

REDACTED – FOR PUBLIC INSPECTION

May 29, 2012

VIA ECFS AND HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 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 the attached *ex parte* letter. The letter contains Highly Confidential Information subject to the Second Protective Order (DA 12-51) in the above-referenced proceeding.

Pursuant to the terms of the Second Protective Order, two copies of the Redacted version of the attached notice are being filed with the Office of the Secretary. The Redacted version of the notice is also being filed electronically through the Commission's Electronic Comment Filing System. In addition, one copy of the Highly Confidential version of the notice is being delivered to the Office of the Secretary and two copies are being delivered to Sandra K. Danner of the Wireless Telecommunications Bureau's Broadband Division.

Should any questions arise concerning this filing, please do not hesitate to contact the undersigned.

Sincerely,

/s/

Adam D. Krinsky
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Attachment

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Ex Parte

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, 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 erroneous and irrelevant claims made by Free Press.¹ Free Press' core contention is that Verizon Wireless does not *really* need the spectrum at issue in the above-captioned license assignment proceeding. Tellingly, Free Press does not question or even address the methodology Verizon Wireless uses in its regular business practice to assess its spectrum needs. Rather, it refers to stray quotations taken from thousands of pages of documents the company has placed in the record. In fact, these references either are unrelated to the question of spectrum need or they affirmatively support Verizon Wireless' need for new spectrum.

As an initial matter, it is noteworthy that Free Press' allegations are contrary to long-standing Commission spectrum policy. In connection with both secondary market license assignments and spectrum auctions, the Commission has consistently refused to second guess parties' business judgments regarding their need for spectrum.² The Commission should

¹ See *Ex Parte* Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed Apr. 26, 2012) ("Free Press *Ex Parte*").

² See *AT&T Inc. and Qualcomm Incorporated*, 26 FCC Rcd 17589, 17625 ¶ 89 (2011) ("We find unpersuasive [a party's] arguments that we should either deny or place conditions on this transaction based on a concern that this spectrum will not be used by AT&T to provide wireless broadband services but instead 'would be shelved.'"); *Nextel License Acquisition Corp.*, 13 FCC Rcd 11983, 11986 ¶ 7

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maintain that approach here. Nonetheless, Verizon Wireless responds to Free Press' claims to ensure that the record is clear.

Verizon Wireless Has Demonstrated Its Substantial Need for Additional Spectrum.

Verizon Wireless has submitted an unprecedented amount of evidence showing its need for new spectrum. For example, Mr. William Stone, Verizon's Executive Director of Network Strategy, has provided two declarations describing in detail the processes that Verizon Wireless uses to assess its 4G LTE network capacity constraints and resultant spectrum needs, including but not limited to application of the Verizon Planning Instrument ("VPI").³ As noted previously, the VPI is a network planning tool used in the ordinary course of business to enable Verizon Wireless to assess capacity constraints; it is not a theoretical model devised for regulatory purposes.⁴

Applying the VPI, Verizon Wireless has produced maps assessing capacity constraints and the need for more spectrum in all 99 markets where Verizon Wireless launched LTE by year-end 2011 and is proposing to acquire AWS spectrum (the VPI relies in part on historic traffic demand data and thus makes projections for deployed markets only).⁵ The data confirm that the company will face spectrum shortages as soon as next year in many markets, with more shortages by 2015 and beyond, absent new spectrum resources. This is true, moreover, *both* in the eastern United States, where Verizon Wireless already holds AWS spectrum, and in the

(WTB 1998) ("We do not require auction bidders to demonstrate a 'need' for the spectrum. Our auction-based system for assigning frequencies allows the market to decide the value of a frequency.").

³ See Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, ¶¶ 17-28, attached as Exhibit 3 to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, File No. 0004993617 (filed Dec. 16, 2011) ("Stone Decl."); Supplemental Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, ¶¶ 19-29, ¶¶ 39-48, attached as Exhibit 2 to Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4 (filed Mar. 2, 2012) ("Stone Suppl. Decl.").

⁴ See Verizon Wireless April 30 *Ex Parte* at 2.); Letter from John T. Scott, III, VP & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (filed Apr. 30, 2012) ("Verizon Wireless April 30 *Ex Parte*").

⁵ See Stone Suppl. Decl. (maps depicting capacity constraints in 18 markets); Verizon Wireless April 30 *Ex Parte* (maps depicting capacity constraints in 81 additional markets).

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western areas, where it does not; and it is true notwithstanding the substantial investment in network efficiencies that Verizon Wireless expects to undertake going forward.

