

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
SPECTRUMCO, LLC, Transferor	)	
COX TMI WIRELESS, LLC Transferor	)	WT Docket No. 12-4
	)	
And	)	
	)	
CELLCO PARTNERSHIP D/B/A	)	
VERIZON WIRELESS, Transferee	)	
	)	
For Consent to the Assignment of AWS-1	)	
Licenses	)	

**REPLY TO OPPOSITIONS TO PETITIONS TO DENY OF  
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”),<sup>1</sup> submits this Reply to Oppositions to Petition to Deny the above captioned applications.<sup>2</sup> The applications consist of separate, but related transactions involving dominant providers in the wireline, wireless, broadband, and video markets. The many petitions filed in this proceeding confirm that approval of the transactions cannot take place absent a full and complete examination of all of the facts surrounding them and a consideration of the competitive harms they would cause across

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<sup>1</sup> NTCA is is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents nearly 600 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities. NTCA’s members have an interest in the outcome of this proceeding.

<sup>2</sup> FCC Public Notice, DA 12-67, *Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, WT Docket No. 12-4 (released January 19, 2012) (“Public Notice”).

wide swaths of the communications industry.<sup>3</sup> Given the dominant position the applicants hold and the potential harms these transactions will cause, the petitioners make a sound showing that the transactions proposed in the applications are contrary to the Commission’s rules and policies and the public interest.

## **I. THE TRANSACTIONS ARE CONTRARY TO THE PUBLIC INTEREST**

The Commission is charged by law to consider whether the proposed transactions will serve the public interest, convenience and necessity.<sup>4</sup> The burden of proof to demonstrate that the transactions serve the public interest falls on the Applicants.<sup>5</sup>

Comcast, Time Warner, and Cox Cable are the largest cable companies in the United States, providing not only video services, but also broadband and voice telecommunications services. Verizon Communications, Inc, the majority owner of Verizon Wireless (“Verizon”), is the country’s largest telecommunications company – providing voice, broadband and video via both fixed and mobile platforms. While the only assets being transferred are AWS licenses that are not in commercial use,<sup>6</sup> the transfers appear to be inextricably linked to a variety of related business arrangements that will permit the cable companies to offer wireless service to their subscribers and allow all of the applicants to integrate wired video, voice and high-speed Internet with the wireless platform.

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<sup>3</sup> See, e.g., Petitions of The Rural Telecommunications Group, Inc., RCA – The Competitive Carriers Association, Free Press, Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, ACCESS Humboldt, Center for Rural Strategies, Future of Music Coalition, National Consumer Law Center on Behalf of its Low-Income Clients, and Writers Guild of America, West.

<sup>4</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>5</sup> See, e.g., *In the Matter of Application of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 40 (2004).

<sup>6</sup> *In the Matters of Cellco Partnership d/b/a Verizon Wireless, Spectrum Co LLC and Cox TMI Wireless, LLC Seek Consent to the Assignment of AWS-1 Licenses*, WT Docet NO. 12-4, Description of the Transaction and Public Interest Statement (December 16, 2011) , p.3.

Verizon Wireless asserts that the spectrum transfers will not cause any competitive harm, but in truth, the petitions confirm that they will further cement Verizon's status as part of a wireless duopoly with AT&T. Other carriers already struggle to compete with limited spectrum and financial resources. They further lack the scale and scope to take on the wireless behemoths in their quest for additional spectrum, reasonably priced, competitive equipment and favorable roaming agreements. Yet Verizon is seeking blessing to increase its spectrum stockpile by 80 percent,<sup>7</sup> and these transactions would result in a 23 percent increase in Verizon's proportion of total national MHz\* POPS.<sup>8</sup> Combined with AT&T's holdings, the two nationwide carriers would control nearly half of the national MHz\*POPS.<sup>9</sup>

Verizon argues that the Commission's "review of [these] application[s] . . . should be limited"<sup>10</sup> because it involves only spectrum. The idea that these spectrum transfers require less than a full and complete public interest analysis because they involve only spectrum and not an operating wireless provider is ludicrous. . The continued aggregation of spectrum by a dominant provider affects nationwide wireless markets and should be a significant factor in the determination of whether or not the proposed transaction is in the public interest. Access to spectrum is a precondition to the provision of wireless service. Presently, competitive providers and new entrants have little to no opportunity to gain access to spectrum for the provision of a wireless broadband product. Verizon and AT&T "dwarf" the wireless broadband spectrum holdings of all other carriers combined.<sup>11</sup> The Commission must weigh the potential harm of

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<sup>7</sup> See Petition to Deny of Rural Telecommunications Group ("RTG Petition") at 9.

