Ex Parte

VIA ELECTRONIC FILING

Marlene H. Dortch Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

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

Dear Ms. Dortch:

Verizon Wireless, on behalf of SpectrumCo, LLC, its members (Comcast Corporation, Time Warner Cable, Inc., and Bright House Networks LLC), and Cox TMI Wireless, LLC, submits this filing to address a litany of erroneous claims regarding the proposed transactions. A review of the record in this proceeding overwhelmingly demonstrates that the proposed assignments of AWS licenses to Verizon Wireless are in the public interest.

Verizon Wireless is deploying the first national LTE 4G wireless network in the world, currently covering more than 200 million people in more than 200 markets. The company recently announced that its nationwide deployment will be completed by mid-2013, months ahead of schedule. These transactions will move spectrum that is currently not being used to a provider that will put it to use to ensure consumers using LTE will have robust and reliable service on their smartphones, tablets, and other mobile devices. The benefits to consumers, the mobile ecosystem, and the larger U.S. economy are clear.

Nevertheless, in their reply comments and *ex partes* in this proceeding, a few parties continue to repeat claims that have no merit and which were squarely addressed and rebutted in Applicants' previous filings. As demonstrated below, these claims are fundamentally flawed.

<u>Claim:</u> <u>The Commission should block the sale of the AWS spectrum to Verizon</u>

Wireless because selling the spectrum to others would better serve the public

<u>interest</u>.

Fact: The proposed transactions are strongly in the public interest and the FCC by

law may not consider alternative transactions.

The parties to the proposed license assignments have demonstrated that the sale of the AWS spectrum to Verizon Wireless is strongly in the public interest. The license assignments will move spectrum that currently is not being used to a provider that will put it to use to serve customers' wireless broadband needs as demand for new and innovative applications and services continues to accelerate. And they will do so with no countervailing lessening of competition. Under the FCC's long standing precedent, that showing is more than sufficient and the license assignments should be promptly approved.

Commenters, principally T-Mobile and its trade association, RCA, ask the Commission to block the license assignments, so that they or others can buy the spectrum instead. They are wrong.

First, the Commission is statutorily barred from considering potential alternative transactions. As the Commission has put it, Section 310(d) "limits our consideration to the buyer proposed in an assignment application, and we cannot consider whether some other proposal might comparatively better serve the public interest." Indeed, T-Mobile itself highlighted that "[t]he Commission has specifically rejected precisely th[is] type of inquiry" and under Section 310(d) "cannot 'consider the relative merits of alternative, hypothetical transactions." As T-Mobile emphasized to the Commission, "Congress intended for the Commission to consider a transaction 'as though no other person were interested in securing such permit or license."

Second, this claim is squarely at odds with the Commission's secondary market policy, which is designed "to permit and promote the operation of market forces in determining how spectrum is used." Secondary market transactions such as this one help to ensure that available spectrum moves to the providers who can efficiently put it to its best use serving consumers.

¹ See, e.g., Citadel Communications Co., Ltd. and Act III Broad. of Buffalo, Inc., Memorandum Opinion and Order, 5 FCC Rcd 3842, 3844 ¶ 16 (1990) (emphasis added).

² Letter to Marlene H. Dortch, Secretary, FCC, from Deutsche Telekom and T-Mobile USA, Inc., WT Docket No. 11-65, at 2 (Oct. 31, 2011) (quoting *Geotek Communications, Inc. and Wilmington Trust Co.*, Memorandum Opinion and Order, 15 FCC Rcd 790, 811 ¶ 48 (WTB 2000)).

³ *Id.* (quoting H.R. REP NO. 82-1750, at 12 (1952)).

⁴ See Principles for Promoting Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, 15 FCC Rcd 24178, 24180 ¶ 8 (2000).

Requesting that the Commission intervene in these transactions by directing spectrum to other, preferred players would contradict and permanently undermine this established policy.

<u>Claim:</u> <u>Verizon Wireless is "warehousing" unused spectrum and does not need more</u>

spectrum.

