

## BOARD OF PORT COMMISSIONERS CITY OF OAKLAND

RESOLUTION APPROVING THE INDIRECT TRANSFER OF OWNERSHIP OF XO COMMUNICATIONS SERVICES, LLC, A LESSEE OF PORT PROPERTY FOR AN EXISTING FIBER OPTICS CABLE, FROM XO HOLDINGS TO VERIZON COMMUNICATIONS, INC.

**WHEREAS**, the Board has reviewed and evaluated the Agenda Report Item No. 2.1 dated January 26, 2017 ("Agenda Report") and related agenda materials, has received the expert testimony of Port staff, and has provided opportunities for and taken public comment; and

**WHEREAS**, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** Based upon the information contained in the Agenda Report and testimony and other information received, the Board hereby finds and determines as follows:

- A. The Port currently leases approximately 109,711 square feet of tidelands and submerged lands located north of the Oakland-San Francisco Bay Bridge to XO Communications Services, LLC ("Lessee") for a fiber optics cable which runs from Oakland to Treasure Island in San Francisco pursuant to a lease dated April 20, 1999 (the "Lease") between the Port and Nextlink, Lessee's predecessor in interest; and
- B. Lessee is owned and controlled by XO Communications, LLC ("Direct Owner"), and the Direct Owner is owned and controlled by XO Holdings; and
- C. XO Holdings is owned and controlled by two additional tiers of ownership, and all tiers at XO Holdings and above will be transferred to Verizon Communications, Inc. or an affiliate (collectively, "Verizon"); and

- D. While Lessee and Direct Owner will remain the same legal entity, the proposed transfer of interest in XO Holdings and the ownership tiers above XO Holdings constitutes an indirect transfer of ownership of Lessee subject to Board approval under the Lease; and
- E. The proposed consent to the transfer of indirect ownership of Lessee to Verizon has been determined to be exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Article 19, Section 15300.4, which exempts the execution of leases or agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. Approval of the proposed change in ownership from XO Holdings to Verizon falls within this class of exemptions. No additional environmental review is required to take the action recommended in the Agenda Report.

**SECTION 2.** The Board approves and authorizes the Executive Director to execute the proposed Consent to Change of Indirect Ownership ("Consent") at the parent entity level as described in this Resolution. If such Consent is not fully executed within 90 days after the Board's approval of this Resolution, this approval shall become null and void unless extended in writing in the sole and absolute discretion of the Executive Director or his designee.

**SECTION 3.** This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

**SECTION 4.** This resolution shall be effective immediately upon adoption by the Board.