

Jean. L. Kiddoo  
Patrick J. Whittle  
Tel: (202) 373-6000  
Fax: (202) 373-6001  
jean.kiddoo@bingham.com  
patrick.whittle@bingham.com

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## VIA ELECTRONIC FILING

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: WT Docket No. 12-4

T-Mobile USA, Inc. (“T-Mobile”) and Deutsche Telekom AG (collectively “T-Mobile”) hereby respond to the latest effort by Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC (together “Applicants”), to deflect the Commission’s attention away from the fact that they have failed to establish that their proposed transfer of spectrum from one spectrum hoarder to another advances the public interest. In particular, they have yet to effectively rebut the serious public interest harms raised by a wide range of parties, including T-Mobile, that will result if their transactions are permitted to go forward.

In their *ex parte* filing made on May 21, 2012 (“*Verizon May 21 Letter*”), the Applicants apparently believe that they are “rebutting” the serious substantive issues raised by T-Mobile by arguing that in a recent meeting with Commission Staff, T-Mobile “repeated” its earlier arguments – as if T-Mobile’s reviewing with FCC Staff the substantial arguments previously made on the record somehow negates their merits. Applicants then attempt to construct inconsistencies in T-Mobile’s arguments by pointing to high level comments made by Mr. Timotheus Höttges, Deutsche Telekom’s CFO, at an investment bank conference. This misguided attempt is bound to fail: Mr. Höttges’ remarks were made in a different context addressing a different issue, and as such were clearly stating a long-term aspirational goal (as Mr. Höttges said, “at the end of the day”) for T-Mobile and not the specific parameters or well established challenges of T-Mobile’s complex refarming plan and associated spectrum situation.<sup>1</sup>

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<sup>1</sup> Applicants’ characterization of an unrelated comment about capacity in T-Mobile’s backhaul network, which Mr. Höttges generalized as “empty,” as “suggest[ing] that T-Mobile is the one with excess capacity” shows just how far Applicants will go to manufacture inconsistencies. T-Mobile, as Mr. Höttges notes, has aggressively been upgrading much of its backhaul network to fiber in its 3G/4G footprint. But having capacity in its backhaul network is a far cry from having excess front-end, RF network capacity. It is Verizon, of course, that has excess capacity in the

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Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC  
20006-1806

T +1.202.373.6000  
F +1.202.373.6001  
bingham.com

Deutsche Telekom's 4th Quarter Results Presentation that Mr. Höttges (among others) presented on February 23, 2012, and presentations by T-Mobile's Chief Technology Officer and other senior officers both before and after Mr. Höttges' recent comments, have all provided more detailed information to the Commission and the financial markets about the complex refarming effort that T-Mobile is undertaking to deploy LTE services to its customers. All this detailed information consistently shows the clear, uncontested, and significant benefit additional spectrum would play in enabling T-Mobile to provide a broad and robust LTE offering and ensuring a good service experience to all its customers across its other technologies as LTE is rolled out. As the Deutsche Telekom presentation made by Mr. Höttges and other T-Mobile presentations have clearly indicated, even if executed perfectly T-Mobile's difficult network modernization plan will only yield an upgrade to LTE across roughly 75% of its 4G footprint, and 10x10 MHz LTE to approximately half of the LTE POPs.<sup>2</sup> On the other hand, Verizon Wireless has been able to deploy a 10x10 MHz LTE network on its 700 MHz spectrum without even beginning to tap into its existing store of AWS spectrum, let alone the AWS spectrum it is proposing to acquire from SpectrumCo and Cox. As an independent analyst has found, *Verizon Wireless already has more LTE spectrum (13.1 billion MHz POPs) than all three of the other national carriers combined – a surplus that will only be exacerbated if these transactions are allowed to proceed.*<sup>3</sup>

### ***Applicants Have Overplayed Their Hand***

The burden is on Applicants to demonstrate that their transactions are in the public interest, and their most recent effort to turn the Commission's attention to supposed T-Mobile inconsistencies once again fails to make that case. If the Commission adopted the Applicants' proposed decisional rule that this sort of senior executive statement trumps evidence in the record, then their applications

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spectrum-dependent RF part of its network, as evidenced by the many MHz of totally unused spectrum that has been held for years in the Verizon Wireless warehouse.

