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July 12, 2012

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 For Consent To Assign
Licenses; WT Docket No. 12-4

Dear Ms. Dortch:

On July 2, 2012, Comcast Corp. submitted an ex parte notice of a meeting in which Verizon Wireless ("Verizon"), Comcast, Time Warner Cable Inc., Bright House Networks, LLC, and Cox TMI Wireless LLC (the "MSOs") met with Louis Peraertz and Dave Grimaldi from Commissioner Clyburn's office to discuss the nature and effects of the various commercial agreements between Verizon and the MSOs. Specifically, Verizon and the MSOs contended that these commercial agreements (i) do not by their terms prevent the MSOs from offering backhaul or WiFi services to competitors of Verizon; and (ii) do not reduce the incentives of the MSOs to offer such services to competitors of Verizon on the same terms and conditions that they would absent the commercial relationships between Verizon and the MSOs because they would be compensated for these services.

This contention takes too narrow a view of the potential for the various commercial agreements to adversely affect the incentives of the Parties in an anticompetitive way. The various agreements' effects on incentives should not be analyzed in isolation from one another. Verizon and the MSOs have entered into a series of agreements that touch on a number of key aspects of their respective businesses. Therefore, the critical question is not whether an MSO would likely earn more money as a reseller of Verizon wireless services compared to what it would

likely earn as a provider of competitive backhaul, but whether these various agreements – taken as a whole in the context of the broad new relationship between the Parties – are likely to increase the ability or incentives of any Party to reduce competition contrary to the public interest.

Verizon and the MSOs are actual and potential competitors in a number of markets, including broadband cable and internet services, backhaul and special access, wireless, and WiFi. As a result of the various Agent Agreements, Reseller Agreements, and the IT Joint Venture, Verizon and the MSOs have fundamentally changed the nature of their relationship from competitors to partners, where they will now have multiple interrelated interests. They have the ability and incentive to cooperate and reduce competition to make all of those ventures as a whole more successful and profitable for each other, or risk retribution for taking pro-competitive independent actions that are not in their broad mutual economic best interests. For example, if an MSO reduces its competitive efforts in a way that furthers Verizon’s overall economic interests, Verizon might reward it by choosing to not roll out FiOS in that MSO’s territory, or to do a roll out less quickly or aggressively, or to charge higher prices for the services it provides. Verizon also might compensate that MSO in other ways, for example, by providing it with cutting-edge devices more quickly or under more favorable terms.

The Courts and Commission have recognized the potential for cooperative arrangements to adversely affect the competitive incentives of the parties beyond the narrow scope of the agreed cooperative arrangements. In *United States v. Dairy Farmers of America*, 426 F.3d 850, 861 (6th Cir. 2005), the court found that a transaction involving two dairy facilities was likely to have an anticompetitive effect even though the transaction did not result in the facilities being brought under common control, because other unrelated relationships between the owners of the facilities had the potential to reduce their incentive to compete against each other. The court explained that focusing an inquiry only on explicit control “ignores the fact that [the parties] have closely aligned interests to maximize profits via anticompetitive behavior,” and “[t]o think that the nature of the interaction between the two dairies will not change is naive, because that would be contrary to the economic incentive of all parties.” *Id.* at 862.¹ A competitive effects analysis that focuses only on explicit contractual rights and control “ignores the possibility that

¹ The FCC cited *Dairy Farmers* in its decision in *News Corporation, The DIRECTV Group Inc., and Liberty Media Corporation*, 23 FCC Rcd 3265 (2008), ¶ 45 (“Just as Liberty Media, DIRECTV-Puerto Rico, and Liberty Global would benefit from a reduction in competition between DIRECTV-Puerto Rico and LCPR via an explicit combination of DIRECTV-Puerto Rico and LCPR, so they would benefit from a reduction in competition via the instant transaction,” which aligned the parties’ economic incentives through common partial ownership).

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there may be a mechanism that causes anticompetitive behavior other than control.”
*Id.*²

The Commission has also recognized that joint ventures can change the incentives of the venture parties. In *Applications of VoiceStream Wireless Holding Corp. and Aerial Communications Inc. for Consent to Transfer*, 15 FCC Rcd 10089 (2000) (“VoiceStream”), the Commission stated that it “recognizes that joint ownership interests may afford a non-controlling interest holder the opportunity to influence the conduct of the controlling partner. In addition, a partnership operating in one market may provide the means for one partner to influence the actions of the second partner in other markets where both also have interests.” VoiceStream, ¶ 25. The Commission’s concern for such anticompetitive influence depends on factors such as “(1) whether either joint venture partner may have leverage over the other partner through the collaborative interest; and (2) the extent to which these joint venture partners have opportunities and incentives to threaten competition in any other markets where both are, or might otherwise become, competitors.” VoiceStream, ¶ 27.

The multiple interrelated interests of Verizon and the MSOs raise similar concerns, which the narrow and formalistic analysis of Verizon and its MSO partners fails to recognize. Therefore, the Commission should look at the overall effect of the commercial agreements on the incentives of Verizon and the MSOs in assessing the likely competitive effects of these agreements, and should ensure that the MSOs are required to treat rivals of Verizon Wireless on nondiscriminatory terms to ensure a level playing field.

Sincerely,

/s/

Tara S. Emory
Counsel to Sprint Nextel Corporation

cc: Dave Grimaldi
Louis Peraertz

² See also 426 F.3d at 862 (the special relationships between the parties created “closely aligned interests to maximize profits via anticompetitive behavior”).