

REDACTED – FOR PUBLIC INSPECTION

July 17, 2012

FILED/ACCEPTED

VIA ECFS AND HAND DELIVERY

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

JUL 17 2012
Federal Communications Commission
Office of the Secretary

Re: *Application of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket No. 12-175*

Dear Ms. Dortch:

T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) hereby file the attached Joint Opposition. The Joint Opposition contains Highly Confidential Information, submitted by Verizon Wireless, which is subject to the Second Protective Order (DA 12-1129) in the above-referenced proceeding.

Pursuant to the terms of the Second Protective Order, two copies of the Redacted version of the attached Joint Opposition are being filed with the Office of the Secretary. The Redacted version of the Joint Opposition is also being filed electronically through the Commission’s Electronic Comment Filing System. In addition, one copy of the Highly Confidential version of the Joint Opposition is being delivered to the Office of the Secretary and two copies are being delivered to Mr. John Spencer of the Wireless Telecommunications Bureau’s Broadband Division.

Should any questions arise, please do not hesitate to contact the undersigned.

Sincerely,

/s/

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Cellco Partnership d/b/a Verizon Wireless and)
T-Mobile License LLC Seek Consent to the)
Assignment of Advanced Wireless Service)
Licenses)

WT Docket No. 12-175

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JOINT OPPOSITION

Federal Communications Commission
Office of the Secretary

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JOINT OPPOSITION

T-Mobile and Verizon Wireless (the “Applicants”) have clearly demonstrated the pro-competitive and public interest benefits of the subject transaction. The few parties that filed comments do not contest these benefits – indeed, they generally agree that further rationalizing each Applicant’s spectrum holdings will benefit consumers – but they nonetheless raise a variety of objections and propose certain conditions on the transaction. None of their objections has merit, and most of them are not even germane to this transaction. For these reasons, none of the proposed conditions is warranted. Accordingly, the Commission should promptly and unconditionally grant the applications.

INTRODUCTION AND SUMMARY

As a threshold matter, the record demonstrates that the spectrum exchange will produce efficiencies, enable T-Mobile to compete more vigorously in the emerging Long Term Evolution (“LTE”) marketplace, and help Verizon Wireless meet its spectrum needs in the markets where it is acquiring spectrum from T-Mobile. As one commenter concluded, “[t]he proposed AWS spectrum swap between Verizon and T-Mobile is a perfect example of carriers turning to the secondary market to fill each carrier’s unique needs.”^{1/} Commenters’ complaints essentially boil

^{1/} Comments of the Association for Competitive Technology, WT Docket No. 12-175, at 5 (filed July 10, 2012) (“ACT Comments”).

down to the argument that in their view the transaction is not perfect, but none of the alleged shortcomings they raise provides any grounds for denying or conditioning the deal.

First, commenters argue that this transaction does not address all of their claims regarding the separate transactions in which Verizon Wireless proposes to acquire spectrum from SpectrumCo, LLC and Cox TMI Wireless, LLC (the “SpectrumCo-Cox transactions”).^{2/} Those claims are not germane to this transaction and do not belong in this proceeding. The commenters themselves recognize this, having also raised these same claims in response to the special pleading cycle established by the Commission for parties to comment on the impact of the subject applications on those transactions.^{3/}

Second, commenters who acknowledge the competitive and public interest benefits of the spectrum exchange nonetheless seek to condition approval of the transfer on Verizon Wireless’ further divestiture of spectrum in certain markets. Verizon Wireless demonstrated in the Public Interest Statement and further shows below its need for additional spectrum in the markets where it is acquiring AWS spectrum from T-Mobile – a showing that debunks calls for divestiture in the markets where Verizon Wireless is acquiring spectrum from T-Mobile. While T-Mobile previously raised concerns about the proposed aggregation of AWS spectrum by Verizon

^{2/} See *Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, Public Notice, 27 FCC Rcd 360 (2012); see also *Petition to Deny of Free Press*, WT Docket No. 12-175, at 4 (filed July 10, 2012) (“Free Press Petition”); *Petition to Deny of Rural Telecommunications Group, Inc.*, WT Docket No. 12-175, at 3 (filed July 10, 2012) (“RTG Petition”); *Information Age Economics Petition to Condition or Otherwise Deny*, WT Docket Nos. 12-4, 12-175 & 12-69, at 5-6 (filed July 10, 2012) (“IAE Petition”).

^{3/} 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*, Public Notice, WT Docket No. 12-4, DA 12-998 (rel. June 26, 2012).

Wireless in the SpectrumCo-Cox transactions, these concerns have been addressed by the transfers proposed in this proceeding.^{4/}

Finally, a few commenters claim that the Commission should impose conditions on this transaction.^{5/} These demands are particularly inapt in light of commenters' own admission of the competitive benefits that will accrue from the transaction. In the absence of any persuasive showing of transaction-specific harm here, such conditions are wholly unwarranted. The Commission itself has stated that it will not "single Applicants out for special treatment unwarranted by any likely adverse consequences of the transaction."^{6/} As a result, commenters' requests for conditions regarding roaming, accelerated build-out, AWS device-related requirements, Verizon Wireless' sale of its Lower 700 MHz licenses, or other conditions unrelated to this transaction should be summarily dismissed.

