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REDACTED – FOR PUBLIC INSEPCTION

August 1, 2012

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

Carly T. Didden
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Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Redacted - For Public Inspection
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:

On behalf of the Communications Workers of America ("CWA") and the International Brotherhood of Electrical Workers ("IBEW") and pursuant to the Second Protective Order adopted in the above-referenced docket, enclosed please find two corrected copies of the Public Inspection version in redacted form of CWA's and IBEW's Ex Parte filing, originally filed with the Commission on July 24, 2012. A corrected Highly Confidential version is also being filed under separate cover with the Secretary's office. Additionally, a corrected Highly Confidential version of this information is being filed separately with the Wireless Telecommunications Bureau.

Respectfully submitted,

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Communications
Workers of America
AFL-CIO, CLC

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Washington, D.C. 20001-2797
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Federal Communications Commission
Office of the Secretary

July 24, 2012

BY ELECTRONIC FILING

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:

On July 20, Debbie Goldman, Telecommunications Policy Director of the Communications Workers of America ("CWA") and Brendan Coffman, CWA Antitrust Counsel, met with Commission staff Rick Kaplan (OGC), Joel Rabinovitz (OGC), Peter Trachtenberg (WTB), Martha Heller (MB), Jim Schlichting (WTB), Ty Bream (MB), Christopher Sova (WCB), and Octavian Carare (WCB) to discuss the above-captioned proceeding.

Ms. Goldman and Mr. Coffman provided a hand-out to Commission staff, "The Verizon/SpectrumCo/Cox Transaction: A Communications Cartel in the Making" and a report previously filed with the Commission, "Verizon/Cable Deal: Slamming the Door on Our High Speed Future." We have attached a copy of the hand-out and the report to this letter. The information in the hand-out is based, in large part, on CWA analysis of the confidential and highly confidential documents provided by the Applicants in this proceeding. These documents provide overwhelming evidence to support the following conclusions:

1. The FCC must address all aspects of the proposed Transaction, which, taken together, pose significant public interest harm.

2. The cross-marketing agreements and Joint Operating Entity ("JOE") create a communications cartel with the market power to set prices, service levels, and determine the pace and direction of innovation.

3. The Transaction eliminates cross-platform competition, particularly in the

Verizon landline footprint. The Transaction will lead to FiOS decline and an end to FiOS expansion. This will result in the loss of approximately 72,000 jobs.

4. The Transaction makes it nearly impossible for the nation to achieve the National Broadband Plan's goal of 100 million households with broadband access at speeds of 50 Mbps downstream/20 Mbps upstream by 2015.[1]

5. The Transaction raises numerous antitrust concerns. The cross-marketing agreements restrain competition; **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**; and IP exclusivity ensures that no other companies will be able to compete in a quad play.

Necessary Conditions to Protect the Public Interest

CWA participants and Commission staff focused their discussion on CWA's proposed remedies to mitigate the public interest harm that would result from this transaction. As CWA has explained previously,[2] if the Commission decides to approve the transaction, it should only do so with the following conditions:

1. Prohibit cross-marketing arrangements in the Verizon landline footprint.

A prohibition against cross-marketing in the Verizon landline footprint will maintain the incentive for Verizon to develop and expand FiOS, consistent with the goals of the 1996 Telecommunications Act and Commission policy to encourage cross-platform competition. As CWA has conclusively demonstrated, absent this Transaction, Verizon would have the financial and competitive incentives to expand FiOS to many currently unserved areas within its landline footprint.[3] These unserved areas are not limited to rural areas. In fact, as CWA has demonstrated, it is in Verizon's economic interest to expand to many currently unserved urban areas on the East Coast, including Albany, Baltimore, Boston, Buffalo, and Syracuse.

[1] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan,* p. 9 ("As a milestone, by 2015, 100 million U.S. homes should have affordable access to actual download speeds of 50 Mbps and actual upload speeds of 20 Mbps.").

[2] *See* Communications Workers of America/International Brotherhood of Electrical Workers Reply Comments, In the Matter of 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, March 26, 2012, 2-14 ("CWA/IBEW Reply Comments"); CWA Comments, In the Matter of 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, July 10, 2012 ("CWA VZW/TMO Comments ").

[3] *See* CWA/IBEW Reply Comments, 2-14; CWA VZW/TMO Comments, 4-8 and Appendix B.

CWA emphasized that it is imperative that the prohibition on cross-marketing apply *throughout* the Verizon landline footprint for multiple reasons. First, Verizon competes today against Comcast, Time Warner, Cox, and Bright House Networks (the "MSOs") with its DSL broadband service in many of its non-FiOS landline footprint service areas.