Fact: Verizon Wireless is a good steward of spectrum, and the AWS spectrum at

issue here will allow it to supplement efficiently the capacity of its 4G LTE

network to meet its customers' growing needs.

As the Commission has frequently recognized, wireless broadband traffic volumes continue to grow dramatically as customers expand their use of new and innovative devices, applications, and services. Verizon Wireless has submitted detailed data and other information, including results from its Verizon Planning Instrument ("VPI"), a tool developed for 1xRTT and EvDO and now expanded for LTE, to project future need. That evidence overwhelmingly shows that Verizon Wireless needs additional spectrum to meet its customers' demands. It also shows that it is already using spectrum efficiently, serving more customer connections per MHz of spectrum than any of the other major wireless providers. The AWS spectrum to be assigned here will allow Verizon Wireless to supplement its 4G capacity efficiently because it complements the company's existing spectrum holdings.

Ignoring this extensive showing, some parties still claim that Verizon Wireless does not need new spectrum and is instead "warehousing" unused spectrum. Those claims should be rejected outright.

First, the Commission has never required parties acquiring spectrum to demonstrate that they need the spectrum immediately, or to do so on a market by market basis. Nor would it make any sense to change past policy and do so now. As T-Mobile's then-CEO explained in 2010: "[Y]ou can't ever buy spectrum when you need it, right. You always have to be out ahead of it." Indeed, in the two most recent significant spectrum-only transactions, AT&T's purchase of Qualcomm spectrum and T-Mobile's acquisition of AT&T's spectrum, the Commission did not require a market by market showing of particularized need, but relied instead on a general showing that the license assignments would be in the public interest.

Second, in any event, commenters are wrong when they claim Verizon Wireless has not demonstrated that it needs new spectrum or has only shown that it needs spectrum in a selected subset of the relevant markets. In fact, Verizon Wireless provided an unprecedented amount of evidence demonstrating customers' skyrocketing demand for data on the 4G LTE network, the

⁵ Transcript, Robert Dotson, CEO, T-Mobile USA, Deutsche Telekom Investor Day (Mar. 18, 2010).

⁶ See AT&T Inc. and Qualcomm Inc., Order, 26 FCC Rcd 17589 (2011) ("AT&T-Qualcomm Order"); Public Notice, Rep. No. 7718 (Apr. 25, 2012) (approving AT&T Mobility Spectrum LLC and T-Mobile License LLC, File No. 0005005682 et al.).

resulting capacity constraints on the network, and the need for more spectrum to meet customers' needs.

For example, Verizon Wireless submitted voluminous historic and projected data on traffic levels at more than 40,000 individual cell site sectors where it currently offers LTE. It also supplied maps depicting specific network constraints and spectrum needs in 18 markets of various sizes, and scattered across the nation. These are not the only markets where spectrum is needed, and Verizon Wireless has provided data on *all* of its LTE markets. That comprehensive data show that Verizon Wireless will need additional spectrum to supplement its 4G network capacity by 2013 in many major markets and by 2015 in many others.

Verizon Wireless more recently submitted maps for 81 additional markets which make the same showing: Verizon Wireless needs additional spectrum to meet sharply growing demands of its customers. That is the case in markets where Verizon Wireless currently has only 700 MHz C Block spectrum as well as in markets roughly covering the eastern half of the nation where it has AWS spectrum. And it is true in major urban areas as well as in more suburban and rural areas. The VPI data show that in market after market, even where Verizon Wireless has AWS spectrum, it will not be able to meet projected customer data demand without additional spectrum resources.

These maps reflect data from the VPI, a network planning tool used in actual business practice to enable the network engineers to assess capacity constraints. Significantly, the VPI incorporates actual traffic data experienced on the LTE network. It is not a theoretical model devised for regulatory purposes. The maps show that, absent additional spectrum, customers will begin to experience congestion even earlier than in some previous projections (which did not include actual LTE traffic data); this is consistent with Verizon Wireless' previous experience in which its projections have often understated actual growth in demand.

