REDACTED FOR PUBLIC INSPECTION

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	)	

FILED/ACCEPTED

MAR 26 2012

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC ("Level 3"), by its undersigned counsel, hereby replies to the Joint Opposition to Petitions to Deny and Comments, filed by Verizon Wireless, SpectrumCo, and Cox Wireless (collectively "Applicants"),[1] in the above-captioned applications for consent to assign certain wireless spectrum licenses, pursuant to 47 USC §§ 309(d) and 310(d), and the Commission's rules. Whether viewed independently or in conjunction with the concurrently-announced joint marketing agreements, these transactions will increase the incentive of the Verizon businesses, both wireless and wireline, to discriminate anticompetitively against Level 3 and other third-party content providers and carriers of such content to Verizon networks and customers. The transactions also may impede competition in the market for wired connections to cell sites. Consequently, Level 3 requests that the FCC impose appropriate conditions on Verizon Wireless as set forth below.

---

[1] *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses*, Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4 (Mar. 2, 2012)("Joint Opposition").

No. of Copies rec'd: 0+1
List ABCDE

I. THE PROPOSED TRANSACTION CREATES RISKS OF ANTICOMPETITIVE AND DISCRIMINATORY CONDUCT BY VERIZON WIRELESS AS AN INTERNET SERVICE PROVIDER

The New Jersey Division of Rate Counsel requests that the transaction be conditioned on the application of rules prohibiting Verizon Wireless from engaging in unreasonable discrimination in the treatment of lawful Internet traffic.[2] In response, Applicants assert that such conditions "would bear no relationship whatsoever to the license assignment under review," and therefore should be rejected.[3]

Applicants' assertion that there is "no relationship" between the proposed transaction and a need for conditions with respect to Internet traffic is incorrect. The proposed SpectrumCo and Cox transactions will result in a significant increase in concentration and a substantial movement toward a Verizon/AT&T duopoly in wireless communications.[4] In the proposed transactions, Verizon Wireless will obtain the spectrum holdings of SpectrumCo LLC (jointly owned by Comcast, Time Warner Cable, and Bright House Networks) and Cox TMI Wireless, LLC. If the proposed transaction is allowed, Verizon and AT&T will control more than 60% of all spectrum measured by value, placing them in even more dominant positions than they currently occupy with regard to this essential and quantity-constrained input in the provision of wireless service. There does not appear to be any procompetitive necessity for this deal: Verizon Wireless has admitted that it already has enough spectrum to meet its needs through 2015 without the SpectrumCo and Cox AWS spectrum; we understand that it has not even begun to use the AWS

---

2 Petition to Deny of the New Jersey Division of Rate Counsel, filed February 17, 2012, at 35-37.

3 Joint Opposition to Petitions to Deny and Comments, filed March 2, 2012, at 67-68.

4 The two firms already capture more than 80% of the wireless industry's profits.

spectrum that it acquired in 2006; it has more free spectrum with which to deploy LTE than AT&T, T-Mobile and Sprint combined; and it recently admitted that it is only using 5 percent of its existing LTE capacity. Therefore, Level 3 is concerned that the goal of the proposed transaction is, or the result of it will be, to warehouse wireless spectrum, a scarce, limited and critical input to wireless communications.[5] This will suppress competition in the wireless space and will increase the already powerful monopoly position held by Verizon Wireless in terms of the ability of third parties like Level 3 to bring content to Verizon Wireless' subscribers.

Moreover, by placing Verizon Wireless and the cable companies in the position of profiting from the sale of one another's services, the joint marketing and agent agreements that are part of this transaction will reduce the incentives for Verizon Wireless and the cable companies to compete with one another for the provision of high-speed Internet access. This, along with the hoarding of wireless spectrum, causes Level 3 to be particularly concerned about the increased power that this transaction will provide to Verizon Wireless to act as a "gatekeeper" with respect to volumes of data flowing from the Internet to its customers.

---

[5] DOJ has noted the danger of such warehousing strategies. *See* Comments of the DOJ, Notice of Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport and Solicitation of Comments on Grant of Petition with Conditions, No. FAA-2010-0109, Mar. 24, 2010, *available at* http://www.justice.gov/atr/public/comments/257463.pdf (supporting the Federal Aviation Administration's required slot divestiture in the LaGuardia/Washington-Reagan slot exchange (takeoff-and-landing rights) between Delta and US Airways, out of a concern that that the parties were engaging in "slot hoarding," in part intending to keep new entrants from the market. The Department noted that the parties did not need the slots and that other entrants would use them more efficiently, thereby providing a net benefit for consumers.)

