

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the matter of	)	
	)	
Applications of Cellco Partnership	)	WT Docket No. 12-175
D/B/A Verizon Wireless, and T-Mobile	)	
License, LLC.	)	

**INTRODUCTION**

T-Mobile and Verizon have proposed to swap spectrum in a way that leaves both parties better off, giving Verizon a definitive edge in its quest to build a comprehensive nationwide LTE network, and providing T-Mobile with the “path to LTE” that just a few months ago was said to be impossible.<sup>1</sup> And depending on the outcome of the Lower 700 MHz A and B block sales, the net result could potentially alleviate spectrum access issues among several regional providers.

But while these are good things they do not satisfy the Commission’s requirement that it promote the public interest—the Commission’s broader aim should be to promote competition generally, and not just a few competitors.<sup>2</sup> For this reason the Commission should only approve this transaction if it takes a few steps to ensure that it promotes the public interest and broader competitive goals, and alleviates the possible negative effects of enhancing the competitive position of Verizon, already the largest mobile provider. First, the Commission should condition the transfer on a commitment by both Verizon and T-Mobile to offer reasonable data

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<sup>1</sup> Jim Cicconi, *AT&T Response to FCC Staff Report*, AT&T PUBLIC POLICY BLOG, Dec. 1, 2012, <http://attpublicpolicy.com/wireless/att-response-to-fcc-staff-report/> (“T-Mobile has no clear path to LTE.”).

<sup>2</sup> 47 U.S.C. § 310(d).

roaming to other carriers. Consumers (especially rural consumers) would benefit from the increased ability of smaller carriers to offer service that works nationwide. Second, the Commission should set standards for build-out, to ensure that carriers are properly serving all geographic areas—and it should back up these standards with “use it or share it” requirements.

Of course, the transaction under discussion here can only take place if the SpectrumCo/Cox/Verizon transactions are approved—which they shouldn’t be. As detailed in comments elsewhere,<sup>3</sup> Public Knowledge continues to believe that those transactions would seriously harm the public interest, and should be denied. In particular, they would set up a Joint Operating Entity (JOE) between Verizon and other companies that would enable them to collaborate on issues of pricing, service, and technology, harming consumers in the voice, video, and data markets. If the JOE is allowed to stand, it is difficult to see how anything that improves the competitive position of Verizon, including the current proposed transactions with T-Mobile, would serve the public interest. As a general matter members of an anticompetitive arrangement like the JOE should not be given leave to further improve their competitive positions against others. Certainly this transaction would need to have conditions specifically tailored to remedying some of the JOE’s most egregious anticompetitive effects.

However, for the purpose of these comments PK will leave to one side the issues springing from the JOE, and the question of whether the transfers of spectrum to Verizon in the first place served the public interest. Additionally, PK will assume

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<sup>3</sup> Comments of Public Knowledge in WT Docket No. 12-4 (filed July 10, 2012).

that Verizon honors its commitment to sell its lower 700 MHz A and B block licenses. With these caveats, PK does not object to the proposed future spectrum swap between Verizon and T-Mobile, provided that it is subject to roaming and build-out conditions that will ensure it serves the broader public interest, instead of just the interests of Verizon and T-Mobile.

## **I. ROAMING**

One of the best ways the Commission can ensure that consumers can realistically buy service from small and regional carriers is through robust, industry-wide data-roaming rules. But it should also condition these transfers on the licensees' agreement to abide by data roaming conditions—not only to insulate any rules against legal risk, but to alleviate various transaction-specific harms. After this transaction, both Verizon and T-Mobile will be in the position to build stronger networks, which reduces both of their incentives to cooperate with other carriers on data roaming. If they need to purchase data-roaming less often (or not at all) they are less likely to offer data-roaming reciprocally, potentially leaving smaller carriers without any means to offer service in some areas.

