“The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?”

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Chairman Kohl, Ranking Member Lee, and members of the Subcommittee, thank you for inviting me to testify about the proposed spectrum transfer and the integrated commercial agreements between Verizon Wireless and SpectrumCo LLC (consisting of Comcast, Time Warner Cable, and Bright House Networks) and Cox TMI Wireless LLC. Together these transactions will further cement Verizon's control over several critical resources for providing mobile broadband service, including most notably spectrum and access to roaming, while also potentially expanding Verizon's control over access to content, innovative services, and intellectual property. These deals merit a thorough investigation into the anticompetitive effects they may have on consumers and the future of our industry. This inquiry will prove that substantial and stringent conditions must be used to mitigate the anticompetitive effects of these transactions, and if these conditions are not included, the transaction must be denied.

RCA is an association representing more than 100 competitive wireless providers across the United States, including many rural and regional carriers, providing commercial services to subscribers throughout the nation. Many of RCA's members individually serve fewer than 50,000 customers, while RCA membership also includes larger regional and national carriers.

A significant change has occurred in the wireless industry over the past half decade. We have moved from talking about the "Big 4" national wireless carriers to increasingly referring to the "Big 2," a reflection of the level of control that these massive carriers hold over the industry against all competitors. In the once-competitive wireless

industry, the dominance of the two largest wireless carriers is visible by nearly any measure, including industry earnings before interest, taxes, depreciation, and amortization (EBITDA), total revenues, quantity of prime spectrum and value of spectrum.

This deal is not about spectrum price. This deal is "an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements," as Comcast's David Cohen recently stated, in which the major wireline providers in many markets will be at best joining forces to provide joint services – and at worst effectively agreeing not to compete with each other. Through the spectrum transaction, related marketing deals, and joint venture between the companies, Verizon will not compete for wired services with the cable companies, and the cable companies will not compete for wireless service with Verizon. If this deal concerned spectrum only, the cable companies could garner a much higher price for the spectrum from spectrum-starved carriers.

In AT&T's defunct attempt to takeover T-Mobile USA, the Department of Justice and the Federal Communications Commission recognized that the market has become imbalanced between the Twin Bells (AT&T and Verizon Wireless) and the rest of the industry. Just before AT&T abandoned the T-Mobile takeover, Verizon struck a deal with the cable companies, attempting to crowd out competitors and push the precarious state of the industry over its tipping point. While Verizon and the cable companies' transactions are distinguishable, the result would be the same. Without substantial conditions, this deal would send an anticompetitive wave crashing through the industry.

Spectrum

Proponents of this deal have stated that these transactions are only about spectrum and that inquiry and oversight are not needed, while at the same time openly stating that spectrum is the lifeblood of the wireless industry. Because spectrum is a scarce and finite taxpayer owned resource, it is a unique, fundamental input for wireless services. Federal policymakers must ensure that further spectrum resources are made available to feed the proliferation of wireless services. But it is even more critical that federal policymakers ensure that spectrum be made available to competitive operators who can and will immediately put it to use to expand mobile broadband and consumer choice. Verizon has shifted its public stance of having adequate spectrum resources to meet its needs through at least 2015 to stating to the FCC that it will need additional spectrum as early as 2013. All the while, Verizon maintains a vast spectrum warehouse of prime, unused spectrum and now looks to add additional spectrum resources to its stock pile. Putting aside the current transaction for this brief moment, I can assure you that virtually all RCA members would be ecstatic to find themselves in a similar spectral position as Verizon.

This transaction would transfer at least 20 MHz of prime, unused, and nearly nationwide spectrum into the hands of a carrier that already holds as much as 44 MHz of unused spectrum in many markets. At the same time, many competitive carriers are approaching exhaustion of their current holdings. Verizon's dominant control over other critical market inputs, including wireline backhaul, roaming for both voice and data services, and monopsony control over access to cutting-edge, interoperable devices, exacerbates this problem.

