

[END HIGHLY CONFIDENTIAL] These provisions make crystal clear what Petitioners and other parties have long suspected: the agency, resale, and JOE agreements are intimately connected to and contingent on the license transfer.

## The Nucleus of the Cartel: The Joint Operating Entity Agreement

### Purpose of the JOE

The Applicants' discussions in forming the JOE demonstrate that they intended the JOE to be a [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Although this paper will focus on the JOE's competitive impact by virtue of being the Applicants' exclusive vehicle to integrate wireless and wireline technologies, it is important to remember that the JOE is legally capable of acting in areas far beyond this.

Practically speaking, the JOE is intended to give its Members control over the *de facto* standards for the next generation of fundamental technology for broadband, video, and voice service providers. The JOE also functions to insulate its Members from competition from their fellow Members. Comcast has an incentive to protect itself from competition from wireless communications against its wireline network. Verizon Wireless has an incentive to accept declining revenues for voice and messaging services in return for increased and sustained mobile data usage, which brings in higher revenues for the company.

<sup>21</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>22</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>23</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>24</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>25</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>26</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

The documents produced by the Applicants reveal that both Verizon and the MSOs were concerned about [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The full impact of the anticompetitive harms of the JOE can only be understood when analyzed in the context of the other commercial agreements that the parties negotiated and agreed upon simultaneously, as the agreements [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] and are mutually dependent. By seeking a way to cease competing with each other and stifle or co-opt new competitors, the Applicants have created a series of agreements that act together to cause a host of short-term and long-term harms for consumers. In the near term, the agreements will lead to price-fixing, market allocation, exclusive joint marketing agreements, and agreements not to compete. Over the longer term, the agreements foreclose companies from developing competing technologies in the same field as those of the JOE, and insulate the Applicants from competition from each other and from third parties that may ever need to license intellectual property from the JOE or its Members, or desire to partner with one of the JOE’s members or licensees.

**Sharing Information Between Competitors**

The JOE Agreement [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

On a general level, the JOE Agreement requires [BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

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<sup>27</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>28</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>29</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>30</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>31</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The Members of the JOE also [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The JOE Members must [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The JOE must also [BEGIN HIGHLY CONFIDENTIAL]

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<sup>32</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>33</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>34</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>35</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>36</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Finally, if an MSO [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>37</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>38</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>39</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>40</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>41</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>42</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>43</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>44</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

**Restrictions on Members**

The JOE Agreement establishes that the JOE [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

**Exclusivity**

The Applicants have agreed that the JOE will be [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This reading of the JOE Agreement is confirmed by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

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<sup>45</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>46</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>47</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>48</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>49</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>50</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>51</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>52</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

Additionally, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END HIGHLY

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The JOE Agreement also calls for [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

If a JOE Member [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

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<sup>53</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>54</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>55</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>56</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>57</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>58</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>59</sup> See U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (2007), at 33, *available at* <http://www.usdoj.gov/atr/public/hearings/ip/222655.pdf>.

Additionally, as discussed above, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

The JOE limits [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

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<sup>60</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>61</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>62</sup> [BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]

<sup>63</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>64</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>65</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>66</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>67</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

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<sup>68</sup> [BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]

<sup>69</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>70</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>71</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>72</sup> [BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]

<sup>73</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

CONFIDENTIAL]

[END HIGHLY

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

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<sup>74</sup> [BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]

<sup>75</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

<sup>76</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>77</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL] [END HIGHLY

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

[BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

Notably, neither Verizon Wireless nor the MSO JOE Members may [BEGIN HIGHLY  
CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

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<sup>78</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>79</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>80</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>81</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY  
CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
HIGHLY CONFIDENTIAL]

[END

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This requirement threatens competition in three ways. [BEGIN HIGHLY  
CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

Under the agency agreements between Verizon Wireless and the individual MSOs,  
Verizon Wireless will [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Verizon

Wireless may not, [BEGIN HIGHLY CONFIDENTIAL]

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<sup>82</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>83</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>84</sup> [BEGIN HIGHLY CONFIDENTIAL]  
HIGHLY CONFIDENTIAL]

[END

<sup>85</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>86</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

[END HIGHLY CONFIDENTIAL]

Verizon Wireless and the MSOs must also [BEGIN HIGHLY CONFIDENTIAL]

CONFIDENTIAL]

[END HIGHLY

Punishment for [BEGIN HIGHLY CONFIDENTIAL]  
[END HIGHLY CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

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<sup>87</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>88</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>89</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>90</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>91</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>92</sup> [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

<sup>93</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>94</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This provision gives the JOE enormous leverage over its licensees by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Restrictions on [BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This provision extends the JOE's and its Members' leverage over licensees [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
HIGHLY CONFIDENTIAL]

[END

[BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

The JOE is controlled by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

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<sup>95</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>96</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>97</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>98</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>99</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>100</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>101</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

**The Board's Authority**

The Board has [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The Board has [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The Board also has authority to [BEGIN HIGHLY CONFIDENTIAL]

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<sup>102</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>103</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>104</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>105</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>106</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY  
CONFIDENTIAL]

<sup>107</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>108</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>109</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>110</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

<sup>111</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

**Members' Role**

*[BEGIN HIGHLY CONFIDENTIAL]*

*[END HIGHLY CONFIDENTIAL]*

The JOE Members [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

The Board may require [BEGIN HIGHLY CONFIDENTIAL]

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<sup>112</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>113</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>114</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>115</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>116</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>117</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>118</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>119</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

CONFIDENTIAL]

[END HIGHLY

Restrictions on [BEGIN HIGHLY CONFIDENTIAL]  
HIGHLY CONFIDENTIAL]

[END

The JOE's Members are prohibited from [BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

If the JOE [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

Yet another compelling reason that the JOE cannot stand is that, even if [BEGIN  
HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

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<sup>120</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>121</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>122</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>123</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>124</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

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[END HIGHLY CONFIDENTIAL]

125 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

126 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

127 [BEGIN HIGHLY CONFIDENTIAL]

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128 [BEGIN HIGHLY CONFIDENTIAL]

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129 [BEGIN HIGHLY CONFIDENTIAL]

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130 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

131 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

132 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

133 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
CONFIDENTIAL]

[END HIGHLY

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]  
[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

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<sup>134</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>135</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>136</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

<sup>137</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

## **Conclusion**

The JOE is at the center of a structure that stifles competition between its members and from third parties, and by its own terms requires its members to behave as a cartel. These agreements pose serious threats to the future of the development and delivery of voice, video, and data service over wireline and wireless networks.

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<sup>138</sup> [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

REDACTED—FOR PUBLIC INSPECTION

FILED/ACCEPTED

JUL 10 2012

Federal Communications Commission  
Office of the Secretary

# The Anticompetitive Effects of the Verizon/SpectrumCo Agreements

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Harold Feld, *Senior Vice President*

Jodie Griffin, *Staff Attorney*



[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] ..... 23

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[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] .... 26

[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] ..... 26

[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] ... 27

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## 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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<sup>1</sup> [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,<sup>2</sup> 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]

[END HIGHLY CONFIDENTIAL]

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<sup>2</sup> 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).

<sup>3</sup> [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

<sup>4</sup> [BEGIN HIGHLY CONFIDENTIAL]

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HIGHLY CONFIDENTIAL]

<sup>5</sup> [BEGIN HIGHLY CONFIDENTIAL]