



Public Knowledge

July 10, 2012

FILED/ACCEPTED

JUL 10 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 Comments 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
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
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Application of Cellco Partnership d/b/a)	WT Docket No. 12-4
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for Consent to Assign Licenses)	
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Verizon Wireless and Cox TMI Wireless,)	
LLC for Consent to Assign Licenses)	

COMMENTS OF PUBLIC KNOWLEDGE

In response to the Public Notice issued on June 26,¹ Public Knowledge submits the following comments on how the proposed transfer of licenses by Verizon Wireless to T-Mobile (VZ/T-Mobile)² impacts the public interest analysis with regard to the above captioned transaction. While the VZ/T-Mobile transaction does address concerns Public Knowledge has previously expressed with regard to the problem of spectrum concentration created by this transaction, it does nothing to address the issues relating to the Joint Operating Entity (JOE) and the joint marketing agreements (JMAs), which are intrinsically linked to the proposed license transfers at issue in this proceeding.

If the JOE and JMAs were rescinded, however, and the Commission required Verizon Wireless to honor its commitment to sell its Lower 700 MHz A&B block

¹ See *Wireless Telecommunications Bureau Seeks Comment on the Impact on the Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile to Assign AWS-1 Licenses*, WT Docket No. 12-4, Public Notice (June 26, 2012).

² See Public Interest Statement, attached to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC, and T-Mobile License LLC for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-175, ULS File No. 0005272585.

licenses, the proposed set of transactions would result in an overall enhancement of spectrum efficiency for both Verizon Wireless and T-Mobile. Depending on the outcome of the Lower 700 MHz A&B block sales, the net result could potentially alleviate spectrum access issues among several regional providers.³ But even these benefits cannot offset the anti-competitive impact of the JOE and JMAs on the wireless industry and on the telecommunications industry as a whole.

Public Knowledge also believes that the remedies PK proposed in its Petition to Deny with regard to the spectrum concentration issues, *i.e.*, a data roaming condition, acceleration of AWS build out requirements, and a “use it or share it” condition in the event Verizon fails to meet these build-out requirements, remain necessary.⁴ These conditions will maintain an adequate level of competition, despite Verizon’s overwhelming network advantage post-transaction, and ensure that rural Americans also enjoy the benefits of Verizon’s advanced LTE network.⁵

I. The Verizon/T-Mobile Spectrum Transfers Do Not Address the Anticompetitive Consequences of the Proposed Spectrum Transfers.

When examining the proposed license transfers between Verizon Wireless and T-Mobile, the Commission should keep in mind what the transfers do *not* do. The transfers do not resolve the anticompetitive concerns raised by the Applicants’ agency, reseller, and Joint Operating Entity agreements. Public Knowledge has consistently warned of the

³ See Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012).

⁴ See Petition to Deny of Public Knowledge *et al.*, WT Docket No. 12-4 (Feb. 21, 2012), at 45-53 (“Petition to Deny”).

⁵ PK has recommended these same conditions be extended to T-Mobile as well, for similar reasons. See Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012).

anticompetitive effects of the commercial agreements,⁶ and while the VZ/T-Mobile transactions may alleviate some of the spectrum concentration concerns posed by the proposed transactions in this proceeding, they do nothing to prevent or remedy the harms threatened by the proposed transactions to the development of competition in the telecommunications landscape.

As the attached paper more fully explains, the commercial agreements are thoroughly intertwined with each other and will be used to stifle competition in the wireline and wireless markets, from third parties and from the Applicants themselves.⁷ The VZ/T-Mobile license transfers may ultimately benefit competition among wireless carriers using licensed spectrum, but they will do nothing, for example, to prevent the Applicants' commercial agreements from stifling wireless competition that uses WiFi offload technologies.

The Applicants' agreements operate together to **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

This will cripple the development and usefulness of WiFi networks to systematically manage congestion on mobile networks. Absent the agreements at issue, the cable operators would presumably be willing to enter into WiFi offload agreements with

⁶ See Petition to Deny at 19-29; Reply Comments of Public Knowledge *et al.*, WT Docket NO. 12-4 (Mar. 26, 2012) at 6-24.

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wireless carriers like Pioneer,⁸ or to partner with companies like Netflix that may be interested in pursuing new avenues to transmit their services to consumers.

However, the commercial agreements [BEGIN HIGHLY CONFIDENTIAL]

⁸ Other wireless carriers, such as T-Mobile, Sprint, and AT&T, have also shown interest in utilizing WiFi offload for wireless backhaul. *See* Letter from David H. Pawlik, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (May 25, 2012); Mike Dano, *T-Mobile USA Offloads 5M Wi-Fi Callers*, FIERCE WIRELESS (Feb. 16, 2011); Maisie Ramsay, *AT&T Ups the Ante on Android WiFi Offload*, CED MAGAZINE (Oct. 3, 2011); Phil Goldstein, *AT&T Expands WiFi Offload Project*, FIERCE WIRELESS (July 26, 2010).

