

REDACTED – FOR PUBLIC INSPECTION

March 7, 2012

FILED/ACCEPTED

Monica S. Desai
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MAR - 7 2012

Federal Communications Commission
Office of the Secretary

VIA ELECTRONIC FILING

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

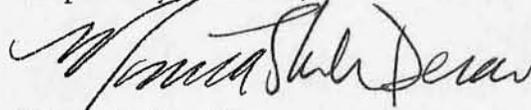
Re: FOR PUBLIC INSPECTION

**Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and
Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses,
WT Docket No. 12-4**

Dear Ms. Dortch:

On behalf of the Communications Workers of America (“CWA”) and the International Brotherhood of Electrical Workers (“IBEW”), enclosed please find two copies of the Public Inspection version in redacted form of CWA’s and IBEW’s ex parte filing in the above-referenced docket.

Respectfully submitted,



Monica S. Desai

REDACTED – FOR PUBLIC INSPECTION

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VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

On March 5, 2012, Debbie Goldman of Communications Workers of America (“CWA”), Randy Barber, President, Center for Economic Organizing and consultant to CWA and the International Brotherhood of Electrical Workers (“IBEW”), and Monica Desai of Patton Boggs, met with the following Commission staff regarding the above-referenced proceeding: Rick Kaplan, Neil Dellar, Austin Schlick, Jim Bird, Joel Rabinovitz, and Renata Hesse. During a portion of the meeting, when the discussion focused on confidential documents filed pursuant to the Protective Orders¹ in the proceeding, Debbie Goldman was not present.

Ms. Goldman, Mr. Barber and Ms. Desai discussed the points raised in the CWA and IBEW Supplemental Comments. They emphasized the critical importance of providing the public

¹ *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”); 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”).*

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with an opportunity to evaluate unredacted versions of the Joint Marketing Agreements connected to the proposed Transaction.² They requested status information on when the Commission would rule on the request made by CWA and other interested parties to stop the 180-day informal “shot clock” until the Applicants file unredacted versions of this critical information. They stated that transparency should be paramount in the public interest review process, and that the burden should be on the Applicants to prove why the information does not relate to any Commission public policy objective such as cross-platform competition, innovation, and the promotion of job growth and investment in infrastructure. They noted that it is unfair for the public to have to rely simply on the bald assertions made by the Applicants regarding the relevance of the hidden information, and emphasized that parties interested in evaluating the Transaction’s competitive concerns are at a considerable disadvantage without such information. CWA also reiterated that “pricing, compensation, and related provisions” are relevant to public interest analysis.³ The hidden information could help the public better understand the Transaction’s impact on the policy objectives that the Commission works to foster.

Ms. Goldman and Ms. Desai also discussed the Applicants’ denial of Ms. Goldman’s request to review Confidential and Highly Confidential information submitted in this proceeding. Ms. Desai noted that Ms. Goldman is an in-house expert working for a non-commercial party, and is not involved in any competitive decision-making. Under the plain terms of the Protective Orders, Ms. Goldman is entitled to review the Confidential and Highly Confidential information submitted in this proceeding. Ms. Goldman and Ms. Desai asked for status information regarding the February 16th Response filed by CWA to the Applicants’ Objection.

² 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”). See also 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); 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). The reseller and agent agreements between Verizon Wireless and SpectrumCo and Verizon Wireless and Cox and the joint operating entity agreement contained in Attachment A of each letter are collectively referred to as the “Joint Marketing Agreements.”

³ See Comments of CWA and IBEW, WT Dkt. No. 12-4 at 23 (filed on Feb. 21, 2012); Supplemental Comments of CWA and IBEW, WT Dkt. No. 12-4 at 4 (filed on Mar. 2, 2012).

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During the second portion of the meeting, Ms. Goldman left the room. Mr. Barber and Ms. Desai discussed the redactions to the Joint Marketing Agreements in light of the Applicants' assertion characterizing them as a "small number of redactions" that are related to "pricing, compensation, and related provisions, given the very highly sensitive, competitive nature of the information contained therein."⁴ Allowing the Applicants to redact critical information sets a bad precedent for FCC transaction review and encourages future license transfer applicants to hide relevant information in side agreements.

