

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Application of Cellco Partnership d/b/a)	
Verizon Wireless and SpectrumCo LLC)	
For Consent To Assign Licenses)	
)	WT Docket No. 12-4
Application of Cellco Partnership d/b/a)	
Verizon Wireless and Cox TMI Wireless,)	
LLC For Consent To Assign Licenses)	
)	

COMMENTS
OF SPRINT NEXTEL CORPORATION

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SUMMARY

Sprint Nextel Corporation urges the Commission to carefully review the pending applications in this proceeding within the totality of the circumstances. Cable operators and incumbent local exchange telephone companies (“ILECs”) have been either competitors or potential competitors in the provision of video, voice, and private line services, as well as other product markets. This was the multiplatform competition envisioned by the Communications Act, as amended by the ‘96 Telecom Act, which was intended to increase consumer choices and lower prices with a minimum of regulation. Now, however, the sweeping commercial agreements announced in conjunction with the wireless spectrum assignments in this proceeding may make such competition illusory. Negotiated agreements among Verizon, Comcast, Time Warner Cable, Cox, and Bright House could determine the competitive future of the communications industry in large portions of the country.

There are two – and only two – wired ecosystems in the United States: one controlled by ILECs and the other by cable operators. Because so much of the communications infrastructure, wired and wireless, relies on these ecosystems, the Commission must carefully study the effects that the Verizon/Cable Company agreements will have on consumers and industry competitors. The Commission should examine how these agreements might affect access to WiFi networks, which are dependent upon the wireline network and are critical to the expansion of spectrally efficient wireless communications networks. Wireless carriers also rely on wired infrastructure for the backhaul and special access facilities that interconnect cell sites with the switched telephone network. The Commission should determine whether the Verizon/Cable Company

agreements will decrease potential competition in the provision of dedicated private lines, which could further increase costs to wireless carriers and other private line consumers.

The proposed spectrum assignments will also move valuable mobile service opportunities from potential competitors to the nation's largest wireless carrier. The Commission should study the possible effects that these assignments could have on roaming agreements, particularly those for data roaming, which smaller competitors need so they can offer nationwide wireless broadband service to their customers. Finally, the Commission should examine the overall effects of this spectrum transfer. Although the transactions exceed the Commission's spectrum screen in a number of markets, this determination is based on a measure that values one megahertz of mobile spectrum the same as any other, regardless of whether it lies within more valuable "beachfront" bands or in higher-frequency bands of limited commercial use. The Commission should consider another method of evaluating spectrum holdings, such as one based on book value.

All of these determinations are vital to the continuation of competition in communications services. In making this important review, the Commission and interested industry participants and public interest groups should have the benefit of examining the complete, unredacted versions of the Verizon/Cable Company agreements so that they will be able to evaluate the implications of the transactions within the totality of these competitive and marketplace circumstances.

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**COMMENTS
OF SPRINT NEXTEL CORPORATION**

I. THE COMMISSION SHOULD REVIEW THE NOVEL BUSINESS ARRANGEMENTS THAT ARE PART OF THE PROPOSED TRANSACTIONS BECAUSE THEY MAY AFFECT THE COMPETITIVE FUTURE OF THE COMMUNICATIONS INDUSTRY.

The Commission is reviewing applications for the assignment of commercial mobile wireless licenses that one analyst has called “a complete reordering of the competitive universe as we know it today.”¹ Cellco Partnership d/b/a Verizon Wireless (“Verizon”), Comcast Corp. (“Comcast”), Time Warner Cable, Inc. (“Time Warner”), Bright House Networks, LLC (“Bright House”),² and Cox Communications Inc. (“Cox”)³ claim that the applications now under consideration involve only assignments of Advanced Wireless Services (“AWS”) spectrum.⁴ However, the applications disclose that the Applicants have entered into separate commercial agreements that establish new relationships among the largest cable operators and the largest telecommunications company in the United States – companies that are existing competitors in the video and private line product markets and existing or potential competitors in other product

¹ Craig Moffett, *Quick Take – Verizon Buys Spectrum From Cable . . . The End of the World as We Know It*, BERNSTEIN RESEARCH, at 1 (Dec. 2, 2011).

² Subsidiaries of Comcast, Time Warner, and Bright House are the members of SpectrumCo, LLC, the licensee in one of the two proposed spectrum assignments, FCC File No. 0004993617, filed December 16, 2011 (the “Verizon/SpectrumCo” application).

