

MASSACHUSETTS  
40 main st, suite 301  
florence, ma 01062  
tel 413.585.1533  
fax 413.585.8904

WASHINGTON  
501 third street nw, suite 875  
washington, dc 20001  
tel 202.265.1490  
fax 202.265.1489



December 22, 2011

Chairman Julius Genachowski  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**RE: Verizon Wireless and SpectrumCo application for assignment of 122 AWS licenses**

Dear Chairman Genachowski:

Free Press submits this letter in response to the application filed on December 19, 2011, seeking approval to transfer 122 Advanced Wireless Spectrum licenses from SpectrumCo, LLC to Verizon Wireless. We do not at this time address the merits of the public interest benefits alleged by the applicants. Indeed, we do not believe the public or the Commission can properly assess the potential benefits or harms of the transfer in question without viewing the transaction in its entirety. Consequently, we ask the Commission to follow the lead set by the Department of Justice and incorporate in its review all of the terms and conditions of the proposed deal. Merely reviewing part of the deal – whether it is ultimately approved or rejected – would violate the Commission’s mandate to determine whether the public interest will be served by granting the application.

The companies have announced, and it has been widely reported in the press, that the purchase of SpectrumCo’s licenses is one piece of a complex, multi-party transaction.<sup>1</sup> Also included in that transaction are agreements among the four companies involved to market and sell one another’s communications services, including voice, video, and broadband offerings. Although all the details of these joint-marketing arrangements have not been made public, it has been reported that Comcast, Time Warner Cable and Bright House will sell Verizon’s wireless services to their subscribers, and Verizon will make its erstwhile competitors’ cable modem and television services available to its wireless customers.

As the companies’ own press releases indicate, the spectrum sale and the joint-marketing arrangement are not separate transactions. Indeed, neither arrangement would stand independently. It is unlikely that the cable companies in the SpectrumCo venture would willingly sell a key asset to a competitor without an assurance that the purchaser would not use that asset to compete with the cable companies’ own services. It is also hard to believe Verizon Wireless would agree to jointly market its competitors’ services, unless the company could simultaneously

---

<sup>1</sup>E.g. Press Release of Verizon Wireless, Comcast, Time Warner Cable, and Bright House Networks (Dec. 2, 2011), at <http://news.verizonwireless.com/news/2011/12/pr2011-12-02.html>; Associated Press, “Cable companies to resell Verizon Wireless service,” *Los Angeles Times* (Dec. 2, 2011), at <http://www.latimes.com/business/la-fi-w-cable-verizon-20111202,0,607072.story>.

acquire valuable AWS spectrum licenses and discourage its cable competitors from developing competing wireless service offerings.

Overall, this transaction would weaken the incentives for each of these companies to compete with one another in the provisioning of high-speed Internet, wireless, and MVPD services, undermining the FCC's mandate from Congress in the 1996 Telecommunications Act to increase competition. Furthermore, depending on the terms of this arrangement, it is likely to contradict one of the key goals articulated in the Commission's National Broadband Plan: to "bolster consumer benefits by developing data-driven competition policies for broadband services."<sup>2</sup>

The Commission may legally consider within its review both the application and "such other matters as the Commission may officially notice."<sup>3</sup> Moreover, Congress has directed the Commission to determine "whether the public interest, convenience, and necessity will be served" by approving a proposed license transfer.<sup>4</sup> Such a determination cannot possibly be made without considering all provisions of the deal that will impact the public interest. Cross-marketing arrangements have a substantial impact on the investments and pricing choices made by competitors. Because the proposed license transfer comes part-and-parcel with the other arrangements, they must be reviewed together for their collective impact on the public interest. Without careful review of the entire agreement, the Commission is not in a position to assess whether this deal would have "anti-competitive" effects on the communications marketplace – much less whether grant of the applications would satisfy the standard of Section 309.

The Commission must demand that the applicants provide all documents related to the joint marketing and selling of services by these companies to enable a comprehensive and complete review of this transaction. According to press reports, the Department of Justice plans to review the marketing arrangements to ensure all of the companies continue to have incentives to offer new services, compete on subscription prices, and invest in network build-out. The FCC should take similar steps. Furthermore, as with other transactions, all relevant documents should also be made available for public review under a suitable protective order.

We urge the FCC to ensure this transaction is not a hidden agreement to divide up the broadband marketplace and thereby maintain a stagnant and fixed environment for consumer prices.

Sincerely,

*/s/ Joel Kelsey*

Joel Kelsey  
M. Chris Riley  
Matthew F. Wood  
Free Press

---

<sup>2</sup> *Connecting America: The National Broadband Plan*, FCC, at 35 (rel. Mar. 16, 2010).

<sup>3</sup> 47 U.S.C. § 309(a).

<sup>4</sup> *Id.*