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July 12, 2012

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JUL 13 2012

Federal Communications Commission
Office of the Secretary

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

Re: Application of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless for Consent to Assign Licenses; WT Docket No. 12-4
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On July 11, 2012, Ellen Stutzman, Director of Research & Public Policy, John Vezina, Political Director, Richard Garrett, consultant, Michael Forscey, Counsel and members Anne Kenney and Matt Nix of the Writers Guild America West (WGAW) met with the following Federal Communications Commission staff to discuss the proposed license transfers and commercial agreements between Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless: Joel Rabinovitz, Virginia Metallo of Office of General Counsel, Joel Taubenblatt, Martha Heller, Marius Schwartz, Ty Bream, Dana Scherer, and Christopher Sova.

WGAW disputed Verizon's contention that the Commission is precluded from modifying the spectrum screen in this proceeding or that is limited in its review. We further argued that the Joint Operating Entity (JOE), Agent Agreements and Reseller Agreements are relevant to the Commission's review and should be considered in tandem with the License Transfer issue. DOJ review of the commercial agreements does not preclude FCC from considering those agreements in determining whether to approve the transaction.

WGAW argued that the Commission is fully within its mandate to consider the effects of the commercial agreements because of the substantial threat the proposed entity poses to competition. The petitioners argue that the Commission has not done so in the past; however, in our view, doing so under the present circumstances is a clearly matter of agency discretion and the obvious threat to competition presented by the proposal plainly requires the Commission to modify past practice in this instance.

WGAW pointed out that cross platform competition is a central objective of the 1996 Telecom Act and stated that, to the contrary, the proposed transaction, in fact, appears designed to thwart the purpose of the act and undermine the development of competition on the Internet platform. The transaction brings together some of the largest wireline and wireless Internet and cable providers and thus provides incumbent firms with the ability to exert more control over the Internet, to the detriment of current and future competition. Recent actions by incumbent Internet service providers to institute data caps, and to apply such data caps to unaffiliated content while exempting affiliated content clearly demonstrates ongoing efforts by cable to control access and directly impede development of competing content.

WGAW asserted it's strong advocacy for competition in media and it's ongoing efforts to limit media consolidation. Competition is necessary at all levels in the value chain, from production to exhibition, to distribution. WGAW believes a competitive media landscape is better for creators and consumers because it increases the amount of diverse content available to viewers. More outlets increases competition to offer the best content and reduces the ability of a few firms to determine what reaches the public.

Overall WGAW believes that this transaction will, instead, increase the market power of these large distributors and allow these incumbent firms to use their power to depress supply prices and limit the growth of competitive alternatives to cable. The result will be decreased investment in programming both on traditional cable platforms and on the Internet. As a result, there will be less employment in the content creation industry and less diverse and independent content offered to consumers.

Harm to Program Suppliers such as Basic Cable Networks:

The 1996 Telecom Act was designed to promote competition by encouraging cable and telecom to enter each other's markets. Competition in the distribution of cable programming has had a positive effect for the content community because it has led to increased investment in original scripted programming by cable networks. This programming has offered consumers alternatives to broadcast networks and has increased employment of entertainment industry workers of all categories including writers who are members of WGAW.

Separate from this transaction we have long been concerned with both horizontal and vertical integration in the production and programming by networks, but believe that, even under current conditions, writers and the public have benefitted from the growth of cable and the multiplication of original programming offerings. For instance, 24 basic cable networks now broadcast scripted, programming such as dramas and comedies. In the 2010-2011 television season, there were 89 scripted series on these networks. The total number of original series has doubled in 4 years. Many of these networks appeal to specific population segments and offer programming that would not be available on the broadcast networks.

WGAW argued that the proposed transaction and commercial agreements reduce platform competition. Among these anti-competitive effects are:

1. Reduced incentives for FIOS to expand because Verizon will benefit from working with cable operators where it does not offer FIOS service.
2. Reduced incentives to compete because Verizon Wireless will participate in revenues of both Verizon Telecom quad play deals and MSO quad play deals. The partnership may also close the door on standalone wireless competition.

Harm to a Competitive Internet Platform:

The vertical and horizontal consolidation that has occurred in film and television has made the protection of competition on the Internet a critical public policy objective and a key goal for writers and the WGAW. The public interest is best served if the Internet is not controlled by the same few entities that control film and television.

Because of the Internet's openness new companies are investing in original programming. Companies like Google, Amazon and Netflix are investing significant amounts of money in original video. For example Netflix has licensed four original series that previously would have only been available on television. In fact, one such series is "Arrested Development," a program that previously aired on the FOX broadcast network. An open Internet will encourage other companies to enter the market and offer similar products. This represents new employment opportunities for writers and more content offerings for consumers.

WGAW argued attempts to limit the competitive potential of the Internet threaten to undo what has occurred and stifle future competition. MSOs plainly do not support services that stream video content over the Internet and compete with their own cable offerings. Comcast and Time Warner Cable are 2 of the top 3 providers of residential broadband. Collectively they have more than 28 million Internet subscribers, according to SNL Kagan. This transaction appears to be an attempt to extend MSO controlled video to wireless platforms, to the detriment of new competition.

THE COMMERCIAL AGREEMENTS:

THE DISCUSSION CONCERNING CONFIDENTIAL DOCUMENTS AND AGREEMENTS SUBJECT TO THE PROTECTIVE ORDER WAS LIMITED TO INDIVIDUALS CLEARED TO REVIEW SUCH MATERIAL.

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

WGAW believes that companies can use market power to depress supply prices—lowering investment in programming. This could cause significant harm in programming. Original programming on basic cable has grown dramatically over the past few years, largely because of the value captured in negotiations with the MVPDs. This combination increases the market power of some very powerful MVPDs who would use their power (and now advantaged access to 40% of the wireless market controlled by Verizon) to limit payments to programming suppliers.

The Agreements also pose a threat to competition from wireless video services. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Harm to Internet Competition:

WGAW believes that the commercial agreements are an obvious attempt to extend incumbent firm control of video programming to the Internet. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] This makes these firms the gatekeeper of video programming on the Internet as well as on the cable television service. **[BEGIN HIGHLY CONFIDENTIAL]**

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[1] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL]

WGAW believes the companies involved in the proposed transaction want to integrate video across wireless and wireline platforms. However, such an outcome can be achieved without controlling distribution. To prevent the MSO's and Verizon from using their control of the wireless and wireline platforms to unfairly disadvantage competitors in the video market, unaffiliated content must not be treated differently under any proposed data cap. Comcast is already engaging in discriminatory application of data caps by exempting its own Xfinity service when viewed on an Xbox while applying data caps to Netflix traffic. **[BEGIN HIGHLY CONFIDENTIAL]**

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[END HIGHLY CONFIDENTIAL]

Conditions:

To ameliorate the anticompetitive harm posed by the commercial agreements, the WGAW offered some suggested conditions. WGAW believes the full wireline net neutrality conditions

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[2] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

[3] **BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

[4] Ibid.

[5] **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**

should be extended to the transferred spectrum and all VZW spectrum. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Any patents developed in the JOE must be offered to unrelated firms on FRAND terms—fair, reasonable, and nondiscriminatory terms. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]. Companies should be also required to certify that they will not discuss programming or other media related activities and content of nonparticipants in a nondiscriminatory basis. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

A redacted version of this letter is being filed electronically pursuant to Section 1.1206 of the Commission's Rules and Protective Orders in this proceeding. Should you have any questions, please contact the undersigned.

Sincerely,

Ellen Stutzman
Director of Research & Public Policy
WGAW

Michael Forscey
Counsel