REDACTED FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FILED/ACCEPTED
JUL 24 2012
Federal Communications Commission
Office of the Secretary

In re Applications of	)	
Cellco Partnership d/b/a Verizon Wireless and T-Mobile License LLC	)	WT Docket No. 12-175
Cellco Partnership d/b/a Verizon Wireless and SpectrumCo. LLA and Cox TMI Wireless, LLC For Consent to Assign Wireless Licenses	)	WT Docket No. 12-4

REPLY TO OPPOSITION AND COMMENTS

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July 24, 2012

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I. Introduction

Verizon seeks through this *Application* to acquire from T-Mobile USA, additional AWS spectrum in 17 Western U.S. Cellular Market Areas (CMAs). The Commission must evaluate whether these transfers are in the public interest, an analysis that cannot take place in a vacuum, but with a keen awareness of the Commission's own concerns about the growing spectrum gap and its impact on the future of competition in the wireless market. If the Commission agrees with the wireless industry's claims of a looming spectrum shortage, it cannot blindly approve the transfer of spectrum to an already spectrum-rich carrier who has failed to demonstrate that these scarce resources will be utilized fully, to the public's benefit.

Verizon's Opposition and its selected divestiture of AWS to T-Mobile in certain markets, when viewed along side its claims in the SpectrumCo proceeding, demonstrates that its case for additional spectrum is vastly overstated. Specifically, Verizon has failed to demonstrate its need for *40 MHz* of AWS spectrum in *any* market. Indeed, as we discuss below, Verizon is voluntarily reducing its post-transaction AWS holdings to 30 MHz in **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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at least 40 MHz. If spectrum is the lifeblood of the wireless industry, and if the Commission's policies are formulated through a lens of a looming spectrum crisis, then it has a duty to closely explore the public interest benefits that would arise through reducing Verizon's post-transaction holdings to 30 MHz of AWS spectrum.

II. Applicants Have Failed to Make the Case That Verizon Needs The Full Amount of AWS Spectrum it is Acquiring From T-Mobile

In previous filings submitted in the SpectrumCo proceeding, we have shown how

the evidence clearly demonstrates that Verizon does not need additional AWS spectrum in the markets where it currently holds at least 20 MHz of AWS spectrum.[1] This is the case for 494 of the 734 Cellular Market Areas (CMAs) that encompass more than two-thirds of the U.S. population. In these markets, Verizon currently possesses enough spectrum to launch the world's first 20 x 20 MHz LTE-Advanced network. The evidence clearly shows that this massive lead in capacity, combined with a minimal effort on Verizon's part to utilize non-spectrum acquisition methods to further enhance capacity on an as-needed basis in the few locations that might require it (assuming Verizon's aggressive utilization forecasts are accurate) is more than enough to ensure that Verizon's needs are met for the foreseeable future.

The above concerns aside, Verizon absolutely has not shown that allowing it to control a full *40 MHz* of AWS spectrum in any market is in the public interest. Verizon's case for the need for 40 MHz (and not 20 or 30) is built entirely upon its submission of a few maps purporting to show future congestion, maps based on the black box known as the "Verizon Planning Instrument" (VPI). While we have serious objections to the

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[1] *See e.g.* Letter from S. Derek Turner, Research Director, Free Press to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4 (June 4, 2012). Verizon claims that it has "thoroughly rebutted" the contents of this letter, and thus "there is no need to revisit those issues again." This is, charitably put, wishful thinking on Verizon's part. Verizon's June 20th response did little to undermine the damning case made not by Free Press, but by *Verizon's own documents* from 2010 through early 2012. Verizon's attempt at a rebuttal is essentially a pleading for the Commission to ignore the plain meaning of Verizon's past internal communications on the subject of its actual needs for additional spectrum, particularly in markets where it already possesses 20 MHz of AWS. Verizon's rebuttal letter ignores many of the points made in the June 4th Free Press letter. Further, our letter represents a small fraction of the internal Verizon communications that clearly show Verizon's true need for additional AWS licenses. Our letter served to highlight *some* of these needles we found in the haystack, but Commission staff has access to all of this material, and it is well aware of Verizon's true thinking in the months preceding and following the announcement of the SpectrumCo/Cox deals.

Commission utilizing Verizon's opaque, self-interested doomsday predictions to make public interest determinations, Verizon's own actions indicate that *it doesn't take its own predictions seriously*, or is at least willing to ignore them when it deems it expedient to do so.

By its actions in its agreement with T-Mobile, Verizon confirms that it is overstating its need for 40 or more MHz of AWS spectrum in any given market. Through this deal, Verizon will voluntarily reduce its post-transaction holdings to 30 MHz in the 24 markets where otherwise would have held 40 or more MHz. This move alone indicates that Verizon's true need for AWS is likely below 40 MHz total in any given market.

