

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENTS
OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
(CCIA)**

Edward J. Black
Catherine R. Sloan
Phillip Berenbroick
CCIA
900 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
Tel. (202) 783-0070
Email: EBlack@ccianet.org
CSloan@ccianet.org
PBerenbroick@ccianet.org

March 26, 2012

EXECUTIVE SUMMARY

CCIA joins a number of Petitioners and Commenters in calling on the Federal Communications Commission to conduct a thorough review of the proposed spectrum license transfers and commercial joint marketing agreements between Verizon Wireless, SpectrumCo and its affiliated companies, and Cox Communications. CCIA urges the Commission to investigate the influence the proposed transactions and commercial agreements will have on competition in the mobile broadband market, whether placing additional spectrum into the hands of the nation's most spectrum-rich carrier will harm the public interest and stifle competition, and the impact the proposed commercial agreements will have on competition in both the landline broadband and mobile broadband markets, potentially undermining the intent of the Communications Act.

CCIA requests the Commission's public interest analysis take into account the scarcity of spectrum in the secondary markets suitable for delivering advanced mobile broadband services, and the pre and post-transaction spectrum holdings of Verizon Wireless. The Commission should determine whether this spectrum aggregation would reduce or eliminate the ability of spectrum-starved carriers to compete and to negotiate fair and reasonable data roaming agreements.

Additionally, the Commission should consider the impact of the Applicants' commercial agreements. These agreements have the potential to reshape the competitive landscape of the telecommunications market and merit review. As other parties have commented, these agreements could undermine a central goal of the Telecommunications Act of 1996 – which was to promote competition between monopoly telephone companies and monopoly cable companies. Moreover, the Commission should review the effect of the proposed commercial agreements, in concert with the license transfers, on competition in the mobile broadband market.

The Applicants have failed to adequately address claims in the docket alleging that Verizon Wireless is likely to warehouse this new spectrum, and does not even attempt to refute the analysis that allowing it to acquire additional and scarce spectrum will harm competition in the mobile broadband market. Further, the Applicants fail to address issues raised in the docket that are vital for the future of competitors in the mobile broadband market – namely Wi-Fi offloading and data roaming. Finally, the Applicants fail to acknowledge the marketplace altering ramifications of their proposed commercial agreements, and assert the Commission should not and cannot review them.

As many others have requested, the Commission should thoroughly review the proposed license transfers and commercial agreements, and reject or condition them as needed to promote the public interest and increase competition.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. THE COMMISSION SHOULD THOROUGHLY REVIEW THE SIGNIFICANT SPECTRUM CONCENTRATION THAT WOULD RESULT FROM VERIZON WIRELESS' PLANNED SPECTRUM ACQUISITION	1
A. Spectrum is the Critical Input for Mobile Broadband Services and Available Spectrum Has Become Scarce	3
B. Verizon Wireless Controls More Spectrum and More Valuable Spectrum Than Any Other National Carrier	5
C. Competition in the Mobile Broadband Market is Dependent on Addressing the Spectrum Needs of Smaller Carriers	9
D. The Commission Should Determine Whether the Proposed Transactions Would Make it More Difficult for Other Carriers to Negotiate Fair and Reasonable Data Roaming Agreements	12
II. THE COMMISSION SHOULD THOROUGHLY REVIEW ANY ANTI-COMPETITIVE HARM THAT MAY RESULT FROM THE COMMERCIAL JOINT MARKETING AGREEMENTS	14
A. The Commission Should Determine Whether the Commercial Agreements Would Reduce Competition Between Duopoly Landline Competitors	16
B. The Commission Should Determine Whether Commercial Arrangements Would Stifle Competition in the Mobile Broadband Market by Blocking Access to Wi-Fi Networks	18
CONCLUSION	20

The Computer & Communications Industry Association (“CCIA”),¹ pursuant to The Federal Communications Commission’s (“Commission”) January 19, 2012 Public Notice,² files these Reply Comments regarding Verizon Wireless’ proposed purchase of 122 Advanced Wireless Services (“AWS-1”) licenses from SpectrumCo,³ and 30 AWS-1 licenses from Cox TMI Wireless, LLC.⁴ CCIA urges the Commission to undertake a thorough review of the significant spectrum concentration that would result from the proposed transactions (“Transactions”), as well as any anti-competitive harm that may result from the separate commercial agreements (“Commercial Agreements”) that Verizon Wireless has entered into with Comcast, Time Warner Cable, Bright House, and Cox (collectively, with Verizon Wireless, the “Applicants”).

I. THE COMMISSION SHOULD THOROUGHLY REVIEW THE SIGNIFICANT SPECTRUM CONCENTRATION THAT WOULD RESULT FROM VERIZON WIRELESS’ PLANNED SPECTRUM ACQUISITION

CCIA urges the Commission to carefully review the considerable spectrum concentration that would result from completion of the proposed transaction. As the Commission notes, these

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks and full, fair and open competition in the computer, telecommunications and Internet industries.

