

characteristics, represent different markets, and that this particularly valuable market becomes particularly more concentrated as a result of the proposed transfer.

### **B. Roaming Obligations.**

Concentration of the spectrum market can easily harm the public interest. Verizon will face reduced competitive pressure to charge reasonable roaming terms and rates, or to build out rapidly to allow consumers to make use of this space. To ensure this, the Commission should condition the transfer upon Verizon meeting roaming obligations; building out service in the transferred spectrum blocks aggressively; and ensuring that, so long as the transferred spectrum is unused, it may be added to the white spaces database for use by unlicensed devices.

The further concentration resulting from the license transfers will necessarily increase Verizon's ability to restrict or unreasonably burden other carriers in terms of data roaming. As the Commission has recognized, data roaming requirements can increase competition among wireless providers, increase the number of consumers who have access to mobile broadband services, and promote investment in facilities-based broadband networks. The Commission should ensure that Verizon does not abuse its much-increased market power over wireless data roaming by conditioning the transfer on reasonable provisions paralleling those in its data roaming order,<sup>126</sup> including requirements to offer roaming arrangements to other providers on commercially reasonable terms and conditions, and accounting for technological compatibility and feasibility.

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<sup>126</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order (2011). The Commission should impose these obligation upon Verizon as a condition of this transfer regardless of the outcome in the pending judicial review of the Data Roaming Order.

### **C. Use It Or Share It: Buildout Obligations With Teeth.**

The licenses at issue have mostly gone to waste for years. The bulk of the licenses come from SpectrumCo, which bought them at auction in 2006 only to warehouse them and fail to deliver services to the public. Whether this was a deliberate ploy to keep the licenses out of the hands of competitors, or a bona fide but failed attempt to bring new services to the wireless market, is immaterial. The fact is that the Commission's policies with regard to this spectrum have not been sufficient to ensure that it actually delivers benefits to consumers, and any conditions in these proposed transfers must reflect that.

In particular, the Commission should allow Verizon to control these licenses only subject to "use it or share it" provisions.<sup>127</sup> To begin with, the Commission should adopt a tight schedule for deployment, similar to that adopted for the upper A and B blocks of the 700 MHz auction. Under this schedule, Verizon must provide signal coverage and offer service over at least 35 percent of the geographic area of each of the transferred license authorizations within four years of the completion of the license transfer. By the end of the license terms, Verizon should provide signal coverage and offer service for 70 percent of each geographic area. As with the relevant 700 MHz blocks, failure to meet the buildout requirements should be subject to enforcement. But under "use it or share it" conditions, the consequence for Verizon, if it fails to develop its spectrum, need not be outright forfeiture. Instead, spectrum that is underdeveloped should be made available for opportunistic use or on secondary markets, at reasonable rates. If Verizon chooses not to fully make use of the public resource of spectrum it is entrusted with, it should not stand

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<sup>127</sup> See Michael Calabrese, *Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum* (2011), available at <http://ssrn.com/abstract=1992421>.

in the way of others who would, even—or especially—when those “others” are potential Verizon competitors.

“Use it or share it” conditions will allow the Commission to make spectrum useful for users, and keep it from being a chip in a high-stakes game between communications giants. At the same time, they would not interfere with Verizon’s legitimate investment expectations because Verizon can move forward on any investments it intends to make. The Commission should therefore allow the license transfers only subject to conditions that ensure that spectrum is put into the secondary market if Verizon fails to use it to benefit the public.