Third, claims that Verizon Wireless is improperly warehousing spectrum are demonstrably false. Chairman Genachowski has dismissed such claims as "just not true," concluding that "[t]he looming spectrum shortage is real – and it is the alleged hoarding that is illusory." Verizon Wireless has repeatedly sold spectrum when it identified licenses that did not fit into its plans so that the spectrum could be used by others – nearly 40 licenses to competitors of all sizes over the past five years. This track record belies any claim of warehousing.

Fourth, the only fact that these commenters cite as support for their warehousing claims is that Verizon Wireless holds some AWS licenses in eastern markets that it has not yet put to use, and also still holds 700 MHz A and B Block licenses. But as explained in previous filings, Verizon Wireless has devoted significant time, effort and millions of dollars of expense to clearing its existing AWS spectrum and to developing devices that are compatible with this

⁷ FCC Chairman Julius Genachowski, *The Clock Is Ticking, Remarks on Broadband*, at 7-8 (Mar. 16, 2011), http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0316/DOC-305225A1.pdf.

spectrum for its planned deployment. It also demonstrated that the existing AWS spectrum that Verizon Wireless plans to deploy will not by itself accommodate growing customer demand. The additional spectrum being acquired here will complement these existing AWS holdings by allowing Verizon Wireless to use a consistent type of spectrum to supplement the capacity of the LTE network efficiently across its footprint. In contrast, the 700 MHz A and B Block spectrum is not as suitable as a complement to Verizon Wireless' existing 700 MHz C Block and AWS spectrum.

In addition, Verizon Wireless recently announced that it will sell its remaining 700 MHz A and B Block spectrum through a public bidding process contingent on the completion of the pending AWS license purchases. This will allow that spectrum to be used by other carriers and their customers, much the way Leap plans to do with the 700 MHz A Block license it is acquiring from Verizon Wireless in Chicago.

Some parties now claim that Verizon Wireless' decision to put all of these Lower 700 MHz band licenses into the secondary market disproves its need for spectrum for LTE. Verizon Wireless has, however, explained that it plans to accommodate LTE growth with a combination of Upper 700 MHz and AWS spectrum (and thus its need for additional AWS spectrum), but that the Lower 700 MHz spectrum does not fit in those plans. As a result, it is selling that spectrum contingent on completing the acquisition of the AWS spectrum here – precisely what the Commission's secondary market policy encourages. The Commission should not overlook the fact that these commenters would have it both ways – *first* arguing that Verizon Wireless should not be allowed to acquire AWS spectrum because it is holding Lower 700 MHz spectrum, but *now* attacking it for offering that same spectrum for sale to its competitors.

Claim: The license assignments would harm competition.

Fact: The license assignments at issue here involve the assignment of spectrum licenses that are not being used, and will not reduce competition in any market.

The proposed license assignments involve only spectrum that is not currently being used and do not involve the transfer of any customers, network assets, or ongoing businesses. In each of the geographic markets at issue, there are multiple other providers who both hold spectrum and are providing competing wireless services to customers. And, Verizon Wireless' spectrum holdings will remain below the spectrum screen in virtually all geographic areas at issue here. These facts are compelling and the commenters that claim otherwise offer nothing more than vague generalities and empty rhetoric.

First, to assess the effect of spectrum assignments, since 2004 the FCC has used a spectrum screen. This screen is an analytical tool used to identify which markets warrant further

review.⁸ The FCC has consistently used a screen of approximately one-third of what it considers to be then-available spectrum, and has adjusted the numerical value of the screen periodically as additional spectrum was deemed to be available. The FCC has consistently held that markets below the screen are presumed to be competitive after the transaction and *no further assessment is required*.⁹ The FCC will undertake a further review of individual market conditions only in markets that exceed the screen to determine whether there will be any lessening of competition.

In this case, after its acquisition of the AWS spectrum, Verizon Wireless will remain at or below the screen in more than 98 percent of the counties where it is acquiring the spectrum, even *including* the company's 700 MHz spectrum holdings that will be put up for sale. To put it another way, Verizon Wireless would exceed the screen in only 1.8% of the counties covered by the licenses that would be assigned (46 of 2,577 counties), covering only 1.8% of the population covered by the licenses (5.2 million of 287 million POPs).

