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May 31, 2012

**VIA ELECTRONIC FILING**
Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth 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 Wireless Licenses, WT Docket No. 12-4**

Dear Ms. Dortch:

On May 29, 2012, Debbie Goldman of Communications Workers of America ("CWA"), along with Monica Desai, counsel to CWA, met with David Grimaldi and Louis Peraertz, Legal Advisors to Commissioner Mignon Clyburn, regarding the above-referenced proposed Transaction filed by Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC, and Verizon Wireless and Cox TMI Wireless, LLC (collectively, the "Applicants").[1] CWA emphasized that if the Commission moves forward with approval, former competitors will simply stop competing. As a result, the Transaction will exacerbate the existing digital divide and eliminate the promised benefits of cross-platform competition, unless the Commission imposes conditions to counteract these harms.

**(1) The proposed Transaction will reduce Verizon's incentive to build-out and continue investing in FiOS, a result that will be disproportionately harmful to consumers in areas that have lower income levels and higher percentages of minorities.**

As discussed in the meeting and reflected in the attached documents, Verizon has not deployed its FiOS network in a number of large- and medium-sized cities in its footprint, including Boston, Baltimore, Albany, Buffalo, and Syracuse among others.[2] A demographic analysis

[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* Attachments A and B; *see also* Attachment C, Letter from New York Mayors to Julius Genachowski, Chairman, Federal Communications Commission, and Eric H. Holder, United States

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 are disproportionately impacted by Verizon's decision not to deploy FiOS in these areas.

> **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, 52.3 percent of the population are minorities compared to only 22.9 percent minority population in the surrounding FiOS-deployed suburbs.
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> **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 7.7 percent of the population lives in poverty, and the median household income of $95,386 is more than twice that of Baltimore city. In Baltimore, 72 percent of the population are minorities compared to 49.4 percent minority population in the surrounding Baltimore FiOS-deployed suburbs.[3]

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Attorney General, WT Docket No. 12-4 (filed May 16, 2012) ("Verizon has not built its all-fiber FiOS network in any of our densely-populated cities. Not in Albany, Binghamton, Buffalo, Cortland, Elmira, Kingston, Syracuse, Troy, and Utica. Yet, Verizon has expanded its FiOS network to the suburbs ringing Buffalo, Albany, Troy, and Syracuse, as well as many places in the Hudson Valley, and most of downstate New York. As a result, the residents and businesses in our cities are disadvantaged relative to their more affluent suburban neighbors who have access to Verizon's FiOS, providing competitive choice in high-speed broadband and video services."). *See also* news articles provided in Attachment E.

[3] *See* Attachment D, Letter from Elbridge James, NAACP Maryland State Conference, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed Mar. 9, 2012) ("Under this transaction, as mentioned, Baltimore will never get a fiber-optic network and the City will be at a disadvantage. The direct job loss will be the hundreds of technicians that would be employed building, installing and maintaining FiOS in the area. The indirect costs of this deal are even higher: the lack of competition in telecommunications will raise prices and reduce service quality. If Baltimore is never wired for fiber-optic service, the City's residents and businesses will not be able to use applications that require truly high-speed internet, reducing job creation, educational opportunity, and participation in civic life. While the precise impact on jobs is difficult to predict, broadband investment leads to job creation. Lack of investment will leave the Baltimore less able to develop economically.").

**Albany:** Verizon has not deployed FiOS in Albany, NY. In Albany, one-quarter (25.3 percent) of the population lives below the poverty line, and the median household income is $39,158. 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, 44.8 percent of the population are minorities compared to 13.4 minority population in the surrounding FiOS-deployed suburbs.

**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, 44.9 percent of the population are minorities compared to 4.9 percent minority population in the surrounding FiOS-deployed suburbs.

**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, 38 percent of the population are minorities compared to 6.7 percent in the surrounding FiOS-deployed suburbs.

