

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

and

STATE OF NEW YORK,

Plaintiffs,

v.

VERIZON COMMUNICATIONS INC.,  
CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS, COMCAST  
CORP., TIME WARNER CABLE INC.,  
COX COMMUNICATIONS, INC., and  
BRIGHT HOUSE NETWORKS, LLC,

Defendants.

Case No. 1:12-cv-01354

**OPPOSITION OF THE CITY OF BOSTON, MASSACHUSETTS  
TO PROPOSED SETTLEMENT**

**I. SUMMARY**

The City of Boston, Massachusetts<sup>1</sup> (the “City”) files these comments to express the City’s ongoing opposition to the spectrum transfers and related commercial agreements entered into between Verizon and the cable operator Applicants.<sup>2</sup>

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<sup>1</sup> The Mayor’s Office of Cable Communications was established in July of 1980 and given the task of researching and planning the development of Boston’s cable television and communication system. The idea of cable for the City of Boston was first explored in 1973, but was abandoned because the City found that it would have to bear an unfair financial burden. Mayor Kevin White revisited the cable issue in 1979 and it was decided that the City would move forward with a franchise system. The Office of Cable Communications was the sole office within the City government that dealt exclusively and specifically with the cable franchising process in Boston; and as such, the office served an important policy-making function as the principle advisor to the Mayor on the cable franchise issue. Under Massachusetts’ law, the Mayor of Boston has the exclusive power to award the cable franchise license. Presently the Office of

The City also wishes to make clear its deep disappointment in the actions of the Federal Communications Commission and the Department of Justice in approving the spectrum transfers and the commercial agreements between Verizon and the cable operators as the transactions are anti-competitive, unlawful, and not in the public interest. If the transaction is approved as proposed, it could leave Boston and Bostonians permanently on the wrong side of the digital divide. The City urges the Court to deny the Applications, and to exercise its authority— in this proceeding and/or by initiating a separate proceeding – to halt the implementation of the related commercial agreements. The City strongly believes that the spectrum transfers and related commercial agreements create significant disincentives for Verizon to make any future investments in its FiOS fiber network which in turn will harm Boston consumers, who lack robust competition and investment in wireline broadband services. The City would recommend that the Court reject the proposed settlement, and suggest that, if the proposed transaction is eventually approved at all, in order to ameliorate customer confusion and disincentives to expand the FiOS footprint, *at the very least* any settlement should provide that neither VZW nor any of the cable defendants should be able to sell each others' services in any state where Verizon has either a FiOS footprint or a DSL footprint.

Put simply, the City is concerned that these transactions are designed to ensure that Verizon and Comcast collaborate and never compete in Boston, thereby effectively depriving our communities, citizens, small businesses, schools, hospitals and educational facilities the benefits

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Cable Communications still handles all cable related business for the City and is located in the Mayor's cabinet under the Chief Information Officer.

2 Applications were filed on December 16, 2011 by Cello Partnership d/b/a Verizon Wireless ("Verizon Wireless") and SpectrumCo, LLC ("SpectrumCo"), and on December 21, 2011 by Verizon Wireless and Cox TMI Wireless, LLC, a subsidiary of Cox Communications, Inc. ("Cox"), to assign spectrum licenses held by SpectrumCo and Cox Wireless to Verizon Wireless. See also, Public Notice, DA-12-67, WT Docket No. 12-4 (rel. Jan. 19, 2012); Order, DA-12-367, WT Docket No. 12-4, (rel. Mar. 8, 2012).

of video and broadband competition that is available in most of eastern Massachusetts' surrounding suburbs and in other parts of the country.

## **II. INTRODUCTION**

Boston is a world-class city whose major industries include innovative technology, research, healthcare, education and hospitality. These industry sectors demand access to broadband to grow and succeed in their respective fields and their customers expect nothing less. Affordable broadband is critical to economic development, quality of life, and opportunity for the residents and small businesses in our City.

### **A. THE CITY OF BOSTON IS A STRONG PROPONENT OF BROADBAND DEPLOYMENT**

The City of Boston has actively advocated for broadband investment and video competition throughout our city and particularly in under-served and lower-income neighborhoods. We encourage the introduction of new technologies and competition through innovative policies and investments. For example:

- Boston has invested over \$18 million over the last five years in our city fiber network to support broadband for use by constituent services and our public schools.
- Boston developed informal and expedited franchising processes. In Boston, we renew, transfer, amend and dissolve franchises, quickly, as the situation(s) warrant, in order to be responsive to changes in law, regulation and/or market conditions.
- Boston has taken the lead in piloting an affordable wireless solution for our residents through the Boston Wi-Fi Project.