² WT Docket No. 12-4, *Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, Public Notice, DA 12-67 (Jan. 19, 2012) (“*Public Notice*”).

³ SpectrumCo is a joint venture among subsidiaries of Comcast Corp. (“Comcast”), Time Warner Cable, Inc. (“Time Warner Cable”), and Bright House Networks, LLC (“Bright House”). See WT Docket No. 12-4, *Verizon Wireless/SpectrumCo Application*, Public Interest Statement at 2 (Dec. 16, 2011).

⁴ Cox TMI Wireless LLC is a subsidiary of Cox Communications, Inc (“Cox”). See WT Docket No. 12-4, *Verizon Wireless/Cox Application*, Public Interest Statement at 2 (Dec. 20, 2011).

transactions would transfer 152 AWS-1 licenses to Verizon Wireless. The Verizon Wireless/SpectrumCo transaction would see Verizon Wireless gain 20 to 30 MHz of spectrum in 572 CMAs, covering 259.7 million people, while the Verizon Wireless/Cox transaction would see Verizon Wireless acquire 20 MHz of spectrum in 90 CMAs, covering 30 million people. All told, the proposed Transactions, if approved, would see Verizon Wireless gain 20 to 30 MHz of prime spectrum covering nearly 290 million people – 94% of the U.S. population.⁵

As the Commission makes clear in its *AT&T/Qualcomm Order*, the standard of review, pursuant to section 310(d) of the Communications Act, is to determine whether the proposed transfer of spectrum licenses “will serve the public interest, convenience, and necessity.”⁶ The Commission’s review assesses whether the proposed transaction complies with the Communications Act (“the Act”), other applicable statutes, and the Commission’s rules; considers whether the Transaction could result in public interest harms by frustrating or impairing the objectives or implementation of the Act or related laws; then employs a balancing test weighing potential public interest harms against public interest benefits.⁷ The Commission also seriously considers the impact of proposed license transfers on competition, with a preference for enhancing

⁵ *Public Notice*, at 2.

⁶ WT Docket No. 11-18, *Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations*, Order, FCC 11-188, at 10 ¶ 23 (Dec. 22, 2011) (“*AT&T/Qualcomm Order*”) (citing 47 U.S.C. § 310(d)) (While the Commission ultimately granted the AT&T/Qualcomm license transfer application, the Commission noted that the transaction raised competitive concerns regarding excessive spectrum concentration. *AT&T/Qualcomm Order*, at 23 ¶ 51. The acquisition saw AT&T’s receive 6 MHz of spectrum nationwide and an additional 6 MHz of spectrum in five major metropolitan markets, substantially less than the 20 to 30 MHz of spectrum covering 94% of the U.S. population that Verizon Wireless proposes to acquire with these Transactions).

⁷ *Id.* at 10-11 ¶ 23.

competition, accelerating private sector deployment, and promoting a diversity of license holdings.⁸

CCIA, like other parties in this docket, urges the Commission to conduct a thorough review of these proposed license transfers.⁹ The Commission’s review should take into account the growing scarcity of available spectrum suitable to satisfy the growing demands on mobile broadband networks; that this transaction will concentrate even more valuable spectrum into the hands of the wireless carrier with the most spectrum, the most valuable spectrum, as well as a vast wireline infrastructure through its parent company, Verizon Communications (“Verizon”);¹⁰ the spectrum needs of the rest of the wireless market, particularly spectrum-starved smaller carriers that require additional spectrum in order to continue delivering innovative products and services and providing consumers with low-cost options to higher-priced competitors; and the effect of the planned transaction on the availability of essential data roaming agreements at non-monopoly rates.

A. Spectrum is the Critical Input for Mobile Broadband Services and Available Spectrum Has Become Scarce

The Commission has acknowledged that mobile broadband services delivered over advanced mobile broadband devices are increasingly vital for American consumers.¹¹ In its most

⁸ *Id.* at 11 ¶ 24.

⁹ *See, e.g.*, WT Docket 12-4, Petition to Deny of the New Jersey Division of Rate Counsel, at 13 (Feb. 17, 2012); Petition to Condition or Otherwise Deny Transactions of RCA – The Competitive Carriers Association, at 6 (Feb. 21, 2012) (“Petition of RCA”); Comments of Sprint Nextel Corp., at 19 (Feb. 21, 2012) (“Comments of Sprint”).

¹⁰ Verizon Communications, Inc. owns a controlling, 55% of Verizon Wireless. *See* VERIZON COMMUNICATIONS, INC., 2011 ANNUAL REPORT 33, 41 (2012).