But Verizon is voluntarily reducing its total AWS holdings to 30 MHz **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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more than 40 MHz of this spectrum. In its *Reply to Opposition* in the SpectrumCo proceeding, Verizon submitted maps of 18 markets where it claimed the VPI showed that its existing spectrum holdings would not be able to "meet demand by the end of 2015..."[2] We now see that Verizon is voluntarily reducing its post-transaction AWS holdings to 30 MHz **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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

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[2] *See* Joint Opposition to Petitions to Deny and Comments, Verizon Wireless et. al., WT Docket No. 12-4, March 2, 2012, at Exhibit 2.

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

The implication of Verizon's actions not matching the evidence it offered in its pleadings is clear. Either Verizon is badly overstating its need for 40 MHz of AWS in any given market, or the carrier is making the implicit argument that the public interest benefits of the transfer of spectrum to a maverick competitive carrier like T-Mobile outweigh the potential harms that might occur if Verizon's self-serving capacity predictions come true. We believe that the former is true, based on Verizon's willingness to reduce its holdings to 30 MHz of AWS in two dozen markets, and based on the voluminous internal Verizon communications that demonstrate the carrier has all along badly overstated its need for more than 20 MHz of AWS in *any* market.

In five markets[4] Verizon is requesting approval to disaggregate 10 x 10 MHz AWS blocks to 5 x 5 MHz blocks in order to make it possible for it to transfer a net total of 10 MHz, not 20 MHz, to T-Mobile (in these markets Verizon currently holds or will acquire AWS B-block or F-Block licenses, which are 10 x 10 MHz paired blocks, in contrast to the 5 x 5 MHz paired AWS C, D, and E-blocks). If Verizon is willing to disaggregate certain 20 MHz blocks into 10 MHz blocks, in markets as large as Philadelphia, this suggests that the Commission should look closely at Verizon's true need for 40 MHz of AWS in *any* of the 428 CMAs where it seeks to control that amount

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[4] CMA-4 (Philadelphia, PA), CMA-36 (Memphis, TN-AR-MS), CMA-63 (Springfield-Chicopee-Holyoke, MA), CMA-134 (Atlantic City, NJ), and CMA-314 (Alabama 8 – Lee).

of spectrum.[5] If the Commission is inclined to grant Verizon control of more than 20 MHz of AWS spectrum in those markets, then disaggregating the licenses and requiring divestiture of 10 MHz of AWS spectrum would better serve the public interest than granting Verizon control of the full 40 MHz. For the purposes of its transaction with T-Mobile, we urge the Commission to, *at a minimum*, require Verizon to disaggregate (if necessary) and divest 10 MHz of AWS spectrum in CMA-39 (Salt Lake City-Ogden, UT), CMA-77 (Tucson, AZ), and CMA-97 (Bakersfield, CA). These are the three markets where T-Mobile is transferring a net-positive amount of AWS spectrum to Verizon, a transfer which will result in Verizon controlling 40 MHz of AWS in these markets.[6]

III. Conclusion

Verizon's case for excess spectrum aggregation is built entirely upon a black box model, one that Verizon through its deal with T-Mobile has clearly shown to be a self-serving tool that it apparently doesn't even take seriously. Verizon has simply offered no evidence that the public interest will be served by granting it control of more than 30 MHz in any market. If the Commission is serious about improving wireless competition

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[5] As Applicants note, in our *Petition* we erroneously stated that T-Mobile would transfer 20 MHz to Verizon in CMA-82 (Tacoma, WA). The actual amount is 10 MHz, which brings the total number of markets where Verizon's post-transaction AWS holdings will be 40 MHz to 428, not 429 as we stated in our earlier filing.

[6] In the SpectrumCo/Cox proceeding we have previously urged the Commission to, at a minimum, require Verizon divest spectrum in any market where it will control more than 30 MHz of AWS. *See* Comments of Free Press, WT Docket No. 12-4, July 10, 2012. This transaction with T-Mobile is apparently predicated on approval of those transfers between Verizon and SpectrumCo/Cox/Leap. If the Commission fails to reduce Verizon's holdings in those markets below 40 MHz of AWS in order to make the bulk of *this* deal possible, we would urge the Commission to require Verizon divest spectrum in all of the markets involved in the T-Mobile transaction where Verizon's AWS holdings will exceed 30 MHz, regardless of whether Verizon is receiving a net gain in spectrum.

in the long-term, then it must address the problems of excess spectrum aggregation that this and the SpectrumCo/Cox transactions will produce.

Respectfully submitted,

_____/s/_____

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