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May 1, 2012

## **VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, DC 20554

Re: Ex Parte Communication – WT Docket 12-4

Dear Ms. Dortch:

On behalf of T-Mobile USA, Inc. (“T-Mobile”), and pursuant to Section 1.1206 of the Commission’s Rules, 47 C.F.R. § 1.1206, the undersigned submits this letter as a written *ex parte* communication in connection with WT Docket No. 12-4. This letter responds to the letter of SpectrumCo, LLC (“SpectrumCo”), submitted on April 26, 2012, on behalf of Comcast Corporation, Time Warner Cable, Inc., Bright House Networks LLC, and Cellco Partnership d/b/a Verizon Wireless in the above-referenced docket (“SpectrumCo Letter”).

In its Petition to Deny dated February 21, 2012 and Reply dated March 26, 2012, T-Mobile demonstrated that Verizon Wireless has been sitting on substantial amounts of AWS spectrum for almost six years. During this period it has completely failed to utilize, far less utilize efficiently, this extremely valuable resource. At a time when the mobile broadband industry is facing a looming “spectrum crunch,”<sup>1</sup> it strains credulity to assert that the public interest would be served by allowing Verizon Wireless to hoard even more spectrum, especially in the AWS band where many of its smaller competitors would be able to put this spectrum to use immediately as they roll out 4G LTE services to compete with Verizon Wireless.

Remarkably (but perhaps not surprisingly), the SpectrumCo Letter makes no attempt whatsoever to rebut T-Mobile’s arguments or to show that the proposed Verizon Wireless acquisition of AWS spectrum from SpectrumCo and Cox TMI Wireless LLC (the “CableCos”) is in the public interest – the sole issue in this proceeding. Nor does

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<sup>1</sup> See, e.g., Remarks of FCC Chairman Julius Genachowski, 2012 Consumer Electronics Show, <http://www.fcc.gov/document/chairman-genachowski-2012-consumer-electronics-show> (Jan. 11, 2012).

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SpectrumCo attempt to rebut factually or analytically the compelling showing by T-Mobile and other parties that the instant transaction would be disastrous for competition and directly contrary to the public interest. Instead, SpectrumCo's Letter reveals the dearth of public interest support for its proposed transaction by engaging in an *ad hominem* effort against T-Mobile, taking out of context statements made at a different time, in different circumstances, and regarding a very different transaction.

It would be convenient if SpectrumCo could sweep away the serious problems with its proposed transaction by simply alleging that T-Mobile's arguments are inconsistent with statements made in connection with its previously proposed transaction with AT&T. But this is nonsense. Even if true – which (as we show below) they are not – SpectrumCo's jumble of complaints about T-Mobile's advocacy would do nothing to make its affirmative case that its deeply flawed deal is in the public interest. As SpectrumCo's Letter acknowledges in a different context, the Commission must consider the merits of the transaction before it, not those of a previous transaction – and this is even more so when the purportedly inconsistent arguments did not succeed and the previous transaction ultimately was not approved by the Commission.

In any event, the supposed inconsistencies highlighted by SpectrumCo do not withstand closer examination. For example:

**T-Mobile has never asserted that *Verizon Wireless* has not warehoused its existing AWS spectrum.**

Take the SpectrumCo citation to a T-Mobile statement that spectrum warehousing has not generally been a problem in the industry.<sup>2</sup> Somehow, SpectrumCo has transformed this into a blanket statement that there has been no warehousing whatsoever, including by Verizon Wireless. But the opposite is true. As T-Mobile has demonstrated in this proceeding, while T-Mobile and other similarly situated carriers have and continue to make maximum and efficient use of their existing spectrum, Verizon Wireless has in fact warehoused its AWS spectrum since acquiring it in the 2006 auction.

**In fact, *Verizon Wireless* has warehoused spectrum and it uses its existing spectrum less efficiently than T-Mobile.**

SpectrumCo also makes much of a prior T-Mobile statement that aggregation by providers of a “greater volume of spectrum than many other providers” does not by itself constitute warehousing. That is obviously true, since a carrier with a lot of spectrum may be making full use of that spectrum.<sup>3</sup> But when a carrier – namely, Verizon Wireless –

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<sup>2</sup> SpectrumCo Letter at 5.

<sup>3</sup> SpectrumCo Letter at 3. Indeed, the T-Mobile statement cited by SpectrumCo was the lead-in to a detailed showing that AT&T was not *in fact* hoarding spectrum. Under SpectrumCo's logic, if a dog-owner had made a statement that dogs are generally safe pets for

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has a great deal of spectrum which it has held for years *without* using it, uses even its other spectrum less efficiently than other carriers such as T-Mobile,<sup>4</sup> and then seeks to acquire a great deal more spectrum without a near term need for it, that is a different story. The showing that Verizon Wireless is warehousing spectrum is based on this second premise, which is fully consistent with T-Mobile's past statements. Indeed, the facts demonstrate that the two principal warehouseers of spectrum in the mobile broadband space are Verizon Wireless and SpectrumCo, two of the parties to this transaction.

