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EX PARTE OR LATE FILED

ORIGINAL

June 4, 2011

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

FILED/ACCEPTED

JUN - 4 2012

Federal Communications Commission
Office of the Secretary

**Re: Notice of Written *Ex Parte* Presentation
WT Docket No. 12-4**

Dear Ms. Dortch,

In recent *ex parte* filings,¹ Verizon continues to assert that its acquisition of the AWS licenses held by SpectrumCo and Cox would serve the public interest, even though Verizon currently holds more greenfield 4G spectrum than all other national competitors combined.² In the face of evidence showing Verizon is already well-positioned to handle future demand, and in the face of press reports indicating regulatory agency-mandated divestiture is highly likely due to the weight of this evidence, Verizon has gone back to its self-servingly opaque magic 8-ball, and now asserts that its earlier *predictions* of future data demand were too low.³ This is, to say the least, an expected yet duplicitous action, and one the Commission should heavily discount. As the Commission learned in the AT&T-T-Mobile merger review, carriers seeking regulatory gifts will tell the Commission just about anything to get what they want. However, the truth is always there to be found in the carrier's own confidential internal communications.

Such is the case in this transaction. Verizon wants these AWS licenses, but Verizon *absolutely* does not need these licenses. The proof that Verizon's acquisition of this nationwide 4G spectrum is *not* in the public interest is in Verizon's own internal documents. This evidence is indisputable, voluminous and damning. It reveals these very simple truths: **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

¹ See e.g. Letter from Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Attorney for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed May 29, 2012).

² Verizon currently owns more spectrum (13.1 billion MHz-POPs) that is free-and-clear to support LTE than AT&T, Sprint and T-Mobile USA combined (12.9 billion MHz-POPs).

³ See e.g. Letter from Tamara Preiss, Vice President Federal Regulatory Affairs, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed May 31, 2012).

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Introduction

A license transfer review involves much more than a routine antitrust analysis. The Commission's public interest standard requires that it reject any license transfer that could produce public interest harms and frustrate the objectives of the Act. In the event that a license transfer would produce benefits and harms, approval is only warranted if the benefits clearly outweigh the harms. And the ultimate burden of proof in this balancing test rests with the applicants, not petitioners or the Commission.

As we outlined in our *Petition to Deny* and *Reply to Opposition*, the harms of the transfer of AWS licenses from SpectrumCo/Cox to Verizon would be numerous and large, while the benefits would be undefined, narrow and highly speculative at best. Further, the transactions are tied to a cartelization arrangement between Verizon and these four major cable companies, agreements that will reduce competition in the core wired and wireless communications markets as well as frustrate competition in various over-the-top markets that utilize broadband Internet connectivity.

In our *Petition to Deny*, we stated that “[w]hile Verizon absolutely *wants* this spectrum, it in no way actually *needs* it, nor will it put this highly valuable resource to its most immediate and efficient use.”⁴ In this written *ex parte* we present evidence from Verizon's internal documents proving definitively that this is indeed the case. Verizon is badly overstating its need for this spectrum, particularly in the eastern portion of the country. The consummation of these transactions as proposed would simply result in the transfer of spectrum from one hoarder to another. Further, we present evidence on Verizon's actual *wants* for this spectrum as expressed internally by the company prior to the announcement of the deal with SpectrumCo. Finally, we discuss Verizon's internal thinking about alternatives to meet increased demand, and present evidence that explains Verizon's seemingly counter-intuitive stance on the efficiency-enhancing practice of Wi-Fi offloading.

The Public Interest Test Requires a Long-View of the Wireless Market

The lessons learned in the AT&T-T-Mobile transaction review,⁵ as well as the *Fifteenth Report* should loom large in the Commission's review of these license transfers.⁶ The likely harms to competition identified in that prior transaction were expected to arise in large part due to the concentration of spectrum. The same issues and concerns about competition are present in the instant proceeding, even absent any transfer of customers. As the cable companies' own experience here shows, an established brand in addition to raw spectrum resources and scale/scope economies were not enough to overcome the entry barriers in this highly concentrated market. Indeed, the market power and legacy monopoly advantages of the Twin Bells are so strong that the other existing carriers struggle to remain viable competitors. Given

⁴ See *Petition to Deny of Free Press*, WT Docket No. 12-4, at 7.

