

Public Knowledge

EX PARTE OR LATE FILED

August 3, 2012

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

FILED/ACCEPTED

AUG - 3 2012

Federal Communications Commission
Office of the Secretary

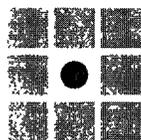
Re: WT Docket No. 12-4, Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses

Dear Ms. Dortch:

Pursuant to the Protective Orders in this proceeding, please find enclosed two copies of an ex parte filing of Public Knowledge in redacted form. The Highly Confidential version of this filing has been filed under separate cover as directed by the Protective Orders.

Respectfully submitted,

/s Jodie Griffin
Staff Attorney
PUBLIC KNOWLEDGE



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EX PARTE OR LATE FILED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

August 3, 2012
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Federal Communications Commission
Office of the Secretary

Re: WT Docket No. 12-4, Proposed Assignment of Licenses to Verizon Wireless from SpectrumCo and Cox TMI Wireless
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On August 2, 2012, Jodie Griffin, Staff Attorney, John Bergmayer, Senior Staff Attorney, and Carrie Ellen Sager, Legal Intern, of Public Knowledge (PK) met with Paul Murray, Holly Saurer, and David Goldman of Commissioner Rosenworcel's office.

PK discussed the competitive harms that would result from approval of the Verizon Wireless, SpectrumCo, and Cox applications, previously detailed in both our *Petition to Deny*¹ and *Reply Comments*.² The harms that would stem from the agency, reseller, and Joint Operating Entity (JOE) agreements necessarily mean that the applications cannot be in the public interest, and so the applications should only be approved upon agreement that the Applicants will rescind the commercial agreements. However, should the Commission permit the agreements to stand, certain conditions would be necessary to reduce the extent to which the agreements would harm the public interest. PK noted that these conditions must be flexible in order to protect against harmful conduct that the Commission cannot yet specifically anticipate, and must also prohibit specific behaviors that are harmful to the public interest.

At their core, the proposed agreements represent the creation of the communications cartel of the next ten to fifteen years. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] The fact that these companies maintain significant levels of control—40% of the wireless market, 40% of the residential broadband market, and 40% of the residential video market—means it will be a cartel with clout. Using the intellectual property they develop, the Applicants will be able to impose their own proprietary standards on the market—something Comcast has already shown itself to be particularly adept at.

¹ See *Petition to Deny of Public Knowledge et al.*, WT Docket No. 12-4 (Feb. 21, 2012).

² See *Reply Comments of Public Knowledge et al.*, WT Docket No. 12-4 (Mar. 26, 2012).



The Applicants themselves have effectively admitted that these agreements mark the end of their attempts to directly compete with each other. For example, on one conference call Time Warner Cable stated that instead of competing with Verizon, it will offer enriched offerings available only to those who have dual subscriptions to both Verizon and Time Warner Cable.³ The proposed agreements are the vessel for the Applicants' promises to work together instead of competing, to the detriment of consumers who benefit from robust competition in the marketplace.

PK reminds the Commission that competition from companies like Apple are no competitive counterweight to the Applicants' collusion, since this type of competitor would be no match for the increased market power that Verizon and Comcast will gain through these transactions. Companies that control only content or only transmission paths will still in some way be dependent upon the Applicants, who will jointly control both conduit and content, and who

[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] Comcast in particular, which owns NBCUniversal, several cable networks, and a vast wireline Internet access service infrastructure, would face no meaningful competition from companies like Apple.

Public Knowledge has previously explained in detail how the commercial agreements will stunt the development and use of technologies like WiFi offload, online video, and wireless backhaul.⁴ The following conditions could take steps to alleviate some of the competitive harms inflicted by the agreements, even if they do not entirely solve the problems raised by the deals.

I. REASONABLE AND NONDISCRIMINATORY LICENSING OF THE JOE'S TECHNOLOGY

If the JOE Agreement is allowed to stand, the JOE Members must not be allowed to anticompetitively leverage the JOE's patents and other intellectual property against competitors. Particularly considering the market share of the JOE's Members, the technology that results from

³ See Steve Donohue, *How will Time Warner Cable and Verizon Wireless innovate?* FIERCECABLE (Apr. 26, 2012), <http://www.fiercecable.com/story/how-will-time-warner-cable-and-verizon-wireless-innovate/2012-04-26>.

