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August 2, 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
Notice of *Ex Parte* Communications

Dear Ms. Dortch:

On July 31, 2012, representatives of the Alliance for Broadband Competition (“ABC”) and other concerned organizations met with FCC Staff working on the pending applications in the above-cited docket to discuss the harms to competition that would arise from the proposed license assignments and the Commercial Agreements among Verizon Wireless (“Verizon”) and Comcast Corp., Time Warner Cable Inc., Bright House Networks, LLC, and Cox TMI Wireless LLC (the “Cable Companies,” collectively with Verizon, the “Applicants”).

ABC is an informal coalition of communications service providers, trade associations, and public interest organizations. Members of ABC have made numerous filings, including Petitions to Deny, Petitions to Condition, or Comments, describing the problems arising from the spectrum assignments and related agreements and have met individually with Commissioners and FCC staff. The purpose of this meeting was to demonstrate that a wide variety of interested parties are joined in requests for stringent conditions on these transactions. Although meeting participants voiced specific concerns that are not necessarily shared by all attending parties uniformly, there is a consensus that the Verizon + Cable transactions pose serious threats to competition.

ABC representatives attending the meeting were: Mike Saperstein of Frontier Communications Corporation (“Frontier”); Genny Morelli of the

Independent Telephone and Telecommunications Alliance; Rebecca Thompson and Tim Donovan of RCA – The Competitive Carriers Association (“RCA”); Jodie Griffin of Public Knowledge; Charles McKee, Trey Hanbury, and Rafi Martina of Sprint Nextel Corporation (“Sprint”); Meagan Foster of the National Telecommunications Cooperative Association; Phillip Berenbroick and Daniel O’Connor of the Computer & Communications Industry Association (“CCIA”); Frank Lamancusa of Bingham McCutchen LLP, Outside Counsel to Vonage Holdings Corp. (“Vonage”); and the undersigned of this firm, Outside Counsel to Sprint. Also attending were non-ABC members: Joel Kelsey of Free Press; Parul Desai of Consumers Union; and Mark Cooper of the Consumer Federation of America (“CFA”).

FCC staff members attending all or part of the meeting were: Rick Kaplan, General Counsel Sean Lev, Jim Bird, and Joel Rabinovitz of the Office of General Counsel; Jim Schlichting, Joel Taubenblatt, Susan Singer, and Peter Trachtenberg of the Wireless Telecommunications Bureau; Lisa Gelb of the Wireline Competition Bureau; Chief Economist Marius Schwartz and Paul Lafontaine of the Office of Strategic Planning and Policy Analysis; and Martha Heller and Sarah Whitesell of the Media Bureau.

As we explained to Commission Staff, the unprecedented arrangements between Verizon and the Cable Companies turn competitors into collaborators and in doing so provide strong incentives for the Applicants to use their market power to undermine competition in numerous geographic and product markets, discriminate against competitors, and disadvantage consumers. The Commission should impose firm conditions on the Applicants to lessen the anticompetitive effects of the arrangements.

The Commercial Agreements

The Commercial Agreements present the Commission with a critical opportunity to enforce the spirit of the Telecommunications Act of 1996, which relies on robust competition between Incumbent Local Exchange Carriers (“ILECs”) and cable operators, the two industries with nationwide wired infrastructure, to provide benefits to consumers – or allow the Applicants to fundamentally undermine it. The Commercial Agreements provide Verizon and the Cable Companies with exceptional market power while offering few, if any, countervailing public benefits. Furthermore, as Sprint and Public Knowledge pointed out, the Commission must consider the likely future behavior of the Applicants, given the incentives provided by the arrangements. CFA has demonstrated that the Commercial Agreements fail every test presented by the Department of Justice / Federal Trade Commission Joint

Venture Guidelines.¹ CFA has proposed that the Department of Justice appoint a “Special Master” to oversee compliance with conditions imposed on the Applicants and that the Commission establish a separate docket framing the issues and providing an expedited mechanism through which parties may seek enforcement action from the Commission.

Consumer Interests

Public interest and consumer advocacy organizations have deep concerns about the effects that the transactions will have on consumers. Many of the top-rated wireless and wireline carriers consumers would naturally turn to as competitive alternatives, according to Consumer Reports surveys, have been smaller companies that are most likely to suffer from the coordinated efforts of Verizon and the Cable Companies. In proposing necessary Commission actions to help address the harms posed by the Commercial Agreements, Free Press advocates looking first to structural conditions before behavioral requirements. It asks that the Commission prohibit cross-marketing in areas where Verizon and the Cable Companies both have wired network facilities and fears that the Joint Operating Entity (“JOE”) formed by the Applicants will become an exclusive “club” where members can exclude competitors and discuss further methods of collusion. A time limit of two to three years should be placed on each of the Commercial Agreements.

