**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

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| In the Matter of | ) | |
| | ) | |
| Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent to Assign Licenses | ) | WT Docket No. 12-4 |
| | ) | |
| Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent to Assign Licenses | ) | |
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To the Chief, Wireless Telecommunications Bureau

# COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS


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## EXECUTIVE SUMMARY

The 1996 Telecommunications Act was premised on the expectation that there would be increased competition among platforms and that consumers would benefit from increasingly robust choices for video, wireless, voice, and broadband services. Cross-platform competition drives investment to increase capacity in broadband networks, creating jobs, enabling new and improved services and applications, and lower prices.

The Commission is evaluating applications by SpectrumCo LLC, Cox TMI Wireless and Verizon Wireless that, based on press reports and other publicly available information, would appear to reduce such cross-platform competition by FiOS and the cable companies through joint marketing arrangements. Furthermore, the applications threaten to reduce competition in the market for video programming.

The Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW") acknowledge that wireless is going to play an increasingly important role in expanding connectivity and that spectrum is necessary to achieve those goals. As such, CWA and IBEW are not opposed to the transfer of spectrum from SpectrumCo and Cox to Verizon Wireless (together, the "Applicants").

However, because the license transfers combined with the corresponding Joint Marketing Agreements raise serious competitive concerns for other broadband providers and significantly reduce incentives to invest in alternative broadband platforms, CWA and IBEW urge that the Commission grant the applications subject only to the following specific conditions, which would help ensure continued investment in cross-platform alternatives for broadband services and robust video competition:

1. Consistent with past transactions, require that Verizon must continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.
2. Require the Applicants to make the services they provide each other under the Joint Marketing Agreements to be available on a nonexclusive basis, and to make such services available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.
3. Require the Applicants to allow consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.

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**COMMUNICATIONS WORKERS OF AMERICA AND**
**THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

## I. INTRODUCTION

The Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW") hereby submit the following comments regarding the applications filed by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") and SpectrumCo LLC ("SpectrumCo") and Verizon Wireless and Cox TMI Wireless, LLC ("Cox") (collectively, the "Applicants") for Federal Communications Commission ("FCC" or "Commission") consent to the assignment of licenses held by SpectrumCo and Cox to Verizon Wireless ("Transaction").[1]

CWA represents more than 700,000 workers in the communications, media, airline, and manufacturing industries as well as the public sector, including a segment of Verizon Wireless and

[1] *See Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses, WT Dkt. No. 12-4*, Public Notice, DA 12-67 (rel. Jan. 19, 2012) (hereinafter, the "Transaction").

Comcast employees. In addition, CWA represents approximately 300,000 employees at competing telecommunications companies impacted by this Transaction. IBEW represents 700,000 members in the construction, utility, telecommunications, manufacturing, railroad, government and broadcasting industries. Of that number, IBEW represents 4,500 employees at Time Warner, Comcast and other cable companies and 55,000 at telecommunications companies. Consequently, the Transaction is a subject of intense interest to CWA's and IBEW's members.

The 1996 Telecommunications Act was premised on the expectation that there would be increased competition among platforms and that consumers would benefit from increasingly robust choices for video, wireless, voice, and broadband services. Cross-platform competition for such services results in higher infrastructure investment, job growth, and lower prices for consumers. Indeed, the Commission has emphasized the importance of accelerating broadband deployment by "removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[2] The states with the most robust broadband capacity are those states in which Verizon's FiOS competes with cable's broadband service. This cross-platform competition drives investment to increase capacity in broadband networks, creating jobs, enabling new and improved services and applications. Indeed, the Commission has stated that competition between network operators is "crucial" in ensuring that broadband is affordable.[3] And Verizon itself has

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[2] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8014 (2011 ) (citing 47 U.S.C. § 1302(b)) ("Seventh Broadband Report").

[3] *Id.*, ¶ 71.

cited the importance of "the competitive rivalry between cable companies and telcos" resulting in benefits to consumers of "better broadband services and lower prices."[4]

The Commission is evaluating a transaction that, based on press reports and other publicly available information, would appear to reduce such competition by FiOS and cable companies through joint marketing arrangements.[5] Such agreements would limit the availability of competitive services, dividing up geographic service areas for particular companies.[6] Such a result would lead to

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[4] Comments of Verizon and Verizon Wireless, Attachment C: Declaration of Michael D. Topper, "Broadband Competition and Network Neutrality Regulation," GN Dkt. No. 09-191 at 15 (filed Jan. 14, 2010 ("Topper Report").

[5] Letter of Michael Hammer, Willkie Farr & Gallagher LLP to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 (filed on Jan. 18, 2012) (Attachment A is a listing of the reseller agreements, agent agreements, and the joint operating entity agreement, among others, between Verizon Wireless and SpectrumCo.) ("Hammer Letter") and Letter of J.G. Harrington, Dow Lohnes to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 (filed on Jan. 18, 2012) (Attachment A is a listing of the reseller agreements and agent agreements, among others, between Verizon Wireless and Cox.) ("Harrington Letter"). The reseller and agent agreements between Verizon Wireless and SpectrumCo and Verizon Wireless and Cox and the joint operating entity agreement will be collectively referred to as the "Joint Marketing Agreements."

[6] Press Release, Verizon Communications, *Comcast, Time Warner Cable, and Bright House Networks Sell Advanced Wireless Spectrum to Verizon Wireless for $3.6 Billion* (Dec. 2, 2011) ("The companies also announced that they have entered into several agreements, providing for the sale of various products and services. Through these agreements, the cable companies on the one hand, and Verizon Wireless, on the other, will become agents to sell one another's products, and over time, the cable companies will have the option of selling Verizon Wireless services on a wholesale basis."); Press Release, Verizon Communications, *Cox Communications Announces Agreement to Sell Advanced Wireless Spectrum to Verizon Wireless; Cox and Verizon Wireless Will Become Agents to Sell Each Other's Residential and Commercial Products* (Dec. 16, 2011) ("Cox and Verizon Wireless will also become agents to sell each other's residential and commercial products and services through their respective sales channels. Over time, Cox may have the option to sell Verizon Wireless' services on a wholesale basis."); Thomas Catan and Greg Bensinger, *Verizon Wireless-Comcast Deal Meets Political Resistance*, Wall St. J., Feb. 2, 2012, *available at* http://online.wsj.com/article/SB10001424052970203920204577197390303185550.html (last visited Feb. 19, 2012) ("Political headwinds are building against a marketing alliance between Verizon Wireless, the nation's largest wireless operator, and cable giant Comcast Corp., amid worries that cooperation between the two rivals could blunt competition in the telecommunications market and lead to higher prices. The resistance comes as the two companies are extending their partnership to a third test market—the San Francisco Bay area. Under their deal, Verizon Wireless will promote Comcast's Internet, phone and television service to its customers and vice versa."); Brian X. Chen, *Verizon's Cozying Up With Comcast Draws Attention*, N.Y. Times, Feb. 2, 2012, *available at* http://bits.blogs.nytimes.com/2012/02/02/verizon-comcast/ (last visited Feb. 19, 2012) ("One was a marketing alliance in which the two companies agreed to advertise each other's Internet, phone and television offerings. The other was an agreement in December in which a consortium of cable companies, including Comcast and Time Warner, said they would sell $3.6 billion worth of spectrum to Verizon, which the wireless company could use to expand its networks.").