¹¹ WT Docket No. 05-265, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order,

recent annual report on competition in the wireless market, the Commission found that access to spectrum is a precondition to wireless services, and that ensuring sufficient spectrum is available for all incumbent licensees, as well as new carriers that need spectrum to enter the market, is critical for promoting competition, investment, and innovation in wireless services and infrastructure.¹²

Chairman Genachowski has referred to the “looming spectrum crunch” during his time at the Commission,¹³ and the Applicants have acknowledged that growing demand for mobile data services is straining the nation’s spectrum resources, making it imperative that such resources are used efficiently.¹⁴

As the Rural Telecommunications Group has observed, spectrum scarcity has caused prices on the secondary market to rise to a point where market entry by smaller competitors is all but impossible.¹⁵ CCIA urges the Commission to consider the impact of spectrum scarcity, rising barriers to market entry, newly available spectrum being years away, and the growing demand for advanced mobile data services by consumers in its public interest review of the proposed license

FCC 11-52, at 8 ¶ 14 (Apr. 7, 2011) *recon. pending, appeal docketed sub nom. Cellco Partnership v. FCC*, No. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011) (“*Data Roaming Order*”).

¹² WT Docket No. 10-133, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, FCC 11-103, at 157-58 ¶ 266 (June 24, 2011) (“*Fifteenth Report*”).

¹³ Julius Genachowski, Chairman, Fed. Communications Comm’n, Remarks as Prepared for Delivery, 2012 Consumer Electronics Show, at 2 (Jan. 11, 2012).

¹⁴ WT Docket No. 12-4, Joint Opposition to Petitions to Deny and Comments, at 5-8 (Mar. 2, 2012) (“*Joint Opposition*”).

¹⁵ WT Docket No. 12-4, Petition to Deny of the Rural Telecommunications Group, Inc., at 9 (Feb. 21, 2012) (“*Petition of RTG*”).

transfers. Particularly, CCIA recommends the Commission consider whether the proposed Transaction will exacerbate these trends, resulting in public interest harms by crippling competition in the mobile broadband marketplace, particularly since the Commission has a stated aim to promote wireless competition.¹⁶

B. Verizon Wireless Controls More Spectrum and More Valuable Spectrum Than Any Other National Carrier

In its 2011 report on wireless competition, the Commission detailed the spectrum holdings of wireless carriers. According to the report, Verizon Wireless has the largest holdings of any of the four national carriers. The Commission also noted that Verizon Wireless holds licenses for the greatest amount of spectrum under 1 GHz – or the spectrum with the most favorable propagation characteristics for the provision of mobile broadband services.¹⁷ In light of these facts, the Commission’s review should consider the effect on competition of allowing the carrier with the most spectrum and most valuable spectrum to control even more of this scarce resource.

Other parties in this docket have also taken note of Verizon Wireless’ spectrum holdings.¹⁸ T-Mobile specifically mentions that Verizon Wireless holds the most spectrum of any of the four nationwide carriers.¹⁹ While Verizon Wireless argues that the growth in demand for wireless data

¹⁶ See WT Docket No. 09-66, *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, FCC 10-81, 5 ¶ 1 (May 20, 2010) (“*Fourteenth Report*”) (“[p]romoting competition is a fundamental goal of the Commission’s policymaking.”).

¹⁷ See *Fifteenth Report*, at 168, Tables 27-28.

¹⁸ See, e.g., WT Docket No. 12-4, Petition to Deny of NTCH, Inc., at 2-5 (Feb. 21, 2012); Petition of RCA, at 8-12; Comments of Sprint, at 16-20.

¹⁹ WT Docket No. 12-4, Petition to Deny of T-Mobile, USA, Inc., at 9 (Feb. 21, 2012) (“Petition of T-Mobile”).

services will be daunting for even its vast spectrum holdings to keep up with,²⁰ it fails to acknowledge that smaller and less spectrum-rich carriers are facing the same growth in demand for services while holding significantly less spectrum. As NTCH, Inc. points out, Verizon Wireless has attempted to justify these Transactions by noting that demand on spectrum is growing due to customers using multiple devices and spectrum-hungry applications.²¹ And as Verizon Wireless itself acknowledges, it has a nationwide average spectrum “depth” of 89 MHz, and post-transaction its average will swell to 109 MHz.²² Verizon Wireless refuses to recognize that its competitors face the same explosion in demand, but with a nationwide average of 30 MHz or less over which to distribute the load.²³

Not only does Verizon Wireless already control more spectrum than all other carriers, as Sprint asserts, Verizon Wireless holds the most valuable spectrum, with a book value that exceeds the holdings of any other carrier.²⁴ In fact, Sprint points out that Verizon’s spectrum holdings, if AT&T is excluded, are more valuable than the holdings of the rest of the top ten wireless carriers combined.²⁵

The value and type of spectrum Verizon Wireless currently holds, in addition to its quantity, is of critical importance for the Commission to take into account when reviewing the proposed license transfers. In its *AT&T/Qualcomm Order*, part of the Commission’s review

²⁰ See Joint Opposition, at 12-23.