⁵ See FCC Staff Report, WT Docket No. 11-65.

⁶ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd 9664 (2011) (“*Fifteenth Report*”).

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the current competitive realities of the wireless market, the Commission has to be very concerned about the prospects for future competition if Verizon and AT&T, as carriers with all of their existing market advantages, further widen their spectrum lead on the competitive carriers.

Verizon and its cable partners (“Applicants”) do not want the Commission taking a broad, long view of the market’s competitiveness. They simply want the Commission to view this transaction as a transfer of unused spectrum from a group of license holders that have no plans to enter the market, to an established carrier who will make use of this resource in the future. But precisely because spectrum is the lifeblood of competition in this industry the Commission has to take a long view. It has to move beyond the outdated and narrow spectrum screen and ask: what impact will this concentration of 4G spectrum have, and what would the “but for” world look like if these transactions were rejected or substantially modified through structural conditioning?

Verizon’s entire case for letting it widen the spectrum gap between itself and its competitors is that without this AWS spectrum, the company will face capacity constraints as consumers increase their use of mobile services. But the key questions here for the Commission’s public interest test are these: is Verizon facing some unique capacity challenge that it cannot meet using methods that do not widen the spectrum gap and do not harm competition? In addition, what is Verizon’s actual need for specific AWS licenses, particularly in areas where it already holds substantial unused AWS spectrum along side its other 700 MHz assets? What is the state of competition in the “but for” world over the next 5 to 10 years if the Commission rejects these transfers or orders substantial structural modifications? And particularly important for the balancing test, what exactly is the nature of the harm that Verizon thinks customers on its network will experience in the future if these transfers are rejected, and what alternatives would Verizon then explore to ensure those harms were mitigated?

Verizon Already Has The Most Spectrum Across The Best Bands

As Table 1 below illustrates, Verizon is by far the dominant holder of the most valuable mobile broadband spectrum. Verizon’s 700 MHz licenses cover the entire country (with its upper C-block licenses covering all 50 U.S. states, its A-block licenses covering more than 50 percent of the population, and its B-block holdings covering 50 million Americans). Verizon’s sub-1 GHz Cellular-band spectrum reaches of 85 percent of the U.S. population, far more than even AT&T’s Cellular-band reach, while the other two national carriers hold almost nothing in this band and absolutely nothing in 700 MHz.⁷ All the national carriers have near-universal PCS spectrum coverage. T-Mobile’s owned-AWS population reach is nationwide, but because its holdings are heavy in the 5 x 5 MHz AWS C-, D-, and E-blocks, its MHz-POP weighted AWS holdings are only slightly higher than Verizon’s, whose holdings are mostly in the 10 x 10 F-block.⁸

⁷ Sprint does hold iDEN spectrum, which is excluded from this analysis, as it is not counted in the FCC’s spectrum dashboard, the source for these summary statistics.

⁸ See FCC Spectrum Dashboard.

**Table 1:
Population Reach of National Mobile Wireless Carriers by Spectrum Band**

Carrier	Population Reach (owned spectrum)				Percent of U.S. Population Covered by MHz Amount						
	700 MHz	Cellular	PCS	AWS	0-10	10-20	20-30	30-40	40-50	50-60	60+
AT&T	100.0%	69.9%	99.2%	50.7%	0.0%	0.1%	0.0%	0.5%	1.2%	1.7%	96.5%
Verizon Wireless	100.0%	84.8%	96.5%	66.5%	0.0%	0.0%	0.3%	0.1%	1.3%	3.3%	94.9%
T-Mobile	0.0%	0.1%	99.6%	99.9%	0.0%	0.4%	2.8%	10.8%	17.1%	33.5%	35.4%
Sprint	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	6.3%	37.8%	55.8%	0.1%	0.0%

Source: SNL Kagan; FCC Spectrum Dashboard

Verizon is currently the only carrier who has enough greenfield 700 MHz and AWS spectrum that can be used to deploy a 20 x 20 MHz LTE-Advanced network to the *majority* of the U.S. population. It holds the nationwide 11 x 11 MHz upper 700 C-block spectrum licenses, and it holds 10 x 10 MHz AWS licenses in the eastern portion of the U.S. that encompass 67 percent of the U.S. population. This means that today, Verizon could launch a 20 x 20 MHz LTE-Advanced network on these two bands alone – double the existing capacity of its currently mostly empty LTE network. Where it lacks AWS spectrum in the West, it holds lower 700 MHz A- and B-block licenses (with the exception of a few areas in the West) that could be used for higher-MHz LTE-Advanced networks.