They disagreed with the assertion that there were a "small number" of redactions. As noted by Free Press, Media Access Project, The Greenlining Institute and Public Knowledge, "more than ten pages at a time" are redacted and "many provisions have been redacted in their entirety, including headings."⁵ The redactions ranged from one word to twelve consecutive pages, with at least 229 discrete redactions. In one agreement alone, it appeared that the volume of redactions totaled more than 29 pages, constituting a better fifth of the agreement.⁶

Moreover, Mr. Barber and Ms. Desai noted that even if assuming for the sake of argument that the Applicants are entitled to redact "pricing, compensation, and related provisions" (and we believe they are not), it is unclear that even a majority of the redactions were even tangentially related to these categories. In the case of many redactions, headings are deleted, **[[REDACTED]]** are deleted, and **[[REDACTED]]** are deleted. For example, **[[REDACTED]]** are completely redacted, with **[[REDACTED]]**. In another example, it appears that **[[REDACTED]]**.⁷ Also, there are multiple references to a **[[REDACTED]]**. **[[REDACTED]]**. **[[REDACTED]]**. This may or may not have any relation to the **[[REDACTED]]**.

⁴ Hammer Letter at 2; Harrington Letter at 2.

⁵ Letter of Andrew Schwartzman, Media Access Project, S. Derek Turner, Free Press, Samuel Kang, the Greenlining Institute, Harold Feld, Public Knowledge, to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 at 2 (filed on Feb. 7, 2012).

⁶ **[[REDACTED]]**

⁷ **[[REDACTED]]**

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In other cases, the [[REDACTED]]. Those [[REDACTED]]. For example, in [[REDACTED]].

And, there are many examples of [[REDACTED]]. For example, there are [[REDACTED⁸⁹¹⁰]].¹¹

As a result of these types of redactions, the public is at a severe disadvantage, and cannot fully analyze the competitive impact of these Joint Marketing Agreements.

Please contact me if you have any questions related to this matter.

Respectfully submitted,



Monica S. Desai
Carly T. Didden

cc: Rick Kaplan
Austin Schlick
Jim Bird
Joel Rabinovitz
Neil Dellar
Renata Hesse

Attachments:

- (1) March 2 Supplemental Comments
- (2) February 16th Response to Objection

⁸ [[REDACTED]]

⁹ [[REDACTED]]

¹⁰ [[REDACTED]]

¹¹ [[REDACTED]]

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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)
)
)

To the Chief, Wireless Telecommunications Bureau

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

The Communications Workers of America (“CWA”) and the International Brotherhood of Electrical Workers (“IBEW”) hereby submit the following supplemental comments regarding the applications filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and SpectrumCo LLC (“SpectrumCo”) 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

Pursuant to Section 310(d) of the Communications Act,² the Commission must determine whether the Transaction, which includes Joint Marketing Agreements,³ will serve the public interest,

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, “Transaction”).

² 47 U.S.C. § 310(d) (1996).

convenience, and necessity.⁴ The public has the right to participate fully in the Commission's evaluation. The Commission's evaluation, as well as the Comments and Reply Comments offered by the public, are incomplete without the ability to review fully the Joint Marketing Agreements, which are at the heart of this Transaction. Accordingly, it is impossible for the public to evaluate fully and meaningfully any Oppositions filed by the Applicants today, and to provide a robust evaluation in the Reply Comments due to be filed on March 12, without access to such critical information.

The FCC has the duty to protect and foster cross-platform competition. Consumers benefit from having choices for video, wireless, voice, and broadband services. Such competition results in lower prices, accelerated broadband deployment, and new and improved services and applications.⁵ Verizon itself has cited the importance of "the competitive rivalry between cable companies and telcos" resulting in benefits to consumers of "better broadband services and lower prices."⁶ The

³ 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) 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) ("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."

