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March 26, 2012

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ORIGINAL

VIA HAND DELIVERY

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

FILED/ACCEPTED

MAR 26 2012

Federal Communications Commission
Office of the Secretary

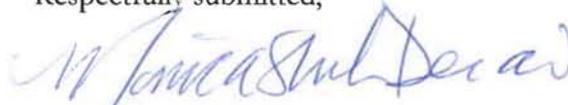
Re: FOR PUBLIC INSPECTION

**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 Reply Comments filed in the above-referenced docket. A Highly Confidential version of the Reply Comments is being filed separately.

Respectfully submitted,



Monica S. Desai
Partner

Counsel for CWA-IBEW

Enclosures

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EXECUTIVE SUMMARY

When Congress passed the 1996 Telecommunications Act, consumers were promised the benefits of cross-platform competition, and the increasingly robust choices for video, wireless, voice and broadband services, as well as the resulting jobs created by such competition. The Transaction¹ proposed by selected cable companies and Verizon threatens to turn back the clock by encouraging cartel-like deals NOT to compete. The end result will be a reduction in broadband and video competition, reduced investment in network deployment, job loss, and, with less competitive pressure on pricing and service quality, more expensive bundles of cable channels and costly, slow broadband services. In short, members of this combine-in-the-making have increased competitive advantages against all non-members; they are effectively building a competitive fortress to fend off all other competitors.

CWA and IBEW urge that the Commission grant the applications subject only to the following specific conditions, which would help ensure continued aggressive investment in cross-platform alternatives for broadband services and vigorous video competition:

1. Consistent with past transactions,² require that Verizon must continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.
2. Require Verizon Wireless and the Cable Companies to make the services they provide each other under the Agreements to be available on a nonexclusive basis, and to make such services available to all requesting telecommunications carriers, cable service providers, and broadband Internet service providers on the same terms and conditions.

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*, Public Notice, 27 FCC Rcd 360 (2012) (hereinafter, the “Transaction”).

² See, *AT&T and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, App. F (2007).

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3. Require Applicants to allow consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.
4. Prohibit Applicants from cross-marketing their services within the Verizon footprint.

TABLE OF CONTENTS

I. THE PROPOSED TRANSACTION DISTORTS VERIZON’S INCENTIVES TO COMPETE, SUBSTANTIALLY HARMING COMPETITION IN THE BROADBAND AND VIDEO MARKETPLACE.....2

A. Cross-Platform Competition is a Cornerstone Principle of the Telecommunications Act of 1996 and a Fundamental Policy Goal of the FCC.....2

B. Absent the Transaction, Verizon Would Aggressively Build Out FiOS, Allowing Consumers the Benefits of More Cross-Platform Competition.....6

C. The Transaction Threatens to Harm Video Competition.....14

D. The Provisions of the JOE Prevent Competition and Promote Collusion Among the Parties.16

E. Without Conditions, the Transaction, Taken as a Whole, Will Harm Competition and Result in Reduced Investment in Infrastructure.17

II. THE COMMISSION SHOULD DEMAND THAT THE APPLICANTS PROVIDE COMPLETE INFORMATION.....19

III. THE TRANSACTION HAS A NEGATIVE IMPACT ON JOB GROWTH AND CREATION25

IV. CONCLUSION AND PROPOSED TRANSACTION CONDITIONS29

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

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

The Communications Workers of America (“CWA”) and the International Brotherhood of Electrical Workers (“IBEW”) hereby submit the following Reply Comments regarding the applications filed by Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and SpectrumCo LLC (“SpectrumCo”) and Verizon Wireless 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”).³

³ 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*, Public Notice, 27 FCC Rcd 360 (2012) (hereinafter, the “Transaction”).

Because the Transaction combined with the corresponding Joint Marketing Agreements⁴ raises serious competitive concerns and significantly reduces incentives to invest in alternative broadband platforms, CWA and IBEW urge the FCC only to grant the Transaction subject to specific conditions. Such conditions must ensure continued investment in cross-platform alternatives for broadband services and must ensure robust video competition.

I. THE PROPOSED TRANSACTION DISTORTS VERIZON’S INCENTIVES TO COMPETE, SUBSTANTIALLY HARMING COMPETITION IN THE BROADBAND AND VIDEO MARKETPLACE

A. Cross-Platform Competition is a Cornerstone Principle of the Telecommunications Act of 1996 and a Fundamental Policy Goal of the FCC.

The Telecommunications Act of 1996 (“Telecommunications Act” or “Act”) offered the promise of cross-platform competition. It was grounded in a general principle that increased competition — particularly across platforms — would occur in the provision of both telecommunications and video services.⁵ The Act was specifically designed to allow telephone

⁴ 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.”

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996). Indeed, the Act was intended specifically “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition.*” (Preamble) (emphasis added)…” In addition, in discussing new section 651 permitting telephone company entry into the market for video, the conference report specifically highlighted the critical importance of cross-platform competition: “Recognizing that there can be different strategies, services and technologies for entering video markets, the conferees agree to multiple entry options *to promote competition, to encourage investment in new technologies and to maximize consumer choice of services that best meet their information and entertainment needs.*” (emphasis added). In explaining new section 652, the report further emphasized the importance of cross-platform competition, as 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 within local markets.*” (emphasis added)

companies and cable companies to compete, with the expectation that this would result in “more jobs and more choices” for American consumers.⁶

That competition is what NYNEX and Comcast executives promised at the time as they urged the passage of the Act. According to Tom Tauke, then NYNEX Executive Vice President, “If the legislation is enacted, it will bring real competition into the telecommunications industry. It will give consumers more services, greater choice and lower prices.”⁷ And Comcast’s Brian Roberts told Congress that “The investment community is waiting for a clear signal from this Congress that you have embraced a competitive telecommunications future, and the longer that that signal is delayed the longer that billions and billions of investment dollars remain bottled up, hundreds of thousands of jobs, and unprecedented choices for consumers, and America’s global leadership in

Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H.Rept. 104-458.

⁶ Conference Report on S. 652, Telecommunications Act of 1996, 142 CONG. REC. H1145, H1151 (Feb. 1, 1996) (quoting Congressman Ed Markey (D-MA), an architect of the Act. Congressman Markey stated that the Act would spur competition and investment, resulting in “many tens and hundreds of thousands of new jobs, far more than have ever existed in this area of the American economy.” *Id.* Then Congressman Jack Fields (R-TX) noted that “We ... invited the leading CEOs of America’s telecommunication companies to come and answer one question. That one question was, What should we do as the new majority in this dynamic age of technology [sic] to enhance competition and consumer choice? ... the biggest surprise to us was when Brian Roberts of Comcast Cable on behalf of the cable industry said that they wanted to be the competitors of the telephone companies in the residential marketplace. In fact, the next day, I called Brian and Jerry Levin of Time-Warner to have them reassure me that their intent was to be major players and competitors in the residential marketplace. After that discussion, I told my staff that we needed a checklist that would decompartmentalize cable and competition in a verifiable manner and move the deregulated framework even faster than ever imagined. And we came up with the concept of a facilities based competitor who was intended to negotiate the loop for all within a State and it has always been within our anticipation that a cable company would in most instances and in all likelihood be that facilities-based competitor in most States - even though our concept definition is more flexible and encompassing. It is this checklist which will be responsible for much of the new technologies, the major investments that will be flowing, and the tens of thousands of jobs that will be created because of this legislation.” *Id.* at H1145).

