Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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	)	
	)	
	)	

To the Chief, Wireless Telecommunications Bureau

SUPPLEMENTAL COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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Dated: March 2, 2012

EXECUTIVE SUMMARY

Today Verizon Wireless, SpectrumCo LLC and Cox TMI Wireless, LLC are filing Oppositions to Comments and Petitions to Deny filed by members of the public that are concerned about the proposed Transaction. Multiple parties have expressed concern that the proposed Transaction will reduce cross-platform competition between FiOS and the applicant cable companies, and will reduce competition for video programming. There are Joint Marketing Agreements that will shed light on the competitive concerns at the heart of the proposed Transaction. The Communications Workers of America and the International Brotherhood of Electrical Workers take this opportunity to emphasize the critical importance of providing the public with an opportunity to evaluate, in a meaningful way, the proposed Transaction, through a full review of those Joint Marketing Agreements. Unredacted versions of the Joint Marketing Agreements connected to the proposed Transaction must be made available. Without such documents, the comments that have been filed by the parties are incomplete, the public is asked to rely simply on the assertions filed today by the Applicants and the reply commenters will be placed at a considerable disadvantage.

The Commission should stop the informal 180-day "shot clock" for this Transaction until the Applicants provide unredacted copies of the following:

1. All materials submitted to the Department of Justice pursuant to its HSR investigation.

2. All materials (including any materials submitted to the respective Applicants' Board of Directors, shareholders or investors) related to the Applicants' investigation into the profitability and risks associated with the relevant Joint Marketing Agreements.

3. Copies of reseller or agent agreements between any of the Applicants and another company.

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SUPPLEMENTAL COMMENTS OF THE
COMMUNICATIONS WORKERS OF AMERICA AND
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

The Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW") hereby submit the following supplemental comments regarding the applications filed by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and SpectrumCo LLC ("SpectrumCo") and Cox TMI Wireless, LLC ("Cox") (collectively, the "Applicants") for Federal Communications Commission ("FCC" or "Commission") consent to the assignment of licenses held by SpectrumCo and Cox to Verizon Wireless ("Transaction").[1]

Pursuant to Section 310(d) of the Communications Act,[2] the Commission must determine whether the Transaction, which includes Joint Marketing Agreements,[3] will serve the public interest,

[1] *See Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses, WT Dkt. No. 12-4*, Public Notice, DA 12-67 (rel. Jan. 19, 2012) (hereinafter, "Transaction").

[2] 47 U.S.C. § 310(d) (1996).

convenience, and necessity.[4] The public has the right to participate fully in the Commission's evaluation. The Commission's evaluation, as well as the Comments and Reply Comments offered by the public, are incomplete without the ability to review fully the Joint Marketing Agreements, which are at the heart of this Transaction. Accordingly, it is impossible for the public to evaluate fully and meaningfully any Oppositions filed by the Applicants today, and to provide a robust evaluation in the Reply Comments due to be filed on March 12, without access to such critical information.

The FCC has the duty to protect and foster cross-platform competition. Consumers benefit from having choices for video, wireless, voice, and broadband services. Such competition results in lower prices, accelerated broadband deployment, and new and improved services and applications.[5] Verizon itself has cited the importance of "the competitive rivalry between cable companies and telcos" resulting in benefits to consumers of "better broadband services and lower prices."[6] The

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[3] Letter of Michael Hammer, Willkie Farr & Gallagher LLP to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 (filed on Jan. 18, 2012) and Letter of J.G. Harrington, Dow Lohnes to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 (filed on Jan. 18, 2012) ("Harrington Letter"). The reseller and agent agreements between Verizon Wireless and SpectrumCo and Verizon Wireless and Cox and the joint operating entity agreement will be collectively referred to as the "Joint Marketing Agreements."

[4] *See, e.g.*, *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Agreements*, 24 FCC Rcd 13915, 13927 ¶ 27 (2009) ("AT&T/Centennial Order").