⁴ 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").

⁵ The Commission has emphasized the connection between increased competition and accelerated broadband deployment, emphasizing that competition between network operators is "crucial" in ensuring that broadband is affordable. *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 ¶ 71 (2011) (citing 47 U.S.C. § 1302(b)) ("Seventh Broadband Report").

⁶ 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 on Jan. 14, 2010) ("Topper Report").

states with the most robust broadband capacity are those in which Verizon's FiOS competes with cable's broadband service.⁷ Cross-platform competition drives investment to increase capacity in broadband networks, thereby creating jobs, and enabling new and improved services and applications.⁸

The FCC also has the responsibility to establish a process that enables interested parties to have access to all of the information necessary to comment on these public interest goals and mandates. Here, numerous parties have complained to the Commission that vital information has been withheld that puts them at a serious disadvantage when analyzing the impact of this Transaction. Public interest groups including Public Knowledge and Free Press, trade associations including Rural Telecommunications Group, Inc. and RCA-The Competitive Carriers Association, and industry participants including DIRECTV, Sprint Nextel Corporation, Hawaiian Telecommunications, NTCH, and T-Mobile USA, have all insisted that they need access to fully unredacted copies of the Joint Marketing Agreements and they are at a serious disadvantage without them.

CWA and IBEW agree with concerns voiced by other interested parties and organizations that the proposed Transaction would appear to reduce such competition by FiOS and cable companies through Joint Marketing Arrangements. Such agreements would appear to limit the availability of competitive services, dividing up geographic service areas for particular companies, leading to reduced investment in infrastructure, job losses, and ultimately, higher prices for consumers.

⁷ See FiberforAll, <http://Fiberforall.org/Verizon-fios/> (last visited Feb. 15, 2012).

⁸ 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.

In order to evaluate whether the proposed Transaction is in the public interest, it is critical that unredacted versions of the Joint Marketing Agreements be made available. Accordingly, as emphasized by others “unless and until those materials are made available, it will be impossible to frame fully informed comments for this proceeding.”⁹ And as emphasized by the Rural Telecommunications Group, parties interested in participating in the public interest review process “are unable to fully analyze critical components” of the Joint Marketing Agreements and as a result “are at a disadvantage in filing comments and petitions in this proceeding.”¹⁰

Because the Joint Marketing Agreements contain significant redactions, including the redaction of headings, it is impossible to determine the scope of the redactions. It is also impossible to determine if they are limited to “pricing, compensation, marketing strategy, or [are] irrelevant to

⁹ Comments of DirecTV, LLC, WT Dkt. No. 12-4 at 4-5 (filed on Feb. 21, 2012) (“DTV Comments”); *see also* RCA-The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, WT Dkt. No. 12-4 at 36 (filed on Feb. 21, 2012) (“In a nutshell, rather than actively competing against each other for the gamut of telecommunications needs – wireless, wireline, video, etc. – the two major telecommunications companies in most areas of the country will now be working together through an effective non-compete agreement that almost certainly will result in a loss of competition in each separate product market. The potential for anti-competitive action between these companies is enormous – and potentially dangerous for consumers. The Commission should not blindly accept the Applicants’ characterization that these significant Related Agreements do not raise any competitive issues. Rather, the Commission must conduct a complete and exhaustive review of these Related Agreements to ensure that competition is not stifled by their very existence.”) (“RCA Petition”); NTCH Petition to Deny, WT Dkt. No. 12-4 at 12 (filed on Feb. 21, 2012) (“The Commission should require the parties to make the full terms of these agreements available for its own review and that of the public.”); MetroPCS Communications, Inc. Petition to Deny Applications, WT Dkt. No. 12-4 at 4 (filed on Feb. 21, 2012) (“Under the legal standard set by Section 310(d) of the Communications Act, the Commission cannot grant a license assignment without making an affirmative finding that the public interest, convenience and necessity will be served thereby. The Commission should not, and cannot, make such a finding based on the record provided to date by the Applicants.”) (internal citation omitted); Comments of Sprint Nextel Corporation, WT Dkt. No. 12-4 at ii (filed on Feb. 21, 2012) (complete, unredacted versions of the Joint Marketing Agreements are necessary to “evaluate the implications of the Transactions within the totality of these competitive and marketplace circumstances.”).

