

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter 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 CITIZEN ACTION OF NEW YORK (CAPITAL DISTRICT CHAPTER),
CAROLYN McLAUGHLIN, RICHARD CONTI, LEAH GOLBY, BARBARA SMITH, NINA
NICHOLS, DOUGLAS BULLOCK, THE COMMUNITY LOAN FUND OF THE CAPITAL
REGION, THE NEW YORK STATE ALLIANCE FOR RETIRED AMERICANS, THE
UPSTATE DIVISION OF 1199 SERVICE EMPLOYEES INTERNATIONAL UNION, THE
CENTER FOR WORKING FAMILIES, DOMINICK PATRIGNANI AND JOHN
VANDENBURGH III**

I. INTRODUCTION

The Capital District Chapter of Citizen Action of New York (“Capital District Chapter of Citizen Action”), Albany Common Council President Carolyn McLaughlin, Albany Common Council Members Richard Conti, Leah Golby, and Barbara Smith, Troy City Council President Pro Tempore Nina Nichols, Albany County Legislator Douglas Bullock, the Community Loan Fund of the Capital Region, the New York State Alliance for Retired Americans, the Upstate Division of 1199 Service Employees International Union, the Center for Working Families and John VanDenburgh and Dominick Patrignani hereby submit the following comments regarding the application filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and SpectrumCo LLC (“SpectrumCo”) and Cox TMI Wireless, LLC (collectively, the “Applicants”) for the consent of the Federal Communications Commission (“FCC” or the “Commission”) to the assignment of licenses held by SpectrumCo to Verizon Wireless.

The undersigned are elected officials and community and labor organizations primarily from two cities in “upstate” New York: the City of Albany in Albany County, and the City of Troy in Rensselaer County. Some signers are also statewide or regional organizations with members or supporters in the two counties. All of the undersigned share an interest in access to modern telecommunications services in

these two counties, particularly for residents of traditionally underserved communities in the cities of Albany and Troy, as well as rural and suburban residents of the two counties.

Carolyn McLaughlin is President of the Albany Common Council, the legislative body of the City of Albany in Albany County in New York State and Richard Conti (6th Ward), Leah Golby (10th Ward) and Barbara Smith (4th Ward) are members of the Albany Common Council. Nina Nichols is an At-Large Member of the Troy City Council of the City of Troy in Rensselaer County in New York State, and also serves as President Pro Tempore of the Troy City Council. Ms. Nichols also is Senior Pastor at Christ Church United Methodist in Troy. Douglas Bullock is an Albany County Legislator (8th Legislative District) and is also First Vice-President of the Albany Central Federation of Labor.

The Capital District Chapter of Citizen Action is the Capital District Chapter of a statewide organization with over 20,000 members that has chapters or affiliates in seven communities in New York State that advocates for social, racial, economic and environmental justice. (Our “Capital District” chapter includes Albany and Rensselaer counties. Citizen Action of New York, the statewide organization, also has chapters or affiliates in Long Island, New York City, the Southern Tier, Rochester/the Finger Lakes, Central New York, and Western New York.) Among our interests are ensuring access by consumers to telecommunications services, including cable, Internet, wireless and “landline” telephone service.

The Community Loan Fund of the Capital Region, Inc. has since 1985 been actively engaged in sustainable community development activities for economically underserved people and communities. As a nonprofit financial institution with a community development mission, we know first-hand the positive impact of investment into our urban and rural areas. In contrast, we have also been witness to the detrimental impacts of disinvestment, particularly in our urban core, including the cities of Albany and Troy. We believe that order to become a healthy region, we need healthy cities and investing in our urban area infrastructure is critical. Residents and small businesses located in the counties of Albany and Rensselaer need access to modern telecommunications in order to assure equitable opportunities for all.

The New York State Alliance for Retired Americans (NYSARA) is the state chapter of a nationwide organization, founded in May 2001, with four million members. NYSARA members are working together to make their voices heard in the laws, policies, politics, and institutions that shape our lives. NYSARA has a primary objective to enroll and mobilize retired union members and other seniors and community activists into a nationwide grassroots movement advocating a progressive political and social agenda that respects work and strengthens families. NYSARA is concerned about the impact of the proposed deal on its membership -- both active union members and retirees -- especially those who are retired on fixed incomes.