<sup>2</sup> See, e.g., Deutsche Bank Market Research Report "Takeaways from Meeting with T-Mobile USA Management," dated May 18, 2012, at 2-3 ("DB Report"); *Deutsche Telekom Q4/11- Results Presentation*, dated Feb. 23, 2012, at p. 29, available at: <http://www.telekom.com/presentations/>; *T-Mobile Business and Network Update*, dated Feb. 23, 2012, at p. 8, available at: <http://newsroom.t-mobile.com/files/PDF-4TPB3BZ93THUQUPG.pdf>; Attachment to Letter to Marlene H. Dortch from Jean L. Kiddoo, WT Docket No. 12-4, dated May 15, 2012, at pp. 5-6 ("*T-Mobile May 15 Ex Parte*"); Letter to Marlene H. Dortch from Kathleen O'Brien Ham, WT Docket No. 12-4, dated May 4, 2012 (noting that in a telephone conversation with Chairman Genachowski, Mr. René Obermann, Chief Executive Officer of Deutsche Telekom, advised the Chairman that the AWS spectrum T-Mobile acquired from AT&T "is a critical but insufficient catalyst to the implementation of T-Mobile's network modernization and LTE deployment").

<sup>3</sup> See *T-Mobile May 15 Ex Parte* at 5 (citing Deutsche Bank Markets Research, *Key Updates on Major Spectrum Deals*, dated Feb. 5, 2012, at p.7).

are nonstarters from the outset, since statements by the Applicants' executives contradict the specific statements in the Applicants' Public Interest Statements and other Commission filings that purport to carry their burden of proof on this issue. For example, notwithstanding that the only public interest showing that the Applicants make is a general claim that Verizon Wireless needs additional spectrum for its LTE services, in February, the Executive Vice President and Chief Financial Officer of Verizon Wireless' own parent, Fran Shammo, told investment analysts after the applications were filed that "the 4G network has a ton of capacity. Obviously, we only have 5% of our customers on it right now."<sup>4</sup> And then there was Verizon Wireless' Chief Executive Officer Lowell McAdam, Verizon Wireless' CEO, who, less than 3 months before Applicants filed applications attesting to the FCC that the public interest justifies the acquisition of massive amounts of nationwide AWS spectrum, told an investor conference that its current spectrum position is strong in the near to mid-term "[a]nd even when the day comes when the company needs more spectrum, he said he feels like the company is in a good position, because [Verizon Wireless] will likely only need additional spectrum in specific markets."<sup>5</sup>

Similarly, in April 2010, Ivan Seidenberg, Verizon Wireless' former Chief Executive Officer, basically stated in an interview that there really wasn't a need for additional spectrum for commercial broadband services in the near to mid-term, and that while there "could be" a spectrum shortage in "five or seven years," he thought that "technology will tend to solve these issues." In response to remarks from a senior Commission official that Mr. Seidenberg's comments were "baffling" in light of the company's FCC advocacy to the contrary, a Verizon Wireless spokesperson later clarified that Verizon Wireless "reiterate[s] what we said in our filings at the FCC: there is a long-term need for additional spectrum for mobile broadband services."<sup>6</sup> Of course, neither Mr. Seidenberg's statement nor Verizon Wireless' subsequent "clarification" is consistent with the position it is now asserting that it has an acute need for significant new spectrum in the near term.

Applicants also repeatedly assert that T-Mobile's showing that lower band spectrum has certain demonstrable propagation characteristics that should be

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<sup>4</sup> *VZ-Verizon at Deutsche Bank Media and Telecommunications Conference*, dated Feb. 27, 2012, at 5, available at:

[http://www22.verizon.com/idc/groups/public/documents/adacct/db\\_vz\\_transcript\\_2012.pdf](http://www22.verizon.com/idc/groups/public/documents/adacct/db_vz_transcript_2012.pdf).

<sup>5</sup> *Verizon CEO talks up spectrum, downplays Sprint iPhone*, CNET News, dated Sept. 21, 2011, available at: [http://news.cnet.com/8301-30686\\_3-20109452-266/verizon-ceo-talks-up-spectrum-downplays-sprint-iphone/](http://news.cnet.com/8301-30686_3-20109452-266/verizon-ceo-talks-up-spectrum-downplays-sprint-iphone/).

