

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 )

REPLY COMMENTS  
OF SPRINT NEXTEL CORPORATION

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SUMMARY

Sprint Nextel Corporation (“Sprint”) and several other industry participants and public interest entities have demonstrated in comments and petitions filed in this proceeding that the license assignment applications currently under review by the Federal Communications Commission (the “Commission”) are merely one small part of a transformative set of agreements. The Applicants (Cellco Partnership d/b/a Verizon Wireless (“Verizon”), SpectrumCo, LLC (owned by Comcast Corp., Time Warner Cable Inc., and Bright House Networks, LLC), and Cox TMI Wireless LLC) have agreed to call a cease fire to competition between local exchange carriers (“LECs”) and cable operators, previously avid competitors, so that they can sell each other’s services and collaborate in the control of technology and intellectual property intended to integrate wired video, voice, and high-speed Internet with wireless technologies.

Although substantial evidence reveals that the Applicants fully comprehend the integrated nature of the transactions, they nonetheless argue that the spectrum assignments must be evaluated in a vacuum, removed from the interrelated repercussions of the Commercial Agreements. They seemingly believe this position gives them license to largely ignore questions and concerns raised in comments and petitions by Sprint and others. These include:

- The Commission’s spectrum screen is inadequate as a reliable tool for evaluating the competitive impact of transactions such as this. Yet, even though their own expert finds fault with it, the Applicants ask the Commission to avoid deviating from this flawed standard.

**REDACTED – FOR PUBLIC INSPECTION**

- WiFi is an increasingly important factor in the provision of mobile communications service. Both through public hotspots and through in-home wireless networking, WiFi is able to provide customers with fast downloads while avoiding usage caps imposed by many commercial mobile service operators. The transactions in this proceeding would put gatekeeper functionality in the hands of the combined Verizon/ Cable Company enterprise, which would also have exclusive rights to technology and intellectual property that could become industry standards based only on the sheer volume of customers that would be served by the enterprise.
- The transactions would eliminate any incentive the Cable Companies might have to actively compete against the Verizon operating LECs in the provision of private line, backhaul, and special access services. As the Verizon LECs solidify their control over the market, they will have the ability to increase prices and delay service to Verizon's competitors.
- Verizon's market share in the provision of mobile wireless services makes it vital for smaller carriers to be able to make arrangements for data roaming with the largest carrier. Verizon takes the position that the Commission's data roaming requirements are invalid, signaling the difficulties that competing carriers will continue to have with data roaming.

The combination of LEC and cable operators in a venture intended to provide video, data, and voice telecommunications services is totally antithetical to the goals and provisions of the Communications Act, as amended by the '96 Act. Congress clearly believed that the existence of two wired terrestrial networks in most areas of the country was the basis for widespread

competition, not collaboration. Contrary to this belief, the arrangements in this integrated transaction eliminate constraints that exist today or would develop and provide the Applicants with opportunities to raise prices and make competition more difficult and more expensive for other wireless carriers. The Commission must carefully evaluate these groundbreaking transactions in their totality to determine whether the public interest requires safeguards to protect consumers.

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**REPLY COMMENTS  
OF SPRINT NEXTEL CORPORATION**

**I. THE SCOPE OF THE INTERRELATED TRANSACTIONS IN THIS PROCEEDING IS FAR BROADER THAN LICENSE ASSIGNMENTS.**

In their “Joint Opposition to Petitions to Deny and Comments,”<sup>1</sup> Cellco Partnership d/b/a Verizon Wireless (“Verizon”), SpectrumCo, LLC,<sup>2</sup> and Cox TMI Wireless, LLC (the “Cable Companies”) persist in the position that the transactions under scrutiny in this proceeding are license assignments and nothing more.<sup>3</sup> Sprint Nextel Corporation (“Sprint”) along with a significant contingent of industry participants and public interest groups maintain that the spectrum assignments are but one part of a transformative arrangement that has the potential to forever change the competitive landscape in the wireless, broadband, and video markets.<sup>4</sup>

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<sup>1</sup> Joint Opposition of Cellco Partnership d/b/a Verizon Wireless, Cox TMI Wireless, LLC and SpectrumCo, WT Docket No. 12-4 (filed Mar. 2, 2012) (the “Joint Opposition”).

<sup>2</sup> SpectrumCo, LLC is owned by Comcast Corp., Time Warner Cable Inc., and Bright House Networks, LLC, three cable Multiple System Operators (“MSOs”). Cox TMI Wireless LLC is a subsidiary of MSO Cox Communications, Inc. Verizon and the Cable Companies are the “Applicants” in this proceeding.

<sup>3</sup> Joint Opposition at 4, 70-71.