All Spectrum is not Created Equal

Reviewing the spectrum holdings of multiple carriers will not result in an apples-to-apples comparison, as all spectrum is not created equal. Based on the propagation characteristics of the different frequencies as well as the potential for interference and various operations in neighboring spectrum bands, a direct megahertz to megahertz comparison is virtually impossible. However the spectrum band is sliced, Verizon demonstrates a stronger portfolio than most of its competitors, which would be bolstered if these transactions proceed as proposed. Federal policymakers must analyze this current transaction in the context of how much spectrum Verizon holds and how efficiently Verizon is using it.

Verizon seeks to purchase at least 20 MHz of spectrum in the Advanced Wireless Service (AWS) band. Since it has already been cleared, this spectrum is ready for immediate 4G Long Term Evolution (LTE) mobile broadband deployments. Importantly, it is not encumbered by existing operations from other wireless operators or government users and the standards for LTE service over AWS have already been established as "Band 4." AWS is one of four spectrum bands, along with Cellular, PCS, and 700 MHz, that will be used for the deployment of domestic LTE service.

Not surprisingly, Verizon holds all four of the spectrum bands ready for 4G LTE deployment, and Verizon has significant amounts of under-used or unused spectrum. This spectrum grab is premature at best and nefarious at worst based on this underutilization of spectral resources which are primed and ready for LTE deployment. To put this in context, Verizon has proposed to spend $3.9 billion for the cable companies' AWS spectrum while over $5 billion in other spectrum it has previously

purchased remains unused. This spectrum warehousing forecloses the opportunity for other carriers to expand services.

Verizon holds 22 MHz of nationwide 700 MHz Upper C Block spectrum, as well as an additional 12 to 24 MHz of Lower 700 MHz in several markets. Yet based on its buildout status reports filed with the FCC earlier this year, Verizon has begun constructing and offering service only on the C Block, while nearly $5 billion in spectral resources purchased at auction lie fallow in Verizon's spectrum warehouse, and while many of our members struggle to offer competitive services to consumers over significantly less spectrum.

Further, Verizon's massive spectrum warehouse and purchasing power has a chilling effect on the secondary spectrum market. Verizon is able to pay staggering amounts for spectrum on the secondary markets, which encourages spectrum speculation for unfair financial gain. Instead, some speculators with no intention of constructing and operating wireless facilities are holding on to fallow spectrum in the hopes of a "big score" from one of the duopoly carriers. If the deal is approved as proposed, Verizon will add even more spectrum to its warehouse while competitive, spectrum-starved carriers are left behind.

Lack of Interoperability Further Tips the Competitive Balance in Verizon's Favor

Long Term Evolution (LTE) promised to bring together GSM and CDMA technologies and unite the industry. As the FCC was attempting to establish the 700 MHz spectrum as the 4G LTE spectrum band, Verizon and AT&T were creating separate band plans on which only their devices would operate. AT&T and Verizon successfully

bifurcated the 700 MHz spectrum, isolating lower A block holders, and stranding them without access to interoperable mobile broadband devices. Smaller carriers without a sufficient number of customers to demand the direct attention of equipment manufacturers found their frequencies orphaned. As a result they have been largely unable to deploy LTE services on 12 MHz of prime, low-band spectrum.

Beyond the impact to Lower A Block licensees, this bifurcation has had a chilling effect on competition throughout the entire industry. The most telling example comes from Cox Communications. This past year, Cox decided to exit the wireless market. In its press release, Cox stated that its decision to no longer sell its 3G wireless service was based on the lack of wireless scale necessary to compete in the marketplace, the acceleration of competitive 4G networks, as well as the inability to access iconic wireless devices. Lack of interoperability has a negative competitive impact on the entire market.