<sup>8</sup> RCA Petition to Condition or Otherwise Deny Transactions ("RCA Petition") at 11.

<sup>9</sup> *Id.*

<sup>10</sup> Verizon-SpectrumCo Application, Exhibit 1, at 4.

<sup>11</sup> See RCA Petition at 10.

permitting Verizon to amass more spectrum for which it has no apparent immediate need when there are competitive providers starving for spectrum.

Verizon claims that because SpectrumCo is not currently operating on the AWS spectrum that SpectrumCo holds, Verizon should be permitted to acquire that spectrum to put it to good use. It is not at all clear, however, that Verizon would put this spectrum to any better use any time soon. Indeed, Verizon has not yet deployed 3G or 4G services on any of the AWS spectrum Verizon acquired six years ago.<sup>12</sup> Verizon admits that it has enough spectrum to meet its needs through 2015, which would seem to indicate that the desire to obtain this additional spectrum is driven more by an incentive to keep that spectrum out of the hands of competitors with perhaps more immediate needs. Overall, Verizon's holdings already consist of the most valuable types of spectrum,<sup>13</sup> and yet Verizon has not deployed advanced wireless services using that spectrum already in hand. There is no evidence that Verizon will do anything more than add the valuable spectrum at issue here to its already sizeable spectrum stockpile if permitted to acquire it. The Commission should not permit any wireless operator to hoard the scarce and valuable spectrum that remains in the secondary markets in the manner indicated here.

The harms arising from the transactions are not limited to the stockpiling of spectrum by Verizon. Further harming the public interest, the proposed transactions would remove potential competitors from the communications landscape. SpectrumCo and Cox have specifically indicated that they have no intention of becoming facilities-based mobile wireless operators,<sup>14</sup>

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<sup>12</sup> RTG Petition at 10.

<sup>13</sup> In the top 100 Markets, Verizon holds 58 MHz of spectrum below 1 GHz.

<sup>14</sup> NTCA agrees with RCA that the Commission should conduct an inquiry into whether the cable companies acted as spectrum speculators and the extent to which Verizon has been warehousing spectrum. *See* RCA Petition, pp. 16-23.

instead relying on Verizon to offer the service to their customers.<sup>15</sup> These transactions would thus have the nation’s largest wireless provider (and also the nation’s largest provider of fiber wireline service) strike a deal with its cable “competitors” to foreclose potential competition with respect to key service offerings. The fewer facilities-based providers there are, the fewer the choices for other providers and for consumers. The bargain between Verizon and the cable companies threatens the public interest by removing potential competitors, giving Verizon greater negotiating power with respect to other facilities-based wireless providers and mobile virtual network operators who rely on nationwide wholesale or roaming services to operate.

In determining whether applicants have demonstrated that a proposed transaction will serve the public interest, convenience and necessity, the Commission must “employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”<sup>16</sup> The Commission has indicated that its review will consider “whether a transaction will enhance, rather than merely preserve, existing competition, and takes a[n] . . . extensive view of potential and future competition and its impact on the relevant market.”<sup>17</sup> If the proposed transactions are approved, Verizon would become an even larger dominant presence in the national wireless service market, further cementing its place in the dominant duopoly. Moreover, there is a strong indication that Verizon would warehouse the spectrum, removing it from the secondary market while at the same time removing four potential

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<sup>15</sup> *Declaration of Robert Pick*, p. 5.

<sup>16</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 26 (2008).

