

April 20, 2012

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VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch:

On April 19, 2012, Debbie Goldman of Communications Workers of America (“CWA”), along with Monica Desai, Jennifer Cetta and Ryan King, counsel to CWA, spoke by telephone with Jim Bird, Neil Dellar and Joel Rabinovitz of the Office of General Counsel. During the call, CWA stressed concern about not having a timely and meaningful opportunity thus far to review documents in connection with the above-referenced proceeding.

Specifically, the Federal Communications Commission (“Commission”) made a request on March 8, 2012, to Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”), SpectrumCo LLC (“SpectrumCo”), Cox TMI Wireless, LLC (“Cox”), Comcast Corporation (“Comcast”), Bright House Networks, LLC (“Bright House”), and Time Warner Cable Inc. (“Time Warner Cable”) for “additional information and clarification of certain matters discussed in the applications and other information provided to the Commission.”¹ The Commission required

¹ Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Michael Samsok, Cellco Partnership, d/b/a Verizon Wireless, WT Docket No. 12-4 (Mar. 8, 2012); Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to David Don, SpectrumCo LLC, WT Docket No. 12-4 (Mar. 8, 2012); Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Jennifer Hightower, Cox TMI Wireless, LLC, WT Docket No. 12-4 (Mar. 8, 2012); Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Lynn Charytan, Vice President, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corporation, WT Docket No. 12-4 (Mar. 8, 2012); Letter from Rick Kaplan,

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this information in order to complete its review and make the necessary public interest findings under the Communications Act. Because the Commission has deemed that this information is critical to its review of the transaction, it is also critical that parties interested in participating in the public interest review process also have the opportunity to meaningfully review the information in a timely manner. Specifically, CWA discussed how it has not had this opportunity due to a combination of delays in document production, the volume of documents recently produced, and the manner of production, including CWA's difficulty in searching some documents without indexes or tables – making it impossible to determine which documents were responsive to which FCC questions -- and CWA's inability to read other documents or files. These problems are explained more specifically below.

In prior transactions, the Commission has stopped the clock to allow meaningful evaluation and sound analysis of the record. For example, the Commission stopped the clock for 37 days in the AT&T/T-Mobile merger when it learned that AT&T had developed and was relying upon new models that had not been provided to the Commission or to third parties entitled to have access to the information. The Commission explained that it would only re-start the clock “. . . once the new evidence has been provided to us in a format and with sufficient explanation and back-up information to enable us, and third parties entitled to have access to the information, to adequately evaluate it.”² Furthermore, the Commission decided to “. . . also allow time before restarting the clock for those third parties to have a meaningful opportunity to comment on the submission.”³ In addition, in the Comcast/NBCU matter, the Commission stopped the clock for 25 days when those parties had not “fully complied” with Commission instructions regarding the

Chief, Wireless Telecommunications Bureau, FCC, to Bright House Networks, LLC, ATTN: Cody Harrison, Sabin, Bermant & Gould LLP, WT Docket No. 12-4 (Mar. 8, 2012); Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Steven Teplitz, Senior Vice President, Government Affairs, Time Warner Cable Inc., WT Docket No. 12-4 (Mar. 8, 2012).

² Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Richard L. Rosen, Esq., Arnold & Porter, LLP, WTB Docket No. 11-65, at 1 (July 20, 2011) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308512A1.pdf; Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Richard L. Rosen, Esq., Arnold & Porter, LLP, WTB Docket No. 11-65 (Aug. 26, 2011) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309294A1.pdf.

³ Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Richard L. Rosen, Esq., Arnold & Porter, LLP, WTB Docket No. 11-65, at 1 (July 20, 2011) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308512A1.pdf

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submission of certain information in response to the Media Bureau's information request,⁴ and in the Verizon/MCI and SBC/AT&T matters, the Commission granted requests to stop the clock for 23 days and 36 days respectively "[i]n the interest of ensuring sound analysis of the record" after the applicants filed additional relevant information.⁵

Consistent with this precedent, and in order to give the interested parties the opportunity to provide meaningful comment, CWA respectfully requested that the FCC stop the 180-day clock. CWA provided examples of the difficulties and challenges, including unusual and burdensome measures, faced by CWA in obtaining access to these documents. The information responsive to the FCC request was due on March 22, 2012, but CWA explained how electronic information in a usable format was not made available to CWA from Time Warner Cable and Bright House until April 12 and 17, respectively, approximately two and-a-half weeks after CWA requested them.⁶

⁴ Letter from William T. Lake, Chief, Media Bureau, FCC, to Michael H. Hammer, Esq., Wilkie Farr & Gallagher LLP, MB Docket No. 10-56 (June 24, 2010) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299031A1.pdf; Letter from William T. Lake, Chief, Media Bureau, FCC, to David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, MB Docket No. 10-56 (June 24, 2010) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299030A1.pdf; Letter from William T. Lake, Chief, Media Bureau, FCC, to Michael H. Hammer, Esq., Wilkie Farr & Gallagher LLP & David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, MB Docket No. 10-56 (July 13, 2010) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299726A1.pdf. See also *In re Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.; For Consent to Assigned Licenses or Transfer Control of Licensees*, Order, 25 FCC Rcd 3802, 3802-3803 (2010) ("In light of the approaching filing deadlines, and in order to provide adequate time for all interested parties to review and comment on these additional economic reports, we have decided to suspend the current filing deadlines, including the May 3 deadline for filing comments and petitions to deny, pending the Applicants' submission of these materials. We will also stop our 180-day informal time clock to take account of the additional comment period. The Commission has a strong interest in ensuring a full and complete record, and we believe this action will ensure that all parties will have sufficient time to review and comment on the applications, including these supplemental materials, and will ultimately contribute to an efficient and expeditious review of the proposed transaction.").

