

U.S. Senate Committee on the Judiciary,
Subcommittee on Antitrust, Competition Policy, and Consumer Rights
Hearing on “The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumer?”

Responses to Questions for the Record from Senator Herb Kohl

- 1. Comcast and your cable company partners concluded the sale of this spectrum to Verizon Wireless just days before T-Mobile’s arrangement with AT&T formally came to an end. Why not wait to see whether T-Mobile would pay more for the spectrum assets, which T-Mobile has suggested it would? Did Comcast not owe a fiduciary duty to your shareholders to entertain other potentially higher bids for the spectrum?**

As I testified, SpectrumCo reached out to virtually every major party in the wireless industry. We considered a number of different potential transactions and expended substantial resources investigating these options. Ultimately, as to the other alternatives we pursued, we were not able to reach agreements or find solutions – sometimes because SpectrumCo decided not to pursue the transaction, and other times because the other party decided not to pursue it.

Discussions with various potential buyers and partners proceeded in parallel at various points in time over the past several years. Our discussions with Verizon Wireless were our primary focus during most of 2011, while T-Mobile was intensely pursuing a separate transaction; Deutsche Telekom (“DT”) announced it was selling T-Mobile to AT&T in March 2011. After many months of negotiations, we finalized and announced our agreements with Verizon Wireless in early December 2011, while AT&T, T-Mobile, and DT were still pursuing their planned transaction. At the time we concluded our negotiations with Verizon Wireless, we did not know that T-Mobile’s transaction with AT&T was going to be abandoned.

The agreements we reached with Verizon Wireless are consistent with Comcast’s best interests. In today’s marketplace, basing decisions like these on what might happen in another company’s pending transaction is simply not practical or sound business practice. We were and still are unaware of any statement by T-Mobile that it would pay more for the spectrum than Verizon Wireless agreed to pay, and we are confident that no such statements were communicated to us during the period that we were negotiating with Verizon Wireless. In any event, as I have said, our concern was not solely with the price we received for the spectrum, but also with the provisions of the Commercial Agreements that provide us with a comprehensive strategic wireless solution for our company, shareholders, and customers. Our agreements with Verizon Wireless provide us with the best solution.

- 2. Verizon Wireless and Comcast, and your cable partners, have agreed to establish a joint venture to develop technologies to integrate wireless and wireline services – creating seamless Internet connections between consumers’ TVs and their cell phones or iPads. We must be especially cautious here because this means that top executives from both of your companies – competitors for pay TV customers – will meet regularly and work very closely together and in ways that could compromise your current or future competition. Investment in technology is generally good for consumers, but the concern here is that the joint venture will develop proprietary**

technology, and limit its content to platforms meeting standards set to that proprietary technology. Or, it might eliminate your incentives to compete against each other for future products and services. Can you give us any assurance that this won't happen with the joint venture?

As you note, the Innovation Technology Joint Venture (often referred to as the “joint operating entity” or “JOE”) is being created by Verizon Wireless, Comcast, and the other cable partners. Comcast and the other cable partners are not direct competitors of Verizon Wireless; JOE does *not* involve competitors for pay-TV customers. We do compete with Verizon Telecom, but Verizon Telecom is not included in the joint venture at all. Verizon Telecom and Comcast will continue to have every incentive to compete vigorously, and nothing about the Innovation Technology Joint Venture changes that. Both Comcast and Verizon Telecom have invested billions of dollars to provide what each believes is the best service to consumers. Both will continue to compete with each other in order to maximize returns from those investments. Moreover, the parties to JOE all have strong incentives to prevent the exchange of commercially sensitive information as such exchanges could disadvantage them in the marketplace, a fact that is reflected in the agreements. Verizon Wireless has represented to Comcast that it is maintaining an information firewall with Verizon Telecom. Comcast, in consultation with outside antitrust counsel, has also developed guidelines for team members to follow in an effort to guard against transmission of competitively sensitive information to Verizon Telecom. The DOJ has recognized that these kinds of safeguards mitigate any anticompetitive concerns.

While we hope that JOE will develop valuable technology (that is its purpose, after all), there is certainly no guarantee. As with all joint ventures, JOE is an investment risk for the companies involved. There is no likelihood that JOE or its owners will limit the distribution of any content they may control to platforms meeting standards designed around technology developed by JOE; to the contrary, content owners generally have powerful incentives to license their content broadly to maximize revenues. That is especially true in today's vibrantly competitive, dynamic, fragmented, and multi-platform marketplace. Plus, in the case of NBCUniversal content, there are FCC rules and both FCC and DOJ conditions that address the availability of content to multichannel video programmer distributors (“MVPDs”) and online video distributors (“OVDs”).

3. As you pointed out in your written testimony, Comcast's deal with Verizon Wireless allows you to be a reseller of Verizon Wireless service beginning in 2016. Why wait until then – why doesn't the deal allow Comcast to be a reseller right now?

The agency arrangements provide a mechanism that allows us to move swiftly to start offering a wireless option to our customers. In fact, although these agreements were only announced in early December, Comcast began marketing Verizon Wireless services in Seattle by mid-January and expanded within weeks to Portland (OR) and San Francisco. Refining and perfecting the customer interaction scripts, marketing plans, and order flows is currently underway, and other valuable experience regarding the wireless marketplace is being gained. Consumers are benefiting today.