¹⁰ Rural Telecommunications Group, Inc., WT Dkt. No. 12-4 at 6 (filed on Feb. 21, 2012).

the Commission's review of the spectrum transaction," as alleged by the Applicants.¹¹ The Commission has consistently stated that the material terms of an agreement may not be redacted and that pricing information is a material term.¹² As noted by Hawaiian Telecom, the Joint Marketing Agreements "have been redacted to the point of uselessness. With so many of the contractual details undisclosed, it is impossible to determine the extent to which the parties can engage in potentially anticompetitive practices. It is further impossible to determine if the terms and conditions of the Joint Agreements are on their face anti competitive."¹³

The public must be allowed to examine the cross-sales and joint venture components of the agreements, which, as emphasized by Public Knowledge, is consistent with the recognition that "unmonitored third party influence and control over licenses can thwart the purpose of the Commission's rules entirely."¹⁴

The FCC should not allow the Applicants to rest simply on their own assertions regarding critical information impacting investment, competition and jobs, and the Commission should not simply take them at their word. As stated by DIRECTV, "[o]ne can only wonder what these parties are hiding through these deletions, and why they do not want commenters to have access to that material."¹⁵ The Commission, not the Applicants, should decide what information in an agreement is relevant to the Commission's and the public's review of a transaction in order to evaluate its

¹¹ Letter of Bryan Tramont, Wilkinson Barker Knauer LLP; Michael Hammer, Willkie Farr & Gallagher LLP; J.G. Harrington, Dow Lohnes PLLC to Marlene Dortch, Secretary, Federal Communications Commission, WT Dkt. No. 12-4 at 2 (filed on Feb. 9, 2012).

¹² 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).

¹³ Hawaiian Telecommunications, Inc. Petition to Deny or Condition Assignment of Licenses, WT Dkt. No. 12-4 at 10-11 (filed on Feb. 21, 2012).

¹⁴ PK Petition at 18.

¹⁵ DTV Comments at 4-5.

impact on the public interest. Indeed, the Applicants and the Commission may have very different views on whether the transaction upends the Communications Act's aim to create a competitive framework to encourage investment, maximize consumer choices and create jobs.

Moreover, since the sensitive information regarding "pricing, compensation, and related provisions" has, according to the Applicants, been redacted from the Joint Marketing Agreements, the Commission should make those redacted copies of the Joint Marketing Agreements publicly available.

The Commission should stop the informal 180-day "shot clock" for this Transaction until the Applicants provide unredacted copies of 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 Joint Marketing Agreements.
3. Copies of reseller or agent agreements between any of the Applicants and another company.

Respectfully submitted,

/s/ Monica S. Desai

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*Counsel to the Communications Workers of
America*

Dated: March 2, 2012

CERTIFICATE OF SERVICE

I, Ryan W. King, hereby certify that on this 2nd day of March 2012, I caused true and correct copies of the foregoing Supplemental Comments to be served by first class mail to the following individuals:

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And by email to the following individuals:

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/s/ Ryan W. King
Ryan W. King

ATTACHMENT 2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**RESPONSE TO JOINT OBJECTION TO DISCLOSURE OF
CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

The Communications Workers of America (“CWA”), through counsel, hereby responds to the Joint Objection to Disclosure of Confidential and Highly Confidential Information (“Objection”) filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), SpectrumCo LLC, and Cox TMI Wireless, LLC (collectively, the “Applicants”) in the above-referenced proceeding (“Transaction”). The Applicants object to the disclosure of Confidential and Highly Confidential Information pursuant to the Protective Order¹ and Second Protective Order² in this Transaction to Debbie Goldman, Telecommunications Policy Director and Research Economist

¹ *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 Docket No. 12-4, DA 12-50 (Jan. 17, 2012) (“First Protective Order”).*