³ Cox subsidiary, Cox TMI Wireless, LLC, is the licensee in the second proposed spectrum assignment, FCC File No. 0004996680, filed December 21, 2011 (the “Verizon/Cox” application) (Comcast, Time Warner, Bright House, and Cox, collectively, “the Cable Companies;” the Cable Companies and Verizon, collectively, the “Applicants”).

⁴ Verizon/SpectrumCo application, Exh. 1, at 1; Verizon/Cox application, Exh. 1, at 1.

markets. Under the agreements, the Cable Companies and Verizon will sell each other's services, with each Cable Company having a future option of transitioning to resale of Verizon services, and create a new joint venture in which the Applicants will collaborate to develop technology and intellectual property that will integrate wired video, voice, and high-speed Internet with wireless technologies.⁵

Given the unique market power of the Applicants and the potential impact on competition, Sprint Nextel Corporation ("Sprint") urges the Commission to evaluate the proposed license assignments carefully within the totality of the circumstances. Although the full extent of the agreements is not clear because the Applicants filed redacted versions of their agreements,⁶ the cooperative arrangements encompass wired and wireless technologies, voice, video, and data services: the full complement of 21st century electronic communications services. Detailed Commission review of the proposed transactions and these arrangements is justified because they have the potential to touch each consumer and every government, business, healthcare, and educational institution in the United States. The Communications Act, as amended, is intended to create a competitive framework to encourage investment in new technologies and to maximize consumer choices while keeping consumer rates reasonable

⁵ Verizon/SpectrumCo application, Exh. 1, at 23-24 and n.71; Verizon/Cox application, Exh. 1, at 20 and n.62.

⁶ *See* Letter of Outside Counsel to DIRECTV, the Rural Cellular Association, Rural Telecommunications Group, Inc., Sprint, and T-Mobile USA, Inc., WT Docket No. 12-4 (filed Feb. 8, 2012) (supporting the request of four public interest parties for unredacted versions of the agreements and also requesting additional time to comment on any new issues that might come to light upon inspection of the full agreements).

without excessive regulation.⁷ The Commission must determine whether the collaboration of telecommunications and cable giants through these arrangements upends this framework by eliminating or reducing competition between these historical industry rivals, likely resulting in reduced choices and increased prices for consumers.

In most parts of the country there are only two wireline ecosystems – one provided by the incumbent local exchange carrier (“ILEC”) and another by the incumbent cable provider. There is no realistic likelihood of another wireline ecosystem being created in the foreseeable future. As the only wireline ecosystems, ILECs and cable companies are natural competitors in offering a wide range of current and developing products that are critical inputs for a variety of customers and third-party services. The Commission should determine whether these transactions eliminate competition between these two ecosystems, or at the very least, whether the agreements will change the incentives of the parties and induce them not to compete with each other as vigorously. The Commission should also decide whether genuine future competition between these ecosystems can develop because there is good reason to believe that such competition would inevitably occur in the absence of these agreements.

As the third-largest wireless service provider in the country, Sprint competes by providing quality services at reasonable prices. This is possible only if Sprint can access the necessary inputs for its business on competitively reasonable terms. Many of these inputs are controlled by wireline companies. Control over these inputs has allowed Verizon and AT&T to dominate the wireless market through scale and vertical integration. Any set of transactions that

⁷ See, e.g., Telecommunications Act of 1996, H.R. Conf. Rep. 104-458, at 185; Cable Communications Policy Act of 1984, H. Rep. No. 98-934, at 25.

poses the possibility of further tilting the playing field in favor of either of the two dominant carriers would raise serious concerns for Sprint. Sprint is participating in this proceeding to determine whether the arrangements envisioned by the Verizon/Cable Company applications raise that specter.

As part of its effort to review the potential impact of the proposed transactions, Sprint has sought access to the underlying Verizon/Cable Company agreements. Although the Applicants have provided the agreements subject to the Commission's Protective Orders,⁸ they have only provided redacted copies.⁹ Such an approach limits Sprint's ability – and the ability of all interested parties – to adequately assess the impact of these new arrangements. Accordingly, the Commission should require the Applicants to provide unredacted copies of the agreements.¹⁰

Even without access to complete copies of the agreements, Sprint has identified several areas in which the Commission should focus its analysis. These include the degree to which the Verizon/Cable Company agreements will affect the availability of WiFi services used for data traffic, the dedicated private line market – including special access and backhaul lines used by carriers, and wireless roaming. The Commission should also determine the competitive impact that will result from Verizon, the wireless provider which already has the largest bundle of prime

⁸ *Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC*, WT Docket No. 12-4, Protective Order, DA 12-50; Second Protective Order, DA 12-51 (rel. Jan. 17, 2012).