<sup>4</sup> Comments of Sprint Nextel Corporation, at 1-4 (*citing* the characterization of the transactions by Craig Moffet of Bernstein Research: “a complete reordering of the competitive universe as we know it today.”) (Except as stated otherwise, Comments and Petitions to Deny cited hereinafter are those filed in WT Docket No. 12-4 on February 21, by the cited party). *See also, e.g.*, Petition to Deny of Free Press, at 47-52 (“With these transactions and associated cartelization agreements, we finally see industry admitting the myth of not only so-called ‘third-pipe competition,’ but of competition between cable broadband providers and ILEC broadband providers.” *Id.* at 52); Hawaiian Telcom Communications, Inc. Petition to Deny or Condition Assignment of Licenses, at 17 (“the transaction may be viewed as an allocation

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There are two wired terrestrial networks in most areas of the country: one built by incumbent local exchange telephone carriers (“ILECs”) and the other by franchised cable operators. Both were constructed with and enabled by government support, including enhanced access to public and private property at regulated cost.<sup>5</sup> The agreements between Verizon and the Cable Companies significantly change their commercial incentives, converting the owners of these wired ecosystems from natural competitors to comrades in arms, on an apparent mission to divide the markets for a wide range of services in a manner that would increase their profits, raise retail prices, and limit consumer choice. This type of cooperation is antithetical to the principles of the Communications Act, which relies on competition to maximize consumer choice and keep rates reasonable.<sup>6</sup> These arrangements, therefore, require, at the very least,

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of markets.”); Petition to Deny of the New Jersey Division of Rate Counsel (Feb. 17, 2012), at 23 (“[I]n aggregate, Verizon, Comcast, Time Warner, Bright House and Cox control a large percentage of the landline voice, wireless, and broadband links to the nation’s households. Therefore, their joint conduct in the market place will have major repercussions for millions of consumers.”); Petition to Deny of Public Knowledge et. al., at 2 (“[T]hese proposed transactions would fundamentally alter the nature of the telecommunications world in a manner utterly contrary to that intended by the 1996 Telecommunications Act.”); RCA — The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, at 36 (“[R]ather 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.”).

<sup>5</sup> See, e.g., 47 U.S.C. § 224.

<sup>6</sup> The Commission’s recent report on cable industry prices demonstrates the wisdom of that approach: in markets with effective wired multichannel video competition (e.g., from FiOS), cable prices were 31% lower per expanded basic channel than in markets without such

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increased regulatory oversight for the activities of the Verizon/Cable Company venture or carefully crafted precautions that deter anticompetitive behaviors.

In their license assignment applications, the Applicants disclosed the existence of “Commercial Agreements” that permit Verizon and the Cable Companies to sell each other’s services and to create a joint venture in which they will purportedly collaborate to develop technology and intellectual property that will integrate wired video, voice, and high-speed Internet with wireless technologies.<sup>7</sup> These arrangements, however, will raise the costs of wireless competitors, thereby reducing their ability and incentives to compete with Verizon.

The Applicants have formally claimed that these agreements are irrelevant to the license assignments and lie outside the Commission’s jurisdiction.<sup>8</sup> Statements made by a high-ranking Comcast executive, however, reveal that the Applicants’ formal position is a matter of regulatory expediency and not entirely accurate. In a recent interview with POLITICO, David L. Cohen, Executive Vice President of Comcast Corporation, admitted that the agreements and license assignments are interrelated. In response to a question asking if Comcast would have sold spectrum to Verizon without the commercial agreements, he stated: “The transaction is an

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competition. *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, DA 12-377, § 14, Table 2 (rel. Mar. 9, 2012).

<sup>7</sup> Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, File No. 004993617 (filed Dec. 16, 2011), Exh. 1, at 23-24 and n.71 (“Verizon/SpectrumCo Application”); Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4, File No. 004996680 (filed Dec. 21, 2011), Exh. 1, at 20 and n.62.

<sup>8</sup> Joint Opposition, Addendum Concerning the Commercial Agreements, Exh. 6, at 1.

integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements."<sup>9</sup>

The Applicants have taken advantage of their formal position when they developed their Joint Opposition. By conveniently claiming that the Commercial Agreements were irrelevant to the license assignments and therefore not subject to Commission review, the Applicants apparently believed that it was unnecessary to respond to pointed questions regarding a host of competitive issues raised by those agreements.<sup>10</sup> Thus, they gave short shrift to concerns in areas such as access to WiFi, dedicated lines, and roaming,<sup>11</sup> ignoring issues or providing only perfunctory, dismissive responses. The Joint Opposition further stated that the Commission should not review the Commercial Agreements because they are being fully reviewed by the Department of Justice (“DOJ”) and only the DOJ has authority to review them.<sup>12</sup> Yet, in the POLITICO interview, Mr. Cohen noted that the Applicants don’t believe that DOJ has authority over their arrangements either.<sup>13</sup>

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<sup>9</sup> Eliza Krigman, *Comcast Executive Defends Verizon-SpectrumCo Deal*, POLITICO PRO (Mar. 8, 2012).

<sup>10</sup> Joint Opposition at 70.

<sup>11</sup> See Sections III. – V. below.

<sup>12</sup> Joint Opposition at 75.

