



140 West Street
6th Floor
New York, NY 10007-2109
Tel (212) 519-4716
Fax (212) 962-1687
keefe.b.clemons@verizon.com

Keefe B. Clemons
General Counsel – Northeast Region

verizon✓

RECEIVED

JUL 07 2016

BOARD OF PUBLIC UTILITIES
MAIL ROOM

July 6, 2016

By Electronic and Express Mail

Irene K. Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

**Re: Verified Petition of XO Holdings, XO Communications Services, LLC, and Verizon Communications Inc. for Approval of a Proposed Transaction
BPU Docket No. TM106030248**

Dear Secretary Asbury,

This letter is submitted on behalf of the Petitioners in response to the letter filed by New Jersey Division of Rate Counsel (“Rate Counsel”) that was filed in this docket on May 11, 2016. (“Rate Counsel Letter”). In that letter, Rate Counsel recommended that the Board “condition approval of the proposed acquisition on assurances from Verizon that [sic] transaction will have no negative impact or reduction of New Jersey employees for a minimum five year period post transaction or negative impact on employee pension obligations as triggered under *N.J.S.A. 48:3-7.*” Rate Counsel Letter at 2 (footnote omitted). Petitioners respectfully submit that in this case conditioning the transaction as suggested by Rate Counsel would be improper.

First, to the extent Rate Counsel’s proposed five-year condition is based on concerns that the proposed transaction will have a negative impact on or cause a reduction in any employee XO pension obligations benefits, no such obligations currently exist for any of XO’s NJ employees (currently, 135). See *Petitioners’ Response to Board Staff’s Request S-2*. Therefore, the transaction will have no impact whatsoever on any pension obligations, and accordingly does not raise any issue under *N.J.S.A. 48:3-7*.¹

¹ *N.J.S.A. 48:3-7* provides in relevant part that:

Where, by the proposed sale, lease, or other disposition of all or a substantial portion of its property, any franchise or franchises, privileges, or rights, or any part thereof or merger or consolidation thereof as set forth herein, it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligation to any employees

(continued . . .)

Case mgmt
list copied

Irene K. Asbury, Secretary
July 6, 2016

XO's employees currently have and will continue to have access to the same 401K plan, including their vested interests and prior contributions, immediately after closing, and employees will eventually be transferred to Petitioner Verizon's 401K plan, which offers even greater benefits. *Petitioners' Response to Board Staff's Request S-2.*

As discussed in our responses to Board Staff's interrogatories (*Petitioners' Response to Board Staff's Request S-1*), Verizon does anticipate some merger savings as a result of the transaction, and should be given the opportunity to assess the needs of the combined entity after the transaction closes in order to make decisions that maximize efficiency and operational effectiveness. Verizon should not be required to guarantee that any particular employees will retain their jobs for any finite period of time following the completion of the transaction. Indeed, doing so would give the XO employees a special status that other similarly-situated Verizon employees do not enjoy, and would unreasonably constrain Verizon's ability to achieve some of the synergies that one would reasonably expect as a result of such a transaction.

Should the Board require some assurance relating to XO's NJ employees, it should adopt the more reasonable language approved by the Board in the Charter-Time Warner Merger (Docket Nos. CM15070770, TM15070772), rather than the 5-year retention obligation proposed by Rate Counsel, and require for a limited period of time that Verizon notify the Board and provide an explanation if there is a net loss of XO customer-facing jobs in New Jersey that is greater than fifteen percent (15%).²

For all of the foregoing reasons, Petitioners respectfully request that the Board approve the proposed transaction without the conditions recommended by Rate Counsel.