⁹ *See* Letter from Media Access Project, Free Press, Public Knowledge and The Greenlining Institute to Marlene H. Dortch, WT Docket No. 12-4 (Feb. 7, 2012).

¹⁰ Should the Applicants file more complete versions of the agreements, Sprint may file additional and more detailed analyses of the proposed transactions.

spectrum licenses, acquiring even more. Given the breadth of these issues, the Commission should evaluate these arrangements in great detail and listen carefully to the concerns voiced by other communications companies, interested parties, and organizations that represent consumer interests.

II. THE VERIZON/CABLE COMPANY AGREEMENTS MAY LIMIT COMPETITIVE ACCESS TO WIFI NETWORKS.

The Commission is well aware of the exploding popularity of wireless data devices and the “looming spectrum crunch.”¹¹ To meet this demand for wireless broadband, wireless carriers need to deploy a variety of mechanisms and technologies to most efficiently manage their spectrum resources to provide service to the public. One of the most effective methods of increasing the capacity of wireless data systems is moving data traffic, whenever possible, from the licensed spectrum of commercial mobile carriers to unlicensed spectrum, such as that now used for WiFi.

Spectrally efficient WiFi is a wireless tail attached to the end of a high-capacity wired network. The process gains its efficiency and speeds in part because it only needs to use radio transmission for a very small portion of the end-to-end route taken by data traffic. The vast majority of the route is along the less traffic-sensitive wired network. In most areas of the country, there are two – and only two – options for carrying this traffic: the wired ecosystem of the incumbent local exchange telephone carrier and that of the incumbent wired cable operator.

¹¹ See, e.g., Transcript of Remarks by FCC Chairman Julius Genachowski at the Consumer Electronics Show, at 2 (Jan. 11, 2012), *available at*: http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0112/DOC-311974A1.pdf.

These ecosystems have been developed over a course of decades with the help of government-mandated access to poles, ducts, and rights-of-way. It is highly unlikely that a third wired ecosystem could be created in the near future. As a result of the proposed Verizon/Cable Company relationships, these two options may effectively merge into a single choice: one affiliated with the largest mobile wireless carrier.

A properly programmed modern smartphone, such as the Apple iPhone, can switch seamlessly between a carrier's licensed frequencies on its macro network and unlicensed WiFi spectrum. The phone must be within range of an accessible WiFi "hotspot," configured to seek WiFi connections, and recognized as an authorized user by the WiFi transceiver. Truly public WiFi hotspots in libraries and similar venues permit access by *any* WiFi-equipped user, while some WiFi systems such as those in a hotel may require a password provided to guests to reserve the system's capacity for their use. Most importantly, a cluster of WiFi hotspots can be programmed to provide immediate access to a specific set of devices, such as the handsets of a particular carrier.

Cable operators have been building WiFi networks as an incentive to attract and retain customers of their core video programming and broadband data distribution services. For example, Comcast offers 20,000 "xfinity" WiFi hotspots from Philadelphia to New York City.¹² Comcast customers with WiFi-enabled devices, such as tablets, notebook computers, and smartphones can sign in with their Comcast username and password at any of these hotspots by

¹² Comcast, XFINITY, <<http://www.comcast.com/wifi/default.htm?SCRedirect=true>> (last visited Feb. 20, 2012).

locating the “xfinitywifi” signal.¹³ Once a customer’s WiFi device is registered with one xfinity hotspot, the device will be automatically recognized, and access will be allowed, at any xfinity hotspot in Comcast’s network.¹⁴

This practice benefits both wireless carriers and consumers. Smartphones using Apple iOS, Android, or Windows Mobile operating systems can connect to xfinity hotspots.¹⁵ When a smartphone is so connected, its data usage does not add to the traffic load of the mobile carrier’s macro wireless network and the consumer can use the less traffic-sensitive, and thus lower-cost, wired network for heavier data usage.¹⁶ If one carrier, Verizon for example, were able to enter an agreement that allowed it exclusive access to cable company WiFi networks, this would create a severe competitive disparity.

To increase the scope of the WiFi options for their customers, cable companies can partner to make WiFi more broadly available. For example, Comcast, Time Warner, and Cablevision Systems, Inc. allow customers of their respective wired high-speed Internet services to freely roam across their networks in the New York, New Jersey, and Connecticut tri-state

¹³ *Id.*

¹⁴ Comcast, *What is Automatic Sign-In for XFINITY in WiFi?* <<http://www.comcast.com/wifi/faqs.htm?SCRedirect=true>> (last visited Feb. 20, 2012).