<sup>13</sup> Krigman, *supra* note 9 (quoting David Cohen of Comcast: “What we have argued is that the FCC doesn’t have jurisdiction over these agreements. . . . [T]here is no approval right or rejection right at the FCC over these. . . . The spectrum agreement is subject to the Hart-Scott-Rodino Act over at the Justice Department. Under that Act, the DOJ doesn’t have a right to approve or reject any transaction there either.”).

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<sup>14</sup> [Begin Highly Confidential Information] [Redacted]  
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<sup>15</sup> [Begin Highly Confidential Information] [Redacted]  
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<sup>16</sup> [Begin Highly Confidential Information] [Redacted]  
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Commission staff, having had the opportunity to review fully unredacted versions of the Commercial Agreements at the Department of Justice, has ordered the disclosure of certain provisions that Verizon and the Cable Companies initially redacted. Some of these newly unredacted provisions are discussed in these Reply Comments. The Commission has also ordered the Applicants to produce certain documents relating to the transactions.<sup>19</sup> These related documents are very likely also to have value in allowing commenters to adequately assess the harms associated with the transaction and provide the Commission with meaningful comment on

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<sup>17</sup> **[Begin Highly Confidential Information]** [Redacted] **[End Highly Confidential Information]**

<sup>18</sup> **[Begin Highly Confidential Information]** [Redacted] **[End Highly Confidential Information]**

<sup>19</sup> Letters from Rick Kaplan, Chief, Wireless Telecommunications Bureau, to Cody Harrison (Bright House), Lynn Charytan (Comcast), Jennifer Hightower (Cox), David Don (SpectrumCo), Steven Teplitz (Time Warner), and Michael Samsock (Verizon), WC Docket No. 12-4 (Mar. 8, 2012).

which to base its decision. Thus, Sprint may have additional comments or concerns following the review of these materials by its Outside Counsel and Outside Consultants.

**II. THE SPECTRUM SCREEN IS CLEARLY BROKEN, BUT THE APPLICANTS INSIST ON APPLYING IT ANYWAY.**

Sprint and numerous parties have explained that, because of the physical characteristics of spectrum at various places in the electromagnetic spectrum, it makes no sense to use a spectrum screen that considers one megahertz to be equal to another megahertz in a completely different band.<sup>20</sup> The Applicants are eager to cite the large spectrum holdings of Clearwire Corp. to make Verizon's holdings seem less imposing by comparison, but it is not sensible to equate the Clearwire spectrum with Verizon's "beachfront" holdings because the physical characteristics and market value are so different.<sup>21</sup>

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<sup>20</sup> Sprint Comments at 17, *citing* Fifteenth Report; RCA Petition at 52; Petition to Deny of T-Mobile, USA, Inc., at 32-34.

<sup>21</sup> See Joint Opposition at 50. The Commission should reject Verizon's attempts to diminish the extent of its spectrum holdings by false comparisons to the spectrum currently held by Clearwire. First, as Verizon knows, while Sprint does purchase wholesale capacity from Clearwire and holds an ownership stake in the company, it does not control Clearwire's board of directors or management and does not manage Clearwire's operations. Second, Clearwire operates as a wholesale carrier that sells 4G wireless broadband capacity to any carrier that desires to purchase it, including Verizon and AT&T. See, e.g., Greg Bensinger, *Clearwire, Leap Make Wholesale Pact*, WALL STREET JOURNAL available at: <<http://online.wsj.com/article/SB10001424052702304692804577281682264233766.html>> (reporting Clearwire's agreement to provide broadband services to Leap Wireless and Clearwire's discussions to provide similar wholesale services to Verizon and AT&T). Thus, Verizon and AT&T are just as able to acquire capacity from Clearwire as Sprint, Leap, or other carriers, each of which must negotiate wholesale capacity arrangements with Clearwire at arm's length. Third, the Commission includes only 55.5 MHz of the 2.5 GHz band in its

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Moreover, the Applicants' consultant claims that the Commission has been inconsistent in this regard<sup>22</sup> and notes that the "one-third rule" underlying the Commission's spectrum screen is implicitly based on a false assumption.<sup>23</sup> While noting the sheer variety and complexity of the many proposals for an improved spectrum aggregation screen, the Applicants nevertheless implore the Commission to continue using the current screen, which their own consultant finds flawed, because it fits their needs.<sup>24</sup> This argument is not a comforting justification for setting the standard for review of applications that would result in granting even more prime spectrum to the carrier that already holds the most. Verizon's embrace of the existing spectrum screen stands in stark contrast to its prior requests that the Commission revise the screen coincident with its review of a pending transaction.<sup>25</sup>

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spectrum screen calculations, but even this amount greatly overstates the relative value of this spectrum in the broadband future. In fact, Sprint and Clearwire described in detail the factors diminishing the relative value of the 2.5 GHz band in their joint filings in the Commission's 2008 proceeding regarding the transfer of Sprint's licenses in that band to Clearwire. *See, e.g.,* Joint Opposition to Petitions to Deny and Reply to Comments of Sprint Nextel Corporation and Clearwire Corporation, WT Docket No. 08-94, at 22-31 (Aug. 4, 2008).