⁷ Jeffery Krasner, *Senate OKs Revamped Telecommunications Rules*, The Boston Herald (June 16, 1995).

telecommunications are held hostage.”⁸ Roberts promised to “knit together Americas [sic] cable television systems, speed up the installation of fiber optics in our networks, and combine wireless and wireline technologies in a bold new way ... to give American consumers unprecedented choice, convenience, and competitive prices.”⁹

But now “[t]his deal seems to completely abandon the promise of the Telecom Act,” Senator Al Franken (D-MN) reflected during a March 21, 2012, hearing examining the Transaction.¹⁰ Moreover, several commenters caution that the “associated joint cartelization agreements will further tilt the wireline market towards a cable monopoly, forever ending any hope of wireless-wireline or cable-telco competition.”¹¹

Not only is cross-platform competition a cornerstone of the Telecommunications Act, but promoting and increasing cross-platform competition is also a central policy goal for the FCC. The Commission has emphasized that “increasing competition among facilities-based broadband providers . . . will sustain and increase competitive choice among broadband providers and Internet access products.”¹² The Commission has also recognized that cross-platform competition is “crucial

⁸ Communications Law Reform: Hearings before the Subcommittee on Telecommunications and Finance of the Committee on Commerce, House of Representatives, 104th Cong., first session, May 10, 11, and 12, 1995, at 34 (printed by U.S. Government Printing Office).

⁹ *Id.* at 35.

¹⁰ Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, *The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers* (March 21, 2012), <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8b30fa475a5089d793576cd94706f84e>.

¹¹ Petition to Deny of Free Press at 2 (filed Feb. 21, 2012).

¹² Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers at 6 (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Red 14853, 14887 (2005) (“Wireline Broadband Order”)) (filed on Feb. 21, 2012 (“CWA-IBEW Comments”). The Commission’s report on residential wireline broadband service noted that Verizon FiOS Internet delivered 114 percent of its advertised upload and download speeds during peak periods. FCC’s Office of Engineering and Technology and Consumer and

to ensuring that broadband is affordable, but may not be sufficient in all areas.”¹³ And the Commission has recognized that cross-platform competition increases investment in infrastructure.¹⁴ In addition, in the *Report on Cable Industry Practices*, the FCC explained the importance of video competition by showing that prices on average are lower for incumbent cable operators in communities with a rival operator and, in such cases, the prices of the rival are lower than the incumbent.¹⁵

Many commenters note not only this fundamental objective, but also the accompanying benefits of investment, economic growth and jobs. As Media Access et al. notes, the Commission’s policy goal is to promote the “development and deployment of multiple platforms [to] promote competition in the provision of broadband capabilities.”¹⁶ This policy envisions competitive

Governmental Affairs Bureau, *Measuring Broadband America* at 17 (2011), <http://www.fcc.gov/measuring-broadband-america>.

¹³ *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, 8043 ¶ 71 (2011).

¹⁴ “The presence of a facilities-based competitor impacts investment. Indeed, broadband providers appear to invest more heavily in network upgrades in areas where they face competition. ... Indeed, competition appears to have induced broadband providers to invest in network upgrades. Cable and telephone companies invested about \$48 billion in capital expenditures (capex) in 2008 and about \$40 billion in 2009.” *Connecting America: The National Broadband Plan*, Chapter 4 at 38, <http://download.broadband.gov/plan/national-broadband-plan-chapter-4-broadband-competition-and-innovation-policy.pdf>.

¹⁵ *In re 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*, Report on Cable Industry Prices, MM Docket No. 92-266, DA-12-377, at ¶ 5 (released Mar. 9, 2012) (“Chart 2 compares the expanded basic price in effective competition communities overall (\$54.77) to subgroups of communities, as of January 1, 2010. Prices on average were 1.5 percent lower (\$53.93) for incumbent cable operators in communities with a rival operator; 9.6 percent lower (\$49.51) for the rival operators . . .”).

¹⁶ Petition to Deny of Public Knowledge et al. at 24 n.60 (citing *High-Speed Access to the Internet Over Cable and other Facilities*, Declaratory Ruling & Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802 ¶ 6 (2002)), (filed Feb. 21, 2012).

pressure as a means for “keeping prices low, keeping carrier practices fair, and driving innovation forward.”¹⁷

Similarly, the Applicants do not dispute that they have recently relied upon this cross-platform competition in their advocacy before the Commission to argue against particular regulations.¹⁸

B. Absent the Transaction, Verizon Would Aggressively Build Out FiOS, Allowing Consumers the Benefits of More Cross-Platform Competition.

Moreover, no one disputes that, up until now, Verizon Communications has systematically built out FiOS, competing with cable’s broadband and video services and providing increasingly robust consumer choices for video, wireless, voice and broadband services. As a result of the Joint Marketing Agreements, Verizon will now end the continued investment in FiOS that competitive and economic forces would otherwise have naturally and rationally compelled.

CWA and IBEW reject the position taken by Applicants that Verizon never actually intended to build out FiOS beyond the initial 70% of their territory.¹⁹ This assertion is simply not credible in the face of the strong growth and positive financial showing of FiOS. In fact, FiOS far

¹⁷ *Id.* at 24-25.

¹⁸ *See, e.g.*, 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 9 (filed Jan. 14, 2010 (explaining that “cross-platform or intermodal competition (referring to cable/telco wired broadband competition) offers significant consumer benefits as competitors that operate different technological platforms are able to offer highly differentiated packages of price, quality, and functionality. Cross-platform competitors have strong incentives to maintain and expand their subscriber base to spread their fixed costs over a large network of users. When a cable company or telco loses a subscriber to its competitors, it loses both the variable profit contribution from that subscriber as well as the subscriber’s contribution to its fixed costs of building and maintaining its network. This creates a strong incentive for providers to maintain services and prices that appeal to consumers, and to continuously invest and innovate to provide better service.”).

¹⁹ *See* generally Joint Opposition at Ex. 6, 9-10 (asserting that Verizon had previously planned to reduce FiOS investment in new markets and that the Joint Marketing Agreements do not impact Verizon incentives vis-à-vis FiOS).

outstripped the rest of its wireline division in terms of growth. For example, while 2011 consumer retail revenues were 1.4 percent higher than in 2010, FiOS revenues were 20.1 percent higher in 2011 than they were in 2010.²⁰ During the fourth quarter 2011, FiOS' year-over-year growth was 18.2 percent, almost as great as Verizon Wireless' 19.2 percent growth in the exploding wireless data sector.²¹ While in 2010, FiOS revenues accounted for 51% of consumer revenue; in 2011 it accounted for 61 percent.²² During the fourth quarter of 2011, FiOS also contributed to a 20 percent year-over-year growth in Verizon's triple play offering of voice, Internet and video.²³ And analysts recognized the positive growth opportunity presented by FiOS.²⁴

Wireline – Selected Operating Statistics								
Unaudited	2010				2011			
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q
FiOS Internet penetration	29.0%	29.8%	31.0%	31.9%	33.1%	33.9%	34.6%	35.5%
FiOS Video penetration	25.4%	26.1%	27.2%	28.0%	29.1%	29.9%	30.6%	31.5%

Source: http://www22.verizon.com/idc/groups/public/documents/adacct/2011_q4_foi_xls_v2.xls, Tab: Wireline-Operating

²⁰ See Verizon Communications Financial and Operating Information, as of December 31, 2011, http://www22.verizon.com/idc/groups/public/documents/adacct/2011_q4_foi_xls_v2.xls (Tabs: Wireline-Financial and Wireline-Operating) (last visited 2/25/2012).

