

March 26, 2012

Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**WT Docket No. 12-4: Application of Verizon Wireless, SpectrumCo,
and Cox TMI for Consent to Assign Licenses**

Dear Chairman Genachowski, Commissioner McDowell, and Commissioner Clyburn:

Consumers Union, the public policy and advocacy division of *Consumer Reports*[®], urges the Federal Communications Commission (FCC) to deny the proposed transaction between Verizon Wireless, SpectrumCo, and Cox (collectively “Cable Companies”). The FCC has been tasked to implement the goals of Telecommunications Act of 1996. The Act was intended to help facilitate competition between the traditional telephone companies and the cable industry, which in turn would benefit consumers. While competition has been far less than what Congress envisioned, the cable industry has invested in spectrum needed to offer wireless services while telephone companies have rolled out video services in some parts of their service area.

However, this deal could jeopardize the goals of competition and consumer benefits that Congress intended. The deal would add to Verizon Wireless’ domination in the wireless market and represents the loss of the Cable Companies as facilities-based or wholesale wireless competitors. As a result, this transaction will eliminate the chance of more choices in the wireless broadband market. At the same time, the transaction would provide Verizon a disincentive from competing in the landline high-speed broadband and video market and strengthen cable’s monopoly status in the high-speed broadband and video market.

In this transaction, Verizon Wireless seeks to purchase spectrum licenses from SpectrumCo, a joint venture among Comcast Corporation, Time Warner Cable Inc., and Bright House. Also, cable provider Cox has agreed to sell off its spectrum to Verizon Wireless. Simultaneously, Verizon Wireless and the Cable Companies have entered into joint marketing agreements. Both Comcast and Verizon Wireless have indicated these joint marketing agreements are an integral part to the spectrum sale.¹ These joint marketing agreements allow each individual cable company and Verizon Wireless to sell one another’s products.

The proposed transaction is not in consumers’ best interest since it will diminish competition in the video, broadband, and wireless markets. Consequently, consumers could suffer an increase

¹ See, e.g., Eliza Krigman, *Comcast executive defends Verizon-SpectrumCo deal*, March 8, 2012 (“The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements.”).

in prices and face diminished competitive alternatives in the video, broadband, and wireless markets. Thus, the FCC should protect consumers by denying this transaction.

Spectrum Concentration

Verizon Wireless already holds the greatest amount of spectrum compared to its competitors.² Importantly, the Commission has determined Verizon Wireless holds the most low-band spectrum, which is the prime band for providing mobile broadband deployment.³ This transaction would generally provide Verizon Wireless in most markets an additional 20 MHz of AWS spectrum, which is well suited also for mobile broadband deployment.

Also troublesome is the fact that Verizon Wireless and AT&T together hold more spectrum nationally than the other carriers combined.⁴ These two carriers also hold the vast majority of spectrum best suited also for mobile broadband deployment.⁵ This transaction would increase the dominant position that Verizon Wireless holds in the spectrum market and exacerbate the trend of consolidation the Commission has documented in the wireless market.⁶

Collusion Instead of Competition

Under the joint-marketing agreements, Verizon Wireless and the Cable companies “will sell each other’s services on a market-standard commission basis, with the new subscribers becoming customers of the other service provider....”⁷ Essentially, under these joint-marketing plans, Verizon Wireless stores will market and offer promotions for the Cable Companies’ services, with the Cable Companies doing the same for Verizon Wireless.⁸

These joint-marketing arrangements are effectively agreements to not compete, and would essentially divide up the current broadband, video, and wireless markets. As a consequence of these agreements, Verizon will have no further incentives to build out its FiOS network, which is a direct competitor to the Cable Companies, since head-to-head competition would jeopardize this deal and threaten Verizon’s core revenue stream of mobile service subscriptions. On the other hand, the Cable Companies have decided they are unable to compete with AT&T and

² See *Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless*, WT Docket 10-133, Fifteenth Report, Table 28, Jun 27, 2011 (“Fifteenth Wireless Competition Report”).

³ See *id.* at Tables 27-28.

⁴ See RCA – The Competitive Carriers Association, Petition to Deny or Otherwise Deny Transactions.

⁵ See Fifteenth Wireless Competition Report at Table 27.

⁶ See Fifteenth Wireless Competition Report.

⁷ See Verizon Wireless and SpectrumCo., LLC, Description of the Transaction and Public Interest Statement (December 19, 2011); Verizon Wireless and Cox TMI Wireless, LLC, Description of the Transaction and Public Interest Statement (December 19, 2011).

