REDACTED—FOR PUBLIC INSPECTION

June 18, 2012

FILED/ACCEPTED

JUN 18 2012

Federal Communications Commission
Office of the Secretary

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 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 14, 2012, Harold Feld, Senior Vice President; Jodie Griffin, Staff Attorney; and Gregory Capobianco, Legal Intern, of Public Knowledge ("PK") met with Zachary Katz and Charles Mathias of the Office of the Chairman to discuss the proposed license transfers and commercial agreements between Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless.

During the meeting PK expressed concern that the both the license transfer and the commercial agreements would harm the public interest. Our presentation focused on concerns regarding spectrum aggregation and the joint marketing, reseller, and Joint Operating Entity ("JOE") agreements, which will result in an effective cartel between the Applicants.

PK urged the FCC to reject Verizon's claims that the spectrum screen is a safe harbor that prevents the Commission from addressing the competitive harms posed by certain proposed spectrum transfers. As PK has explained before, the spectrum screen is not a cap, and the FCC is free to recognize and prevent public interest harms that flow from transactions that do not result in spectrum holdings that exceed the screen.[1] To the extent that the FCC is utilizing the spectrum screen as a tool in its analysis of the proposed transactions, PK urged the FCC to first resolve the Public Interest Spectrum Coalition's ("PISC") 2008 Petition for Reconsideration[2] regarding the spectrum screen alterations from the Verizon/AllTel transaction. If the FCC grants the PISC Petition, Verizon, which was a party to the Verizon/AllTel proceeding and therefore has ample notice of the pending Petition, would be over the spectrum screen in a number of markets.

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[1] Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (Mar. 27, 2012).
[2] See Petition for Reconsideration of the Public Interest Spectrum Coalition, WT Docket 08-95 (filed Dec. 10, 2008).

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Although PK concludes that the proposed transactions must be blocked as contrary to the public interest, if the FCC decides to approve the transaction, the FCC should only give its approval on condition of a "use it or share it" spectrum obligation. Under this condition, unused spectrum would be included in the white spaces database for use by white spaces devices. Additionally, the Commission should modify the build-out requirement of the licenses at issue by moving the build-out deadline from 2021 to 2016, to ensure that Verizon has incentive to build out spectrum in a timely fashion. According to Verizon's own argument that it needs the spectrum at issue prior to 2016, these conditions would impose no cost to Verizon but would encourage efficiency by permitting other devices to use spectrum that would otherwise have gone unused. This condition would also give device manufacturers advance notice that the spectrum may become available so they can make appropriate adjustments in the next generation of their equipment. More generally, a "use it or share it" provision would send a signal to developers that it will be worthwhile to continue investing in white spaces technology because the FCC will be using the white spaces database as a tool to encourage innovation.

PK also discussed its challenge to the Applicants' claim of confidentiality over the governance structure of the JOE.[3] There is no justifiable reason why the membership of the JOE's Board deserves confidential treatment, and the current shroud of secrecy surrounding the JOE's management prevents parties from realizing how the transactions would impact them. Public disclosure of the Board's governance structure would further demonstrate the cartel-like nature of the Applicants' arrangement, especially since **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Since third parties that cannot sign onto the protective orders cannot see this information and their outside counsel cannot disclose the information to them, the FCC receives less input from interested parties about the agreements, and the public discourse in this proceeding suffers. Moreover, these provisions are directly relevant to the fact that the proposed transactions give rise to an attributable interest under the Commission's rules.[5] PK urged the FCC to grant its challenge in a timely fashion so that interested parties may give input before the resolution of this proceeding.

We expressed our concern that the Applicants' related joint marketing, reseller, and JOE agreements will prevent or discourage competitors to Verizon Wireless from **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** This would negatively affect the development of Wi-Fi networks and restrict **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] For example, if a carrier like Pioneer entered into a Wi-Fi backhaul

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[3] *See* Challenge to Confidentiality Designation of Public Knowledge, WT Docket No. 12-4 (filed May 9, 2012).

[4] **[BEGIN HIGHLY CONFIDENTIAL]**
[END HIGHLY CONFIDENTIAL]

[5] *See* 47 C.F.R. § 76.501 Notes 1–5; Petition to Deny of Public Knowledge et al., WT Docket 12-4, 5, Conf. App. at A-8–A-9 (Feb. 21, 2012).

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agreements with Comcast, its service could default to Wi-Fi service in covered areas before using data roaming agreements on other carriers' licensed spectrum. But under the agreements in this proceeding, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

The harms of this restriction are magnified when combined with **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] These requirements would prevent the cable operator Applicants from launching competing wireless offerings, or discourage them from doing so. For example, Time Warner Cable's recent patent on "virtual ownership" of video programming and patent application for seamless "Wi-Fi roaming" could be used to launch a competing mobile service, but under the commercial agreements **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

As a result, these agreements would stifle competition in the wireless market and impede the development of Wi-Fi technology as an efficient tool for wireless carriers. If the Commission approves the proposed transactions, PK urged the Commission to establish a condition that prohibits Verizon Wireless from asserting any right to prohibit the cable operators from entering into Wi-Fi agreements with third parties. Alternatively, the Commission could 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/

Harold Feld
Senior Vice President
Public Knowledge

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[6] **[BEGIN HIGHLY CONFIDENTIAL]**
[END HIGHLY CONFIDENTIAL]

[7] **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**

[8] *See* Letter from Harold Feld, Legal Director, and Jodie Griffin, Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (Apr. 30, 2012).