²¹ Petition to Deny of NTCH, Inc., at 2.

²² Joint Opposition, at 24.

²³ Petition to Deny of NTCH, Inc., at 2.

²⁴ Comments of Sprint, at 18-19.

²⁵ *Id.* at 19.

“analyzed the spectrum concentration associated with these Transactions by focusing on spectrum suitable for mobile data services over broadband networks because that spectrum is likely to be a critical input”²⁶ Particularly, the Commission reviewed the spectrum concentration that would result if the Transactions were to be approved and the competitive effects of that concentration.²⁷ Further, the Commission acknowledged that based on its findings in its *Fifteenth Annual Mobile Wireless Competition Report* (“*Fifteenth Report*”), it is not only prudent to focus the Commission’s review of the Transactions on the post-transaction absolute holdings of wireless spectrum by the acquiring entity, but also on the concentration of the type of spectrum, as spectrum in different frequency bands have very different propagation characteristics.²⁸ The Commission has found that lower frequency spectrum has favorable propagation characteristics to those in higher bands, as it provides the same geographic coverage at a lower cost than higher frequency bands, requires fewer cell sites, and provides superior in-building penetration. All of which provide competitive advantages to carriers holding lower frequency spectrum and contribute to the higher valuation of lower frequency spectrum.²⁹

As discussed above, the Commission’s *Fifteenth Report* concluded that Verizon Wireless controls more spectrum than its rivals, much of which was acquired in the 1980s free of charge by virtue of Verizon Communications’ corporate predecessors’ status as incumbent legacy landline

²⁶ *AT&T/Qualcomm Order*, at 17 ¶ 38.

²⁷ *Id.* at 19-20 ¶ 43.

²⁸ *Id.* at 21-22 ¶ 49.

²⁹ *See Fifteenth Report*, at 169-178 ¶¶ 289-307.

carriers,³⁰ and with the advantage of the wireline “headstart.”³¹ It also found that Verizon Wireless controls 47.7% of all Cellular spectrum and 42.8% of all 700 MHz spectrum – the two bands best suited for the provisioning of mobile broadband. In contrast, neither Sprint nor T-Mobile holds any spectrum in the most desirable bands.³² Verizon Wireless’ vast spectrum holdings have led numerous parties to argue that allowing Verizon Wireless to control even more spectrum would lead to “excessive spectrum aggregation,” harming competition and thwarting the public interest.³³

The Applicants have failed to respond to arguments against excessive spectrum concentration, along with the assertions that excessive spectrum concentration does not serve the public interest. The Applicants argue that Verizon Wireless serves more customers than any other wireless carrier,³⁴ but it fails to acknowledge that it does so while controlling more spectrum than any other carrier. The Applicants also claim that Verizon Wireless is the most spectrally efficient carrier,³⁵ as if efficiency would justify any aggregation of spectrum – potentially even aggregation of all spectrum. Finally, the Applicants’ refuse to acknowledge public interest benefits of

³⁰ See Thomas W. Hazlett and Robert J. Michaels, *The Cost of Rent Seeking: Evidence from Cellular Telephone License Lotteries*, 59 S. Econ. J. 425, 427 (1993) (recounting the Commission’s initial allocation of spectrum licenses. “It awarded two licenses per market, one to a telephone company (Local Exchange Carrier) affiliate and one to a ‘nonwireline’ company. Only LECs in the cellular franchise area could enter the wireline lottery.”).

³¹ See John W. Berresford, *The Impact of Law and Regulation on Technology: The Case of History and Cellular Radio*, 44 BUS. LAW. 721, 727 (1989).

³² See *Fifteenth Report*, at 168, 174, Tables 27-28, ¶ 299.

³³ Petition of RTG, at 14-15. See also Petition to Deny of New Jersey Division of Rate Counsel, at 9; Petition to Deny of NTCH, Inc., at 1, 3; Comments of Sprint, at 16; Petition of T-Mobile, at 15.

³⁴ Joint Opposition, at 24.

³⁵ Joint Opposition, at 24-28.

competition in the mobile broadband market, particularly that increased competition would spur greater efficiency than permitting carriers to control a disproportionate share of spectrum.

In addition to its vast spectrum holdings, Verizon Wireless is one of only two vertically integrated wireless carriers. Like AT&T, Verizon Wireless' parent company, Verizon owns vast landline network infrastructure, including both Internet backbone and local backhaul. Verizon's wireline infrastructure is a resource on which all of its wireless competitors are dependent, and the Commission should consider the anti-competitive impact of allowing one company to exert control over so much of the required inputs to its competitor's services – namely spectrum necessary for nationwide data roaming and wireline infrastructure required for special access.