The Center for Working Families works with organizations and advocates across New York State to advance policies that promote democracy, economic opportunity, and broadly shared prosperity for all New Yorkers. Access to telecommunications services is a critical point of democratic and economic opportunity for all Americans in the twenty-first century.

The Upstate Division of 1199 Service Employees International Union is the voice of health care employees in western, central, and northern New York State and includes more than 17,000 health care workers at 20 hospitals and over 45 nursing homes as registered nurses, hospital workers, and nursing home workers.

Dominick Patrignani is the President of the International Union of Electrical Workers-Communication Workers of America Local 81359, which is based in Waterford in Albany County of New York State. (Mr. Patrignani signs on as an individual rather than on behalf of his union.)

Finally, John VanDenburgh III is the Executive Vice-President of Communications Workers of America Local 1118 based in Albany, New York. (Mr. VanDenburgh signs on as an individual rather than on behalf of his union.)

SpectrumCo is a joint venture between Comcast Corporation, Time Warner Cable, and Bright House Networks, three of the largest cable operators in the United States (the “cable companies”).¹ Time

¹ Press Release, *Verizon Communications, Comcast, Time Warner Cable, and Bright House Networks Sell Advanced Wireless Spectrum to Verizon Wireless for \$3.6 Billion* (December 2, 2011).

Warner Cable is the dominant cable operator in Albany and Rensselaer counties, as well as in much of upstate New York.

The cable companies and Verizon, including Time Warner Cable, the incumbent cable operator in the Capital District counties, announced in December that in addition to the acquisition of spectrum licenses, that they had entered into agreements to “sell one another’s products and, over time, the cable companies will have the option of selling Verizon Wireless’ service on a wholesale basis” (the “transaction”).² Simply put, two traditionally fierce rivals for the cable television market in Albany and Rensselaer counties as well as other communities in upstate New York and throughout the nation have proposed to enter into an agreement to cooperate in regard to the selling of cable and other telecommunications services, including eventually wireless service.

II. THE TRANSACTION WILL PRODUCE SUBSTANTIAL HARM TO THE PUBLIC INTEREST WHICH WILL ADVERSELY IMPACT ALBANY AND RENSSELAER COUNTY CONSUMERS AS WELL AS ECONOMIC DEVELOPMENT AND JOBS IN THOSE COMMUNITIES

A. The Transaction Will Adversely Affect Consumers in Albany and Troy, Particularly Low-Income Residents and Residents of Color, As Well as Rural Consumers and Consumers from Some Suburban Communities in Albany and Rensselaer Counties

It is clear that high-speed broadband -- of which Verizon Communication’s all-fiber optic FiOS technology is the prime example -- is a critical part of the infrastructure communities will need to have significant economic growth in the 21st century, fueling job creation and other improvements in education, health care and other essential services. As community leaders and elected officials in the two counties, we know that affordable, high-speed internet access is critical to economic development, the quality of life, and educational opportunities for the residents and small businesses in our counties. We also know that robust video competition has the potential to benefit consumers with lower prices and new and improved video services.

As a result of the new joint marketing agreement before the Commission, Verizon’s interests will be aligned with the cable companies, vastly reducing the historic rivalry between cable and telephone.

² *Id.*

This rivalry has served to hold prices down to at least a limited degree, while helping to spark better services and innovation for consumers and our other constituents, including businesses that we represent as elected officials and community organizations.

As a result of the transaction, Verizon will have a much lesser incentive to invest in or market an all-fiber network (FiOS), which competes with Verizon's new partner, Time-Warner, particularly in regard to cable television and internet service. "Verizon Communications ... will not have the incentive to expand FiOS in-region, and will have significantly less incentive to market aggressively its in-region FiOS broadband wireline product."³

In particular, the consumers of Albany and Troy, and the traditionally underserved communities in these cities will be harmed by the transaction. As a result of the deal, the applicants will offer a "quadruple play" of telecommunications services to consumers -- wireless, broadband, cable television, and telephone service -- a bundled product that their potential competitors cannot provide. "The [a]pplicants will have the advantage of being able to offer multiple services to a consumer more cheaply than their competitors because of the expansive reach of the companies' combined platforms."⁴ Just looking at Verizon Communication's web page makes it clear that their business strategy emphasizes marketing bundled products to consumers.⁵ Exclusive market power to bundle the quadruple play will give Verizon Wireless and Time Warner Cable the market power to dominate the Capital Region (Albany, Troy and the surrounding areas) for all telecommunications services to the detriment of consumers.

