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July 31, 2012

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: 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, WT Docket No. 12-4

Dear Ms. Dortch:

RCN Telecom Services, LLC ("RCN"), through its undersigned counsel, hereby expresses its concern that the commercial agreements entered into among Verizon Wireless and the SpectrumCo cable companies (*i.e.*, Comcast, Time Warner Cable, and Bright House Networks) and Cox TMI Wireless (collectively, the "CableCos"), which are part of the spectrum transfer application now before the Commission, are not in the public interest, as presently constituted.¹ RCN believes that the joint sales and marketing agreements and the joint product research and development agreement will cause harm in several communications services markets, including the markets for wireline voice, wireline broadband Internet access, and wireline video services.² Accordingly, RCN requests that if it approves the spectrum transfer, the Commission impose the relief described in Section VI, below, to ensure that those negative effects are avoided.

- Beijing
- Boston
- Frankfurt
- Hartford
- Hong Kong
- London
- Los Angeles
- New York
- Orange County
- San Francisco
- Santa Monica
- Silicon Valley
- Tokyo
- Washington

¹ As explained in further detail in Sections IV and V, below, the Commission must review the referenced agreements in the context of its overall review of the Verizon Wireless, SpectrumCo, and Cox Wireless request for the assignment of certain wireless spectrum licenses, pursuant to 47 U.S.C. §§ 309(d) and 310(d) and the Commission's rules in the instant docket.

² RCN takes no position herein regarding the competitive impact of the proposed spectrum transfer from SpectrumCo and Cox TMI Wireless to Verizon Wireless, viewed in isolation from the commercial agreements.

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I. Summary

RCN maintains that the joint sales and marketing and joint product research and development agreements between Verizon Wireless and the CableCos, in particular, Comcast and Time Warner Cable, will cause harm to competition in the markets for voice, high-speed Internet access (wireless and wireline) and wireline video programming services in the six regions served by RCN. Specifically, the agreements will unlawfully enhance Comcast's, Time Warner Cable's, and Verizon Wireless's already dominant market positions and will facilitate coordinated action among those companies that will harm competition in Boston, Philadelphia, the Washington DC Metropolitan Area, New York City, Chicago and the Pennsylvania Lehigh Valley, among other areas. Accordingly, RCN requests that if the Commission authorizes the transfer of the wireless licenses from SpectrumCo to Verizon Wireless, it impose the conditions on the joint sales and marketing and joint product research and development agreement among Verizon Wireless and the CableCos that are recommended herein.

II. Overview of RCN

RCN is a robust competitor and the only cable over-builder that competes in several major U.S. geographic markets directly with cable companies and Verizon FiOS/DSL in three product markets (*i.e.*, wireline voice, wireline broadband Internet access, and wireline video programming). RCN provides these services in Boston, Philadelphia, and the Washington DC metropolitan area in competition with Comcast and Verizon FiOS/DSL and in competition with Time Warner Cable and Verizon FiOS/DSL in portions of New York City. RCN also provides these services in Chicago in competition with Comcast and AT&T's U-verse/DSL and in the Pennsylvania Lehigh Valley in competition with Verizon FiOS/DSL and Service Electric Company. In these RCN markets, the incumbent cable company and the incumbent local exchange carrier, combined, dominate the three product lines in which RCN competes. RCN also competes with Comcast and Time Warner Cable and others in providing backhaul to Verizon Wireless and other wireless carriers from their cell sites to their switches.

Like other cable companies, RCN does not currently offer wireless telephone or wireless broadband services. Additionally, RCN does not have resale agreements with any wireless provider and no wireless provider resells RCN's services.

III. Anticompetitive Effects of the Verizon/SpectrumCo/Cox Agreements

The parties to the joint sales and marketing and joint product research and development agreements at issue are RCN's principal market competitors. These agreements entail

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providing Comcast and Time Warner Cable with significant marketing and sales opportunities as well as with wireless products that are unavailable to RCN. Because selling wireless service in a bundle with some or all of the services offered by RCN and the CableCos would provide a very significant advantage to the CableCos, one that would enable them to further entrench and enhance their already dominant positions, RCN believes that the agreements will harm competition and the ability to compete of RCN and any other cable overbuilder. As more fully addressed below, RCN contends that the Commission must take appropriate actions to prevent or limit the identified harms.

