March 21, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 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; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10-56

Dear Ms. Dortch:

The Applicants in this proceeding have submitted for the record several Commercial Agreements that, among other things, “provide the parties to those agreements with the ability to act as agents selling one another’s services.” In doing so, however, they took it upon themselves to redact significant portions of those documents, and have made clear that they would not submit unredacted copies of those documents unless ordered to do so by the Commission. While the Commission recently directed the Applicants to make a revised submission of the Commercial Agreements in which specific sections are no longer redacted, Public Knowledge believes that the Commission should require full disclosure of all provisions of the Commercial Agreements.

In this regard, it is interesting to note the very different view of redacting taken by one of the Applicants – Comcast Corporation – when disclosure of someone else’s confidential information is at issue. In order to protect the interests of online video distributors (“OVDs”) in the aftermath of Comcast’s acquisition of NBC/Universal, the Commission imposed a condition under which Comcast/NBCU must provide an OVD comparable programming on terms that are economically equivalent with those the OVD has been able to negotiate with a qualifying peer programmer. Recently, Comcast filed a request that OVDs be compelled to “provide a full and unredacted copy of their peer deal(s)” whenever they seek to take advantage of this merger condition. In addition, Comcast proposed a new protective order under which disclosure of

3 See, e.g., Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Lynn Charatan, Vice President, Comcast Corp. (Mar. 8, 2012).
confidential materials would not be limited to outside counsel and experts only (as it is under the protective orders in this proceeding), but would also include disclosure to “business persons with executive management and negotiating responsibilities” within Comcast/NBCU.6

As Comcast has recognized, program carriage agreements “have long been considered (and acknowledged by the Commission) as the ‘crown jewels’ of the business.”7 Nonetheless, Comcast proposes that OVDs be required to hand over such agreements, in full and unredacted form, for review by executives of their biggest competitor. The material redacted from the Commercial Agreements in this proceeding can be no more confidential than the “crown jewels” of the industry. Yet Comcast feels entitled to redact such information even though it would only be disclosed to outside counsel and experts, not the internal decisionmakers of other companies. For Comcast, the sensitivity of information and the right to redact apparently are determined by a single criterion: what rule best serves Comcast’s interests in a particular situation. Comcast is free to take such a self-serving approach, but the Commission is not.

As it weighs the need for further disclosure of redacted materials, the Commission should take note of Comcast’s radically different approach when it is on the other side of the disclosure issue.

Respectfully submitted,

/s/
John Bergmayer
Senior Staff Attorney
PUBLIC KNOWLEDGE

cc:
Jim Bird
Sandra Danner
Bill Dever
Lisa Gelb
Rick Kaplan
Paul LaFontaine
Virginia Metallo
Paul Murray
Joel Rabinovitz

Eric Ralph
Jennifer Salhus
Austin Schlick
Susan Singer
Christopher Sova
Tim Stelzig
Joel Taubenblatt
Sara Whitesell
Aleks Yankelevich

6 Id. at 4.
7 Comments of Comcast Corporation, MB Docket No. 11-131, at 34 (Nov. 28, 2011).