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July 19, 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:

Beginning with its initial Comments in this proceeding,¹ Sprint Nextel Corporation (“Sprint”) has expressed its concern about the effects that the arrangements among Verizon Wireless (“Verizon”) and the Cable Companies² will have on the availability of backhaul services and access to WiFi controlled by the Cable Companies. Several other concerned parties have echoed these concerns and have called on the Commission to impose WiFi access conditions on the Applicants, including MetroPCS Communications, Inc. in its most recent comments.³ Notwithstanding MetroPCS’s clear request for a WiFi access condition, Sprint fears

¹ Comments of Sprint Nextel Corporation in WT Docket No. 12-4, filed February 21, 2012 (“Sprint Comments”), §§ II-III, pp. 5-12.

² Comcast Corp., Time Warner Cable, Inc., Bright House Networks, LLC, and Cox Communications, Inc. (Verizon and the Cable Companies collectively, the “Applicants”).

³ MetroPCS Communications, Inc. Comments on the Impact of the Verizon Wireless / T-Mobile Spectrum Assignments on the Pending Verizon Wireless / SpectrumCo and Verizon Wireless / Cox Transactions, WT Docket No. 12-4, filed July 10, 2012.

that some may assume that the Commission's Data Roaming rules⁴ already mandate the same result that could be achieved by the imposition of a WiFi access condition. Sprint believes that this would be a dangerous position for the Commission to take and that only a clear condition mandating nondiscriminatory access and WiFi authentication procedures will serve the public interest.

The Applicants May Dispute the Applicability of Data Roaming Obligations.

The Commission should not hope that reminding the Applicants of existing Data Roaming obligations will solve problems of access to Cable Company WiFi networks. Although, as MetroPCS points out, the definition of "commercial mobile data service" could include WiFi, Verizon and AT&T have already pointed to WiFi as an *alternative* to data roaming.⁵

Additionally, as Sprint pointed out in its comments, Verizon has opposed the adoption of the Data Roaming rules and filed an appeal of the Commission's order adopting them.⁶ While the controversies over the applicability of the Data Roaming rules and the appeal are being worked out, the harms to mobile subscribers from discriminatory WiFi access would be accumulating.

The Data Roaming Rules Do Not Provide Adequate Relief.

Sprint supports the Commission's Data Roaming Order and believes that full compliance with the Data Roaming rules would be in the public interest. However, relying on existing rules will not address the fundamental structural problems posed by this transaction.

A WiFi Data Roaming condition does nothing to provide competitive wireless carriers with access to the last-mile infrastructure over which Verizon and the Cable Companies have exclusive control. Competing wireless carriers, such as Sprint, cannot build their own WiFi networks or other "small cells" without access to the wired backbone networks that the cable companies and ILECs control as a legacy of their respective monopoly network builds. Where wireless carriers may have had a choice of two wired networks for potential WiFi and small cell system construction, only a single option would effectively exist following the transaction.

⁴ 47 C.F.R. § 20.12(e).

⁵ Letter of Tamara Preiss, Vice President, Verizon, in WT Docket No. 05-265 (November 5, 2010), pp. Letter of Michael Goggin, General Attorney, AT&T Services, Inc. in WT Docket No. 05-265 (November 23, 2010) p. 6.

⁶ Sprint Comments, § IV, pp. 13-15.

The close partnerships contemplated by the Commercial Agreements would destroy even the limited backhaul options that currently exist, replacing competition with cooperation that will give Verizon and the Cable Companies the incentive to increase profits instead of competing on price.

Furthermore, the Data Roaming requirements incorporate a dispute-resolution process that could needlessly defer enforcement of nondiscriminatory WiFi access. Under the dispute-resolution process for Data Roaming, the Commission determines whether a particular offering is commercially reasonable based on the totality of the circumstances.⁷ To make this determination for each case, the Commission must conduct a lengthy analysis of a wide variety of factors.⁸ There is no designated time limit for resolution, and Data-Roaming complaints are not automatically placed on the accelerated docket.⁹ The Cable Companies' strong financial incentive to maintain their favorable arrangement with Verizon, combined with the Commission's likely difficulty in evaluating what is commercially reasonable in the broader context of an anticompetitive market arrangement, would inevitably prolong the dispute resolution process.

Proposed Conditions

The ambiguity and delay resulting from a reliance on the Data Roaming rules would not prevent an adverse effect on competition in the wireless broadband market, which may be extremely difficult, if not impossible, to reverse. Instead, the Commission should take clear, immediate action to remedy the competitive harms of this transaction by imposing the following conditions:

- Cable Companies that operate WiFi networks must not impose any restrictions to access to those networks by wireless subscribers that are not imposed uniformly on customers of all wireless carriers. This prohibits discriminatory access and authentication procedures. Any WiFi technologies or protocols developed by the Cable Companies and Verizon through their joint venture must be made available to all wireless carriers at nondiscriminatory rates and terms.

⁷ Data Roaming Order, ¶ 86.

⁸ The Commission identified a non-exclusive list of least seventeen factors it may analyze in making this determination (e.g., propagation characteristics of the spectrum, previous arrangements, availability of other roaming partners, etc.). *See id.* ¶¶ 86-7.

⁹ *Id.* ¶¶ 77, 84

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- Cable Companies must not discriminate in the cost or speed of handling traffic on their WiFi networks based on a customer's choice of wireless carrier.
- Cable Companies must not restrict wireless carriers from access to existing cable facilities for the installation and attachment of microcells.
- Cable Companies and the Verizon ILEC must provide backhaul services to wireless carriers on a non-discriminatory basis, with costs proportional to the requested capacity of a line.

Sincerely,

/s/

Antoinette Cook Bush
David H. Pawlik
Counsel to Sprint Nextel Corporation

cc: Louis Peraertz
Dave Grimaldi
Paul Murray