<sup>22</sup> Declaration of Michael L. Katz, attached to the Joint Opposition, Exh. 4, at 39-40 (contrasting the Commission's discussion in the AT&T-Qualcomm transaction that spectrum under 1 GHz has special value with its pronouncement in the Fifteenth Report that higher frequencies can be just as effective, or more effective than lower-frequency spectrum) ("Katz Decl.").

<sup>23</sup> *Id.* at 33.

<sup>24</sup> Joint Opposition at 52-54.

<sup>25</sup> *See, e.g., In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and*

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The Commission has repeatedly held that its spectrum screen is not the end of the analysis, but the beginning.<sup>26</sup> The screen is merely a means of identifying those geographic areas where the concentration of an essential input – spectrum – into wireless broadband service offerings has the greatest potential to deny consumers choice, thwart innovation, and increase prices. In this case, a tightly integrated set of agreements among Verizon and the Cable Companies changes the commercial incentives of the participants. Specifically, the transaction ends the Cable Companies' potential to offer facilities-based competition in the wireless market through an anticompetitive agreement by Verizon not to compete in the wireline broadband and video market place. The Commission has never conducted its spectrum screen analysis in a vacuum and must take into account not only the capacity of different bands with intrinsically

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*Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Public Interest Statement, Exhibit 1 at iii (filed June 13, 2008) (requesting significant changes to the spectrum screen as then applied because it “no longer provide[d] a meaningful trigger for engaging in competitive analyses”).

<sup>26</sup> See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 ¶ 75 (“This initial screen is only the beginning of our competitive analysis.”); *Applications of AT&T Wireless Services, Inc, and Cingular Wireless Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21569 (2004) (“We again emphasize that this initial evaluation of markets [through the spectrum screen] *was only the beginning of the competitive analysis*, because it was only meant to screen out those markets which are at least as competitive as the average market today and therefore needed no further examination. . . . We now turn to an examination of the various *other factors* we considered in our further, case-by-case analysis of whether there will be potential competitive harms if the transaction were to be approved without conditions.”) (emphasis added); *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13075 (2005).

different performance and economic characteristics, but also the full competitive import of the transaction that the Applicants present. As a result, Sprint continues to urge the Commission to undertake a thorough review of the significant spectrum consolidation that will result from the proposed transactions without limiting its analysis by relying solely upon its current spectrum screen, which even the Applicants recognize is deficient in many respects.

**III. THE APPLICANTS FAIL TO ADDRESS CONCERNS ABOUT ACCESS TO WIFI.**

In its Comments, Sprint explained its concern that a marriage involving the only two wired communications ecosystems could have a detrimental impact on access to WiFi networks, both in public locations and within buildings.<sup>27</sup> This marriage will reduce competition in WiFi access, raising the costs of competitors and reducing competition in the wireless market. Any wireless telecommunications system is wireless only for a small portion of a link, relying on the wired ecosystem for the majority of the path. WiFi extends the wired component directly to the premises of the wireless user and completes the connection through spectrally efficient unlicensed facilities. WiFi networks that are easily – even seamlessly – accessible by customers of wireless carriers can provide users with advantages of higher-speed connections without wireless data limits.

The growing use of WiFi to supplement wireless networks promises significant consumer benefits. Bright House has turned on a network of 2,000 WiFi hotspots for the use of its customers across central Florida. The service is free to existing Bright House customers and

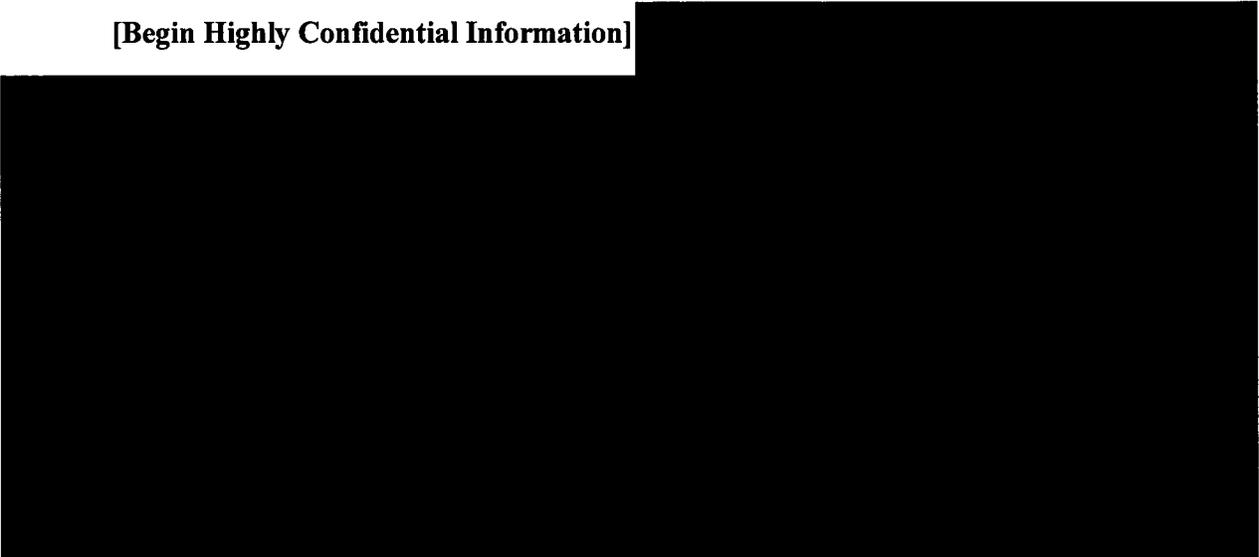
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<sup>27</sup> Sprint Comments at 8-9.