¹⁵ Comcast, *Connecting Your Devices to XFINITY WiFi*, <<http://www.comcast.com/wifi/connect-devices.htm?SCRedirect=true>> (last visited Feb. 20, 2012).

¹⁶ Comcast, *“Does XFINITY WiFi usage count toward my 250 GB High Speed XFINITY Internet allowance?”* <<http://www.comcast.com/wifi/faqs.htm?SCRedirect=true>> (last visited Feb. 20, 2012). Comcast notes that 99.9% of its xfinity subscribers are not impacted by the company’s 250 GB monthly allowance. *Id.*

area.¹⁷ Today, a cable Internet customer of one of those operators can capture this benefit without regard to which mobile carrier he or she uses. But WiFi is an unlicensed and unregulated service; there is currently nothing that would require these companies to continue providing universal connectivity with all smartphones.

Because of the increasing importance of WiFi to the evolution of wireless networks as data demand increases, the Commission should consider a variety of questions related to the impact that the agreements will have on the availability of WiFi networks for such purposes. First, as Comcast, Time Warner, Bright House, and Cox begin to market and sell Verizon services, will they have the financial incentive and ability to make access to their WiFi networks a benefit only available to their wired Internet service customers *who are also Verizon mobile subscribers*? Second, if wireless carriers other than Verizon want to compete with the higher speeds and lower prices available through WiFi access, will they need to form their own competing WiFi networks? Finally, where the cable operator and Verizon own the only two wired ecosystems, will the Verizon/Cable Company alliance have the ability to refuse, hinder, delay, or overprice the construction of a wireless carrier's competing WiFi network? If so, the agreements have the potential to further tilt the playing field in mobile data services and

¹⁷ See "Cablevision, Comcast, Time Warner Cable Strike WiFi Pact," Broadband DSLReports.com, (Apr. 15, 2010), *available at*: <<http://www.dslreports.com/shownews/Cablevision-Comcast-Time-Warner-Cable-Strike-WiFi-Pact-107911>>.

ultimately harm consumers who would effectively lose their choice of mobile carriers if they want to take advantage of their cable provider's WiFi network.

An additional WiFi-related issue that the Commission should consider arises from the competitive advantage that cable companies hold through installed proprietary hardware within customers' homes. Cable set-top boxes could be integrated with WiFi transceivers to make every home a hotspot, even if the home does not subscribe to the cable company's high-speed Internet access service. With this configuration, a cable subscriber's wireless phone could seamlessly transition from licensed spectrum on the road to WiFi spectrum in the home, providing off-load relief to the cable-affiliated wireless carrier and data plan savings with faster downloads to the subscriber. The Commission should determine whether the Cable Companies intend to reserve WiFi-enabled set-top boxes for the exclusive use of Verizon Wireless customers subscribed through the Cable Company. If that is the case, cable subscribers would be forced to use the Cable Company's wireless service to experience these benefits and unaffiliated wireless carriers and their customers would be left out in the cold.

III. THE COMMISSION SHOULD DETERMINE THE IMPACT OF THE VERIZON/CABLE COMPANY AGREEMENTS ON FIXED PRIVATE LINE SERVICES.

The impact of the proposed transactions on private line services must be examined in the context of the vital role that these services play for a variety of participants in the emerging broadband ecosystem. First, private line services are important to consumers who use them every time they send an email, surf the Internet, make an online purchase or place a wireless or long distance call. These services are also essential for small and large businesses, educational institutions, health care providers and governmental entities, which require reasonably priced and

widely available private line services to quickly serve and connect with their customers, students, patients and constituents. Private line services are especially critical to virtually every telecommunications-based service, providing a vital input not only for broadband and other data services, but also for wireless and interexchange services. Reasonably priced and broadly available private line services are particularly important for wireless carriers who depend on affordable backhaul to offer their wireless services.¹⁸ Indeed, as wireless carriers continue to deploy cell sites and bandwidth-intensive services, they become even more dependent on the availability of the wireline infrastructure necessary for backhaul.

The Commission's special access docket is replete with evidence confirming that the private line market is highly concentrated.¹⁹ That same evidence confirms that the existing market structure allows price cap LECs, such as Verizon, to charge supra-competitive rates and impose unreasonable and anti-competitive service terms that many purchasers of private line services are forced to accept because in many areas there are insufficient competitive

¹⁸ See Comments of Sprint Nextel Corporation in RM-10593, at 6-8 (filed Jan. 19, 2010).

