

August 20, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Re: WT Docket No. 12-4, Proposed Assignment of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless

Dear Ms. Dortch:

On Friday, August 17, John Bergmayer, Senior Staff Attorney and Jodie Griffin, Staff Attorney at Public Knowledge (PK) spoke by phone with Louis Peraertz, wireless advisor to Commissioner Clyburn. (An earlier-filed version of this *ex parte* did not fully list the participants on the call.)

PK explained why the Commission should resolve the confidentiality challenge it filed in this docket on May 9th, which argued that certain information currently marked as “confidential” or “highly confidential” by the submitting parties should, in fact, be public. PK provided the following reasons:

- 1: The confidentiality challenge is not moot because the material in dispute may be relevant to resolving outstanding legal questions—for example, whether these transactions may raise problems under the FCC’s attribution rules.<sup>1</sup>
- 2: The confidentiality challenge is also not moot because if the FCC opens an ongoing docket for complaints after the FCC votes its order, complainants will not have access to important information protected by the challenged confidentiality designation. Complainants ought to be able to make their best case, but improper designation may keep information from being reviewed by important individuals.
- 3: The parties will be required to file periodic status updates, and the parties may apply to the DoJ to reauthorize the JOE. The material in dispute may be relevant to these issues, and if the material is not properly designated it ought to be made public.
- 4: By resolving PK’s confidentiality challenge on its merits, the FCC will contribute to public confidence in its procedures, and will signal to all stakeholders that the FCC takes its procedures seriously the complaints that are made under its rules.
- 5: Even if it would not make a difference to the outcome of any particular proceeding, the public has a right to know the basis of agency decisions. If the material the Commission bases its decision on does not in fact meet the criteria for confidential or highly confidential status, then it should be made public to serve this broader goal of transparency.

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<sup>1</sup> See Petition to Deny of Public Knowledge, WT Docket No. 12-4, Conf. App. A-8-A-9 (Feb. 21, 2012). This issue also bears on the future of viewpoint diversity in cable and broadcast programming. See Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (Aug. 20, 2012).

Finally, PK notes that some material that is may be designated as confidential or highly confidential in the FCC's docket may have been made public in DoJ filings, and should be public in the FCC's record as well.

Respectfully submitted,

/s John Bergmayer  
*Senior Staff Attorney*  
PUBLIC KNOWLEDGE