⁴ See Comments of Public Knowledge, WT Docket No. 12-4 (July 10, 2012), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017090909>; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (June 22, 2012), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017090909>; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (June 19, 2012), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017039460>; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (May 18, 2012), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017036172>; Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (Apr. 30, 2012), *available at* <http://apps.fcc.gov/ecfs/comment/view?id=6017033654>; .



the JOE's operations will likely become a *de facto* standard in an area of increasing importance in the next generation of communications infrastructure: seamlessly integrating wireline and wireless services. It is crucial that the Applicants are prevented from leveraging this technology to shut out competitors or would-be competitors that are outside of the JOE's club.

Accordingly, PK urged the Commission to impose conditions that would diminish the anticompetitive effects of the JOE's control of must-have patents and other intellectual property. These terms should apply with regard to all prospective licensees, and should apply to all patents owned or controlled by the JOE. The JOE should also be prohibited from receiving exclusive licenses to any patents unless it has the right to sublicense those technologies on reasonable and nondiscriminatory (RAND) terms to third parties. The JOE must make these licenses available for any of its existing patents, and the JOE would be directly responsible for ensuring the administration of licenses on RAND terms to licensees.

A RAND condition would not deprive the JOE and its Members of the legitimate fruits of their labors. The JOE would still receive reasonable payment for licenses to use its technology. The RAND condition would simply ensure that the JOE's technology is not used as a bottleneck to thwart competition in the market.

a. Reasonable Licensing Terms

Any condition that requires licensing on RAND terms must include a clear definition as to what the standard requires. In order to ensure that such a condition is effective, the Commission should specify what is necessary for compliance by incorporating a well-understood and existing definition for what meets the RAND standard. Existing definitions have been recently discussed by both the Department of Justice⁵ and the Federal Trade Commission⁶ and should be considered by the Commission when implementing any condition on licensing.

As part of the RAND condition, the JOE must be required to license its technology on terms that are not anticompetitive and would not be considered unlawful if imposed by the dominant firm in a market. The JOE must not charge more than the marginal value of its technology over the next-best alternative for the licensee, and the fees for the JOE's licenses must be relative to the proportion of the licensed technology to the total patented technology necessary for the

⁵ Regarding "Oversight of the Impact on Competition of Exclusion Orders to Enforce Standards-Essential Patents" before the S. Comm. on the Judiciary, 112th Cong. (2012) (statement of Joseph F. Wayland, Acting Assistant Attorney General, Antitrust Division), *available at* <http://www.justice.gov/atr/public/testimony/284982.pdf>.

⁶ Regarding "Oversight of the Impact on Competition of Exclusion Orders to Enforce Standards-Essential Patents" before the S. Comm. on the Judiciary, 112th Cong. (2012) (statement of Edith Ramirez, Commissioner, Federal Trade Commission), *available at* <http://www.judiciary.senate.gov/pdf/12-7-11RamirezTestimony.pdf>.

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licensee's service.⁷ The JOE may not raise its rates after its technology becomes a *de facto* standard, or after the market for that technology has grown to maturity and the licensees after effectively locked-in to that technology. The JOE may, however, include reasonable and customary terms relating to the operation and maintenance of the licensor/licensee relationship, including audits, choice of law, and dispute resolution.

The JOE must make a cash-only payment option available to prospective licensees. The JOE could not, for example, require licensees to **[BEGIN HIGHLY CONFIDENTIAL]**

⁸ **[END HIGHLY CONFIDENTIAL]** The JOE also could not “bundle” licenses for technology that the prospective licensee wants or needs with licenses for technology that the licensee does not want.

If the JOE fails to agree on licensing terms with a prospective licensee, the JOE should be prohibited from seeking injunctive relief in an action against the prospective licensee. Even when no licensing agreement can be reached, injunctive relief should be exclusively reserved for when monetary damages cannot compensate for the injury of continued use.⁹ This condition would not prohibit the JOE from seeking damages for infringement, but would simply require that the JOE be made whole monetarily after proving its case without being permitted to entirely stop the activities of the alleged infringer.

b. Nondiscriminatory Licensing Terms

The JOE must be required to treat all licensees similarly in order to maintain a level playing field between incumbent firms and new competing entrants. To ensure the effective operation of this condition, the JOE should be prohibited from entering any contract that ensures confidentiality over license provisions that pertain to the RAND conditions of the license.