The Commission should deny the petitions and unconditionally grant the applications.

I. THE TRANSACTION IS IN THE PUBLIC INTEREST BECAUSE IT WILL BENEFIT CONSUMERS.

The T-Mobile/Verizon Wireless transaction clearly serves the public interest.^{7/} The net transfer of AWS spectrum to T-Mobile in 125 Cellular Market Areas ("CMAs") will allow T-Mobile to deploy LTE in additional markets and provide added spectrum to support LTE service in others; one-for-one AWS spectrum swaps in 76 CMAs will increase the amount of contiguous spectrum held by each of the Applicants, allowing each to use its spectrum more

^{4/} See Letter from Thomas J. Sugrue, Senior Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (filed June 25, 2012).

^{5/} See IAE Petition at 8-10; Free Press Petition at 5-6; Comments of Public Knowledge, WT Docket No. 12-175, at 1-3 (filed July 10, 2012) ("Public Knowledge Comments").

^{6/} *General Motors Corp. and the News Corp. Limited*, Memorandum Opinion and Order, 19 FCC Rcd 473, ¶ 131 (2004) ("GMC/News Corp. Order").

^{7/} Applicants note that any discussion below specific to the particular spectrum needs of either T-Mobile or Verizon Wireless is based on each company's individualized assessment of its unique circumstances.

efficiently to meet its customers’ needs; and the net transfer of AWS spectrum to Verizon Wireless in 17 CMAs will provide needed additional spectrum resources in western markets where its spectrum holdings are limited. Even commenters that express some reservations about this deal acknowledge that the combination of this spectrum exchange and other pending transactions “offers significant potential benefits for US customers and for sustaining the effectiveness of competition in the US wireless market.”^{8/}

A. Commenters Agree That the Net Transfer of Spectrum to T-Mobile Will Promote Competition.

T-Mobile observes that the transaction will provide it with critical AWS spectrum to enhance both network capacity and performance to meet the growing demand for 4G mobile broadband.^{9/} This is good for consumers because it will enable T-Mobile to compete even more vigorously with other wireless carriers, and in particular will give T-Mobile a stronger platform on which to offer a robust and competitive LTE service in the short- to medium term.

Commenters agree. As Free Press notes, the transaction involves “the procompetitive acquisition of AWS spectrum by T-Mobile.”^{10/} Public Knowledge likewise observes that the transaction will facilitate T-Mobile’s “path to LTE.”^{11/}

^{8/} IAE Petition at 1.

^{9/} See Public Knowledge Comments at 1 (the transaction “provid[es] T-Mobile with the ‘path to LTE’ that just a few months ago was said to be impossible”); ACT Comments at 1 (the transaction will further the “[c]ontinued build-out of wireless capacity [that] is crucial for continued growth of wireless internet and data services as well as overall economic growth”). Public Knowledge has previously recognized that T-Mobile “has acted as both a price leader and an innovation leader despite its smaller size and spectrum constraints.” Petition to Deny of Public Knowledge and Future of Music Coalition, WT Docket No. 11-65, at 35-36 (filed May 31, 2011); see also *id.* at 7 (“T-Mobile is not merely a direct competitor but a ‘maverick’ whose behavior forces pro-consumer responses from larger firms despite T-Mobiles [sic] relatively modest market share.”). Free Press has also noted that “T-Mobile has taken on the role of a maverick competitor, using product innovation to differentiate and compete.” Petition to Deny of Free Press, WT Docket No. 11-65, at 33 (filed May 31, 2011).

^{10/} Free Press Petition at 3.

^{11/} Public Knowledge Comments at 1.

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Specifically, the transaction will improve T-Mobile's spectrum position in 15 of the top 25 markets in the United States by providing an opportunity for T-Mobile to acquire additional AWS spectrum and to realign its existing spectrum holdings. T-Mobile will gain spectrum in markets covering 60 million people – including in major markets like Philadelphia, PA; Washington, D.C.; Detroit, MI; Minneapolis, MN; Seattle, WA; Cleveland and Columbus, OH; Milwaukee, WI; Charlotte, Raleigh-Durham and Greensboro, NC; Memphis, TN; and Rochester, NY.

This new AWS spectrum is particularly well-suited to complement T-Mobile's existing AWS spectrum holdings on which it will deploy LTE services, and it can therefore be promptly deployed in conjunction with the company's previously announced \$4 Billion 4G network evolution plan, in which it is modernizing 37,000 cell sites, launching 4G HSPA+ in the 1900 MHz band, and deploying LTE in 2013.

The Rural Telecommunications Group is flatly wrong when it asserts that the transaction will do "precious little" to benefit competition or that it will not materially benefit T-Mobile.^{12/} To the contrary, with the additional AWS spectrum being acquired in this transaction, T-Mobile will be able to enhance its 4G network evolution plan by deploying LTE in a number of additional markets or by deploying a more robust 10x10 MHz LTE service where it would have been limited to a 5x5 MHz deployment given T-Mobile's existing spectrum holdings.