reduced investment in infrastructure, job losses, and ultimately, higher prices for consumers. CWA and IBEW support the Commission's emphasis on the paramount importance of increasing our investment in broadband infrastructure. As stated by FCC Chairman Julius Genachowski, "The great infrastructure challenge of our generation – one that the FCC and the states will have to tackle together with the private sector – is broadband – high speed Internet to connect every person and business to each other, and to the world of opportunities and markets beyond us."[7] CWA and IBEW acknowledge that wireless is going to play an increasingly important role in expanding connectivity and agrees with the FCC that spectrum is necessary to achieve those goals.[8]

As such, CWA and IBEW are not opposed to the transfer of spectrum from SpectrumCo and Cox to Verizon Wireless. However, because the Transaction combined with the corresponding Joint Marketing Agreements raises serious competitive concerns for other broadband providers and significantly reduces incentives to invest in alternative broadband platforms, CWA and IBEW urge that the Transaction only be granted subject to specific conditions. Such conditions must ensure continued investment in cross-platform alternatives for broadband services and must ensure robust video competition.

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[7] Julius Genachowski, Chairman, FCC, NARUC Annual Meeting: Our Innovation Infrastructure: Opportunities and Challenges (Nov. 15, 2010).

[8] News Release, FCC, *Statement from FCC Chairman Julius Genachowski on Incentive Auction Legislation* (Feb. 17, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0217/DOC-312534A1.doc (last visited Feb. 19, 2012) ("I'm pleased that Congress has recognized the vital importance of freeing up more spectrum for mobile broadband…."); Julius Genachowski, Chairman, FCC, GSMA Mobile Asia Congress: Remarks of FCC Chairman Julius Genachowski as Prepared for Delivery (Nov. 16, 2011), http://www.fcc.gov/document/chairman-julius-genachowski-speech-gsma-mobile-asia-congress (last visited Feb. 19, 2012) ( "Reflecting the growing importance of mobile broadband, we established for the first time a Mobility Fund that will expand 4G mobile broadband to tens of thousands of road miles, where millions of people work, live, and travel, including dedicated support for Tribal areas.").

## II. STANDARD OF REVIEW

Pursuant to Section 310(d) of the Communications Act,[9] the Commission must determine whether the Transaction and the commercial agreements will serve the public interest, convenience, and necessity.[10] Absent a determination that the Transaction and the commercial agreements would violate specific provisions of the Communications Act, another statute, or the Commission's rules, the Commission employs a balancing test that weighs "any potential public interest harms of the transaction against any potential public interest benefits."[11]

In conducting its public interest analysis, the Commission takes into account the "broad aims of the Communications Act," which include, among other things, accelerating private sector deployment of advanced services. Additionally, the Commission may assess "whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers" and "may consider technological and market changes and the nature, complexity, and speed of change of, as well as trends within, the communication industry."[12]

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[9] 47 U.S.C. § 310(d).

[10] *See, e.g.*, *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Agreements*, 24 FCC Rcd 13915, 13927 ¶ 27 (2009) ("AT&T/Centennial Order"); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, 23 FCC Rcd 17444, 17460 ¶ 26 (2008) ("Verizon Wireless/ALLTEL Order"); *Applications of Cellco Partnership d/b/a/ Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Fee Leases and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, 23 FCC Rcd 12463, 12476 ¶ 26 (2008) ("Verizon Wireless/RCC Order"); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent To Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) ("AT&T/Dobson Order"); *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("Sprint/Nextel Order"); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("AT&T Wireless/Cingular Order").

[11] *AT&T/Centennial Order* at 13927 ¶ 27.

[12] *Id.* at 13928 ¶ 28.

At the end of the day, "[t]he applicants involved with each transaction bear the burden of proving ... that the proposed transaction, on balance, serves the public interest."[13]

## III. THE TRANSACTION WILL PRODUCE SUBSTANTIAL PUBLIC INTEREST HARMS

### A. The Transaction and Accompanying Joint Marketing Agreements will Reduce Incentives for Verizon Communications to Continue Deploying FiOS, Curtailing the Expansion of Cross-Platform Broadband Competition Among the Applicants.

The Commission has emphasized that "increasing competition among facilities-based broadband providers . . . will sustain and increase competitive choice among broadband providers and Internet access products."[14] This transaction will have the opposite impact. As a result of the Transaction, Verizon Communications ("Verizon"), the parent company of Verizon Wireless, will not have the incentive to expand FiOS in-region, and will have significantly less incentive to market aggressively its in-region FiOS broadband wireline product. The end result will be a reduction in cross-platform broadband competition, reduced investment in broadband deployment, and lower broadband adoption. There will also be a reduction in competitive pressure on pricing and service quality of broadband and video. For consumers, that translates into more expensive bundles of cable channels and costly, slow broadband services.

Two years ago, Verizon touted the significant impact of cross-platform competition as a reason the Commission should not impose network neutrality rules. Verizon's own expert, Dr. Michael Topper, emphasized that "cross-platform or intermodal competition (referring to

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[13] *AT&T/Dobson Order* at 20302 ¶ 10.

[14] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14887 (2005) ("Wireline Broadband Order"). The Commission's report on residential wireline broadband service noted that Verizon FiOS Internet delivered 114 percent of its advertised upload and download speeds during peak periods. The report also cited the company's symmetrical FiOS Internet speeds, which exceeded promised speeds and provided upstream speeds averaging four to six times faster than those of the closest competitor -- an advantage in an increasingly interactive and competitive Internet environment. FCC's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, *Measuring Broadband America* at 17 (2011), http://www.fcc.gov/measuring-broadband-america.

cable/telco wired broadband competition) offers significant consumer benefits as competitors that operate different technological platforms are able to offer highly differentiated packages of price, quality, and functionality. Cross-platform competitors have strong incentives to maintain and expand their subscriber base to spread their fixed costs over a large network of users. When a cable company or telco loses a subscriber to its competitors, it loses both the variable profit contribution from that subscriber as well as the subscriber's contribution to its fixed costs of building and maintaining its network. This creates a strong incentive for providers to maintain services and prices that appeal to consumers, and to continuously invest and innovate to provide better service."[15]

FiOS is the most advanced broadband delivery platform, making Verizon the only major U.S. telecommunications company to draw fiber all the way to homes and the only one to offer broadband speeds approaching those available in Japan and South Korea. FiOS has allowed Verizon to mount an effective resistance to cable companies.[16] As a result, FiOS has been an effective competitor to cable in the provision of broadband and video services. Verizon FiOS can provide up to 50 Mbps of Internet service, more than 385 digital television channels, including 125 HD channels and 18,000 titles available on demand.[17] Growth of this platform is critical in order to preserve the competitive facilities-based cross-platform goals of the 1996 Telecommunications Act. Such competition results in more investment in broadband and better services for consumers.