Second, these assignments do not raise any issue if viewed at a broader national level. As T-Mobile's CEO has explained, the U.S. marketplace is very competitive and approximately three-quarters of Americans live in places contested by at least five facilities-based wireless providers. Further, with the addition of the AWS spectrum at issue, Verizon Wireless would hold only about 26 percent of the spectrum nationwide that the FCC includes in its spectrum screen, meaning that roughly *three-quarters* of that spectrum remains available for others. Verizon Wireless' holdings nationwide also will be somewhat less following its announced sale of its 700 MHz A and B Block licenses. If other bands that are now available were included in the screen, the figure would be even lower, as detailed below.

Third, even in those markets that are subject to a further assessment under the FCC's established precedent, commenters have produced *no* evidence of any potential competitive harm flowing from this spectrum-only transaction. The FCC has made clear that it will reject such claims where, as here, opponents fail to present "facts or evidence" that "specific competitive harm" would result. Applicants also demonstrated that in each of the above-screen markets there are multiple competitors that hold spectrum and are offering competing wireless services,

⁸ AT&T Wireless Services, Inc. and Cingular Wireless Corp., Memorandum Opinion & Order, 19 FCC Rcd 21522, 21568-69 ¶ 109 (2004) ("AT&T Wireless-Cingular Order"); AT&T-Qualcomm Order, 26 FCC Rcd at 17602 ¶ 31; AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8720-8721 ¶ 32 (2010) ("AT&T-Verizon Wireless Order").

⁹ Sprint Nextel Corp. and Clearwire Corp., Memorandum Opinion and Order, 23 FCC Rcd 17570, 17601 \P 76 (2008) ("Sprint Nextel-Clearwire Order"); see also AT&T Wireless-Cingular Order, 19 FCC Rcd at 21569 \P 109.

¹⁰ The AT&T/T-Mobile Merger: Is Humpty Dumpty Being Put Back Together Again? Before the S. Comm. On the Judiciary, Subcomm. Antitrust, Competition Policy and Consumer Rights, 112th Cong. (2011) (statement of Phillip Humm, CEO, T-Mobile USA at 3), http://www.judiciary.senate.gov/pdf/11-5-11%20Humm%20Testimony.pdf.

¹¹ New Cingular Wireless PCS, LLC and D&E Investments, Inc., Order, 27 FCC Rcd 1669, 1670-71 ¶¶ 6-7 (WTB 2012); see also AT&T Mobility Spectrum LLC and BTA Ventures II, Inc., Order, 27 FCC Rcd 1676, 1677-78 ¶¶ 6-8 (WTB 2012).

as well as additional companies holding spectrum that could be deployed to compete with existing providers.

<u>Claim:</u> The spectrum screen should be re-engineered to "weight" the scales in ways

that would favor other providers.

<u>Fact</u>: <u>The FCC's established spectrum screen achieves its purpose to identify the</u>

markets in which the assignment of spectrum licenses warrants further competitive review, and there is no basis to add spectrum weighting.

As explained immediately above, the FCC's long-established spectrum screen makes it clear that the assignment of the unused AWS licenses to Verizon Wireless will not lessen competition in any geographic market. As a result, a few commenters argue that the FCC should add selective "weight" to the scales to support their argument that Verizon Wireless would hold too much spectrum. Their efforts to skew the result are misplaced.

First, the FCC already has explained that it is not true that some spectrum is inherently better than other spectrum for all purposes. All bands have advantages and disadvantages when compared to other bands, depending on what uses the licensee intends and where, and while favorable propagation characteristics of lower-band spectrum "allow for better coverage across larger geographic areas," higher-band spectrum "may be well suited for adding capacity." Likewise, T-Mobile also has explained that higher-band spectrum can be "as effective as, or preferred to, lower band spectrum in providing competitive services, particularly for enhancing capacity in highly populated areas." Precisely for this reason, T-Mobile *opposed* the concept of spectrum screen weighting when it was defending its own merger.