C. Competition in the Mobile Broadband Market is Dependent on Addressing the Spectrum Needs of Smaller Carriers

As discussed above, the Commission has asserted that access to spectrum is necessary for delivering mobile broadband services, and that ensuring sufficient spectrum is available, both for incumbents of all sizes, as well as new entrants, is critical for promoting competition, investment, and innovation in mobile services.³⁶ Without additional spectrum, smaller carriers cannot expand their networks to serve new customers and compete with larger carriers, while larger, spectrum-constrained carriers cannot meet the demands of customers and compete with Verizon Wireless and AT&T, which together control the lions-share of the nation's most valuable spectrum.

If the Commission aims to promote additional competition in the wireless market, it must address the spectrum needs of spectrum-starved carriers. In reviewing the proposed spectrum sale, the Commission must take into account whether its approval will foreclose greater competition by placing so much additional spectrum in the hands of the most spectrum-rich carrier.

³⁶ *Fifteenth Report*, at 157-158 ¶ 266.

The Commission has specifically said its goal is to promote competition in the wireless market,³⁷ and with regards to spectrum, that new market entrants will need access to spectrum to begin to offer services and compete with established licensees.³⁸ Further, the Commission has acknowledged that the spectrum holdings of major service providers can influence a carrier's ability to effectively compete.³⁹

Many parties have commented on the spectrum needs of smaller carriers and the reality that the proposed Transactions would harm the ability of those smaller carriers to compete against the dominant carriers.⁴⁰ For instance, Sprint comments that these Transactions will “eliminate from the market one of the two remaining large available bands of quality spectrum, which other wireless carriers could rapidly deploy to broaden coverage and enhance competition,” weakening the ability of smaller carriers to effectively compete.⁴¹ T-Mobile writes that the proposed Transactions will extend Verizon Wireless' dominance of scarce spectrum resources, undercutting the ability of new firms to enter the market, and undermining the ability of existing firms to continue to compete as demand for bandwidth grows, foreclosing the ability of competitors to launch services to compete with Verizon Wireless 4G network.⁴² And DirecTV argues that the

³⁷ *Fourteenth Report*, at 5 ¶ 1.

³⁸ *Fifteenth Report*, at 157-158 ¶ 266.

³⁹ *Id.* at 167 ¶ 286.

⁴⁰ See WT Docket No. 12-4, Comments of DirectTV, LLC, at 4 (Feb. 21, 2012); Petition to Deny of Members of the Rural Broadband Policy Group, at 2 (Feb. 21, 2012); Petition to Deny of New Jersey Division of Rate Counsel, at 16; Petition to Deny of NTCH, Inc. at 3; Comments of Sprint, at 16; Petition of RTG, at 9; Petition of T-Mobile, at 10-16.

⁴¹ Comments of Sprint, at 16.

⁴² Petition of T-Mobile, at 10.

proposed Transactions will lead to less competition as small rural providers are forced out of business because they will lack access to spectrum and face diminishing options to partner with other carriers.⁴³

Parties in this docket also stress that Verizon Wireless' dominant spectrum position already allows it to meet its spectrum needs for the near-to-medium term. Various Petitioners reason that the planned Transaction will result in Verizon Wireless warehousing spectrum, which would harm competition and the public interest by keeping spectrum from competitors that would utilize it immediately to deliver advanced mobile data services to consumers. Thus, parties argue, Verizon Wireless' planned spectrum warehousing is contrary to the public interest because it will stifle competition, innovation, and the efficient and timely utilization of scarce spectrum resources.⁴⁴

The Applicants' response to these claims is to flatly assert that the planned Transactions will not reduce competition.⁴⁵ The Applicants also assert that the Commission should reject claims suggesting the Commission should await a different buyer for the spectrum at issue.⁴⁶ Finally, the Applicants claim that assertions that Verizon Wireless is warehousing spectrum are unsubstantiated and rebutted by its own assertions to the contrary.⁴⁷

Neither CCIA, nor other parties assert that the transfer of the licenses and authorizations alone will reduce competition in the mobile broadband market, nor do the parties ever propose any

⁴³ Comments of DirectTV, LLC, at 3-4.

⁴⁴ See Petition to Deny of the New Jersey Division of Rate Counsel, at 16; Petition of RCA, at 9, 19-23; Petition of RTG, at 20; Petition of T-Mobile, at 13-14, 36.

⁴⁵ See Joint Opposition at 41-69.

⁴⁶ *Id.* at 63-64.

⁴⁷ See *Id.* at 23-24 (citing Verizon Wireless/SpectrumCo Application, Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, Exhibit 2.).

specific alternative buyer for this spectrum. CCIA urges the Commission to determine whether the proposed Transactions, when coupled with Verizon Wireless' already dominant spectrum position, the spectrum needs of other carriers, and the scarcity of spectrum available on the secondary markets, will serve the public interest and help the Commission achieve its goals of promoting competition in the wireless marketplace. Further, CCIA urges the Commission to closely examine claims that Verizon Wireless would warehouse spectrum. Just months prior to these Transactions, Verizon Wireless claimed it held sufficient spectrum for the near and medium term.⁴⁸ The Commission should be wary of any post hoc claims and calculations of spectrum need by the Applicants and focus on the competitive effects of the proposed transaction.