In any event, the commercial wisdom of this transaction is a business decision that provides no ground for denying or delaying approval of the requested transfers. As the

^{12/} See RTG Petition at 7-9. RTG's assessment differs markedly from that of RCA – The Competitive Carriers Association ("RCA"). RCA recently noted that the transaction "addresses concerns with respect to T-Mobile's access to useable, 4G-ready spectrum." Letter from Michael Lazarus and Andrew Morentz, Telecommunications Law Professionals PLLC, Counsel to RCA – The Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 1 (filed July 11, 2012). As a member of RCA, T-Mobile works closely with rural and other smaller carriers on matters of mutual interest.

Commission has acknowledged, “it is not the Commission’s role to substitute its business judgment for that of the applicants,”^{13/} and it has therefore declined to substitute one party’s business decision for another.^{14/} Moreover, section 310(d) of the Communications Act requires the Commission to limit its public interest analysis of an assignment application to the merits of that particular transaction.^{15/} The Commission may not make comparative analyses about whether some hypothetical transaction might better serve the public interest.^{16/}

B. The Record Reflects the Efficiency Benefits of the Intra-Market Swaps.

As Free Press recognizes, this transaction “involves efficiency-enhancing spectrum swaps.”^{17/} Swaps of spectrum blocks to achieve greater contiguity will also occur in most of the markets where the assignments of spectrum will result in a net increase in the spectrum held by one of the Applicants. Operating on contiguous blocks of spectrum and aligning spectrum blocks in adjacent markets allow wireless providers to use frequencies for data transmissions otherwise dedicated to guard bands, provide efficiency benefits and access to greater capacity,

^{13/} *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, ¶ 19 (2010);

^{14/} *See Cablevision of Boston, Inc., A-R Cable Services, Inc., A-R Cable Partners, and Cablevision of Framingham, Inc., Petition for Determination Pursuant to Section 76.1503(c)(2)(v)(B) of the Commission’s Rules*, Memorandum Opinion and Order, 13 FCC Rcd 18854 (CCB 1998) (“[W]e will not substitute Cablevision’s business judgement [sic] for that of RCN-BECoCom regarding carriage of Cablevision’s programming.”).

^{15/} *See* 47 U.S.C. § 310(d) (prohibiting the FCC from considering, in any license transfer or assignment proceeding, “whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee”).

^{16/} *See Application of Citadel Communications Company, Ltd. (Assignor) and ACT III Broadcasting of Buffalo, Inc. (Assignee) for Assignment of License of Television Station WUTV (TV), Buffalo, New York*, Memorandum Opinion and Order, 5 FCC Rcd 3842, ¶ 16 (1990) (finding that the FCC “cannot consider whether some other proposal might comparatively better serve the public interest”); *see also Applications of MMM Holdings, Inc. for Transfer of Control of LIN Broadcasting Corp.*, Memorandum Opinion and Order, 4 FCC Rcd 6838, ¶ 8 (CCB & MMB 1989), *quoting* S. Rep. No. 82-44, at 8 (1st Sess. 1951) (finding the Commission’s practice of comparative analysis to be “an unwise invasion by a Government agency into private business practice”).

^{17/} Free Press Petition at 3.

and will enable each Applicant to take better advantage of improved wideband technologies. No commenter challenges these efficiency benefits.

C. Verizon Wireless Will Obtain Additional Spectrum to Help Meet Customers' Growing Demand for LTE.

Verizon Wireless observes that rapidly increasing demand for mobile broadband will overtake the company's 4G LTE network capacity absent additional spectrum, even taking into account the numerous capacity-enhancing techniques that Verizon Wireless intends to make.^{18/} The company's need for more spectrum is particularly acute across the western United States, where its existing spectrum holdings are limited and it currently holds virtually no AWS spectrum to supplement the 700 MHz Upper C Block spectrum initially deployed for LTE.^{19/} The SpectrumCo-Cox transactions will provide 20 MHz of AWS spectrum in the 17 markets where Verizon Wireless will receive a net transfer of AWS spectrum from T-Mobile, but it will not be enough to address customer demand. In those 17 markets, all located in the West, T-Mobile will provide Verizon Wireless 10 MHz of additional AWS spectrum in 14 markets and 20 MHz in three others to help address that demand. Upon completion of all pending transactions, Verizon Wireless' total spectrum holdings in the 17 markets will be 99 MHz or less in 14 of the markets and between 102 and 109 MHz in the remaining three markets.

Free Press rehashes claims from the SpectrumCo-Cox proceeding that Verizon Wireless should be denied this opportunity to secure additional spectrum needed to meet customers' rapidly growing demand for LTE. These recycled arguments are no more credible here; once

^{18/} See Applications of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC for Consent to Assign Licenses, WT Docket No. 12-175, File No. 0005272585, Ex. 1 at 6 (filed June 25, 2012) ("Verizon Wireless/T-Mobile Applications"), *citing* Supplemental Declaration of William H. Stone, Verizon, ¶¶ 3, 10 ("Stone Suppl. Decl."), attached as Ex. 2 to Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4 (filed Mar. 2, 2012).