Second, if the current spectrum screen is changed at all, it should be increased, not decreased. The FCC has consistently employed a screen of roughly one-third of the spectrum that it considers to be currently available and has periodically adjusted the numerical value of its screen to reflect the availability of additional spectrum. If the FCC were to update its screen, there are a number of additional spectrum blocks that should be added to the 422 MHz of spectrum that it currently includes in its calculation of the screen. Together, these additional blocks would bring the total amount of spectrum available to more than 600 MHz. These include:

¹² Rural Telecommunications Group Reply at 7-8; Free Press Reply at 23; T-Mobile Reply at 20.

¹³ Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report, 26 FCC Rcd 9664, 9832 ¶ 289 (2011).

¹⁴ Ex Parte Notice from T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-133 et al., at 2 (Dec. 2, 2010).

¹⁵ See AT&T/T-Mobile Joint Opp. at 189-90 (rejecting "'[l]ow [b]and [s]pectrum' [a]rguments [as] [b]oth [i]rrelevant and [f]alse.").

- The 10 MHz in the PCS G Block that Sprint Nextel plans to use to deploy LTE.
- The 40 MHz of MSS/ATC spectrum which the FCC has stated could enhance competition for terrestrial wireless service and has proposed to make available solely for terrestrial use without an accompanying satellite-based service.
- The 104.5 MHz of BRS/EBS spectrum held by Clearwire that is not currently included in the screen, a portion of which Clearwire has announced it will use to deploy LTE.
- The 25 MHz of WCS spectrum for which the FCC modified technical rules in order to make it immediately available for mobile broadband.

Third, to the extent other parties propose to make more radical changes to the screen to support their desired result, the FCC should not take these up here. Those complicated proposals would have a far more widespread impact on the industry as a whole than reasonably could be considered here. For example, some parties propose to radically reengineer the screen by imposing a complex "weighting" process that values spectrum bands differently. However, there is no technical or other basis in this record, or elsewhere, to justify making these changes. Moreover, any weighting process is inherently complex and would need to constantly change, undercutting the purpose of the screen as a simple, straightforward guide for the FCC and wireless companies as they consider potential transactions.

<u>Claim</u>: <u>The transactions will exacerbate a spectrum "duopoly."</u>

Fact: The wireless industry is intensely competitive, other wireless providers have significant spectrum holdings, additional spectrum bands are available and being used for wireless broadband services, and the FCC is working to make additional spectrum available.

The Applicants demonstrated in their previous filings that the sale of the AWS spectrum to Verizon Wireless will allow it to put this spectrum to use to serve customers' needs in today's intensely competitive marketplace. Some opponents nevertheless assert that the AWS license assignments will exacerbate what they label a "spectrum duopoly" in which Verizon Wireless and AT&T have acquired most of the available "broadband spectrum," leaving other competitors "spectrum-starved." 16

First, there is, by definition, no spectrum duopoly. A duopoly, of course, occurs when two companies control all or nearly all of a defined market. Opponents do not attempt to make this factual or legal showing, nor could they. On the contrary, Clearwire alone holds *more* spectrum in most markets than *either* AT&T or Verizon Wireless holds, and it has trumpeted to

¹⁶ See Computer & Communications Industry Association Reply at 3, 9; Free Press Reply at 13, 20 n.45; RCA Reply at 19, 26.

analysts that it holds more than 160 MHz of BRS/EBS spectrum. Sprint Nextel, in turn, has access to the Clearwire spectrum plus an average of another 50 MHz of its own spectrum. And T-Mobile itself recently added \$1 billion in new AWS spectrum that it acquired from AT&T to deploy LTE.

