

June 8, 2012

**Ex Parte**

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: ***Application of Cellco Partnership d/b/a Verizon Wireless 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:

Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC have submitted an extraordinary amount of evidence in this proceeding showing that the proposed AWS license assignments will benefit customers. Tellingly, T-Mobile does not challenge the detailed traffic and customer data in the record demonstrating that Verizon Wireless will need the AWS licenses from SpectrumCo and Cox to supplement its current AWS and 700 MHz spectrum in some markets by 2013 and in even more by 2015 and beyond. Instead, T-Mobile continues its efforts to commandeer this proceeding to advance its business interests by raising issues that have no bearing on the Commission's review.<sup>1</sup> The Commission should ignore these attempts and grant the applications.

T-Mobile dedicates much of its advocacy to its own claimed spectrum needs, as if this assignment proceeding were a comparative hearing to determine which of several applicants should be awarded the AWS spectrum. In support of its proffered need for more spectrum, T-Mobile recounts its "well established challenges" as a result of its "complex re-farming plan," and its "difficult network modernization."<sup>2</sup> T-Mobile's laments may be probative of the facts that T-Mobile and its parent Deutsche Telekom decided to exit the market rather than invest and that they decided to sit out the 700 MHz auction—while Verizon Wireless continued to invest some \$18 billion over the last three years, half of which was devoted to increasing the capacity of its existing network.

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<sup>1</sup> *Ex Parte* Letter from Jean L. Kiddo, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, FCC, WT Docket No. 12-4 (May 24, 2012) ("*May 24 T-Mobile Ex Parte*"); *Ex Parte* Letter from Jean L. Kiddo, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, FCC, WT Docket No. 12-4 (May 30, 2012) ("*May 30 T-Mobile Ex Parte*").

<sup>2</sup> *May 24 T-Mobile Ex Parte* at 1-2.

But T-Mobile's "challenges" are irrelevant to the issue here, as the Commission's task is not to undo the effects of T-Mobile and Deutsche Telekom's prior business decisions and it is statutorily barred from considering alternative transactions. As the Commission has explained, Congress limited the FCC's review of license assignments under Section 310(d) of the Communications Act to "consideration [of] the buyer proposed in an assignment application, and [the FCC] cannot consider whether some other proposal might comparatively better serve the public interest."<sup>3</sup> Indeed, Congress made clear over fifty years ago that "in applying the test of the public interest, convenience, and necessity the Commission must do so as though the proposed transferee or assignee were applying for the construction permit or station license ... as though no other person were interested in securing such permit or license."<sup>4</sup> T-Mobile's advocacy throughout this proceeding, however, has sought to have the Commission directly contravene these directives.

T-Mobile's recent filings again make the same spectrum efficiency assertions it has made before, without drawing any nexus between its efficiency "analysis" and any basis (let alone a lawful one) upon which the Commission could deny or condition these license assignments.<sup>5</sup> T-Mobile first argued that it would use the AWS spectrum more efficiently in its petition to deny the transaction.<sup>6</sup> In response, as part of a broader showing relating to Verizon Wireless' spectrum use, Verizon Wireless pointed out that it has, in fact, been a good steward of spectrum. By a straightforward, objective and easily verifiable measure of efficiency, the number of connections per MHz, Verizon Wireless is actually the most efficient provider.<sup>7</sup> Notably, CTIA just included this exact same efficiency metric in its recent Competition Report reply comments.<sup>8</sup>

T-Mobile continues to harp on this same claim while ignoring Verizon Wireless' overwhelming evidence regarding 4G LTE data traffic growth and its customers' growing need for more spectrum. Instead, T-Mobile tries to argue that Verizon Wireless is not a good steward of spectrum, makes misleading claims about efficiency, and misconstrues statements made by Verizon Wireless. T-Mobile's cited quotations (some of which are quite dated) only underscore that Verizon Wireless' subscribers have adopted and use 4G services at rates faster than anticipated, and cannot be used to suggest that Verizon Wireless does not need AWS spectrum. Verizon Wireless has repeatedly explained that its internal projections have been conservative, and that actual consumer demand has exceeded those projections repeatedly.<sup>9</sup> Consumers have

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<sup>3</sup> See, e.g., *Citadel Communications Co., Ltd. and Act III Broad. of Buffalo, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 3842, 3844 ¶ 16 (1990).

<sup>4</sup> H.R. REP. NO. 82-1750 (1952), reprinted in 1952 U.S.C.C.A.N. 2234, 2246.

<sup>5</sup> See *May 30 T-Mobile Ex Parte*.