^{19/} The only western U.S. market where Verizon Wireless holds AWS spectrum today is Santa Fe, where it holds 10 MHz covering only 274,000 pops.

again, they omit any supporting engineering analysis or data.^{20/} They also fail to provide any documentation to support claims of competitive harm in the 17 markets at issue. And RTG's claims asserting that Verizon Wireless will hold too much spectrum beyond these 17 markets are totally irrelevant to this proceeding.^{21/}

In support of Verizon Wireless' response to these claims, attached is a declaration from Bill Stone, Verizon's Executive Director – Technology, which further demonstrates that claims challenging the company's need for additional spectrum in the 17 markets are meritless.^{22/} The data Mr. Stone includes and discusses in his declaration show that in the markets where Verizon Wireless is acquiring additional spectrum from T-Mobile, the 700 MHz C Block, combined with the AWS spectrum the company will acquire in the SpectrumCo-Cox transactions, is not sufficient to meet customers' increasing 4G demands by the end of 2015 and in some cases even earlier.^{23/} Verizon Wireless faces increasing and significant capacity constraints in both large and small western markets where it is acquiring spectrum from T-Mobile, regardless of the density of cell sites or the populations being served. Mr. Stone explains that in the markets where Verizon Wireless would acquire additional AWS spectrum from T-Mobile, additional spectrum is needed to help meet that growing demand.^{24/} Put another way, absent acquisition and deployment of *additional* spectrum capacity, many Verizon Wireless customers are likely to

^{20/} Free Press cites to a June 4th *ex parte* it submitted in WT Docket 12-4, *see* Free Press Petition at 5 & n.3, but that *ex parte* has been thoroughly rebutted and there is no need to revisit those issues again here. *See* Letter from Adam D. Krinsky, Attorney for Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (filed Jun. 20, 2012).

^{21/} *See* RTG Petition at 4-7. RTG also includes an inaccurate chart that wrongfully depicts Verizon Wireless' spectrum position in various large markets (*e.g.*, off by an excess of approximately 40 MHz in Los Angeles). *See id.* at 5. RTG attributes this information to the Yankee Group, but does not provide a source or date for the information. For this reason as well, the chart should be disregarded.

^{22/} Declaration of William H. Stone, Verizon, attached as Ex. 1.

^{23/} *See id.* at ¶¶ 5-9 (discussing rapid growth in demand).

^{24/} *See id.* at ¶ 5.

experience substantial declines in the speed and/or the quality of their data service in all of these markets. This point is made graphically in the maps accompanying Mr. Stone's declaration.^{25/} The maps demonstrate, in each of the markets at issue for which there is historical LTE traffic data on which to base a forecast, that customers will be adversely affected absent additional spectrum to meet the growing needs. In these markets, the T-Mobile spectrum, while in most cases only 10 MHz, is needed to help preserve high quality service to customers.^{26/} Mr. Stone also explains that Verizon Wireless continues to invest in techniques to increase spectral efficiency, including small cells, cell splitting, femto cells, Wi-Fi offloading, and refarming of PCS spectrum that is currently being used to support its 3G EVDO network. However, he notes that these techniques simply cannot keep up with the extraordinary growth of demand for broadband.^{27/}

The data further confirm that the Commission should reject Free Press' factually unsupported claim that Verizon Wireless must divest spectrum in the 17 markets.^{28/}

II. THE COMMISSION MUST EVALUATE THIS TRANSACTION ON ITS OWN MERITS.

Despite recognizing the benefits of the transaction, several commenters argue that because this transaction is contingent on the Commission's approval of the Verizon Wireless/SpectrumCo-Cox deal, to which they object, this transaction should also not be

^{25/} See *id.* (providing maps illustrating spectrum constraints at year-end 2015).

^{26/} See *id.* at ¶ 5.

^{27/} See *id.* at ¶¶ 4, 8, 11.

^{28/} See Free Press Petition at 5-6. Free Press misstates Verizon Wireless' post-transaction spectrum position in Tacoma, WA (CMA 82). Free Press erroneously states that Verizon Wireless will receive 20 MHz of AWS spectrum from T-Mobile and 20 MHz from SpectrumCo-Cox for a total of 40 MHz, when in fact Verizon Wireless will only receive 10 MHz from T-Mobile for a total of 30 MHz. Compare Free Press Petition at 4 n.2 & Appendix with Verizon Wireless/T-Mobile Applications, Ex. 2 (Verizon Wireless Aggregation) at 5.

approved.^{29/} The Commission must reject claims regarding the SpectrumCo-Cox transactions in this proceeding. Plainly, the Applicants’ ability to consummate the transaction depends on the Commission’s approval of the Verizon Wireless/SpectrumCo-Cox deal; Verizon Wireless can only assign licenses now held by others after it becomes the holder of those authorizations. That contingency does not, however, create a vehicle to import the issues raised in the SpectrumCo-Cox deal into this proceeding.

