



Public Knowledge

EX PARTE OR LATE FILED

June 22, 2012

FILED/ACCEPTED

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

ORIGINAL

JUN 22 2012
Federal Communications Commission
Office of the Secretary

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

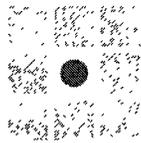
Dear Ms. Dortch:

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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Secretary
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Federal Communications Commission
Office of the Secretary

Re: WT Docket No. 12-4, Proposed Assignment of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On June 20, 2012, Harold Feld, Senior Vice President; Jodie Griffin, Staff Attorney; and Carrie Ellen Sager, Legal Intern; of Public Knowledge (PK) met with Angela Giancarlo, Chief of Staff & Senior Legal Advisor, Wireless & International, of Commissioner McDowell.

PK began with a discussion of procedural issues, beginning by requesting that the Commission resolve its Petition for Reconsideration of the spectrum screen, which has been pending since the Verizon/Alltel transaction in 2008.¹ PK noted that the spectrum screen is a policy document, not a safe harbor. If the parties are going to treat it like an ironclad rule instead of a policy document, then for fairness, the FCC should resolve the pending petition before making any decision in the Verizon/SpectrumCo deal. Verizon was a party to the 2008 proceeding in which the petition was filed, and so cannot claim surprise.

In the Petition for Reconsideration, PK argued that the spectrum screen should be returned to 95 MHz by eliminating the BRS and EBRS spectrum that was added to the screen in the earlier proceeding. BRS and EBRS spectrum should not be included in the screen because they are not comparable to the other spectrum; they have different physical characteristics, are differently encumbered, and their inclusion harms competition by unequally benefiting the two largest providers.

PK also urged the Commission to grant its challenge to the confidential classification of the governance structure of the Joint Operating Entity (JOE). **[BEGIN HIGHLY**

¹ See Petition for Reconsideration of the Public Interest Spectrum Coalition, WT Docket 08-95 (filed Dec. 10, 2008).



CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL] do not meet the standard for Highly Confidential treatment. The continued classification of this material makes it difficult for parties who may have an interest in the proceedings, such as Netflix or Frontier, to participate. For example, Verizon objected when Netflix attempted to sign on to the protective orders to access the materials. Even when parties have signed the confidentiality acknowledgements, only outside counsel may access Highly Confidential material, so the client may never realize that they have an interest and must speak out in this proceeding.

PK particularly urges that the Commission rule on the confidentiality challenge in a timely fashion, while parties may still access material and provide input in this proceeding. It would be patently unfair and inappropriate for the Commission to rule on the issue of confidentiality along with its final decision, too late for interested parties to be notified and become involved.

PK noted that it supports to recommendations of other organizations such as Free Press that the Commission require divestiture of AWS-1 spectrum, which would enhance competition. However, PK urged that in order for the divestiture to truly improve competition, the Commission must not allow it to simply be purchased by AT&T.

The spectrum crunch negatively affects all players, but the spectrum gap only helps Verizon and AT&T. When the top two providers control significantly more spectrum than their competitors, the smaller providers are unable to provide the same quality of service to customers. Although these smaller competitors may still exist in the market, they do not apply the same competitive pressure that they would if they were able to compete on a more level playing field.

PK also recommended an interoperability condition, though this is primarily an issue involving AT&T, which is not a party to the matter at hand. PK noted that interoperability on the 700 MHz spectrum is a major issue for competition, and urged that if Verizon and AT&T continue to fail to come up with a voluntary solution, the Commission should require one.

PK emphasized the importance of Wi-Fi offloading and the threat that these transactions pose to the development and deployment of Wi-Fi offload technology. Companies, particularly Sprint, are moving from depending only large-area cell towers to small cell technology, and are looking to use Wi-Fi offloading as part of this move. The primary competitors to the telecommunications companies are cable MSOs. Under the JOE agreements and the commercial agreements, **[BEGIN HIGHLY CONFIDENTIAL]**



² [END HIGHLY CONFIDENTIAL] This could seriously damage both wireless competition and technological innovation, particularly when combined with [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

One example of this problem is Time Warner Cable’s patent application for seamless “Wi-Fi roaming,” which allows a wireless device to move between networks without interruption. Under the JOE and its corresponding commercial agreements, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] This restraint of trade would limit consumer choices and restrain innovation.

PK noted that [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL], the agreements give rise to an attributable interest under a straight reading of Section 652. The JOE and the resale agreements create a management interest prohibited under 652(a) and (b) by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] They also create a joint venture prohibited under 652(c) by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Finally, PK stressed that if the sale is approved, the Commission should impose a “use it or share it” condition on Verizon. This would allow any spectrum unused by Verizon by a particular date to be made available through the TV whitespace database for use by devices that utilize the white spaces. PK believes that TV whitespace is the gateway to the next generation of cognitive and multiband radio, and that a “use it or share it” condition would provide incentives to develop this technology. Such a condition would not cost Verizon anything; it would allow others to have nonexclusive use of the spectrum until Verizon builds out, but once Verizon did so, the spectrum would automatically return to Verizon exclusively.

Respectfully submitted,

² [BEGIN HIGHLY CONFIDENTIAL CONFIDENTIAL]

[END HIGHLY



/s
Harold Feld
Senior Vice President
Public Knowledge