<sup>17</sup> *Id.* at 28.

wireless competitors from the market. NTCA therefore agrees with RCA that the proposed transactions “while certainly in *Verizon’s* interest, are definitely not in the *public* interest.”<sup>18</sup>

## **II. IF THE TRANSACTIONS ARE APPROVED, STRICT CONDITIONS ARE IMPERITIVE**

The transactions may not be approved as presented. The potential public interest harms of the proposed transaction far outweigh any potential public interest benefits. Verizon and the cable companies have not met their public interest burden. The petitions therefore cannot be approved as consistent with the public interest unless the Commission imposes substantial and meaningful conditions on their approval.

### **A. Voice and Data Roaming at Rates No Less Favorable Than Those Provided to the Cable Companies**

Non-dominant wireless providers complain that there are unable to receive “commercially reasonable roaming rates” from Verizon.<sup>19</sup> As the Commission has recognized, the roaming rules, in and of themselves, “do not enable a smaller or regional provider to replace the competitive position of a nationwide facilities-based provider”<sup>20</sup> and “do not serve as a substitute for competition in the provision of these important services.”<sup>21</sup> The applications can only be found consistent with the public interest if the Commission, among other things, imposes a stringent and enforceable roaming condition such that new entrants and competitors will receive the best available reseller rate that Verizon is charging any of the cable companies in connection with the transactions.

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<sup>18</sup> RCA petition, p. 54.

<sup>19</sup> *See, e.g.*, RCA petition, p.55.

<sup>20</sup> *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order., WT Docket No 11-18, FCC 11-188, ¶ 67 (rel. Dec 22, 2011)..

<sup>21</sup> *Id.*

The cable companies claim their inability to obtain favorable roaming rates was one reason they were unable to build out the spectrum.<sup>22</sup> However, if these transactions are approved, the cable companies will obtain significant financial gain and a low reseller rate while Verizon strengthens its dominant position by denying reasonable roaming rates to competitors. The cable companies and Verizon would unreasonably benefit from the cable companies' abdication of any competitive interest. The public interest demands that Verizon offer the reseller rate to any requesting carrier to offset the harm arising from this transaction.

### **B. Divestiture of Unused or Under-Used Spectrum**

Verizon seeks to gain more valuable spectrum despite its significant unused or underused spectrum holdings. The logical conclusion is that the spectrum Verizon holds in such areas exceeds the capacity it needs to meet its demand or near-term build out plans. However, in many of these markets, especially rural markets, there is a continued unmet need for wireless service and many providers stand ready, willing and able to provide wireless service if only they could obtain spectrum in the bands held by Verizon. The public interest will be best served if the Commission reviews Verizon's spectrum in each market across the United States and requires the divestiture of any unused or underused spectrum asset.

### **C. Interoperability**

Small wireless providers struggle in their quest for access to equipment that will enable them to remain competitive. They lack market power to drive device manufacturing and will be irreparably harmed if Verizon continues down a path of non-interoperability, restricting the best

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<sup>22</sup> *Declaration of Robert Pick* at 5. (“...[S]ecuring roaming agreements posed another complicating factor. Wireless consumers expect service coverage wherever they travel. NO carrier- and especially not a new entrant – can provide service in all areas, which necessitates that it obtain roaming agreements with other carriers. SpectrumCo would have been especially dependent upon roaming agreements in the early phases of deployment because wireless networks are built in stages. Securing these roaming agreements would impose further costs and business uncertainty.”)

and most innovate handsets to its own spectrum bands. The Commission must ensure that the equipment for all bands us open and competitive. This transaction, if approved, must be conditioned upon interoperability in the 700 Mhz and AWS spectrum bands. An interoperability condition on the transaction will help mitigate competitive harms.

### III. CONCLUSION

For the foregoing reasons, NTCA respectfully requests that the Commission find that the transactions proposed by the applications are contrary to the Commission's rules and policies and the public interest as currently structured or condition any grant of the applications as presented herein.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply to Oppositions to Petitions to Deny of the National Telecommunications Cooperative Association in WT Docket No. 12-4, DA 12-67, was served on this 26<sup>th</sup> day of March 2012 via electronic mail to the following persons:

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