



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Riverside
(951) 686-1450

2000 Pennsylvania Ave, NW, Suite 4300, Washington, DC 20006
Phone: (202) 785-0600 | Fax: (202) 785-1234 | www.bbklaw.com

Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

Gail A. Karish
(909) 466-4916
gail.karish@bbklaw.com
File No. 51087.00003

April 5, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DA 20554

Re: Application of Cellco Partnership d/b/a Verizon Wrieless and
SpectrumCo LLC for Consent to Assign Licenses and Application of
Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC
for Consent to Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

The City of Boston (the "City") filed reply comments on March 26, 2012 in the above-captioned proceeding. We have now realized that the reply comments contained a couple of minor typographical errors:

- Page 3, third sentence in Section II, the word "built" should have been "build."
- Page 8, the heading should have read: "IV. THE ASSIGNMENT IS NOT IN THE PUBLIC INTEREST".

I have attached a corrected copy of the City's Reply Comments (not including the exhibit).

Sincerely,

Gail A. Karish
BEST BEST & KRIEGER LLP

**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

REPLY COMMENTS OF BOSTON, MASSACHUSETTS

Boston, Massachusetts (the “City”), files these reply comments in the above-captioned proceeding to express the City’s opposition to the Applications and the related Commercial Agreements entered into between the Applicant Verizon Wireless and the cable operator Applicants.¹ The City urges the Commission to deny the Applications, and to exercise its authority— in this proceeding and/or by initiating a separate proceeding – to halt the implementation of the related Commercial Agreements. The City strongly believes that the Applications and related Commercial Agreements create significant disincentives for Verizon to make future investments in its FiOS fiber network which will harm consumers, particularly in the Boston area which lacks robust competition and investment in wireline broadband services. It is due to this lack of competition that the City filed an Emergency Petition for Recertification² last year, seeking to reinstate the City’s rate regulation authority, and we urge the Commission to

¹ Applications were filed on December 16, 2011 by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and SpectrumCo, LLC (“SpectrumCo”), and on December 21, 2011 by Verizon Wireless and Cox TMI Wireless, LLC, a subsidiary of Cox Communications, Inc. (“Cox”), to assign spectrum licenses held by SpectrumCo and Cox Wireless to Verizon Wireless. *See also, Public Notice*, DA-12-67, WT Docket No. 12-4 (rel. Jan. 19, 2012); *Order*, DA-12-367, WT Docket No. 12-4, (rel. Mar. 8, 2012).

² City of Boston, Massachusetts, Emergency Petition for Recertification, CUID No. MA0182, filed May 9, 2011. (“Emergency Petition”). A copy of the Emergency Petition is attached hereto as Exhibit A. See discussion, *infra*.

act on that petition as well. Finally, we believe the arrangements between Verizon Wireless and the cable operators are anti-competitive, unlawful, and not in the public interest.

I. THE CITY OF BOSTON IS A STRONG PROPONENT OF BROADBAND DEPLOYMENT

Boston is a world-class city whose major industries include innovative technology, research, healthcare, education and hospitality. These industry sectors demand access to broadband to grow and succeed in their respective fields and their customers expect nothing less. Affordable broadband is critical to economic development, quality of life, and opportunity for the residents and small businesses in our City.

The City of Boston has actively advocated for broadband investment and video competition throughout our city and particularly in under-served and lower-income neighborhoods. We encourage the introduction of new technologies and competition through innovative policies and investments. For example:

- The City has invested over \$18 million over the last five years in our city fiber network to support broadband for use by constituent services and our public schools.
- The City developed informal and expedited franchising processes. In Boston, we renew, transfer, amend and dissolve franchises, quickly, as the situation(s) warrant, in order to be responsive to changes in law, regulation and/or market conditions.
- Boston has taken the lead in piloting an affordable wireless solution for our residents through the Boston Wi-Fi Project.
- The City streamlined access for broadband and wireless telecommunications businesses seeking to provide services to Boston's residents and businesses, establishing a single point of entry for telecommunications services applicants.