- The City streamlined access for broadband and wireless telecommunications businesses seeking to provide services to Boston's residents and businesses, establishing a single point of entry for telecommunications services applicants.
- Boston has negotiated agreements with providers such as RCN, Next G, American Tower and Extenet in order to introduce some measure of competition and new technologies in wireless communications.
- Boston is in the midst of an aggressive Boston Technology Opportunity Program designed to reach schoolchildren and families in need of technical skills and training, thanks to funding support from the American Recovery and Reinvestment Act.

Collectively, all of these efforts are designed to provide our citizens, neighborhoods and businesses with the resources necessary to succeed in a digital economy. Vital to our efforts is the development of a healthy and competitive market for broadband.

**B. BOSTON LACKS A ROBUST AND COMPETITIVE MARKET FOR WIRELINE BROADBAND AND VIDEO SERVICES**

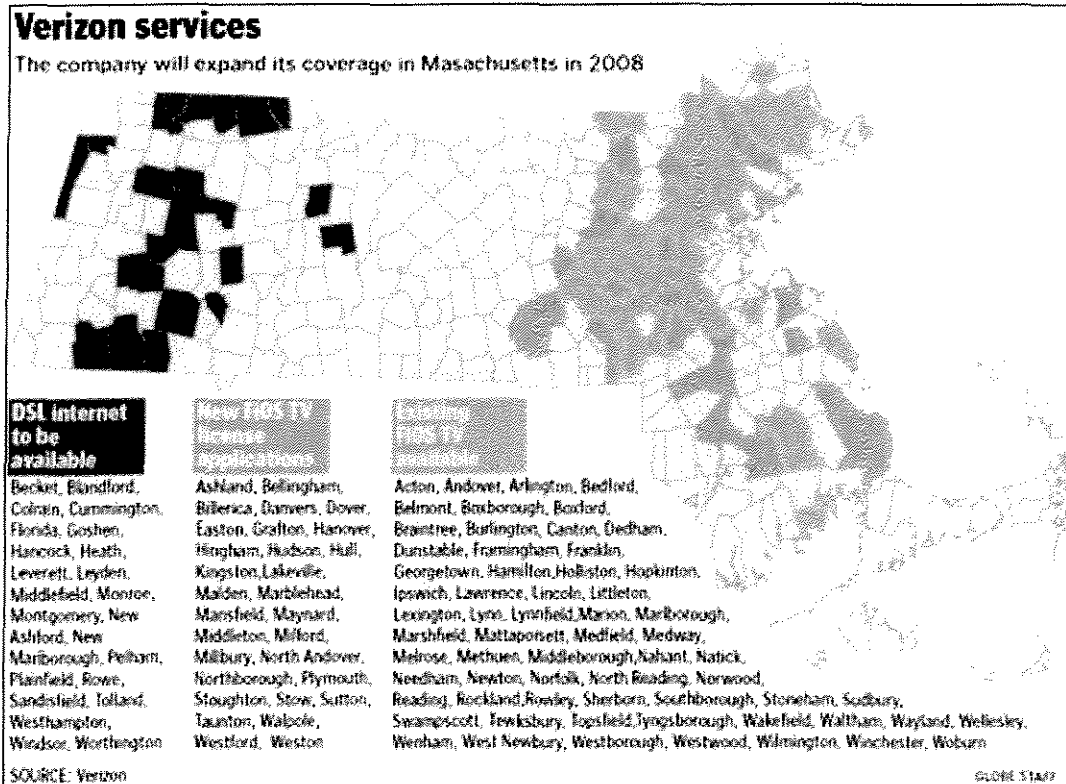
Verizon is the predominant landline telephone company serving the Boston area, and Comcast is the predominant cable operator. The City of Boston understands that advanced communications networks hold out the promise of video competition and the potential benefit to consumers of lower prices, improved customer service and new, expanded video and broadband services. Thus, when Verizon announced plans for the launch of its "nationwide" FiOS fiber build out, the City and its residents welcomed the news, knowing that in the past, cable companies rushed to build systems in densely populated cities and larger towns.

Unfortunately, Verizon chose not to build out its fiber network to offer FiOS services in Boston. Verizon, instead, focused its investment on securing cable franchises in lower density, suburban communities surrounding Boston. As Verizon invested in its fiber network in suburban

communities to offer competitive digital TV services, VoIP and faster Internet speeds, it also launched an aggressive regional marketing campaign. Boston residents, attracted by these advertised choices and competitive prices, cannot understand why these options are not available to them. Residents, frustrated with the lack of competition for cable services and skyrocketing prices, often call City Hall to complain.