uses the Cable Company’s pre-existing broadband infrastructure as a customer retention tool.<sup>28</sup>

Carrier Republic Wireless reverses the paradigm by relying primarily on WiFi networks and using commercial mobile wireless networks only when its customers are not within range of a WiFi hotspot. Republic is able to offer its wireless service at a \$19 per month price point.<sup>29</sup>

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<sup>28</sup> Phillip Dampier, *Bright House Fires Up 2,000 Wi-Fi Hotspots For Customers Across Central Florida*, STOP THE CAP! (Jan. 18, 2012), available at: <<http://stopthecap.com/2012/01/18/bright-house-fires-up-2000-wi-fi-hotspots-for-customers-across-central-florida/>>.

<sup>29</sup> Stacey Higginbotham, *Republic Wireless: Everything you need to know*, GigaOM (Nov. 7, 2011), available at: <<http://gigaom.com/2011/11/07/republic-wireless-everything-you-need-to-know/>> (last visited March 16, 2012).

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As a result of these agreements, the Cable Companies will no longer be independent providers of WiFi who would be willing to partner with all wireless carriers. Instead, the integrated marketing of cable and Verizon services provides an opportunity and incentive for the Applicants to restrict or encumber access to public WiFi hotspots for customers of wireless carriers that compete against Verizon. By making the services of competitors less readily accessible, the Cable Operators stand to increase their profits when they act as a Verizon agent or reseller. Furthermore, when the WiFi network is inside a customer's business or residence, the wired ecosystem with access to that premises is a powerful and exclusive tool for retaining or converting wireless subscribers. Although its scope is unclear, it is possible that the technology joint venture among the Applicants<sup>32</sup> will develop new proprietary authentication protocols for WiFi access, providing Verizon wireless subscribers exclusive access to the easiest and best connections with their home WiFi.<sup>33</sup> It may also be possible that only Verizon subscribers will be able to use the Cable Company home WiFi service with their mobile devices.

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<sup>32</sup> Verizon/SpectrumCo Application at 24, n.71.

<sup>33</sup> Written Testimony of David L. Cohen, Executive Vice President, Comcast Corporation, Before the U. S. Senate Antitrust Subcommittee, at 14 (Mar. 21, 2012) (“Cohen Testimony”) *available at*: <<http://www.judiciary.senate.gov/pdf/12-3-21CohenTestimony.pdf>> (“For example, the Joint Venture will explore technology developments that allow consumers’ devices to seamlessly transition between WiFi and mobile wireless networks.”).

The Applicants have failed to address these concerns. They noted the growth of WiFi as a factor in efficient network design.<sup>34</sup> One of their consultants mentioned the value of WiFi networks for offloading wireless data traffic,<sup>35</sup> while another consultant proposed that independent WiFi networks could actually compete with wireless carriers.<sup>36</sup> However, the Applicants failed to mention that both of these applications require access to high-speed wired infrastructure that would be exclusively in the hands of the Applicants in many areas. This horizontal overlap raises serious competitive issues.

The Commission must ensure that the Verizon/Cable Company arrangements do not stifle the important benefits of seamless WiFi connections for wireless customers. Accordingly, the Commission should require the Applicants to provide reasonable WiFi access to consumers in public areas and within businesses and homes served by the Applicants, on nondiscriminatory terms, regardless of the consumer's choice of wireless carrier. Membership in the technology joint venture should be open to other carriers with equal rights and opportunities and the venture should be required to license its technology and intellectual property to other carriers on reasonable, nondiscriminatory terms.

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<sup>34</sup> Joint Opposition at 55.

<sup>35</sup> Declaration of David E. Borth, attached to Joint Opposition, Exh. 3, at 3.

<sup>36</sup> Katz Decl. at 33.