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¹¹ [BEGIN HIGHLY CONFIDENTIAL]

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As a result, whichever way the agreements are executed, Verizon Wireless would be able to significantly hinder its direct competitors' strategies to use WiFi technology to expand their market offerings and [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] The proposed VZ/T-Mobile license transfers would do nothing to solve this problem and protect nascent competing technologies from being stifled by the commercial agreements.

II. Data Roaming, Build-Out, and “Use It Or Share It” Conditions Remain Necessary In This Proceeding.

Even if Verizon Wireless trades some of its spectrum licenses with T-Mobile, the license conditions that Public Knowledge has supported in past filings in this proceeding remain relevant and necessary to protect competition in the wireless space.¹⁴

Indeed, a data roaming obligation will only become more important as Verizon amasses more spectrum holdings. It is important to remember that the proposed transfers will give Verizon a much stronger network of spectrum holdings even if some of the licenses it obtains from SpectrumCo may eventually be transferred to T-Mobile. Verizon's larger, more rationalized spectrum network will decrease its need to ever enter into data roaming agreements on another carrier's network, which will decrease its incentive to open its network for roaming to other carriers, even at reasonable rates.¹⁵

Similarly, a “use it or share it” condition, particularly when paired with ambitious build-out schedules, will continue to ensure that Verizon uses its newly acquired spectrum while permitting unlicensed uses at no cost to Verizon if Verizon fails to meet

¹⁴ See Petition to Deny at 45-53.

¹⁵ *Id.* at 48.

its build-out deadlines.¹⁶ Finally, equipment interoperability will only become more important as Verizon achieves a larger, more sophisticated network and therefore acquires greater leverage over device manufacturers.¹⁷

For these reasons, the Commission should still impose the conditions that Public Knowledge supported in its Petition to Deny to ensure the efficient use of spectrum and vibrant competition in the wireless market.

CONCLUSION

For these reasons, Public Knowledge urges the Commission to block the commercial agreements and impose conditions upon the proposed license transfers to ensure that the transactions serve the public interest, even in light of the proposed Verizon/T-Mobile license transfers.

Respectfully submitted,

/s/
Harold Feld
Senior Vice President

Jodie Griffin
Staff Attorney

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1818 N Street, NW, Suite 410
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¹⁶ *Id.* at 49-52. *See, e.g.*, Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (June 18, 2012).

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The Anticompetitive Effects of the Verizon/SpectrumCo Agreements

Harold Feld, *Senior Vice President*

Jodie Griffin, *Staff Attorney*



[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] 23

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Members’ Role 25

Restrictions on [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] 26

[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] 26

[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] 26

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[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] 28

Conclusion 29

Executive Summary

The proposed license transfers in this proceeding come part and parcel with a series of agency, resale, and Joint Operating Entity (“JOE”) agreements that essentially embody the decision of two of the largest telecommunications companies in the U.S.—namely, Comcast and Verizon—to divide up the market between them and avoid direct competition—either from other broadband carriers, device manufacturers, or video providers like Netflix—for the foreseeable future. Comcast and Verizon [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Going forward, Verizon and Comcast [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].

The function of the JOE as the central vehicle for the Applicants to share commercially sensitive information, jointly control foundational technologies, and engage in joint strategic decision-making is perhaps best illustrated by the Applicants’ own depiction of the JOE. To quote from Comcast’s own [BEGIN HIGHLY CONFIDENTIAL]

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¹ [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] The JOE thus incentivizes or requires its Members—most prominently Verizon and Comcast—to turn to the JOE to develop the next generation of improved or new voice, video, and data service offerings, rather than attempt to innovate and compete individually.

This scheme fits nicely as an extension of Comcast’s strategy to divide its product offerings to maximize profits, own or control the transmission path for an increasing share of video, voice, and data flows, and make peace with rivals that might threaten Comcast’s dominance in its chosen sphere.

For its part, Verizon benefits from these agreements by entrenching its dominance in the wireless service market through increased spectrum holdings and marketing services from the multiple system operator (“MSO”) members and [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The instrument that ties together Comcast and Verizon’s anticompetitive plans and makes their efforts to prevent each other and third parties from meaningfully competing with certain technologies is the JOE. The JOE, while jointly controlled by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] is effectively controlled by [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] on issues where their strategies coincide or they have incentive to reinforce each other. The JOE, bolstered by the agency, resale, and license purchase agreements, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This scheme will impose heavy costs on the development of new technologies in the wireline and wireless space and will prevent companies from investing in offerings that find new ways to improve voice, video, and data services for consumers.

Harms to Competition

Restricting the Development of WiFi Offload

The Applicants' agreements operate together to [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] This will cripple the development and usefulness of WiFi networks to systematically manage congestion on mobile networks. Absent the agreements at issue, the cable operators would presumably be willing to enter into WiFi offload agreements with wireless carriers like Pioneer,² or to partner with companies like Netflix that may be interested in pursuing new avenues to transmit their services to consumers.