The Communications Act requires the Commission to make individualized determinations on transfer and assignment applications. Section 309 of the Act clearly states that “the Commission shall determine, in the case of *each application* filed with it . . . whether the public interest, convenience, and necessity will be served by the granting of such application.”^{30/} The Wireless Telecommunications Bureau has made clear that “the Commission’s duty [is] to ascertain whether a *particular transfer* or assignment proposal is in the public interest, convenience, and necessity”^{31/} The Commission has provided the opportunity for parties to comment on the interrelation between the two transactions in the SpectrumCo-Cox proceeding. The parties have availed themselves of that opportunity and that is the appropriate forum for their resolution.

^{29/} See Free Press Petition at 4 (“[T]his transaction *cannot* be viewed in isolation. It is contingent upon Commission approval of Verizon’s massive and unnecessary acquisitions of AWS spectrum from SpectrumCo, Cox and Leap Wireless. Therefore, because those transactions, even when subsequently modified by this transaction, are not in the public interest, it logically follows that this contingent transaction is not in the public interest.”); Public Knowledge Comments at 2.

^{30/} 47 U.S.C. § 309(a) (emphasis added).

^{31/} *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A., and C-Call Corp.*, 10 FCC Rcd 3361, ¶ 19 (WTB 1995) (emphasis added); see also *Acquisition of Certain Assets of Cimco Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, 25 FCC Rcd 3401, n.16 (2010) (citations omitted) (noting that “[a]ny potential public interest harms or benefits related to [a separate transaction involving one of the parties] may be raised in the course of the Commission review of that transaction”).

Nor is there any merit to RTG’s assertion that the applications in this proceeding should be held “in abeyance pending the outcome of the [Verizon Wireless/SpectrumCo-Cox] transactions” because Verizon Wireless does not yet have the legal authority to assign forty-seven of the licenses at issue.^{32/} To the contrary, the Commission has routinely accepted and evaluated transfer and assignment applications that are contingent upon FCC approval of another transaction.^{33/} The contingent nature of the subject applications does not preclude their consideration by the Commission on their own merits.

III. OTHER ISSUES DO NOT ARISE FROM THIS TRANSACTION, ARE BEYOND THE SCOPE OF REVIEW, AND DO NOT JUSTIFY CONDITIONS.

The Commission should deny any requests to impose conditions on this transaction. As the Commission has repeatedly stated, while it is “empowered to impose conditions on the transfer of control of Commission licenses,” such conditions are designed “to mitigate the harms *the transaction* would likely create” and “are tailored to address the *specific harms* anticipated.”^{34/} The Commission “generally will not impose conditions to remedy pre-existing

^{32/} RTG Petition at 3.

^{33/} See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, etc.*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, ¶ 22 (2008) (“*Verizon/RCC Order*”); *ALLTEL Communications, Inc. and Cingular Wireless LLC Seek FCC Consent to Transfer Control of Licenses and Authorizations*, Public Notice, 21 FCC Rcd 7809, n.2 (2006); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶¶ 5, 11-12 (2006); *Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., Debtor-In-Possession, Assignors and Wilmington Trust Company or Hughes Electronics Corporation, Assignees; Applications of Wilmington Trust Company or Hughes Electronics Corporation, Assignors, and FCI 900, Inc., Assignee, for Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses*, Memorandum Opinion and Order, 15 FCC Rcd 790, ¶ 2 (WTB 2000).

^{34/} See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 252 (2004) (“*AT&T/Cingular Order*”) (emphasis added); see also *Applications of AT&T Inc. and Centennial Communications Corp.*, Memorandum Opinion and Order, 24 FCC Rcd 13915, ¶ 110 (2009) (“*AT&T/Centennial Order*”).

harms or harms that are unrelated to the transaction.”^{35/} Commenters’ claims here that the Commission should impose a variety of conditions on the spectrum exchange are not related to the transaction under review or simply lack merit. At most, they are “best left to broader industry-wide proceedings,”^{36/} but in no circumstance should they be adopted as conditions in this proceeding.

Data Roaming. Public Knowledge acknowledges that the proposed swaps are beneficial, but nonetheless asserts they “do not reduce the need for data roaming obligations.”^{37/} That assertion is groundless. There is no evidence of any transaction-specific harm that warrants a condition here. The Commission has routinely rejected requests for a data roaming condition on wireless transfers of control.^{38/} In those cases, the Commission found no transaction-specific reason to impose such a rule, holding instead that data roaming was more appropriately addressed on an industry-wide basis.^{39/} The same applies here.^{40/}

^{35/} *Verizon/RCC Order* ¶ 30; *see also AT&T/Cingular Order* ¶ 43; *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589, ¶ 79 (2011) (“*AT&T/Qualcomm Order*”).

^{36/} *GMC/News Corp. Order* ¶ 131.