This "gatekeeper" problem is illustrated by the situation involving Comcast, which Level 3 has already brought to the FCC's attention.[6] In a series of ex parte letters, Level 3 has laid out the history of the disputes between Level 3 and Comcast over Comcast's insistence on charging Level 3 for delivering Internet content ordered by Comcast's customers. To summarize this history, Comcast has demanded onerous payments from Level 3 and others that deliver content bound for Comcast's Internet service customers; Comcast has allowed interconnections between the delivery entities and Comcast's network to become congested, degrading quality; Comcast has the power to do this because it controls the exclusive means of access to tens of millions of Internet customers and thus has the ability to act as a gatekeeper with respect to any Internet content that is requested by them; Comcast has the increased incentive to do this because such content competes with other content that Comcast itself provides, including content that it

---

[6] Ex Parte Letter from John M. Ryan, Assistant Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 & Docket 10-127 (November 30, 2010); Ex Parte Letter from John M. Ryan, Assistant Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 & Docket 10-127 (December 3, 2010); Ex Parte Letter from John M. Ryan, Assistant Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191 (December 7, 2010); WC Docket No. 07-52 & Docket 10-127; Ex Parte Letter from Bob Yates, Assistant Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 & Docket 10-127 (December 10, 2010); Ex Parte Letter from John M. Ryan, Assistant Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191; WC Docket No. 07-52 & Docket 10-127 (December 14, 2010); Ex Parte Letter from John M. Ryan, Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191 (January 14, 2011); Ex Parte Letter from John M. Ryan, Executive Vice President and Chief Legal Officer, Level 3 Communications, Inc. to Julius Genachowski, Chairman, FCC, GN Docket No. 09-191 (February 16, 2011); Ex Parte Letter from John M. Ryan, Executive Vice President and Chief Legal Officer, Level 3 Communications, Inc. to Julius Genachowski, Chairman, FCC, GN Docket No. 09-191 (February 17, 2011); Ex Parte Letter from John M. Ryan, Chief Legal Officer, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191 (February 22, 2011).

obtained through the NBC Universal transaction; and Comcast is taking such action and despite the fact that its own customers themselves have requested the content and have paid Comcast for the ability to receive it. In addition to Comcast, Level 3 has had similar issues with other very large Internet Service Providers, including Verizon, Time Warner Cable, and AT&T.

Applicants' Joint Opposition makes it clear that Verizon Wireless is rapidly becoming an enormous provider of high-speed broadband and that this transaction is instrumental to such growth in volume. Applicants assert that Verizon Wireless provides download speeds of 5-12 Mbps[7] and demonstrates "the extraordinary growth in [its] customers' use of data services."[8] Verizon Wireless describes the project rate of growth of data traffic as a [Begin Highly Confidential] [redacted] [End Highly Confidential] in data traffic year over year.[9]" Applicants further assert that the additional spectrum that is the subject of the proposed transaction is needed to support both the speeds and volume of traffic that Verizon Wireless "seeks to provide and its customers expect."[10]

Thus, Verizon Wireless is increasingly gaining the same power as Comcast to extract payment for access to its customer base, and, as indicated above, its wireline affiliates are already doing so. The proposed transaction will not only provide Verizon Wireless with increased power through a substantial increase in spectrum and eventually, more customers (or at least, the prevention of competitors using that spectrum to serve more customers), but also increased incentive to act anticompetitively. The transactions give Verizon Wireless a new and

---

7 Joint Opposition at 16.

8 Joint Opposition at 14.

9 Joint Opposition at 17.

10 Joint Opposition at 16.

powerful marketing force in these leading cable companies, plus a new-found ability in many areas to offer a "quintuple play" of wireless voice service, wireline voice service, wireless broadband, wireline broadband, and video. As Verizon entities (1) increasingly profit from the broadband and content sales of their partners and (2) decreasingly fear attempts by those partners to compete in the sale of broadband access, those Verizon entities will have ever increasing incentives to discriminate against third-party content providers, including by making efforts to extract payment from and/or by degrading interconnection capacity to those providers, just as Comcast and Verizon Wireless' wireline affiliates have done.

Therefore, Level 3 asks that the FCC impose the following conditions on Verizon Wireless:

For a period of 5 years following the closing of the transaction between Verizon Wireless, as buyer, and SpectrumCo LLC and Cox TMI Wireless, LLC (collectively, the "Sellers"):

- Verizon Wireless must interconnect with requesting Internet backbone carriers on reasonable and nondiscriminatory terms that are no less advantageous than the terms effectively provided to its affiliates or to the affiliates of Sellers. Verizon Wireless may not charge a requesting Internet backbone carrier for interconnection with its local wireless network infrastructure, local wireless core network facilities or local mobile switching locations for the exchange of traffic to and from subscribers served by these local network facilities.

- Verizon Wireless may not deny interconnection with any Internet backbone carrier or otherwise discriminate against such Internet backbone carrier based on the type of traffic exchanged, its source, its destination, the volume of traffic, the ratio of traffic that is sent or received or the technology used in its delivery. The location and technical configuration of interconnection points for the exchange of traffic between Verizon Wireless and requesting Internet backbone carriers must be technically, operationally and economically reasonable and nondiscriminatory, and in any event no less advantageous than as offered or provided to its affiliates or to the affiliates of Sellers.