Verizon is hands down the best-positioned carrier for the foreseeable future. It currently has the most unused deployed capacity, and will be able to increase that capacity much quicker, covering more people, at a far lower cost than any other carrier. T-Mobile will have to perform an efficiency enhancing but nevertheless disruptive and expensive “double re-farming” of its existing 2G and 3G spectrum just to be able to offer first-generation LTE in some of its markets.⁹ Sprint will deploy a 5 x 5 MHz LTE service on its PCS G-Block spectrum, and then must look to its financially troubled partner Clearwire to help it offer a competitive LTE product.¹⁰ AT&T is in a far better position than either of these carriers, but it is still in a far worse spectrum position relative to Verizon, and will have accelerate spectrum re-farming in some markets, as it is currently doing in New York City.¹¹

As we’ve previously told the Commission,¹² Verizon is facing the same predictable increases in data demand that all other wireless carriers are facing. There is absolutely nothing unique about Verizon’s situation, except for the fact that it is already the carrier who is best positioned to deal with increased demand. Indeed, Verizon’s current pleas of spectrum poverty are a very recent development that just happen to coincide with the opportunity to acquire this valuable nationwide slice of the public airwaves. In 2010 Verizon’s former CEO Ivan

⁹ See e.g. Letter from Jean L. Kiddoo, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed May 15, 2012).

¹⁰ See Marguerite Reardon, “Sprint’s 4G aspirations depend on spectrum deals,” *CNET*, March 15, 2012.

¹¹ See “AT&T Continues to Focus on New York City Wireless Experience,” *PR Newswire*, May 23, 2012.

¹² See e.g. Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed April 24, 2012).

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Seidenberg's notably downplayed the notion of a spectrum crisis as it applied to his company,¹³ and company executives were repeating this sentiment to Wall Street up until the days before the SpectrumCo deal was announced.¹⁴

But that was then. Now Verizon is a carrier before the Commission asking for a regulatory handout in order to benefit its preferred business model at the expense of spectrum efficiency and competition. And because Verizon needs to convince the Commission that there are some tangible public interest benefits of allowing this much concentration of mobile broadband spectrum, it has gotten into the business of making doomsday predictions, just as AT&T did last year when it wanted favorable FCC treatment.

Below, we discuss confidential evidence that casts substantial doubt on the predictions of this latter-day New Jersey Nostradamus. But even if we accept Verizon's recent predictions as gospel, then total busy hour traffic will increase by a factor of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] on an LTE network where *today* the per bit costs are [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] than the per bit costs on the 3G network.¹⁵ The average user over time

¹³ See "A Conversation with Ivan Seidenberg," Council on Foreign Relations, Apr. 6, 2010.

¹⁴ See Comments of Francis J. Shammo, Wells Fargo Securities Technology, Media & Telecom (TMT) Conference, November 9, 2011 (transcript obtained via *SNL Kagan*). "Yeah, so from a spectrum utilization, I think what David and Tony and Lowell, and we have all said is, we're in pretty good shape through 2015, and then at that point, we're going to need to start to think about what happens in '16 and '17 in capacity. And the good thing here is, is that we have some flexibility, because we can, as 3G volume on voice starts to convert over to VoLTE on 4G, which will start to happen in 2012, that spectrum can be re-appropriated over to the 4G network." Shammo also telling stated "I think *as an industry, we need to get spectrum into the people who can build the spectrum out*. And that's really the important thing for us because this is a capital-intensive industry. There are only a few players that can do this and by having spectrum sit in holders who do not build it out *or have no intention of building it out and spinning it in five years* to make a profit, really makes no sense." (emphasis added). This is somewhat of an ironic statement given Verizon's massive existing AWS holdings, and Shammo's own public admission that excess capacity (presumably in *some but not all* locations) wouldn't be needed for at least five years beyond when the proposed SpectrumCo/Cox deals might close. It is clear that of the carriers that might purchase this spectrum on the open market, Verizon is the one that is *least* likely to build it out the soonest. Shammo's statement is also important in light of Verizon's [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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¹⁵ See [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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But despite its newer, scarier predictions about future data demand, Verizon has failed to meet its burden of proof to demonstrate that it needs these AWS licenses to handle these very manageable increases in demand. Verizon certainly has failed to show why it needs to add additional AWS spectrum in the Eastern two-thirds of the U.S. where it already holds enough AWS to allow it to launch a 20 x 20 MHz LTE-Advanced network.