²¹ 4th Quarter 2011 Earnings Results, Francis Shammo, Chief Financial Officer, at slide 5 (Jan. 24, 2012), http://www22.verizon.com/idc/groups/public/documents/adacct/4q_earnings_release_slides.pdf.

²² See Verizon Communications Financial and Operating Information, as of December 31, 2011, http://www22.verizon.com/idc/groups/public/documents/adacct/2011_q4_foi_xls_v2.xls (Tabs: Wireline-Financial and Wireline-Operating).

²³ 4th Quarter 2011 Earnings Results, Francis Shammo, Chief Financial Officer, at slide 12 (Jan. 24, 2012), http://www22.verizon.com/idc/groups/public/documents/adacct/4q_earnings_release_slides.pdf.

²⁴ Verizon Communications, Inc. "Lowering 1Q/12 EPS on a Setback for the Wireline Margin, Citi Investment Research & Analysis (March 25, 2012) ("We believe Verizon's lower wireline margin relative to most of its peers represents an opportunity for improvement partly by increasing FiOS scale with time and partly by right-sizing the spend on overhead, support, benefits, and its legacy plant.")

The strong financial performance of FiOS reflects the reason Verizon had said, prior to the announcement of the Transaction, that it would “fill in” its existing FiOS markets based on demand. Verizon Chief Financial Officer Francis Shammo, recognizing the solid financial gains of FiOS, noted that “[i]n FiOS, we continued to steadily increase penetration on all [sic] all our markets. By further penetrating existing markets, we will enhance our capital and operating efficiency and improve overall investment returns.”²⁵ It appears only rational that the economic and business realities would have compelled Verizon to build out FiOS both within its existing FiOS markets and to other Local Franchise Areas (“LFAs”) given the competitive forces at play.

Despite this past investment in FiOS, and the strong financial growth and performance of FiOS, Verizon has now decided to eschew further investment in platform competition, opting instead to “divide” the market by focusing on Verizon Wireless and jointly marketing its services with incumbent cable operators and relying instead on their investment.

Indeed, Verizon publicly admitted that, prior to the SpectrumCo deal, it was moving toward a seamlessly integrated FiOS – Verizon LTE package, but that the proposed Transaction halted that progression. As Verizon Chief Executive Lowell McAdam acknowledged less than a week after the Transaction was announced, “... if I look back 18 to 24 months ago we saw what the promise of LTE was and we looked at our FiOS asset. We said, wow, finally you are going to be able to do these quad-plays and have video move seamlessly between the desktop and the TV set and your

²⁵ CWA-IBEW Comments at 8-9 (citing Verizon Communications, Earnings Call Transcript, Oct. 21, 2011, *available at* <http://seeking-alpha.com/article/301177-verizon-communications-management-discusses-q3-2011-results-earnings-call-transcript>).

tablet and your smartphone. The technology base will really support that. So we were well down the road in developing that for FiOS and then the opportunity came up to partner with Comcast”²⁶

Days after the Joint Marketing Agreements were executed, Verizon’s McAdam stated that the company will stop its build out of FiOS television and Internet services in the next couple of years²⁷ and “wind down the FiOS spend.”²⁸ With Joint Marketing Agreements that appear to allow the club members to take advantage of the operations of others in the club, Verizon now has little incentive to continue investing in FiOS and “fill in” its markets. As a result, the Transaction has the potential now to leave approximately one-third of Verizon's in-region customers without FiOS as a choice for broadband or video service.²⁹

This Transaction also creates incentives for Applicants exclusively to sell each other’s services and for Verizon Wireless even to cross-market the services of FiOS competitors within the FiOS footprint, a practice that is certain to erode FiOS’ market share in local franchise areas where the cable partners remain dominant broadband providers. As another commenter notes, Verizon will be selling the cable MSOs’ services in Verizon Wireless stores located in Verizon’s LEC territories.³⁰ This is confirmed by the recent statement of David Cohen, Executive Vice President

²⁶ Verizon Chairman, President and CEO Lowell McAdam, Transcript, UBS Median and Communications Conference at 2 (Dec. 7, 2011), http://www22.verizon.com/idc/groups/public/documents/adaect/ubs_vz_transcript.pdf (last visited on Mar. 20, 2012).

²⁷ Cecilia Kang, *Verizon ends satellite deal, FiOS expansion as it partners with cable*, The Washington Post (Dec. 8, 2011, 2:58 p.m.), http://www.washingtonpost.com/blogs/post-tech/post/verizon-ends-satellite-deal-fios-expansion-as-it-partners-with-cable/2011/12/08/gIQAGANrfO_blog.html.

²⁸ Verizon Communications Inc. at UBS Media and Communications Conference (Dec. 7, 2011), http://www22.verizon.com/idc/groups/public/documents/adaect/ubs_vz_transcript.pdf.

²⁹ *Id.* at 9 (citing Peter Svensson, *Verizon Winds Down Expensive FiOS Expansion*, USA Today, Mar. 26, 2010, available at <http://www.usatoday.com/money/industries/telecom/2010-03-26-verizon-fiosN.htm>).

³⁰ Free Press Petition to Deny at 39 (filed on Feb. 21, 2012).

of Comcast Corporation, who admitted that: “Within the FiOS footprint, all we have agreed is that Verizon Wireless stores will be Switzerland. They can sell Comcast products and they can sell FiOS products; there is no favoritism.”³¹ Verizon General Counsel Randal Milch confirmed this in a recent Senate hearing.³²

Promoting cable will reduce the market share, and related investment in, FiOS. Moreover, 30 percent of the Verizon footprint will be left without the benefit of access to FiOS, leaving those consumers on the wrong side of the digital divide. To date, Verizon has not deployed its FiOS network in a number of large- and medium-sized cities in its footprint, including Buffalo, Albany, Syracuse, Boston, and Baltimore, among others. A demographic analysis comparing the population in these non-FiOS cities with the population in the suburbs ringing these cities where Verizon has deployed FiOS demonstrates that people of color and lesser economic means will be disproportionately impacted by the decreased incentives to invest in FiOS.

Baltimore: Verizon has not deployed FiOS in Baltimore, the largest city in Maryland with a population of 639,000. In Baltimore, one-quarter (25.6 percent) of the residents live below the poverty line, and the median household income is \$38,346. However, in the suburban counties surrounding Baltimore where Verizon has obtained video franchises and has deployed FiOS, only 7.6 percent of the population lives in poverty, and the median household income of \$81,840 is more than twice that of Baltimore city. In Baltimore, 63 percent of the population is African American

³¹ Eliza Krigman, *Comcast Executive Defends Spectrum Deal*, POLITICO PRO (Mar. 8, 2012).

³² Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, *The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers* (March 21, 2012), <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8b30fa475a5089d793576cd94706f84e>. Verizon’s Randal Milch inaccurately stated that Verizon Wireless stores do not sell FiOS services today. In fact, many Verizon Wireless stores currently sell FiOS services.

and 4.2 percent is Hispanic, compared to 30.1 percent African American and 12.2 percent Hispanic in the surrounding Baltimore FiOS-deployed suburbs.³³

Boston: Verizon has not deployed FiOS in Boston, the largest city in Massachusetts with a population of 645,000. In Boston, almost one-quarter (23.3 percent) of the population lives below the poverty line, and the median household income is \$49,893. In the surrounding suburbs where Verizon has obtained video franchises and deployed FiOS, the poverty rate is 8.3 percent and the median household income of \$82,816 is significantly higher than that of Boston. In Boston, 23 percent of the population is African American and 16.9 percent is Hispanic compared to only 4 percent African American and 10 percent Hispanic in the surrounding FiOS-deployed suburbs.³⁴

Buffalo: Verizon has not deployed FiOS in Buffalo, the second largest city in New York State with a population of 270,000. In Buffalo, over one-quarter (28.8 percent) of the population lives below the poverty line, and the median household income is \$29,285. In the surrounding suburbs where Verizon has obtained video franchises and deployed FiOS, the poverty rate is 8.2 percent and the median household income of \$56,925 is double that of Buffalo. In Buffalo, 36.9 percent of the population is African American and 8 percent is Hispanic compared to only 2.8 percent African American and 2.1 percent Hispanic in the surrounding FiOS-deployed suburbs.³⁵

³³ CWA calculation based on data from the U.S. Census Bureau, American Community Survey, 2010. The suburban counties with FiOS franchises and deployment are Anne Arundel, Harford, Howard, Montgomery, and Prince Georges. CWA calculated a weighted average for these counties.

³⁴ CWA calculation based on data from the U.S. Census Bureau, American Community Survey, 2010 (5-year average dataset). FiOS availability in cities and towns in Essex, Middlesex, Norfolk and Suffolk counties from Verizon.com (accessed at [<http://deals.servicebundles.com/verizon-fios-availability>] 3/9/2012).

³⁵ CWA calculation based on data from the U.S. Census Bureau, American Community Survey, 2009. The Buffalo suburbs with Verizon video franchise and FiOS deployment are the towns of Tonawanda, Amherst, West Seneca, Hamburg, Orchard Park; the villages of Kenmore, Blasdell, Hamburg, Orchard Park; and the city of Lackawanna. See also The Coalition for Economic Justice, *Bypassing Buffalo: Who is Getting Verizon's FiOS and Who Isn't*,

Albany and Troy: Verizon has not deployed FiOS in Albany and Troy, NY, cities with 147,962 residents. In Albany and Troy, one-quarter (25 percent) of the population lives below the poverty line, and the median household income is \$39,158 (Albany) and \$36,675 (Troy). In the surrounding suburbs where Verizon has obtained video franchises and deployed FiOS, the poverty rate is 5.4 percent and the median income is \$70,540. In Albany and Troy, 28.7 percent (Albany) and 12 percent (Troy) of the population is African American and 7.6 percent (Albany) and 8 percent (Troy) are Hispanic, compared to 3.5 percent African and 3.1 percent Hispanic in the surrounding FiOS-deployed suburbs.³⁶

Syracuse: Verizon has not deployed FiOS in Syracuse, NY, a city with a population of 144,734. In Syracuse, almost one-third (31.1 percent) of the population lives below the poverty line, and the median household income is \$30,891. In the surrounding suburbs where Verizon has obtained video franchises and deployed FiOS, the poverty rate is 7 percent and the median income is \$52,961. In Syracuse, 28.1 percent of the population is African American and 7.4 percent is Hispanic, compared to 2.8 percent African and 2.2 percent Hispanic in the surrounding FiOS-deployed suburbs.³⁷

http://donthypassbuffalo.com/FiOS_Report.pdf; see also *Connecting America: National Broadband Plan* at 37 (Mar. 16, 2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf> (last visited Feb. 15, 2012).

³⁶ CWA calculation based on data from the U.S. Census Bureau, American Community Survey, 2006-2010 (5-year average dataset). FiOS availability in Bethlehem, Colonie town, Colonie village, and Guilderland.

³⁷ CWA calculation based on data from the U.S. Census Bureau, American Community Survey, 2006-2010 (5-year average dataset). FiOS availability in towns of Camillus, Cicero, Clay, De Will, Geddes, Lysander, Salina, Van Buren, villages of Baldwinsville, Fayetteville, Liverpool, and Skaneateles.

Cities without Verizon FiOS Compared to Surrounding Suburbs with FiOS Median Household Income, Poverty Rate, % Minority			
	% Minority	Median Household Income	Poverty Rate
Buffalo - No Verizon FiOS	44.9%	\$29,285	28.8%
Buffalo Suburbs with Verizon FiOS	4.9%	\$56,925	8.2%
Baltimore - No Verizon FiOS	72%	\$38,346	25.6%
Baltimore Suburban Counties with FiOS	52.8%	\$81,840	7.6%
Boston - No Verizon FiOS	52.3%	\$49,893	23.3%
Boston Suburbs with Verizon FiOS	22.9%	\$82,816	8.3%
Albany - No Verizon FiOS	44.8%	\$39,158	25.3%
Albany Suburbs with FiOS	13.4%	\$70,540	5.4%
Syracuse - No Verizon FiOS	38.0%	\$30,891	31.1%
Syracuse Suburbs with Verizon FiOS	6.7%	\$52,961	7.0%
<i>Source: Calculations based on U.S. Census, American Community Survey, 2009 and 2010</i>			

The Transaction will also impact consumers in non-FiOS areas by stranding them without a broadband alternative. Time and again, Verizon has said it is not investing in copper. Verizon’s Chief Financial Officer Francis J. Shammo said in 2011 that “we’ve really concentrated on investing in FiOS and curtailing the investment in the copper network and moving people from copper to FiOS.”³⁸ Verizon had already trialed a copper shutdown in 2011 in two markets and had plans then to migrate 200,000 to 300,000 customers in costly maintenance areas to FiOS in 2012.³⁹ At that time, Verizon Communications President and COO Lowell McAdam also expressed the company’s intent to “get the copper out of service and out of our base.”⁴⁰ Thus, this Transaction provides Verizon

³⁸ Francis J. Shammo, Chief Financial Officer and Executive Vice President, Verizon Communications, Inc. Capital IQ Transcript at 8, Third Quarter 2011 Earnings Call (Oct. 21, 2011).

³⁹ Goldman Sachs Equity Research Comment, Verizon Communications, “Management Meeting Focused on Cost-Saving Opportunities” (Dec. 1, 2011).

⁴⁰ Lowell McAdam, President and Chief Operating Officer, Verizon Communications, Inc., UBS Media and Communications Conference, Capital IQ Transcript at 15 (Dec. 7, 2011).

with greater incentive to abandon its DSL/copper voice product leaving customers in non-FiOS areas with no wired broadband alternative and deteriorating voice service.