<sup>6</sup> See *Petition to Deny of T-Mobile, USA Inc.*, WT Docket No. 12-4, at i (Feb. 21, 2012).

<sup>7</sup> Joint Opposition to Petitions to Deny and Comments of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC., WT Docket No. 12-4, at 23-31 (Mar. 2, 2012) ("Joint Opp.").

<sup>8</sup> Reply Comments of CTIA-The Wireless Association, WT Docket No. 11-186, Ex. B (Apr. 30, 2012).

<sup>9</sup> See Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, ¶ 10,

found more uses for 4G than anticipated, which is good news, and Verizon Wireless has had to adapt to ensure it continues to provide its subscribers with the level of service they expect.<sup>10</sup> This is not a proceeding to assess whether a third party is more “efficient” than the applicant by some metrics. The Commission has never evaluated license transfers on that metric, nor could it do so without violating Section 310(d) of the Act.

Nonetheless, the Applicants below address the clear flaws in T-Mobile’s spectrum efficiency analysis<sup>11</sup> to ensure the record is accurate.

***T-Mobile’s Smartphone Claims are Faulty and Self-Serving.*** T-Mobile’s contention that efficiency must account for smartphone penetration is an exercise in cherry picking particular statistics designed to “demonstrate” that T-Mobile is a more efficient spectrum user.<sup>12</sup> Yet, these claims are neither internally consistent nor readily verified by the Commission or third parties. A few of these shortcomings:

*Ignores 4G smartphones.* Cisco has explained that a smartphone on a 4G network—which Cisco defines as WiMAX and LTE<sup>13</sup>—“is likely to generate 50 percent more traffic than the same model smartphone on a 3G or 3.5G network.”<sup>14</sup> Verizon Wireless’ experience on its 4G LTE network confirms that 4G customers access far more data traffic than 3G customers. T-Mobile’s attempt to equate all smartphones users on different networks produces misleading results.

*Ignores connected devices.* Cisco projects that a tablet generates 121 times the traffic of a traditional phone, and a laptop 498 times more traffic. Yet those connected devices are not accounted for in T-Mobile’s analysis, rendering it invalid for this reason as well.<sup>15</sup>

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Ex. 3 to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, File No. 0004993617 (Dec. 16, 2011); *Ex Parte* Letter from Adam D. Krinsky, Attorney for Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 4 (May 29, 2012).

<sup>10</sup> See Supplemental Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, ¶¶ 9-10, 23-29, 39-48, Ex. 2 to Joint Opp.; *Ex Parte* Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 5-6 (May 17, 2012).

<sup>11</sup> See Supplemental Declaration of Dennis Roberson, ¶ 12, Ex. 1 to *May 30 T-Mobile Ex Parte* (“Roberson Suppl. Decl.”).

<sup>12</sup> See Declaration of Dennis Roberson, ¶ 8, Ex. A to Reply of T-Mobile, USA, Inc. to Opposition to Petition to Deny, WT Docket No. 12-4 (Mar. 26, 2012) (“Roberson Decl.”).

<sup>13</sup> CISCO, CISCO VISUAL NETWORKING INDEX: GLOBAL MOBILE DATA TRAFFIC FORECAST UPDATE, 2011-2016, at 14 (Feb. 14, 2012) (explaining that “4G connections ... include mobile WiMAX and Long-Term Evolution (LTE)”).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 8.

*Applies only a subset of smartphone penetration data.* T-Mobile relies on a single third-party analyst report to assert that it has a higher smartphone penetration rate than Verizon Wireless,<sup>16</sup> yet other third-party analyst reports reach just the opposite conclusion regarding smartphone penetration.<sup>17</sup> Any effort to assign substantial weight to a single, one-point-in-time smartphone statistic fails to account for the dynamic growth in smartphones and risks an invalid and fleeting comparative result.

*Applies limited and overly restrictive usage data.* T-Mobile cites a newspaper article for the claim that its smartphone customers access more data than Verizon Wireless customers, but fails to acknowledge that the claim is based on a survey of just 700 Android users, or 0.000005% of the 127 million smartphone users in the United States today.<sup>18</sup> Besides being statistically insignificant, this sample excludes altogether the Apple iOS platform used by many Verizon Wireless customers, which according to press reports is used by 80 percent of the top 10 percent of heaviest data users.<sup>19</sup>