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[15] *Topper Report* at 9.

[16] Verizon had a total of 4.8 million FiOS Internet and 4.2 million FiOS Video connections at year-end 2011. FiOS penetration (subscribers as a percentage of potential subscribers) continued to increase. FiOS Internet penetration was 35.5 percent at year-end 2011, compared with 31.9 percent at year-end 2010. In the same periods, FiOS Video penetration was 31.5 percent, compared with 28.0 percent, respectively. The FiOS network passed 16.5 million premises at year-end 2011, up more than 900,000 from year-end 2010. News Release, Verizon Communications, *Verizon Reports Record Revenue Growth in 4Q, Fueled by Strong Demand for Wireless FiOS and Strategic Services* (Jan. 24, 2012), http://www22.verizon.com/investor/news_verizon_reports_record_revenue_growth_in_4q_fueled_by_strong_demand_for_wireless_fios_and_strategic_.htm (last visited Feb. 15, 2012) ("Verizon Fourth Quarter News Release").

[17] *See* http://Fiberforall.org/Verizon-fios/ (last visited Feb. 15, 2012).

This conclusion is supported by findings from CWA's Speed Matters program, which has collected data from Internet users on the speed of their Internet connections. This data provides compelling evidence that FiOS vs. cable cross-platform broadband competition results in higher-capacity broadband networks. The Speed Matters 2011 test results show that the states with "FiOS/cable competition" have much faster average Internet connection speeds than states without extensive competition between cable and fiber-to-the-home broadband platforms.

According to the results of the 2011 speedmatters.org speed test, the U.S. average (mean) Internet download speed was 8.1 Mbps. But in the states in which Verizon's FiOS competes with cable's broadband service, the average download speeds were significantly faster, putting those states at the top of the rankings. The average download speeds in states where consumers had the advantage of both FiOS and cable competition were: Rhode Island (16.1 Mbps), Delaware (15.8 Mbps), Maryland (13.8 Mbps), New Jersey (12.7 Mbps), Virginia (11.3 Mbps), Washington DC (11.1 Mbps), Massachusetts (11.2 Mbps), New York (9.9 Mbps), and Pennsylvania (9.3 Mbps).

Moreover, for today's Internet applications, upload as well as download capacity is important. In the "FiOS/cable competition" states, average upload speed far exceeds the national average. The U.S. average upload speed in 2011 was 1.9 Mbps, far below those in states where cable and FiOS competed. The average upload speed in those states were: Rhode Island (7.5 Mbps), Delaware (4.5 Mbps), Maryland (4.6 Mbps), New Jersey (4.2 Mbps), Virginia (3.5 Mbps), Washington DC (5.1 Mbps), Massachusetts (3.3 Mbps), New York (3.0 Mbps), and Pennsylvania (3.0 Mbps).

Prior to the announcement of the Transaction, Verizon had said that it would "fill in" its existing FiOS markets based on demand. Verizon Chief Financial Officer Francis Shammo has noted that "[i]n FiOS, we continued to steadily increase penetration on all [sic] all our markets. By further penetrating existing markets, we will enhance our capital and operating efficiency and

improve overall investment returns."[18] With commercial arrangements that appear to eliminate or reduce cross-platform competition, Verizon now has little incentive to continue investing in FiOS and "fill in" its markets. As a result, the Transaction has the potential now to leave approximately one-third of Verizon's in-region customers without FiOS as a choice for broadband or video service.[19]

The Transaction also increases Verizon's incentive to abandon its wireline properties, especially in rural areas. Verizon's focus on its FiOS network and away from more rural operations is evidenced most recently by its sale of its landline business and 1.5 million customers in Maine, New Hampshire and Vermont to FairPoint Communications in 2008.[20] Verizon later shed more DSL and landlines to Frontier Communications ("Frontier") in 2010.[21] In the Frontier deal, Verizon sold 4.8 million mostly-rural access lines to Frontier, including FiOS high-speed Internet

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[18] Verizon Communications, Earnings Call Transcript, Oct. 21, 2011, *available at* http://seekingalpha.com/article/301177-verizon-communications-management-discusses-q3-2011-results-earnings-call-transcript (last visited Feb. 15, 2012); *see also* Statement of Lowell McAdam, Chairman, CEO, President, Chairman of Verizon Wireless, Director of Verizon Wireless, at UBS 39th Annual Global Media and Communications Conference, Dec. 7, 2011, in response to a question about the future of FiOS, suggesting scale and efficiency would lead to increased FiOS deployment ("We have now developed a strategy, whereas, if we put FiOS down the street, regardless of the services that are on the street, we're going to move everything over to FiOS and get the copper out of service and out of our base. So that is a pretty significant shift for us. That changes the scale, and frankly, the cost structure associated with FiOS. And if I can get some rhythm on that and be a little bit more efficient on the ONTs and what goes on inside the house, then the economics of FiOS begins to get better and better, then I can reevaluate.").

[19] Peter Svensson, *Verizon Winds Down Expensive FiOS Expansion*, USA Today, Mar. 26, 2010, *available at* http://www.usatoday.com/money/industries/telecom/2010-03-26-verizon-fios_N.htm (last visited Feb. 15, 2012).

[20] The Associated Press, *Verizon to Sell Assets to FairPoint in 3 States*, N.Y. Times, Jan. 17, 2007, at C4, *available at* http://www.nytimes.com/2007/01/17/business/17verizon.html (last visited Feb. 15, 2012). Verizon's pattern of selling rural assets dates back further to 2005 when it sold 715,000 access lines in Hawaii to a private global investment firm, The Carlyle Group. *See* Verizon Hawaii, Inc., Corporate History, *available at* http://transition.fcc.gov/wcb/armis/carrier_filing_history/COSA_History/gthi.htm (last visited Feb. 15, 2012).

