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August 1, 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; Applications of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC, WT Docket No. 12-175
Notice of *Ex Parte* Meeting

Dear Ms. Dortch,

On Monday July 30th, Derek Turner, Research Director of Free Press and Joel Kelsey, Policy Advisor of Free Press met with Commissioner Mignon Clyburn, Dave Grimaldi, Chief of Staff, Louis Peraertz, Legal Advisor, and Keia Johnson, Law Clerk to Commissioner Clyburn.

During the meeting, we summarized our arguments made in various filings in the above captioned proceedings. Specifically, we noted that the review and the evidence produced should inform the Commission's policymaking beyond these specific license transfers. We described how the review illustrates the competitive problems created by the spectrum gap between the Twin Bells (Verizon and AT&T), and all other competitors. We noted how the review indicates that the U.S. is not in fact facing a general spectrum crisis, but a spectrum *allocation* crisis, one that is compounding the very real competition crisis in the wireless market. We described how the evidence conclusively shows that Verizon has not made a persuasive case to the Commission that it is in dire need of this spectrum in a majority of U.S. cellular markets, but is instead using its market power to take the path of least resistance to increase capacity, while other carriers, who have far less spectrum, innovate and struggle to construct networks of comparable capabilities. We noted the negative impact this has on consumers who struggle to afford a quality wireless experience. We pointed out how this review once again illustrates the pressing need to scrap the current spectrum screen, and replace it with tools that better account for the differences in the value of individual spectrum blocks. We urged the Commission to make it clear at the conclusion of this review that it has strong concerns about the spectrum gap and the impact it has on wireless competition.

We also noted how the review and Verizon's subsequent 11th hour deal with T-Mobile underscores the duplicitous nature of Verizon's spectrum claims. In the deal with T-Mobile, Verizon has volunteered to reduce its AWS spectrum holdings in regions of the U.S. where it generally was claiming spectrum exhaust before the Commission just weeks prior.

We pointed out that Verizon, through the deal with T-Mobile, is voluntarily reducing its AWS holdings to 30 MHz in 24 markets that it otherwise would have held 40 or more MHz. Verizon's voluntary divestiture *below* 40 MHz in these markets suggests that either Verizon is badly overstating its need for 40 MHz of AWS in any given market, or the carrier is making the implicit argument that the public interest benefits of the transfer of spectrum to a maverick competitive carrier like T-Mobile outweigh the potential harms that might occur if Verizon's self-serving capacity predictions come true. We suggested that this voluntary reduction demonstrates conclusively that further spectrum divestitures would better serve the public interest than letting Verizon hoard excess spectrum during a time of a supposed spectrum crisis.

We also urged the Commission to attached strong buildout conditions to whatever AWS spectrum Verizon is granted. We suggested that more aggressive buildout deadlines could reduce Verizon's incentives to hoard excess AWS spectrum, or at the very least would, in combination with data-roaming obligations, create improved incentives for Verizon to wholesale this excess capacity.

We discussed our unresolved concerns with the Joint Marketing and Joint Operating Entity agreements between Verizon, Comcast, Cox, Time Warner Cable, and Bright House Networks. We discussed how Congress in 1996 envisioned a future of robust competition between phone and cable companies, not a future where they stopped competing and joined forces. In particular we pointed out that Section 652(c) provides an example of the intention of Congress to promote vigorous competition over price and quality of service between these market sectors. We suggested the Act requires the Commission to be skeptical of these collaborations, which undermine Congressional goals, and to take action to ensure they are not used as vehicles to distort markets and thwart competition. While we remain skeptical that these joint arrangements can be conditioned in any way to prevent competitive harms, we did suggest that prohibiting the JMAs in the local markets where Verizon's LEC footprint overlaps its cable partner's franchise footprint would mitigate some of the competitive harms. We also suggested that a time limit be placed on the JOE of no more than three years. This, along with a special master acting in an oversight capacity could help ensure the JOE is not used as a vehicle for collusion or other anticompetitive activities.

Sincerely,

/s/

S. Derek Turner
Research Director
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