⁵ 180-Day Clock Stopped on Consideration of Applications for Consent to Transfer of Control Filed by Verizon Communications Inc. and MCI, Inc., *Public Notice*, 20 FCC Rcd 14727 (2005); 180-Day Clock Stopped on Consideration of Applications for Consent to Transfer of Control Filed by SBC Communications Inc. and AT&T Corp., *Public Notice*, 20 FCC Rcd 14579 (2005).

⁶ CWA requested the information on March 29, 2012. It did not submit a request for electronic documents of Cox as Cox provided a narrative response only.

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In addition, Comcast originally provided documents to CWA in unsearchable, scanned PDF as well as XLS formats, but did not provide CWA, in a timely manner, a meaningful way to evaluate those documents because they had no index that would allow CWA to identify the documents to parties' responses to the information requests. Yet the Commission made clear that "each response or document should clearly indicate the specific question or request to which it responds ..."⁷

While Bright House did provide a hard copy of its unredacted Highly Confidential narrative response to CWA on March 29, 2012, the date of CWA's request, it did not make available supplemental electronic documents to CWA until April 17 although Bright House submitted its responses to the Commission's Information and Discovery Request on April 4, 2012.

Similarly, Time Warner Cable has cited technical issues in producing electronic copies of its documents. The company provided a hard copy of its unredacted Highly Confidential narrative response on April 11, 2012 following CWA's March 29th request. But the first production of its electronic copies (2 DVDs, one each for Confidential and Highly Confidential documents) was not available until April 12, 2012 and its second production (2 copies of 2 hard drives, again one each for Confidential and Highly Confidential documents) was not available until April 13, 2012. Time Warner Cable's electronic data contains 542 documents. One Time Warner subdirectory alone on the Highly Confidential disk has 221,621 files with 1,015 folders, taking up 40.5 gigabytes.

In addition, Verizon Wireless provided electronic data the day after CWA's March 29th request, which contained 3,146 documents, some of which are in formats that CWA so far has been unable to read. Specifically, 90 to 100 files are in ".dbf, .prj, .sbx, .sbn, .shp, .shx" formats that CWA cannot open. It is not clear how many total pages of documents are included in these files until CWA is able to gain access to them.

Also, Comcast's response to CWA's request was incomplete.⁸ According to the March 30th cover letter accompanying the packet sent to CWA's counsel, the delivery was supposed to include "discs containing the electronic files and data in Summation format that Comcast submitted with its response." However, upon review of the discs containing electronic files and data that were said to be in Summation format, it was determined that the files were actually in PDF format and XLS formats (2,973 in PDF format and 519 in XLS format). CWA explained that it appears that all of the PDF documents provided by Comcast were scanned as images and thus were not

⁷ See, e.g., Letter from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, to Michael Samscock, Cellco Partnership, d/b/a Verizon Wireless, WT Docket No. 12-4 (Mar. 8, 2012).

⁸ Comcast's incomplete response was delivered to CWA on March 30, 2012.

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directly searchable.⁹ In addition, the initial Comcast Highly Confidential DVD in PDF format had 3,492 files in a single directory (COMFCC001_HC), with no index, key or other guide to which documents respond to which specifications. Also, there was no indication which documents responded to specific Commission questions in the PDF and XLS formats. As a result, CWA was required to send a second request for documents in Summation format, which were provided to CWA on April 17 and which CWA is in the process of uploading.

CWA further expressed concern that it already has invested considerable resources -- 120 hours alone -- in trying to overcome the technical challenges presented by the document production, without even yet having the opportunity to review the vast majority of the documents. CWA also noted that while it was initially pleased by the comprehensiveness of the Commission's document request and the timeliness of the document production deadline, the series of challenges posed in reviewing the documents has meant that interested parties like CWA cannot review these documents even as the Commission's 180-day clock is ticking. Furthermore, these problems are adverse to the Commission's policy of conducting open and transparent reviews to allow parties to provide meaningful comment on the proceeding.

In the end, the public interest requires that the Commission intervene by suspending the 180-day clock to ensure a meaningful opportunity for all third parties to review and evaluate this additional information. This is the only reasonable option for ensuring a fair public interest review of the transactions.

Sincerely,

_____/s/_____
Monica S. Desai
Partner

Counsel for Communications Workers of America

cc: Adam Krinsky, Counsel to Celco Partnership d/b/a Verizon Wireless
J.G. Harrington, Counsel to Cox TMI Wireless, LLC
David Don, Counsel to SpectrumCo LLC
Michael Hammer, Counsel to Comcast Corporation

⁹ In order for the Comcast PDFs to be searchable, the PDFs had to be converted in Adobe to conduct an OCR text recognition search.

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Robert Kidwell, Counsel to Bright House Networks, LLC

Matthew Brill, Counsel to Time Warner Cable Inc.

James Bird, FCC

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