

February 9, 2012

VIA ELECTRONIC FILING

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

Re: *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC
For Consent To Assign Licenses; Application of Cellco Partnership d/b/a Verizon
Wireless and Cox TMI Wireless, LLC, WT Docket No. 12-4*

Dear Ms. Dortch:

Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, SpectrumCo's owners, and Cox Wireless TMI, LLC (collectively, "Applicants") hereby respond to the letter filed by Free Press, Media Access Project, Public Knowledge, and Greenlining Institute (collectively, "Public Interest Groups") on February 7, 2012, and the letter filed February 8, 2012 by Sprint Nextel, T-Mobile, DirecTV, Rural Telecommunications Group, and Rural Cellular Association (collectively, "Other Carriers") in the above-referenced proceeding, in which the Public Interest Groups and the Other Carriers criticize the limited redactions in certain commercial agreements filed in this proceeding on January 18, 2012.¹ After apprising staff, Applicants redacted material that is particularly commercially sensitive (in addition to being irrelevant to the Commission's review of these spectrum transactions).² The fact that Applicants' commercial competitors, including Sprint, T-Mobile, and DirecTV, are attempting to leverage a spectrum transfer proceeding to gain access to proprietary pricing and marketing information they would never have access to in the normal course underscores why they should not be allowed such access. The redactions made are limited, reasonable, and consistent with past Commission rulings. The Commission should thus reject the request that unredacted versions of the documents be filed.

There are two categories of agreements potentially at issue here. First, Applicants filed the license purchase agreements between the parties (collectively, "License Purchase

¹ See Letter from Michael H. Hammer, Counsel to Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (Jan. 18, 2012); Letter from J.G. Harrington, Counsel to Cox Wireless, TMI, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (Jan. 18, 2012). Attachment A to each letter lists the commercial agreements (collectively, "Commercial Agreements").

² *Id.* at 3.

Agreements”). Of the documents filed, the License Purchase Agreements are the only agreements even arguably relevant to the license assignment applications, though notably, even these types of agreements typically are not filed with the Commission in license assignment proceedings for spectrum purchases.³ At the request of staff, however, Applicants nonetheless filed each agreement in its entirety, subject to the protections of the Protective Orders in effect in this proceeding. The only redacted materials in the License Purchase Agreements are the formula explaining how the licenses at issue were valued (but not the purchase price itself), and the names and contact information for individual businesspeople within the companies. This information has no bearing on the license assignment applications.

The second category of documents Applicants filed consists of a series of separate, stand-alone Commercial Agreements. As Applicants explained in the January 18 cover letters, the Commercial Agreements are not relevant to the license assignment applications. The Commercial Agreements do not involve the transfer of any Commission licenses and do not require the Commission’s approval. Further, the Commercial Agreements and the License Purchase Agreements are not contingent upon each other. If the License Purchase Agreements are not approved, the Commercial Agreements nevertheless will remain in effect, and if the parties were to terminate the Commercial Agreements, the License Purchase Agreements would still be effective.

Nonetheless, Applicants agreed, at staff’s request, to submit the Commercial Agreements to the record under Highly Confidential treatment,⁴ and apprised staff that the submission was subject to redacting certain particularly commercially-sensitive provisions. Thus, Applicants redacted a limited amount of specific detail in the Commercial Agreements relating to pricing, compensation, and marketing strategies. This information (aside from being wholly irrelevant to the spectrum transaction the Commission is reviewing) could, if disclosed, significantly harm the parties by providing competitors and potential competitors – such as the Other Carriers who are seeking to obtain it here – with information about, among other things, specific competitive pricing and metrics for establishing compensation, marketing strategies both generally and for individual customers, as well as detailed marketing roll-out plans. Such information would provide competitors with the type of proprietary pricing and compensation data that never is publicly released, and which could, if made available even subject to the Protective Orders,

³ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc. For Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-121; *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, WT Docket No. 08-246; *Sprint Nextel Corporation and Clearwire Corporation, Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94; *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-237.

⁴ Even under Highly Confidential treatment, there are still a large number of individuals who have access to these documents. As of now, 99 signatories, representing 18 different parties, have signed the Protective Orders. One party is represented by 35 individuals who have access to Confidential and Highly Confidential Information.

inform decisions and negotiating tactics by competitors in other transactions, harming Applicants (and their customers). Similarly, the detailed and specific marketing information redacted could be used by competitors or potential competitors as a roadmap to approach particular customers, or to shape marketing strategies. More broadly, the risk of harm from disclosure is particularly unjustified where there is – as here – a fundamental lack of relevance to the Commission’s review of the applications to assign spectrum licenses.