⁸ See Bob Fernandez, “Comcast, Verizon Wireless to launch joint marketing effort,” *Philly Inquirer*, Jan 17, 2012, http://articles.philly.com/2012-01-17/business/30635500_1_verizon-wireless-comcast-s-xfinity-communications-and-data-services.

Verizon Wireless⁹ and instead will now be able to dominate the landline video and broadband markets.

Effect on Wireless Competition

The wireless industry is already concentrated, with Verizon Wireless having the largest share of the market and two companies, Verizon Wireless and AT&T controlling 64% of the wireless market.¹⁰ This transaction would further add to Verizon Wireless' dominance in the wireless market, continue to solidify a wireless duopoly, controlled by Verizon Wireless and AT&T, and further reduce competition.

For instance, there would be less spectrum available for competitors like T-Mobile, Sprint, and MetroPCS, who already are at a disadvantage when it comes to premium spectrum assets for wireless broadband deployment. Moreover, a stronger Verizon Wireless can more easily squeeze out its current competitors. For example, competitive carriers will become even more dependent on Verizon Wireless for roaming agreements. This dependency would give Verizon Wireless the incentive to raise the costs of roaming agreements. In addition, due to the lack of interoperability, it will be even more difficult for competitors have access to popular handheld devices that consumers want. Further, the joint-marketing agreements between Verizon Wireless and the Cable Companies could give the Cable Companies little incentive to cut reasonable deals with Verizon Wireless' competitors on access points such as special access and Wi-fi off-loading capabilities, making it more difficult and expensive for the competitors to compete.

Effect on Landline Competition

The cable market is essentially a regional monopoly since the major Cable providers do not compete with each other.¹¹ Moreover, the Commission's National Broadband Plan concluded that for those consumers who want very high broadband speeds, nearly 75% of the population will likely only have one landline broadband provider – the cable company.¹² This is because the speeds offered by DSL will not reach the higher speeds offered by the cable industry or fiber-to-the-premises (FTTP) services, like FiOS, which only reach about 15% of the population.¹³

Consequently, this transaction could lead to a landline high-speed broadband and video monopoly, controlled by cable providers. In fact, it was recently noted:

Where Verizon FiOS service exists, there will be competition with cable Internet access service providers for high-speed Internet access at speeds that are

⁹ See e.g., Peter Svенsson, "Cable companies drop wireless dreams," *USA Today*, Dec. 2, 2011, <http://www.usatoday.com/tech/news/story/2011-12-02/verizon-wireless-spectrum/51586750/1>.

¹⁰ See Petition to Deny of the New Jersey Division of Rate Counsel.

¹¹ See e.g., Susan P. Crawford, "The Looming Cable Monopoly," 29 *Yale L. & Policy* 34, 37, Dec. 16, 2010, http://yalelawandpolicy.org/sites/default/files/YLPRIA29_Crawford.pdf

¹² See Federal Communications Commission, *Connecting America: The National Broadband Plan*, 2010, at 42.

¹³ See *id.*

necessary to carry out real-time video conferencing or watch high-definition video. Where FiOS is not installed, there will not be any competition, and consumers will have just one provider to choose from: their local cable monopoly.¹⁴

Consumers are demanding higher speeds for a variety of purposes such as tele-health or streaming television shows and movies over the Internet. As DSL may become less attractive for consumers because of the slower speeds, the only option consumers will have for high-speed broadband will be the local cable provider. Additionally, consumers looking for bundling options (to package high speed broadband, voice, and/or video products) will face a lack of choices if competitors, like satellite providers, are unable to provide a viable high speed broadband service.

Conclusion

Consumers Union strongly believes that this transaction does not serve the public interest. If approved, it will lead to the loss of competition and choice for consumers in the video, broadband, and wireless markets. With fewer choices for consumers to choose in a duopoly or monopoly market, Verizon Wireless and the Cable Companies will no longer have incentives to price their products competitively, leading to higher prices for consumers. In tough economic times like these, it is in the public's interest to keep prices low and keep as many options for consumers as possible. For these reasons, Consumers Union urges the Commission to deny this transaction.

Sincerely,



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¹⁴ Susan P. Crawford, *The Looming Cable Monopoly*, 29 Yale L. & Policy 34, 36, Dec. 16, 2010, http://yalelawandpolicy.org/sites/default/files/YLPRIA29_Crawford.pdf.