Further, Verizon has offered no explanation of *what the user experience* will be like in [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] if it fails to acquire all of SpectrumCo's and Cox's AWS licenses. This is a critical shortcoming in its pleading, since it makes it impossible for the Commission to evaluate the magnitude of any benefit that Verizon claims these license transfers will bring. Verizon seems to think that if it does the wireless equivalent of screaming fire in a crowded theater ("spectrum crisis!") that the Commission will be forced to overlook the fact that Verizon's supposed capacity constraints are wildly overstated, are made worse by Verizon's preferred spectrally inefficient business model, and could be addressed with the same very routine techniques used by all other carriers.

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HIGHLY CONFIDENTIAL INFORMATION]

16 *Id.* [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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This is not conjecture on our part. Verizon's internal communications provides all the evidence the Commission needs to determine that the *Application* fails to meet the public interest balancing test. The internal documentation provides a clear picture of Verizon's true capacity constraints and its actual need for these AWS licenses, as well as evidence of how Verizon's preferred business model is conflict with the Commission's goals for spectrum to be used efficiently in a competitive market.

The confidential data shows that internally Verizon's thinking throughout 2011 was [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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In fact, the predictions that we see in the *Application* [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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¹⁹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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²⁰ [END HIGHLY CONFIDENTIAL INFORMATION]

But what were Verizon’s internal thoughts on its need for additional spectrum, particularly in the East, where it already holds enough AWS spectrum to enable deployment of a 20 x 20 MHz LTE-Advanced network covering more than 200 million Americans? The evidence on this is clear and consistent throughout these documents. Prior to announcing the SpectrumCo AWS acquisition, Verizon’s focus was [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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²³ [END HIGHLY CONFIDENTIAL INFORMATION]

Focusing on the question of Verizon’s need for AWS spectrum in the Eastern two-thirds of the country is critical for the Commission’s public interest evaluation. It is also critical to ensuring that this valuable public resource is not merely moved from a spectrum speculator to a spectrum hoarder. Part of the reason this is such a risk is the 2021 buildout deadline imposed by

²⁰ *Id. See also e.g.* [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

²¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]

²² *See e.g.* [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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the FCC on AWS license holders. Verizon’s attitude about this buildout deadline, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL INFORMATION]

And like in Verizon’s notorious commercials, if the Commission wants to know Verizon’s thinking about its true need for additional spectrum, particularly in the Eastern U.S., “there’s a map for that.” **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL INFORMATION]

These descriptions of AWS spectrum and Verizon’s plans and needs for it are important, because Verizon already has a substantial AWS footprint, covering 207 million of the U.S. population. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] Indeed, this is most certainly part of the attraction of this deal to Verizon. By taking all this spectrum that fits in well particularly for certain other smaller competitive carriers, all Verizon leaves for its rivals over the next decade are much more capital

²⁴ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁵ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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intensive methods to increase capacity, ways that Verizon **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** And this assumes that these smaller carriers can hang on long enough to where these methods have given them the base level of spectrum needed to launch a commercially viable 4G product.