Free Press ignores this evidence and offers no technical analysis or evidence of its own. Instead it quotes snippets from company documents, none of which supports its claims. Its first selected quotation, intended to show that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] says nothing about Verizon Wireless' spectrum needs. As Verizon Wireless has explained at length (and as the Commission is otherwise aware), mobile broadband traffic is growing at a tremendous rate. In fact, by year-end 2015 Verizon Wireless' LTE data traffic is projected to be five times the peak data traffic ever carried on its 3G EVDO network.⁷ Verizon Wireless's spectrum need projections already take into account the efficiencies associated with LTE.

Similarly irrelevant are Free Press references to documents describing **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Free Press also misconstrues the company's projections that **[BEGIN HIGHLY CONFIDENTIAL]**

⁶ Free Press *Ex Parte*, Attachment at 3, citing to VZW-TPK-FCC-0264049.

⁷ See, e.g., Stone Suppl. Decl. ¶¶ 9, 11-17.

⁸ Free Press *Ex Parte*, Attachment at 6, citing to VZW-TPK-FCC-026335 and 033264.

⁹ Free Press asserts that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] To the contrary, Verizon Wireless has fully documented its need and intent to deploy AWS spectrum, and has made clear that it will do so next year.

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[END
HIGHLY CONFIDENTIAL] Any claim that there will be less need for new spectrum in the 2014-2015 period is therefore specious. Likewise, Free Press' claim that [BEGIN **HIGHLY CONFIDENTIAL**]

[END **HIGHLY CONFIDENTIAL**]

Free Press next cites several documents that it misinterprets as suggesting that Verizon Wireless overstates its need for more spectrum. Free Press quotes a [BEGIN **HIGHLY CONFIDENTIAL**]

[END **HIGHLY CONFIDENTIAL**] In fact, the evidence in the record shows that Verizon Wireless has consistently *underestimated* growth in consumer demand, and therefore *underestimated* its capacity needs.¹⁴ Likewise, Free Press' references to documents citing [BEGIN **HIGHLY CONFIDENTIAL**]

¹⁰ Free Press *Ex Parte*, Attachment at 4, citing to VZW-TPK-FCC-043684.xls, 043685.xls, 043687.xls, 026348.ppt.

¹¹ Free Press *Ex Parte*, Attachment at 4.

¹² Free Press *Ex Parte*, Attachment at 5, citing to VZW-TPK-FCC-000327.

¹³ Free Press *Ex Parte*, Attachment at 5, citing to VZW-TPK-FCC-043702, slide 2.

¹⁴ See Stone Decl. ¶ 10.

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[END HIGHLY CONFIDENTIAL] As noted above, Verizon Wireless has submitted maps reflecting VPI results in dozens of markets in the western and eastern United States, showing that customers will experience congestion in the 2013 to 2015 time frame even taking into account the company's use of its existing AWS spectrum. And Free Press' reference to a statement by Verizon's Chief Financial Officer that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Finally, Free Press erroneously suggests that refarming PCS spectrum alone would be sufficient to address shortfalls in Verizon Wireless' spectrum portfolio, citing several documents to assert that **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] But this mischaracterizes the evidence in the record. Free Press asserts that one document **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Verizon Wireless has in any event produced detailed information, including additional VPI data and maps based on that VPI data, demonstrating that Verizon Wireless cannot refarm PCS spectrum fast enough to accommodate needs generated by burgeoning 4G demand, and that refarming alone would not produce adequate spectrum to protect customers from experiencing service degradation.¹⁹

¹⁵ Free Press *Ex Parte*, Attachment at 6, citing to VZW-TPK-FCC-005547, 005274, 029354.

¹⁶ VZW-TPK-FCC-0264040; *see also* Free Press *Ex Parte*, Attachment at 5.

¹⁷ Free Press *Ex Parte*, Attachment at 8, citing to VZW-TPK-FCC-044356.

¹⁸ VZW-TPK-FCC-044359; *see also* Free Press *Ex Parte*, Attachment at 8.

¹⁹ *Ex parte* Letter from Tamara Preiss, VP, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (filed May 17, 2012).

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Verizon Wireless Is Deploying Network Enhancements to Address Capacity Constraints, But It Still Needs More Spectrum to Meet Growing Consumer Demand.

