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June 19, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, and Cox
TMI Wireless, LLC, WT Docket No. 12-4
Notice of *Ex Parte* Meeting

Dear Ms. Dortch,

On Tuesday June 19, 2012, Derek Turner, Research Director of Free Press and Joel Kelsey, Policy Advisor of Free Press met with Paul Murray, Senior Legal Advisor to Commissioner Rosenworcel.

During the meeting, we summarized and presented the arguments made in a June 4, 2012 highly confidential written *ex parte* filed by Free Press in this proceeding. We reiterated that these transactions as proposed fail to meet the public interest standard of the Communications Act. As we noted in the June 4th *ex parte*, the Applicants have failed to make the case that the transfer of these scarce public airwaves to Verizon has any measurable benefits that could outweigh the numerous harms that will be created by further increasing the spectrum gap between Verizon and other carriers. We reviewed the record evidence that demonstrates conclusively that Verizon is badly overstating its need for this spectrum, particularly in the Eastern 2/3 of the U.S. where it already holds AWS licenses. We discussed the glaring problems with Verizon's current opposition to modifying the 2021 buildout deadline on these AWS licenses in light of its stated immediate need for this spectrum, and discussed how Verizon's internal communications informed this aspect of the transaction review. We also noted how the Commission had expressed concerns about the so-called "spectrum gap" in the recent *CMRS Reports*, *AT&T-T-Mobile Staff Report* and *AT&T-Qualcomm Order*. We discussed the inherent problems in the existing spectrum screen and noted how the screen itself is merely a tool, not a rule nor a safe harbor for spectrum consolidation. We pointed out that the public interest standard in the Act is the ultimate hurdle that the Applicants must overcome, not the flawed spectrum screen. We also observed that the Verizon's planned use of the carrier aggregation features of LTE-Advanced will result in the indistinguishable comingling of Verizon's upper 700 MHz C-block spectrum with AWS spectrum, and noted that such comingling does not result in the voiding of the "no locking/no blocking" C-block license requirements. Further, we noted that the

Commission has a duty to resolve any outstanding complaints against any of the Applicants for alleged violations of prior transaction conditions before concluding its review of the current transactions.

We emphasized that though there is no combination of conditions that would make these transactions a net positive for the public interest, there are several conditions that would work to lessen the overall public interest harms. First, we argued that Verizon should be ordered to divest AWS spectrum where post-transaction it would hold more than 20 MHz of paired AWS spectrum (i.e. Verizon should not be allowed to add an additional 10 x 10 MHz AWS license in any market where it already holds a minimum of 10 x 10 MHz of AWS, in addition to its 11 x 11 upper 700 MHz C-block licenses). These markets lie in the Eastern 2/3 of the country, areas where Verizon is already capable of launching a 20 x 20 MHz LTE-Advanced network using its existing AWS and upper 700 MHz C-block licenses. Verizon simply does not need additional AWS spectrum in these markets, not now, not in 2013, not in 2015, and beyond. Approving these particular transfers would clearly not be consistent with the purposes of the Communications Act. Again, we emphasized that the Commission's analysis would be better informed by focusing on Verizon's internal documents that speak to its need for this spectrum, not Verizon's ever-changing and self-serving pleadings made to the Commission upon the consummation of this proceeding. Second, we urged the Commission to avoid any further warehousing of spectrum by modifying the buildout requirement of the licenses at issue in this proceeding. We argued that the current 2021 substantial service deadline should be substantially shortened. We further suggested that while the traditional "use it or lose it" condition in combination with a substantially shortened license term would provide increased buildout incentives, that the Commission should explore the benefits of alternatives such as a "use it or share it" license condition. However, we emphasized that a "use it or share it" license condition on the AWS spectrum that is the subject of these transfers would only provide the appropriate buildout incentives if the Commission adopted it in concert with the ordered divestitures of AWS licenses where Verizon already holds a minimum of 20 MHz of AWS spectrum.

Sincerely,

/s/

S. Derek Turner
Research Director
Free Press
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CC via email:

Paul Murray