Second, the claims that only spectrum below 1 GHz is optimal for mobile broadband, or only 700 MHz and AWS spectrum are suitable for LTE, are both factually wrong and belied by what is happening in the marketplace. The international standards designate approximately 1,474 MHz of spectrum across 34 bands for use to provide LTE or LTE Advanced, ranging from 698 MHz to 3800 MHz. And various providers are already providing or have announced that they will provide LTE service using spectrum ranging from the lower 700 MHz A Block to the 2.5 GHz band. For example:

- MetroPCS has deployed LTE using its 1.7/2.1 MHz AWS spectrum and its 1.9 MHz PCS spectrum.
- Sprint Nextel has announced plans to deploy LTE on its 1.9 GHz PCS G Block spectrum and its 800 MHz spectrum.
- Clearwire has announced plans to deploy LTE on its 2.5 GHz BRS/EBS spectrum.
- T-Mobile has announced plans to deploy HSPA+ on its 1.9 GHz PCS spectrum and LTE on the 1.7/2.1 GHz AWS spectrum it recently acquired from AT&T.
- Leap is deploying LTE using Lower 700 MHz A Block and 1.7/2.1 MHz AWS spectrum.
- DISH has announced its intent to launch a nationwide LTE Advanced network in the 2 GHz S-Band.

Third, the size of the secondary market has doubled several times over during the past decade, and the overwhelming majority of secondary-market transactions take place between non-nationwide carriers. In addition to T-Mobile's own recent acquisition, there are numerous examples of other carriers using the secondary market to acquire spectrum, including numerous licenses sold or placed on the secondary market by Verizon Wireless.

Fourth, suggestions that Verizon Wireless and AT&T control too much spectrum ignore the significant steps already taken by the government to free up additional spectrum for mobile broadband use. For example, the FCC recently proposed to allow the full 40 MHz of 2 GHz spectrum held by DISH to be used for terrestrial purposes without requiring any satellite-based service. Congress also recently passed legislation directing the Commission to auction various federal spectrum holdings for commercial use and permitting it to undertake "incentive auctions" promoting the reassignment of broadcast spectrum for commercial mobile broadband use. The first tranche of those auctions, covering 55 MHz of spectrum, must be completed by 2015. In

addition to that spectrum, NTIA recently "announced its finding that 95 megahertz (MHz) of prime spectrum could be repurposed for wireless broadband use" in the 1755-1850 MHz band.

Fifth, no provider demonstrates that its business is constrained by a lack of spectrum or that it is unable to meet the needs of its customers. Sprint Nextel touts to Wall Street its Clearwire relationship "that provides a lot more bandwidth and ... capacity." Clearwire itself last week declared that it "clearly ha[s] a significant spectrum portfolio and something that we can leverage." According to Clearwire, its spectrum assets are "ideally suited to meet the requirements in central business districts or other dense usage areas," and it "will be the first operator in the U.S. to push the limits of LTE technology, giving us the advantage of offering the fastest speeds and the highest-capacity network in the nation."

MetroPCS similarly suggests while it "continue[s] to seek spectrum opportunities, ... enhancing network capacity through technology gains presents a cost-effective, nearer-term alternative." With respect to Verizon Wireless' planned sale of lower 700 MHz spectrum, MetroPCS notes "we are absolutely interested in any options out there. We currently own some 700. It is a viable option. [L]ike all sources of spectrum, there are potential issues, but we will certainly be taking a very close look at that." Yet on the same day as its earnings call, MetroPCS' letter to the FCC asserted that "the sale proposed by Verizon will not provide meaningful near term spectrum relief for third parties," as part of its continued advocacy to seek beneficial roaming and divestiture conditions on these license assignments. T-Mobile executives have explained that "[s]everal important developments make LTE possible for us now. Most importantly, we're getting new AWS spectrum as a result of the termination of the AT&T deal ... which we will use for LTE." With that new AT&T spectrum, according to executives, "T-Mobile will have sufficient spectrum to roll out LTE with 20MHz to about 75% of the top 25 markets in 2013." T-Mobile has subsequently announced a spectrum swap with

¹⁷ Transcript, Sprint Nextel Corp., Q1 2012 Earnings Call (Apr. 25, 2012).

¹⁸ Transcript, Clearwire Corp., Q1 2012 Earnings Call (Apr. 26, 2012).

¹⁹ *Id*.

²⁰ Transcript, MetroPCS Communications, Inc., Q1 2012 Earnings Call (Apr. 26, 2012).