Regardless, the full text of the agreements has been submitted to the Department of Justice subject to statutory confidentiality protections. Moreover, the Applicants have agreed to give Commission staff access to documents filed with the Department of Justice. Thus, the full text of these documents has been and continues to be available to the Commission for *in camera* review at the Department of Justice, should the Commission wish to further assure itself that these limited provisions are neither relevant to nor necessary for its review of the assignment of licenses.

This approach is consistent with Commission precedent. The Commission previously upheld the use of redactions when disclosure of the redacted material was irrelevant to the Commission’s review of a transaction – even when the agreement at issue, unlike here, was *required by rule* to be submitted with the application. In *AMTS Consortium*,⁵ parties to an application for partial assignment of a geographic license submitted a copy of the purchase agreement as required by Section 1.2111(a) of the Commission’s rules.⁶ The Commission denied an opposing party access to the redacted portions of the agreement because the purpose of Section 1.2111(a)’s filing requirement could be served without public disclosure of the redacted information.⁷ Moreover, the Commission declined to permit disclosure of the redacted terms even under a protective order.⁸ Similarly, the Commission allowed for redactions of documents (or omission of portions of documents) that were submitted pursuant to a protective order in at least five additional proceedings. In the Comcast/NBCUniversal proceeding, Comcast was permitted to file redacted documents in response to certain of the Commission’s information requests.⁹ Similarly, in the Adelphia/Comcast/Time Warner proceeding, redacted versions of certain documents were submitted pursuant to the protective orders in that proceeding, and, despite the complaints of at least one party, the Commission did not require the applicants to submit unredacted versions of the document.¹⁰ In another license transfer proceeding,

⁵ *AMTS Consortium, LLC, Applications to Partially Assign License for Station WQCP810 to Northeast Utilities Service Company*, Memorandum Opinion and Order, 25 FCC Rcd 526 ¶ 3 (2010) (“*AMTS Consortium Order*”).

⁶ *See* 47 C.F.R. § 1.2111(a).

⁷ *AMTS Consortium Order* ¶ 15.

⁸ *Id.* ¶ 17.

⁹ *See* Letter from Michael H. Hammer, Willkie Farr & Gallagher LLP, Counsel to Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 1 (June 30, 2010) (noting that the Media Bureau permitted Comcast to redact certain documents).

¹⁰ *See* Letter from William Wiltshire, Harris, Wiltshire & Grannis LLP, Counsel for DIRECTV, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 05-192, at 2 (Feb. 14,

Commission staff permitted the applicants to file a version of an agreement that omitted certain exhibits, and that decision was never overturned.¹¹ And, the Commission staff permitted the filing of redacted confidential or highly confidential documents containing irrelevant materials in other instances as well.¹² These precedents demonstrate the careful balance that the Commission must strike here as well. The approach taken allows potential commenters to understand the agreements, but it does not permit those commenters to have access to especially commercially-sensitive information.

For all these reasons, the Commission should reject the requests to file the unredacted documents and any efforts to suspend the pleading cycle.¹³ Please contact the undersigned should you have any questions regarding this matter.

2006); Letter from William Wiltshire, Harris, Wiltshire & Grannis LLP, Counsel for DIRECTV, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 05-192, at 13 (Mar. 15, 2006).

¹¹ See Response of Verizon Wireless to the Wireless Telecommunications Bureau's November 19, 2009 General Information Request, WT Docket No. 09-104, Response to Question VI.E.10, at 20 (Dec. 18, 2009) ("Pursuant to an agreement with the Bureau staff, exhibits and schedules to the purchase agreement are not being produced.").

¹² See, e.g., Letter from Michael Nilsson, Harris, Wiltshire & Grannis LLP, Counsel for DIRECTV, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-18, at 1 (Aug. 14, 2007) ("As has been discussed previously with Media Bureau staff, DIRECTV redacted portions of certain of [sic] Highly Confidential documents."); Letter from Arthur H. Harding, Fleischman and Walsh, Counsel to Time Warner Inc., to Magalie Roman Salas, Secretary, FCC, CS Docket No. 00-30, at 2 (June 26, 2000) ("Certain redactions have been made where portions of submitted documents are not responsive or otherwise material to the Commission's requests."); Letter from Arthur H. Harding, Fleischman and Walsh, Counsel to Time Warner Inc., to Magalie Roman Salas, Secretary, FCC, CS Docket No. 00-30, at 1 (July 17, 2000) ("In accordance with our understandings with Commission staff, certain redactions to confidential documents have been made where portions of submitted documents are not responsive or otherwise material to the Commission's requests.").

¹³ On February 9, MetroPCS submitted a filing, noting the *ex parte* letters referred to above and supporting a delay in the pleading cycle. See Letter from Carl Northrop, Telecommunications Law Professionals PLLC, Counsel to MetroPCS Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (Feb. 9, 2012). For all the reasons above, there is no reason to deviate from the pleading cycle established by the Commission, and MetroPCS' request should similarly be rejected.

Respectfully submitted,

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