[5] The Commission has emphasized the connection between increased competition and accelerated broadband deployment, emphasizing that competition between network operators is "crucial" in ensuring that broadband is affordable. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8014 ¶ 71 (2011) (citing 47 U.S.C. § 1302(b)) ("Seventh Broadband Report").

[6] Comments of Verizon and Verizon Wireless, Attachment C: Declaration of Michael D. Topper, "Broadband Competition and Network Neutrality Regulation," GN Dkt. No. 09-191 at 15 (filed on Jan. 14, 2010) ("Topper Report").

states with the most robust broadband capacity are those in which Verizon's FiOS competes with cable's broadband service.[7] Cross-platform competition drives investment to increase capacity in broadband networks, thereby creating jobs, and enabling new and improved services and applications.[8]

The FCC also has the responsibility to establish a process that enables interested parties to have access to all of the information necessary to comment on these public interest goals and mandates. Here, numerous parties have complained to the Commission that vital information has been withheld that puts them at a serious disadvantage when analyzing the impact of this Transaction. Public interest groups including Public Knowledge and Free Press, trade associations including Rural Telecommunications Group, Inc. and RCA-The Competitive Carriers Association, and industry participants including DIRECTV, Sprint Nextel Corporation, Hawaiian Telecommunications, NTCH, and T-Mobile USA, have all insisted that they need access to fully unredacted copies of the Joint Marketing Agreements and they are at a serious disadvantage without them.

CWA and IBEW agree with concerns voiced by other interested parties and organizations that the proposed Transaction would appear to reduce such competition by FiOS and cable companies through Joint Marketing Arrangements. Such agreements would appear to limit the availability of competitive services, dividing up geographic service areas for particular companies, leading to reduced investment in infrastructure, job losses, and ultimately, higher prices for consumers.

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[7] *See* FiberforAll, http://Fiberforall.org/Verizon-fios/ (last visited Feb. 15, 2012).

[8] As emphasized by Verizon's expert, Dr. Topper, "The ability and propensity for consumers to switch providers creates incentives for cable companies and telcos to offer attractive combinations of price and service and to invest in their networks to improve service offerings." *Topper Report* at 10.

In order to evaluate whether the proposed Transaction is in the public interest, it is critical that unredacted versions of the Joint Marketing Agreements be made available. Accordingly, as emphasized by others "unless and until those materials are made available, it will be impossible to frame fully informed comments for this proceeding."[9] And as emphasized by the Rural Telecommunications Group, parties interested in participating in the public interest review process "are unable to fully analyze critical components" of the Joint Marketing Agreements and as a result "are at a disadvantage in filing comments and petitions in this proceeding."[10]

Because the Joint Marketing Agreements contain significant redactions, including the redaction of headings, it is impossible to determine the scope of the redactions. It is also impossible to determine if they are limited to "pricing, compensation, marketing strategy, or [are] irrelevant to

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[9] Comments of DirecTV, LLC, WT Dkt. No. 12-4 at 4-5 (filed on Feb. 21, 2012)("DTV Comments"); *see also* RCA-The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, WT Dkt. No. 12-4 at 36 (filed on Feb. 21, 2012) ("In a nutshell, rather than actively competing against each other for the gamut of telecommunications needs – wireless, wireline, video, etc. – the two major telecommunications companies in most areas of the country will now be working together through and effective non-compete agreement that almost certainly will result in a loss of competition in each separate product market. The potential for anti-competitive action between these companies is enormous – and potentially dangerous for consumers. The Commission should not blindly accept the Applicants' characterization that these significant Related Agreements do not raise any competitive issues. Rather, the Commission must conduct a complete and exhaustive review of these Related Agreements to ensure that competition is not stifled by their very existence.")("RCA Petition"); NTCH Petition to Deny, WT Dkt. No. 12-4 at 12 (filed on Feb. 21, 2012) ("The Commission should require the parties to make the full terms of these agreements available for its own review and that of the public."); MetroPCS Communications, Inc. Petition to Deny Applications, WT Dkt. No. 12-4 at 4 (filed on Feb. 21, 2012) ("Under the legal standard set by Section 310(d) of the Communications Act, the Commission cannot grant a license assignment without making an affirmative finding that the public interest, convenience and necessity will be served thereby. The Commission should not, and cannot, make such a finding based on the record provided to date by the Applicants.") (internal citation omitted); Comments of Sprint Nextel Corporation, WT Dkt. No. 12-4 at ii (filed on Feb. 21, 2012) (complete, unredacted versions of the Joint Marketing Agreements are necessary to "evaluate the implications of the Transactions within the totality of these competitive and marketplace circumstances.").

