

June 11, 2012

Ex Parte

VIA ELECTRONIC FILING

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

This proceeding has triggered an array of off-base claims, including some raised in two recent filings submitted by Information Age Economics (“IAE”).¹ As Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC explain briefly below, IAE’s contentions are both irrelevant to the pending spectrum applications and wrong on the merits.

Claims Regarding the 700 MHz Band Are Irrelevant and Wrong. This proceeding involves proposed acquisitions of AWS spectrum – not 700 MHz spectrum. IAE’s claims about the 700 MHz band, and device interoperability in that band in particular, have no bearing whatsoever on this proceeding, do not belong here and, under settled Commission precedent, should not even be considered.² Although IAE spends pages on the merits of device interoperability in the 700 MHz band, it did not even bother to file comments in the open FCC proceeding that is addressing that precise topic, implying that it (and its backers) are more concerned about interfering with this transaction than about addressing device interoperability itself. In any event, issues relating to 700 MHz device interoperability are not relevant here, and should be addressed in the separate proceeding regarding those matters.

Moreover, IAE’s assertions are meritless. IAE wrongly asserts that the Upper 700 MHz C Block open platform rules require interoperability and then proceeds on that false premise to attack Verizon Wireless’ actions in making new devices available to its customers. These rules

¹ See Letter from Alan Pearce, IAE, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (filed May 24, 2012) (“May 24 Letter”); Letter from Alan Pearce, IAE, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (filed May 29, 2012).

² See, e.g., *Verizon Communications Inc. and MCI, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18445 ¶ 19 (2005) (in transaction proceeding, FCC only considers “transaction-specific” harms, meaning those that directly “arise from the transaction”); *IT&E Overseas, Inc. and PTI Pacifica Inc.*, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 5466, 5474 ¶ 14 (WCB/WTB/IB 2009) (same). The Commission, moreover, has previously rejected efforts to inject 700 MHz interoperability into license transfer proceedings (*AT&T Inc. and Qualcomm Inc.*, 26 FCC Rcd 17589, 17620 ¶ 71 (2011)), and it has opened a separate rulemaking proceeding to examine interoperability. *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, 27 FCC Rcd 3521 (2012).

in fact do not require an Upper C Block licensee to offer devices that are interoperable across all 700 MHz spectrum (and none of the Commission's rules do, for that matter).³ Moreover, as Verizon Wireless has documented, it is deploying state-of-the-art devices that operate on a wide range of spectrum bands including Upper 700 MHz C, AWS, PCS and cellular. The remainder of IAE's discussion of interoperability criticizes AT&T, which of course has no bearing on this proceeding.

Claims that the Commercial Agreements Amount to Formation of a Cartel Are Meritless and Not Germane to this License Assignment Proceeding. IAE's claim that the agency and other commercial agreements between Verizon Wireless and each of the MSOs effectuate communications cartels is unavailing. First, as noted previously, the Commission is authorized to review license assignments under Section 310(d) of the Communications Act, not other transactions that may involve the same parties.⁴ Moreover, the Department of Justice's Antitrust Division is engaged in a separate review of the agreements, and it is that government agency, not the Commission, which has legal authority to engage in traditional competition analysis of such arrangements.

Second, as Applicants have demonstrated,⁵ IAE's claims of cartel lack factual support and are in any event wrong on the merits. A cartel is "[a] combination of producers or sellers that join together to control a product's production or price."⁶ Nothing in the Agency Agreements, the Reseller Agreements, or the Innovation Technology Joint Venture will allow the MSOs or Verizon Wireless to control the production or price of the other's products – let alone undercut competition. For example, the Agency Agreements merely authorize the MSOs and Verizon Wireless to act as sales *agents* for one another – with pricing established at the sole discretion of the principal.⁷ These types of sales agency arrangements are pervasive in the telecommunications industry and have never been characterized as constituting a "cartel."⁸ The

³ See 47 C.F.R. § 27.16(a) (network access requirements "apply only to the authorization for Block C").