Additionally, the agreement to form the Joint Operating Entity (“JOE”) lessens the differential between FiOS and the cable companies. As Media Access Project et al., make clear,

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In summary, but for the Transaction, economic realities and competitive pressure would have compelled Verizon to build out FiOS both within its existing FiOS markets and to other LFAs. As Verizon takes advantage of piggy-backing on the investments made by other Applicants through the Joint Marketing Agreements, people of color and lesser economic means will be disproportionately impacted by the decreased incentives to invest in FiOS.

C. The Transaction Threatens to Harm Video Competition.

Moreover, the Transaction could substantially harm competition in the video marketplace. As discussed in CWA and IBEW’s Comments, the Transaction is likely to enable the Applicants to

⁴¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED] [END HIGHLY CONFIDENTIAL INFORMATION]

secure more video content at a lower cost through bulk discounts. The Applicants will be able to access video content more cheaply than those outside of the combine, because of the expansive reach of the Applicants' combined platforms and resulting ability to purchase programming in bulk. For example, with the recent approval of the Comcast/NBCU merger, the Applicants will likely be able to access Comcast/NBCU's vast library of video programming for the benefit of the new cable/Verizon bundles at a more favorable price than their competitors.⁴²

The Applicants will also be able uniquely to bundle their services. As CWA and IBEW emphasized in their comments, the Joint Marketing Agreements will allow the Applicants to market the video programming, broadband and mobile wireless services from four of the ten top video providers with the largest market shares and the nation's largest mobile wireless provider.⁴³ This will enable the Applicants to hinder competitors' ability to compete effectively with larger bundles of wireless and wireline services and programming packages.

Video competition will also be threatened in other ways. For example, Verizon, the nation's largest wireless provider, may be prevented from promoting competing content applications. As a commenter notes, [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED]

[REDACTED] [END

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⁴² *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4243-44, App. D (2011).

⁴³ CWA-IBEW Comments at 13-14, n.37.

⁴⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

[REDACTED]

Such artificial restrictions on video competition and the unprecedented market power of the Applicants could result in higher prices for consumers, less network investment and fewer jobs.⁴⁶

D. The Provisions of the JOE Prevent Competition and Promote Collusion Among the Parties.

CWA and IBEW are not alone in their concern that the agreement by the Applicants to form a Joint Operating Entity (“JOE”) is disturbing. The Applicants jointly control approximately 34% of the wireless market, 53% of the residential broadband markets, and 45% of the residential video market, and Comcast controls substantial programming interests.⁴⁷ Through the JOE, the Applicants will combine, in part, jointly to develop patents and proprietary standards across areas where they would normally be competing. As a result, the technologies developed through the JOE will, almost immediately and by default, become industry standards, to the competitive disadvantage of those outside of the club.⁴⁸

And, the JOE will likely erode the competitive distinctions between FiOS and cable alternatives. For example, FiOS currently boasts a significant competitive, performance advantage over cable’s DOCSIS 3.0. However, to the extent that both Verizon and the Cable companies are marketing bundled products that increasingly incorporate seamless, integrated wireless and wireline technologies that the JOE will develop, license and control, the overall competitive advantage of FiOS over DOCSIS 3.0 is likely to decline. This is due partly to the fact that both will be part of

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⁴⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [REDACTED]

...” [END HIGHLY CONFIDENTIAL INFORMATION]

⁴⁶ CWA-IBEW Comments at 13, n.36.

⁴⁷ *Id.* at 12, n.35.

⁴⁸ See Petition to Deny of Public Knowledge et al. at 3-4.

bundles that consumers will likely value differently, and partly because the JOE technologies will likely make FiOS and DOCSIS 3.0 perform in less distinguishable ways.

Numerous commenters, including Media Access Project, Hawaiian Telecom Communications, Inc., RCA and the Rural Telecommunications Group, Inc., have echoed this point.⁴⁹ For example, one commenter explains that because the JOE would facilitate anti-competitive behavior, “Control of such an intellectual property portfolio—which would include not merely patents, but proprietary standards and other critical elements for the deployment of services—is particularly troubling here.”⁵⁰ Taken together, the JOE, the exclusive resale agreements and the license transfers act both individually and in combination with each other to undermine the competitive availability of services offered over “video programming systems” articulated in Section 629 of the Act and the public interest.⁵¹

E. Without Conditions, the Transaction, Taken as a Whole, Will Harm Competition and Result in Reduced Investment in Infrastructure.

It seems quite clear that the combined impact of the Joint Marketing Agreements – the MSO Agreement, Agent Agreements, Reseller Agreements, and JOE Agreement – have the potential to be highly anti-competitive. These agreements provide each of the signatories significant additional advantages vis-à-vis competitors who are not members of this exclusive club. In short, members of this combine-in-the-making have increased competitive advantages against all non-members; they are effectively building a competitive fortress to fend off all other competitors.

⁴⁹ Petition to Deny of Public Knowledge, Media Access Project, et al at 20-21; Petition to Deny of Free Press at 43; Hawaiian Telecom Communications, Inc. Petition to Deny or Condition Assignment of Licenses at 10-11; RCA-The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions at 37-38; Petition to Deny of the Rural Telecommunications Group, Inc. at 22-23.

⁵⁰ Petition to Deny of Public Knowledge et al. at 3.

⁵¹ *Id.* at 6; 47 U.S.C. § 629.

Taken as a whole, the Transaction and the attendant Joint Marketing Agreements undermine cross-platform competition by encouraging Verizon Wireless to sell its cable partners' services, thus undermining the viability of its own Verizon FiOS' offering and FiOS' expansion aims in local franchise areas where the cable companies are entrenched. **[BEGIN HIGHLY**

CONFIDENTIAL INFORMATION] [REDACTED]

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And, as a result of the Joint Marketing Agreements, the ability of the club members to market the quad play of voice, video, broadband and wireless will give them an enormous competitive advantage over other wireline providers, reducing their ability to compete or invest in higher-speed broadband networks. Indeed, Verizon Wireless and Comcast have already launched such bundled packages in a number of markets, including Seattle, Washington, Portland, Oregon and the San Francisco Bay Area.⁵³

Thus, the Transaction, if approved, must be properly conditioned so as to be consistent with the Commission's stated policy of "increasing competition among facilities based broadband

⁵² **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [REDACTED]
[END HIGHLY CONFIDENTIAL INFORMATION]

⁵³ Press Release, *Verizon Wireless and Comcast Team Up in Seattle to Deliver to Consumers the Best Video Entertainment, Communications and Internet Experiences at Home and Away*, Jan. 17, 2012, <http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=1144&SCRedirect=true>; Press Release, *Verizon Wireless And Comcast Team Up In Portland To Deliver To Consumers The Best Video Entertainment, Communications And Internet Experiences At Home And Away*, Jan. 17, 2012, <http://news.verizonwireless.com/news/2012/01/pr2012-01-17h.html>; San Francisco Press Releases, *Verizon Wireless and Comcast Work Together in San Francisco to Deliver Great Video Entertainment, Communications and Internet Experiences -- at Home and Away*, Feb. 1, 2012, http://www.bizjournals.com/sanfrancisco/prnewswire/press_releases/California/2012/02/01/SF45508 (last visited 2/25/2012); MercuryNews.com, *Comcast offers discount on Verizon Wireless service*, Feb. 1, 2012, http://www.mercurynews.com/business/ci_19862713.

providers” in order to “sustain and increase competitive choice among broadband providers and Internet access products.”⁵⁴

The Commission should condition approval of the Transaction on the following:

1. Consistent with past transactions,⁵⁵ require that Verizon must continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.
2. Require Verizon Wireless and the Cable Companies to make the services they provide each other under the Agreements to be available on a nonexclusive basis, and to make such services available to all requesting telecommunications carriers, cable service providers, and broadband Internet service providers on the same terms and conditions.
3. Require Applicants to allow consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.
4. Prohibit Applicants from cross-marketing their services within the Verizon footprint.