Free Press then switches gears and contends that Verizon Wireless **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** It is true that Verizon Wireless will invest in and deploy numerous network enhancements to increase capacity on the 4G LTE network. In fact, more than half of Verizon Wireless' capital expenditures are on these types of measures to enhance capacity. But as Mr. Stone made clear, "these network enhancements by themselves are not close to sufficient to meet our growing capacity needs. We need to add additional spectrum resources, and we need it soon in order to place the spectrum in use in sufficient time to address demand."²¹

As Verizon Wireless noted previously, the company is investing in new macro sites and will deploy a variety of capacity-enhancing techniques as well, including addition of new cell sites, use of LTE small cells, deployment of the LTE Advanced standard, the addition of new antennas and other equipment on existing cell sites, load balancing, MIMO, and ICIC (inter-carrier interference cancellation) and eICIC (enhanced inter-carrier interference cancellation).²² To the extent Free Press questions Verizon Wireless' commitment to capacity-enhancing investments in the 4G LTE network, it is important to note that the company has a history of investing billions of dollars in deploying more advanced radio technologies and optimizing network design – CDMA, Ev-DO Rev. A, and now LTE – each of which has brought major improvements in spectral efficiency and significantly enhanced consumer welfare. Indeed, the company's VPI projection for year-end 2015 presumes that the company's continuing investment in network enhancements will increase the data traffic threshold for spectrum-constrained cell sectors. The techniques Free Press refers to will be utilized (with the exception of the 700 MHz A/B Block spectrum holdings, which the company plans to sell subject to approval of the AWS transactions).²³ Even then, however, Verizon Wireless needs to add spectrum resources in order to address its customers' growing demand.

²⁰ Free Press *Ex Parte*, Attachment at 9.

²¹ Stone Suppl. Decl. ¶ 39.

²² See, e.g., Letter from John T. Scott, III, VP & Deputy General Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 4 (filed May 8, 2012).

²³ See Free Press *Ex Parte*, Attachment at 9.

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Free Press wrongly suggests that Verizon Wireless has **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Nothing has changed this view. Verizon Wireless incorporates WiFi capability into all devices so consumers can choose to use WiFi or the network.²⁶ Indeed, the documents that Free Press cites detail **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] There is no basis to suggest that Verizon Wireless is opposed to customers' voluntarily choosing to use WiFi.²⁸ And Verizon Wireless has made clear that it does employ Wi-Fi technology itself in appropriate circumstances, such as in stadiums and similar venues with concentrated demand.

Free Press also asserts that Verizon Wireless should **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Verizon

Wireless, however, has well documented the reasons that the Lower 700 A/B blocks are not a good complement to its other existing spectrum and that AWS spectrum is better suited to that

²⁴ Free Press *Ex Parte*, Attachment at 9-10.

²⁵ Free Press *Ex Parte*, Attachment at 11, citing VZW-TPK-FCC-033068.

²⁶ Stone Suppl. Decl. ¶ 46.

²⁷ VZW-TPK-FCC-033057. Free Press also cites a **[BEGIN HIGHLY CONFIDENTIAL]**

[END

HIGHLY CONFIDENTIAL].

²⁸ Verizon Wireless April 30 *Ex Parte* at 4. In fact, Verizon Wireless' new metered pricing is designed to promote customers' use of WiFi when such use meets their economic and quality of service needs.

²⁹ See Free Press *Ex Parte*, Attachment at 9; see also *id.* at Attachment at 7, citing VZW-TPK-FCC-029352 (**[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]).

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purpose.³⁰ Accordingly, Verizon Wireless has announced that consistent with its previous efforts to rationalize its spectrum holdings, it will conduct a public sale process for its 700 A/B block spectrum to make that spectrum available to another provider that can make better use of it. This is precisely the purpose of the secondary market.

The Commission Should Reject Proposals to Develop New Spectrum Limits.

Finally, Free Press restates its claim of a purported [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] However, the Commission has already rejected the claim that some mobile wireless spectrum is inherently better than other spectrum for all purposes, noting that 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.”³²

Free Press would have the Commission disregard the tool it has had in place for years to evaluate potential competitive harms from spectrum aggregation: the spectrum screen. If the Commission were to consider any change in the screen at all, it should be an increase in the amount of spectrum included in the overall screen. The FCC has consistently employed a screen of roughly one-third of the spectrum that it considers to be currently available and has adjusted the numerical value of its screen to reflect the availability of additional spectrum. If the FCC were to update the screen it must take into account an additional 600 MHz of available spectrum not currently included in the screen, including PCS G Block spectrum, MSS/ATC spectrum, BRS/EBS spectrum, and WCS spectrum.

* * *

³⁰ Stone Suppl. Decl. ¶ 49; Letter from Kathleen M. Grillo, Sr. VP, Federal Regulatory Affairs, Verizon, to Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, WT Docket No. 12-4 (filed May 22, 2012).

³¹ See Free Press *Ex Parte*, Attachment at 12.

³² *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).

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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,

/s/
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