There is already significant evidence that Verizon is neglecting cities in its build out and marketing of FiOS. Among the cities that do not have FiOS service within Verizon's service areas are the cities of Boston and Baltimore, as well as Buffalo, Syracuse, Albany, Utica, Binghamton and

³ Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers, In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent to Assign Licenses, Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent to Assign Licenses (WT Docket No. 12-4), at 6 (hereinafter, "CWA/IBEW Comments").

⁴ *Id.*, at 14.

⁵ See *Get the FiOS bundle that's right for you!*, Verizon Web Page, <http://deals.servicebundles.com/verizon-fios>, accessed March 1, 2012.

Schenectady in New York State.⁶ In Erie County in Western New York, many Buffalo suburbs have FiOS service, yet Buffalo, the largest city in the county and second largest by population in the state, still does not have FiOS service, despite the repeated pleas of community groups and public officials. Buffalo has a far higher percentage of African-American and Hispanic residents than the localities surrounding Buffalo that Verizon selected to provide FiOS service.⁷

In the Capital District, FiOS and its cable television service are available “in large areas of Albany County, except for the city of Albany...”⁸ In Albany County, FiOS service, including video service, is presently available in the suburban towns of Bethlehem, Guilderland and the Town of Colonie, as well as the Village of Colonie. Rensselaer County, including the City of Troy, its largest city, does not have FiOS at all. Outside of the suburban communities of Bethlehem, Guilderland and the Town and Village of Colonie, our region has no effective competition to Time Warner, the incumbent cable operator.

The residents of the suburban towns in Albany County just mentioned that have access to FiOS have higher average incomes than those of City of Albany residents, and a much smaller percentage of the residents of these towns are people of color than in the City of Albany. The mean income of Albany City in 2010 was \$49,075, as compared to \$71,824 for Albany County; 21.2% of Albany City residents have an income of \$75,000 or above, versus 35.5% of the residents of the entire county.⁹ The City of Albany is 30.8% African-American and 8.5% Hispanic, as compared to 12.7% and 4.9% respectively for Albany County.¹⁰ A similar pattern applies in the City of Troy in Rensselaer County, which had a far lower

⁶ CWA/IBEW Comments, at 11.

⁷ Reply Comments of Buffalo Community Organizations and Elected Officials, In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent to Assign Licenses, Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent to Assign Licenses (WT Docket No. 12-4) (hereinafter, “Buffalo Community Organizations Comments”).

⁸ *The Buzz: Better, maybe, but with limits*, Albany Times Union (February 26, 2012).

⁹ U.S. Census Bureau 2010 American Community Survey 1-Year Estimates: 2010: Table DP-03 (Selected Economic Characteristics), for Albany City and Albany County.

¹⁰ U.S. Census Bureau 2010 American Community Survey 1-Year Estimates: 2010: Table DP-01 (Profile of General Population and Housing Characteristics: 2010), for Albany City and Albany County.

median income in the 2006-2010 period than the average for New York State (\$36,675 as compared to \$55,603).¹¹

We fear that if this transaction is permitted without any conditions, Verizon will have even less of an incentive to fully deploy its all-fiber FiOS network in the cities of Albany and Troy and in all of Rensselaer County, a mostly rural and suburban county (except for the City of Troy). The proposed Verizon Wireless/cable company partnership would exacerbate the “digital divide” in our region, and foreclose the possibility of effective high-speed broadband and video competition in these communities. Verizon Wireless is a subsidiary of Verizon Communications. We are deeply concerned that as a result of the new joint marketing agreement, Verizon Communications, the parent corporation, will never invest in an all-fiber network that competes with the new partners of Verizon Wireless, its subsidiary: Time-Warner Cable, Comcast and Cox. In our region, Time Warner Cable is the dominant cable provider. Without FiOS, there will be no cable competition.

We also fear that the transaction will increase the incentive of Verizon to neglect rural areas of Albany and Rensselaer counties. The company has already abandoned its wireline properties in rural areas throughout the nation. As Verizon embraces cable through its wireless subsidiary, there is every reason to assume this trend will continue and accelerate.¹²

The proposed transaction will also further strengthen the joint Verizon Wireless/cable company partnership as against potential competitors in the market for programming and other content provided on cable television, “smart phones” and other wireless devices, and through the Internet. “The power of this arrangement is evidenced in the market shares of the cable partners, which represent four of the nation’s largest multichannel video programming distributors, and Verizon Wireless, the nation’s leading wireless provider.” The market power of the combined companies will increase the danger -- present already today -- that competitors to the incumbent cable providers (including Time Warner in our region) will be foreclosed from the marketplace, thus resulting in higher prices and less variety of programming for

¹¹ U.S. Census Bureau, State and County QuickFacts, City of Troy, New York.