***T-Mobile's Spectrum Weighting Ploy is Equally Flawed.*** T-Mobile's spectrum efficiency calculation also incorporates a gerrymandered spectrum weighting formula. That calculation also is internally inconsistent and wrong. For example, it effectively doubles a carrier's 700 MHz and cellular holdings, and it is not a coincidence that T-Mobile holds none of that spectrum today.<sup>20</sup> T-Mobile does not place any added weight on AWS spectrum—spectrum that it does hold—even though it asserts in this same proceeding that 700 MHz spectrum and AWS spectrum are the only “LTE spectrum” bands.<sup>21</sup> T-Mobile's fabricated “LTE spectrum” category has been repeatedly rebutted.<sup>22</sup>

*Continues the false notion of “better” spectrum.* T-Mobile's spectrum weighting scheme is invalid: there is no such thing as objectively “better” spectrum for all purposes, as the

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<sup>16</sup> Roberson Decl. ¶ 8 (citing J.P. MORGAN COMPANY, TELECOM, CABLE AND SATELLITE SPECTRUM AND COMPETITION OVERVIEW, 4Q 2011 WRAP-UP AND 2012 OUTLOOK, Mar. 5, 2012).

<sup>17</sup> SNL Kagan, Media Sector Report: Mobile Wireless Subscriptions by Subset Q4 '10-Q4 '11 (Apr. 10, 2012).

<sup>18</sup> Roberson Suppl. Decl. ¶ 12 (citing Willa Plank, *Confessions of an iPhone Data Hog*, Wall Street Journal (Jan. 27, 2012) (detailing “[a]n NPD Connected Intelligence study of 700 Android smartphone users”).

<sup>19</sup> See Phil Goldstein, Report: iPhone users make up 80% of heaviest data users, Fierce Wireless (May 30, 2012) (citing Analysis Mason report based on Arbitron Mobile's monitoring application of an equally small sample size), available at <http://www.fiercewireless.com/story/report-iphone-users-make-80-heaviest-data-users/2012-05-30>.

<sup>20</sup> Roberson Decl. ¶ 12.

<sup>21</sup> *May 24 T-Mobile Ex Parte* at 2.

<sup>22</sup> Joint Opp. at 61-63; see also *Ex Parte* Letter from Adam D. Krinsky, Counsel for Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4, at 7 (May 2, 2012) (“*Applicants' May 2 Ex Parte*”).

Applicants have repeatedly explained.<sup>23</sup> T-Mobile cites Verizon Wireless' statements that 700 MHz has strong propagation characteristics,<sup>24</sup> but no one disputes that. It is, however, also indisputable that different spectrum bands have their own advantages and disadvantages. For example, the Commission has observed that higher band spectrum has its own capacity-based benefits,<sup>25</sup> and efficiency claims rely heavily on capacity capabilities.<sup>26</sup> T-Mobile's fixation on a purported heightened value of low-band spectrum remains peculiar, given that the AWS licenses at issue in this review are not low band, T-Mobile voluntarily declined to participate in the 700 MHz auction, and Verizon Wireless recently announced its intent to sell its lower 700 MHz licenses through an open bidding process contingent on the completion of the pending AWS license purchases.

*Unreasonably limits review to top 50 markets.* T-Mobile's decision to apply its artificial spectrum weighting in only the top 50 markets underscores that this efficiency exercise is all about presenting T-Mobile in the most flattering (but false) light. T-Mobile's analysis is limited to the urban markets it has selectively focused on. Giving extra weight, let alone twice the weight, to low-band spectrum in the top 50 markets—where the capacity advantages of high-band spectrum are particularly attractive—is nonsensical.

The Commission should complete its review and grant the proposed license assignments. In doing so, it should discourage further efforts to interject frivolous and irrelevant issues into what should be a straightforward spectrum-only license assignment review.

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<sup>23</sup> Joint Opp. at 55-61, n.194; *Applicants' May 2 Ex Parte* at 7-9.

<sup>24</sup> *May 30 T-Mobile Ex Parte* at 3-4.

<sup>25</sup> *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd 9664, 9832 ¶ 289 (2011); *Ex Parte* Letter from Russell H. Fox, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, FCC, WT Docket No. 10-133 *et al.*, at 2 (Dec. 2, 2010) ("There are certain circumstances where upper band spectrum is as effective as, or preferred to, lower band spectrum in providing competitive services, particularly for enhancing capacity in highly populated areas.").

<sup>26</sup> T-Mobile's own expert concedes that "wireless network deployments in a given geographic area reflect both coverage- and capacity-driven consideration." Roberson Decl. ¶ 11.

Marlene H. Dortch

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Respectfully submitted,

/s/ \_\_\_\_\_

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