#### **D. Unlicensed Uses Until Deployment.**

However rapidly Verizon may plan on deploying service to the areas in these spectrum bands, there is no reason that this valuable spectrum should continue to lie fallow while waiting for this buildout to occur. Any buildout requirements should be augmented by a “use it or share it” license condition that would permit other parties to make use of the spectrum acquired in this transaction on a very localized basis until such time as Verizon actually deploys service in that area. Responding to the Commission’s Notice of Inquiry on Dynamic Spectrum Use Technologies, Petitioners (along with others in the Public Interest Spectrum Coalition) have previously proposed this as an alternative to more draconian and largely unenforceable “use it or lose it” buildout requirements.<sup>128</sup> While temporary local use of fallow spectrum may not have been practical as recently as

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<sup>128</sup> See Comments of the Public Interest Spectrum Coalition, *Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies*, ET Docket No. 10-237 (Feb. 28, 2011). See also Michael Calabrese, “Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum,” Working Paper, presented at 39th Research Conference on Communication, Information and Internet Policy, Sept. 25, 2011.

last year, the Commission's ongoing certification of geolocation databases to govern opportunistic and conditional access by frequency-hopping radios to vacant TV channels makes this entirely feasible. There appears to be no reason to limit use of the TV Bands Databases to the TV band frequencies only, since these databases are capable of being used to regulate contingent access to fallow portions of other bands, including fallow AWS bands at issue here.

Even if the Commission imposes the buildout obligations suggested above, this spectrum will remain fallow for many years, particularly in rural and remote areas, until such time as Verizon completes a nationwide buildout. Just as licensed wireless microphone operators can make reservations in the database to block unlicensed access to TV white space channels as they need it, as part of its buildout obligation Verizon should be required to notify one or more FCC-certified TV Bands Database managers in advance of the commercial operation of a base station or other transmitter in each discrete geographic area as it builds out, along with the protection contour that is needed to give the licensee its needed and expected protection from harmful interference. Any unlicensed or other FCC-approved access to unused spectrum in a local area would be subject to these conditions, including the presumption that use of fallow spectrum licensed to Verizon on a primary basis is secondary, contingent, and temporary.

As the Commission adds fallow or underutilized bands to the database, subject to band-by-band conditions designed to avoid interference with incumbent licensees, network operators and/or devices can check the database for a particular area and select the most useful frequency from among those to which they can be tuned. Although device costs might be higher, the low spectrum costs would be an offset, encouraging use

of this otherwise wasted capacity as cognitive radio devices become more cost-effective. That trade-off between the ability to use unlicensed spectrum with somewhat more expensive equipment and/or a potentially lower quality of service is what has allowed thousands of wireless Internet service providers and community wireless providers to serve rural and other underserved areas.

Another emerging development that supports both the usefulness of opening access to a variety of unused frequency bands and its benefit for consumers and competition is the possibility that multiple carriers—as well as other service providers needing wireless connectivity—can share a common network infrastructure. The applications that use fallow spectrum on an opportunistic basis and/or share common local infrastructure—like many of the applications that would use unlicensed access to TV white space—are likely to be very low power and use local area connections for peer-to-peer applications, or for connections to a wireline router for the purpose of achieving faster data rates and offload. This would also facilitate data offloading and avoid the need to send certain bandwidth intensive data applications (such as video) over a capacity-limited licensed network operating on exclusively licensed spectrum.

Unlicensed use of the spectrum also would reduce congestion in existing mobile broadband networks—a particular concern of the Applicants—and would continue to spur the development and adoption of unlicensed devices. The Commission has explicitly recognized the potential benefits of unlicensed use of unused spectrum, and this spectrum should likewise not remain dark any longer than is necessary.

**E. Equipment Interoperability.**

If the Commission allows the license transfers to go forward, Verizon—already dominant over other carriers with respect to its spectrum holdings—would have such control over the AWS spectrum that it could control the equipment market and deploy handsets that work on its network alone. Therefore, the Commission must act to protect consumer choice by adopting an interoperability condition. By doing so, it will help mitigate some of the harms to consumers that would result from a fragmented equipment market, ensuring that small and regional carriers’ subscribers have access to a full range of reasonably-priced and innovative handsets.

**CONCLUSION**

WHEREFORE, for the above stated reasons, the Commission should deny the Application, or refer the matter for a hearing pursuant to Section 310(d).