- Verizon Wireless will take appropriate steps to (i) maintain the interconnection capacity of the links between its wireless end users and any requesting Internet backbone provider so that interconnection capacity is adequate to handle traffic flowing over each interconnection point in existence as of the closing date, (ii) expeditiously augment such capacity as appropriate to exchange traffic without congestion over the interconnection points so as to assure delivery of Internet content to and from its subscribers over each interconnection point with a service quality no less advantageous than that offered or provided to its affiliates or to the affiliates of Sellers, and (iii) allow interconnecting parties to alter the location of or add interconnection points in a technically feasible and reasonable manner that will permit the efficient exchange of Internet traffic.

II. PROVISIONS RELATED TO BACKHAUL SERVICES ARE ANTICOMPETITIVE

Level 3 agrees with the comments submitted by Sprint, Free Press, and RCA that the joint marketing agreements are anticompetitive and imbalance the market for backhaul services.[11] That market is a large and rapidly growing submarket of the special access market. As reflected in the record of WCB Docket 05-25, including numerous filings by Level 3,[12] the

---

[11] Comments of Sprint Nextel Corporation, WT Docket No. 12-4, pp. 9-13 (Feb. 21, 2012); Petition to Deny of Free Press, WT Docket No. 12-4, p. 47 (Feb. 21, 2012); RCA – The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, WT Docket No. 12-4, p. 58 (Feb. 21, 2012).

[12] Ex Parte Letter from Erin Boone, Senior Corporate Counsel, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (March 1, 2012); Ex Parte Letter from Michael J. Mooney, General Counsel, Regulatory Policy, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (February 22, 2012); Ex Parte Letter from Erin Boone, Senior Corporate Counsel, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 and RM-10593 (June 23, 2011); Ex Parte Letter from Eric Branfman, Bingham McCutchen, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (February 9, 2011); Ex Parte Letter from Eric Branfman, Bingham McCutchen, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (February 4, 2011); Ex Parte Letter from Eric Branfman, Bingham McCutchen, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (February 3, 2011); Ex Parte Letter from Andrew D. Lipman, Bingham McCutchen, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (October 25, 2010); Ex Parte Letter from Andrew D. Lipman, Bingham McCutchen, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (October 21, 2010; Ex Parte Letter from John M. Ryan, Assistant Chief Legal Officer, Level 3

special access market is very heavily concentrated, and restrictive conditions which are imposed by incumbent LECs make competition very difficult. Verizon Wireless, as the largest provider of wireless service, is likely both the largest purchaser of wireless backhaul and the largest purchaser in the larger special access market. This transaction may be expected to help Verizon Wireless increase its already large share of the wireless market, and hence increase its importance as a buyer of backhaul. Level 3 is concerned that Section 3.9 of the VZW Agent Agreements and Section 6.21 of the Reseller Agreements may impede the ability of Level 3 and other independent providers of wireless backhaul to compete with Comcast, Time Warner Cable, Bright House Networks, and Cox in providing wireless backhaul to Verizon Wireless. The joint marketing agreements state that [Begin Highly Confidential] [redacted] [End Highly Confidential] Such agreements directly harm Level 3 and limit competition in the backhaul market in where the cable MSOs are located.

Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (August 20, 2010); Ex Parte Letter from William P. Hunt, III, Vice President, Public Policy, Level 3 Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (July 21, 2010); Level 3 Communications, LLC, Reply Comments WC Docket No. 05-25, RM-10593 (February 24, 2010).

[13] VZW Agent Agreement, § 3.9, [Begin Highly Confidential] [redacted] [End Highly Confidential]; Reseller Agreement for Time Warner Cable, § 6.21, [Begin Highly Confidential] [redacted] [End Highly Confidential].

REDACTED FOR PUBLIC INSPECTION

[Begin Highly Confidential] [redacted] [End Highly Confidential]

The end result is that the market for backhaul services is constrained wherever the cable MSOs operate. It appears that in some respects this transaction constitutes an agreement by the cable MSOs not to compete with Verizon Wireless in the wireless market in exchange for a commitment by Verizon Wireless that would limit competition to the cable MSOs in the wireless backhaul market. In this trade-off, competition and the consumer are injured on both ends of the transaction.

Therefore, Level 3 suggests that the FCC impose an additional condition:

- The parties shall remove Section 3.9 of the VZW Agent Agreements and Section 6.21 of the Reseller Agreements.

III. REQUESTED RELIEF

Pursuant to Commission's authority to review, deny, and condition license assignments, Level 3 requests that the Commission condition the approval of the assignment of SpectrumCo wireless licenses elsewhere on the relief set forth above.

Respectfully submitted,

/s/

Eric J. Branfman
Frank G. Lamancusa
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
202-373-6000

Dated: March 26, 2012