II. THE COMMISSION SHOULD DEMAND THAT THE APPLICANTS PROVIDE COMPLETE INFORMATION

CWA and IBEW are encouraged that the FCC is requiring Verizon and the cable companies to remove some of the redactions in their filings. Until all of the documents are made public, however, there is simply too much that the public does not know about this deal. The stakes are too high for American consumers for the FCC to allow Verizon and these cable companies to keep hidden how they intend to price and to market all these new products they want to offer. The public is entitled to this information fully to evaluate the transaction’s impact on the public interest.

⁵⁴ CWA Comments at 6 (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14887 (2005)).

⁵⁵ See, *AT&T and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, App. F (2007).

The Applicants must be required to submit the entirety of the Joint Marketing Agreements and the JOE Agreement for review at least pursuant to the FCC’s protective orders. It is simply unfair for the public to have to rely on the bald assertions of the Applicants regarding the relevance of the hidden information, particularly while at the same time the Applicants have cited to sections of the Joint Marketing Agreements in support of their arguments. Multiple and varying parties agree that the Joint Marketing Agreements 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.⁵⁶

The Applicants argue that consideration of the Joint Marketing Agreements “is not necessary for – or even relevant to – the review of the spectrum license agreements here” claiming, in part, that the “license agreements and Commercial Agreements are separate from, and not contingent on, each other.”⁵⁷ What is most striking about this claim is that it has been directly and publicly contradicted by multiple executives from several of these very same companies. For example, the Applicants have publicly admitted that the license and marketing agreements are part of a single “integrated transaction”:

Question: Your company and Verizon Wireless are arguing before the DOJ and the FCC that the joint-marketing agreements do not need to be reviewed by federal regulators, and

⁵⁶ *See, e.g.*, Letter from DirecTV, LLC, Sprint Nextel Corporation, T-Mobile USA, Inc., Free Press, Media Access Project, Public Knowledge, Computer & Communications Industry Association, New America Foundation, Rural Telecommunications Group, Inc., and RCA – The Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (filed March 6, 2012) (“In combination with the proposed spectrum transaction, the Commercial Agreements will significantly enhance the Applicants’ competitive position in the broadband, wireless and video markets. Without the ability to review those agreements in full, interested parties would be unfairly deprived of the information they need to produce a complete portrait of the impact this transaction will have on the public interest and the Commission would be unnecessarily deprived of that input into its public interest determination.”)

⁵⁷ Joint Opposition to Petitions to Deny and Comments at 70 (filed Mar. 2, 2012) (“Joint Opposition”).

are separate and apart from the spectrum sale. If Verizon hadn't agreed to the joint-marketing agreements, would you still have been willing to sell the spectrum?

David Cohen: *The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements.*⁵⁸

But for the Joint Marketing Agreements, the cable companies would not have offered to sell spectrum to Verizon Wireless.⁵⁹

In addition, in the Joint Opposition the Applicants quote sections of the Joint Marketing Agreements that they have made available, for example, to counter questions raised by commenters about collusion between market competitors.⁶⁰ The FCC should not permit the Applicants simultaneously to use sections of the Joint Marketing Agreements to buttress their arguments before the FCC while at the same time limiting the sections of those same Joint Marketing Agreements that the public may review. Once the Applicants rely on portions of a document to support their claims, the public should be able to review those same documents in their entirety to ensure that the Applicants are not just cherry picking sections of the Joint Marketing Agreements.

⁵⁸ Eliza Krigman, *Comcast Executive Defends Spectrum Deal*, POLITICO PRO (Mar. 8, 2012) (emphasis added).

⁵⁹ To that point, one commenter cites a conversation between Verizon Chief Executive Lowell McAdam and Comcast Chief Executive Brian Roberts that occurred at a financial conference before the deal was finalized. Roberts told Verizon that in order to sell its spectrum licenses, Comcast needed a “fallback” so that it was “not blocked out of wireless. McAdams states, “I think that's the reality of the situation we are in. As I talked with Brian Roberts, he said ‘look, Lowell. If I sell you the spectrum, that puts me on a particular path. I need to have a fallback that if this doesn't work as well as we hope that I'm not blocked out of wireless,’ so I had to respect that as a partner. And an MVNO will have added burdens for them if they choose to go that path. They'll have to make that call, but it will be profitable for us if they do go that way. So it's a win-win I think for both of us.” Petition to Deny of Free Press at 40, n.62 (filed on Feb. 21, 2012) (emphasis added) (citing remarks of Lowell C. McAdam, President, Chief Executive Officer, COO & Director, Verizon Communications, Inc., UBS Global Media & Communications Conference, Dec. 7, 2011).

⁶⁰ See Joint Opposition at Ex. 6.

It simply cannot be argued with a straight face that the Applicants have merely made a “small number” of redactions to the Joint Marketing Agreements. Even with the new information added to the record by the Applicants, there are still redactions ranging from one word to eight pages, with at least 225 discrete redactions.⁶¹ In addition, it is unclear that a majority of the redactions are even tangentially related to “pricing, compensation and related provisions.” In one agreement alone, the originally produced document appeared to have a volume of redactions totaling more than 29 pages, constituting a better fifth of the agreement. While approximately 40 percent of these redactions were removed, only a minority appeared to bear any direct connection to the License Purchase Agreement; the rest pertained to other matters. Overall, it is striking that while more than half of the previously redacted pages have been “unredacted,” about four-fifths of those do not appear directly to relate to the License Purchase Agreement. Importantly, redacted entries that appear to be most critical to understanding and evaluating these Transactions continue to be blacked out.

Applicants claim that the Commission has, in the past, declined to “review commercial agreements involving the parties to a transaction that, unlike here, were *directly* related to or even dependent on a spectrum transaction.”⁶² Applicants go on to list the following three FCC decisions as examples of when the FCC acted on this policy. Upon closer examination, it is clear that these three cases do not support Applicants’ proposition that the FCC declines to review commercial agreements like the Joint Marketing Agreements when conducting a spectrum transaction analysis. The FCC declined to review the agreements in the following cases, not because of a policy against

⁶¹ These calculations pertain to the Comcast-related transaction documents. The results for Time Warner Cable, Bright House Networks and Cox documents are similar. The Commission’s March 8, 2012, Order in Docket No. 12-4 resulted in 34 separate “unredactions.” However, even within these “unredactions,” certain sections or words remained redacted.

⁶² See Joint Opposition at 72.

reviewing commercial agreements, but rather because the agreements in question either related to private party interests that were more appropriately handled by courts or future contracts which may or may not ever be entered into.