¹⁹ Many participants in that docket have referenced various portions of a 2009 study by the National Regulatory Research Institute, which found that of the 50 MSAs surveyed, the median for all DS1 and DS3 services (the services most critical to many special access customers) fell well within the zone characterized as "highly concentrated" by the Merger Guidelines, and none of the MSAs had as many as two effective firms. Peter Blumh, *Competitive Issues in Special Access Markets*, NATIONAL REGULATORY RESEARCH INSTITUTE (Jan. 21, 2009), available at: <http://www.naruc.org/Publications/09%200121%20NARUC%20NRRI_spcl_access_mkts_jan09-02%20_2_.pdf>.

alternatives.²⁰ Wireless carriers are particularly subject to these practices because there are fewer competitive providers of private lines that can be used for backhaul purposes in many geographic regions. Sprint itself remains heavily dependent on ILEC private lines for backhaul as are other wireless carriers, who repeatedly note a similar dependence on ILEC offerings.²¹

Various alternate providers, including fixed wireless and competitive wireline carriers, have attempted to provide competition to ILEC private line services, including for backhaul purposes. These carriers have experienced some limited successes in offering private line services in certain areas, but they have struggled elsewhere because of technology limitations and the fact that they lack the economies of scale and network reach to provide competition in other areas.

Cable operators, in particular, have expressed their intent to compete in this business, at least in the future.²² Indeed, in response to inquiries about the reasonableness of their special access rates, the ILECs have claimed that the cable operators are already widespread competitive

²⁰ See, e.g., Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 05-25, at 6-7 (Aug. 8, 2007).

²¹ See Letter from Kathleen O'Brien Ham, T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, WC Docket No. 05-25, at 2 (May 6, 2010). (“after years of negotiating long-term, multi-market contracts with a variety of suppliers . . . T-Mobile still purchases ILEC backhaul in most of its 3G coverage area”).

²² For instance, Comcast’s President and CEO of Cable, Neil Smit, described the backhaul market in December 2010 as a “very good growth opportunity for us....” UBS Global Media and Communications Conference (Dec. 7, 2010) *available at*: <http://files.shareholder.com/downloads/CMCSA/0x0x428249/8f603e9b-4c0d-4272-b6a8-549984d2e82a/Comcast%20Transcript%20at%20UBS.pdf>.

providers of private line services.²³ In some of their franchised territories, cable operators may well become competitors for private line services, especially in Ethernet-based private lines. Sprint and other wireless operators would welcome this competitive alternative to ILEC offerings, especially for backhaul purposes. But would such competition develop if the two wireline ecosystems now enter into joint marketing arrangements that effectively protect one another's core businesses?

The Commission should review how the proposed transactions will impact the availability of competitive private line services, especially from cable operators. Whether or not Verizon and the Cable Companies have formally agreed not to compete in the provision of private line services, as agents or resellers of Verizon Wireless services, the Cable Companies will have a stake in its success. Given the extent of their cooperative efforts with respect to their bigger businesses – cable and wireless – will each of the parties be less likely to risk disrupting the working relationships inside their joint venture by competing aggressively for private line services? In addition, now that the Cable Companies will not be deploying facilities-based wireless services under their own brands, will they have the financial and operational incentives

²³ See Comments of Verizon and Verizon Wireless, WC Docket No. 05-25, at 20-22 (filed Jan. 19, 2010) (“[t]here is extensive evidence that cable companies are now major competitors providing high capacity services. Cable companies already have extensive broadband networks that are ready and able to provide high capacity services for both business customers and wireless customers.”); see also Reply Comments of Verizon and Verizon Wireless, WC Docket No. 05-25, at 14 (filed Feb. 24, 2010) (“[t]he Commission’s framework should further acknowledge that cable operators are serving not only business customers, but also have expanded their footprint and introduced new services to meet the backhaul needs of wireless providers. The major cable operators have invested heavily to upgrade and extend their high-capacity networks to provide wireless backhaul services”).

to build out their networks for backhaul services? In this manner, does Verizon further benefit from these new relationships by decreasing the potential for competition in the private line services market, especially private lines used for backhaul purposes? Answers to these questions will be vital in determining the potential impact of the proposed transactions on the availability of competitive private line services.