[21] News Release, Verizon Communications, *Verizon to Divest Landline Business in 14 States; Significant Benefits to Verizon Shareholders* (May 13, 2009), http://newscenter.verizon.com/press-releases/verizon/2009/verizon-to-divest-wireline.html (last visited Feb. 15, 2012).

customers.[22] The Frontier transaction left Verizon with about 27 million homes in total.[23] The latest available statistics show that after the sale to Frontier, roughly 60 percent of Verizon's existing broadband footprint is covered by FiOS but 40 percent, or more than 10 million homes, are not part of the current FiOS deployment.[24] According to Verizon, the company passed 16.5 million households with fiber by the end of 2011.[25]

Verizon's continued exit from rural markets would reduce broadband access and services to consumers in already severely underserved areas, and is contrary to the Commission's stated goal of expanding broadband service in rural and underserved areas.[26] The states with the most robust broadband capacity are those in which Verizon's FiOS competes with cable's broadband service.[27] This cross-platform competition drives investment to increase capacity in broadband networks, thereby creating jobs, and enabling new and improved services and applications.[28] Continued investment in Verizon's FiOS, particularly in rural areas, would be an effective way to bring

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[22] *Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, ¶ 6 (2010).

[23] Ed Gubbins, *Verizon: With Frontier Deal, FiOS Footprint Could Reach 80% Coverage*, Connected Planet, May 13, 2009, *available at* http://connectedplanetonline.com/independent/news/verizon-frontier-communications-deal-0513/ (last visited Feb. 15, 2012).

[24] Karl Bode, *If You're Waiting on FiOS, You Could Be Waiting a While*, Broadband DSL Reports, Jan. 24, 2012, *available at* http://www.dslreports.com/shownews/If-Youre-Waiting-on-FiOS-You-Could-Be-Waiting-a-While-118039 (last visited Feb. 15, 2012).

[25] *Id.; see Verizon Fourth Quarter News Release.*

[26] FCC, *Bringing Rural Broadband to Rural American: Report on a Rural Broadband Strategy,* ¶ 8 (2009), http://www.fcc.gov/reports/first-rural-broadband-report (The FCC's "goal is that all rural Americans, like their counterparts in more densely populated areas of the country, have the opportunity to reap the full benefits of broadband services.") ("First Rural Broadband Report").

[27] *See* http://Fiberforall.org/Verizon-fios/ (last visited Feb. 15, 2012).

[28] As emphasized by Verizon's expert, Dr. Topper, "The ability and propensity for consumers to switch providers creates incentives for cable companies and telcos to offer attractive combinations of price and service and to invest in their networks to improve service offerings." *Topper Report* at 10.

broadband competition to underserved areas.[29] The Verizon/cable partnership will reduce incentives that drive this cross-platform competition.

Customers outside the Verizon footprint will be impacted as well. Nationally, the Speed Matters data shows that a full 47 percent of Internet users do not connect at speeds that meet the FCC broadband benchmark of 4Mbps upstream/1Mbps downstream. As a result of the Verizon/cable company partnership, cable's ability to market the quad play of voice, video, broadband, and wireless will give it an enormous competitive advantage over other wireline competitors, reducing their ability to compete or invest in higher-speed broadband networks.

To date, Verizon has not deployed its FiOS network in a number of large- and medium-sized cities in its footprint, including Buffalo, Albany, Syracuse, Boston, and Baltimore, among others. A 2010 study examining broadband adoption rates in the City of Buffalo and its suburbs demonstrates that people of color and lesser economic means will likely be disproportionately impacted by the decreased incentives to invest in FiOS, threatening to further widen the digital divide.[30] For example, in the City of Buffalo, where 36.9 percent of the population is African American and 8 percent is Hispanic, the City's residents lack access to FiOS.[31] However, in Buffalo's suburbs, where FiOS is available, African Americans comprise only 2.8 percent of the population and Hispanics comprise 2.1 percent.[32] This conclusion is born out in another report

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[29] *First Rural Broadband Report*, ¶ 8 ("No national broadband strategy can be undertaken without due consideration to the rural broadband infrastructure and the people it must serve. The likely success of rural initiatives is intimately linked to a sound national broadband policy that reflects the complex interdependencies of regulatory policies, economic issues, and technological innovations.").

[30] The Coalition for Economic Justice, *Bypassing Buffalo: Who is Getting Verizon's FiOS and Who Isn't*, http://dontbypassbuffalo.com/FiOS_Report.pdf; *see also Connecting America: National Broadband Plan* at 37 (Mar. 16, 2010), http://download.broadband.gov/plan/national-broadband-plan.pdf (last visited Feb. 15, 2012) ("Additionally, the data show that rural areas are less likely to have access to more than one wireline broadband provider than other areas. The data also show that low-income areas are on average somewhat less likely to have more than one provider than higher-income areas.") ("National Broadband Plan").

[31] *Id.* at 3.

[32] *Id.*

from The Center for Social Inclusion (CSI) and Mississippi State Conference NAACP. In that report, an analysis by county, race and ethnicity in the State of Mississippi revealed that communities where people of color are in the majority have the fewest broadband provider options.[33] The study concluded, among other things, that investing in broadband in communities of color, low-income regions and rural areas is critical to creating jobs, improving educational outcomes and enhancing health services.[34]

### B. There Will Be Reduced Competition in the Market for Video Programming, Resulting in Higher Prices for Consumers, Less Network Investment, and Fewer Jobs.

The Joint Marketing Agreements further strengthen the Applicants' competitive position in two fundamental ways. First, the Applicants will have an advantage over other competitors through their ability to purchase video programming at further discounted prices. Second, the Applicants will have a further advantage over their competitors by being able to bundle their services, offering a unique quad play of voice, video, data, and wireless. The power of this arrangement is evidenced in the market shares of the cable partners, which represent four of the nation's largest multichannel video programming distributors, and Verizon Wireless, the nation's leading wireless provider. For example, after the Transaction, and Joint Marketing Agreements, Applicants will have the ability to reach nearly 100 percent of the wireless market and a subscriber base of nearly 50 percent of the U.S. video market.[35] Such an unprecedented level of market power could hinder video and broadband competition, resulting in higher cable rates, less network investment and fewer jobs.[36]

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[33] The Center for Social Inclusion and the Mississippi NAACP, *Broadband in Mississippi, Toward Policies for Access Equity* (January 2012), *available at* http://www.centerforsocialinclusion.org/wp-content/uploads/2012/01/Broadband-in-Mississippi-Toward-Policies-for-Access-Equity.pdf (last visited Feb. 15, 2012).

[34] *Id.*

[35] The cable partners' share of the video market would be 41.1 percent and Verizon's video market share is 4.2 percent, for a combined total video market share of 45.3 percent post-Transaction. The cable partners' share of the Internet access market is currently 42.3 percent and Verizon's share is 10.7 percent, for a

Today some companies are trying to compete with incumbent cable providers, investing in significant resources to build out their networks and enter the video marketplace. The Joint Marketing Agreements could block or limit that competition, and block or limit the investment and jobs that accompany those efforts. As competitors' relative costs increase, those companies trying to compete will invest less in building out their networks and hire fewer people. As a result of this proposed Transaction, Applicants will have the market power to stifle competitive entry by new video operators. As a result, there will be fewer companies competing to provide traditional video services, fewer choices, higher prices for consumers, and lost jobs from these potential competitors.