[10] Rural Telecommunications Group, Inc., WT Dkt. No. 12-4 at 6 (filed on Feb. 21, 2012).

the Commission's review of the spectrum transaction," as alleged by the Applicants.[11] The Commission has consistently stated that the material terms of an agreement may not be redacted and that pricing information is a material term.[12] As noted by Hawaiian Telecom, the Joint Marketing Agreements "have been redacted to the point of uselessness. With so many of the contractual details undisclosed, it is impossible to determine the extent to which the parties can engage in potentially anticompetitive practices. It is further impossible to determine if the terms and conditions of the Joint Agreements are on their face anti competitive."[13]

The public must be allowed to examine the cross-sales and joint venture components of the agreements, which, as emphasized by Public Knowledge, is consistent with the recognition that "unmonitored third party influence and control over licenses can thwart the purpose of the Commission's rules entirely."[14]

The FCC should not allow the Applicants to rest simply on their own assertions regarding critical information impacting investment, competition and jobs, and the Commission should not simply take them at their word. As stated by DIRECTV, "[o]ne can only wonder what these parties are hiding through these deletions, and why they do not want commenters to have access to that material."[15] The Commission, not the Applicants, should decide what information in an agreement is relevant to the Commission's and the public's review of a transaction in order to evaluate its

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[11] Letter of Bryan Tramont, Wilkinson Barker Knauer LLP; Michael Hammer, Willkie Farr & Gallagher LLP; J.G. Harrington, Dow Lohnes PLLC to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 at 2 (filed on Feb. 9, 2012).

[12] *See, e.g., Application of LUJ, Inc. and Long Nine, Inc. for Assignment of License of Station WYVR (FM), Petersburg, Illinois,* 17 FCC Rcd 16980, 16982 (2002).

[13] Hawaiian Telecommunications, Inc. Petition to Deny or Condition Assignment of Licenses, WT Dkt. No. 12-4 at 10-11 (filed on Feb. 21, 2012).

[14] PK Petition at 18.

[15] DTV Comments at 4-5.

impact on the public interest. Indeed, the Applicants and the Commission may have very different views on whether the transaction upends the Communications Act's aim to create a competitive framework to encourage investment, maximize consumer choices and create jobs.

Moreover, since the sensitive information regarding "pricing, compensation, and related provisions" has, according to the Applicants, been redacted from the Joint Marketing Agreements, the Commission should make those redacted copies of the Joint Marketing Agreements publicly available.

The Commission should stop the informal 180-day "shot clock" for this Transaction until the Applicants provide unredacted copies of the following:

1. All materials submitted to the Department of Justice pursuant to its HSR investigation.

2. All materials (including any materials submitted to the respective Applicants' Board of Directors, shareholders or investors) related to the Applicants' investigation into the profitability and risks associated with the relevant Joint Marketing Agreements.

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Respectfully submitted,

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Dated: March 2, 2012

CERTIFICATE OF SERVICE

I, Ryan W. King, hereby certify that on this 2nd day of March 2012, I caused true and correct copies of the foregoing Supplemental Comments to be served by first class mail to the following individuals:

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