⁴ See Joint Opposition of Cellco Partnership d/b/a Verizon Wireless, *et al.* to Petitions to Deny and Comments, WT Docket No. 12-4, at 70-79 (Mar. 2, 2012) and sources cited therein.

⁵ See *id.*, Exhibit 6, at 5 - 7.

⁶ *Freedom Holdings, Inc. v. Spitzer*, 447 F. Supp. 2d 230, 251 (S.D.N.Y. 2004) (quoting BLACK'S LAW DICTIONARY 206 (7th ed. 1999)) (internal quotation marks omitted); accord IIA Philip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 405a, at 26 (2d ed. 2002) ("Competing firms form a cartel when they replace independent decisions with an agreement on price, output, or related matters." (emphasis added)).

⁷ *Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290, 318 (2d Cir. 2008) (rejecting plaintiff's attempt to characterize an agency agreement as a cartel and explaining that, unlike cartels, which ordinarily result in reductions of output, agency agreements often result in expansion of output).

⁸ See, e.g., Press Release, DIRECTV, AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T / DIRECTV to AT&T Customers (Nov. 3, 2011), <http://investor.directv.com/releasedetail.cfm?ReleaseID=620738>; Press Release, CenturyLink, Inc., DIRECTV and CenturyLink Sign Agreement to Offer Video Services to CenturyLink Customers (Aug. 12, 2010), <http://news.centurylink.com/index.php?s=43&item=57>; Press Release, Frontier Commc'ns Corp., Frontier Communications Teams with AT&T to Offer Wireless Voice and Data Products (Nov. 15, 2011), <http://phx.corporate-ir.net/phoenix.zhtml?c=66508&p=irol-newsArticle&ID=1630726&highlight=>.

Reseller Agreements likewise would not afford any party the right to control the production or price of another's products. And the Innovation Technology Joint Venture will not control the price, sales, or content of any Applicant's products. Under these circumstances, there is simply no basis for IAE's claims of cartel.

Third, the points IAE raises in support of its cartelization claim – to the extent they can be discerned – are baseless. From the start, IAE concedes that its arguments are premised on the “assum[ption] that if the Verizon Wireless-SpectrumCo-Cox transaction is approved, AT&T will follow-up with its own version of a collaborating cartel between itself and another set of cable companies.”⁹ Such crystal-ball speculation has no place in this proceeding and cannot serve as the basis for asserting alleged harms from the instant transactions or the commercial agreements. Moreover, IAE's suggestion that the commercial agreements contemplate “[t]he carving up of the territory of the U.S. between members of a cartel”¹⁰ is utterly meritless: Verizon Telecom and the MSOs compete aggressively in their overlapping geographic service areas, and nothing in the agreements here either expressly provides for or otherwise promotes any territorial allocation of markets among them. To the contrary, the Applicants maintain strong incentives to compete against one another to ensure returns on their substantial infrastructure investments. Nor will the commercial agreements “establish a monopsony structure confronting third party owners/providers/distributors of video content and other services”¹¹ Indeed, the variety of channels for the distribution of video has indisputably grown substantially, and now includes not only MSOs, cable programmers, satellite distributors, and broadcast networks, but also a wide variety of providers formerly limited to the provision of telephony, over-the-top providers such as Netflix and Amazon.com, and application developers delivering content to mobile devices. Nor is there anything identified in these transactions that affects the market for video content; it is an entirely spurious and irrelevant claim.

Finally, much of IAE's criticism of Verizon Wireless and the MSOs is a critique of the U.S. broadband market compared to broadband availability internationally – criticism that is at odds with the Commission's own findings about the growth of broadband. IAE also tries to tie this transaction to the obviously unrelated acquisition of AT&T's cable assets by Comcast a decade ago, bemoans what it perceives to be lack of intramodal wireline competition, and voices fears about the use of deep packet inspection by Internet service providers. These topics have nothing to do with the spectrum-only transaction before the Commission and are not relevant to the license assignments at issue here.

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⁹ May 24 Letter, Attachment (Ex Parte Comments) at 3 n.1.

¹⁰ *Id.* at 3.

¹¹ *Id.*

Respectfully Submitted,

/s/

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