- We have negotiated agreements with providers such as RCN, Next G, American Tower and Extenet in order to introduce some measure of competition and new technologies in wireless communications.
- Boston is in the midst of an aggressive Boston Technology Opportunity Program designed to reach schoolchildren and families in need of technical skills and training, thanks to funding support from the American Recovery and Reinvestment Act.

Collectively, all of these efforts are designed to provide our citizens, neighborhoods and businesses with the resources necessary to succeed in a digital economy. Vital to our efforts is the development of a healthy and competitive market for broadband.

II. BOSTON LACKS A ROBUST AND COMPETITIVE MARKET FOR WIRELINE BROADBAND AND VIDEO SERVICES

Verizon is the predominant landline telephone company serving the Boston area, and Comcast is the predominant cable operator. We at the City understand that advanced communications networks hold out the promise of video competition and the potential benefit to consumers of lower prices, improved customer service and new, expanded video and broadband services. Thus, when Verizon announced plans for the launch of its “nationwide” FiOS fiber build out, the City and its residents welcomed the news, knowing that in the past, cable companies rushed to build systems in densely populated cities and larger towns.

Unfortunately, Verizon chose not to build out its fiber network to offer FiOS services in Boston. Verizon, instead, focused its investment on securing cable franchises in lower density, suburban communities surrounding Boston. As Verizon invested in its fiber network in suburban communities to offer competitive digital TV services, VoIP and faster Internet speeds, it also launched an aggressive regional marketing campaign. Boston residents, attracted by these advertised choices and competitive prices, cannot understand why these options are not available

to them. Residents, frustrated with the lack of competition for cable services and skyrocketing prices, often call City Hall to complain.

The City reached out to Verizon repeatedly to discuss with company leadership the need for upgrades and new services over the last eight years, looking for any opportunity to negotiate a Verizon FiOS cable franchise. Our purpose has been to build a mutual dialogue to accommodate Verizon’s entry in the new video market in order to bring more competition and increased broadband service offerings to Boston residents.

There is no compelling need to amend laws or avoid regulation; companies can do business in Boston at lightning speed. Yet, Verizon has declined the City’s invitations to enter into cable franchise negotiations.



As illustrated in the preceding Boston Globe chart published in February, 2008,³ Verizon chose to build out its FiOS network in the yellow and light blue areas which represent suburban communities. It chose *not* to provide FiOS service in Boston and all surrounding urban communities. Hence, a number of residents in those communities rightly perceive Verizon to be redlining, or at the very least cherry-picking. As the statewide map displays, urban Greater Boston is the hole in the Verizon FiOS donut.

Verizon's decision to bypass Boston in favor of surrounding suburban communities disproportionately affects minority and lower-income neighborhoods, small businesses, and seniors. It can have a deleterious effect on the ability to attract jobs and promote growth into the urban ring. We fear that without the broadband infrastructure and robust competition envisioned in the Telecommunications Act of 1996, Boston, and the urban communities of eastern Massachusetts will suffer economically.

III. THE SPECTRUM ASSIGNMENT AND RELATED COMMERCIAL AGREEMENT WILL ONLY WORSEN THE SITUATION BY DETERRING BROADBAND DEPLOYMENT AND VIDEO COMPETITION IN BOSTON

Our concerns about the lack of broadband deployment and video competition in the Boston area are heightened by the deal that has been struck between Comcast and Verizon's subsidiary, Verizon Wireless. The Commission has before it two Applications to assign spectrum licenses held by SpectrumCo (owned by Comcast, Time Warner Cable and Bright House) and by Cox Wireless to Verizon Wireless. The Applicants describe their transaction(s) as involving "only assignments of spectrum."⁴ However, the proposed spectrum sale is linked to

³ Johnson, Carolyn Y., "Paying a Bundle for Cable Upgrade," The Boston Globe, Business Section, February 29, 2008.