What Verizon is proposing is not efficient use of the public airwaves, certainly not in a time of a supposed spectrum crisis, and certainly not during a time of a very real competition crisis. It is a business strategy, one that benefits Verizon no doubt, but the end result for the market competition and consumers is far worse than if these transfers were not consummated. Verizon simply views the buying of the AWS spectrum that it does not need as **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

²⁶ **[END**

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Quite damning evidence indicating Verizon's true need for additional spectrum is the revelation that in **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁸ **[END HIGHLY CONFIDENTIAL**

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But the evidence for Verizon's true need for these licenses extends well beyond its general attitude about additional spectrum, to its view of the specific licenses held by SpectrumCo and Cox. Early on, in a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁶ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁷ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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²⁸ *Id.*

²⁹ *See* **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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³⁰ *Id.*

³¹ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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³² **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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³⁴ [END HIGHLY CONFIDENTIAL INFORMATION]

It shouldn't be surprising that Verizon is taking the public stance it is now, hiding behind its newfound yet opaque predictions of a capacity crisis. But as the Commission learned in the AT&T-T-Mobile merger review, a carrier seeking regulatory approval for a massive competition-killing deal will say anything and will produce new predictions of impending doom if that's what it takes to get the deal done. The Commission should heavily discount what Verizon is telling it now, and heavily weight what Verizon was telling itself in the months leading up to (and in some cases following) the announcement of the SpectrumCo deal.

The story in the confidential documents is clear and unwavering: Verizon felt it [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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In light of this clear and irrefutable evidence, the Commission has no choice but to conclude the public interest balancing test is not met. In order to promote competition, efficient use of the public airwaves and the overall public interest, the Commission must reject the Applicants proposal as submitted.

Why Verizon Would Rather Horde Spectrum Instead of Utilizing Wi-Fi Offloading

It is well known that Wi-Fi offloading, particularly onto carrier-grade Wi-Fi networks, is a very efficient method for managing congestion on mobile networks that operate using licensed spectrum. This is not simply reliance on mom-and-pop coffee shop open networks, but an integrated strategy by major cellular carriers who recognize the substantial advantages to both

³³ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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³⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
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the operator and the customer of seamlessly moving some of the mobile data traffic onto these fixed networks.³⁵ AT&T is a major proponent of this strategy.³⁶ Sprint has expressed the importance of Wi-Fi offloading to its future prospects in this very proceeding.³⁷ T-Mobile has embraced Wi-Fi offloading, with a particular emphasis on routing voice calls over such networks.³⁸

But strangely, Verizon is alone among the national carriers in viewing Wi-Fi offloading as a useful tool for managing congestion across its network. In its *Opposition*, Verizon characterized this widely accepted and growing practice as not offering a “good solution to congestion.”³⁹ Why? Because Verizon thinks that 1) “most Wi-Fi networks are owned by third parties... [who] do not offer the same security, reliability, and user experience that Verizon Wireless has built its reputation on;” and 2) “Wi-Fi uses unlicensed spectrum and it is difficult to control interference that can greatly degrade the capacity of a Wi-Fi access point and thus impact the customer experience.”⁴⁰ This is at best a disingenuous response from a carrier who claims to be on the cutting edge of network innovation. As the Commission is well aware, when Petitioners like Free Press state that Verizon could use Wi-Fi offloading as a method for managing congestion, we are not simply talking about forcing users onto unknown third-party networks. We are talking about the very same strategies used by AT&T, T-Mobile, Sprint and other carriers. We are talking about carrier-grade Wi-Fi networks, not simply opportunistic offloading onto unknown third-party networks. We are suggesting that instead of hoarding more valuable licensed spectrum, Verizon itself should deploy Wi-Fi hotzones in major urban areas prone to congestion. As a major ILEC and the nation’s leading residential fiber-to-the-home

³⁵ See e.g. Ray Le Maistre, “Carrier Wi-Fi is Hot,” *Light Reading*, April 26, 2012. See also e.g. Mike Robuck, “Research: Carrier Wi-Fi equipment market to hit \$2.1B by 2016,” *CD Magazine*, May 10, 2012 (“The strongest new growth driver is mobile operators deploying carrier Wi-Fi to offload a portion of their mobile data traffic”).