Very truly yours,



cc: Service List (w/encl., by electronic mail)

(... continued)

thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the board shall not grant its approval unless the public utility seeking the board's approval for such sale, lease, or other disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

² See *Order Approving Stipulation of Settlement*, Petition of Time Warner Cable, *et al.*, Docket No. CM15070770, March 31, 2016, at 11. We note that the Board has previously recognized that merging companies should be given flexibility to realize merger benefits. See *Order of Approval*, I/M/O Joint Petition of Verizon Communications Inc. and MCI, Inc. for Approval of Merger, BPU Docket No. TMO5030189, April 12, 2006, at 44 ("the imposition of employment quotas on a company must be balanced with the possibility of negating the very merger benefits that will, in the long-term, improve employment in New Jersey.")

BPU Docket No. TM16030248 XO Communications Services, LLC and Verizon Communications Inc. and XO Holdings – Approval of Proposed Transaction

State of New Jersey Attorney General's
Office, Division of Law & Public Safety
Caroline Vachier, DAG
Alex Moreau, DAG
Veronica Beke, DAG
124 Halsey Street
Newark, NJ 07101-45029
Caroline.Vachier@dol.lps.state.nj.us
Alex.Moreau@dol.lps.state.nj.us
Veronica.Beke@dol.lps.state.nj.us

Lawanda Gilbert
Director, OC&T
New Jersey Board of Public Utilities
44 South Clinton Ave, 3rd Flr, Suite 314
P.O. BOX 350
Trenton, NJ 08625
Lawanda.Gilbert@bpu.nj.gov

Harold Bond
New Jersey Board of Public Utilities
44 South Clinton Ave, 3rd Flr, Suite 314
P.O. BOX 350
Trenton, NJ 08625
Harold.Bond@bpu.nj.gov

Paul Flanagan
Executive Director
New Jersey Board of Public Utilities
44 South Clinton Ave, 3rd Flr, Suite 314
P.O. BOX 350
Trenton, NJ 08625
Paul.Flanagan@bpu.nj.gov

Carol Artale
Legal Specialist
New Jersey Board of Public Utilities
44 South Clinton Ave, 3rd Flr, Suite 314
P.O. BOX 350
Trenton, NJ 08625
Carol.Artale@bpu.nj.gov

Rocco Della Serra
New Jersey Board of Public Utilities
44 South Clinton Ave, 3rd Flr, Suite 314
P.O. BOX 350
Trenton, NJ 08625
Rocco.DellaSerra@bpu.nj.gov

Stephanie Brand, Esq.
Director
New Jersey Division of Rate Counsel
140 East Front Street, 4th Flr., POB 003
Trenton, NJ 08625
sbrand@rpa.state.nj.us

Christopher M. Psihoules
Deputy Attorney General
State of New Jersey
124 Halsey Street, Fl. 2
Newark, NJ 07101
Christopher.M.Psihoules@dol.lps.state.nj.us

Maria T. Novas-Ruiz
Assistant Deputy Rate Counsel
New Jersey Division of Rate Counsel
140 East Front, 4th Flr., POB 003
Trenton, NJ 08625
Mnovas-ruiz@rpa.state.nj.us

Keefe B. Clemons - Verizon
General Counsel – Northeast Region
140 West State Street, 6th Floor
New York, NY 10007-2109
keefe.b.clemons@verizon.com

Richard C. Fipphen
Assistant General Counsel
Verizon
140 West Street, Rm 6114
New York, NY 07007
richard.fipphen@verizon.com

Ava Marie-Madeam,
Vice President Regulatory Affairs
Verizon
540 Broad Street
Newark, NJ 07107
avamarie.p.madeam@verizon.com

XO Holdings and XO Communications Services,
LLC:
Rex Knowles
Executive Director, Regulatory
8851 S. Sandy Parkway
Sandy, UT 84070-6408
Rex.knowles@xo.com

Shawn L. Kelly
Dentons, US LLP
101 JFK Parkway
Short Hills, NJ 07078-2708
Shawn.kelly@dentons.com

Todd D. Daubert
Dentons US LLP
1301 K Street, NW Suite 600, East Tower
Washington, DC 20005-3364
Todd.daubert@dentons.com