⁷ See David Salant, *Formulas for Fair, Reasonable, and Non-Discriminatory Royalty Determination*, Munich Personal RePEc Archives (2007), <http://mpira.ub.uni-muenchen.de/8569/>.

⁸ **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

⁹ *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).



II. NON-EXCLUSIVITY IN THE COMMERCIAL AGREEMENTS

If the transaction between Verizon Wireless and SpectrumCo is approved, the transfer should only be permitted on the condition that the parties [BEGIN HIGHLY CONFIDENTIAL]

[END

HIGHLY CONFIDENTIAL] This will permit the parties to continue to enjoy the benefits of their partnerships while maintaining the parties' ability and incentive to partner with third parties to offer competing services to consumers.

- a. [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

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¹⁴ [BEGIN HIGHLY CONFIDENTIAL]

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¹⁵ [BEGIN HIGHLY CONFIDENTIAL]

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¹⁶ [BEGIN HIGHLY CONFIDENTIAL]
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¹⁷ [BEGIN HIGHLY CONFIDENTIAL]

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¹⁹ [BEGIN HIGHLY CONFIDENTIAL]

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b. [BEGIN HIGHLY CONFIDENTIAL]
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c. *The Need for a Non-Exclusivity Condition*

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To ensure that the parties and their potential future licensees have both the incentive and the ability to compete vigorously against each other, the parties' agreements should only be allowed to stand upon condition that they [BEGIN HIGHLY CONFIDENTIAL]
[END HIGHLY CONFIDENTIAL]

III. SPECTRUM CONDITIONS

As the Commission considers whether to approve the proposed spectrum transfers, PK believes it is important to consider the impact of the "spectrum gap" in addition to the spectrum crunch. As the gap between the amount of spectrum controlled by the top two providers and the amount controlled by others increases, meaningful competition becomes more difficult, limiting consumer choice and preventing new competitors from entering the market. PK concludes that

²³ [BEGIN HIGHLY CONFIDENTIAL]
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the transactions should be blocked, and strongly maintains that if they are not, conditions must be put in place to protect consumers and competition within the industries.

If the Commission approves the spectrum transfers, the Commission should require a “use it or share it” condition, which would require any spectrum left unused by Verizon by 2016 to be included in the white spaces database for use by white spaces devices. Such a condition would be a boon to technology by encouraging developers to invest in white spaces technology. The spectrum would continue to be available for use on an unlicensed basis until Verizon builds out. Implementing this as a purely mechanical system would be easy because the condition would work with the existing white spaces databases, and would have the additional benefit of preventing the need for enforcement: Verizon would send notification when they turn on the new system, and if they fail to do so, the spectrum would automatically be put into the database and made available for use.

Additionally, on the subject of spectrum aggregation, if the Commission requires divestitures of the parties, the Commission should ensure that the spectrum divested by Verizon Wireless is not simply bought by AT&T. The Commission can achieve this result by requiring Verizon Wireless to put the divested spectrum in a divestiture trust, which can then sell the spectrum only to carriers that meet certain criteria crafted to preserve competition in wireless service.

IV. ENFORCEMENT OF CONDITIONS

If these or any other conditions are to be effective, the Commission must ensure that sufficient enforcement mechanisms are in place to monitor for violations and to efficiently remedy any violations that occur. As part of its conditions on the proposed transactions, the Commission should create an open process in which parties may complain of violations of the Commission’s Order. The Commission should ensure such complaints are handled expeditiously and conditions are strongly enforced to prevent any anti-consumer, anticompetitive behavior by the Applicants.

The Commission should also impose a finite term of 3-4 years on the Applicants’ JOE Agreement, which will give the Commission the opportunity to assess whether the JOE Members have been using the JOE anticompetitively or otherwise stifling the development of new voice, video, and data offerings. A finite term for the JOE would also realign the Applicants’ incentive to earnestly develop new technologies without the temptation to anticompetitively leverage those technologies to dominate the communications landscape.