RCA members spent nearly $2 billion on 700 MHz spectrum, which they cannot use as a result of anticompetitive practices of the larger carriers. Smaller carriers, and their now stranded investment, continue to sit on the sidelines while Verizon and AT&T get a head start on deploying 4G LTE throughout the country. Verizon itself could mitigate some of the harms by deploying its 700 MHz lower A and B block licenses and demand inclusion of these bands on procured devices. Instead, that spectrum remains unused in Verizon's warehouse.

Additionally, the boutique specifications, known as band classes, have created a new, technical barrier to roaming. Where devices are not technically compatible, even when operating on the same technology in the same spectrum band, roaming will not be

possible. Restoring interoperability remains one of the most pressing competitive issues in the industry today.

Roaming Is Fundamental to Competition

No carrier provides ubiquitous service. Wireless customers must roam onto other compatible networks to receive service when outside of their provider's coverage footprint. By their very nature, rural and regional carriers have less spectrum and smaller coverage footprints than the national carriers. The geographic service areas of RCA's members do not replicate the massive national footprints of Verizon and AT&T, and so RCA's members are heavily reliant on voice and data roaming arrangements to fill the gaps. The Commission has repeatedly recognized that roaming agreements can be critical to providers, especially smaller providers, remaining competitive in the mobile services marketplace.

Roaming agreements were once commonplace. However, as the industry consolidated and market power became concentrated in the hands of fewer carriers, Verizon and AT&T have built a roaming duopoly where they rarely, if ever, need smaller carriers' networks to fill coverage gaps. As a result, Verizon and AT&T have increasingly been able to hamstring the ability of other carriers to compete by refusing to offer voice and data roaming on commercially reasonable terms and conditions. RCA is pleased the FCC took action last year to ensure voice and data roaming where technically possible, but RCA members continue to struggle to negotiate commercially reasonable data roaming agreements. This is because Verizon has appealed the data roaming order, leaving the impact in limbo. Further, while the order is an important back-stop in private

negotiations, these negotiations remain very one-sided with the larger carriers having significant bargaining advantages over the smaller carriers. Simply put, Verizon has the power and incentive to stall negotiations to foreclose competition. This transaction will only increase Verizon's dominance over the roaming market by eliminating four potential roaming partners.

Not coincidentally, it is partially through Verizon's dominant control over the roaming market that brought the cable companies to the table to surrender their spectrum to a one-time competitor rather than build out their own networks. When the FCC adopted its Data Roaming Order, NCTA, a trade association representing cable providers, stated that, "adopting enforceable data-roaming rights will enable new entrants to compete on a nationwide basis and give consumers more choice and flexibility in wireless services." The most telling example of the importance of data roaming comes from the Applicants themselves. In explaining some of the challenges to building a network to the FCC, and in public statements, the Cable Companies said they would need to secure nationwide roaming agreements[1]. They rightly noted that wireless consumers expect service coverage wherever they travel and that no carrier, and especially not a new entrant, can provide service in all areas, which necessitates that it obtain roaming arrangements with other carriers. Indeed, Comcast stated publicly that "access to roaming agreements is next to impossible."

The roaming challenges expressed by the cable companies involved in the transaction today are experienced throughout the industry by all competitive carriers, as they noted. Increasing Verizon's market power will only exacerbate these issues.

[1] David L. Cohen, *Clarifying Comcast's Spectrum Position*, Comcast Voices, Jan. 17, 2012, http://blog.comcast.com/2012/01/clarifying-comcasts-spectrum-position.html.

Federal policymakers should not implicitly endorse the "If you can't beat 'em, join 'em" philosophy.

Cable's Competition with the Telephone Company

Despite the cable companies' inability to successfully launch their own facilities-based wireless services to compete with Verizon, the cable companies have found success in competing with Verizon's other service offerings, including FiOS. With unconditioned approval of these transactions, such competition will vanish. As the one-time competitors join forces to market and sell each others' services, federal policymakers must publicly establish clear rules of the road to ensure that this cozy arrangement does not stifle future innovation.