Bulk Discount

Assuming the Joint Marketing Agreements permit the Applicants to purchase programming together or in concert, they will be able to secure more content at a lower cost by being able to deliver a combination of more wireline and wireless viewers, which will entitle the Applicants to a larger programming discount. Such bulk discounts reduce the cost of their bundled services, making it more difficult for other video providers to compete, thereby devaluing their competitors' services because it will be difficult for them to maintain and increase their number of subscribers.

Bundling Advantage

The Applicants, through the Joint Marketing Agreements, will now have the ability to market the video programming, broadband and mobile wireless services from four of the 10 top

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combined total broadband market share of 53 percent post-Transaction. Figures are derived from Goldman Sachs & Co., *Telecom/Pay TV Industry Model* (Jan. 23, 2012). Verizon Wireless' share of the wireless market is 34 percent. Goldman Sachs & Co., *Wireless Industry Model* (Nov. 11, 2011).

[36] This Transaction would exacerbate the existing lack of competition in the video marketplace today, as demonstrated by the rising cable rates that consumers pay every year. *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 24 FCC Rcd 259, ¶ 2 Chart 1 (2009). The Commission recognized that "[i]ncumbent cable operators are still by far the dominant force in the MVPD business, with ... the ability to impose steadily rising prices." *Exclusive Contracts for the Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20251 ¶ 32 (2007), *petition for reh'g denied, Nat'l Cable & Telecomm. Ass'n v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

video providers with the largest market shares and the nation's largest mobile wireless provider.[37] Competitors will be hindered in their ability to compete effectively with larger bundles of wireless and wireline services and programming packages, with bundled discounts.[38]

These larger bundles make competition against the Applicants difficult on multiple levels.[39] The Applicants will have the advantage of being able to offer multiple services to a consumer that may purchase at a discount from one provider.[40] The Applicants can also access content more cheaply than their competitors because of the expansive reach of the companies' combined platforms. The Applicants will either be able to secure: (1) more subscribers, if they are able jointly to purchase programming for their combined wireline and wireless services; or (2) existing subscribers for a longer period of time because subscribers will be able to access programming at

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[37] *See* Goldman Sachs & Co., *Telecom/Pay TV Industry Model* (Jan. 23, 2012).

[38] Charles B. Goldfarb, *CRS Report to Congress: Bundling Residential Telephone, Internet, and Video Services: Issues for Congress* at i (Feb. 17, 2004), *available at* http://ipmall.info/hosted_resources/crs/RL32232_040217.pdf (last visited Feb. 19, 2012) ("The convergence of previously distinct markets has required companies to seek strategies for holding on to their traditional customers while seeking new ones. One of those strategies is for companies to offer bundles of 'traditional' and 'new' services at a single price that often represents a discount off the sum of the prices of the individual services. These bundled service offerings are favored by many consumers. They provide the convenience of 'one stop shopping' and in some situations, by providing the full panoply of services at a fixed price, make it easier for consumers to comparison shop. They also are favored by many providers because they tend to reduce 'churn' – the rate at which customers shift to competitors - and allow providers to exploit economies of scope in marketing.") ("CRS Report").

[39] *See* CRS Report at i ("Some observers have been concerned that bundled service offerings could have anticompetitive consequences if they foster industry consolidation or if a provider has market power for one of the services in its bundled offering and can use that offering to tie that service to a competitive service in a fashion that reduces competition for the competitive service . . . ."); Anthony Than, *The Pros and Cons of Bundled Pricing*, Harvard Business Review (Feb. 26, 2010), http://blogs.hbr.org/tjan/2010/02/the-pros-and-cons-of-bundled-p.html (last visited Feb. 19, 2012) ("[B]undling tends to favor the seller. First, there is the simplicity of a single priced product. If you can sell the same bundle to everyone, it makes life easier, which usually means lower marketing and selling costs.").

[40] Verizon has emphasized the importance of bundles as a competitive advantage. *See* Transcript of Verizon-FiOS Briefing Session, Verizon Communications, Sept. 27, 2006 (Virginia Ruesterholz, the then President of Verizon Telecom, stated: "When we look at bundles, clearly this is important to us. And we are seeing a very, very high penetration of the triple play with our TV product. 79% of our TV customers are taking the triple play. So very, very positive. 99% of our FiOS TV customers have the double play. So this product is very sticky. It is pulling along with it at least one other product, if not two products. So we see this as a very, very compelling story on why our customers are going to buy the bundle. And also, the churn levels say that, yes, they want to stay with us.").

home and wirelessly. Accordingly, it will hinder the competitors' ability to compete effectively because the Applicants will dominate their respective markets.

Comcast commented in the FCC's 2009 video competition proceeding that "competition ... increasingly involves bundles of services – packaging video, voice, Internet, and sometimes wireless services together – all designed to deliver maximum value to customers who choose a particular provider."[41] Verizon also recognizes the importance of bundling: "bundling is king for customer retention"[42] and Cox admitted before launching its wireless service that "[t]he consumer benefits of adding mobility to the Cox bundle will be significant."[43] Accordingly, the Transaction will reduce the value of a competing company's video and broadband product because it will be more expensive to get access to programming and that company will find it increasingly difficult to compete with the Applicants.

This is bad for consumers – the marketplace should encourage all broadband providers to provide video.[44] In 2009, Comcast noted that "telcos have firmly established themselves as serious players in the video marketplace."[45] Verizon commented to the FCC that "[i]n all of these areas

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[41] Comments of Comcast Corp., MB Dkt. No. 07-269 at 2 (filed on May 20, 2009) ("Comcast 2009 Comments").

[42] Tim Young, Access *Technology Rumble: Cableco vs Telco*, Pipeline at 1 (Vol. 5, Mar 2009) at 21, available at http://www.pipelinepub.com/0309/EC1_1.html; *Verizon Details FTTP Cost Curves and ROI,* Connected Planet Online (Sept. 27, 3006), http://connectedplanetonline.com/home/news/verizon_fttp_roi_092706/ (last visited Feb. 19, 2012) ("Verizon also expects its service bundle to save 40% to 50% of the voice lines it otherwise would have lost to competitors. And it's working to make its bundles stickier....."); *see also* Comments of Verizon Communications, MB Dkt. No. 07-269 at 7 (June 8, 2011) ("[N]ew competition from competitive wireline providers is bringing the benefits of wireline competition for the first time to most consumers. And consumers increasingly are moving toward 'Over the Top' ("OTT") and broadband delivered content. The availability and capabilities of online video services create still more options for consumers as they decide how and from whom to obtain video programming. As a result, all providers are now forced to compete aggressively across a wide range of dimensions, including content, price, technology and customer service.") ("Verizon 2011 Comments").