**IV. THE APPLICANTS HAVE IGNORED THE CONCERNS OF CARRIERS REGARDING COMPETITION IN DEDICATED PRIVATE LINES.**

Sprint noted the significance of the Verizon/Cable Company agreements to the market for dedicated private lines, whether used for backhaul, special access, or internally by businesses, educational institutions, health care providers, and governmental entities.<sup>37</sup> The private line market is already highly concentrated, with ILECs, such as Verizon's LEC affiliates, responsible for the largest share. Cable operators have been increasingly active in this area, however, especially in the high-speed, high-capacity Ethernet class. The wireless industry requires reliable, reasonably priced backhaul for its growth and operational stability, and the Verizon/Cable Company non-aggression pact will reduce or eliminate any incentive that the Cable Companies would otherwise have to maintain or increase competition in this area because they will profit from Verizon's success against its smaller competitors and will be less likely to take any action that could upset their strategic partner.<sup>38</sup> A decision by the Cable Companies to not bid aggressively – or at all – for these backhaul services will raise the costs of wireless

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<sup>37</sup> Sprint Comments at 9-13.

<sup>38</sup> *See, e.g.*, Petition to Deny of NTCH, Inc., at 12-13 (“A cable company which is promoting Verizon's cellular service and profiting from its sales certainly does not want to see a prospective competitor expand its coverage and undercut Verizon on price or quality of service. Simply stated, under the cooperation pact, helping a Verizon competitor now hurts or threatens to hurt the participating cable companies' bottom lines. Yet Verizon and the cable companies control the throttle on approximately 70% of the backhaul capacity in markets where both are franchised providers.”); RCA Petition, at 58 (“The availability of cable backhaul capacity acts as a constraint on Verizon's and AT&T's incentives to raise backhaul prices even further. . . . [The Commercial Agreements raise] the serious question of whether the Cable Companies have an incentive to continue to provide other wireless carriers with competitive offerings in the backhaul and special access markets.”).

carriers competing with Verizon. Verizon Communications Inc. subsidiaries that provide lines for backhaul will be able to keep all of the additional profits from the higher prices that it can set without the bother of dealing with competitive bids.

The Applicants' response in this proceeding does not address the problem. They merely tell the carriers to take their fight outside. The Commission's rulemaking on special access,<sup>39</sup> however, has not proven to be an efficient mechanism for curbing the supra-competitive rates and unreasonable service terms of ILECs. Verizon and AT&T continue to exercise market power in the supply of special access and are actively forcing competition out of the market. Indeed, this transaction threatens to be simply another step in the exercise of that market power. It would be exceedingly dangerous to competition in the wireless industry and detrimental to consumers to permit the Verizon/Cable Company venture to destroy further competition in private line services based on a hope that the Commission will be able to fashion a regulatory fix sometime in the future. At a minimum, the Commission should require the Applicants to make their private line, backhaul, and special access services available to other carriers on a nondiscriminatory basis with reasonable terms and conditions.

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<sup>39</sup> See, *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, FCC 05-18 (rel. Jan. 31, 2005).

**V. THE APPLICANTS ARE ATTEMPTING TO SIDE-STEP THE REAL DANGERS TO DATA ROAMING THAT COULD ARISE FROM THEIR ARRANGEMENTS.**

Sprint and several other parties explained that the concentration of additional spectrum in the hands of Verizon could exacerbate problems for carriers that require data roaming agreements to fill out their national footprints.<sup>40</sup> Verizon, along with AT&T, has opposed data roaming obligations and has appealed the Commission’s ultimate order on the subject.<sup>41</sup> Thus, carriers can expect Verizon to be difficult when it comes to negotiating roaming agreements in the AWS frequencies that it now seeks to acquire from the Cable Companies. Competing carriers must also be prepared for excuses based on “technological compatibility” or “technical feasibility” proffered by Verizon to escape its roaming obligations.

The Applicants respond to these charges by pointing out that there will be no lessening of data roaming as the result of the transaction because the Cable Company spectrum is not available for roaming use today.<sup>42</sup> To the extent that parties are dissatisfied with Verizon’s negotiation process or its terms and conditions for roaming, the Applicants again invite them to

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<sup>40</sup> Sprint Comments at 13-16 (noting that Verizon had opposed and is appealing the Commission’s Data Roaming Order); Petition to Deny of New Jersey Department of Rate Counsel at 15-16 (“smaller wireless companies could find it more difficult to negotiate favorable roaming agreements”); Petition to Deny of NTCH, Inc. at 5-6 (Verizon charges irrational roaming rates).

<sup>41</sup> *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, 26 FCC Rcd 5411 ¶ 14 (2011) *recon. pending, appeal docketed sub nom. Cellco Partnership v. FCC*, No. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011).

<sup>42</sup> Joint Opposition at 65.

file complaints with the Commission (pursuant to the very rules that Verizon is appealing in federal court), rather than seek relief through this proceeding.<sup>43</sup>

At least one of the Cable Companies is perfectly aware of how difficult it can be to negotiate fair and reasonable roaming agreements. Comcast's Executive Vice President, David Cohen, stated earlier this month that "access to roaming agreements is next to impossible."<sup>44</sup>

The Commission should ensure that the new cooperation between Verizon and the Cable Companies does not make reasonable roaming agreements even more difficult to obtain.

