

REDACTED – FOR PUBLIC INSPECTION

August 1, 2012

FILED/ACCEPTED

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AUG - 1 2012

Federal Communications Commission  
Office of the Secretary

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

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

Dear Ms. Dortch:

In prior submissions in this proceeding, DIRECTV, LLC has expressed concerns related to the Joint Marketing Agreements between Verizon and its cable MSO partners (Comcast, Time Warner Cable, Bright House, and Cox).<sup>1</sup> The Applicants have also entered into an agreement that establishes the Joint Operating Entity (“JOE”), a joint venture formed for the purpose of developing technology to integrate wireline and wireless products and services. As discussed below, because technology developed by the JOE will knit together the nation’s largest 4G wireless network with the nation’s largest incumbent cable networks, it could easily set *de facto* standards for video and other content-related applications. Accordingly, DIRECTV proposes that any grant in this proceeding be conditioned upon a requirement that such technology be made available to competitors on fair and reasonable terms.

Like most organizational documents, the agreement establishing the JOE is designed to set up the organization of the joint venture and assign rights and responsibilities to its participants. It is not designed to discuss objectives and strategies to be pursued and achieved any more than a merger agreement would be. Nonetheless, the JOE Agreement’s terms reflect the intent behind its formation. For example, **[BEGIN HIGHLY CONFIDENTIAL]**

<sup>2</sup> **[END HIGHLY**

<sup>1</sup> See, e.g., Comments of DIRECTV, LLC, WT Docket No. 12-4 (filed Feb. 21, 2012).

<sup>2</sup> **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL].**

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**CONFIDENTIAL]** That defined term is used throughout the document to delineate the scope of the parties' agreement. Thus, **[BEGIN HIGHLY CONFIDENTIAL]**

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**[END HIGHLY CONFIDENTIAL]**

Having established a mechanism for developing proprietary technology available only to the nation's largest 4G wireless network and its largest incumbent cable networks – each of which is also the increasingly dominant broadband provider in its respective markets – the Applicants have enabled the JOE to set *de facto* standards for the integration of video and other content-related applications on wireline and wireless systems. The JOE Agreement provides that, **[BEGIN HIGHLY CONFIDENTIAL]**

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**[END HIGHLY CONFIDENTIAL]** Without access to such technology, the quality of the content and applications of competing MVPDs carried over Verizon's network could be seriously degraded. Moreover, the patent portfolio amassed by the JOE could be used to tie up alternative technologies in lengthy legal battles, setting back innovation by years. Absent the Joint Marketing Agreements, there would be no reason for Verizon to favor its cable company partners over other MVPDs in these ways.

By pooling their resources through the JOE, the Applicants will also enhance their ability to act as gatekeepers for digital content. Although the information requests issued by the Commission to the Applicants did not seek information related to their plans with respect to video content, several documents primarily addressed to other topics include tantalizing references to the parties' strategies in this regard. Perhaps the best example is **[BEGIN HIGHLY CONFIDENTIAL]**

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<sup>3</sup> **[BEGIN HIGHLY CONFIDENTIAL]**  
**[END HIGHLY CONFIDENTIAL].**

<sup>4</sup> **[BEGIN HIGHLY CONFIDENTIAL]**  
**[END HIGHLY CONFIDENTIAL].**

<sup>5</sup> **[BEGIN HIGHLY CONFIDENTIAL]**  
**[END HIGHLY CONFIDENTIAL].**

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<sup>9</sup> **[END HIGHLY CONFIDENTIAL]** It is also worth noting that Verizon plainly sees mobile video as a significant strategic avenue for immediate development, and its ties to the cable companies as integral to that strategy. Indeed, according to Verizon’s Chief Executive Officer, Lowell McAdam,

This 4G leap really opens up all the things that we have been talking about for a long time and obviously the cornerstone is video . . . that is going to be the cornerstone of the changes and the future of the business. And that is why things like this relationship with SpectrumCo is important to us . . . <sup>10</sup>

Thus, there can be no doubt that the arrangements among the parties will affect the market for distribution of video programming unless tempered by the Commission.

To rectify the resulting competitive imbalance, DIRECTV proposed the following condition: Any technologies or protocols developed by through the JOE must be made available to all video providers on reasonable and non-discriminatory rates, terms, and conditions.

Sincerely yours,

William M. Wiltshire  
*Counsel for DIRECT, LLC*

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<sup>6</sup> **[BEGIN HIGHLY CONFIDENTIAL]**  
**[END HIGHLY CONFIDENTIAL].**

<sup>7</sup> **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL].**

<sup>8</sup> **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL].**

<sup>9</sup> **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL].**

<sup>10</sup> Edited Transcript: Verizon at Guggenheim Securities Symposium, at 3 (June 21, 2012) (*available at* [http://www22.verizon.com/idc/groups/public/documents/adacct/vz-guggen\\_6\\_21\\_12.pdf](http://www22.verizon.com/idc/groups/public/documents/adacct/vz-guggen_6_21_12.pdf)).

**WILTSHIRE & GRANNIS LLP**

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cc: John Spencer