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²² Letter from MetroPCS Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 at 2 (Apr. 26, 2012).

²³ *T-Mobile Expands 4G Network to New Cities*, T-Mobile Issues & Insights Blog (Mar. 13, 2012), http://blog.t-mobile.com/2012/03/13/t-mobile-expands-4g-network-to-new-cities/.

Leap that will allow T-Mobile to further "enhance the 4G user experience as we continue to deliver a fast, nationwide 4G network and modernize our network for LTE services." ²⁴

Lastly, commenters' singular focus on wireless carriers fails to account for the multitude of players in the mobile wireless ecosystem. The different sectors within this ecosystem grow more intertwined by the year. Any evaluation of competition in the mobile wireless ecosystem must account for all relevant players. In particular, today's market is driven by "mix-and-match competition" among networks, devices, operating systems, applications, and mobile content. Some consumers have a strong preference for a specific device or a particular operating system, which drives carriers to partner with providers of complementary components and offer consumers access to the devices, content, and applications of their choice. Any carrier-centric analysis of today's wireless marketplace is misplaced, and any suggestion of duopoly is illusory.

<u>Claim:</u> <u>Verizon Wireless' spectrum efficiency showing is flawed and does not support</u>

the need for more spectrum.

<u>Fact:</u> <u>Verizon Wireless is a leader in spectrum efficiency, and commenters'</u> critiques are baseless.

The Applicants have demonstrated that Verizon Wireless is the most efficient user of spectrum of any of the major wireless providers, serving more customers per megahertz than any of those providers. Verizon Wireless already employs a variety of engineering techniques to increase spectral efficiency, as reflected in the objective statistics that show relative efficiency levels among providers. However, these engineering techniques alone are not enough to meet consumers' rapidly growing needs.

One commenter takes issue with the Applicants' straightforward calculations, and argues that the efficiency number should be re-calculated applying its preferred selective spectrum "weighting" in lieu of an objective customer connection per MHz figure. These arguments are simply wrong.

First, as discussed above, there is no objective or accepted way in which to "weigh" various spectrum bands. T-Mobile claims that spectrum below 1 GHz spectrum should be weighted more for competitive analysis because it "is considerably more efficient at providing coverage and capacity than spectrum above 1 GHz." But both the FCC and T-Mobile have

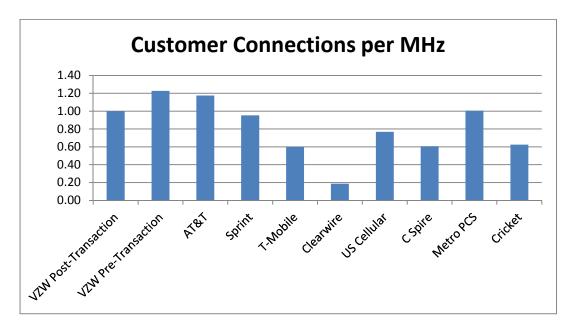
²⁴ Press Release, T-Mobile USA, Leap Spectrum Exchange (Apr. 9, 2012), http://newsroom.t-mobile.com/articles/leap-spectrum-exchange.

²⁵ T-Mobile Reply at 9-12; Steve Sharkey, *Verizon Wireless Has Lots More Room for Efficiency – Without More Spectrum!*, T-Mobile Issues & Insights Blog (Apr. 4, 2012) ("T-Mobile Blog"), http://blog.t-mobile.com/2012/04/04/verizon-wireless-has-lots-more-room-for-efficiency-%E2%80%93-without-more-spectrum/.

²⁶ T-Mobile Blog, *supra*.

previously explained that this claim is erroneous, as noted above. T-Mobile also suggests that any efficiency assessment should account for each provider's respective smartphone penetration levels. But smartphone penetration obviously changes over time and has been increasing for all providers, including Verizon Wireless. This metric also is far too fleeting to have merit.