Joint Sales and Marketing Agreements Restrain Competition

The joint sales and marketing agreements between Verizon Wireless and Comcast and between Verizon Wireless and Time Warner Cable combine, over long periods of time, the marketing, sales, and product research and development of the nation's largest wireless service provider, which is dominant in five of RCN's six markets, with the largest provider of high-speed wireline Internet access and wireline video programming services, which is also dominant in five of RCN's six markets (*i.e.*, Boston, Philadelphia, the Washington DC metropolitan area, New York City, and Chicago). Furthermore, in four of these markets (Boston, Philadelphia, the Washington DC metropolitan area, and New York City), Verizon Wireless is controlled by the second largest provider in those regions of wireline video programming and high-speed wireline Internet access -- Verizon Communications, Inc., which holds a majority interest in Verizon Wireless. In addition, all of these markets are highly concentrated and have enormous barriers to entry (in the form of large capital costs to install cable and scarcity of spectrum needed for entry as a wireless competitor), so that alliances among the strongest competitors pose an unusually great threat to competition.

Verizon Wireless and the CableCos located in RCN's territories each already has a significant marketing presence. None of these entities is in need of assistance from its competitors in marketing its core products. Nonetheless, Verizon Wireless and the CableCos will partner to sell in each others' stores, use their direct marketing channels to market each others' products, jointly advertise, jointly use direct mail, jointly market on the Internet, make use of each others' sales teams and call centers, jointly provide sales incentives, and cooperate in countless other ways to capture market share from those not party to their agreements. Many of these tactics have already been rolled out. In short, the combination of the marketing and sales channels of Verizon Wireless and the CableCos, which are already dominant competitors, to bundle video and wired high-speed Internet services with a wireless service is likely to overwhelm the smaller competitors in the market.

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This concern is not speculative. Documents produced by the Applicants reflect that Verizon Wireless has committed to Comcast, for example, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] That represents approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] as many subscribers as RCN has in total. Verizon Wireless also committed to Comcast [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] Since Comcast's footprint covers [BEGIN RCN HIGHLY CONFIDENTIAL] [REDACTED] [END RCN HIGHLY CONFIDENTIAL] of RCN's subscribers in the four metropolitan areas where Comcast is the incumbent cable provider (Boston, Philadelphia, the Washington DC Metropolitan Area and Chicago) and [BEGIN RCN HIGHLY CONFIDENTIAL] [REDACTED] [END RCN HIGHLY CONFIDENTIAL] of RCN's subscribers in RCN's overall footprint, Verizon Wireless's commitment to Comcast will have a [BEGIN RCN HIGHLY CONFIDENTIAL] [REDACTED] [END RCN HIGHLY CONFIDENTIAL] impact on RCN and other competitors in those regions.

Furthermore, despite RCN's requests, Verizon Wireless has refused to market RCN's services. This refusal is hardly surprising, given that under the joint sales and marketing agreements Verizon Wireless is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

³ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]

⁴ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]

⁵ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]

⁶ [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]

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RCN is further concerned that Comcast will deny RCN access to programming content. For example, NBC/Universal programming could be deployed exclusively over Verizon Wireless devices. As such content would be unavailable to RCN, as well as any wireless provider other than Verizon Wireless, Comcast would be distributing its content in a discriminatory fashion as well as leveraging its ownership of content to exert control into the wireless and wireline video programming markets. Such actions would unfairly disadvantage RCN, which would have had access to that programming had it been made available through other means.

These exclusivity and other restrictions under the joint sales and marketing agreements have an impact not only on RCN, but also on other wireline service providers that are similarly prohibited or restrained in the services they can obtain from Verizon Wireless and the CableCos. RCN contends that such restraints are unreasonable, anticompetitive, and Applicants have failed to show any pro-competitive effects, let alone any pro-competitive effects sufficient to justify their harms. Accordingly, the joint sales and marketing agreements are not in the public interest and should be modified to address those issues, should the Commission approve the spectrum transfer.