The Commission has authority to require conditions on these transactions, even if the transactions had not involved any spectrum transfers. For example, Section 628(b) of the Communications Act provides the Commission with the ability to prohibit unfair methods of competition that prevent multichannel video programming distributors from providing programming to consumers.²⁴ Notwithstanding that existing authority, the spectrum transfer both

²⁴ 47 U.S.C. § 548.

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in this transaction and the T-Mobile/Verizon Wireless transaction²⁵ are directly related and *also* give the Commission the necessary authority to require conditions for approval.

Finally, the proposed agreements create an attributable interest under a straight reading of Section 652 and the Commission's traditional tests.²⁶ The JOE and the resale agreements create a management interest by [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Such a management interest is prohibited under Section 652(a) and (b). Additionally, Section 652(c) prohibits joint ventures to provide video programming or telecommunications services; [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] creates such a prohibited joint venture.

Public Knowledge notes that many other parties have suggested conditions to decrease the public harms flowing from the transactions. For ease of reference, PK encloses the following appendix, listing many of the conditions that have been proposed in this proceeding thus far.

Respectfully submitted,

/s/
Jodie Griffin
Staff Attorney
PUBLIC KNOWLEDGE

²⁵ See Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012).

²⁶ See Petition to Deny of Public Knowledge et al., WT Docket No. 12-4, Conf. App. A-8-A-9 (Feb. 21, 2012).

Appendix A

Conditions Proposed for the Verizon/SpectrumCo/Cox Transactions

Small Cells/Wi-Fi/Seamless Connectivity

- Prohibit discriminatory or proprietary technical standards for hand-off between wireless and wireline networks, data sharing, content storage and access to competitive networks to combat the ability to the Applicants to block “access to integrated and proprietary wireline-wireless handoff technology that will be uniquely controlled by the Applicants.”¹
- Interpret WiFi roaming as a “mobile data service” that is “being provided for a profit” under the Data Roaming Order. Data roaming obligations would extend to cable companies’ WiFi network, which will “serve to mitigate the concern...that the cable companies will provide exclusive or preferential access to Verizon as a result of the cooperative Commercial Agreements.”²
 - Arrangements between Verizon and the cable companies with respect to Cable WiFi hotspots “would serve as a benchmark of the ‘commercially reasonable’ arrangements to which other wireless companies would be entitled.”
- Require that cable companies “offer their WiFi offload roaming on CableWiFi to all requesting parties at commercially reasonable rates, terms and conditions” and with a prohibition on “deny[ing] access to WiFi offload roaming by making device authentication, network testing or bill file transfers overly complex so as to frustrate the end-user’s access to seamless roaming or otherwise delay the launch of these data roaming services.”³
- Require that any WiFi technologies or protocols developed by the JOE be made available to all third-parties at nondiscriminatory rates, terms, and conditions.⁴
- Prohibition on cable companies operating WiFi networks from imposing any restrictions to access by wireless subscribers which are not uniformly imposed on customers of all wireless carriers to prohibit discriminatory access and authentication procedures.⁵

¹ See Letter from John T. Komeiji, Senior Vice President and General Counsel of Rural Telecommunications Group, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 20, 2012) (hereinafter Hawaiian Telecom letter); Letter from Micah M. Caldwell, Vice President, Regulatory Affairs of Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 10, 2012) (hereinafter ITTA letter).

² See Comments of MetroPCS Communications, WT Docket 12-4 (July 10, 2012) (hereinafter MetroPCS comments).

³ See Letter from Caressa D. Bennet, General Counsel of Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 19, 2012).

⁴ See Letter from William B. Wilhelm, Counsel for Vonage, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 16, 2012) (hereinafter Vonage letter); Letter from Antoinette Cook Bush, Counsel to Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 19, 2012) (hereinafter Sprint Nextel letter)..

⁵ See Sprint Nextel letter.