Second, T-Mobile claims that the efficiency calculations made by Verizon Wireless are based on an apples-to-oranges comparison because they compare Verizon Wireless' efficiency before it acquired the AWS spectrum at issue here to T-Mobile's efficiency after its recent acquisition of spectrum from AT&T. In fact, Verizon Wireless' filing included the following chart clearly showing both Verizon Wireless' pre-transaction and post-transaction spectrum holdings. The chart shows that even with the spectrum Verizon Wireless seeks to acquire, it would be the second-most spectrally-efficient provider – with nearly double the efficiency of T-Mobile – and this includes 700 MHz spectrum that Verizon Wireless has announced the intent to sell:



Ultimately, the efficiency calculations simply show that Verizon Wireless is a good steward that uses it existing spectrum efficiently. This is the only pertinent point: the Commission has made clear that it cannot and will not engage in a comparison of potential alternative transactions, and T-Mobile's efforts to manipulate the calculations are irrelevant.

<u>Claim</u>: <u>The Commission should impose conditions to address alleged harmful effects of</u> the license assignments.

<u>Fact</u>: These claims are unrelated to the transactions under review and are properly addressed, if at all, in broader industry-wide proceedings.

Some commenters continue to assert that the Commission should impose a variety of conditions to alleviate the supposed harmful effects of the license assignments. These claims are

not related to the transactions under review, but rather are efforts by commenters (mostly competitors) to advance their own broader regulatory agendas. As such, they are "best left to broader industry-wide proceedings" and should be rejected in the context of these transactions.²⁷

- Roaming. The license assignments will not alter the roaming market, and there is no basis to impose a condition that caps roaming rates. Because SpectrumCo and Cox already had decided not to enter the market as facilities-based service providers, the deals will not diminish the number of carriers offering roaming. In any event, the Commission has comprehensively addressed the availability of voice and data roaming and provided a complaint process for redressing roaming concerns. As the FCC has previously recognized, general concerns regarding roaming are more appropriately addressed in rulemaking proceedings.
- Interoperability. There is no basis to impose conditions relating to device interoperability in the Lower 700 MHz spectrum band. These transactions do not involve any 700 MHz spectrum, and Verizon Wireless has announced its intent to sell its Lower 700 MHz holdings. Interoperability concerns are thus irrelevant to these transactions. Moreover, the Commission just initiated a proceeding to address 700 MHz interoperability issues.
- Backhaul. No commenter has been able to articulate why a backhaul condition is relevant to these spectrum-only license assignments. Some commenters express a vague concern, supported by no facts or economic theories, that these transactions could somehow cause the cable companies to stop competing to provide backhaul services. But neither the spectrum purchase agreements nor the separate commercial agreements contain any provisions that limit the cable companies' ability or incentive to compete for backhaul business. Indeed, to the extent that Verizon Wireless were to purchase backhaul services from the cable companies going forward, that would serve to *strengthen* those companies' competitive backhaul businesses. In any case, access

²⁷ General Motors Corp. and Hughes Electronics Corp., Memorandum Opinion and Order, 19 FCC Rcd 473, 534 ¶ 131 (2004); see also Craig O. McCaw and AT&T Co., Memorandum Opinion and Order, 9 FCC Rcd 5836, 5904 ¶ 123 (1994); AT&T Inc. and Centennial Communications Corp., Memorandum Opinion and Order, 24 FCC Rcd 13915, 13969 ¶ 133 (2009) ("AT&T-Centennial Order"); AT&T-Verizon Wireless Order, 25 FCC Rcd at 8747-48 ¶ 101; AT&T-Qualcomm Order, 26 FCC Rcd at 17622 ¶ 79 (noting that the Commission "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction"); Sprint Nextel-Clearwire Order, 23 FCC Rcd at 17581-82 ¶ 22.

²⁸ See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Second Report and Order, 26 FCC Rcd 5411 (2011), recon. pending, appeal pending.

²⁹ AT&T-Centennial Order, 24 FCC Rcd at 13969 ¶ 133.

> to backhaul facilities is an issue of industry-wide relevance that is better addressed in the context of a pending rulemaking proceeding.

> > * * *

The Commission should grant the license assignments, and reject opponents' unsupported and rehashed objections. This letter is being filed electronically pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,

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