³⁶ See e.g. Phil Goldstein, “AT&T expands WiFi offload project,” *Fierce Wireless*, July 26, 2010. See also e.g. Maisie Ramsay, “AT&T ups ante on Android Wi-Fi offload,” *CD Magazine*, October 3, 2011 (“AT&T has been at the forefront of Wi-Fi offloading. It operates 27,000 hotspots in the United States and 190,000 hotspots overseas through roaming agreements. Most of its smartphone customers can access the U.S. Wi-Fi network at no additional cost, and Wi-Fi doesn't count against their monthly data plans”). See also e.g. Matt Lewis, “Wi-Fi offload gives AT&T much needed breathing space,” *Rethink Wireless*, October 25, 2011 (“AT&T is also the only major US cellco deploying Wi-Fi hotzones - wide areas of Wi-Fi coverage deployed in large outdoor or indoor locations - providing connectivity in high traffic areas. The carrier continues to add hotzones in cities like Palo Alto, San Francisco and Chicago and has also made Wi-Fi available in several parks throughout New York City”).

³⁷ See e.g. Letter from David H. Pawlik, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (filed May 25, 2012).

³⁸ See e.g. Mike Dano, “T-Mobile USA offloads 5M Wi-Fi callers,” *Fierce Wireless*, February 16, 2011.

³⁹ *Opposition*, Exhibit 2, para. 46.

⁴⁰ *Id.*

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provider, Verizon certainly could leverage its existing infrastructure the same way that AT&T has, and that Sprint wishes it could.

So why is Verizon being so disingenuous about Wi-Fi offloading? Why is Verizon bucking the trend that the other U.S. carriers and carriers around the world are embracing? The answer to such questions almost always lies in financial motives. Let's first take a look at the market, and the differences in service offerings between AT&T, who embraces Wi-Fi offloading, and Verizon, who does not.

Market wide, while use of mobile data is growing, the number of mobile subscribers is not. While there is plenty of room (though not much hope) for the smaller carriers to gain market share, the duopolists at the top have to be content with slow subscriber and market share growth as they use their market power slowly kill its competitors. But Wall Street wants to see impressive growth, and if its subscriber growth is slowing, or only seeing impressive growth in the lower revenue-generating prepaid segment, Verizon must look for ways to grow its revenues. Verizon's core business is the business of selling mobile data. Verizon offers its smartphone users multiple tiers of mobile data monthly megabyte buckets, extending up to 10 GB for \$80, while its closest competitor AT&T's highest smartphone tier is 3 GB for \$30 per month.⁴¹ This is a key difference; one that likely explains the difference between the two company's Wi-Fi offloading attitudes. That Verizon is encouraging its customers to purchase more than three times the data at nearly three times the price as AT&T offers indicates that Verizon is in the business of selling as much data as it can get consumers to purchase.⁴²

If Verizon acted as AT&T did, and automatically shifted smartphone users onto Wi-Fi networks, those users would use less data, and many of them would be unlikely to sign up for Verizon's most costly monthly data tiers. Thus, if given a choice, Verizon would probably prefer to amass as much licensed spectrum as it could in order to sell users as much data as they are willing to pay for. Wi-Fi offloading in such a world just doesn't help the bottom line, even if it helps ensure efficient use of the public airwaves.

⁴¹ For example, iPhone 4S users on AT&T's network have two choices for data plans – 300 MB for \$20 each month, or 3 GB for \$30 each month. Verizon however offers three tiers – 2 GB for \$30 each month, 5 GB for \$50 each month, or 10 GB for \$80 each month. Both carriers will enable tethering with additional monthly data allotments for an additional \$20 per month.

⁴² AT&T of course is interested in selling users as much data as it can, but current business models are often shaped by historical events. AT&T's early experience with smartphone users, particularly iPhone users, in the now long-gone unlimited monthly data era, meant it had to invest in a Wi-Fi offloading business strategy. Indeed, as we see from the confidential information **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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Verizon seems to think its anti-Wi-Fi offloading stance is “the most consumer friendly solution”⁴³ but a user watching a stream of a football game or uploading a photo to Instagram certainly does not care whether the data’s first link is over a licensed cellular spectrum owned and operated by Verizon or unlicensed spectrum on a Wi-Fi network owned and operated by Verizon. In fact that customer would most certainly think the most customer friendly solution is the one that avoids monthly data overage fees or simply allows them to spend less each month.

With this contrast of Verizon’s and its competitors’ business models in mind, we turn to what Verizon has stated internally on this matter.