For example, cable companies provided a threat to land line phone companies, such as Verizon, with the development and launch of voice over internet protocol (VoIP) services, giving consumers a choice of purchasing phone service from the phone company or their cable provider. The cable companies' broadband products also provided an alternative internet offering to Verizon's digital subscriber line (DSL) service.

Essentially, in much of America there are two wires reaching most consumers – one from the phone company and one from the local cable franchise. In many markets, these wires are controlled by Verizon and one of the cable companies involved in this deal. In fact, nearly 70% of the 82.5 million Americans covered by Verizon's local exchange carrier (LEC) territory are covered by the franchise area of one of these cable companies. For these nearly 60 million consumers, the only wires reaching their homes

will be operated by companies working together through these joint agreements. This raises serious questions regarding Verizon and the cable companies' willingness to compete on services or costs. This Committee, the DOJ, and the FCC must carefully consider this competition issue.

Backhaul and Control Over the Wires

In addition to being the two largest wireless providers, Verizon and AT&T are also the two largest wireline providers. This provides the two carriers with a significant competitive advantage, as they effectively control the backhaul networks that provide the pathway from wireless towers to the public switched telephone network. These two largest providers have a history of discriminating against RCA members in the sale of backhaul capacity, not surprisingly favoring their own wireless affiliates.

Increasingly, cable companies have provided an alternative backhaul service for wireless carriers. The growth of cable backhaul has also been lucrative for the cable companies. For example, in its fourth quarter 2011 earnings release, Time Warner Cable noted an almost 70% growth in backhaul revenues in just one year, from 2010 to 2011. The availability of cable backhaul capacity acts as a constraint on Verizon's and AT&T's incentives to raise backhaul prices even further. Now, however, Verizon and the cable companies have entered into a series of agreements, which raises the serious question of whether the cable companies have an incentive to continue to provide other wireless carriers with competitive offerings in the backhaul and special access markets.

With the cable companies reselling Verizon Wireless service, it is critical that cable companies do not discriminate against competitive carriers in the provision of

backhaul service in favor of Verizon Wireless. Similarly, the FCC must carefully watch what Verizon, which has built out fiber networks to support its FiOS offering and to provide its own backhaul to Verizon Wireless cell sites, does not abandon the strategy of investing in and upgrading their own wired network. With Verizon and the cable companies now jointly marketing each others' services on a cooperative basis, in many areas the backhaul market may go from a duopoly (Verizon and the cable companies) to an effective monopoly (the cooperative Verizon/cable companies' joint effort).

WiFi Services and Offload as an Alternative Solution to Network Congestion

One way to reduce network congestion, without as great reliance on purchasing backhaul from a competitor, is to utilize WiFi offload capabilities. Congestion issues are resolved by moving traffic off the cellular network utilizing exclusively licensed spectrum and on to an internet protocol network. By connecting mobile devices to WiFi networks, traffic can be more immediately taken off the air and onto a wired network, allowing the operator to better handle capacity issues. Beyond the network operator side, consumers are also increasingly relying on WiFi networks with an ever-increasing number of connected devices.

A growing trend in the industry is to shrink the size of cells through use of pico- and femto-cells and other systems to bolster this moving traffic off the air. All of these options rely on access to the wired network through either the phone company or the cable company. Cut off this access, and a WiFi offloading solution is eliminated. As the industry faces what many, including FCC Chairman Julius Genachowski, have referred to

as a "looming spectrum crunch," we should work to identify ways to expand access, not give one set of teamed companies control over most of the solutions.

Cable has been a leader in building out WiFi hotspots, utilizing unlicensed spectrum to provide unlimited and efficient wireless network access to their customers. For example, Comcast has over 20,000 WiFi hotspots from Philadelphia to New York City alone. With increased incentives to rely on Verizon for wireless service, cable companies may reduce expansion of WiFi networks, or make them available only to Verizon Wireless customers for mobile offload. Unfortunately, the removal of competition in this area will slow innovation and deployment of the high speed mobile broadband networks that all consumers and our economy rely on.