- Prohibit cable companies from discriminating in the cost or speed of handling traffic on their WiFi networks based on customer's choice of wireless carrier.⁶
- Prohibit cable companies from restricting wireless carriers from access to existing cable facilities for the installation and attachment of microcells.⁷

Special Access/Backhaul

- Prohibit preferential backhaul arrangements among the applicants to address the “potential to impair competition in the wireline backhaul market and reduce investment in wireline broadband networks.”⁸
- All backhaul agreements among the partners should be made public and subject to prior review and approval by the Commission.⁹
- Prohibit preferential backhaul arrangements among the Applicants.¹⁰
- Require cable companies and the Verizon ILEC to provide backhaul services to wireless carriers on a non-discriminatory basis, with costs proportional to the requested capacity of a line.¹¹

Resale Agreements

- Prohibit exclusivity in broadband retail offerings by Verizon Wireless.¹²
- Prohibit the cable applicants from discriminatory or exclusionary sales practices for cable advertising.¹³
- Prohibit Applicants from cross-marketing their services within the Verizon footprint.¹⁴

Joint Operating Entity

- Require that JOE-developed products not be used to unreasonably discriminate against a consumer's ability to obtain access to or use broadband facilities.¹⁵
- Require the Applicants to make services “each of them provides to each other and the intellectual property developed under the Agreements” available on a nonexclusive basis.¹⁶

⁶ *Id.*

⁷ *Id.*

⁸ *See* Hawaiian Telecom letter.

⁹ *See* Letter from Genevieve Morelli, President of Independent Telephone & Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 18, 2012).

¹⁰ *See* ITTA letter.

¹¹ *See* Sprint Nextel letter; Hawaiian Telecom letter.

¹² *See* Hawaiian Telecom letter.

¹³ *See* Hawaiian Telecom letter; ITTA letter.

¹⁴ *See* Letter from Monica S. Desai, Counsel for Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (May 7, 2012) (hereinafter CWA letter).

¹⁵ *See* Vonage letter.

- Services and intellectual property would be available to all requesting telecommunications carriers, cable service providers, and broadband internet service providers on the same terms and conditions.
- Require that any patents developed in the JOE be offered to third parties on FRAND or RAND terms.¹⁷
 - Require that JOE-developed technologies be available to prospective licensees with a cash-only payment option.¹⁸
 - Prohibit the JOE from seeking injunctive relief against prospective licensees that fail to agree on licensing terms.¹⁹
- Impose a finite term of 3-4 years on the JOE Agreement.²⁰

Programming/Carriage

- Prohibit discrimination in access to video content controlled by the Applicants to respond to the applicants' (many vertically integrated broadband and content providers) "potential to stifle competitive alternatives for delivery of video and other content."²¹
- Prohibit discrimination in access to video content controlled by any of the Applicants to address the threat to independent content providers ability to gain access to potentially proprietary platforms of the Applicants.²²
- Require Applicants to certify that they "will not discuss programming or other media related activities and content of nonparticipants in [sic] a nondiscriminatory basis."²³

Over the Top Video Content/Discriminatory Treatment of Data

- Prohibit the Applicants from enforcing data usage limits on customers using unaffiliated service providers unless the same data usage limits apply to customers that take the same service from Applicants to respond to Applicants' incentive to stifle competitive alternatives for delivery of video and other content.²⁴
- Application of the "same net neutrality rules to wired and wireless broadband provided by the parties," given the potential for discriminatory conduct, including discriminatory

¹⁶ See CWA letter.

¹⁷ See Letter from Jodie Griffin, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (August 2, 2012) (hereinafter Public Knowledge letter); Letter from Ellen Stutzman, Director of Research & Public Policy, Writers Guild of America West, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 12, 2012) (hereinafter WGAW letter).

¹⁸ See Public Knowledge letter.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Hawaiian Telecom letter.

²² See ITTA letter.

²³ See WGAW letter.

²⁴ See Hawaiian Telecom letter; ITTA letter.

routing practices that could increase latency and result in a qualitative degradation of over-the-top apps and services (for example, by using “public versus price peering points for the exchange of data traffic” carrying non-affiliated services, “scenic routing of data traffic over nodes with increased latency or by selecting routes that utilize a greater number of numbers,” or removing QOS tags that could alter priority levels of non-affiliated traffic) and discriminatory exemptions for non-affiliated traffic to otherwise-applicable data caps.²⁵

