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January 18, 2012

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *In re Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses*, WT Docket No. 12-4, Ex Parte Notice and Submission of Confidential and Highly Confidential Documents Pursuant to First and Second Protective Orders  
**REDACTED – FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

On January 13, 2012, the individuals listed below met with Austin Schlick, General Counsel; Jim Bird, Senior Counsel, Office of General Counsel; and Renata Hesse, Joel Taubenblatt, and Susan Singer of the Wireless Telecommunications Bureau to discuss the above-referenced proceeding:

- Michael Glover, John Scott, Kathy Grillo, and Katharine Saunders of Verizon;
- Kathy Zachem, Lynn Charytan, and David Don of Comcast Corporation (“Comcast”), represented by Arthur Burke and Pritesh Shah of Davis Polk & Wardwell LLP and Michael Hammer and Brien Bell of Willkie Farr & Gallagher LLP;<sup>1</sup>
- Terri Natoli of Time Warner Cable Inc. (“Time Warner Cable”);
- Daniel Brenner of Hogan Lovells on behalf of Bright House Networks, LLC (“Bright House”); and
- Barry Ohlson of Cox Enterprises, Inc. and J.G. Harrington of Dow Lohnes, PLLC, representing Cox Communications and Cox TMI Wireless.

During the meeting, the parties discussed issues relating to the terms of the protective orders that will govern this proceeding, as well as issues regarding the submission of certain documents, as explained more fully below.

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<sup>1</sup> Michael Hammer and Brien Bell also represent SpectrumCo, LLC (“SpectrumCo”) in this matter.

On December 16, 2011, Verizon Wireless and SpectrumCo (an entity owned by Comcast, Time Warner Cable, and Bright House) (collectively, the “Applicants”) filed an application seeking Commission approval to assign certain spectrum licenses from SpectrumCo to Verizon Wireless.<sup>2</sup> Pursuant to Section 310(d) of the Communications Act, the Commission’s approval of the proposed license transfer is required. The proposed transaction is a sale of spectrum licenses only. It involves no assets, facilities, customers, or operating businesses. As described in the Public Interest Statement included in the application, the transaction demonstrably serves the public interest by moving spectrum that is not currently being used to serve consumers to a provider that will make efficient use of that spectrum to serve the public, and it raises no cognizable competitive issues.<sup>3</sup>

The parties entered into several separate commercial agreements (“Commercial Agreements,” or “Agreements”).<sup>4</sup> Those Commercial Agreements have no bearing on whether the spectrum sale is in the public interest, do not require Commission approval, and, for several reasons, do not need to be part of the formal record in this proceeding.

First, the proposed spectrum license sale and the Commercial Agreements are not contingent upon each other. Nothing in the Commercial Agreements requires approval of the spectrum license transaction, or vice versa.<sup>5</sup>

Second, the Commercial Agreements provide the parties to those agreements with the ability to act as agents selling one another’s services, and provide the members of SpectrumCo the option of acting as resellers in the future. They also establish a technology joint venture to develop innovative technology and intellectual property that will integrate wired video, voice, and high-speed Internet with wireless technologies. Sales agency agreements are common in the industry,<sup>6</sup> as are reseller agreements<sup>7</sup> and technology development agreements.<sup>8</sup> The

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<sup>2</sup> See File No. 0004993617. See also FCC, Public Notice, *Commission Opens Docket for Proposed Assignments of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless, LLC, and Designates These Applications as Permit-But-Disclose under the Commission’s Ex Parte Rules*, WT Docket No. 12-4, DA 12-35 (Jan. 11, 2012). A Public Notice seeking comment on the application has not been issued.

<sup>3</sup> File No. 0004993617, Form 603, Exhibit 1, Description of the Transaction and Public Interest Statement.

<sup>4</sup> See Comcast Corporation, Press Release, *Comcast, Time Warner Cable, and Bright House Networks Sell Advanced Wireless Spectrum to Verizon Wireless for \$3.6 Billion*, Dec. 16, 2011, available at <http://www.comcast.com/about/pressrelease/pressreleasedetail.aspx?SCRedirect=true&PRID=1134>.

<sup>5</sup> See *In the Matter of Applications for Consent to the Transfer of Control of Licenses From Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Order, 17 FCC Rcd 22633 ¶ 11 (2002) (“In short, because the AOL ISP Agreement survives regardless of whether the merger is consummated, we do not believe it is sufficiently merger-specific to consider in our review.”), *aff’d* *Consumer Federation of America v. FCC*, 348 F.3d 1009 (D.C. Cir. 2003).

<sup>6</sup> For example, DirecTV and AT&T just announced a three-year renewal of their agreement to market and sell each other’s services. See Press Release, DIRECTV, Inc., *AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T / DIRECTV to AT&T Customers* (Nov. 3, 2011), <http://investor.directv.com/releasedetail.cfm?ReleaseID=620738>. Best Buy, Radio Shack, and numerous other retailers are prominent examples of agents that sell the services of unaffiliated providers.

Commission – rightly – has never asserted authority to review such agreements or required parties to file such agreements, and there is no basis to do so here.