Joint Marketing

The agreements between the cable companies and Verizon shield each others' core businesses from competition. Each company would have a stake in the success of the other, and accordingly even if there is no formal arrangement not to compete, the incentives are dramatically reduced. Regarding wired services, the two wires going to the home are wrapped up into one.

As wireless broadband has grown and speeds have increased, LTE technology has brought us a potential third "line" to the home. Affix a "cantenna," a cylinder-shaped antenna for receiving the LTE signal, to a structure and a customer can gain access to wireless broadband using the latest network technology to access the internet at speeds that are comparable or better to other potential offerings, particularly in rural areas. Yet

this third connection to the home is also under the control of the Verizon-Cable team, essentially wrapping up all three means of connecting the home under one banner.

Moreover, other anticompetitive effects may loom within these agreements as well – but since they have been designated as "highly confidential" by the companies, I am unable to review or comment on them. A thorough examination of such agreements must be made to determine whether other potential anticompetitive harms exist behind the curtain of the secret highly confidential documents.

FCC Must Update the Spectrum Screen

The FCC has recognized that the control of spectrum licenses can translate into control of the market, and has historically taken steps to ensure that licenses are accessible to a range of companies and interests. At one point we had a spectrum cap, with a limit on the amount of spectrum that one entity could hold. Following the sunset of the spectrum cap, the FCC moved to using a spectrum screen. For the past eight years, the Commission has used this now-outdated tool to determine whether or not to closely examine particular markets for competitive harm due to the consolidation of spectrum into the hands of too few entities. Because the operative facts in the dynamic broadband market were constantly changing, the Commission found it necessary to modify the screen constantly on a transaction-by-transaction basis, leading to recurring complaints of *ad hoc* decision making. While the spectrum screen may have been a useful transitional mechanism as the Commission moved away from spectrum caps in local markets, the Commission should now use a new approach to determine competitive harm. The

spectrum screen approach is no longer an adequate tool to consider whether competitive harm may be occurring in a particular market.

Under the current spectrum screen, this transaction triggers additional scrutiny in only a few markets. As an informal tool for evaluating transactions, this points to the need for the screen to be updated to reflect today's market realities – such as the fact that the FCC no longer considers the wireless marketplace to be "effectively competitive" and the fact that a duopoly now exists between AT&T and Verizon. Moreover, the standard spectrum screen analysis does not adequately account for the fact that not all spectrum for broadband use is comparable as indicated above. The Commission should abandon the spectrum screen approach in favor of a new paradigm, used in the AT&T/Qualcomm transaction, in which the Commission reviews the potential anti-competitive effects of each proposed transaction on a national level, using a case-by-case analysis. This approach would more closely approximate the reality of the current mobile wireless industry. If the FCC continues to utilize its spectrum screen, it should properly apply weighted values to different bands and blocks of spectrum based on the favorable, or unfavorable, characteristics that each band possesses for use in the provision of mobile broadband services. The spectrum screen should also more accurately reflect the current availability of wireless spectrum, which should result in a decrease of the spectrum screen. Finally, the FCC should consider a spectrum screen that is different for the dominant carriers in the industry – AT&T and Verizon – than it utilizes for the rest of the industry. The FCC must retain the ability to modify or alter the spectrum screen to adjust to new market conditions, including conditions created by the transaction at hand.

Verizon has previously agreed that the spectrum screen should be revised during a pending transaction.

By adopting a screen that takes into account (1) the proper amount of usable spectrum; (2) a proper valuation of spectrum and (3) the current marketplace reality that four carriers are needed for competition in a market, the Commission would be able to more accurately determine the competitive harm caused by spectrum aggregation, particular in the context of additional spectrum aggregation by the two dominant carriers – Verizon and AT&T.