Respectfully submitted,

PUBLIC KNOWLEDGE  
MEDIA ACCESS PROJECT  
NEW AMERICA FOUNDATION OPEN  
TECHNOLOGY INITIATIVE  
BENTON FOUNDATION  
ACCESS HUMBOLDT  
CENTER FOR RURAL STRATEGIES  
FUTURE OF MUSIC COALITION  
NATIONAL CONSUMER LAW CENTER,  
ON BEHALF OF ITS LOW-INCOME  
CLIENTS  
WRITERS GUILD OF AMERICA, WEST

/s Harold Feld  
*Legal Director*  
PUBLIC KNOWLEDGE

February 21, 2012

**REDACTED—FOR PUBLIC INSPECTION**

**CONFIDENTIAL APPENDIX**

[An appendix, consisting of 9 pages, containing highly confidential information subject to the Second Protective Order was submitted as part of this filing. Absent the explicit permission of the Parties with regard to what information can be made public, Petitioners have redacted the entire appendix.]

## DECLARATION OF HAROLD FELD

I, Harold Feld, declare under penalty of perjury that:

1. I have read the foregoing Petition to Deny of Public Knowledge et al., including the Confidential Appendix.
2. This declaration is submitted in support of the Petition to Deny applications in FCC Docket Number WT 12-4.
3. I am the Legal Director for Public Knowledge (“PK”), an advocacy organization with members, including Verizon Wireless subscribers and subscribers of multichannel video programming cable service, who, in my best knowledge and belief, will be adversely affected if the Commission approves the proposed transactions.
4. PK members use the wireless devices associated with their accounts to make and receive voice calls, send and receive text messages, and use data services when they travel to various locations throughout the United States. PK members also receive multichannel video programming and wireline broadband access.
5. In my best knowledge and belief, PK members will be directly and adversely affected if the Commission allows the proposed transactions between Verizon Wireless and SpectrumCo and between Verizon Wireless and Cox TMI Wireless to proceed. They will likely face fewer choices for wireline and wireless broadband and for cable service. Furthermore, if the agreements are permitted, Applicants may subsequently modify the agreements in anticompetitive ways without FCC oversight, creating higher prices for these services for PK members.
6. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

/s Harold Feld  
*Legal Director*  
PUBLIC KNOWLEDGE

## DECLARATION OF ANDREW JAY SCHWARTZMAN

1. I am Andrew Jay Schwartzman, Senior Vice President and Policy Director of Media Access Project (“MAP”), and declare under penalty of perjury that the foregoing is true and correct.
2. This declaration is submitted in support of the Petition to Deny applications in FCC Docket Number WT 12-4.
3. MAP is a non-profit, public interest law firm and advocacy organization working in communications policy. For over 38 years, MAP has promoted the public interest before the FCC and the U.S. Courts. Over that time, MAP has provided critical policy leadership and counsel to the public interest and media reform community and fought to ensure the public’s right to access and to diverse and competitive telecommunications services. MAP, its employees, and the persons it represents are users of wireless broadband services, and many are customers both of Verizon Wireless and of the owners of SpectrumCo and Cox. MAP’s employees and clients use the wireless devices associated with their accounts to make and receive voice calls, send and receive text messages, and use data services when they travel to various locations throughout the United States. They also receive multichannel video programming and wireline broadband access.
4. In my best knowledge and belief, the members of the public whose interests MAP represents, and MAP’s employees, will be directly and adversely affected if the Commission allows the proposed transactions between Verizon Wireless and SpectrumCo and between Verizon Wireless and Cox TMI Wireless to proceed. They will likely face fewer choices for wireline and wireless broadband and for cable service. Furthermore, if the agreements are permitted, Applicants may subsequently modify the agreements in anticompetitive ways without FCC oversight, creating higher prices for these services for MAP’s employees and clients.
5. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

/s Andrew Jay Schwartzman  
*Senior Vice President and Policy Director*  
MEDIA ACCESS PROJECT

## CERTIFICATE OF SERVICE

I certify that on February 21, 2012, I sent the foregoing Petition to Deny by email to the following:

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PUBLIC KNOWLEDGE