- ***AT&T-Centennial***.⁶³ Here, the Commission stated that it would not evaluate whether a proposed acquisition would violate a settlement agreement because (1) it considered the arguments moot; and (2) the settlement agreement represented a private contract that should be resolved by local and state courts. Unlike the settlement agreement in the *AT&T-Centennial* case, which implicates private party rights which are traditionally enforced by courts, the Joint Marketing Agreements at issue here directly impact the public and relate to an issue of direct Commission jurisdiction – cross-platform competition.
- ***GM-Hughes***.⁶⁴ In this case, the Commission did not refuse to “review contractual agreements involving the parties to a transaction” as the Applicants suggest, but rather declined to get involved in evaluating whether the proposed transaction would discriminate against certain stockholders. The Commission was persuaded that a state court is the appropriate forum for shareholder derivative suits, not the Commission. These facts are quite different than the Joint Marketing Agreement in this proceeding, which have the potential to directly harm the public by decreasing competitive choice among broadband providers and Internet access products. Unlike the *GM-Hughes* case where a state court was the proper forum to resolve the potential unfairness to particular shareholders resulting from a transaction, the Commission is the proper forum to decide whether the Joint Marketing Agreements threaten cross-platform competition that could harm consumers.
- ***Sprint-Clearwire***.⁶⁵ In this case, the FCC did not “decline” to “review” an agreement as part of the review of the transaction, but rather refused to attach a condition requiring approval of any potential future contract modifications relating to financial backing. Declining to review all future contracts regarding financial backing is hardly the same as reviewing the Joint Marketing Agreements that could threaten cross-platform competition if the Transaction is approved.

In fact, the FCC actually has reviewed non-license agreements between parties as part of the transaction review process when the agreements could run afoul of a major policy objective of the

⁶³ *Applications of AT&T Inc. and Centennial Communications Corp., For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13976 ¶152 (2009).

⁶⁴ *General Motors Corp. and Hughes Electronics Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 473, 609 ¶314 (2004).

⁶⁵ *Sprint Nextel Corp. and Clearwire Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17609-10 ¶101 (2008).

FCC. For example, in the AT&T – T-Mobile transaction, the Commission supported its decision in part on the conclusion that “serious issues concerning the potential for the proposed transaction to result in a lessening of competition in the provision of GSM and HSPA-based roaming services.”⁶⁶ This conclusion relied upon the Commission's review of non-license, ancillary roaming agreements of both AT&T and T-Mobile.⁶⁷ And, the Commission has refrained from imposing program access or program carriage related conditions after reviewing “the ancillary and other agreements that [would] continue to exist . . . after separation” of the merging entities.⁶⁸

In the end, it is remarkable that the Applicants would both: (i) execute Joint Marketing Agreements that implicate broadband and video services provided by major competitors in concert with the sale of spectrum from SpectrumCo and Cox to Verizon Wireless, (ii) claim that the licensing and marketing agreements are separate from each other, (iii) withhold large sections of those agreements from review even under a Highly Confidential protective order, (iv) cite to those provisions that they decided to share with the FCC and the public in support of their arguments – and then claim “there is no legitimate rationale for requiring submission of the agreements in unredacted format.”⁶⁹ It is important that the FCC has acknowledged that a review of the Joint Marketing Agreements is necessary to determine if the spectrum license transfer is in the public

⁶⁶ *Applications of AT&T Inc. and Deutsche Telekom AG*, Order & Staff Analysis and Findings, 26 FCC Rcd 16184, 16239 (2011).

⁶⁷ *Id.* at 16239 n.300.

⁶⁸ *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Time Warner Inc., and its Subsidiaries, Assignor/Transferor to Time Warner Cable Inc., and its Subsidiaries, Assignee/Transferee*, MB Docket No. 08-120, 24 FCC Rcd 879, 890 n.90 (Feb. 11, 2009) (concluding, after review of ancillary and other agreements, that the merging entities would not retain “connections conferring significant ability to influence each other such that they would warrant a finding of attribution”).

⁶⁹ Joint Opposition at 4-5.

interest.⁷⁰ But as such, it is now incumbent on the FCC to permit a full look at these critical documents.

III. THE TRANSACTION HAS A NEGATIVE IMPACT ON JOB GROWTH AND CREATION

The Transaction will reduce jobs and economic growth by reducing incentives to invest in wireline networks and by making it virtually impossible for other companies to compete on video.⁷¹ The Transaction will also result in providing the Applicants with a unique ability to thwart broadband competition.⁷² Other commenters have also emphasized this point. The IBEW Local 827 and System Council T-6 stated that “[t]he approval of this transaction will result in the loss of potentially thousands of current and future jobs as Verizon Communications abandons the build up, maintenance and expansion of its FiOS network. Additionally, the approval of this transaction is also likely to result in the diminishment of bargaining unit jobs as current union work is shifted to low pay, low benefit workers or to outside contractors.”⁷³

It is easy to see how investment and jobs could be impacted in other ways beyond reduced investment in FiOS, and the loss of jobs that comes with that. The Joint Marketing Agreements and the JOE also will create significant competitive deficits for competing wireline and wireless carriers, which in turn will lessen their incentives to make additional investments in everything from

⁷⁰ See Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau to Michael Samscock, Cellco Partnership, WT Dkt. No. 12-4, Mar. 8, 2012; Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau to Lynn Charytan, Vice President, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corp., WT Dkt. No. 12-4, Mar. 8, 2012.

⁷¹ CWA-IBEW Comments at 20.

⁷² *Id.*

⁷³ Comments of Internal Brotherhood of Electrical Workers, Local 827 and System Council T-6 at 1-2 (“Local IBEW Comments”).

expanded DSL and upgraded backhaul facilities to additional tower installations and LTE broadband solutions.

As Economists Robert Crandall and Hal J. Singer note, “there is perhaps no better way to create jobs than to stimulate investment.”⁷⁴ Additional investment to wire the country with next-generation technologies will expand domestic output and create new jobs. In their report, “The Economic Impact of Broadband Investment,” Crandall and Singer took stock of the investment in first-generation access technologies: cable modem, DSL, and 3G wireless. The investments and the associated job creation were notable: annualized investment in cable modem from 2003 to 2009 was \$4.3 billion, which corresponds to 63,400 jobs created.⁷⁵ Meanwhile, annualized investment in DSL and fiber from 2003 to 2009 was \$11.7 billion, which corresponds to 202,400 jobs created.⁷⁶

Crandall and Singer report that even greater investments are now being made. U.S. facilities-based broadband service providers are upgrading their existing infrastructure with next-generation access technologies. Crandall and Singer estimate that the annual average investment by broadband service providers from 2010 to 2015 will be \$12.5 billion in wireline broadband, including fiber-to-the-home and fiber-to-the-node, which corresponds to 247,000 jobs created.⁷⁷ The economists predict a \$30.4 billion investment in all broadband technologies, will correspond to more than 509,000 jobs created.⁷⁸

⁷⁴ Comments of CWA-IBEW at 20 (citing Robert W. Crandall and Hal J. Singer, *The Economic Impact of Broadband Investment*, http://www.naviganteconomics.com/docs/broadbandforamerica_crandall_singer_final.pdf (last visited Feb. 15, 2012).

