



May 30, 2012

BY ELECTRONIC FILING

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

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

Dear Ms. Dortch:

As part of their proposed spectrum transaction, Verizon Wireless and the nation's largest incumbent cable operators have entered into a series of Commercial Agreements under which they would act as agents selling one another's services and would create a Joint Operating Entity ("JOE") to develop technology to integrate wireless and wireline products and services. These new relationships have changed market dynamics in significant ways by giving the parties strong incentives to cooperate rather than compete. For example, several commenters have noted Verizon's recent decision to cease offering stand-alone digital subscriber line ("DSL") service, a move that effectively raises the cost of the only wireline alternative to cable modem service in most areas throughout the country.¹ Verizon's decision to compromise its own broadband product just as it gains access to what had been the primary competing product demonstrates the potential these Commercial Agreements have to reshape competition in a variety of markets.

Yet another recent development highlights the potential for anticompetitive effects arising from the alliance of the nation's largest wireless carrier and its largest cable system operators. On May 21, those cable operators (along with Cablevision) announced that they will enable each other's broadband customers to access their metro WiFi networks, totaling over

¹ See, e.g., Letter from William M. Wiltshire to Marlene H. Dortch, WT Docket No. 12-4 (filed May

50,000 hotspots, under the name “CableWiFi.”² WiFi is taking on increasing importance in the evolution of wireless networks. According to Cisco Systems, mobile offload onto WiFi will double between 2011 (11 percent) and 2016 (22 percent).³ In the abstract, then, this new WiFi capability could help alleviate bandwidth constraints on cellular networks in major urban areas.

However, because WiFi networks rely heavily on wireline networks – controlled in most parts of the country by Verizon and/or its cable company partners – the public has no assurance that the CableWiFi network will be equally available to all consumers. If, for example, Verizon Wireless receives exclusive access to its cable allies’ WiFi network under the JOE, then Verizon would have the incentive and ability to discriminate against its wireless competitors by denying the competitors’ customers access to connectivity on similar terms and conditions.⁴ A similar disparity could also arise if the JOE developed proprietary technology that customizes the WiFi offload network in a way that provides Verizon Wireless preferential access to the network, or makes the network less capable when accessed by others. These latter forms of discrimination are feasible through various means, including authentication protocols and connectivity procedures that make accessing the HotSpots more onerous for subscribers of other carriers.

Other forms of anti-consumer discrimination are also possible. For instance, cable companies are understood to be in the process of deploying set-top boxes that can leverage consumers’ broadband connections for use as in-home Wi-Fi points of presence that the cable operator – not the consumer – controls. This new parallel WiFi offering gives cable companies the ability to exempt Verizon Wireless (or other, preferred over-the-top) traffic from typical broadband caps by, for example, routing the traffic through a separate WiFi router with separate service set identifiers (SSIDs) contained within a set-top box. Comcast, for example, has already claimed that Xfinity streaming content routed through Xbox 360 consoles is distinct from other traffic routed over the consumer’s high speed Internet connection and, therefore, not subject to data caps, because Xfinity content is provisioned “over a separate, additional bandwidth flow into the home for use of this service.”⁵ As a result, the Applicants could reasonably be expected

² See, e.g., Press Release, “Major U.S. Cable Companies Join Forces on WiFi,” YAHOO! FINANCE (May 21, 2012) (*available at* <http://finance.yahoo.com/news/major-u-cable-companies-join-100000756.html>).

³ See Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011-2016 (Feb. 14, 2012) (*available at* http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html).

⁴ Notably, while in October 2011 Comcast had touted the commercial opportunities of allowing “Cellular offload via WiFi for mobile network operators,” the Applicants’ recent CableWiFi press release omitted any reference to such access. See, e.g., Ken Falkenstein, VP Wireless Technology, Comcast, “Small Cells and the Cable Industry,” Federal Communications Commission Public Forum: Indoor Deployments of Small Cell Sites, at 21, October 28, 2011, *available at*: http://wireless.fcc.gov/spectrum/Small_Cell/Final_Small_Cell_Forum_panel_2.pdf

⁵ Tony Werner, Executive Vice President and Chief Technology Officer, Comcast, “The Facts about Xfinity TV and Xbox 360: Comcast is Not Prioritizing,” May 15, 2012, *available at*:

to treat new ‘dual-capability’ set-top boxes as a license to discriminate against broadband traffic that originates on equipment that the Applicants do not themselves control.

The Verizon/Cable alliance would also create incentives that could frustrate a competitive response to this type of anti-competitive discrimination. WiFi offload works so efficiently because it uses radio transmissions for only a very small portion of the route taken by data traffic. The vast majority of the route is handled by a wireline network. In most areas of the country, there are only two such wireline networks with the ubiquity and capacity for carrying this traffic: the incumbent cable system and the incumbent local exchange telephone carrier. Because these networks, which were developed over decades with the aid of government-mandated access to poles, ducts, and right-of-way, are unlikely to be replicated, the proposed Verizon/Cable alliance could effectively reduce the available options to a single choice – which is unavailable to competitors of the largest wireless operator and the largest cable operators.

In these circumstances, the Commission cannot accurately assess the public interest implications of the proposed transactions without fully exploring the arrangements surrounding the CableWiFi network and other WiFi initiatives explored in the technology joint venture described in the Applicants’ Public Interest Statement. The Applicants’ public statements strongly suggest that the JOE remains focused on using cable facilities for WiFi connectivity.⁶ As Comcast Chief Operating Officer Dave Watson explained, “Mobility is an increasingly important part of our Xfinity services roadmap. WiFi technology, coupled with our agreements with Verizon Wireless, are two significant ways we are executing on our strategy.”⁷

At a minimum, the Commission should ask the parties to clearly state whether they will impose any commercial or practical limitations on access to the network, whether they will make their wireline networks available for use by competing WiFi offload networks on non-discriminatory terms and conditions, and whether technologies developed by the JOE will be used to discriminate among those accessing the network. Only by conducting a probing inquiry into such issues can the Commission get the complete understanding of the potential effects of this aspect of the proposed transactions that is necessary to make its public interest determination in this proceeding. Accordingly, we urge the Commission to conduct an appropriate investigation as expeditiously as possible.

<http://blog.comcast.com/2012/05/the-facts-about-xfinity-tv-and-xbox-360-comcast-is-not-prioritizing.html>

⁶ See, e.g., Description of the Transaction and Public Interest Statement, WT Docket No. 12-4, at fn. 71 (Dec. 21, 2011); Press Release of Time Warner Cable, “Major U.S. Cable Companies Join Forces on WiFi,” May 21, 2012, *available at*: <http://finance.yahoo.com/news/major-u-cable-companies-join-100000756.html>.

⁷ *Id.*

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Respectfully submitted,

/s/

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