

March 6, 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:

This proceeding nominally involves a spectrum transaction among the nation's largest wireless carrier, Cellco Partnership d/b/a Verizon Wireless, and a group of the nation's largest cable MSOs (Comcast Corporation, Time Warner Cable, and Bright House Networks, LLC, and Cox Communications, Inc.). Coincident with their spectrum agreements, these parties also entered into several Commercial Agreements that, among other things, "provide the parties to those agreements with the ability to act as agents selling one another's services."¹

The Applicants claim that the Commercial Agreements are neither anticompetitive nor relevant to this proceeding. Although they have submitted those agreements into the record, they redacted extensive portions of the documents that they unilaterally deemed too sensitive for disclosure even subject to the stringent confidentiality provisions of the Protective Orders issued in this proceeding.² Those redactions, which the Applicants describe as "relating to pricing, compensation, and marketing strategies,"³ make it impossible to understand the full ramifications of the documents or to evaluate their relationship to and effect upon the proposed transactions.

A wide variety of entities have expressed varying levels of concern about the potential impact of these transactions. What those who have had access to the redacted documents have uniformly concluded, however, is that neither the Commission nor interested parties can evaluate

¹ Letter from J.G. Harrington to Marlene H. Dortch, at 2 (Jan. 18, 2012) ("Cox Submission Letter"); Letter from Michael H. Hammer to Marlene H. Dortch, at 2 (Jan. 18, 2012) ("SpectrumCo Submission Letter"). Unless otherwise indicated, all materials cited in this letter were filed in WT Docket No. 12-4.

² *Applications of Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC*, Protective Order, DA 12-50; Second Protective Order, DA 12-51 (rel. Jan. 17, 2012).

³ Letter from Bryan N. Tramont, Michael H. Hammer, and J.G. Harrington to Marlene H. Dortch at 2 (Feb. 9, 2012) ("Applicants' Redaction Letter").

the transactions fully if key documents remain redacted.⁴ Applicants, however, have now made clear that they will not submit unredacted documents unless ordered to do so by the Commission.⁵

The Commission cannot allow such conduct to succeed. As an institutional matter, the Commission cannot allow Verizon and the cable companies to make unilateral determinations that certain information is not relevant to the Commission's public interest determination or is too sensitive to be sufficiently protected by Commission safeguards. And as a policy matter, the Commission cannot allow the Applicants to deny production of evidence for the record without which interested parties would be unable to submit the type of fully informed analyses necessary to help inform the Commission's consideration of the public interest. The Applicants assert that only Commission staff need to review the confidential documents, and they will have access through the Department of Justice.⁶ To the contrary, notice and comment periods are most useful to the Commission when the public has appropriate access to the full record and can make informed comment. The purpose of notice and comment is to give the Commission the benefit of input from diverse parties. Public participation at this level has been crucial to Commission review of transactions in the past.⁷ In combination with the proposed spectrum transaction, the Commercial Agreements will significantly enhance the Applicants' competitive position in the broadband, wireless and video markets. Without the ability to review those agreements in full, interested parties would be unfairly deprived of the information they need to produce a complete portrait of the impact this transaction will have on the public interest and the Commission would be unnecessarily deprived of that input into its public interest determination.

⁴ See, e.g., Public Knowledge, *et al.*, Petition to Deny at 19 (Feb. 21, 2012); Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers at 21-23 (Feb. 21, 2012); Supplemental Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers at 21-23 (March 2, 2012); Greenlining Institute Comments at 14-15 (Feb. 21, 2012); T-Mobile, USA, Inc., Petition to Deny at 19 (Feb. 21, 2012); DIRECTV, L.L.C., Comments at 4-5 (Feb. 21, 2012); RCA-the Competitive Carriers Association Petition to Condition or Otherwise Deny at 36 (Feb. 21, 2012); Rural Telecommunications Group, Inc., Petition to Deny at 6 (Feb. 21, 2012); MetroPCS Communications, Inc., Petition to Deny at 5 (Feb. 21, 2012); Hawaiian Telecom Communications, Inc., Petition to Deny or Condition Assignment of Licenses at 1-2 (Feb. 21, 2012); Sprint Nextel Corporation, Comments at ii (Feb. 21, 2012); NTCH, Inc., Petition to Deny at 10 (Feb. 21, 2012).

⁵ Cellco Partnership d/b/a/ Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC, Joint Opposition to Petitions to Deny and Comments at 70-79 (Mar. 2, 2012).

⁶ See Applicants' Redaction Letter at 3.

⁷ See, e.g., *Comcast Corp., General Electric Co. and NBC Universal, Inc.*, 26 FCC Rcd. 4238, ¶ 46 (2011) ("we also believe that the bargaining model used in the economic expert reports submitted by ACA and DISH supports the conclusion that the transaction could lead to price increases that target MVPD rivals"); *AT&T Inc. and Deutsche Telekom AG*, 26 FCC Rcd. 16184, Staff Analysis and Findings, ¶ 98 (WTB 2011) ("Based on the record and data before us, we find that opponents raise serious concerns about potential competitive harms that could result if T-Mobile were eliminated").

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If, as the Applicants contend, the redacted materials are not relevant to this proceeding, then after reviewing them, all concerned will be free to turn their attention to other issues in this proceeding. If, however, those materials are relevant, all concerned will be able to present their observations and concerns for the Commission's consideration.

The undersigned therefore respectfully request that the Commission stop the informal 180-day "shot clock" on this transaction and toll the remaining response deadlines until the Applicants have submitted and parties have had the opportunity to review full and unredacted copies of all documents previously submitted to the Commission.

Respectfully submitted,

/s/

Susan Eid
DIRECTV, LLC

/s/

Trey Hanbury
Sprint Nextel Corporation

/s/

Kathleen Ham
T-Mobile USA, Inc.

/s/

S. Derek Turner
Free Press

/s/

Andrew Schwartzman
Media Access Project

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RCA – The Competitive Carriers Association

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