[43] Comments of Cox Communications, MB Dkt. No. 07-269 at 10 (filed on Aug. 28, 2009).

[44] *See, supra*, Section III.A.

[45] Comcast 2009 Comments at 17; *see also* Peter Grant & Dionne Searcey, *Verizon's FiOS Challenges Cable's Clout*, Wall St. J., Oct. 24, 2007 at A12 ("After years of promises, Verizon Communications Inc. is making

where Verizon offers its FiOS TV service, it faces stiff competition. Most significant is the competition posed by the incumbent cable operators that vigorously compete in virtually every area that Verizon offers FiOS TV. These providers, who until recent years generally benefitted from actual or de facto monopoly franchises in their service territories and who have often taken steps to slow the introduction and spread of wireline video competition still serve the largest share of video subscribers in most communities. Cable operators compete aggressively with Verizon across a full bundle of voice, Internet, and video services and related applications enabled by their networks."[46]

Comcast commented that "the importance of telco video competition cannot be underestimated.[47] But under the Joint Marketing Agreement this telco-video competition is diminished as (1) Verizon has reduced incentives to build out its wireline pipe to compete;[48] and (2) other telcos have reduced ability to compete with the incumbent cable operator's even greater bulk programming discounts and bundle of voice, video, data and wireless.

The Joint Marketing Agreements also appear to contain exclusivity provisions that require the Applicants to terminate similar agreements with other companies. For example, Verizon

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significant headway with its $18 billion effort to roll out television and faster Internet service, posing a difficult new competitive threat for the cable industry.").

[46] Verizon 2011 Comments at 7-8 ("[W]ireline video competition of the type that Verizon brings yields important benefits to consumers. As the Commission repeatedly has found, head-to-head wireline video competition brings the most benefits to consumers. For example, the Commission's most recent pricing survey stated: "Compared to the overall average price of $52.96 charged by operators in the effective competition communities, average prices were 1.1 percent lower ($52.37) for incumbent operators in communities with a rival operator [and] 9.6 percent lower ($47.86) for rival operators." Moreover, "[p]rices of rival operators in communities where a second operator is present were 8.1 percent lower on average than prices charged by operators providing service in noncompetitive communities,' and these prices were '33.3 percent lower on a per channel basis.'" (internal citations omitted)).

[47] Comments of Comcast Corp., MB Dkt. No. 07-269 at 9, 31 (filed on June 8, 2011) ("The entry of the Bell companies as video competitors ... has further increased competitive pressures..." and "[O]ver the past few years, incumbent telephone companies, such as AT&T and Verizon, have entered the marketplace, and the competitive effects of their entry have been substantial.").

[48] Goldman Sachs, *Commentary: Spectrum Moves Into the Right Hands – Opportunistic Step by Verizon; Overhang Removed for Cable* (Dec. 2, 2011) (The Joint Marketing Agreements "will eliminate fears of cable deploying capital in wireless, as this deal sets a long-term foundation for both agency and wholesale relationships with the industry leader in wireless.").

immediately announced the end of its relationship with DirecTV, and could discontinue its relationship with other providers. At the same time, the Cable Companies ended their commercial relationship with Clearwire, which has provided the mobile broadband component of the Cable Companies' service bundles. Comcast, Time Warner Cable and Bright House Networks were early investors in the current version of Clearwire, and had hoped that its 4G network would complement their own bundle of home Internet, phone and television offerings. The timing of the Applicants' decisions to terminate their respective relationships with competing video and wireless providers strongly suggests that certain provisions of the Joint Marketing Agreements are driving their behavior.[49] Otherwise, there would be no reason for all of the Applicants to end their existing relationships with competing video and wireless providers at virtually the same time.[50]

Verizon's Joint Marketing Agreements with the cable companies present a specific challenge for CenturyLink, which currently resells Verizon Wireless' network services. By all indications, the Verizon Wireless resale agreement with CenturyLink remains valid, but could be jeopardized in the near future. Access to "state-of-the-art, secure, and resilient broadband service" is one of the Commission's goals for both rural and non-rural areas.[51] CenturyLink operates in thirty-seven

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[49] It is unclear from the publicly-available information about the Joint Marketing Agreements if SpectrumCo and Cox will continue operating their WiFi hotspots. *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, ¶ 372 (2010) ("In November 2010, the communication company Comcast served its customers with 21,629 hotspots and is deploying more." (citing to Nat Worden, Cable Companies Reach Wi-Fi Pact, Wall St. J., Apr. 15, 2010. "Cablevision, Comcast and Time Warner have deployed thousands of Wi-Fi hot spots, with Cablevision alone investing $300 million on Wi-Fi network deployment and averaging more than two million Wi-Fi sessions a month on its network. In addition, the three companies have agreed to allow their broadband Internet subscribers to roam freely across the Wi-Fi deployments of all three major cable operators in the New York metro area." (internal citations omitted)).

[50] *Verizon Parts with DirecTV on LTE, to Focus on AWS License*, Communications Daily, Dec. 8, 2011, at 8; Alex Sherman, *Comcast to Discontinue Clearwire Wireless Service in Six Months*, Bloomberg BusinessWeek, *available at* http://www.businessweek.com/news/2011-12-02/comcast-todiscontinue-clearwire-wireless-service-in-sixmonths.html (last visited Feb. 15, 2012); Urvaksh Karkaria, *Cox Communications Hangs Up Its Wireless Biz*, Atlanta Bus. Chronicle, Feb. 3, 2012.

[51] *First Rural Broadband Report*, ¶ 11.

states,[52] which serve 15 million phone lines.[53] If CenturyLink is forced to find another wireless provider for its bundle, the impact will be felt by rural and non-rural consumers throughout CenturyLink's service area. For example, CenturyLink operates wireline facilities in Oregon and Washington that compete against Comcast and that currently sell DirecTV video programming and Verizon Wireless mobile services as part of its service bundles. According to press reports, pursuant to the Joint Marketing Agreements, Comcast is now selling Verizon Wireless services in Seattle, Washington; Portland, Oregon; and San Francisco, California.[54] The commercial agreements with the cable companies could cause Verizon Wireless to terminate its partnership with CenturyLink. If Verizon Wireless terminates its partnership with CenturyLink, CenturyLink will lose its wireless offering and thus cannot provide a quad play bundle to compete against Comcast or other MVPDs, which hurts rural and non-rural consumers.[55] As has been noted by the Commission, "access to video programming is often an important element in a customer's decision to purchase broadband service. Accordingly, access to video programming could become an issue that has an impact on the potential competitiveness of the service offerings of rural broadband providers and thus on rural

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[52] Press Release, CenturyLink, *CenturyLink and Quest Complete Merger: Combination Offers consumer, Business and Wholesale Customers a Complete Portfolio of Communications Services* (Apr. 1, 2011), http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1545034&highlight=; *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 16 FCC Rcd 4194, ¶ 13 (2011).