^{37/} Public Knowledge Comments at 1, 3-4; *see id.* at 1-2 (arguing that the transaction’s approval should be conditioned on “a commitment by both Verizon and T-Mobile to offer reasonable data roaming to other carriers”).

^{38/} *See, e.g., Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 25 FCC Rcd 8704, ¶ 101 (2010) (“*AT&T/Verizon Order*”); *AT&T/Centennial Order*, ¶ 133 (2009); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, 23 FCC Rcd 17444, ¶¶ 179-80 (2008) (“*Verizon/ALLTEL Order*”).

^{39/} *See, e.g., AT&T/Verizon Order* ¶ 101; *AT&T/Centennial Order* ¶ 133; *Verizon/ALLTEL Order* ¶ 180. Nor is a data roaming condition warranted here because of the possibility that the rule will be overturned on appeal. The Commission has declined to impose duplicative obligations mirroring its rules on a transaction to account for judicial rejection of such rules, unless the conditions are necessary to protect against transaction-related harms. *See Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, ¶¶ 93-94 (2011) (justifying Comcast’s “voluntary commitment” to abide by net neutrality rules even if they are struck down by explaining that “Comcast’s acquisition . . . will increase [its] incentive to discriminate against unaffiliated content and distributors in its exercise of control over consumers’ broadband connections”). Neither commenter has presented any credible evidence that the transaction creates any special risk regarding the availability of data roaming.

Build-Out and Use-It-Or-Share-It Requirements. Build-out requirements that Public Knowledge requests are also unwarranted, because these license assignments create no transaction-specific harm warranting new build-out obligations.^{41/} Further, there is simply no evidence that the build out of the AWS spectrum that the Applicants are exchanging will be delayed. To the contrary, both T-Mobile and Verizon Wireless intend to put the spectrum to use promptly to meet the needs of their customers.

In addition, requiring the Applicants to build out the AWS spectrum that each is acquiring in this transaction on a different schedule from the remainder of its spectrum would create an unnatural patchwork of build-out geography that is inconsistent with consumer needs. Spectrum that for commercial reasons should be rolled out together would be subject to inconsistent build-out obligations. In markets where either Applicant already has spectrum and is acquiring more under this transaction, build-out obligations would apply to newly acquired spectrum but not currently held spectrum. If more aggressive build-out obligations were to be considered, the important issues that such additional obligations would create are more appropriately addressed in a rulemaking proceeding where a full record on these matters can be developed.

Similarly, this transaction does not uniquely create any harm that a “use-it-or-share-it” obligation would address.^{42/} The Commission, moreover, is already considering “use-it-or-

^{40/} Furthermore, the Commission’s adoption of a data roaming rule renders such a condition unnecessary and inappropriate for either party to this transaction. T-Mobile and Verizon Wireless maintain the positions they have taken previously with respect to roaming requirements in the context of rulemakings and other transactions.

^{41/} See Public Knowledge Comments at 4-6.

^{42/} See *id.* Generally, a use-it-or-share it obligation would likely involve the creation of a geolocation database, like that employed for TV band white spaces which would indicate where unused AWS spectrum is available for use by others.

share-it” proposals in the context of a pending proceeding.^{43/} Given the many complexities of such an approach, including how to address interference issues, it should be considered, if at all, in the context of a rulemaking where a full record can be developed.

AWS Device-Related Conditions. The Commission has recognized that interoperability issues are more appropriately addressed in a rulemaking than in a license assignment proceeding,⁴⁴ and commenters provide no transaction-specific evidence to warrant an AWS interoperability condition. Accordingly, there is no basis to impose an AWS interoperability mandate on future Verizon Wireless LTE devices.^{45/} Nor is there any basis to impose AWS handset exclusivity restrictions or otherwise mandate AWS device availability as a condition of this transaction.^{46/} The Commission has concluded that these non-transaction-specific issues are also better addressed in the context of industry-wide proceedings.^{47/}

Lower 700 MHz A/B Auction. Verizon Wireless’ previously announced public sale process of all of its Lower 700 MHz spectrum licenses is not part of this transaction, and thus there is no basis to impose conditions related to that sale here.^{48/} The Commission should allow the secondary market to rationalize disposition of this spectrum.^{49/}

^{43/} See *Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies*, Notice of Inquiry, 25 FCC Rcd 16632, ¶¶ 37-41 (2010); Comments of the Public Interest Spectrum Coalition, ET Docket No. 10-237, at 4, 22-23, 32-33 (filed Feb. 28, 2011).

^{44/} See *AT&T/Qualcomm Order* ¶ 71.

^{45/} See IAE Petition at 7; see also RTG Petition at 6-7.

^{46/} See IAE Petition at 7-8.

^{47/} See *AT&T/Qualcomm Order* ¶¶ 75, 79.

^{48/} See IAE Petition at 8-9; see also News Release, Verizon Wireless to Conduct Spectrum License Sale (Apr. 18, 2012), <http://news.verizonwireless.com/news/2012/04/pr2012-04-18f.html>.