Second, allowing cross-marketing in the Verizon footprint where Verizon has not yet deployed FiOS would serve as an additional disincentive to FiOS expansion. Although FiOS provides an attractive investment return in many currently non-FiOS areas, the combination of Verizon's cap-ex savings from *not* building FiOS plus the commission on the sale of an MSO bundle may produce an even higher return than a FiOS investment. In other words, collusion is cheaper than network investment.

Third, the cross-marketing agreements implicate price coordination between Verizon and the MSOs, thereby eliminating the consumer benefits of cross-platform price competition. Consumers need actual competition between the two platforms, not the false sense of competition that would result from Verizon nominally offering FiOS where VZW is marketing MSO services. There is an added level of concern stemming from the arms-length interactions that will be necessary to implement the cross-marketing agreements; once the competitors are already dealing this closely, the risk of overt collusion on price becomes even higher.

Finally, the restrictions from the JOE and the likelihood that VZW and the MSOs will create a new brand through the JOE means that Verizon will likely move away from FiOS and towards the bundled MSO/VZW quad play if given the opportunity. In summary, because the cross-marketing agreements change the corporate incentives to compete throughout the Verizon landline footprint, the prohibition on cross-marketing should apply *throughout* the Verizon incumbent local exchange service areas.

2. **Require meaningful commitments in the JOE that would allow any competitor access to intellectual property necessary to compete so long as they are willing to purchase licenses under reasonable and non-discriminatory terms.**

CWA reiterated its belief that the long-term aspirations of the JOE to **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**.

3. **Consistent with past transactions,[4] require Verizon to continue to offer FiOS broadband Internet service and expand in-region deployment to cover at least 95 percent of residential living units and households within the Verizon in-region territory, and ensure that a certain percentage of incremental deployment after the Transaction Closing will be to rural areas and low-income living units, with timetables, data reporting, and penalties for non-compliance.**

4. **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**

In summary, CWA emphasized that absent these conditions, the proposed Transaction, which represents a cartel-in-the-making, will result in reduced broadband and video competition, reduced investment in network deployment, job losses, and,

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[4] *See, AT&T and BellSouth Corporation Application for Transfer of Control,* Memorandum Opinion and Order, 22 FCC Rcd 5662, App. F (2007);); *In the Matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a/ CenturyLink for Consent to Transfer Control,* Memorandum Opinion and Order, WC Docket No. 10-110 (App. C), March 18, 2011 (rel); *In the Matter of Applications Filed by Frontier Corporation and Verizon Communications, Inc. for Transfer of Control,* Memorandum Opinion and Order, WC Docket No. 09-95 (App. C), May 21, 20120 (rel); *In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc.,* Memorandum Opinion and Order, WC Docket No. 08-238, (App. C), June 25, 2009 (rel).

with less competitive pressure on pricing and service quality, more expensive bundles of cable channels and costly, slower broadband service.

Sincerely,

Debbie Goldman

Debbie Goldman
Communications Workers of America

The Verizon/SpectrumCo/Cox Transaction: A Communications Cartel In the Making

Attachment A

The Verizon/SpectrumCo/Cox Transaction
A Communications Cartel in the Making

WT Docket No. 12-4

Communications Workers of America

July 20, 2012

Overview

1. FCC must address all aspects of Transaction which, taken together, pose significant public interest harm
2. Cross marketing agreements and JOE create communications cartel with market power to set prices, service levels, pace & direction of innovation
3. Transaction eliminates cross-platform competition. Loss of 72,000 jobs
   - Transaction spells FiOS decline and end to FiOS expansion. Absent Transaction, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]** FiOS profitability and expansion path
4. Transaction makes it nearly impossible to reach National Broadband Plan 2015 goal: 100 m HH with broadband access at 50/20 Mbps speeds
5. Antitrust Concerns are Numerous
   - Cross-marketing agreements restrain competition
   - **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**
   - **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]** ensures no other companies will be able to compete in quad play
6. Modest Remedies Would Curtail Anticompetitive Effects
   - Prohibit cross-marketing arrangements in the Verizon footprint
   - Require specific non-exclusivity commitments by the JOE members
   - Impose FiOS build-out requirements

Verizon Communications is a Party to this Deal

- [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted]
- [redacted]
- [redacted] [END HIGHLY CONFIDENTIAL INFORMATION]
- Verizon Communications owns 55% of VWZ
- Verizon Communications appoints 5 of 9 of VZW's Board of Directors, including the Chairman/CEO

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FiOS Profitability Sets Stage for Expansion

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Verizon Executives Extol FiOS Profitability

"FiOS is already about 60% of the consumer revenue in that portfolio...each and every quarter, we continue to increase the profitability of FiOS...we have some markets that are in excess of 50% penetrated from the first early days of when we started this. So I still think there is a very long runway for FiOS."