² *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 Docket No. 12-4, DA 12-51 (Jan 17, 2012) (“Second Protective Order” and collectively with First Protective Order, “Protective Orders”).*

at CWA.³ Ms. Goldman is an in-house expert working for a non-commercial party. Ms. Goldman is not involved in any competitive decision-making. Under the plain terms of the First and Second Protective Orders, Ms. Goldman is entitled to review the Confidential and Highly Confidential Information submitted in this proceeding. Accordingly, the Commission should deny the Objection and permit Ms. Goldman access to the Confidential and Highly Confidential Information subject to the terms and conditions of the Protective Orders and their executed acknowledgements of the same.

At the outset, the Objection rests on two faulty propositions: (1) that CWA “is not a ‘non-commercial party’” and (2) that even if CWA is a “non-commercial party,” collective bargaining falls within the meaning of “Competitive Decision-Making” as defined by the First and Second Protective Orders.⁴ Neither proposition is correct, as explained in detail below.

(1) CWA is a Non-Commercial Party.

CWA is a non-profit Section 501(c) (5) organization, the purpose of which is to protect the organizing and collective bargaining rights of its employee members - rights that are enshrined and protected by longstanding federal law and policy.⁵ Unlike a commercial entity, CWA itself will not reap any commercial benefits from access to the Applicants’ Confidential and Highly Confidential Information.

Applicants claim that CWA is somehow a “commercial party” because it bargains for the rights of its union employees. This argument overlooks that as a matter of longstanding federal law

³ Joint Objection to Disclosure of Confidential and Highly Confidential Information of Celco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), SpectrumCo LLC, and Cox TMI Wireless, LLC of Objection, WT Dkt. No. 12-4 (filed on Feb. 7, 2012) (“Objection”).

⁴ First Protective Order para. 2 and Second Protective Order para. 2 (“The term ‘Outside Consultant’ includes any consultant or expert employed by a non-commercial party in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.”).

⁵ 29 U.S.C. §§ 151-152(a) (5); *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

and policy, the rights of workers to organize and collectively bargain with their employers embody unique public interest policies and protections and have no similarity to one of the Applicants' competitors.⁶ Indeed, federal law explicitly recognizes "the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty to contract," and therefore declares it important federal policy to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."⁷ Consistent with that federal law and policy, the mere fact that CWA negotiates on behalf of union workers with some affiliates of the Applicants "over a variety of commercial and business matters"⁸ does not change the fact that CWA is a non-profit organization. The Applicants cite no precedent in support of its assertion that because CWA bargains with affiliates of the Applicants to protect workers, that such negotiations turn CWA, a non-profit company, into a "commercial party."

(2) Ms. Goldman is not involved in any "Competitive Decision-Making"

"Competitive Decision-Making" is defined in the Protective Orders as meaning that a person's "activities, associations, or relationship with any of its clients involve advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or a business relationship with the Submitting Party." Ms. Goldman's work, as Telecommunications Policy Director and as a research economist, does not involve anything related to "competition with or a business relationship with" the Applicants.

State public utility commissions ("PUC") have squarely rejected the idea that a union

⁶ 29 U.S.C. §§ 151-152(a) (5).

⁷ National Labor Relations Act, 49 Stat. 449, §1 (1935) (codified as amended at 29 U.S.C. § 151-169)

⁸ Objection at 4.

representing a company's employees is a "competitor" of that company. For example, the Rhode Island PUC examined an argument by a utility that attempted to prevent the required disclosure of sensitive commercial and financial information to the unions representing its workers. The utility tried to invoke an exemption for the disclosure of information that would cause "substantial harm to the competitive position" of the company." The Rhode Island PUC, in ruling in favor of the union, noted that the utility had been unable to find any federal or state law interpreting a labor union to be "a competitor with its own company," and emphasized that the "competitive harm" exemption had never been interpreted "to deem a labor union which is in dispute with its own company to be in competition with its own company."⁹ The Washington, D.C. PUC confirmed that "a labor union...representing a utility's own employees, should not be viewed as a 'competitor' of the utility for purposes of discovery."¹⁰ And the Missouri PUC found it "obvious" that CWA is "not a competitor" of Sprint Nextel.¹¹

Regardless, to alleviate any such concerns, and consistent with past arrangements for reviewing such information, Ms. Goldman is willing to agree that she will not participate in collective bargaining for a period of 18 months after an order is issued granting the Transaction.