**VI. SECTION 652 OF THE COMMUNICATIONS ACT IS INTENDED TO PROHIBIT ARRANGEMENTS LIKE THE VERIZON/CABLE COMPANY JOINT VENTURE.**

Petitioners in this proceeding have noted that the proposed joint venture flouts the intent of Section 652(c) of the '96 Act.<sup>45</sup> The primary objective of the '96 Act was to create a pro-competitive policy framework by opening all telecommunications markets to competition.<sup>46</sup> Section 652(c) furthers that goal by providing that a local exchange carrier ("LEC") and a cable operator in the same market may not enter into any joint venture to provide telecommunications

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<sup>43</sup> *Id* at 65-66.

<sup>44</sup> Krigman, *supra* note 9.

<sup>45</sup> *See* Petition to Deny of Public Knowledge, et al. at 41-44; Petition to Deny of Rural Telecommunications Group, Inc., at 20-26.

<sup>46</sup> *See* H.R. Rep. No. 104-458, at 1 (1996).

services within such market.<sup>47</sup> Congress designed this provision “to maximize competition between local exchange carriers and cable operators.”<sup>48</sup>

The Applicants contend that despite Congress’s clear disapproval of such joint projects between LECs and cable companies, their joint venture should escape scrutiny under the Act because Verizon Wireless is not technically a LEC, but merely a “wireless affiliate” of a LEC.<sup>49</sup> The Applicants argue that the language in Sections 652(a) and (b) prohibits acquisitions of control or mergers involving LECs and their affiliates and cable operators, but the language in Section 652(c) prohibiting joint ventures between LECs and cable operators does not mention affiliates.

However, Verizon Wireless regularly demonstrates precisely how integrated it is with Verizon Communications Inc. and its LEC affiliates. Verizon Communications is the majority owner of Verizon Wireless. The interchangeable nature of the officers of the two companies is just one indication of how integrated these nominally separate entities are.<sup>50</sup> **[Begin Highly**

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<sup>47</sup> See 47 U.S.C. § 572(c).

<sup>48</sup> H.R. Rep. No. 104-458, at 174.

<sup>49</sup> Joint Opposition at 76-77.

<sup>50</sup> For example, the current Chairman and Chief Executive Officer of Verizon Communications, Lowell C. McAdam, was formerly the Chief Executive Officer of Verizon Wireless. His former Chief Operating Officer at Verizon Wireless, John G. Stratton, now runs a Verizon Communications division, Verizon Enterprise Solutions, which sells both Verizon Wireless and Verizon wireline – that is, LEC-operated – products to business and governmental customers. See *Bio of Lowell C. McAdam and Bio of John G. Stratton*, Verizon Leadership Team, available at:

<<http://www22.verizon.com/onecms/LeadershipTeam/BiosAndPictures/BiosAndPictures.htm>> (last visited Mar. 16, 2012). Additionally, when the U.S. Senate Antitrust Subcommittee

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**Confidential Information]** [REDACTED]

**[End Highly Confidential Information]** Nevertheless, the Applicants

argue that this technicality should preclude review of the venture under Section 652(c). This fundamentally misinterprets the Act.

When Congress passed the '96 Act, adding Section 652 to the Communications Act, it did so based in part on the assurances of the Cable Company Applicants that they would become stalwart competitors with the LECs. Time Warner told Congress that “[c]able operators, with

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invited a Verizon representative to testify on March 21, 2012, the company did not send an officer or director of the wireless company, but instead sent Randal S. Milch, Executive Vice President and General Counsel of Verizon Communications Inc., the controlling real party in interest of the wireless carrier.

<sup>51</sup> **[Begin Highly Confidential Information]** [REDACTED] **[End Highly Confidential Information]**

<sup>52</sup> **[Begin Highly Confidential Information]** [REDACTED] **[End Highly Confidential Information]**

broadband plant passing over 95 percent of American homes, with strategically clustered facilities, provide by far the best hope – and perhaps the only hope – of competing head-to-head with entrenched local phone companies.”<sup>53</sup> Comcast stated that “when we are done America will be the first Nation on earth to have full-fledged, facilities-based telephone competition everywhere. We will have achieved the vision of a two-wired world.”<sup>54</sup> This spectrum transfer and the associated agreements are the last nails in the coffin of those promises.

As the Applicants themselves have acknowledged in previous proceedings, the objective of the Act generally, and Section 652 specifically, is to foster competition between the only two providers wired directly into consumers’ homes. Cox previously noted that “the core purpose of the 1996 Act was to encourage such facilities-based competition” between LECs and cable operators.<sup>55</sup> Cox also noted that the Act was intended to ensure that “cable operators and telephone companies [upgrade] their facilities to compete with each other and [deploy] fiber-based, switched broadband facilities nationwide.”<sup>56</sup> Time Warner has championed Section 652

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<sup>53</sup> Testimony of Gerald M. Levin, CEO, Time Warner, Inc., Before the House Subcommittee on Telecommunications and Finance of the Committee on Commerce, Communications Law Reform, (May 10, 1995) *available at*: <  
[http://archive.org/stream/communicationsla00unit/communicationsla00unit\\_djvu.txt](http://archive.org/stream/communicationsla00unit/communicationsla00unit_djvu.txt)>

<sup>54</sup> Testimony of Brian L. Roberts, President, Comcast Holdings Corp., Before the House Subcommittee on Telecommunications and Finance of the Committee on Commerce, Communications Law Reform, (May 10, 1995) *available at*: <  
[http://archive.org/stream/communicationsla00unit/communicationsla00unit\\_djvu.txt](http://archive.org/stream/communicationsla00unit/communicationsla00unit_djvu.txt)>

<sup>55</sup> Comments of Cox Communications, Inc., In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-260, at 21 (Mar. 18, 1996).