Conditions Must Be Imposed If These Deals Go Forward

For all of the reasons described, this deal cannot be granted unless the Commission imposes stringent transaction-specific conditions that limit the competitive harms that would result. Specifically, the FCC must impose:

1. Significant spectrum divestitures;
2. Commercially feasible provisioning of roaming;
3. Interoperability and availability of interoperable devices; and,
4. Affordable provision of backhaul and special access services.

Where Verizon clearly holds a sufficient amount of spectrum to meet near-term demand, approval of the deal should include robust divestitures of unencumbered useable spectrum that can be deployed by one or more competing operating carriers to provide wireless broadband services. In considering spectrum divestitures, the FCC must conduct a full review of Verizon's holdings and use in each market across the nation to determine where spectrum may otherwise be put to better and more efficient use, rather than sit in a

spectrum warehouse. This is particularly important in rural areas, where Verizon appears not to be utilizing spectrum it already holds to its full capacity. The FCC should require divestitures to operating entities willing to enhance their current offerings or expand their current operations in markets where it is clear that Verizon's spectrum inventory unreasonably exceeds the capacity necessary to meet near-term demand. It is also critical that all spectrum divested be immediately available and suitable for deployment of 4G LTE services, including availability of interoperable devices and robust roaming opportunities.

Verizon must be required to provide voice and data roaming on commercially reasonable terms and conditions. Roaming supports both consumer expectations and competition among carriers, and a stringent roaming condition will allow both existing operators and new entrants to compete in the market. Close scrutiny of the resale provisions contained in the joint market agreements with the cable companies should guide the justification of what is deemed to be commercially reasonable terms and conditions for roaming, and should in fact be lower than these reseller rates as roaming carriers impose fewer costs on a host carrier than do resellers. Further, a stringent roaming condition along these lines will not unduly benefit the cable companies for their unwillingness or inability to deploy their AWS spectrum as they compete against other facilities based providers.

The Commission must also impose an interoperability condition, ensuring that equipment for all bands – particularly for 700 MHz and AWS – remains open and competitive, with all carriers having access to devices that are interoperable within a band. The Commission must ensure that Verizon is prevented from restricting the best

and most innovative handsets to its own spectrum bands and technologies. Although an interoperability *NPRM* is forthcoming, the rulemaking and related appeal process on such a contested issue may be protracted. An interoperability condition on this transaction will mitigate competitive harms in the interim, and will be subject to revision in accordance with the Commission's ultimate conclusions in the interoperability proceeding. In addition, Verizon must commit to deploying mobile wireless services on its Lower 700 MHz A and B Block spectrum in the near term. In doing so, Verizon would create an equipment and infrastructure market that would both decrease its own warehousing of spectrum, as well as allow other providers to deploy on their own Lower 700 MHz A and B Block spectrum.

Finally, the FCC must impose conditions for the provision of wireline backhaul and special access. Verizon and AT&T, the two largest providers, have a history of discriminating against competitors in the sale of backhaul capacity, tending to favor their own wireless affiliates. What already is a significant competitive disadvantage for smaller carriers may become seriously exacerbated by the proposed Transactions. The joint marketing and resale agreements raise the serious question of whether the cable companies have an incentive to continue to provide other wireless carriers with competitive offerings in the backhaul and special access markets. The Commission must condition this deal on access to Verizon's and the cable companies' backhaul capacity.

Conclusion

Further concentration in the wireless industry will continue to crowd out competition and ultimately harm consumers. In looking at the Verizon-cable deals from a wireless industry perspective, Verizon Wireless will continue to grow stronger, the viability of competitors will be further stressed, and four potential new entrants will be eliminated as the march to duopoly continues. Absent imposing each of the conditions discussed today, competitive carriers will continue to struggle to provide service as an alternative to an even stronger market dominant player. These deals must be conditioned, or they must be stopped. Otherwise, new regulations to artificially create the benefits of market competition will be required.

Thank you again for the opportunity to testify today, and I welcome any questions.