**Unlike previous proposed mergers, the primary effect of the proposed accumulation of even more *unused* spectrum into Verizon Wireless' spectrum warehouse would be to foreclose its competitors from using this spectrum to compete with Verizon Wireless.**

With regard to spectrum aggregation more generally, SpectrumCo seems to believe that T-Mobile's defense of the proposed merger in the AT&T transaction means that it must never object to any spectrum acquisition elsewhere.<sup>5</sup> But as T-Mobile has shown here, the type of aggregation of *unused* spectrum engaged in historically by Verizon Wireless poses a very different issue than mere aggregation and full use of spectrum. T-Mobile's analysis reveals starkly not only that Verizon Wireless has the motive to hoard spectrum to keep it away from its competitors, but also that its modus operandi to date is fully consistent with this motive. Again, SpectrumCo would have the Commission ignore the specific problems with *this* transaction on the basis of an over-general reading of T-Mobile's statements about a different transaction.<sup>6</sup>

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households and that his own dog had never bitten anyone, the dog-owner would be foreclosed from pointing out that another dog-owner's dog had bitten six people and that another bite would be harmful to the public interest.

<sup>4</sup> SpectrumCo and Verizon Wireless had asserted that Verizon Wireless' historic use of spectrum has been more efficient than other carriers. Joint Opposition to Petitions to Deny and Comments, filed by Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC, WT Docket No. 12-4, at 23-27 (filed March 2, 2012). As T-Mobile's expert demonstrated, however, Verizon Wireless arrived at this conclusion only by misleading aggregation of markets and by ignoring the differing technical characteristics of different types of spectrum and the differing Smartphone penetration rates of different carriers. Declaration of Dennis Roberson, attached as Exhibit A to Reply of T-Mobile, USA, Inc. to Opposition to Petition to Deny, WT Docket No. 12-4, filed March 26, 2012. When these glaring flaws are corrected, the analysis shows just the opposite: that Verizon Wireless' use of spectrum is in fact substantially *less* efficient than that of T-Mobile.

<sup>5</sup> SpectrumCo Letter at 3.

<sup>6</sup> Some SpectrumCo arguments are flimsier. For instance, it argues that, because T-Mobile noted the uncontroversial fact that carriers must plan ahead in their acquisition and deployment of spectrum, T-Mobile must be deemed to have given carte blanche to even the most flagrant warehousing of spectrum as long as, in so doing, the warehouseer recites the magic words that it is acting in the name of "planning." SpectrumCo Letter at 2-3. The

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**The fact that 700 MHz spectrum is generally more valuable for purposes of mobile broadband services does not mean that the A and B Blocks are useful and available for competitors' LTE deployment now.**

SpectrumCo also attempts to find an inconsistency between T-Mobile's argument that 700 MHz spectrum should be weighted more heavily in the spectrum screen analysis used to evaluate this transaction and its statements regarding the recently announced 700 MHz A and B Block sale by Verizon Wireless. But once again SpectrumCo is comparing apples with oranges. T-Mobile has not taken issue with the fact that the A and B Block 700 MHz spectrum has propagation and other characteristics that make it more valuable for mobile broadband services than higher band spectrum and as a result should be weighted more heavily in the screen analysis, but that in no way contradicts the incontrovertible fact that for a variety of reasons this spectrum is not readily usable now by Verizon Wireless' competitors to deploy LTE for wireless broadband services.<sup>7</sup> Thus, the divestiture of 700 MHz A and B Block spectrum would not alleviate the competitive harm caused by the Verizon Wireless acquisition of SpectrumCo's AWS spectrum, which would be immediately usable.

As these examples demonstrate, the SpectrumCo Letter is patently irrelevant to the Commission's assessment of the instant transaction. That SpectrumCo has been reduced to this game of "gotcha" reveals the poverty of its substantive arguments, which are not even made in its Letter. The Commission should disregard the SpectrumCo Letter and

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absurdity of this tack is self-evident. The SpectrumCo Letter also alleges that statements made on a T-Mobile blog that questioned the motives of critics of the T-Mobile/AT&T transaction reflect poorly on T-Mobile's own motives in criticizing SpectrumCo's transaction. SpectrumCo Letter at 5. T-Mobile has already addressed SpectrumCo's purported inconsistency in its March 26, 2012 Reply (at n. 73), which noted that the blog post discussed Sprint's argument that the then-proposed merger of AT&T and T-Mobile would result in the merged company charging higher prices and being less innovative, and observed that if this were true, Sprint should be planning to take advantage of the merged company's weakness rather than complaining about it. Here, by contrast, the competitive harm that T-Mobile has shown arises from Verizon Wireless' ongoing hoarding of spectrum, which has and will have a direct harmful effect on T-Mobile's own ability (as well as the ability of many other carriers) to compete. Thus T-Mobile's position in this proceeding is precisely the *opposite* of the disingenuousness pointed out in the blog posting.

<sup>7</sup> E.g., T-Mobile *ex parte* letter to Marlene H. Dortch, WT Docket No. 12-4 (Apr. 20, 2012). In particular, the A-block spectrum has problems with interference from adjacent high-powered broadcast services (the Channel 51 issue) and lack of interoperability with the rest of the 700 MHz band and the B-block is dominated by AT&T nationally with Verizon Wireless offering for sale only a relatively few discrete markets that do not provide the basis for entry into the band by competitors that currently lack a 700 MHz footprint. Moreover, both the A and the B Block spectrum is subject to an initial build-out deadline in 2013.

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focus on the substance of the transaction before it, which would clearly be harmful to the public interest.

Should any additional information be required with respect to this *ex parte* submission, please do not hesitate to contact me.

Very truly yours,

*/s/ Jean L. Kiddoo*

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