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**REDACTED – FOR PUBLIC INSPECTION**

June 8, 2012

**VIA ECFS AND HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless herewith submits the attached *ex parte* notice and attachment. The filing contains Confidential Information subject to the Protective Order (DA 12-50) in the above-referenced proceeding.

Pursuant to the terms of the Protective Order, two copies of the Redacted version of the attached filing are being filed with the Office of the Secretary. The Redacted version of the filing is also being filed electronically through the Commission's Electronic Comment Filing System. In addition, one copy of the Confidential version of the filing is being delivered to the Office of the Secretary and two copies are being delivered to Sandra Danner of the Wireless Telecommunications Bureau's Broadband Division.

Should any questions arise concerning this filing, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara Preiss".

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Marlene H. Dortch

June 8, 2012

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Attachments

cc: Jim Schlichting  
Susan Singer  
Joel Taubenblatt  
Aleks Yankelevich  
Kate Matraves  
Austin Schlick  
Sean Lev  
Jim Bird  
Joel Rabinovitz  
Virginia Metallo  
Marius Schwartz  
Paul LaFontaine  
Sandra Danner  
Best Copy and Printing

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Dear Ms. Dortch:

On June 6, 2012, Professor Michael Katz of the University of California at Berkeley and Theresa Sullivan of Compass Lexecon, along with John Scott and Tamara Preiss on behalf of Verizon Wireless and Adam Krinsky, outside counsel to Verizon Wireless, met with the following Commission staff: Jim Schlichting, Susan Singer, Joel Taubenblatt, Aleks Yankelevich, and Kate Matraves of the Wireless Telecommunications Bureau; Austin Schlick, Sean Lev, Jim Bird, Joel Rabinovitz, and Virginia Metallo of the Office of General Counsel; and Marius Schwartz and Paul LaFontaine of the Office of Strategic Planning. Mia Hayes, outside counsel to SpectrumCo, attended the meeting.

During the meeting, Professor Katz discussed the appropriate standard for review of the transactions, as described in the attached presentation. He explained why some parties' claims

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Marlene H. Dortch  
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for different spectrum screens and for de facto spectrum caps were meritless. He observed that Verizon Wireless' ordinary course of business documents reveal the pro-competitive nature of these license assignments, and explained that there are no facts in the record nor any economic basis to assert that the transactions are exclusionary in nature. Professor Katz further emphasized that deal critics in essence seek a "beauty contest" standard that compares the transaction before the Commission with other potential transactions that might have occurred. This standard is not only inconsistent with competition policy and secondary market principles, which rely on market forces rather than the government to allocate spectrum, but is also flatly contrary to the Communications Act. He noted that consumer welfare will increase by enabling Verizon Wireless to use the spectrum to enhance 4G output and observed that Verizon Wireless consumers would be harmed if the company does not gain sufficient spectrum to meet growing demand.

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,



Attachment

cc: Jim Schlichting  
Susan Singer  
Joel Taubenblatt  
Aleks Yankelevich  
Kate Matraves  
Austin Schlick  
Sean Lev  
Jim Bird  
Joel Rabinovitz  
Virginia Metallo  
Marius Schwartz  
Paul LaFontaine

# An Economic Analysis of Cox and SpectrumCo License Assignments to Cellco

Michael L. Katz

June 6, 2012

# First Things First: These assignments are not mergers.

- VzW is not buying customer relationships.
- The license assignments will not eliminate competitors.
- The assignments allow VzW to acquire a productive input to expand its output while maintaining quality.
- Consumers will benefit.
- Analyzing the transaction as if it were a merger would be a mistake and could harm consumers.
  - Could miss anticompetitive purchase rationales.
  - Could block organic business growth and distort competition that would otherwise benefit consumers.
- Appropriate analysis demonstrates the transactions are not exclusionary and should be approved.