<sup>6</sup> *See FCC Takes a Jab at Verizon CEO Over Spectrum*, Wall Street Journal, dated Apr. 8, 2010; *FCC pushes back at increased opposition from broadband providers*, Washington Post, Apr. 9, 2010, available at:

[http://voices.washingtonpost.com/posttech/2010/04/verizon\\_fcc\\_spars\\_over\\_spectru.html](http://voices.washingtonpost.com/posttech/2010/04/verizon_fcc_spars_over_spectru.html).

considered as part of a reasoned spectrum efficiency analysis “is analytically hollow and ultimately uninformative.”<sup>7</sup> But just yesterday, Verizon Wireless’ Chief Financial Officer, Fran Shammo, refuted Applicants’ arguments when he stated that:

All spectrum is not created equal for all carriers. So from our perspective the 700 MHz contiguous spectrum that we have is extremely efficient, the propagation of that spectrum into buildings is very high, so you don’t need as much cell splitting or build out that you would need from other types of spectrum. So 700 MHz is really efficient spectrum.<sup>8</sup>

And Mr. Shammo is not the only Verizon Wireless executive to tout the attributes of 700 MHz spectrum. Lowell McAdam, Verizon Wireless’ President & Chief Executive Officer, and Tony Melone, Verizon Wireless’ Senior Vice President and Chief Technology Officer, have both claimed the advantages of Verizon Wireless’ 700 MHz spectrum to investors. According to Mr. McAdam, “700 MHz Delivers Superior Building Penetration Advantages” and his slide entitled “Best spectrum: 700 MHz License Map” notes that Verizon is “The only carrier with contiguous 4G spectrum” and has a “Competitive advantage.”<sup>9</sup> Mr. Melone also states that 700 MHz “Delivers Superior Coverage” and that Verizon Wireless has a “Spectrum Advantage” because “Lower Frequencies Drive Enhanced Performance,” citing “better in-building penetration” and “increased coverage,” and “more efficient use of the macro”<sup>10</sup> as compared to higher frequency bands.

It is also important to take into consideration the connection between the commercial agreements and the spectrum sale. Notwithstanding repeated statements by Verizon Wireless before Congress that the commercial agreements and the spectrum sale between Applicants are totally separate and “not contingent upon one another,”<sup>11</sup> Comcast’s Executive Vice President stated that “[t]he

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<sup>7</sup> E.g., *Verizon May 21 Letter* at 4.

<sup>8</sup> *Remarks of Fran Shammo, Chief Financial Officer, Verizon Communications*, May 23, 2012, available at: <http://barclays-r1.alldigital.net/viewer/webcast/GTMTC/249> (emphasis added) (quote taken from audio recording; written transcript not yet available). Mr. Shammo also reiterated that even without the AWS spectrum it seeks to acquire from the other Applicants, Verizon Wireless has sufficient spectrum through 2015 and apparently could also be more efficient by “re-appropriating” (i.e. refarming) its 3G spectrum into 4G. *Id.*

<sup>9</sup> *Presentation of Lowell McAdam, President & Chief Executive Officer, Verizon Wireless*, Barclays Capital, dated May 26, 2010, at pp. 5-6.

<sup>10</sup> *Presentation of Tony Melone, Senior Vice President and Chief Technology Officer, Verizon Wireless*, Wells Fargo Securities Technology, Media & Telecom Conference, dated Nov. 10, 2010, at p. 12-13.

<sup>11</sup> E.g., *Verizon Tells Congress cable deals ease spectrum crunch*, MSNBC.com, dated Mar. 21, 2012, available at: [http://www.msnbc.msn.com/id/46223874/ns/technology\\_and\\_science-wireless/t/verizon-tells-congress-cable-deals-ease-spectrum-crunch/](http://www.msnbc.msn.com/id/46223874/ns/technology_and_science-wireless/t/verizon-tells-congress-cable-deals-ease-spectrum-crunch/).

transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements.”<sup>12</sup> Comcast subsequently attempted to explain the discrepancy in a lengthy explanation of how “in [a] sense, the transactions were integrated.”<sup>13</sup> And then there was the explanation that Comcast had to make in order to explain that its CFO, Michael Angelakis, didn’t mean what he said when he told an investor conference in January 2012 that “[w]e never really intended to build that spectrum.”<sup>14</sup> Comcast called Mr. Angelakis’ rather clear declarative statement a “shorthand reply on a subject with a long and complex history.”<sup>15</sup>