Agreements Facilitate the Exchange of Competitively Sensitive Information

The joint sales and marketing agreements also permit the exchange or disclosure of competitively sensitive information that will facilitate explicit or tacit collusion between Verizon Wireless, Comcast, and Time Warner. In their *Joint Opposition*, Verizon Wireless and the CableCos assert that Verizon Telecom “will receive no information or data from the MSOs concerning the implementation of these agreements.”⁷ But that is only half of the equation. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] At a minimum, Verizon Wireless, as an agent for Comcast and Time Warner Cable, would presumably receive pricing and promotional information about those companies’ high-speed Internet access in advance of their public disclosure. Such information would afford Verizon Wireless an opportunity to act in an anticompetitive manner in advance of when it might otherwise

⁷ *Joint Opposition*, Exhibit 6, p.1.

⁸ Joint Operating Entity Agreement, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL]

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be able. This advance notice could harm the competitive landscape for high-speed Internet access, as Verizon Wireless, Comcast, and Time Warner Cable could coordinate their offerings in a manner detrimental to competition and consumers.

The statement of Verizon Wireless and the CableCos that “there is no plausible basis on which to conclude that the [joint sales and marketing and JOE agreements] will facilitate collusion between or among any competing businesses”⁹ is incorrect on its face. First, Verizon Wireless and the CableCos increasingly compete with one another in the provision of broadband service. As wireless broadband services are provided at higher and higher speeds, these services provide a competitive alternative to wireline broadband services for a significant number of consumers.

Second, the CableCos and Verizon Telecom (the Verizon Communications, Inc. subsidiary and affiliate of Verizon Wireless that operates Verizon FiOS and its DSL services) compete head-to-head in the provision of wired voice, wired high-speed Internet access, and wireline video programming services. As the Antitrust Division of the U.S. Department of Justice (“DOJ”) has previously stated, “competitors” include both actual and potential competitors. At the time when they entered into the agreements to transfer their spectrum licenses to Verizon Wireless and enter into the joint sales and marketing and joint product marketing and joint product research and development agreements, the CableCos were potential providers of wireless service in competition with Verizon Wireless. RCN therefore asserts that the joint sales and marketing and joint product research and development agreements among the CableCos and Verizon Wireless are among competing businesses.

The DOJ has long recognized that “[a]greements that facilitate collusion sometimes involve the exchange or disclosure of information”¹⁰ and that the “sharing of information related to a market in which the collaboration operates or in which the participants are actual or potential competitors may increase the likelihood of collusion on ... competitively sensitive variables.”¹¹ In fact, all other things being equal, “the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern” than the sharing of less competitively sensitive information and that “the sharing of information on current operations and future business plans is more likely to raise concerns than the sharing of historical information.”¹² As they are currently

⁹ *Joint Opposition*, Exhibit 6, p.2.

¹⁰ Federal Trade Commission and U.S. Department of Justice, *Antitrust Guidelines for Collaborations Among Competitors*, § 3.31(b) (2000).

¹¹ *Id.*

¹² *Id.*

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structured, the joint sales and marketing agreements permit that type of information exchange. Accordingly, RCN urges the Commission to conclude that because of their potentially collusive effects, the commercial agreements are not in the public interest unless appropriate conditions are attached, as outlined herein.

Joint Operating Entity Agreement Harms Competition

The joint product research and development agreement (*i.e.*, the JOE) will allow the nation's largest wireless provider and the leading wireline broadband Internet access and wireline video programming providers to team up over a long period of years and develop integrated wireless/wireline products, with disastrous competitive effects. First, the JOE harms competition by facilitating explicit or tacit collusion between among its members. Second, unless tailored to retain competitive conditions, the JOE will permit Verizon Wireless and the CableCos to restrict RCN and other wireline video programming competitors from obtaining content and the intellectual property licenses necessary to build upon the functionality and features of the JOE technology. Integration of wireline and wireless technology may be a useful technological development, but when it is implemented by a group of dominant carriers on an exclusive basis, rather than being open to all upon payment of a reasonable license fee, its anticompetitive effects can be enormous.

Third, similar to the effects of the joint sales and marketing agreements, the JOE allows the CableCos and Verizon Wireless to exchange or disclose extremely competitively sensitive information as part of the collective research and development process along with the marketing efforts associated with those products.¹³ Such an exchange of information will harm competition as the companies could act in a coordinated manner to the detriment of customers and competitors.