D. The Commission Should Determine Whether the Proposed Spectrum Concentration Would Make it More Difficult for Other Carriers to Negotiate Fair and Reasonable Data Roaming Agreement

Finally, the Commission should determine whether the proposed Transactions would hinder competition by making it even more difficult for smaller carriers to negotiate data roaming agreements. In its recent *Data Roaming Report and Order*, the Commission noted that many carriers reported difficulties reaching data roaming agreements with the two largest wireless carriers, AT&T and Verizon Wireless.⁴⁹

⁴⁸ See, e.g., Sue Marek, *How soon will wireless carriers run out of capacity?*, FIERCEWIRELESS, Nov. 3, 2011, <http://www.fiercewireless.com/story/how-soon-will-wireless-operators-run-out-capacity/2011-11-03> (“According to David Small, CTO of Verizon Wireless, his company has enough spectrum to accommodate customers until 2015.”); Marguerite Reardon, *Verizon CEO talks up spectrum, downplays Sprint iPhone*, CNET NEWS, Sept. 21, 2011, http://news.cnet.com/8301-30686_3-20109452-266/verizon-ceo-talks-up-spectrum-downplays-sprint-iphone/ (“Verizon has said previously that it has enough spectrum to support its wireless network through 2015.”).

⁴⁹ See *Data Roaming Order*, at 15-16 ¶¶ 25-27.

In fact, one of the Applicants, Cox Communications even detailed its own difficulties reaching a data roaming agreement with Verizon Wireless.⁵⁰ As the Rural Telecommunications Group points out, if well-financed cable companies with nation-wide spectrum holdings, such as Cox, find it nearly impossible to enter the wireless marketplace due to barriers to entry such as the inability to reach data roaming agreements, it raises questions whether smaller carriers will be able to survive.⁵¹

As the Commission found in its *Data Roaming Order*, “the availability of data roaming arrangements can be critical to providers remaining competitive in the mobile services marketplace.”⁵² But the proposed transaction appears to have the potential to make it even more difficult for smaller carriers to negotiate agreements for data roaming.⁵³ Further, RCA contends that approval of the transactions will grant AT&T and Verizon Wireless nearly unfettered control of nationwide roaming services – a result that would also have been produced by the proposed AT&T/T-Mobile merger.⁵⁴

In its Joint Opposition, the Applicants claim that data roaming is not at issue and that the Commission has addressed the matter.⁵⁵ While the Commission did address data roaming with its *Data Roaming Order*, CCIA urges the Commission to take note of the persistent data roaming

⁵⁰ See *Id.* at 15 ¶ 26 (citing WT Docket No. 05-265, Reply Comments of Cox Communications, at 7 (July 12, 2010)).

⁵¹ See Petition of RTG, at 12.

⁵² *Data Roaming Order*, at 9 ¶ 15.

⁵³ See Petition to Deny of the New Jersey Division of Rate Counsel, at 15-16; Petition of RCA, at 34; Petition of RTG, at 11-12; Comments of Sprint, at 14.

⁵⁴ Petition of RCA, at 34.

⁵⁵ Joint Opposition, at 65-66.

concerns raised by smaller carriers, who argue that Verizon has continued its history of stonewalling and unreasonable behavior with regards to roaming agreements, premising data roaming agreements on terms with supracompetitive rates.⁵⁶

Should the Commission approve these Transactions, it should at a minimum impose conditions that mandate fair and reasonable nationwide data roaming agreements upfront for carriers that rely on Verizon Wireless. This common carrier regulation of wholesale services would be necessary to maintain even the facade of competition in the mobile broadband market.

II. THE COMMISSION SHOULD THOROUGHLY REVIEW ANY ANTI-COMPETITIVE HARM THAT MAY RESULT FROM THE COMMERCIAL JOINT MARKETING AGREEMENTS

In addition to reviewing the spectrum aggregation that would result should the Commission approve the proposed Transactions, CCIA also urges the Commission to review the Commercial Agreements that the Applicants have negotiated. Specifically, CCIA urges the Commission to review whether the Commercial Agreements would result in anti-competitive harm from the owners and operators of much of the nation's competing wireline infrastructure agreeing to jointly sell and market one another's services. Further, the Commission should review the potential impact of the Commercial Agreements on the ability of Verizon Wireless' mobile broadband competitors to reach fair and reasonable agreements with the other Applicants for special access services and Wi-Fi offloading of mobile data traffic.

Other parties in this docket have also requested the Commission review the Commercial Agreements.⁵⁷ Parties argue that the Commercial Agreements are part-and-parcel of the spectrum

⁵⁶ See Petition of RCA, at 9.