⁷⁵ *Id.* at 2.

⁷⁶ *Id.*

⁷⁷ *Id.* at 3.

⁷⁸ *Id.*

Yet the proposed Transaction undermines the incentive of Verizon to continue to invest in its FiOS, thus diminishing innovation, depressing investment in broadband deployment and ultimately eliminating jobs, an argument also advanced by the IBEW Local 827 and T-6 Council.⁷⁹ And to the extent it significantly impairs the ability of other wireline providers to compete, it also may diminish their ability and willingness to invest.

Interestingly, the Joint Opposition does not address or refute the arguments raised by CWA and IBEW in their comments, which conclude that the Transaction will harm investment and job growth and creation.⁸⁰ The Commission is interested in and promotes the creation and preservation of jobs.⁸¹ As the Commission has recently emphasized, in the context of license transfer reviews, “the Commission historically has considered employment-related issues such as job creation, commitments to honor union bargaining contracts, and efficiencies resulting from workforce reduction ... [W]hen Applicants can demonstrate that a number of U.S. jobs will be created as a result of a proposed merger, the Commission will consider this as part of its public interest

⁷⁹ FCC, *Bringing Rural Broadband to Rural American: Report on a Rural Broadband Strategy*, ¶ 16 (2009), <http://www.fcc.gov/reports/first-rural-broadband-report> (“One study estimates that communities having access to mass-market broadband grew disproportionately in employment, the number of information technology-oriented businesses, and the number of businesses overall. ... Simply put, broadband buildout to rural Americans promotes and encourages sustained economic development, to the benefit of us all.”); see Local IBEW Comments at 1-2.

⁸⁰ CWA-IBEW Comments at 20.

⁸¹ For example, in the *SBC/AMT Order*, the Commission cited SBC’s commitment to “improving service quality by hiring more employees.” *Applications of Ameritech and SBC Communications for Consent to Transfer of Control of Licenses and Authorizations*, 14 FCC Rcd 14712, 14947 ¶ 567 (1999). See also *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972 (2010) (Statement of Chmn. Genachowski “I take seriously concerns that have been expressed about the risks this transaction poses for consumers, employees, and competitors”) (Joint Statement of Comm’rs Copps and Clyburn “Lastly, we understand-and fully expect-that approving this transaction will maintain and potentially expand much-needed quality jobs in these rural communities. We continue to be hopeful that Frontier will soon reach an equitable agreement with the Communications Workers of America, ensuring that the needs of Frontier’s employees are respected”).

analysis.”⁸² The Commission’s National Broadband Plan similarly recognized the important link between broadband investment and jobs.⁸³ The Transaction and accompanying Joint Marketing Agreements will result in less overall network investment than if Verizon and the relevant cable operators continued to compete to build out their own wireline and wireless platforms to compete with each other. Less competition results in fewer jobs. Without competition to drive increased investments, there is a negative impact on job creation.⁸⁴

The Joint Opposition cites to Chairman Genachowski’s statement at the Consumer Electronics Show where he stated that “a key pillar of a powerful strategic plan to harness communications technology to drive our economy and enduring job creation” but the Applicants do not discuss how the proposed Transaction or the Joint Marketing Agreements will promote job creation; nor do they refute CWA and IBEW’s arguments that the Transaction and Joint Marketing Agreements will, in fact, deter investment and job growth and creation.⁸⁵ In a latter section of the Joint Opposition, the Applicants make a passing reference to jobs created by investments in the communications industry but again fail to discuss how the Transaction and the Joint Marketing

⁸² See, e.g., *Applications of AT&T and Deutsche Telekom AG*, Order and Staff Analysis and Findings, 26 FCC Rcd 16184, 16293 (2011).

⁸³ For example, the National Broadband Plan pointed to specific links between broadband investment and jobs: “The Lenowisco Planning District Commission reported 1,200 new jobs, \$55 million in new private investments and \$35 million in new payroll as a result of the region’s broadband network.” *National Broadband Plan* at 275 Box 13-3.

⁸⁴ For instance, cable operators report that they have invested more than \$100 billion to construct advanced two-way fiber optic networks, which can cost from \$100,000 to \$300,000 per mile. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, ¶ 52 (2009); Jeremy Feiler, *RCN Out to Block Comcast*, Philadelphia Bus. J., Aug. 16, 2002 (“RCN’s business is capital-intensive - installing fiber-optic or coaxial cable can cost \$100,000 to \$300,000 per mile - and it has halted its expansion.”); Michael Mandel, *Telecom Investment: The Link to U.S. Jobs and Wages*, The Progressive Policy Institute, May 2011, available at <http://progressivefix.com/wp-content/uploads/2011/05/05.2011-Mandel-Telecom-Investment-The-Link-to-US-Jobs-and-Wages.pdf> (last visited Feb. 15, 2012).

⁸⁵ Joint Opposition at 5-6.

Agreements will encourage investments and promote job growth and creation.⁸⁶ The answer is the Applicants do not have a real response to the investment and job growth and creation concerns raised by CWA and IBEW.

IV. CONCLUSION AND PROPOSED TRANSACTION CONDITIONS

For all of the aforementioned reasons, CWA and IBEW strongly urge the Commission to carefully review the combined effects of the Transaction and the Joint Marketing Agreements on competition, consumers and jobs. The Communications Act requires the Commission to review a proposed transaction to determine the status of competition after the transaction is closed. This Transaction and the Joint Marketing Agreements raise serious concerns about the status of competition after the Transaction is consummated. The Transaction, if approved, must be properly conditioned so as to be consistent with the Commission’s stated policy of “increasing competition among facilities based broadband providers” in order to “sustain and increase competitive choice among broadband providers and Internet access products.”⁸⁷

Accordingly, if the Commission determines that grant of the Transaction and the Joint Marketing Agreements is in the public interest, it should provide its consent with the following conditions:

1. Require Verizon to continue to offer FiOS broadband Internet access service, expand in-region deployment to cover at least 95% of residential living units and households within the Verizon in-region territory, and require that a certain percentage of incremental deployment after the Merger Closing will be to rural areas and low income living units, with timetables, data reporting, and penalties for non-compliance.
2. Require Verizon Wireless and the Cable Companies to make the services it provides each other under the Agreements to be available on a nonexclusive basis, and to make such

⁸⁶ *Id.* at 18 n.53.

⁸⁷ CWA Comments at 6 (citing *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14887 (2005)).

services available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.

3. Require Applicants to allow consumers to purchase specific services from the retail bundle at a price equal to the bundled retail price less the wholesale price of the network.
4. Prohibit Applicants from cross-marketing their services within the Verizon footprint.

Respectfully submitted,



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Dated: March 26, 2012

CERTIFICATE OF SERVICE

I, Jennifer Cetta, hereby certify that on this 26th day of March 2012, I caused true and correct copies of the foregoing Reply Comments to be served by courier to the following individuals:

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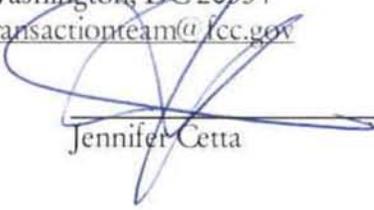
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