Third, in addition to being irrelevant to the Commission’s review of the spectrum sale and beyond the Commission’s authority, the Commercial Agreements contain highly sensitive commercial information that should not be publicly available or accessible to competitors or potential competitors. Disclosure of the terms and conditions of the Commercial Agreements would significantly harm the parties to those agreements by providing competitors and potential competitors with detailed information about, among other things, pricing and compensation matters, marketing strategies and roll-out plans, and other details about the way in which the parties to the Commercial Agreements will market services. The Second Protective Order adopted in this proceeding on January 17, 2012, recognizes the highly sensitive nature of these types of information.<sup>9</sup>

For all of these reasons, the Applicants believe that they should not be required to file the Commercial Agreements in this proceeding. Without waiving their position, however, in order to avoid undue delay in the Commission’s review of the spectrum transaction and in response to a Commission request, Applicants are submitting the Commercial Agreements<sup>10</sup> under separate cover pursuant to the enhanced protections of the Second Protective Order in WT Docket No. 12-4 and the January 18, 2012, e-mail from Commission staff confirming that these documents may be designated as Highly Confidential.<sup>11</sup> The Commercial Agreements fall squarely within categories identified in Appendix A of the Second Protective Order. For example, as described above, the Agreements contain “[i]nformation that discusses in detail current or future plans to

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<sup>7</sup> The Commission has identified more than 50 wireless resellers in the marketplace. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd 9664, App. C, Table C-6 (2011).

<sup>8</sup> *See, e.g.*, Leslie Horn, “Samsung Buying Sony’s 50 Percent Stake in Joint LCD Venture,” PCMag.com, Dec. 27, 2011 (describing a six-year joint venture between Samsung and Sony to develop LCD panel TVs).

<sup>9</sup> *In re Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses*, Second Protective Order, WT Docket No. 12-4, DA 12-51, Appendix A (WTB Jan. 17, 2012) (“*Second Protective Order*”). *See also Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations*, Second Protective Order, 26 FCC Rcd 6243, Appendix A (2011) (affording Highly Confidential treatment to, among other things, business plans, product strategies, advertising or marketing strategies, technology implementation or deployment plans and strategies).

<sup>10</sup> The Commercial Agreements being filed pursuant to the Second Protective Order are listed in Attachment A to this letter. While it is not typical for parties to file the specific commercial terms of a license transfer agreement, since those terms are not relevant to whether the transfer itself is in the public interest, the Applicants are also filing the spectrum License Purchase Agreement pursuant to the first Protective Order under separate cover. *In re Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses*, Protective Order, WT Docket No. 12-4, DA 12-50 (WTB Jan. 17, 2012).

<sup>11</sup> E-mail from Joel Rabinovitz, Office of General Counsel, FCC, to John Scott, Vice President and Deputy General Counsel, Verizon, *et al.* (Jan. 18, 2012).

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compete for a customer or specific groups or types of customers . . . including future procurement strategies, pricing strategies, product strategies, [and] advertising or marketing strategies, future business plans, technology implementation or deployment plans and strategies[.]”<sup>12</sup> In addition, the Agreements provide “information that details the terms and conditions of or strategy related to a Submitting Party’s most sensitive contracts (e.g., marketing, service or product agreements . . . and comparably sensitive contracts).”<sup>13</sup> Pursuant to the parties’ discussions with Commission staff, the parties have made a small number of redactions to the Commercial Agreements relating to pricing, compensation, and related provisions, given the very highly sensitive, competitive nature of the information contained therein.

The filing of the Commercial Agreements and the License Purchase Agreement does not constitute any admission or concession by the Applicants that the Agreements are relevant to the Commission’s review of the spectrum license sale or that the Commission has authority to consider the agreements as part of its review of the proposed transaction, and the Applicants expressly reserve all rights to argue that the Commercial Agreements have no relevance to this proceeding.

Please contact the undersigned should you have any questions regarding this matter.

Respectfully submitted,

Michael H. Hammer  
Michael H. Hammer

cc: Austin Schlick  
Jim Bird  
Renata Hesse  
Joel Taubenblatt  
Susan Singer  
Sandra Danner  
John Spencer

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<sup>12</sup> *Second Protective Order* Appendix A, ¶ 3.

<sup>13</sup> *Id.* ¶ 1.

**ATTACHMENT A**

1. Limited Liability Company Agreement of Joint Operating Entity, LLC, dated 12/2/11
2. VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, dated 12/2/11
3. Comcast Agent Agreement between Comcast Cable Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11
4. Reseller Agreement for Comcast Cable Communications, LLC between Cellco Partnership d/b/a Verizon Wireless and Comcast Cable Communications, LLC
5. VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc., dated 12/2/11
6. TWC Agent Agreement between Time Warner Cable Inc. and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11
7. Reseller Agreement for Time Warner Cable Inc. between Cellco Partnership d/b/a Verizon Wireless and Time Warner Cable Inc.
8. VZW Agent Agreement between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC, dated 12/2/11
9. BHN Agent Agreement between Bright House Networks, LLC and Cellco Partnership d/b/a Verizon Wireless, dated 12/2/11
10. Reseller Agreement for Bright House Networks, LLC between Cellco Partnership d/b/a Verizon Wireless and Bright House Networks, LLC
11. MSO Agreement between C Spectrum Investment, LLC, Time Warner Cable LLC, and BHN Spectrum Investments, dated 12/2/11