However, the commercial agreements [BEGIN HIGHLY CONFIDENTIAL]

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² Other wireless carriers, such as T-Mobile, Sprint, and AT&T, have also shown interest in utilizing WiFi offload for wireless backhaul. See Letter from David H. Pawlik, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (May 25, 2012); Mike Dano, *T-Mobile USA Offloads 5M Wi-Fi Callers*, FIERCE WIRELESS (Feb. 16, 2011); Maisie Ramsay, *AT&T Ups the Ante on Android WiFi Offload*, CED MAGAZINE (Oct. 3, 2011); Phil Goldstein, *AT&T Expands WiFi Offload Project*, FIERCE WIRELESS (July 26, 2010).

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But whether the cable operators [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Verizon Wireless benefits from decreased competition. If the cable operators become MVNOs, [BEGIN HIGHLY CONFIDENTIAL]

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As a result, whichever way the agreements are executed, Verizon Wireless would be able to hinder direct competitors' strategies to use WiFi technology to expand their market offerings and [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Harming Video Competition

Individually, each of the commercial agreements work to discourage competitors from competing with the Applicants in the provision of video programming. When combined, the agreements create an environment overtly hostile to robust competition in the delivery of video content to consumers.

The JOE Agreement [BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

⁶ [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

⁷ [BEGIN HIGHLY CONFIDENTIAL]
HIGHLY CONFIDENTIAL]

[END

⁸ [BEGIN HIGHLY CONFIDENTIAL]
CONFIDENTIAL]

[END HIGHLY

[END HIGHLY CONFIDENTIAL] To the extent that Verizon Wireless develops, distributes, or markets over-the-top applications (for example, OTT video services like a Netflix partnership), Verizon Wireless cannot [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] The interplay between the JOE Agreement and the agency agreements thus prevents video services from [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

Such video services may also encounter difficulty obtaining the intellectual property licenses necessary to build upon the functionality and features of the JOE’s technology, because the MSO Members of the JOE will likely not be eager to permit direct competitors to create innovative new services that challenge the traditional MVPD model and offer consumers more convenient ways to access video programming. The threat posed by online video distributors is surely not lost on the MSO Applicants in this proceeding. Indeed, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

But rather than invest in product innovations that respond more closely to consumer demand, [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] the Applicants here opt coordinate with other large, nationwide firms to leverage their collective market share and shut down innovative competition.

As discussed above, the agreements also jointly thwart efforts between video programming providers and MSOs to [BEGIN HIGHLY CONFIDENTIAL]

⁹ [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

¹⁰ [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

¹¹ [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

¹² [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

¹³ [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] More broadly, the agreements will harm the development of online video services because they remove Verizon and the MSOs' incentive to compete vigorously with strong, fast broadband networks—both wireless and wireline—that would permit users to consume their video programming through wireless or wireline broadband connections.

**Discouraging Innovation Through [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL]**

The joint agreements contain several [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] This not only increases the JOE's competitive power, but removes the Members' incentive to pursue new projects with any entity besides the JOE and its Members.

For example, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] reduce the Applicants' incentive to deviate from the coordinated conduct contemplated in the agreements, and raise the cost of competing for third parties that would seek to challenge the dominance of the Applicants in the relevant market.

The Commercial Agreements and License Transfer Are Inextricably Intertwined

[BEGIN HIGHLY CONFIDENTIAL]

¹⁴ [BEGIN HIGHLY CONFIDENTIAL]
HIGHLY CONFIDENTIAL]

[END

¹⁵ [BEGIN HIGHLY CONFIDENTIAL]
HIGHLY CONFIDENTIAL]

[END

¹⁶ [BEGIN HIGHLY CONFIDENTIAL]
CONFIDENTIAL]

[END HIGHLY

[END HIGHLY CONFIDENTIAL] When asked later whether the MSOs would have been willing to sell their spectrum to Verizon without the side agreements, Comcast Executive Vice President David Cohen confirmed as much, explaining: “The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements.”¹⁸

But beyond the open admissions of the Applicants that these agreements are most accurately considered as parts of an integrated whole, the intricate interworkings of the agreements themselves demonstrate that these are not separate contracts. The agreements repeatedly [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] More subtly, the incentives created by each agreements lead to important insights when predicting the likely anticompetitive harms that will result from the agreements if they are allowed to stand.

For example, if the Time Warner Cable or Bright House members [BEGIN HIGHLY CONFIDENTIAL]

¹⁷ [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

¹⁸ Eliza Krigman, *Comcast Executive Defends Verizon-SpectrumCo Deal*, POLITICO (Mar. 8, 2012). Mr. Cohen went on to note that the parties actually do not object to the Commission reviewing the side agreements. *Id.* Mr. Cohen has noted “There is no secret that our interest is not just in selling spectrum This is a strategic asset to enable us to develop a complete wireless strategy. When our Plan A of building our own network didn’t work out, we still planned to leverage this valuable asset to help us strategically. That’s what the Verizon deal gives us.” Marguerite Reardon, *Verizon Exec Criticizes FCC’s Handling of SpectrumCo Deal*, CNET (June 7, 2012), http://news.cnet.com/8301-1035_3-57449257-94/verizon-exec-criticizes-fccs-handling-of-spectrumco-deal/.

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