^{49/} Cf. ACT Comments at 5 (supporting Verizon Wireless’ proposed public sale of its Lower 700 MHz licenses and calling on the Commission to avoid decisions that could “distort the secondary market” and discourage participation from companies that could put spectrum to use).

Verizon Wireless Billing Practices/Qualifications. The Commission should deny a petition which seeks to challenge Verizon Wireless’ basic qualifications due to a matter relating to Verizon Wireless billing practices.^{50/} As a threshold matter, the petitioner lacks standing because it fails to show that denying the Applications would prevent or redress any “harm” it alleges.^{51/} Moreover, the Enforcement Bureau thoroughly investigated this same matter and, in adopting a Consent Decree, “conclude[d] . . . [that it] raises no substantial or material questions of fact as to whether Verizon Wireless possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.”^{52/} That conclusion became final more than a year and a half ago,^{53/} and there is no basis to revisit it here.

^{50/} Petition to Deny of Diogenes Telecommunications Project, WT Docket No. 12-175, at 5-7 (filed July 10, 2012).

^{51/} See, e.g., *Applications of AT&T Inc. and Deutsche Telecom AG*, Memorandum Opinion and Order, WT Docket No. 11-65, FCC 12-40, ¶ 8 (Apr. 17, 2012); *Application of Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, ¶ 7 (WTB 1995), citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 81 (1978).

^{52/} *Verizon Wireless, Data Usage Charges*, Order, 25 FCC Rcd 15105, ¶ 4 (EB 2010); see also *Verizon Wireless, Data Usage Charges*, Consent Decree, 25 FCC Rcd 15107 (EB 2010).

^{53/} See 47 C.F.R. §§ 1.106(f), 1.115(d), 1.117(a).

CONCLUSION

The public interest benefits of the applications are clear, and no commenter has presented any credible basis for delaying or conditioning their grant. The Commission should dismiss the petitions to deny and promptly and unconditionally grant the requested license assignments.

Respectfully submitted,

/s/

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REDACTED – FOR PUBLIC INSPECTION

EXHIBIT 1

DECLARATION OF WILLIAM H. STONE

1. I am Executive Director - Technology for Verizon, and in that capacity I am responsible for advanced technology planning for Verizon Wireless, including new technology assessments, development of network evolution plans, participation in industry standard groups, and spectrum planning. I have been directly involved in the planning and deployment of Verizon Wireless' current broadband services – EVDO Rev A and LTE – and the network infrastructure to support those services. In particular, I have been responsible for assessing the company's ongoing spectrum capacity needs since the formation of Verizon Wireless over a decade ago and identifying additional spectrum that can meet those needs both in the short term and over the longer term.

2. I submit this declaration in support of applications to the Federal Communications Commission in WT Docket No. 12-175 in which Verizon Wireless and T-Mobile License LLC seek approval to exchange Advanced Wireless Services (“AWS”) spectrum. The exchange has three aspects. In 76 Cellular Market Areas (“CMAs”), the parties will swap equal amounts of AWS spectrum, enabling each company to have more contiguous AWS spectrum. Operating on contiguous blocks of spectrum and aligning spectrum blocks in adjacent markets allow wireless providers to use frequencies for data transmissions otherwise dedicated to guard bands, providing efficiency benefits and access to greater capacity, and will enable each company to take better advantage of improved wideband technologies. The second aspect involves the net transfer of AWS spectrum to T-Mobile in 125 CMAs.

3. The remaining aspect of this AWS spectrum exchange involves the net transfer of spectrum from T-Mobile to Verizon Wireless in 17 western CMAs. In 14 of those markets,

Verizon Wireless will acquire 10 MHz of AWS spectrum as a result of this transaction; in three markets it will acquire 20 MHz. Some commenters claim that Verizon Wireless does not need the AWS spectrum it will acquire from T-Mobile in those 17 markets. Those claims are incorrect and ignore the need for Verizon Wireless to substantially expand its network capacity to cope with the extraordinary and well-documented growing demand for more capacity caused by customers' use of broadband services.

4. In my declarations submitted in support of the pending transactions among Verizon Wireless, SpectrumCo and Cox, I discussed in detail the rapid growth in subscriber demands for broadband services on wireless networks generally, and on Verizon Wireless' new 4G LTE network in particular.¹ I explained that, although LTE is the most spectrally efficient air interface technology today, that increased efficiency, even when combined with our continued substantial investment in other capacity enhancements, is not enough to meet the rapidly growing demand for LTE. Even though we launched LTE in December 2010, only 19 months ago, usage projections indicate that LTE traffic will surpass EVDO traffic in early 2013 and will be five times the peak traffic ever carried on our 3G EVDO network by year-end 2015. The impact of that growth compounds, resulting in more than a 20-fold increase in LTE data traffic from year-end 2011 to year-end 2015. Our most recent traffic projections not only confirm these trends but also indicate that our previous projections may understate the actual level of traffic on our LTE network by the end of 2015.