The City reached out to Verizon repeatedly to discuss with company leadership the need for upgrades and new services over the last eight years, looking for any opportunity to negotiate a Verizon FiOS cable franchise. Our purpose has been to build a mutual dialogue to accommodate Verizon's entry in the new video market in order to bring more competition and increased broadband service offerings to Boston residents.

There is no compelling need to amend laws or avoid regulation; companies can do business in Boston at lightning speed. Yet, Verizon has declined the City's invitations to enter into cable franchise negotiations.



As illustrated in the preceding Boston Globe chart published in February, 2008,<sup>3</sup> Verizon chose to build out its FiOS network in the yellow and light blue areas which represent suburban communities. It chose *not* to provide FiOS service in Boston and all surrounding urban communities. Hence, a number of residents in those communities rightly perceive Verizon to be redlining, or at the very least cherry-picking. As the statewide map displays, urban Greater Boston is the hole in the Verizon FiOS donut.

Verizon’s decision to bypass Boston in favor of surrounding suburban communities disproportionately affects minority and lower-income neighborhoods, small businesses, and seniors. It can have a deleterious effect on the ability to attract jobs and promote growth into the urban ring. We fear that without the broadband infrastructure and robust competition envisioned

<sup>3</sup> Johnson, Carolyn Y., “Paying a Bundle for Cable Upgrade,” The Boston Globe, Business Section, February 29, 2008.

in the Telecommunications Act of 1996, Boston, and the urban communities of eastern Massachusetts will suffer economically.

### III. PROPOSED DEAL

In 2005, Verizon began building out its FiOS fiber network and now offers *wireline* video services and high speed internet service in certain markets (its FiOS footprint) in direct competition with the cable companies. In markets such as Boston where Verizon has not built out its FiOS network, it offers no video service, and a slower, and less competitive DSL internet service (DSL footprint).

The defendant cable companies acquired wireless spectrum (cellular) licenses from the FCC in 2006 but never developed cellular services. Late last year, VZW and the cable defendants reached a deal with two components: (1) *Spectrum Sale*: Cable companies will sell their wireless spectrum licenses to VZW; and (2) *commercial agreements*: (a) VZW and cable companies will act as sales agents of one another's services; (b) each of the cable companies may become resellers of VZW services; and (c) all of the companies (other than Cox) will enter into a technology joint venture to develop ways to integrate wired video, voice, and high-speed Internet with wireless technologies.

On August 16, 2012, the United States Department of Justice and State of New York announced a proposed settlement with the companies that includes modifications to some terms in the commercial agreements. This proposed settlement must be approved by the US District Court for the District of Columbia and interested parties such as the City of Boston were given this opportunity to offer comments to the court on this proposed settlement.

On August 23, 2012, the Federal Communications Commission released an order approving the applications to transfer the spectrum licenses from the cable defendants to VZW,

with some conditions related to implementation of the commercial agreements.<sup>4</sup> As part of its review, the FCC had sought comments from the public on the applications, and received opposition from a variety of sources including consumer groups, labor unions, and local governments, including the City of Boston. Further, the City supports the legal arguments of consumer and public interests organizations<sup>5</sup> that filed with the Federal Communications Commission to demonstrate that:

- (i) the commercial agreements violate provisions of the Communications Act, including 47 U.S.C. § 572 (concerning joint ventures among cable operators and telephone companies) and 47 U.S.C. § 548 (concerning unfair methods of competition or unfair or deceptive acts or practices) and
- (ii) the Commission has ample authority to take enforcement measures under those provisions.<sup>6</sup>

#### **IV. BOSTON'S OPPOSITION**

The City opposed the proposed deal in a filing to the FCC<sup>7</sup>, and in particular expressed concern that the unparalleled scope and scale of the arrangements for joint marketing and

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<sup>4</sup> *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), Memorandum Opinion and Order and Declaratory Ruling FCC 12-95 (rel. Aug. 23, 2012). A petition for reconsideration was filed by NTCH, Inc. on September 24.

<sup>5</sup> 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, on Behalf of Its Low-Income Clients, and Writers Guild of America, West, WT Docket No. 12-4, (filed Feb. 21, 2012) at 5 (“Petition to Deny”).

<sup>6</sup> Petition to Deny at pages 36, 41-42, 45-46; RCA - The Competitive Carriers Association Petition to Condition or Otherwise Deny Transactions, WT Docket No. 12-4, (filed Feb. 21, 2012) at 41; Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 12-4 (filed Feb. 21, 2012) at 8.

