REDACTED—FOR PUBLIC INSPECTION

Public Knowledge

FILED/ACCEPTED

JUN 14 2012

Federal Communications Commission
Office of the Secretary

June 14, 2012

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

Re: WT Docket No. 12-4, 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

Dear Ms. Dortch:

Pursuant to the Protective Orders in this proceeding, please find enclosed two copies of an ex parte filing of Public Knowledge, Free Press, New America Foundation Open Technology Institute, and Consumers Union in redacted form. The Highly Confidential version of this filing has been filed under separate cover as directed by the Protective Orders.

Respectfully submitted,

/s Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

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

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, and Cox TMI Wireless, LLC, WT Docket No. 12-4
Notice of *Ex Parte* Meeting

Dear Ms. Dortch,

On June 12, 2012, Parul Desai, Communications Policy Counsel of Consumers Union, Joel Kelsey, Policy Advisor of Free Press, Derek Turner, Research Director of Free Press, Michael Calabrese, Senior Research Fellow of New America Foundation's Open Technology Institute, Harold Feld, Senior Vice President of Public Knowledge, and Jodie Griffin, Staff Attorney of Public Knowledge met with Sandra Danner, Stacey Ferraro, Rick Kaplan, Maria Kirby, Ted Serafini, Susan Singer, Ziad Sleem, Michael Smith, Joel Taubenblatt, and Thuy Tran of the Wireless Telecommunications Bureau; Ty Bream and Martha Heller of the Media Bureau; Jim Bird and Joel Rabinovitz of the Office of General Counsel; and Christopher Sova of the Wireline Competition Bureau. Parul Desai and Michael Calabrese exited the meeting before the Free Press and Public Knowledge representatives discussed confidential and highly confidential information with the Commission staff.

During the meeting the representatives of the public interest groups expressed our unified opposition to the transactions in this proceeding as proposed. We reiterated arguments made in our collective *Petitions to Deny*[1] and *Replies to Opposition*[2] filed in this proceeding, in addition to the arguments described below. Our presentation focused on the license transfers before the Commission as well as the associated Joint Operating Entity (JOE) and Joint Marketing Agreements (JMAs) between Verizon and the members of SpectrumCo.

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[1] *See* Petition to Deny of Free Press, WT Docket No. 12-4; Petition to Deny of Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humbolt, Center For Rural Strategies, Future of Music Coalition, National Consumer Law Center on behalf of its low-income clients, and Writers Guild of America West.

[2] *See* Reply to Opposition of Free Press, WT Docket No. 12-4; Reply Comments of Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humbolt, and National Consumer Law Center on behalf of its low-income clients,

We discussed how Verizon's claims of need for additional spectrum are vastly overstated, particularly its need for additional spectrum in the markets where it already holds AWS spectrum. We discussed how Verizon's attitude towards Wi-Fi offloading differs from its industry counterparts, and noted the differences in how Verizon sells "buckets" of data versus its competitors. We argued that Verizon's seemingly counter-intuitive stance on the benefits of Wi-Fi offloading is driven by its preferred business model, one that seeks to maximize revenues at the expense of efficient spectrum use and consumer welfare. We also expressed doubts about the validity of Verizon's ever-changing predictions of future capacity constraints, particularly in the Eastern 2/3 of the country. We urged the Commission to focus on Verizon's internal capacity predictions made throughout 2011, and also urged the Commission to explore the underlying sensitivities in Verizon's capacity growth prediction model. We reiterated that Verizon is by far the best-positioned carrier to handle future growth,[3] and that the future capacity issues that it claims to face exist in a much more acute fashion for the other carriers who do not enjoy the same spectrum depth that Verizon does. For these reasons, we suggested that in the "but-for world," rejection or FCC-ordered modification of these license transfers would result in more efficient use of these scarce public airwaves.

We also expressed our concern that the Applicants' related joint marketing, reseller, and Joint Operating Entity agreements will prevent or discourage competitors to Verizon Wireless from using the Wi-Fi capacity of the Applicant cable operators. This will cripple the development and usefulness of Wi-Fi networks. Absent the agreements at issue, the cable operators would presumably be willing to enter into Wi-Fi offload agreements with wireless carriers like Pioneer, or partnering with companies like Netflix that may be interested in pursuing new avenues to transmit their services to consumers. However, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] As a result, Verizon Wireless would be able to significantly hinder its direct competitors' strategies to use Wi-Fi technology to expand their market offerings and strongly discourage the cable operators from ever actually opting to become resellers of Verizon Wireless service.[4]

We expressed our collective belief that though there is no combination of conditions that

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[3] 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. *See Deutsche Bank Markets Research, Key Updates on Major Spectrum Deals,* Feb. 5, 2012, page 7. (This data is reproduced on page 5 of T-Mobile's May 15, 2012 *ex parte* presentation in WT Docket No. 12-4).

[4] Public Knowledge's pending Challenge to Confidentiality Designation, if granted, would permit the public to more fully understand the motivations of the Applicants in entering the commercial agreements and to consider the potential consequences of the agreements. *See* Challenge to Confidentiality Designation of Public Knowledge, WT Docket No. 12-4 (filed May 9, 2012). Public Knowledge also noted that the continued redactions in the highly confidential versions of the commercial agreements impede parties' ability to fully understand the Applicants' contractual incentives and the relationships between the agreements. *See* **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

would make these transactions a net positive for the public interest, there are several conditions that would work to lessen the overall public interest harms. First, we argued that Verizon should be ordered to divest AWS spectrum where post-transaction it would hold more than 20 MHz of paired AWS spectrum. These markets lie in the Eastern 2/3 of the country, areas where Verizon is already capable of launching a 20 x 20 MHz LTE-Advanced network using its existing AWS and upper 700 MHz C-block licenses. Second, we urged the Commission to avoid any further warehousing of spectrum by modifying the buildout requirement of the licenses at issue in this proceeding. We argued that the current 2021 substantial service deadline should be shortened, and suggested that a "use it or share it" license condition would best serve the public interest. Third, given the Congressional concerns about preserving and promoting competition between phone and cable companies, we urged the Commission to prohibit the parties from entering into any joint marketing arrangements in the geographic markets where Verizon offers local exchange service in competition with the facilities-based services of the SpectrumCo. cable companies. Forth, because of the increasingly indispensible nature of Wi-Fi offloading services to wireless carriers that compete with Verizon, we urged the Commission to forbid Verizon Wireless from asserting any right to prohibit the cable operators from entering into Wi-Fi agreements with competitors or potential competitors. The Commission could also achieve a similar result by prohibiting Verizon Wireless from obtaining favorable terms and conditions for Wi-Fi offload from Comcast, Time Warner Cable, or Bright House Networks.

Sincerely,

/s/

Parul Desai
Communications Policy Counsel
Consumers Union

Derek Turner
Research Director
Free Press

Michael Calabrese
Senior Research Fellow
New America Foundation's
Open Technology Institute

Harold Feld
Senior Vice President
Public Knowledge

CC via email:

Sandra Danner
Stacey Ferraro
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