⁴ Public Interest Statement, attached to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC, for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-4, ULS File No. 0004993617 at 24 n.71 ("Verizon/SpectrumCo Public Interest Statement"). *See also* Public Interest Statement, attached to Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-4, ULS File No. 0004996680, at p. 1.

commercial agreements (“Commercial Agreements”) with Verizon Wireless to sell each other’s services and the formation of a Joint Operating Entity (JOE) “to develop innovative technology and intellectual property that will integrate wired video, voice and high-speed Internet with wireless technologies.”⁵ Presumably, the intent of the JOE is to manage the development of products, standards technology and intellectual property. The Applicants emphasize that the transaction will allow Verizon Wireless to add network capacity to meet growing demand for high quality wireless broadband.⁶ Over the past year, Verizon has also signaled to customers and investors that their FiOS expansion and deployment is ending.

The City believes that the Applications, if granted on the terms sought by the Applicants, will leave the city of Boston permanently on the wrong side of the digital divide. The City does not oppose improvements to wireless broadband – to the contrary - as mentioned earlier, the City is actively encouraging wireless and WiFi deployments.

The City’s concern is with the inevitable impacts for Boston residents in terms of wireline broadband deployment and video competition if the Commission approves these Applications and allows the companies to implement the joint marketing and technology development arrangements contemplated by the related Commercial Agreements. We believe that the new joint Verizon/Cable marketing agreement linked to this spectrum transfer will negatively impact any future FiOS investment by Verizon and any further fiber network expansion by Verizon Wireless’ new partner, Comcast. On the one hand, Verizon will have committed its capital expenditure to its wireless division, not FiOS. And, on the other hand, Comcast will essentially partner with its competitor, thereby removing any threat to its existing infrastructure.

⁵ Verizon Wireless/SpectrumCo Public Interest Statement, at 24 n.71.

⁶ *Id.*, p. 1.

Put simply, the City is concerned that these transactions are designed to ensure that Verizon and Comcast collaborate and never compete in Boston, thereby effectively depriving our communities, citizens, small businesses, schools, hospitals and educational facilities the benefits of video and broadband competition that is available in most of eastern Massachusetts' surrounding suburbs and in other parts of the country.

The future harmful effects of the proposed alliance of Verizon and Comcast are not a matter of idle speculation; they are the logical consequence of the continuation of the existing harms that have already been documented and provided to the Commission by the City in its Emergency Petition for Recertification of the City of Boston to Regulate Basic Subscriber Rates, filed in May, 2011 ("Emergency Petition").⁷

In short, the competitive market for video services in Boston did not develop in the way the Commission anticipated in its "effective competition" order, and the City believes that the finding of effective competition in Boston should be reversed. That is the reason for filing the Emergency Petition. The Emergency Petition is relevant to the present proceeding as well because it provides clear and compelling evidence of the consumer harms happening now in the City of Boston due to lack of robust competition, which will only get worse if Comcast and Verizon are permitted to join forces.

When Comcast increased their Basic Rate by 18% last year, it was the third straight year of increases totaling more than 60% on an entry level service that is supposed to provide an affordable option to consumers. These massive increases in basic service rates are what led the Mayor's Office of Cable, Video and Web Services to commission a detailed study of Comcast's Basic Rates. The study found that in the period from 2008 through 2011, Comcast collected from Basic Service customers in Boston approximately \$24 Million **more** than Comcast charged

⁷ See Emergency Petition attached hereto as Exhibit A.

Basic Service customers in neighboring communities.⁸ Moreover, the cable subscribers in Boston are not experiencing the increased number of channels typically being offered when a competitive service like FiOS is available, as recently noted by the FCC in its Report on Cable Industry Prices (DA 12-377). We believe that the price discrepancies and limited service offerings experienced by Boston residents are a consequence of the city of Boston not being a competitive cable market.