The only effort the Applicants make in their letter to address the substance of T-Mobile’s public interest showing is an attempt to counter T-Mobile’s showing that their oft-repeated claim of Verizon Wireless’ superior spectral efficiency is based on an invalid methodology.<sup>16</sup> Applicants argue that the Commission should ignore the fact that, by their own admission, smartphones use on average around 35 times the bandwidth used by featurephones because “smartphone penetration ... changes over time” and is “highly complex.” But all efficiency analyses, including the overly simplistic one urged by Applicants, are necessarily snapshots in time. And while clearly helpful to the Applicants’ position, it is astounding that Applicants find the simple math of calculating the impact of smartphones that use more capacity is too “complex” to undertake. Applicants’ suggestion that the analysis should allocate to T-Mobile rather than AT&T the break-up spectrum which T-Mobile has recently received<sup>17</sup> is yet another red herring – T-Mobile has only just received authorization to acquire this spectrum and has had no chance to deploy it (in sharp contrast to the spectrum that both Verizon Wireless and the other Applicants have held for years without deploying). But in any event, allocating the break-up spectrum to T-Mobile rather than AT&T would not change the fact that Verizon Wireless’ spectrum efficiency is the worst in the industry by any meaningful standard.<sup>18</sup> T-Mobile will shortly submit additional information that further underscores this fact.

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<sup>12</sup> *Comcast Executive Defends Verizon-SpectrumCo Deal*, POLITICO PRO, dated Mar. 8, 2012.

<sup>13</sup> Letter to Marlene H. Dortch from Michael H. Hammer, Counsel to Comcast Corporation, WT Docket No. 12-4, dated Mar. 22, 2012, at Response to Question 18 (“*Comcast Letter*”).

<sup>14</sup> See *Comcast Letter* at Question 17; see also *Spectrum Warehousing: Were They or Weren’t They?*, Wireless Week Blogs, dated Mar. 26, 2012, available at: <http://www.wirelessweek.com/Blogs/Wireless-Week-Blog/Spectrum-warehousing-were-they-or-werent-they/>.

<sup>15</sup> *Comcast Letter* at Response to Question 17 (emphasis added).

<sup>16</sup> *Verizon May 21 Letter* at p. 4.

<sup>17</sup> *Id.* at n. 16.

<sup>18</sup> See *T-Mobile May 15 Ex Parte*, at pp. 5-6, see also n. 8 and related text *supra* .

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***Applicants Cannot Refute T-Mobile's Showing That Their Transactions Harm Competition***

There is an old saying among lawyers that “if the facts are against you, argue the law. If the law is against you, argue the facts. If both the facts and the law are against you, pound the table.” Applicants have clearly begun to pound the table. The Commission should not be misled by their latest diversionary tactic that aims to deflect attention from the significant impact that these transactions will have on competition in the marketplace. T-Mobile submits that the Commission’s review of the cold, hard facts will amply demonstrate that the proposed spectrum transfers do not serve the public interest.

The Applicants have repeatedly urged that the Commission’s review should not be about T-Mobile or any other carrier and that their transactions should be judged on their own merits. Applicants’ latest letter, which again tries to turn the Commission’s sights on T-Mobile and away from the paucity of public interest support for their own applications, belies the sincerity of their plea. The evidence presented by T-Mobile and others demonstrates that although Verizon Wireless may benefit from locking up the last swath of extremely valuable AWS spectrum and foreclosing access to it by any of its competitors, it does not have a near term need for the spectrum it seeks to acquire and that the transaction fails the public interest test. The Commission should promptly deny these applications.

Respectfully submitted,

*/s/ Jean L. Kiddoo*

Jean L. Kiddoo  
Patrick J. Whittle  
Counsel to T-Mobile USA, Inc.

cc (by electronic mail):

Jim Bird	Charles Mathias	Jim Schlichting
Sandra Danner	Kate Mataves	Austin Schlick
Neil Dellar	Virginia Metallo	Susan Singer
Angela Giancarlo	Paul Murray	Marius Schwartz
Rick Kaplan	Louis Peraetz	Michael C. Smith
Zachary Katz	Tom Peters	Joel Taubenblatt
Evan Kwerel	Joel Rabinovitz	Thuy Tran
Paul LaFontaine	Eric Ralph	Aleks Yankelevich