⁵⁷ See WT Docket No. 12-4, Comments of DirectTV, LLC, at 2, 5; Petition to Deny of Free Press, at 40-41 (Feb. 21, 2012) Comments of the Greenlining Institute, at 2 (Feb. 21, 2012); Petition to Deny or Condition Assignment of Licenses of Hawaiian Telecom Communications,

license Transaction and that although the Commercial Agreements have been presented as separate and independent of the license transfer Transactions, in reality the deals are interdependent and were negotiated as part of a single package.⁵⁸ Parties also argue that the Commercial Agreements will eliminate incentives for the cable companies involved in the Commercial Agreements to compete with Verizon and Verizon Wireless, and vice-versa, creating incentives for the companies to engage in anticompetitive conduct,⁵⁹ and undermining or violating the Communications Act.⁶⁰

The Applicants request that the Commission reject the requests that the Commercial Agreements be reviewed in concert with the proposed Transactions to determine whether the planned license transfers and Commercial Agreements, taken together, serve the public interest. The Applicants stress that the Commercial Agreements are independent of the planned Transactions, emphasize that the Commercial Agreements are already under review by the

Inc., at 9-10 (Feb. 21, 2012); Petition to Deny of the New Jersey Division of Rate Counsel, at 22; Petition to Deny of Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humboldt, Center for Rural Strategies, Future of Music Coalition, National Consumer Law Center, and Writers Guild of America – West, at 19, 31 (Feb. 21, 2012) (“Comments of Public Knowledge, et. al.”); Petition to Deny of NTCH, Inc., at 10; Petition of RCA, at 40; Petition of RTG, at 4; Comments of Sprint, at 2-3.

⁵⁸ See Petition to Deny of Free Press, at 40-41; Petition to Deny of NTCH, Inc., at 10.

⁵⁹ See WT Docket No. 12-4, Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers, at 3-4 (Feb. 21, 2012) (“Comments of CWA and IBEW”); Comments of DirectTV, LLC, at 5; Petition to Deny of Free Press, at 40-41; Petition to Deny or Condition Assignment of Licenses of Hawaiian Telecom Communications, Inc., at 16-17; Comments of International Brotherhood of Electrical Workers, Local 827 and System Council T-6, at 11 (Feb. 21, 2012); Petition to Deny of the New Jersey Division of Rate Counsel, at 22-23; Petition to Deny of NTCH, Inc., at 11; Petition of RCA, at 36; Petition of RTG, at 22.

⁶⁰ See Petition to Deny of Free Press, at 6; Petition to Deny of NTCH, Inc., at 11; Petition to Deny of Public Knowledge, et. al., at 36; Petition of RTG, at 22.

Department of Justice, and claim the Commercial Agreements do not violate the Communications Act.⁶¹

CCIA strongly urges the Commission to review the Commercial Agreements during its consideration of the proposed license transfer Transactions. While the Applicants claim the agreements are independent of one another, recent statements by Comcast Corp. Executive Vice President David Cohen clearly refute those claims – stating, “[t]he transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements.”⁶² Additionally, one analyst has called the Transaction, along with the Commercial Agreements, “a complete reordering of the competitive universe as we know it today.”⁶³ Surely the Commission has an interest in determining whether the Commercial Agreements, which are poised to reshape the telecommunications landscape, violate the Communications Act, and when paired with the proposed license transfers, serve the public interest.

A. The Commission Should Determine Whether the Commercial Agreements Would Reduce Competition Between the Nation’s Two Landline Ecosystems

CCIA urges the Commission to thoroughly review whether the Commercial Agreements would reduce competition between the nation’s two landline communications ecosystems – one which is controlled by cable companies in individual markets, and the other that is controlled by an incumbent local exchange carrier (“ILEC”). Such a result would frustrate the intent of the Communications Act, which as Free Press stresses, was intended to facilitate competition between

⁶¹ See Joint Opposition, at 70-79.

⁶² Eliza Krigman, *Comcast Executive Defends Spectrum Deal*, POLITICO, Mar. 8, 2012.

⁶³ Craig Moffett, *Quick Take – Verizon Buys Spectrum From Cable . . . The End of the World as We Know It*, BERNSTEIN RESEARCH, Dec. 2, 2011, at 1.

incumbent telephone companies and incumbent cable companies.⁶⁴ In the past, even Verizon has cited the importance of the competitive rivalry between cable companies and telephone companies in other proceedings, stating, “this competition is benefitting consumers with better broadband services and lower prices.”⁶⁵

As the Communication Workers of America note, the Commission has emphasized that “increasing competition among facilities based broadband providers . . . will sustain and increase competitive choice among broadband providers and Internet access products.”⁶⁶ The Commercial Agreements could potentially reduce competition between Verizon’s FiOS service and competing cable services by “dividing up geographic service areas for particular companies,” which would result in reducing investment in infrastructure and raising prices for consumers.⁶⁷ And T-Mobile contends that the Transaction and Commercial Agreements have the hallmark of “pure horizontal allocation of markets,” with Verizon, majority owner of Verizon Wireless, agreeing tacitly to halt expansion of its video delivery and landline broadband access business; and in return for Verizon agreeing not to enter their cable markets, the cable Applicants would give up control of their wireless spectrum.⁶⁸

⁶⁴ Petition to Deny of Free Press, at 6.