As explained in detail in CWA's Comments, Reply Comments, and ex parte submissions, absent this joint venture, Verizon would have natural economic incentives to continue investing in building out FiOS.[4] However, the proposed Transaction does the opposite, by building in

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[4] *See* Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers, WT Docket No. 12-4 at 6 (filed Feb. 21, 2012) ("CWA-IBEW Comments"); Reply Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers, WT Docket No. 12-4 at 6-14 (filed March 26, 2012) ("CWA-IBEW Reply Comments"); Letter from Monica S. Desai, Counsel, Communications Workers of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in WT Docket No. 12-4 at 10 (filed May 7, 2012) ("CWA May 7 Ex Parte Notice"). As Fran Shammo, Chief Financial Officer of Verizon Communications, Inc., recently told a JP Morgan analyst conference: "[FiOS] is already about 60% of the consumer revenue in that [wireline] portfolio… Each and every quarter, we continue to increase the profitability of FiOS…We have some markets that are in excess of 50% penetrated from the first early days of when we started this…I think Lowell [McAdam, Chief Executive Officer of Verizon Communications, Inc.] and I have been open. If we can penetrate the market and really turn the wireline profitability, could we potentially build out to other areas? Yes…" *See* Verizon at JP Morgan TMT Conference, Thomson Reuters Street Events, Edited Transcript, May 16, 2012 at 7-8.

incentives and pressure for the 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. As a result, Verizon will be left with no incentive to continue deploying FiOS - a result that will be disproportionately harmful to consumers in areas that have lower income levels and higher percentages of minorities.

**(2) The proposed Transaction and Joint Marketing Agreements must be treated as a whole, and conditions addressing the reduction in cross-platform competition must be imposed simultaneously with any approval of a license transfer.**

The Commission has already recognized that the spectrum transfer and Joint Marketing Agreements are part and parcel of an integrated transaction.[5] Thus it is only logical that the Commission treat the harms caused by the proposed Transaction as a whole as well - and in particular impose conditions to address the harms caused by the drastic reduction in cross-platform competition.

CWA reiterated that the Telecommunications Act of 1996 is grounded in the general principle that increased competition, particularly across platforms, would occur in the provision of both telecommunications and video services.[6] The proposed Transaction, when considered as a whole, will significantly undermine cross-platform competition as former fierce competitors combine to work together. In the absence of the Transaction, there are strong natural incentives continually to improve quality, innovation and price. By eliminating competition, the proposed Transaction and Joint Marketing Agreements reduce the incentives to continue investing, innovating and competing on price. It is critical, therefore, that to the extent the Commission approves the proposed Transaction, it simultaneously impose conditions on the related Joint Marketing Agreements to counteract these harms. It artificial to separate them for public interest review purposes, and is inconsistent with steps the Commission has already taken to consider the impact of each on separate tracks.

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[5] *See* Letter from Rick Kaplan, Chief Wireless Telecommunications Bureau, Federal Communications Commission, 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, Chief Wireless Telecommunications Bureau, Federal Communications Commission, to Michael Samsock, Cellco Partnership, WT Docket No. 12-4 (Mar. 8, 2012).

[6] *See* CWA-IBEW Comments at 2; CWA-IBEW Reply Comments at 2-4; CWA May 7 Ex Parte Notice at 1-2.

**(3) Conditions are necessary to remedy harms.**

CWA urged that if the Commission were to move forward with approval, it should not do so without the following conditions, which would support the Telecommunications Act's promise of cross-platform competition, and its related benefits – more jobs, more network investment, and more robust choices for video, wireless, voice and broadband services:

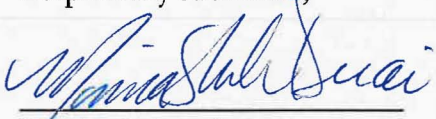
1. Prohibit Applicants from cross-marketing their services within the Verizon footprint;

2. 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; and

3. Require Verizon Wireless and the Cable Companies to make the services each of them provides each other and the intellectual property developed under the Agreements to be available on a nonexclusive basis, and to make such services and intellectual property available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.

The Commission should not move forward with approval without such conditions. These conditions support the benefits of competition if the Commission chooses to move forward with allowing former competitors to stop competing. Such conditions will also help ensure that people of color and lesser economic means are allowed the benefits resulting from choice of providers.

Respectfully submitted,



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