[53] Peter Svensson, *CenturyLink Completes $12.2 Billion Acquisition of Qwest*, KOMONews.com, Apr. 1, 2011, http://www.komonews.com/news/business/119063549.html.

[54] Steve Donohue, *Comcast, Verizon Target Satellite TV, Mobile Rivals with $300 Visa for New Subscribers*, Fierce Wireless, Jan. 17, 2012, http://www.fiercecable.com/story/comcast-verizon-target-satellite-tv-mobile-rivals-300-visa-new-subscribers/2012-01-17; Troy Wolverton, *Comcast Offers Discount on Verizon Wireless Service*, Feb. 1, 2012, http://www.mercurynews.com/business/ci_19862713?source=rss.

[55] CenturyLink may have difficulty partnering with another wireless provide that has a similar rural and non-rural footprint. *See National Broadband Plan* at 29 ("As with fixed broadband, most areas without mobile broadband coverage are in rural or remote areas.") and 85 ("A national footprint improves carriers' cost structure, particularly in rural areas, by allowing the use of the same network equipment on a nationwide basis.").

broadband deployment."[56] As a result, the Commission stated that when evaluating proceedings that can impact the video programming marketplace, it must "consider the impact of any actions it may take on rural broadband deployment."[57] CWA and IBEW believe that their proposed conditions will help alleviate the potential negative impact of the Transaction on rural broadband development.

In addition to allowing Applicants to offer an unprecedented package of bundled services, the Transaction would create an "innovation technology joint venture" to develop new technologies and services to integrate the wireline and wireless platforms. Bright House Network CEO Steve Miron in a statement to his employees described the "Joint Operating Entity" as follows: "We will collaborate with Time Warner Cable, Comcast and Verizon Wireless on a newly created joint venture to develop technology to integrate wired video, voice and high-speed data services with wireless technologies. The new technologies and features developed by the Joint Operating Entity will be made available to Bright House Networks, which gives us the opportunity to grow our platforms, innovate and compete."[58] By facilitating integration of wired and wireless technologies, this joint venture will afford the Applicants increased market power, the ability to impede competition in the video marketplace and to reduce jobs.

Some companies may not oppose the Joint Marketing Agreements but may want access to the same type of arrangements on the same terms and conditions. CWA and IBEW support this proposal because it would even the playing field between competitors.

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[56] *First Rural Broadband Report*, ¶ 159.

[57] *Id.*, ¶ 160.

[58] *Important Message to All Bright House Networks Employees from CEO Steve Miron, available at* http://pastebin.com/dqzqDit1.

## IV. THE TRANSACTION HAS A NEGATIVE IMPACT ON JOB GROWTH AND CREATION.

The Verizon/cable company marketing agreements will reduce jobs and economic growth by reducing incentives to invest in wireline networks and by making it virtually impossible for other companies to compete on video. The Joint Marketing Agreements would result in providing the Applicants with a unique ability to thwart broadband competition.

As Economists Robert Crandall and Hal J. Singer note, "there is perhaps no better way to create jobs than to stimulate investment."[59] Additional investment to wire the country with next-generation technologies will expand domestic output and create new jobs. In their report, "The Economic Impact of Broadband Investment," Crandall and Singer took stock of the investment in first-generation access technologies: cable modem, DSL, and 3G wireless. The investments and the associated job creation were notable: annualized investment in cable modem from 2003 to 2009 was $4.3 billion, which corresponds to 63,400 jobs created.[60] Meanwhile, annualized investment in DSL and fiber from 2003 to 2009 was $11.7 billion, which corresponds to 202,400 jobs created.[61]

Crandall and Singer report that even greater investments are now being made. U.S. facilities-based broadband service providers are upgrading their existing infrastructure with next-generation access technologies. Crandall and Singer estimate that the annual average investment by broadband service providers from 2010 to 2015 will be $12.5 billion in wireline broadband, including fiber-to-the-home and fiber-to-the-node, which corresponds to 247,000 jobs created.[62] The economists

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[59] Robert W. Crandall and Hal J. Singer, *The Economic Impact of Broadband Investment*, http://www.navigantecomics.com/docs/broadbandforamerica_crandall_singer_final.pdf (last visited Feb. 15, 2012).

[60] *Id.* at 2.

[61] *Id.*

[62] *Id.* at 3.

predict a $30.4 billion investment in all broadband technologies, will correspond to more than 509,000 jobs created.[63]

Yet the proposed Transaction undermines the incentive of Verizon to continue to invest in its FiOS, thus diminishing innovation, depressing investment in broadband deployment and ultimately eliminating jobs.[64] And to the extent it significantly impairs the ability of other wireline providers to compete, it also may diminish their ability and willingness to invest.

The Commission is interested in and promotes the creation and preservation of jobs.[65] "As part of its public-interest analysis, the Commission historically has considered employment-related issues such as job creation, commitments to honor union bargaining contracts, and efficiencies resulting from workforce reduction … (W)hen Applicants can demonstrate that a number of U.S.

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[63] *Id.*

[64] *First Rural Broadband Report*, ¶ 16 ("One study estimates that communities having access to mass-market broadband grew disproportionately in employment, the number of information technology-oriented businesses, and the number of businesses overall. … Simply put, broadband buildout to rural Americans promotes and encourages sustained economic development, to the benefit of us all.").

[65] In the *WorldCom/MCI Order,* the Commission considered the impact of that merger on employment. *See WorldCom/MCI* at 213. In the *SBC/AMT Order,* the Commission cited SBC's commitment to "improving service quality by hiring more employees." *SBC/AMT Order* at 567. In the Puerto Rico Telephone Authority/GTE Merger, the Commission also cited employee commitments as a merger-related public interest benefit. *Puerto Rico/GTE Order, ¶ 57; see also Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control,* Memorandum Opinion and Order, 25 FCC Rcd 5972 (2010) (Statement of Chmn. Genachowski "I take seriously concerns that have been expressed about the risks this transaction poses for consumers, employees, and competitors") (Joint Statement of Comm'rs Copps and Clyburn "Lastly, we understand-and fully expect-that approving this transaction will maintain and potentially expand much-needed quality jobs in these rural communities. We continue to be hopeful that Frontier will soon reach an equitable agreement with the Communications Workers of America, ensuring that the needs of Frontier's employees are respected"). The National Broadband Plan also recognized the important link between broadband investment and jobs. For example, "The Lenowisco Planning District Commission reported 1,200 new jobs, $55 million in new private investments and $35 million in new payroll as a result of the region's broadband network." *National Broadband Plan* at 293 Box 13-3. Without broadband access, the National Broadband Plan further noted, Americans can become disenfranchised. "If learning online accelerates your education, if working online earns you extra money, if searching for jobs online connects you to more opportunities, then for those offline, the gap only widens. If political dialogue moves to online forums, if the Internet becomes the comprehensive source of real-time news and information, if the easiest way to contact your political representatives is through e-mail or a website, then those offline become increasingly disenfranchised." *National Broadband Plan* at 21.