IV. THE COMMISSION SHOULD ASSESS THE EFFECT OF THE VERIZON/CABLE COMPANY AGREEMENTS ON DATA ROAMING.

The Commission has noted that commercial mobile data services provided over advanced mobile broadband technologies have become an increasingly significant part of the lives of American consumers.²⁴ As smartphones and tablets rapidly become more prevalent, consumers expect their mobile service providers to offer ubiquitous mobile broadband services.²⁵ For wireless carriers without national footprints of their own, this requires data roaming. In April 2011, the Commission adopted rules that would extend roaming obligations to the wireless data world.²⁶ Among wireless carriers, only Verizon and AT&T opposed the adoption of these rules.²⁷ Sprint, T-Mobile, and the regional and smaller providers all realized that without a regulatory requirement, Verizon and AT&T would make it difficult for other carriers to expand

²⁴ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, ¶ 14 (2011) *recon. pending, appeal docketed sub nom. Cellco Partnership v. FCC*, No. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011).

²⁵ *Id.*, ¶ 15.

²⁶ *Id.*, Appendix A.

²⁷ *Id.*, ¶ 12.

capacity with full nationwide coverage outside their home footprints on reasonable terms and conditions.²⁸ Cable companies, such as Cox²⁹ and Bright House,³⁰ noted that the ability of new entrants into the commercial mobile services marketplace required roaming agreements that were difficult to obtain.

The Commission should conduct a detailed review of how the Verizon/Cable Company agreements will affect data roaming. For instance, will data roaming agreements become even more difficult to negotiate in the future? Will the Verizon/Cable Company agreements foreclose the possibility that any other carrier could ever build a competing system using the spectrum that Verizon is acquiring?

The Commission's data roaming rules³¹ will not necessarily solve such problems, should they arise. Verizon has filed an appeal of the order adopting the rules with the U.S. Court of Appeals for the District of Columbia Circuit.³² Furthermore, the rules themselves provide ample opportunity for an entrenched provider to slow the entry of potential competitors through months or years of litigation before the Commission. Under the rule provisions, a larger carrier may still require competitors to negotiate individualized roaming agreements, such as the one that Cox was unable to achieve after eight months of trying. Additionally, the larger carrier can refuse

²⁸ *Id.*, ¶ 11.

²⁹ *See, e.g., id.*, ¶ 24, n.85. (citing to a letter of Cox's counsel in Docket No. 09-104, dated April 28, 2010, in which Cox described an eight-month odyssey trying to negotiate a roaming agreement with Verizon, while the larger carrier responded with obstacles and excuses).

³⁰ *Id.*, ¶ 37.

³¹ 47 C.F.R. § 20.12(e).

³² *Cellco Partnership v. FCC*, No. 11-1135 & 11-1136, (D.C. Cir., filed May 13, 2011).

roaming in cases where it is “not technologically compatible” or “not technically feasible.”³³ If Verizon is challenging the data roaming rules themselves, it certainly has the ability and incentive to challenge requests for roaming based on these two highly subjective factors.

In February 2010, the Commission sought comment on a request for rulemaking submitted by a group of smaller wireless carriers who claimed that AT&T and Verizon were planning to introduce mobile devices that would operate on their own 700 MHz band frequencies, but not on those areas of the 700 MHz band operated by the smaller companies.³⁴ Cox, then an independent communications company planning to enter the wireless field,³⁵ supported the petitioners. Cox noted evidence on the record demonstrating that Verizon had made a decision to develop handsets that operated only on Verizon frequencies.³⁶ Cox charged that this was a method of frustrating the interoperability principle that has been at the heart of modern mobile services since the dawn of cellular in 1981 and of evading the Commission’s roaming requirements.³⁷

³³ 47 C.F.R. § 20.12(e)(1).

³⁴ *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices*, RM-11592, *Public Notice*, DA 10-278, (Feb. 18, 2010).

³⁵ Cox planned to enter the market in the 700 MHz band using the AWS spectrum that it had purchased at auction – the same AWS licenses it now proposes to sell to Verizon.

³⁶ Comments of Cox Wireless in RM-11592, at 4, n.9 (filed Mar. 31, 2010).

³⁷ *Id.*, at 5.

Verizon responded that each carrier should be able to decide what “business model” it wants to pursue.³⁸ Apparently, Verizon has chosen the “duopoly” model. Now, two years later, the Commission should determine whether the addition of the Cox, Time Warner, Comcast, and Bright House AWS spectrum will give Verizon even more incentive and ability to disrupt the roaming opportunities of smaller carriers.