# The Appropriate Standard

- Central objective of competition policy is to promote consumer welfare.
- Well-functioning secondary markets benefit consumers by allowing those carriers that value the spectrum the most to obtain spectrum licenses.
- Secondary market transactions can harm competition in limited circumstances: policy oversight is warranted but it must be careful not to chill competition.
- *Exclusion Standard*: Allow secondary market transactions unless they are exclusionary.
- Key question is how to distinguish competition from exclusion.

# The Appropriate Test

- It is **not** exclusionary for VzW to outbid rival carriers for spectrum licenses because VzW can generate greater consumer value.
  - Commission has long stated it protects competition, not competitors.
- It would be exclusionary if VzW outbid rival carriers **only** because it would earn greater profits by excluding rivals and harming competition.
- A sequential, two-prong test is appropriate and widely used in competition policy.
  - **Initial Screen:** Use concentration as a proxy for market power to determine whether there is even the potential for exclusion. Proceed to second prong only if there is.
  - **Detailed Review:** Determine whether company had a pro-competitive business justification for its actions or whether it was able to obtain the licenses only because of exclusionary benefits.
- This type of standard is widely recognized as sensible and appropriate even though it may not track changes in total surplus perfectly.

# These assignments pass the appropriate test.

- Initial Screen
  - The Hawaii REAG, 120 of the 135 BEAs, and 2,531 of the 2,577 counties affected by these transactions are below the screen. (Cellco *et al.*, Joint Opposition to Petition to Deny, footnotes 126 and 127.)
  - In the majority of the CMAs in which the screen is exceeded, it is by less than 10 percent. (*Id.* page 46.)
- Detailed Review
  - Fundamental industry trends and VzW ordinary-course documents demonstrate that VzW has a non-exclusionary rationale for purchasing the spectrum licenses.
- Approving the license assignments is pro-competitive and pro-consumer.

# Opponents fail to propose appropriate review standards or tests.

- Several commenters try to misuse the spectrum screen.
  - Deal critics try to turn the screen into a cap.
  - Deal critics try to gerrymander the screen.
- Rather than make meaningful attempts to identify exclusion, deal critics implicitly propose a “beauty-contest” standard.
  - This standard has been rejected in the past and is inconsistent both with the relevant statute and with competition-policy principles generally.
  - Assignment critics provide no meaningful evidence that blocking the assignments would benefit consumers.

# Transaction critics confuse harm to competitors with harm to competition.

- Some rival carriers seek preferential treatment.
  - This is a rational pursuit of private interest: rivals would obtain licenses on favorable terms, which would increase their profits.
  - Not a rational pursuit of public interest: Handicapping large carriers to favor smaller rivals would: (a) make it harder for those service providers that have been most successful in satisfying consumer demands to continue to do so, and (b) reduce competitive pressures on rivals to improve offerings to consumers.
- The Commission should reject an industrial policy of picking winners and losers among carriers.

# THE INITIAL SCREEN

# Several commenters try to misuse spectrum screen.

- Several commenters misunderstand the role of the screen.
  - It is a screen, not a cap or algorithm for evaluating the transaction.
  - “[T]he Commission has used an initial screen to identify markets where the spectrum amounts held by a transferee post-transaction provide reason for further competitive analysis of spectrum concentration.” (ATT-Qualcomm Order, FCC 11-188, ¶ 31.)
- Several commenters try to gerrymander the spectrum screen.
  - Deal critics mischaracterize the significance of spectrum below 1 GHz and the degree to which various bands can be used for LTE.
  - Professor Cramton’s proposal is based on a fundamental economic error.

Consider these last two points in more detail...

# Assignments critics mischaracterize spectrum properties.

- 4G service is not limited to the 700 and AWS bands.
  - Sprint plans to deploy LTE on its 1900MHz spectrum (PCS). (Sprint press release, Oct. 7, 2011.)
  - Clearwire plans to deploy TDD-LTE on the 2.5GHz spectrum band (BRS/EBS). (Clearwire press release, August 3, 2011.)
  - VzW plans to deploy LTE on PCS spectrum after migration. (Verizon Wireless *ex parte* letters, April 30, 2012 and May 31, 2012.)
- Spectrum above 1 GHz has advantages, as well as costs.
  - “higher-frequency spectrum can be ideally suited for providing high capacity where it is needed, such as in high-traffic urban areas.” (FCC, 15th Report, ¶ 296.)
  - Fixed costs of setting up high frequency network may be higher, but incremental costs may be lower.