¹ Declaration of William H. Stone, Verizon, attached as Ex. 3 to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Dkt. No. 12-4, File No. 0004993617 (Dec. 16, 2011) ("Stone Declaration"), at ¶ 4-17; Supplemental Declaration of William H. Stone, Verizon, attached as Ex. 2 to Joint Opposition to Petitions to Deny and Comments, Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4 ("Stone Supplemental Declaration"), at ¶ 9-17.

5. The spectrum Verizon Wireless will acquire from T-Mobile in the spectrum exchange, although only 10 MHz in most of the 17 markets, is essential to helping the company respond to its customers' growing demand. In these 17 markets, Verizon Wireless holds no AWS spectrum today. We are deploying our LTE service initially on 700 MHz C Block spectrum. We intend to supplement the 700 MHz C Block and increase capacity to handle LTE traffic in these markets by deploying 20 MHz of AWS spectrum to be acquired from SpectrumCo and Cox pursuant to pending applications before the Commission. However, given the rapid increases in customers' use of LTE that we are seeing across the company's LTE service area, the 700 MHz C Block combined with that AWS spectrum is not sufficient to meet the demand on network capacity. We project that by the end of 2015, and in portions of these western U.S. markets even earlier, additional AWS spectrum is needed to help meet that growing demand. These capacity needs will occur across these markets, both small and large, and regardless of the density of cell sites or the populations being served. Put another way, absent acquisition and deployment of *additional* spectrum capacity beyond the AWS spectrum being acquired from SpectrumCo and Cox, many Verizon Wireless customers are likely to experience substantial declines in the speed and/or the quality of their data service in these markets. In these markets, the T-Mobile spectrum is needed to help preserve our high quality service to customers.

6. Our projections of these capacity constraints are derived using the Verizon Planning Instrument ("VPI"), the same methodology the company applied to demonstrate its need for additional AWS spectrum in numerous specific markets in the SpectrumCo-Cox proceeding. As I described previously, the VPI is a network planning tool used in regular business practice – using actual LTE traffic and forecasted growth – to enable network engineers to assess capacity

constraints on the Verizon Wireless network and to project the company's spectrum needs.² The only variation from the process used to prepare the data for my prior declaration is that the data I am providing for the markets to be acquired in the T-Mobile spectrum exchange are based on Verizon Wireless' LTE traffic data through April 30, 2012 and the most recent LTE traffic Forecast, dated May 23, 2012, rather than on the older Forecast dated September 23, 2011. (Both of these Forecasts were filed in the SpectrumCo-Cox proceeding record, and the May 23 Forecast is attached hereto.) The May 2012 projections, which incorporate an additional four months of actual customer use of LTE devices on the LTE network, shows that customers are projected to use our LTE network even more than we had predicted in the earlier projections.

7. The attached maps and summary are based on the VPI data. They project the degree of capacity constraints faced by each LTE cell site sector by the end of 2015 in 14 of the 17 markets where the company seeks to acquire additional spectrum from T-Mobile. (Maps are not included for the remaining markets because the company does not yet have sufficient actual LTE usage data due to the recent or pending launch of LTE in those markets, but we expect them to experience constraints by year-end 2015 similar to the other markets.) The maps show that in each of these markets, Verizon Wireless will not be able to fully meet its customers' growing demand for mobile broadband with its current spectrum holdings supplemented by the AWS spectrum it will acquire in the SpectrumCo-Cox transactions.

8. The color scheme for the maps for these western U.S. markets is the same as was used for the maps provided in the SpectrumCo-Cox proceeding, and relies on the same busy hour traffic methodology to depict various levels of capacity constraints by year-end 2015. In sectors that are colored red, many customers are likely to experience widespread and substantial

² Stone Supplemental Declaration at ¶¶ 19-23, 31.

degradation in the speed and quality of data services they use – even assuming all of the expected infrastructure and efficiency improvements through cell splitting, small cells, Advanced LTE techniques, and other enhancements between now and year-end 2015. If the increase in capacity due to those enhancements does not occur as anticipated, many more sectors, shown as yellow, could also be spectrum constrained. The maps project spectrum constraints across all of these markets regardless of geographic size, population density, or cell site distribution.

9. The market summary chart following the attached maps is drawn from the same VPI data. It demonstrates, in a different format, that a substantial number of cell sectors across these markets are projected to become constrained, adversely impacting service to customers, even with the SpectrumCo-Cox AWS spectrum to be deployed and the capacity-enhancing improvements Verizon Wireless intends to make to the network. The percentage of sectors projected to be either red or yellow ranges from [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]. As shown in the “%RED” column, by year-end 2015 more than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] of the cell sectors in every CMA, and more than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] in three CMAs, will be significantly constrained.

10. As I explained previously, Verizon Wireless has historically underestimated traffic growth and thus capacity demand.³ Our most recent traffic projections prepared in May 2012 are no exception; they show a materially higher level of LTE usage by 2015 than the previous traffic projection that had been completed in December 2011. Given the continued pace of growth in customers’ use of LTE, even the most recent spectrum capacity projections

³ Stone Declaration at ¶ 10.