To begin, while Verizon has repeatedly indicated to the Commission in this proceeding that it is doing all it can to address capacity issues utilizing non-spectrum methods, we see **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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On the matter of the specific alternative capacity enhancing technique of Wi-Fi offloading, Verizon is clearly **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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⁴³ *Opposition*, Exhibit 2, para. 46.

⁴⁴ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
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⁴⁹ *Id.*

⁵⁰ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL INFORMATION] the forces motivating Verizon are not always in line with efficient use of scarce public airwaves or the general public interest. As we pointed out earlier, from the customer perspective, Wi-Fi offloading is almost always preferable. And in the case of streaming

⁵¹ *See e.g.* **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY

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

⁵³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION]

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video applications like Netflix, Wi-Fi offloading is clearly preferable, because it pushes the video off of the cellular network, reducing the direct cost to the customer (in terms of metered data) while also reducing congestion on the cellular network. But from Verizon's perspective, offloading is **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

Further, Verizon's increasing the spectrum gap through the amassing of large amounts of excess spectrum instead of embracing carrier Wi-Fi offloading also harms competition by keeping its competitors from being able to launch competitive LTE networks.

Given that the cable companies that are now wed to Verizon in the Joint Operating Entity are the largest operators of wide area Wi-Fi networks, it is important to understand how that influences Verizon's approach to utilizing Wi-Fi offloading in today's all-metered world. According to internal documents, Verizon **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL INFORMATION] Adding even more AWS to its spectrum arsenal is simply the cheapest way for Verizon to go, but not the only method.

More Evidence on The Harms of The Joint Operating and Marketing Agreements

As we discussed above, Verizon **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

⁵⁴ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION]

⁵⁵ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY
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We have previously argued that the presence of the cable companies as sales agents and not truly independent mobile virtual network operators (MVNOs) substantially reduces potential competition in the wireless market. Applicants counter that the cable companies can, if they so choose, become Verizon MVNOs. This will not provide the same level of potential competition that would be possible if these cable providers were non-exclusive independent MVNOs, but it is better for competition than is the case of them acting as mere sales agents. Verizon [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY
CONFIDENTIAL INFORMATION]

There is also evidence suggesting that [BEGIN HIGHLY CONFIDENTIAL

⁵⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL
INFORMATION]

⁵⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY
CONFIDENTIAL INFORMATION]

⁵⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]
[END HIGHLY CONFIDENTIAL INFORMATION]

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[END

HIGHLY CONFIDENTIAL INFORMATION] there are viable alternatives to these license transfers that will not cause the same level of harm to competition as the proposed deal, but would still be mutually beneficial to all Applicants.

And the internal documents offer evidence of how these arrangements will frustrate the goals of the Communications Act. In one [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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⁶² [END HIGHLY

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Finally, Applicants contend that the timing of the collapse of the AT&T-T-Mobile deal had nothing to do with the timing of the Verizon-SpectrumCo deal, and that the spectrum sales are not tied to the Joint Operating Entity or Joint Marketing Agreements. But the internal data indicates that [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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⁵⁹ See e.g. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁶⁰ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁶¹ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL

INFORMATION]

⁶² See e.g. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL

INFORMATION]

⁶³ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

⁶⁵ [END HIGHLY CONFIDENTIAL INFORMATION] Because substantial portions of these commercial agreements remain unavailable to outside parties, we are unable to determine if such provisions are in the final contracts.

This evidence, in combination with the exhaustive evidence presented above concerning Verizon's true need for these licenses, clearly proves these deals are not in the public interest.

Conclusion

Verizon's spectrum position is already better than all of the other national carriers combined. Verizon does not need this transaction to close in order to meet its future forecasted demand, and Verizon absolutely does not need AWS spectrum in the Eastern portion of the U.S. where two-thirds of the population resides and where it is already capable of launching a best-in-class 20 x 20 MHz LTE-Advanced network. There are other more efficient methods for dealing with demand, but Verizon simply views those methods as [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] Verizon has failed to articulate any kind of meaningful future harm if these deals are not approved, and has not addressed the very real harms of spectrum concentration to the public interest goals of the Communications Act. Thus, the transaction as proposed fails to meet the public interest balancing test.

Sincerely,

_____/s/_____

S. Derek Turner
Research Director
Free Press

[END

HIGHLY CONFIDENTIAL INFORMATION]

⁶⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁶⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

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