¹² CWA/IBEW Comments, at 9-10.

consumers.¹³ In our area, this is not just theory: we saw in recent weeks more than one demonstration of the danger of having one major cable operator in our region. Sports fans in the Capital District were without popular local sports programming (including New York Knicks basketball and New York Rangers hockey) for several weeks due to a contract dispute between Time Warner and the Madison Square Garden (MSG) sports channel. And, the local ABC television affiliate (WTEN) had to let its viewers know last month (February of 2011) that it could “go dark” on Time Warner’s cable systems if the parties did not reach an agreement over carriage of the broadcast station.¹⁴ These disputes are likely to happen more frequently, to the detriment of customers, if this transaction is permitted, given the enormous market power the new entity will have.

B. The Transaction and Accompanying Marketing Agreements Will Adversely Affect Economic Development and Jobs in Albany and Troy

The Verizon/cable company deal before the Commission will also adversely affect economic growth and jobs in Albany and Troy and the entire region. As the comments of the Communication Workers (CWA) and the International Brotherhood of Electrical Workers (IBEW) in this proceeding explain further, the additional investments involved in wiring the nation with next-generation technologies like fiber are certain to expand economic development and create new jobs throughout the nation. A report cited in the CWA/IBEW comments indicates that “annualized investments in DSL and fiber from 2003 to 2009 was \$11.7 billion, which corresponds to 202,400 jobs created.” We agree with CWA and IBEW that the proposed transaction will undermine Verizon’s incentive to continue to invest in FiOS, therefore “depressing investment in broadband deployment and ultimately eliminating jobs.”¹⁵

This decrease in investment will have a particularly adverse impact on the Capital Region, which is staking its future on the 21st Century “high-tech” economy. New York State’s Capital Region Economic Development Council, set up by the state, identified biological life sciences, nanotechnology, chemical manufacturing, semiconductor development and clean energy production as key to the region’s

¹³ *Id.*, at 12-19.

¹⁴ *Oscar Role for Cable Dispute*, Albany Times Union (February 27, 2012).

¹⁵ CWA/IBEW Comments, at 20-21.

economic future.¹⁶ Each of these industries depends on having a modern telecommunications infrastructure. The City of Albany, too, has identified access to modern telecommunications technology as a critical lynchpin in maintaining the City's economic competitiveness. The City has said that broadband is critical to closing the digital divide by "increasing internet access and usage throughout Albany's diverse neighborhoods."¹⁷

At a minimum, conditions must be placed on this transaction to ensure that the potential presented by the FiOS technology is realized, both for the nation and for the Capital region of New York State.

III. THE COMMISSION SHOULD SET APPROPRIATE CONDITIONS TO PROTECT CONSUMERS AND PROMOTE ECONOMIC DEVELOPMENT

For the reasons stated above, we urge the Commission to carefully review the combined effects of the transaction and the related marketing agreements on competition, consumers and jobs and economic development. If in spite of the concerns raised by the undersigned and other parties, the Commission determines that approving the transaction is in the public interest, then it should condition its consent on at least the following conditions:

1. The Commission should require Verizon to build FiOS throughout the Verizon service area. Our interest is particularly the City of Albany and the City of Troy in the Capital Region of New York State. We urge the Commission to condition approval on the FiOS build out to 95% of households in our region and require that a certain percentage of incremental deployment after the Merger Closing be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance. We need 21st Century networks.
2. The Commission should prevent Verizon Wireless and the cable companies from marketing each other's products on an exclusive basis. Competition will be frustrated if other providers cannot sign similar deals with these providers on the same terms and conditions.
3. The Commission should require so called "a la carte" cable pricing, a pro-competitive condition. We urge the Commission to require Time Warner, Comcast, Cox, and Verizon to permit consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.

¹⁶ Regional Economic Development Councils Web Page (Capital Region), <http://nyworks.ny.gov/content/capital-region>, accessed March 1, 2012.

¹⁷ *Albany 2030: Comprehensive Plan for the City of Albany* (2011), at 173.

Respectfully submitted,



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