<sup>56</sup> *Id.*

for “ensur[ing] that consumers will truly enjoy a choice between at least two entirely separate competing broadband networks.”<sup>57</sup> The Applicants’ preferred reading of Section 652(c) in this proceeding would eviscerate the cable-LEC competition that they have previously acknowledged is at the heart of the Act. The Commission should not allow Verizon to subvert Congressional intent through the transparent subterfuge of subsidiary action.

The Applicants also ignore the legislative history of the ’96 Act. Congress stated that in crafting Section 652, “the conferees agreed, in general, to take the most restrictive provisions of both the Senate bill and the House amendment in order to maximize competition between local exchange carriers and cable operators.”<sup>58</sup> In the House amendment, the relevant provision prohibited acquisition or control of a cable system by a “common carrier that provides telephone exchange service, [or by any] entity owned by or under common ownership or control with such carrier.”<sup>59</sup> The House understood this provision to bar any joint venture between such entities.<sup>60</sup> The Applicants’ reading of the Act would ignore Congress’s desire to make its controls on joint operations at least as restrictive as those in the constituent bills. As another commenter has

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<sup>57</sup> Comments of Time Warner Cable, In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-260, at 18 (Sep. 25, 1997).

<sup>58</sup> H.R. Rep. No. 104-458, at 174.

<sup>59</sup> See House Amendments to S.652, 104th Cong., at 141:21-26 (1995).

<sup>60</sup> See *id.* at 142:1-22 (permitting LECs only in certain enumerated circumstances [listed in subsection (d) and not applicable here] to “form a joint venture or other partnership with [] any cable system or systems” in violation of the bill’s ban on LEC-cable combinations).

pointed out, the Commission can and should read Section 652(c) of the '96 Act in a manner that conforms to the stated intent of Congress.<sup>61</sup>

Notably, the Applicants do not deny that their joint venture is intended “to provide video programming directly to subscribers or to provide telecommunications services,” which also would remove that venture from any danger of violating Section 652(c). **[Begin Highly**

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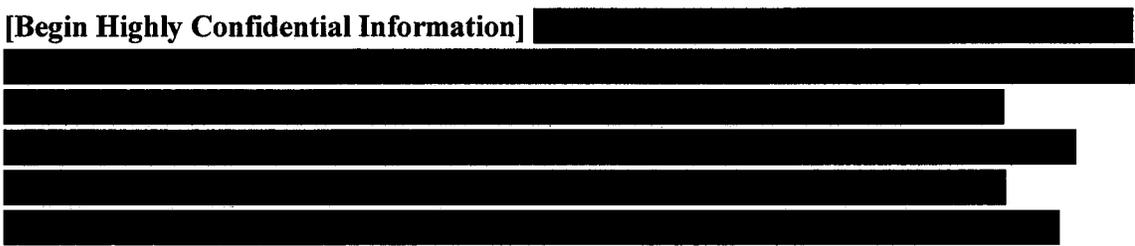
**[End Highly Confidential Information]** However,

because all details of possible future activities need not be contained in the joint venture’s organizational document that was submitted to the Commission, it is impossible to determine for

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<sup>61</sup> See Petition to Deny of Public Knowledge, et al. at 43-44.

<sup>62</sup> **[Begin Highly Confidential Information]**



**[End Highly Confidential Information]**

certain whether the joint venture will violate Section 652(c).<sup>63</sup> There is, however, enough of an open issue to warrant careful Commission scrutiny.

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<sup>63</sup> *See, e.g.*, Cohen Testimony at 2 (“[The Commercial Agreements] also enable Verizon Wireless to offer its customers new options for subscribing to wired video, voice, and high-speed Internet services. And, through the technology joint venture, the companies expect to develop technologies that offer seamless connectivity and enhanced features and services across multiple platforms.”).

**VII. CONCLUSION.**

The spectrum assignments in this proceeding are only a small part of a ground-breaking arrangement that has the potential to transform the communications industry. The combined agreements between Verizon and the Cable Companies will unite the owners of the only two wired ecosystems in much of the nation in a complex web of interrelated agreements intended to increase profits for the participants at the expense of higher prices and fewer choices for consumers and significant damage to competition in wireless, data, and video services. The public interest requires the Commission to consider the totality of the multiple agreements and their potential effects as it makes its decision in this important matter.

Respectfully submitted,

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