V. THE TRANSACTIONS PROVIDE ADDITIONAL PRIME SPECTRUM TO THE CARRIER THAT ALREADY HOLDS THE MOST.

As the Commission is well aware, Verizon and AT&T already hold the vast majority of the best available broadband spectrum, including the so-called “beachfront spectrum.”³⁹ The transactions will extend AT&T’s and Verizon’s control of spectrum to 70% of all spectrum available for wireless services, and 80% of the spectrum held by the four national carriers. The transactions will also eliminate from the market one of the two remaining large available bands of quality spectrum, which other wireless carriers could rapidly deploy to broaden coverage and enhance competition. This would seemingly further cement Verizon’s position as one of the two dominant wireless carriers and weaken the ability of other, smaller carriers to compete against the Twin Bells.

³⁸ Reply Comments of Verizon Wireless in RM-11592, at iii (filed Apr. 30, 2010).

³⁹ See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Fifteenth Report*, 26 FCC Rcd 9664, at ¶ 299 (2011) (“*Fifteenth Report*”) (noting that “when measured on a licensed MHz-POP basis, Verizon Wireless holds 47.7 percent of the Cellular spectrum and 42.8 percent of the 700 MHz spectrum, while AT&T holds 43.6 percent of the Cellular spectrum and 24.4 percent of the 700 MHz band spectrum”).

Given this significant concentration of spectrum, the need for a detailed review of the competitive implications arising from the proposed transactions is obvious – except to the Applicants. They instead claim that the Commission’s review of the proposed transactions should be “limited.”⁴⁰ According to the Applicants, the Commission has little choice but to quickly approve the proposed transactions with “no further competitive inquiry” because the spectrum screen is not triggered in the “vast majority of affected markets.”⁴¹

By asserting such a claim, the Applicants are basically requesting that the Commission not review the potential impacts of the larger cooperative arrangements between companies. More important, however, is that the Applicants want the Commission to gauge the competitive implications of the transactions only by undertaking a simple megahertz count that would not provide a true measure of the formidable spectrum position that Verizon will have over the most commercially valuable segments of wireless spectrum.⁴² The Commission itself has acknowledged that one megahertz of spectrum in a particular frequency band does not hold the same value as one megahertz in another band.⁴³ The lower frequency bands have much better propagation and allow for lower cost network coverage, making them more valuable.⁴⁴ Other spectrum bands can also be more valuable because of the ecosystem of infrastructure and equipment that has developed around them.

⁴⁰ See Verizon/SpectrumCo application, Exh. 1, at 5.

⁴¹ See Verizon/SpectrumCo application, Exh. 1, at 5, 24-25.

⁴² Verizon/SpectrumCo application, Exh. 1, at 25.

⁴³ See e.g., *Fifteenth Report* at ¶¶ 289-302.

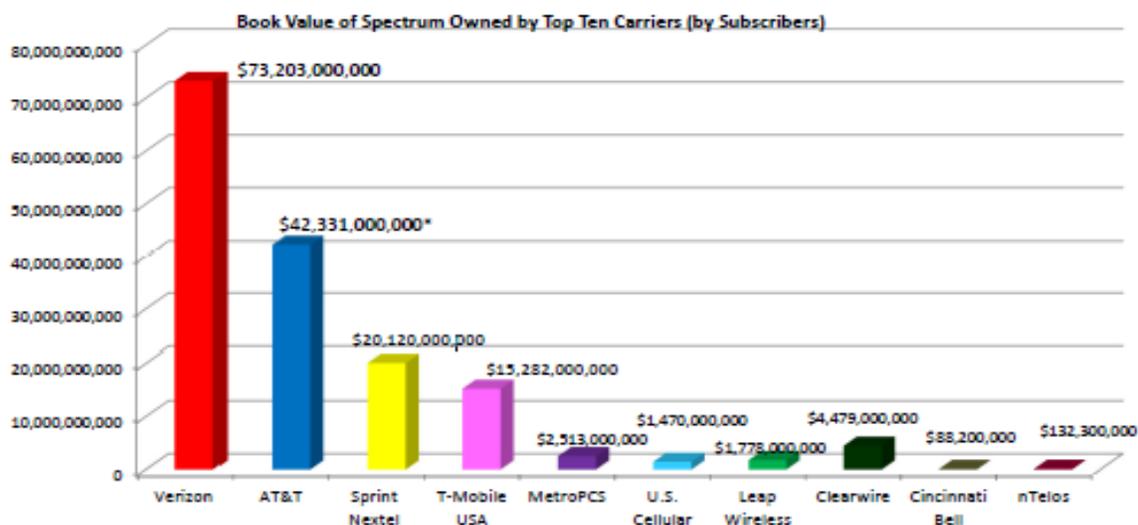
⁴⁴ *Id.* at ¶ 292.

