STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4; Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, ULS File Nos. 0004942973, 0004942992, 0004952444, 0004949596, and 0004949598; and Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket 12-175

This transaction presented the Commission with one of the most challenging reviews in recent memory. First, Verizon Wireless, with over 94.2 million retail subscribers and $70.2 billion in annual revenue,[1] and whose network already covers more of the country's population than any other wireless service provider, sought to acquire 152 licenses of valuable AWS-1 licenses covering 94 percent of the U.S. population (for approximately $4 billion). Second, the parties had negotiated related commercial agreements that, on their face, would have turned former fierce competitors not only into "frenemies", but collaborators, for as long as these companies found it to be in their mutual financial interests. Although DOJ and FTC guidelines state that temporary collaborations between competitors can have public interest benefits, they do not endorse permanent collaborations between entities with the kind of market power these companies possess. Let me be clear: As initially proposed, no FCC could have found the transaction to be in the public interest. However, over the course of several months, Verizon Wireless, the cable company members of SpectrumCo, and Cox worked diligently with the staffs of the Antitrust Division of the U.S. Department of Justice (DOJ) and the FCC. In the end, the parties stipulated to a proposed Final Judgment with DOJ. Together, with the conditions adopted in this Order, this transaction has substantially changed in several critical respects and is now ripe for approval.

For one, the transaction no longer simply involves the transfer of more wireless spectrum to one of the most, if not the most, dominant carriers in the industry. Because of the innovative thinking on the part of the applicant and the flexibility of Commission staff, now the transaction also provides for the transfer of a significant amount of spectrum from Verizon Wireless to one of its competitors, T-Mobile. This will enable T-Mobile to compete more effectively because it will gain spectrum in 125 local markets covering approximately 60 million people, increasing its AWS-1 holdings in order to deploy and expand LTE services. The Order also includes a 700 MHz license transfer to another carrier, Leap Wireless, which offers service though Cricket. The spectrum transfer to Leap will help it to continue offering low-cost, unlimited digital services at flat monthly rates without fixed-term contracts, in 13 CMAs. The Order also forces Verizon Wireless to deploy the AWS-1 licenses on a faster timetable than initially imposed. It must build out its AWS-1 network to 30 percent of the population covered by the licenses within three years from today and to 70 percent of that population within seven years.

Second, with this approval, the Commission is imposing the most robust roaming condition in a transaction in our history. Roaming is essential to competition in the wireless arena, as consumers demand coverage wherever they live, work, or travel. By obligating Verizon Wireless to live by the Commission's data roaming rules regardless of the outcome of its pending

[1] http://aboutus.verizonwireless.com/ataglance.html

litigation to upend those rules, we have taken an important stand for competitive carriers across the nation. The specific condition we adopt here should provide a considerable benefit to smaller carriers and their subscribers. It does not simply require that Verizon Wireless offer roaming arrangements for commercial mobile data services on the AWS-1 spectrum it is acquiring in this transaction. It also requires Verizon Wireless to offer data roaming on any of the spectrum licenses it holds in the geographic areas where it is acquiring AWS-1 spectrum as a result of this transaction. That is 671 Cellular Market Areas (CMAs) out of the 716 CMAs in which Verizon holds spectrum. There are a total of 734 CMAs nationwide. This data roaming condition takes effect today and lasts for five years. That duration for a roaming condition is the longest the Commission has ever imposed.

Third, the commercial agreements, which had required Verizon Wireless and the cable companies to collaborate as long as they had desired, have also been modified in important ways. For example, the Joint Operating Entity agreement (JOE), which likely would have prevented non-members of the JOE in perpetuity from having access to the technologies the JOE developed, has been severely limited to a duration of just over four years from now. After that time, it is far more likely that these companies will be free to license to competitors any technologies or services developed under the JOE. It is also significant that the proposed Final Judgment forbids Verizon Wireless from marketing cable products and services where FiOS service exists, as well as where Verizon is authorized and/or obligated to roll out this competitive service. This represents approximately 70 percent of Verizon's broadband footprint. This should help preserve Verizon's incentives to compete vigorously with FiOS against the cable companies, to ensure lower prices and better services for consumers. As far as wireless competition goes, the proposed Final Judgment limits Verizon Wireless's exclusive agreement with the cable companies so that after a little more than four years, the cable companies can choose other wireless partners. And rather than requiring the cable companies to wait four years to elect whether they want to be a reseller of and competitor to Verizon Wireless, the proposed Final Judgment permits them to make that election immediately, should they so choose.

It is also important that the proposed Final Judgment and this Order permit monitoring of the parties' future activities to ensure that those technologies and services are being made available to other parties and on terms and conditions that are not anti-competitive. In addition, Verizon is obligated to periodically report to the Commission about the impact of the commercial agreements on deployment of FiOS and on the market for DSL services. If those reports indicate that this transaction is leading to anticompetitive harm in these markets, the DOJ and the Commission could take steps to remedy any harm in the market for DSL services.

Given the amount of video programming content that Comcast and Time Warner control, I would have preferred a condition that prevented any of the agreements to impact the market for licensed video programming and the market for over-the-top Internet video programming. That is because the definition for a term in the JOE that establishes the purpose of the research and development to be performed under the JOE was broad enough, in my opinion, to include video programming and over-the-top video programming. Therefore, a condition would have been appropriate to ensure that the JOE, or any of the commercial agreements, could not include video programming and over-the-top Internet video programming. But, the parties have said that the commercial agreements do not involve these services. In addition, the DOJ Final Judgment says that DOJ must review and approve any future modifications to the agreements. Therefore, if in the future, the parties switch their position on the proper interpretation of the agreements and try to include video programming, then DOJ would have authority to prevent that from happening. I thank my colleagues for agreeing with my request to include language making this clear in the Order.

I believe that a concern raised by Communications Workers of America deserves special mention. CWA asserted that Verizon's decision not to build FiOS in certain areas within Albany, Baltimore, Boston, Buffalo, and Syracuse, does not serve the public interest. According to CWA, at least twenty percent of the households in these areas where Verizon did not build FiOS were below the poverty line. For these reasons, CWA believes the Commission should adopt a condition requiring some buildout of FiOS in those areas.[2] While this proceeding may not be the appropriate forum to address CWA's concerns, I believe that the Commission, area governments and private industry must do everything in their power to deploy advanced communications services to low income communities. I pledge to continue to work with CWA and my colleagues to ensure that we are doing all we can to encourage increased competition and build-out in the wireline broadband arena.

It is crystal clear that a very big swath of the American communications landscape—that involving the wireless and wireline data, voice, and video—is rapidly converging. We are moving from silos to blended services, and in our oversight of these tectonic shifts, we must apply careful need to strike the right balance between too much consolidation and just enough in order to provide better and faster services. The hard-working members of the FCC's Wireline, Media, Wireless, and International bureaus, as well as our offices of Strategic Planning and General Counsel and my Wireless Advisor, Louis Peraertz, keep this in the front of their minds each and every day. They are to be commended for their hard work, the long hours, and their ability and openness to collaborate with DOJ.

I vote to approve this transaction.

[2] CWA/IBEW Reply Comments at 10-14.