Denial of Access to Wireless Services Harms Competition

As bundles containing wireless service become an increasingly important product offering, a larger and larger percentage of sales of video, high-speed Internet access, and wired telephone service will be from bundled packages made through the wireless company's sales channels. As a result of the joint sales and marketing agreements, the CableCos will be able to add a wireless component to their service offerings. This will

¹³ For a more detailed exposition of what and how information is shared under the JOE, review a report regarding the anticompetitive effects of the JOE attached to Public Knowledge's July 11 comments. Comments of Public Knowledge, WT Docket 12-4, "The Anticompetitive Effects of the Verizon/SpectrumCo Agreements," p. 12-14 (July 11, 2012).

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enable RCN's chief competitors to offer a multitude of bundles including even a "quad play" -- wireline voice, wireline high-speed Internet access, wireless voice and high-speed Internet access and wireline video programming. Such combinations will make it virtually impossible for RCN to sell to the vast number of Verizon Wireless customers that are in RCN's markets, as these customers would have both FiOS and the cable offering available in bundles of two, three or four services from which RCN and other competitors are excluded from participation. As RCN lacks such a wireless partner (despite its best efforts), RCN will be unable to provide a competitive service. Therefore, by entering into such arrangements, Verizon, Comcast, and Time Warner Cable can harm their common competitor in their regions -- RCN. The Commission must remedy that situation.

Additionally, the anticompetitive effects of the CableCos' and Verizon's commercial agreements affect not only the video, high-speed Internet access, and voice services but also other, related markets. For example, Verizon Wireless will **[BEGIN HIGHLY CONFIDENTIAL]**

[REDACTED] **[END HIGHLY**

CONFIDENTIAL] The competitive impact of such an agreement is that the market for backhaul services is harmed as competition between service providers is diminished. As a result, RCN and other backhaul providers will be placed at a competitive disadvantage in selling backhaul to Verizon Wireless. Moreover, because there are economies of scale in serving two or more carriers at a single cell site, if those backhaul providers cannot obtain the backhaul business of Verizon Wireless, they may be less able to compete for the backhaul business of other wireless carriers located on the same tower. This not only suppresses competition among backhaul providers, but also suppresses competition among wireless providers.

Furthermore, the major cellular service providers have turned to WiFi as a means to alleviate congestion on their networks. The CableCos will have an incentive to allow Verizon to use their WiFi networks, but deny or impede access to those networks by other cellular providers. RCN contends that the CableCos and Verizon Wireless will use the JOE to create integrated wireless/wireline products that will not function on RCN's network or in conjunction with wireless providers other than Verizon Wireless.

¹⁴ See, e.g., **[BEGIN HIGHLY CONFIDENTIAL]** **[REDACTED]** **[END HIGHLY CONFIDENTIAL]**

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IV. The Commission Has the Authority to Review Joint Agreements

The Commission has broad discretion to determine the scope of information required to complete its public interest analysis and the manner in which that review will be conducted.¹⁵ Section 4(j) of the Act empowers the Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."¹⁶ Additionally, section 309(a) states that the Commission may decide whether the public interest standard has been satisfied based on its review of the application and consideration "of such other matters as the Commission may officially notice."¹⁷ Thus the Act does not restrict the Commission's authority to reviewing only what an *applicant* deems relevant to the transfer of wireless assets.¹⁸ That choice is instead given to the Commission.

With respect to deciding what material is relevant, "[t]he Commission's authority to use its administrative discretion in determining which documents and materials are necessary to, or otherwise most relevant and probative to, its public interest analysis is well-established."¹⁹ As the D.C. Circuit has stated, "[t]he Commission is fully capable of determining which documents are relevant to its decision-making."²⁰ In the instant case, the Commission has already correctly concluded that in evaluating the spectrum transfers, it must consider the joint sales and marketing agreements: "*In order for the Commission*

¹⁵ Section 310(d) of the Act provides that no wireless license "shall be transferred, assigned or disposed of in any manner ... except ... upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

¹⁶ 47 U.S.C. § 154 (j).

¹⁷ 47 U.S.C. § 309 (a). The provisions of section 309 address not only an initial license application but also pertain to the review of license transfers pursuant to section 310 of the Act ("Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this title for the permit or license in question ..."). Section 309 governs applications to which section 308 applies.

¹⁸ The only issue the Commission is expressly prohibited from considering is "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." 47 U.S.C. § 310 (d).

¹⁹ *In the Matter of Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Order, 17 FCC Rcd 22633, 22636 (2002) ("Comcast/AT&T Order"), *aff'd* *Consumer Federation of America v. FCC*, 348 F.3d 1009 (D.C. Cir. 2003).