While granting the City's Emergency Petition would go some measure to improve the situation by permitting the City to regulate basic cable rates, regulation is a second best solution in the absence of a truly competitive market for cable and broadband services. Yet, if Verizon and Comcast are permitted to pursue joint economic interests as contemplated in the present Application and related Commercial Agreements, it is very unlikely that that cable subscribers in Boston will ever experience the benefits of effective competition.

IV. THE ASSIGNMENT IS NOT IN THE PUBLIC INTEREST

The City believes the spectrum assignment is not in the public interest. Just last week, the Subcommittee for Antitrust, Competition Policy and Consumer Rights of the Senate Judiciary Committee held a hearing titled, "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?" Susan P. Crawford, a visiting professor at the Harvard University's Kennedy School of Government and Law School, commented on the Verizon/Cable deal in a national Bloomberg News column entitled, "Verizon to the Cable Industry: Let's Be Friends."⁹ She suggested that a better question for the hearing title would be: "Why isn't the American public paying closer attention?" She also wrote: "Like water and electricity services,

⁸ "Report to the City of Boston Regarding Comcast's Basic Service Cable Rates," prepared by Front Range Consulting, Inc., April 2011 and submitted as Exhibit 3 to the Emergency Petition.

⁹ Crawford, Susan P. "Verizon to the Cable Industry: Let's Be Friends" published at <http://www.bloomberg.com/news/2012-03-20/verizon-to-the-cable-industry-let-s-be-friends.html> (last accessed 3/26/2012).

these are natural monopoly businesses characterized by crushing advantages of scale, high upfront investments and sharply declining costs for additional customers. Unlike other utilities, however, the wireless guys and the cable companies are essentially unregulated.”

The City shares Professor Crawford’s concerns that Verizon and the partnering cable entities, who jointly control 40% of the country’s wireless, video and residential broadband markets, are essentially unregulated, and will be able to jointly engage in developing future technologies that ultimately will become industry standard to the detriment of any competitor.

Further, the City supports the legal arguments of consumer and public interests organizations¹⁰ and numerous other filers that demonstrate that (i) the Commercial Agreements violate provisions of the Communications Act, including 47 U.S.C. § 572 (concerning joint ventures among cable operators and telephone companies) and 47 U.S.C. § 548 (concerning unfair methods of competition or unfair or deceptive acts or practices) and (ii) the Commission has ample authority to take enforcement measures under those provisions.¹¹

V. CONCLUSION

The spectrum transfers proposed in the Applications and the related Commercial Agreements will harm consumers in Boston and are not in the public interest. The City urges the Commission to deny the Applications, and to take such other enforcement actions as the Commission deems necessary to halt the implementation of the Commercial Agreements. The City also urges the Commission to act on its Emergency Petition.

¹⁰ Petition to Deny of Public Knowledge, Media Access Project, New America Foundation, Pen 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. filed Feb. 21, 2012, WT Docket No. 12-4, p. 5 (“Petition to Deny”).

¹¹ Petition to Deny at pages 36, 41-42, 45-46; RCA - The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions filed in WT Docket No. 12-4 on February 21, 2012 at page 41; Petition to Deny of the Rural Telecommunications Group, Inc. filed in WT Docket No. 12-4 filed on February 21, 2012 at page 8.

In the event that the Commission looks favorably toward granting the Applications and transaction(s), the City urges the Commission to include, as a condition for approval, a requirement that Verizon continue to invest in and build-out its FiOS network to currently unserved and under-served areas that are inside its traditional telephone service area footprint, including the city of Boston and other urban communities.

March 26, 2012

Respectfully submitted,

Mayor Thomas M. Menino
CITY OF BOSTON, MASSACHUSETTS

By its attorneys,

William F. Sinnott
Corporation Counsel



Gerard Lavery Lederer

Gail A. Karish

Best Best & Krieger LLP

2000 Pennsylvania Avenue, NW

Suite 4300

Washington, DC 20006

Phone: (202) 785-0600

Fax: (202) 785-1234

Counsel for the City of Boston, Massachusetts

51087.00003\7359245.3