Moreover, the Applicants' argument about what they believe is the potential utility of the Confidential and Highly Confidential Information to CWA's current and forthcoming collective bargaining with the Applicants proves too much. If, as the Applicants claim, the Confidential and Highly Confidential Information is in fact relevant to that collective bargaining, then CWA is independently entitled to that information for use in collective bargaining under the National Labor

⁹ *New England Gas Co. Rate Filing*, 2002 R.I. PUC LEXIS 15, at *7 (May 6, 2002)

¹⁰ *Fonmal Case No. 154, Application of Washington Gas Light Co.*, Order on Reconsideration, Order No. 14586, 11, 26, 59 (D.C. PSC Sept. 28, 2007).

¹¹ *Application of Sprint Nextel for Approval of Transfer of Control*, 2006 Mo. PSC LEXIS 218, at *2 (Jan. 18, 2006)

Relations Act and NLRB rules.¹² Thus, by the Applicants' own admission, the very "injury" that they claim they will suffer from Ms. Goldman gaining access to the Confidential and Highly Confidential Information - that the information could be helpful to CWA in collective bargaining - is a right that CWA possesses in connection with collective bargaining under federal labor laws. That can hardly be a cognizable "injury" here, and it serves to underscore our earlier point: as a matter of federal law and policy, CWA cannot be construed to be a "competitor," and collective bargaining cannot be equated to "competitive decision-making activities," within the meaning of the "Outside Consultant" definition in the Protective Orders. Accordingly, Ms. Goldman is entitled to access to the Confidential and Highly Confidential Information, subject to the terms of the acknowledgements they have already executed.

Finally, there is an additional strong public policy reason that militates against granting the Applicants' Objection against Ms. Goldman. If the Protective Orders were construed to prohibit in-house union employees like Ms. Goldman from obtaining access to Confidential and Highly Confidential Information, it would impose on non-profit organizations like CWA the burden and expense of either (1) hiring more outside consultants to perform tasks currently performed by employees, or (2) expanding and reorganizing CWA's in-house staff to separate structurally those employees who are involved with collective bargaining from those who work on Commission proceedings such as this one, functions that are currently integrated with CWA's staff. Imposing such additional costs and structural separation burdens on CWA here, and unions in general, would prejudice them relative to FCC regulated employers that regularly participate in Commission proceedings and that typically have more resources and specialized staff for FCC matters. The result would likely be to chill union participation in proceedings such as this one, denying the Commission

¹² See, e.g., *NLRB v. ACME Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Leland Stanford Jr. University*, 262 NLRB 136 (1982); *Conrock Co.*, 263 NLRB 1293 (1982).

the benefit of critical input concerning the impact of FCC applications such as this one on the applicants' employees. While employers like the Applicants would no doubt like that result, the Commission should not, as it would "deny the Commission the benefit of comment from commenters with limited resources, and tilt the record on which the FCC makes its decisions improperly toward the interests of FCC regulated employers and against their employees."¹³

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For the foregoing reasons, the Objection should be denied, and the Commission should order the Applicants to provide Ms. Goldman with access to the Confidential and Highly Confidential Information pursuant to the terms of her executed acknowledgements that have already been delivered to the Applicants.

Respectfully submitted,

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¹³ *Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24829, ¶17 (1998).

CERTIFICATE OF SERVICE

I, Ryan W. King, hereby certify that on this 16th day of February 2012, I caused true and correct copies of the foregoing "Response to Joint Objection to Disclosure of Confidential And Highly Confidential Information" to be served by first class mail to the following individuals:

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