Verizon CFO Fran Shammo at Thomson Reuters Street Events, Edited Transcript, VZ – Verizon at JP Morgan TMT Teleconference, May 16, 2012

[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted] [END HIGHLY CONFIDENTIAL INFORMATION] Profitable FiOS Expansion Path for [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted] [END HIGHLY CONFIDENTIAL INFORMATION] of Unserved Customer Units

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FiOS Competition Makes a Difference
Verizon and Time Warner Triple Play Comparison

	Time Warner	Verizon FiOS	Verizon Price Difference
Top Tier	$199.99 200+ channels 50 Mbps "burst," but normal speed is less	$144.99 380+ channels, 4 premium 75/35 Mbps	- $55 or -38%
Middle Tier	$164.99 200+ channels 20 Mbps "burst," but normal speed is less	$104.99 290+ channels 50/25 Mbps	- $60 or 57%
Basic Tier	$89.99 200+ channels 10/1 Mbps	$94.99 210+ channels 15/5 Mbps	+$5 or 5%
Source: Time Warner website https://order.timewarnercable.com/OfferList.aspx and Verizon website http://www22.verizon.com/home/shop/shopping.html (Data for Albany NY)			

FiOS Competition Makes a Difference
Verizon and Comcast Triple Play Comparison

	Comcast	Verizon FiOS	Verizon Price Difference
Top Tier	$189.99 200+ channels, 5 premium 28/5 Mbps normal, with "burst" at 30/6 Mbps	$144.99 380+ channels, 4 premium 75/35 Mbps	- $40 or -28%
Middle Tier	$149.99 290+ channels 28/5 Mbps normal, with "burst" at 30/6 Mbps	$104.99 290+ channels 50/25 Mbps	- $45 or 43%
Basic Tier	$89.00 80+ channels 18/3 Mbps normal, with "burst" at 20/4 Mbps	$94.99 210+ channels 15/5 Mbps	+$5.99 or 6%
Source: Comcast website http:/www.comcast.com/Corporate/Learn/Bundles/bundles.html and Verizon website http://www22.verizon.com/home/shop/shopping.html (Data for Washington DC)			

CWA

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Verizon Communications is Exchanging FiOS Profits for this Deal

- Verizon/SpectrumCo Transaction: $3.6 billion
- Verizon values SpectrumCo spectrum at **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted]* **[END HIGHLY CONFIDENTIAL INFORMATION]**
- Verizon agrees to terms that eliminate its incentive to develop and market FiOS
- Verizon and cable partners will introduce and control quad play

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No FiOS Expansion = Loss of 72,000 Jobs

- **"As part of its public interest analysis, the Commission historically has considered employment-related issues such as job creation"** (AT&T/T-Mobile Order and Staff Analysis and Findings, WT Docket No. 11-65, para 259)
- The cross-marketing agreements eliminate Verizon's incentives to continue FiOS investment, leaving 30 percent of Verizon's landline footprint without FiOS
- Dr. Helene Jorgensen used an input-output study to estimate the jobs impact of an increase in Verizon's FiOS deployment
- Conclusion: FiOS expansion to 95 percent of the footprint creates 71,710 job-years (a single job in one year)
  - 18,754 direct jobs
  - 20,914 indirect jobs
  - 32,042 induced jobs
- Dr. Jorgenson also found that an increase in FiOS penetration of 1 percent/year results in 3.1 million more subscribers and an increase in 23,500 job years

Anti-Competitive Components of Transaction

- Agency and reseller agreements unreasonably restrain trade by setting prices, dividing markets, and disincentivizing competition
- **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** [redacted] **[END HIGHLY CONFIDENTIAL INFORMATION]**
- The Joint Operating Entity (JOE) gives its members the ability to control upstream and downstream markets
- The JOE creates a patent pool with classic anti-competitive features
- These restraints are not reasonably necessary to realize any efficiencies

Anti-Trust Concerns: Joint Marketing Agreements

- [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted]
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- Reseller agreements are best seen as a safety net for the transaction
  - [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [redacted]
  - [redacted] [END HIGHLY CONFIDENTIAL INFORMATION]
- There is no reasonable relationship between the cross-marketing agreements and the purpose of the JOE – the restraints of trade are not acceptable ancillary restraints, but rather an unrelated naked agreement to fix prices and restrict competition

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Antitrust Concerns:

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Additional Anti-Competitive Restrictions: Examples in Cross-Marketing Agreements

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