<sup>7</sup> A copy of the City's filing is attached hereto.



collaboration in the commercial agreements would have negative impacts on competition in the City and elsewhere, and would not advance the goal of encouraging the private sector to build out competitive broadband networks and to expand wireless broadband. If Comcast and VZW are permitted to collaborate, consumers cannot realistically expect to benefit, as Comcast and Verizon will have even less incentive to compete on price for wireline services going forward. Verizon would also be less likely to build out its FiOS network in places such as Boston.<sup>8</sup>

The proposed settlement and the conditions in the FCC order approving the spectrum license transfers do not adequately address the City's concerns about this transaction. The City's opposition to the proposed settlement presented to the District Court would express the following concerns:

**A. TRANSACTION UNREASONABLY RESTRAINS TRADE AND COMMERCE**

Overall the transaction continues to unreasonably restrain trade and commerce because it permits a high level of cooperation and collaboration by the dominant players in the wireline and wireless services markets. The collaboration will dampen competition among them and create disincentives for further competitive network investment. It is particularly bad for broadband competition because it allows providers of two alternative broadband technologies to divide up the broadband market (VZW focused on wireless and cable defendants focused on wireline) and to collaborate in pricing and marketing strategies through exclusivity and cross-marketing

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<sup>8</sup> A competitive market for video services in Boston has not developed. Recently, in response to an Emergency Petition<sup>8</sup> of the City for Recertification as a rate regulatory authority, the Federal Communications Commission overturned its former conclusion that a sufficient number of Bostonians would have a choice of wireline cable providers. (In re *Petition of the City of Boston For Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC* (CSR 8488-R), Memorandum Opinion and Order (Apr. 9, 2012). The Emergency Petition is relevant to the present proceeding as well because it provides clear and compelling evidence of the consumer harms happening now in the City of Boston due to lack of robust competition, which will only get worse if Comcast and Verizon are permitted to join forces.

arrangements, and product development agreements so that the companies will remain the dominant players in their respective broadband markets avoiding direct competition with each other. For example, VZW will be able to require the cable defendants to sell VZW services exclusively (i.e., they cannot sell wireless services of Verizon's competitors) until at least December 2016 (as originally proposed in the commercial agreements, this exclusivity was for an unlimited term). Any period of exclusivity incentivizes Verizon to focus on investments in wireless broadband (through VZW) without risk that any of the cable defendants will offer a quad play with a competitor of VZW, and it incentivizes the cable defendants to focus on wireline broadband without risk that Verizon will make further investments in its wireline FiOS business that competes with the cable defendants. Indeed, by allowing the cable defendants to sell VZW exclusively and also allowing VZW to offer its own quad play with FiOS, VZW wins no matter which wireline provider is involved.

**B. SETTLEMENT IS PRACTICALLY UNWORKABLE AND WILL CAUSE CUSTOMER CONFUSION**

The proposed settlement is practically unworkable and will cause customer confusion over available services, and where services can be purchased, and will deter expansion of the FiOS footprint. For example, in the City of Boston:

- Comcast may sell VZW services.
- VZW is permitted to sell Comcast's service for a street address in Verizon's DSL footprint at least until December 2016 (then it would have to petition the Department of Justice to continue).
- VZW is not permitted to sell Comcast's service for a street address that is within the FiOS footprint or in a VZW store located in the FiOS footprint.

- Notwithstanding the above restrictions:
  - VZW may, in any VZW store (1) provide service and support for VZW equipment sold by Comcast and (2) provide information regarding the availability of Comcast service, provided that VZW does not enter into any agreement requiring it to provide and does not receive any compensation for providing such information in any VZW store where VZW is prohibited from selling Comcast service.
  - VZW may market Comcast service in national or regional advertising that is likely to reach street addresses in the FiOS footprint or DSL footprint provided that VZW does not specifically target advertising of Comcast service where it is prohibited from selling Comcast service.

## V. RECOMMENDATION

The City would recommend that the Court reject the proposed settlement, and suggest that, if the proposed transaction is eventually approved at all, in order to ameliorate customer confusion and disincentives to expand the FiOS footprint, *at the very least* any settlement should provide that neither VZW nor any of the cable defendants should be able to sell each others' services in any state where Verizon has either a FiOS footprint or a DSL footprint. That would mean Comcast could not sell VZW service in the City, and VZW would not be able to sell Comcast cable service anywhere in Massachusetts (it could sell Verizon FiOS service). Other jurisdictions that would also be similarly affected because they are in the Verizon FiOS and/or DSL footprints include California, Connecticut, Delaware, Florida, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Texas, Virginia, and the District of Columbia.

**VI. CONCLUSION**

The proposed transaction could harm consumers in Boston and therefore is not in the public interest. The City urges the Court to deny the relief requested or in the alternative condition the terms of the approval as outlined above.

Respectfully submitted,

Mayor Thomas M. Menino  
CITY OF BOSTON, MASSACHUSETTS

By its attorneys,

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