²⁰ *SBC Communications Inc. v. FCC*, 56 F.3d 1484, 1496 (D.C. Cir. 1995).

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*to complete its review of the applications and consider the necessary public interest findings under section 310(d) of the Communications Act, we require that [Verizon, Comcast, and Time Warner] provide ... a revised copy of [their joint sales and marketing agreements].*²¹

Given that "[i]t is incumbent upon the Commission to include in the public record documents or evidence of decisional significance,"²² the Commission's request that the Verizon and the CableCos produce their joint product research and development agreements also clearly indicates that such agreements are considered by the Commission to be relevant to its public interest analysis and should be considered in its review of the spectrum license transfer request. As the Commission is authorized to examine those matters it deems necessary to conduct its public interest analysis, the protestations of Verizon Wireless and the CableCos that the joint sales and marketing and joint research and product development agreements are outside of the Commission's authority should be given no weight.

Consideration of the commercial agreements would not be unique: the Commission has on numerous occasions requested and examined similar agreements and arrangements. For example, in Frontier's acquisition of Verizon wireline assets, the Commission inquired specifically about Frontier's co-marketing agreements with Dish Network Satellite TV.²³ In AT&T's acquisition of Centennial's wireless assets, the Commission requested information from America Movil regarding its relationship with AT&T and required the production of the management services agreement between subsidiaries of AT&T and America Movil.²⁴ In the Comcast/NBC-Universal transaction, the FCC required production of Comcast and NBC-Universal video programming and carriage agreements.²⁵ Even in the transfer of control of Time Warner Cable Inc. from Time

²¹ Letter to Michael Samsok, Cellco Partnership, from Rick Kaplan, Chief, Wireless Telecommunications Bureau, WT Docket No. 12-4, p.1 (March 8, 2012) (emphasis added, citations omitted).

²² *Comcast/AT&T Order*, 17 FCC Rcd at 22636, ¶ 7.

²³ Letter to Kenneth F. Mason, Frontier Communications Corporation, and Karen Zacharia, Verizon, from Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 09-95, Attachment, p.7 (Feb. 12, 2010).

²⁴ Letter to William R. Drexel, AT&T Inc., and Jonathan V. Cohen, Wilkinson Barker Knauer, from James D. Schlichting, Acting Chief, Wireless Telecommunications Bureau, General Information Request, pp. 8-9 (April 30, 2009).

²⁵ Letter to Bryan N. Tramont, Wilkinson Barker Knauer, from William T. Lake, Chief, Media Bureau, MB Docket No. 10-56, Information and Discovery Request for NBC Universal, Inc., pp.7-8 (May 21, 2010).

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Warner Inc., the Commission requested details about ancillary agreements between the parties and the production of programming carriage contracts.²⁶ Thus, even a casual examination of prior transactions demonstrates that such agreements are often reviewed by the Commission. The Commission's authority to review the joint sales and marketing and joint research and product development agreements is therefore clear.

V. The Commission's Authority Under the Public Interest Standard Is Broad and Requires That the Commission Review the Joint Agreements

The Commission's public interest analysis "necessarily encompasses the 'broad aims of the Communications Act.'"²⁷ As the Commission explained in its recent *AT&T-Qualcomm* decision, these broad aims include, among other things, "a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest."²⁸

Verizon and the CableCos seek to constrain the scope of the Commission's review and contend that with respect to the joint sales and marketing and joint product research and development agreements, (a) the Commission has previously declined to review business agreements in the context of license assignments, and (b) the Commission should not review those agreements because the DOJ will do so.²⁹ Applicants are wrong as to both points.

Note as an initial matter that the spectrum transfer, the joint sales and marketing and JOE agreements are all parts of a single transaction between Verizon Wireless and the CableCos. As David Cohen, Executive Vice President of Comcast, responded when asked about the relationship between the commercial agreements and the spectrum transfer: "The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements."³⁰ Furthermore, beyond that admission, the agreements themselves demonstrate that the joint sales and

²⁶ Letter to Marlene H. Dortch, Secretary, FCC, from Arthur H. Harding, counsel for Time Warner Cable, Inc., MD Docket No. 08-120, WC Docket No. 08-157, pp. 1-2 (Oct. 9, 2008).