⁶⁵ GN Docket No. 09-191, WC Docket No. 07-52, *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Comments of Verizon and Verizon Wireless, Attachment C, Declaration of Michael D. Topper, Vice President and Head of the Antitrust & Competition Practice, Cornerstone Research, at 15 (Jan. 14, 2010).

⁶⁶ Comments of CWA and IBEW, at 6 (citing CC Docket No. 02-33, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, at 35 ¶ 64 (Aug. 5, 2005).).

⁶⁷ *Id.* at 3-4.

⁶⁸ Petition to Deny of T-Mobile, at 18-19.

CCIA urges the Commission to fully investigate the connection between the proposed Transactions and the Commercial Agreements. The Commission must reach a conclusion whether the Transaction and Commercial Agreements will undermine the intention of the Communications Act, violate the Communications Act, and reduce or eliminate incentives for competition between Verizon and the cable Applicants in the landline broadband market, as well as online video delivery.

B. The Commission Should Determine Whether Commercial Arrangements Would Stifle Competition in the Mobile Broadband Market by Blocking Access to Wi-Fi Networks

CCIA also requests the Commission determine whether the Commercial Arrangements will stifle competition in the mobile broadband market. To overcome their spectrum constraints, many carriers deploy various technologies and mechanisms to efficiently manage their spectrum while still delivering data-intensive services to consumers. As Sprint details, one of the most effective methods carriers use to increase capacity is to offload data traffic, when possible, from the carriers' licensed spectrum to unlicensed spectrum used for Wi-Fi.⁶⁹

Wi-Fi offloading is of vital importance to wireless carriers, and this practice benefits both carriers and consumers. Carriers benefit by being able to lighten the data traffic on its network, allowing it to serve more customers with greater speed. Consumers benefit because when a smartphone or tablet is connected to a Wi-Fi hotspot they save money as the data traffic travels over lower-cost wired networks.⁷⁰

Currently, a cable Internet customer is able to access the Wi-Fi network of his or her cable company without regard to which mobile carrier the customer uses. However, Wi-Fi is an

⁶⁹ Comments of Sprint, at 5.

⁷⁰ *Id.* at 7.

unlicensed, unregulated service, so there is no requirement that cable companies continue to allow universal connectivity with all smartphones or customers of all wireless carriers.⁷¹

CCIA agrees with Sprint on the importance of Wi-Fi to the ability of mobile broadband providers to deliver data-intensive applications and handle ever-growing data loads, particularly in light of the “looming spectrum crunch.” Thus, in reviewing the Commercial Agreements and the proposed Transactions, CCIA urges the Commission to consider the effect of these arrangements on the ability of mobile broadband providers to offload traffic on cable-operated Wi-Fi networks. Will the cable Applicants, now aligned with Verizon Wireless and profiting off the sale of Verizon Wireless services to their own cable subscribers, have a financial incentive to block Wi-Fi offloading by customers of other carriers?⁷²

CCIA believes that such an outcome would be a disaster for competition in the mobile broadband marketplace. The proposed Transactions, if approved, would hand the most spectrum-rich mobile broadband provider even more valuable spectrum, while spectrum-starved carriers continue to wither on the vine. Meanwhile, the Commercial Agreements between Verizon Wireless and the cable Applicants would create an incentive for the cable companies to block Verizon Wireless’ competitors access to cable controlled Wi-Fi networks, eliminating one of the most efficient and effective means for spectrum-starved providers to continue to serve their customers and maintain some semblance of competition in the mobile broadband market.

The Commission must review these Commercial Agreements, and if it approves the planned Transaction and Commercial Agreements, approval must be conditioned on preserving

⁷¹ *Id.* at 8.

⁷² *See Id.*

Verizon Wireless' competitors' ability to utilize cable Wi-Fi networks on the same terms as Verizon Wireless does.

CONCLUSION

CCIA strongly urges the Commission to thoroughly review the proposed Transactions and Commercial Agreements to determine whether they would reduce or eliminate competition in the mobile or wireline broadband markets, result in the warehousing of scarce spectrum resources, hinder the ability of mobile broadband providers to negotiate fair and reasonable data roaming agreements, and undermine or violate the Communications Act.

March 26, 2012

Respectfully submitted,

Edward J. Black
Catherine R. Sloan
Phillip Berenbroick
CCIA
900 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
Tel. (202) 783-0070
Email: EBlack@ccianet.org
CSloan@ccianet.org
PBerenbroick@ccianet.org