When taking spectrum value into account, the proposed transactions raise serious concerns.⁴⁵ As the following figure demonstrates,⁴⁶ Verizon already has the most valuable spectrum holdings by book value in the U.S. market:

⁴⁵ The spectrum book values listed herein include those for the top ten publicly traded spectrum holders, which are required to file such information with the U.S. Securities and Exchange Commission (“SEC”). Privately held spectrum holders are not included because such information is not publicly available. Sprint recognizes the inherent limitations associated with spectrum book values, which reflect only each carrier’s self-assessment of the value of its spectrum holdings in a given period of time. Fluctuations in spectrum book values arising from marketplace events and technological developments also may reduce the continuing utility of specific valuations. Nevertheless, Sprint believes that an analysis of spectrum book values can be instructive in determining the potential impact of a specific transaction on the marketplace and competition.

⁴⁶ As noted above, book values of carrier spectrum holdings are based on amounts listed in carrier SEC filings. Although T-Mobile USA does not file annual reports with the SEC, Deutsche Telekom offered a valuation of its license holdings in a press release and, although the press release did not explicitly state that the valuation is a “book value,” the 2010 Deutsche Telekom annual report states that “FCC licenses [] are carried at cost.”

Reported Book Values of Wireless Carriers



Verizon Communications Inc., Quarterly Report (Form 10-Q), at 8 (Oct. 23, 2011).
 AT&T Inc., Quarterly Report (Form 10-Q), at 3 (Nov. 3, 2011). * (AT&T's has been upward adjusted to reflect approved purchase of Qualcomm 700 MHz licenses)
 Sprint Nextel Corp., Quarterly Report (Form 10-Q), at 9 (Nov. 3, 2011).
 T-Mobile USA, "T-Mobile USA Reports Third Quarter 2011 Results," Press Release, at 14, Nov. 10, 2011, available at: http://s.tmcocache.com/Company/pdf/English/TMIUS_Q3_2011_Press_Release.pdf
 MetroPCS Communications Inc., Quarterly Report (Form 10-Q), at 7 (Nov. 1, 2011).
 United States Cellular Corp., Quarterly Report (Form 10-Q), at 3 (Nov. 9, 2011).
 Leap Wireless International, Quarterly Report (Form 10-Q), at 7 (Nov. 3, 2011).
 Clearwire Corp., Quarterly Report (Form 10-Q), at 12 (Nov. 3, 2011).
 Cincinnati Bell Inc., Annual Report (Form 10-K), at 76 (Feb. 28, 2011).
 NTELOS Holdings Corp., Quarterly Report (Form 10-Q), at 2 (Nov. 8, 2011).

In fact, Verizon's pre-transaction spectrum holdings are more valuable than the holdings of all of the other top 10 carrier (excluding AT&T) *combined*. The proposed transactions would add nearly \$4 billion of spectrum to Verizon's already substantial portfolio, which would make Verizon's post-transaction spectrum holdings as valuable as the holdings of AT&T, Sprint, and T-Mobile *combined*.

In light of these spectrum valuations, the Commission should undertake a thorough review of the significant spectrum concentration that will result from the proposed transactions. The Commission may also want to consider including spectrum valuations as an input when calculating changes to the post-transaction Herfindahl-Herschman Index ("HHI"). In certain transactions, such as the proposed transactions, metrics that the Commission has used historically

to calculate HHIs (*e.g.*, customers, revenues, etc.), may not actually reflect the competitive impact of a transaction. Including spectrum valuations as an input may enable the Commission to better analyze any public interest harms associated with a specific transaction.

VI. CONCLUSION.

The transactions proposed by the Applicants would result in widespread collaboration and cooperation between providers of the only two wireline ecosystems in vast parts of the country. With reference to complete, unredacted versions of the Verizon/Cable Company agreements, the Commission should examine the potential effects of these new relationships on the access to WiFi services, competition in the dedicated private line market – including for special access and backhaul, and the accessibility of wireless roaming. The spectrum assignments would also result in the further accumulation of highly valuable wireless spectrum by the largest holder of such spectrum today. The Commission should carefully evaluate the implications of the proposed transactions within the totality of these competitive and marketplace circumstances.

Respectfully submitted,

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