inc. and Straight Path Communications, Inc. |) | File No. 0007783428 |
| |) | |
| For Consent to Transfer of Control of Straight Path Spectrum, LLC |) | |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2017

Released: June 22, 2017

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Memorandum Opinion and Order*, we deny a request filed by the Competitive Carriers Association (CCA) to consolidate the Commission’s review of the two above-captioned applications for consent to transfer control of licenses and to set a single, unified pleading cycle for receiving public comment on both transactions.

2. *Background.* On May 11, 2017, Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) and XO Holdings (together with Verizon Wireless, the Applicants) filed an application pursuant to Section 310(d) of the Communications Act of 1934, as amended,¹ seeking 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).² Verizon Wireless currently leases from Nextlink spectrum under its LMDS and 39 GHz licenses,³ and 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.⁴ On June 5, 2017, the Wireless Telecommunications Bureau

¹ 47 U.S.C. § 310(d).

² File No. 0007765708 (filed May 11, 2017).

³ *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).

⁴ *Application of Cellco Partnership and XO Holdings for Transfer of Control of Licenses*, File No. 0007765708, Ex. 1 – Description of Transaction and Public Interest Statement at 2 (filed May 11, 2017) (Public Interest Statement). The Applicants state that the leasing arrangement will terminate when the proposed transfer of control has been completed.

(Bureau) accepted the application for filing and established a pleading schedule under which petitions to deny are due June 26, 2017, oppositions July 3, 2017, and replies July 11, 2017.⁵

3. On June 1, 2017, Verizon Communications, Inc. (Verizon) and Straight Path Communications Inc. filed an application pursuant to Section 310(d) of the Communications Act of 1934, as amended,⁶ seeking Commission consent to the transfer of control of 39 GHz, LMDS, and common carrier fixed point to point microwave licenses held by Straight Path Communications subsidiary Straight Path Spectrum, LLC (Straight Path).⁷ That application has not yet been accepted for filing.

4. On June 13, 2017, CCA filed its Motion to Consolidate asking the Commission to suspend the comment cycle for the Nextlink application and to set a single pleading cycle for both applications.⁸ CCA argues that the amount of overlapping spectrum that Verizon proposes to acquire in the two transactions would foreclose the Commission from adequately analyzing the full competitive effects of each transaction.⁹ CCA notes that if considered together, the combined spectrum holdings would trigger the 1250 megahertz threshold for secondary market transactions in many counties.¹⁰ CCA also argues that “coordinated review” is necessary because both applications contain similar public interest arguments.¹¹ CCA cites cases which it believes gives the Commission discretion to consolidate proceedings.¹²

5. The Applicants jointly opposed the Motion on June 16, 2017 and represent that the transactions are separate and distinct from one another.¹³ According to the Applicants, when transactions are separate and distinct, the Commission will process each application separately, and grant of the first application will not preclude any action or remedy in connection with the later-filed applications.¹⁴ They argue that the cases cited by CCA either support a decision to process the applications separately or are distinguishable.¹⁵ In reply, CCA cites the decision to consolidate Verizon’s acquisition of AWS spectrum,¹⁶ emphasizes the similarity of the public interest arguments in both applications,¹⁷ and argues that the cases cited by the Applicants are distinguishable.¹⁸

⁵ *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*, Public Notice, DA 17-546 (WTB rel. June 5, 2017) (*Verizon-Nextlink Accepted for Filing Public Notice*).

⁶ 47 U.S.C. § 310(d).

⁷ File No. 0007783428 (filed June 1, 2017).

⁸ Motion to Consolidate, Competitive Carriers Association at 8 (filed June 13, 2017) (Motion).

⁹ Motion at 2-3.

¹⁰ Motion at 4-5.

¹¹ Motion at 5.

¹² Motion at 6-8.

¹³ Joint Opposition to Motion to Consolidate, XO Holdings LLC and Nextlink Wireless LLC, Verizon Communications, Inc., and Straight Path Communications, Inc. at 1 (filed June 16, 2017) (Joint Opposition).

¹⁴ Joint Opposition at 2, 4.

¹⁵ Joint Opposition at 2-3.

¹⁶ Reply to Joint Opposition to Motion to Consolidate, Competitive Carriers Association (filed June 20, 2017) (Reply) at 3-5, citing *Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, Public Notice, 27 FCC Rcd 360 (WTB 2012)

¹⁷ Reply at 3.

6. *Discussion.* We decline CCA's request that we consolidate our review of the two transactions. CCA is correct that we have broad discretion in determining how best to conduct our proceedings,¹⁹ but we are not persuaded that we should depart from our normal practice of considering transactions separately when the transactions involve different transferors and are not contingent on each other.²⁰ We note that there are factual distinctions between the two transactions, which may give rise to different issues. For example, the spectrum at issue in the Nextlink transaction is already attributed to Verizon for purposes of our competitive review because Verizon currently leases the spectrum.²¹ In contrast, the spectrum at issue in the Straight Path transaction would be newly attributed to Verizon. Despite CCA's apparent suggestion to the contrary, parties will be able to make arguments regarding that newly attributed spectrum absent consolidation of our review. Similarly, CCA's claim that the parties make similar public interest arguments in both applications does not require consolidation of the review of both transactions. Our consideration of the claims of parties will be based on all the underlying facts and record, which will be different in each transaction.²² In short, "[o]ur review process generally takes into account, as appropriate, the effects of multiple pending applications. . .", and we see no need to depart from that process here.²³ We find that processing these applications separately using our normal procedures will not limit the ability of CCA or other parties to raise issues concerning either transaction, nor preclude or limit any analysis, action or remedy.²⁴

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(d), and Section 1.948 of the

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¹⁸ Reply at 6-7. CCA also argues for the first time in the Reply that the Verizon-Nextlink application is defective because it was not amended to reflect the filing of the Verizon-Straight Path application. Reply at 8-10. We decline to consider this argument at this time because new issues may not be raised in replies. See 47 C.F.R. § 1.45(c), *Verizon-Nextlink Accepted for Filing Public Notice* at 3.

¹⁹ Motion at 6. See *AT&T Incorporated and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589, 17622, para. 80 (2011) (*AT&T-Qualcomm*).

²⁰ See *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A. and C-Call Corp.*, Order, 10 FCC Rcd 3363, 3364, para. 20 (WTB 1995).

²¹ See *Verizon-Nextlink Leasing Order*.

²² We find that the Commission's consolidated review of the Verizon AWS transactions cited by CCA is distinguishable because there was a significantly greater "commonality of issues" among the Verizon AWS applications. See *Verizon AWS Applications Public Notice*, 27 FCC Rcd at 361.

²³ *AT&T-Qualcomm*, 26 FCC Rcd at 17622, para. 80.

²⁴ The pleading cycle for the Verizon-Nextlink transaction will remain as announced in the accepted for filing public notice. Assuming the Bureau finds the Verizon-Straight Path application acceptable for filing, the Bureau will issue a separate public notice announcing that fact and establishing a pleading cycle for that transaction.

Commission's rules, 47 C.F.R. § 1.948, that the Motion to Consolidate filed by the Competitive Carriers Association on June 13, 2017 IS DENIED.

8. 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

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