This has long been the case with regard to AT&T and Verizon, which is why PK supports the Commission's efforts to promote the ability of all consumers to have their handsets work seamlessly nationwide.<sup>4</sup> But while the proposed swaps will increase T-Mobile's competitiveness, they do not reduce the need for data roaming obligations. It will take Sprint and other smaller carriers longer to rearchitect their

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<sup>4</sup> Public Knowledge Commends FCC On Data Roaming Order, Apr. 7, 2011, <http://www.publicknowledge.org/public-knowledge-commends-fcc-data-roaming-order>.

networks and reorganize their spectrum so they can match T-Mobile. Data roaming requirements are all the more important during this industry-wide transition. In any event, increased competition from T-Mobile, while welcome, is not by itself sufficient to offset the competitive advantages held by AT&T and Verizon—it would, in fact, enhance Verizon’s relative competitive position, further increasing the need for it to be subject to roaming obligations.

The Commission should adopt measures that allow all providers to compete, and not just a handful. Without roaming obligations on T-Mobile and Verizon the benefits of LTE will not be shared with all Americans, and the wireless market will continue to fall well short of its competitive potential. (And, it bears mentioning, if the Commission does not address the issues with Wi-Fi roaming and offload that have been raised in the Verizon/Cox/SpectrumCo matter, smaller carriers will have an even harder time entering into reasonable roaming agreements.) Thus, as a condition of the transfers, both carriers should be agree to follow conditions similar to those in the Commission’s data roaming order.<sup>5</sup>

## **II. BUILD-OUT AND USE IT OR SHARE IT**

To benefit the public interest, the Commission should take additional steps to ensure that rural Americans actually benefit from the exclusive licenses Verizon and T-Mobile will have to operate in their territory, by adopting accelerated build-out schedules backed up by “use it or share it” measures.

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<sup>5</sup> See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report & Order, 26 FCC Rcd. 5411 (2011).

While the proposed spectrum swaps would enhance the ability of Verizon and T-Mobile to offer LTE service, no number of spectrum exchanges will change the basic economics of rural service. Carriers, in particular national carriers, have little incentive to build out service to rural areas when more populous urban and suburban areas yield a higher return on investment. They have rights to spectrum, which no one else can use, to serve particular areas but then often do not do it. By giving Verizon and T-Mobile the means to improve their services in several high-value markets the proposed transactions would worsen this already-bad situation by further decreasing the relative ROI of rural areas.

The Commission has traditionally dealt with this problem with build-out requirements, and it should do so here, with requirements similar to what it adopted for the upper A and B blocks of the 700 MHz auction. Under this schedule, Verizon and T-Mobile should provide signal coverage and offer service over at least 35 percent of the geographic area of each of the transferred license authorizations within four years of the completion of the license transfers. By the end of the license terms, Verizon and T-Mobile should provide signal coverage and offer service for 70 percent of each geographic area.

The Commission's experience with build-out requirements, however, has shown that they need to be coupled with appropriate enforcement mechanisms. If enforcement is too weak, carriers can safely ignore (or argue their way out of) any requirements, and if the enforcement provisions are too strong (e.g., "use it or lose it" license forfeiture) the Commission could balk before following them. For these

reason, for some time PK has advocated “use it or share it” requirements.<sup>6</sup> Under this regime, if a carrier fails to meet its build-out requirements its spectrum is made available for opportunistic or secondary use, at reasonable rates—or entered into the white spaces database for unlicensed use. Under this regime, the spectrum ultimately may still be developed by the carrier, who remains the licensee, but the public can benefit from the spectrum until it chooses to do so.

## **CONCLUSION**

As detailed above, assuming that the SpectrumCo/Cox/Verizon transactions are approved (although with several caveats), PK does not object to the proposed spectrum swaps between Verizon and T-Mobile provided the Commission ensures that data roaming, build-out, and “use it or share it” requirements are conditions of the transfers.

Respectfully submitted,

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<sup>6</sup> See Michael Calabrese, *Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum* (2011), available at <http://ssrn.com/abstract=1992421>.