Backhaul

Wireless carriers and rural ILECs approach the transactions from very different points of view, but from both perspectives the agreements will interfere with the carriers’ ability to provide service to subscribers. From the standpoint of Sprint and other wireless carriers, the partnership between Verizon and Cable Companies means that there will be little chance of any real competition in backhaul developing between the only two operators of wired networks in much of the nation. Backhaul is a vital input to wireless service that will only grow in importance with the move to more heterogeneous network configurations that increasingly rely on smaller cells. For Frontier and other rural ILECs, it appears that the close relationship between Verizon and the Cable Companies is likely to result in Verizon awarding its backhaul contracts to the local Cable Company without the opportunity for competitive bids, thus foreclosing the rural ILEC from competing for the business. Rural ILECs use wireless backhaul contracts in suburban and fringe areas to anchor the build-out of their wired networks into remote territories that otherwise could not sustain the costs of wired broadband deployment.

Access

¹ Antitrust Guidelines for Collaborations Among Competitors, U.S. Federal Trade Commission and Department of Justice, April, 2000, *available at* <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>.

Sprint, CCIA, and others are concerned about access to bottleneck facilities necessary for the provision of their service. In addition to backhaul, this bottleneck will include WiFi hotspots and integrated WiFi networks that depend upon control of last-mile infrastructure, such as those constructed by the Cable Companies. To address the threat to competition posed by the Applicants' incentive to exercise discriminatory and anti-competitive control over last-mile bottleneck facilities, Sprint proposes that the Commission impose a condition requiring the Cable Companies to give competing carriers access to WiFi facilities on fair and reasonable terms and conditions, including access to any authentication protocols and intellectual property necessary for such access. Consumers Union recommends WiFi offload to its constituents as a way to reduce the cost of mobile service; it is important that this benefit not be destroyed for customers of wireless or wireline carriers competing with Verizon or the Cable Companies.

Similarly, Vonage needs nondiscriminatory access to Verizon's wireless broadband facilities over which Vonage's mobile app rides. Verizon, a competitor to Vonage for both voice and text messaging services, already has the incentive and ability to discriminate against disruptive and competitive services like Vonage's. Prior to the JOE, the Cable Companies had a countervailing incentive to respond to any Verizon discrimination by providing wireless customers that interconnected with their extensive wireline broadband networks with a product that fully supports over-the-top services such as Vonage's, thereby increasing the value of the Cable Companies' services. Vonage contends that Verizon's influence and ability to control JOE product development and availability neutralizes the Cable Companies' prior ability to constrain Verizon discriminatory conduct. Accordingly, Verizon's ability to interfere with Vonage's competing services will increase. Vonage users, along with subscribers of competing wireless carriers, could see their traffic "scenically routed" through the Internet, increasing latency and resulting in a poor user experience. Additionally, Vonage is concerned that its voice and text messaging traffic will be classified differently than that of Verizon (*i.e.*, a "managed service" vs. not a "managed service") and that such a designation will result in a measurable difference in quality and treatment.

The Commercial Agreements also create other forms of access discrimination. Data roaming is increasingly important for smaller and rural wireless carriers. RCA indicates that many smaller competitive carriers have been unable to reach commercially reasonable roaming arrangements with Verizon. The unconditioned grant of nationwide spectrum to Verizon will serve to further cement Verizon's (along with AT&T's) dominance in the market for nationwide roaming. To mitigate the spectrum aggregation and roaming harms associated with the proposed transaction, RCA asks the Commission to ensure that smaller and rural carriers have access to critical voice and data roaming services as well as clarifying that the Commission's data-roaming rules apply to integrated WiFi networks.

Spectrum

RCA and CCIA expressed concerns of their members regarding the additional concentration of wireless spectrum that the license assignments would give to Verizon. Free Press noted that the Verizon/T-Mobile spectrum deal proves that Verizon does not actually face the spectrum crunch that it decried. The nation faces a *spectrum allocation* crisis, not a general spectrum crisis. To respond to the competitive harms posed by excessive spectrum concentration, RCA encourages the Commission to condition the transactions on Verizon's voluntary divestiture of its Lower 700 MHz A and B Block, impose interoperability requirements on Verizon's A and B Block and AWS licenses, and to require additional AWS divestitures. Similarly, CCIA and Free Press support a 30 MHz per-CMA AWS spectrum cap.

We appreciate the opportunity to address these concerns with Commission Staff. More detail is available in petitions, comments, and ex parte presentations filed by the individual companies or organizations in this Docket and the participants would be happy to answer any questions.

Sincerely

/s/

David H. Pawlik

cc: Jim Bird
Lisa Gelb
Martha Heller
Rick Kaplan
Paul Lafontaine
Sean Lev
Joel Rabinovitz
Jim Schlichting
Marius Schwartz
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