²⁷ *Application of AT&T Inc. and Qualcomm Inc. for Consent to Assign Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 11-18, FCC 11-188, ¶ 24 (2011) (emphasis in original) ("*AT&T-Qualcomm Order*").

²⁸ *AT&T-Qualcomm Order*, at ¶ 24.

²⁹ *Joint Opposition*, pp. 70-75.

³⁰ Eliza Krigman, "Comcast Executive Defends Verizon-SpectrumCo Deal," POLITICO PRO (Mar. 8, 2012).

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marketing and JOE agreements are not separate from the spectrum transfer agreement.³¹ Accordingly, the Commission must examine the effects of all of the agreements collectively as a single transaction.

As discussed above, the Commission has examined ancillary agreements that go beyond the beyond merely the spectrum transaction in the context of license assignments. Furthermore, the Commission has already requested the production of the joint sales and marketing and joint product research and development agreements in order to complete its public interest evaluation,³² so there can be little debate that Commission finds the joint agreements relevant to its review.

Furthermore, the Commission's public interest evaluation is broad in nature; it reviews, among other things, the competitive effects of a proposed transaction.³³ In fact, "the Commission's review of the competitive effects of a transaction under the public interest standard is broader" than the competitive review conducted by DOJ.³⁴ The DOJ looks at the impact the transaction has on competition and whether competition is harmed. The Commission, on the other hand, is required to determine whether the proposed transaction supports the public interest including, but not limited to, the competitive impact of the proposed license transfer. Because the Commission's mandate is broader than the DOJ's, the Commission cannot justifiably refrain from examining the joint agreements simply because the DOJ will be examining them for narrower purposes.

³¹ For a more detailed exposition of interwoven nature of the agreements among Verizon Wireless and the CableCos, review a report regarding the anticompetitive effects of those agreements attached to Public Knowledge's July 11 comments. Comments of Public Knowledge, WT Docket 12-4, "The Anticompetitive Effects of the Verizon/SpectrumCo Agreements," p. 9-11 (July 11, 2012).

³² Letter to Michael Samscock, Cellco Partnership, from Rick Kaplan, Chief, Wireless Telecommunications Bureau, WT Docket No. 12-4, p.1 (March 8, 2012).

³³ *AT&T-Qualcomm Order*, at ¶¶ 24-25.

³⁴ *AT&T-Qualcomm Order*, at ¶ 25. See *Applications Filed by Global Crossing Limited and Level 3 Communications, Inc. For Consent to Transfer Control*, Memorandum Opinion and Order and Declaratory Ruling, 26 FCC Rcd 14056, 14058, ¶ 3 (2011); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17461-62, ¶ 28 (2008).

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VI. Requested Relief

For the reasons stated above, the joint sales and marketing and joint product research and development agreements render the transaction, when viewed as a whole, anti-competitive and not in the public interest. RCN believes that the following conditions would mitigate the anti-competitive aspects of the agreements and render the transaction as a whole to be in the public interest. Thus, RCN requests that to address the public interest harms arising from the CableCos and Verizon Wireless' agreements identified above, the Commission condition the transfer of the wireless licenses to Verizon Wireless on the modification of the joint sales and marketing and joint product research and development agreements in accordance with the following remedies designed to mitigate those harms:

- Require that competitive providers of wired video, broadband, and voice be afforded access to the Verizon Wireless services, marketing, and products in its markets on terms equally favorable as those that have been granted to the CableCos.
- Provide similar access to the customer lists of the deal participants as permitted by the CableCos' agreements with Verizon Wireless be provided to competitive providers of video, wired broadband, and wired voice.
- Allow for cross-marketing programs that enable the services of requesting parties to be sold through Verizon Wireless stores, websites, direct marketing, call centers, and any other sales and marketing methods on equally favorable terms as Verizon Wireless provides to the CableCos.
- Require that the CableCos and Verizon Wireless set aside funds to assist over-builders with marketing support.
- Require that the CableCos set aside commercial advertising slots for over-builders to use for marketing efforts under just and reasonable terms and conditions.

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- Require that the CableCos and Verizon Wireless provide to competitive providers licenses on reasonable terms for the products and services developed through the JOE.

Respectfully submitted,

/s/
Eric J. Branfin
Frank G. Lamancusa

Counsel for RCN Telecom Services, LLC.

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