jobs will be created as a result of a proposed merger, the Commission will consider this as part of its public interest analysis."[66] The Transaction and accompanying Joint Marketing Agreements will result in less overall network investment than if Verizon and the relevant cable operators continued to compete to build out their own wireline and wireless platforms to compete with each other. Less competition results in fewer jobs. Without competition to drive increased investments, there is a negative impact on job creation.[67]

## V. THE APPLICANTS SHOULD BE REQUIRED TO PROVIDE COMPLETE INFORMATION TO THE COMMISSION

The Commission adopted the Protective Orders[68] to provide access to the Applicants' proprietary or confidential information in a way that balances "the right of the public to participate in this proceeding in a meaningful way"[69] while also "protecting proprietary and confidential information from improper disclosure."[70] In addition to the protections provided by the Protective Orders, the Applicants still redacted information "relating to pricing, compensation, and related

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[66] *See, e.g.*, *Applications of AT&T and Deutsche Telekom AG*, Order and Staff Analysis and Findings, 26 FCC Rcd 16184, 16293 (2011).

[67] For instance, cable operators report that they have invested more than $100 billion to construct advanced two-way fiber optic networks, which can cost from $100,000 to $300,000 per mile. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, ¶ 52 (2009); Jeremy Feiler, *RCN Out to Block Comcast,* Philadelphia Bus. J., Aug. 16, 2002 ("RCN's business is capital-intensive - installing fiber-optic or coaxial cable can cost $100,000 to $300,000 per mile - and it has halted its expansion."); Michael Mandel, *Telecom Investment: The Link to U.S. Jobs and Wages*, The Progressive Policy Institute, May 2011, *available at* http://progressivefix.com/wp-content/uploads/2011/05/05.2011-Mandel Telecom-Investment The-Link-to-US-Jobs-and-Wages.pdf (last visited Feb. 15, 2012).

[68] *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, Protective Order*, WT Dkt. No. 12-4, DA 12-50 (Jan. 17, 2012) ("First Protective Order") and *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, Second Protective Order*, WT Dkt. No. 12-4, DA 12-51(Jan. 17, 2012) ("Second Protective Order" and collectively with First Protective Order, "Protective Orders").

[69] *First Protective Order*, ¶ 1; *Second Protective Order*, ¶ 1.

[70] *First Protective Order*, ¶ 1; *Second Protective Order*, ¶ 1.

provisions"[71] from the Confidential and Highly Confidential versions of its commercial agreements. This prevents the public from participating in a meaningful way. In order to evaluate whether the proposed Verizon-SpectrumCo and Verizon-Cox transactions are in the public interest, unredacted versions of the commercial marketing arrangements connected to the transactions must be made available.

The Joint Marketing Agreements are at the heart of this Transaction. They will increase the Applicants' competitive position in the wireless and video markets.

Moreover Section 310(d) of the Communications Act of 1934, as amended, requires the Commission to evaluate the competitive position of the wireless and video markets after the Transaction in order to determine if the Transaction is in the public interest.

The Commission has consistently stated that the material terms of an agreement may not be redacted and that pricing information is a material term.[72] The Commission, not the Applicants, decides what information in an agreement is relevant to the Commission's and the public's review of a transaction in order to evaluate its impact on the public interest, consumers, and jobs.

Furthermore, the Joint Marketing Agreements contain significant redactions, including the redaction of headings, so it is impossible to determine the scope of the redactions and if they are limited to "pricing, compensation, marketing strategy, or [are] irrelevant to the Commission's review of the spectrum transaction," as alleged by the Applicants. Moreover, since the sensitive information regarding "pricing, compensation, and related provisions" has, according to the Applicants, been redacted from the Commercial Agreements, the Commission should make those

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[71] *See* Hammer Letter and Harrington Letter.

[72] *See, e.g., Application of LUJ, Inc. and Long Nine, Inc. for Assignment of License of Station WYVR (FM), Petersburg, Illinois,* 17 FCC Rcd 16980, 16982 (2002) ("The documentation that was submitted provided all relevant information necessary for examination of the subject transaction, including the sales price and other pertinent material terms of the transaction. Neither the Commission nor Saga and other prospective petitioners were, therefore, deprived of access to information relevant to the disposition of this case.").

redacted copies of the commercial agreements publicly available and direct the Applicants' to make available unredacted copies of the commercial agreements under the Protective Orders. At this time, the Commission's electronic filing system does not contain publicly available copies of the Commercial Agreements.

As is the case with most significant transactions before the Commission, there are additional documents and questions that need to be provided by the applicants in order for the Commission and the public to be able to determine if a transaction is in the public interest, promotes competition and encourages job growth and retention. The Commission should stop the informal 180-day "shot clock" for this Transaction until the Applicants provide the following:

1. All materials submitted to the Department of Justice pursuant to its HSR investigation.

2. All materials (including any materials submitted to the respective Applicants' Board of Directors, shareholders or investors) related to the Applicants' investigation into the profitability and risks associated with the relevant Commercial Agreements.

3. Copies of reseller or agent agreements between any of the Applicants and another company.

## VI. CONCLUSION AND PROPOSED TRANSACTION CONDITIONS

For all of the aforementioned reasons, CWA and IBEW strongly urge the Commission to carefully review the combined effects of the Transaction and the commercial agreements on competition, consumers and jobs. The Communications Act requires the Commission to review a proposed transaction to determine the status of competition after the transaction is closed. This Transaction and the commercial agreements raise serious concerns about the status of competition after the Transaction is consummated.

In spite of these concerns, if the Commission determines that grant of the Transaction and the commercial agreements is in the public interest, it should provide its consent with the following conditions:

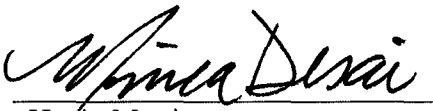
1. Consistent with past transactions,[73] require that Verizon must continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.

2. Require Verizon Wireless and the Cable Companies to make the services it provides each other under the Agreements to be available on a nonexclusive basis, and to make such services available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.

[73] *See, AT&T and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, App. F (2007).

3. The Applicants must allow consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.

Respectfully submitted,



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Dated: February 21, 2012

## CERTIFICATE OF SERVICE

I, Carly T. Didden, hereby certify that on this 21st day of February 2012, I caused true and correct copies of the foregoing Comments to be served by first class mail to the following individuals:

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