# Professor Cramton's basis for revising the spectrum screen is fatally flawed.

- The goal of any screen should be to capture effects on consumer welfare, not competitor profits.
- Spectrum HHI potentially captures effects on consumer welfare only to the extent that it is a good proxy for output effects.
- Professor Cramton's proposal fails to develop a useful proxy for output effects.
  - Production of wireless services requires a mix of inputs.
  - Value of spectrum to carriers depends, in part, on costs of other inputs needed to produce wireless services.
  - The value tells us little about competitive effects.
- There is no sound basis for a general conclusion that a carrier with cheaper spectrum is a less effective competitor.

To see why, consider how license markets work...

# The market value of spectrum is a poor proxy for competitive effects.

- Auctions will tend to equilibrate profits across different types of spectrum, including substitution of other inputs.
- All else equal, competitive effects are the same whether a service provider:
  - purchases license for \$200 million and invests \$800 million in network facilities to produce given output level; or
  - purchases license for \$600 million and invests \$400 million in network facilities to produce that output.
- Example of flaw: high-frequency spectrum
  - Fixed costs of setting up a high-frequency network may be higher, but incremental costs may be lower so that a carrier may produce more output with high-frequency spectrum even if it requires greater capital expenditures at low traffic levels.

# DETAILED REVIEW

# The Detailed Review for Exclusion

- The appropriate standard asks whether VzW was willing and able to obtain the licenses solely because of exclusionary benefits.
- It is **not** exclusionary for VzW to outbid rival carriers for spectrum licenses because VzW can generate greater consumer value.
- VzW ordinary-course business documents clearly demonstrate that the assignment transactions make economic sense absent any exclusionary effects.

# Evidence indicates transactions are being undertaken for pro-competitive reasons.

- VzW's network-planning process indicated a clear need for additional spectrum rights to supplement macro-cell splitting, micro cells, and tiered pricing.
  - There is a broad consensus that demand is growing rapidly.
  - The ability to rely on cell splits, migration, and other techniques is limited, and expansion through these means becomes increasingly difficult and costly.

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# A best-alternative-assignment standard is inappropriate.

- This would be a return to “beauty contests.”
- The Congress and Commission have moved away from beauty contests for good reason: they are costly and inefficient.
- This standard is inconsistent with statutory language:
  - ... the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee. (47 U.S.C. §310(d).)
- Standard clearly is inconsistent with competition-policy principles, which recognize consumer benefit of allowing market-based assignments of licenses absent exclusionary behavior.
- In any event, advocates of a beauty contest have not provided any meaningful evidence that VzW is not the prettiest.
  - Deal critics provide no useful framework with which to assess highest-value uses.
  - Deal critics don’t account for VzW’s high service quality.

# Professor Chevalier's theoretical analysis of warehousing has no probative value.

- Professor Chevalier uses an internally inconsistent model in an attempt to identify a theoretical possibility.
- Professor Chevalier conducts little or no factual analysis and, indeed, never claims that her theoretical possibility is empirically relevant to the license assignments.
- Professor Chevalier provides no standard for assessing competitive effects.

# Critics have put forth no valid evidence of warehousing.

- VzW invests billions of dollars per year in expanding capacity through such means as macro cell splits, micro cells, and the roll-out of LTE.
- VzW has been rapidly expanding output.
- VzW has tried to swap or sell spectrum that it does not need.
- VzW has advocated making federal spectrum available.
  - This would be an extremely odd way to warehouse.
- Long-term spectrum planning is not evidence of warehousing.