- This would include an express prohibition on the classification by Verizon Wireless and the cable companies of their services as “managed services” under the exception to the existing net neutrality provisions.
- Extend full wireline net neutrality conditions to the transferred spectrum and all Verizon spectrum.²⁶
- Any proposed content contracts, video agreements, traffic-related contracts, and retail service agreements among the Applicants should be made public and subject to prior review and approval by the Commission.²⁷
- Prohibit Applicants from treating unaffiliated content differently to prevent the MSOs and Verizon from using their control of the wireless and wireline platforms to unfairly disadvantage competitors in the video market.²⁸

Other Proposed Conditions

- Require the Applicants to follow the same porting processes that are required of telecommunications carriers under Part 64 of the Commission’s rules.²⁹
- Divestiture by cable companies of their interests in Clearwire Corporation within six months to prevent them from being able to “hamper further development of Clearwire’s competing network and services, both by impeding new initiatives and by refusing to make additional investments.”³⁰
- Require Verizon Wireless to offer roaming “to other carriers at rates no less favorable than the resale rates offered to the cable companies in the disclosed Commercial Agreements,” in light of the fact that the “proposed transaction will remove an important constraint on Verizon Wireless’s ability to charge super competitive rates for roaming.”³¹
- Imposition of a “stringent voice and data roaming condition” on Verizon Wireless, such as “applying the best available reseller rate Verizon is charging any of the Cable

²⁵ See Vonage letter.

²⁶ See WGAW letter.

²⁷ See ITTA letter.

²⁸ See WGAW letter.

²⁹ See Hawaiian Telecom letter; ITTA letter.

³⁰ See Letter from Michael Nilsson, counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 20, 2012) (hereinafter DIRECTV letter).

³¹ See MetroPCS comments.

Companies to any requesting carrier,” given the loss of the cable companies as “potential AWS band LTE roaming partners.”³²

- Condition approval on divestiture of additional AWS spectrum and ensured-sale of Verizon’s 700 MHz spectrum, with an interoperability condition attached to the acquisition of any of Verizon’s divested 700 MHz A or B Block spectrum.³³
- Require spectrum divested by Verizon Wireless is not simply bought by AT&T.³⁴
- Imposition of an interoperability condition on AWS spectrum acquired by Verizon to counter Verizon’s “ability and incentive to create a boutique LTE band class consisting of the AWS B and F Blocks.”³⁵
- Prohibit Verizon Wireless and the cable companies from “conditioning their provision of broadband service on the purchase of any other service, including but not limited to, voice telephony service” – i.e. no tying permitted (which would require Verizon to continue offering stand-alone DSL).³⁶
- Require Verizon Communications to continue to provide standalone DSL within its service territories.³⁷
- Require Verizon to continue to offer FiOS, expand in-region deployment to cover at least 95% of residential living units and households within Verizon’s in-region territory, and require that “a certain percentage of incremental deployment after the Merger Closing will be to rural and low income living units, with timetables, data reporting, and penalties for non-compliance.”³⁸
- To prevent Verizon from warehousing the spectrum, require Verizon to meet a “tight schedule for deployment, similar to that adopted for the upper A and B blocks of the 700 MHz auction” – providing signal coverage and offering service over at least 35% of the geographic area within four years of the license transfer and 70% by the end of the license terms.³⁹
 - Verizon would also be subject to a “use it or share it” obligation, making “underdeveloped” spectrum available for opportunistic use or available on secondary markets at reasonable rates.

³² See Letter from Michael Lazarus, counsel for RCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (July 11, 2012) (hereinafter RCA letter); Comments of Public Knowledge, WT Docket 12-4 (July 10, 2012) (hereinafter Public Knowledge comments); Petition to Deny of Public Knowledge et al., WT Docket No. 12-4 (Feb. 21, 2012) (hereinafter Petition to Deny).

³³ See RCA letter.

³⁴ See Public Knowledge letter.

³⁵ *Id.*; see Petition to Deny.

³⁶ See Vonage letter.

³⁷ *Id.*

³⁸ See CWA letter.

³⁹ See Petition to Deny; Public Knowledge comments.

- Permit unlicensed use of Verizon’s spectrum until it begins deployment, with an obligation on the part of Verizon to “notify one or more FCC-certified TV Bands Database managers in advance of the commercial operation of a base station or other transmitter in each discrete geographic area as it builds out.”⁴⁰

⁴⁰ See Petition to Deny.