Reseller arrangements, such as Mobile Virtual Network Operator agreements, are much more complicated and require the reseller to dedicate significant resources to developing and

marketing its own branded offerings. As a business matter, it made little sense to invest significant resources in diving into the highly-competitive wireless marketplace as a reseller when the agency agreements provided Comcast with the ability to offer wireless services almost immediately with minimal investment. This will allow Comcast to test the reception such services receive from consumers and to gain experience in the wireless marketplace that will be valuable in future endeavors. After extensive negotiations, the parties agreed that the option for Comcast and its cable partners to convert to resale arrangements would ripen in 2016.

- 4. One thing that competitive wireless companies require is what is known as “special access” or “backhaul” – access over wired phone lines from cell phone tower to long distance phone and Internet networks. For years, the competitive wireless companies have complained about what they see as very high prices for special access from incumbent phone companies such as Verizon and AT&T. One way around the incumbents is to contract with the cable companies for special access.**

Will Comcast continue to provide backhaul competition to Verizon for competitive cell phone carriers at reasonable and nondiscriminatory terms, or will this deal change your incentives so that you will no longer wish to compete with Verizon?

Yes, Comcast will continue to provide backhaul competition. As an initial matter, Comcast is a recent entrant to the wireless backhaul business, and we are a relatively small part of the overall wireless backhaul marketplace. That said, it is part of our growth strategy, and we are excited about the opportunities presented in this space. We have every incentive to invest in and grow this business and to provide services to as many wireless companies as possible. Nothing in the Commercial Agreements restricts our ability to sell (or gives incentive not to sell) backhaul at competitive rates to anyone who wants it. There are no exclusives with respect to backhaul arrangements.

More generally, the marketplace for backhaul services is marked by growth, competition, diverse suppliers and service offerings, and continuous innovation. These are not just my assertions; they are the FCC’s conclusions from last year’s *AT&T/Qualcomm* decision. There are – and will continue to be – many different competitive alternatives for backhaul.

- 5. Do the commercial agreements between Comcast and Verizon Wireless have any term or time limit? If so, what is that term?**

As Senator Blumenthal discussed with former Assistant Attorney General Rule at the hearing, antitrust reviews typically involve highly sensitive business information that is reviewed under strict confidentiality restrictions established by Congress. As I discussed with Senator Franken, many discussions and agreements between companies are subject to non-disclosure obligations which we are duty-bound to respect. So I hope you will understand that I cannot go further than the applicable non-disclosure provisions allow in providing a public record response to this question.

I can say this. The terms of the Commercial Agreements are commercially reasonable, and neither Comcast nor Verizon Wireless is locked into any of these agreements for unreasonably long periods of time. That is to say, the parties each have options at various points in time, or

upon the occurrence of specified events, to terminate the agreements. Or, by mutual agreement, they can do so at any time.

Beyond that, I respectfully suggest that further inquiries into this subject be reserved for the antitrust authorities who I can assure you are reviewing (on a confidential basis) all the agreements, and all the underlying documentation, with great care.

6. It has been reported in the media, and was alluded to at the hearing, that the commercial agreements between Verizon Wireless and Comcast were exclusive. In what sense are the agreements exclusive? What does the exclusivity cover?

I must refer again to the confidentiality concerns referenced in my preceding answer and limit my comments to a few general observations.

First, it is important to note that the net effect of the Commercial Agreements will be to *increase* consumer choice and flexibility, not to restrict it in any way. Comcast will still sell Xfinity video, voice, and Internet services directly to consumers as well as at Best Buy stores, mall kiosks, and other retail outlets; we are simply adding more outlets where consumers can purchase Xfinity services. Likewise, Verizon Wireless service and handsets will still be available at Verizon Wireless stores as well as Best Buy stores, Radio Shacks, and other retail outlets and websites; Verizon Wireless is adding to the list of outlets where consumers can purchase its services.

Not only are we *adding* to the list of outlets where consumers can acquire these services, but we're also making it easier for them to do so by giving consumers convenient one-stop shopping for a greater variety of products and services, including bundles of communications services. Of course, consumers will not have to buy a bundle of services, but, if they want to, that option will be available.

What exclusivity provisions there are in the Agency and Reseller Agreements are necessary to ensure the pro-competitive benefits of those agreements. They reflect the common-sense proposition that these agreements cannot be successful unless the parties are and remain committed to their success; the exclusivity provisions ensure that all sides share this commitment. This concept is well-established under the antitrust laws.¹ Indeed, other sales partnerships in the relevant markets – including partnerships that DirecTV has entered into with AT&T and Verizon Telecom – have incorporated exclusivity provisions, without any objection from the DOJ, FTC, or FCC as far as we are aware.

7. Under the commercial agreements, what is the amount of commission payment that Comcast will receive from Verizon Wireless for selling Comcast services? Can this amount change during the life of the agreements?

¹ See, e.g., Sheila F. Anthony, Commissioner, FTC, *Vertical Issues in Federal Antitrust Law* (Mar. 19, 1998) (explaining that an exclusivity commitment “may be procompetitive when it encourages retailers to invest in promoting the manufacturer’s line, thereby enhancing *interbrand* competition at the retail level”), available at <http://www.ftc.gov/speeches/anthony/aliabaps.shtm>.

Comcast will not receive any commission from Verizon Wireless for selling *Comcast* services. As far as the commission Comcast will receive from Verizon Wireless for selling *Verizon Wireless* services, the precise amounts of the commissions to be paid under the agency agreements are highly confidential. For the same reason I have stated previously, I am not at liberty to disclose the precise commission that Verizon Wireless will receive from Comcast for selling Comcast services. I can say that these mutual Agency Agreements are market-standard agreements, comparable to the literally thousands of agency agreements already in place in the wireless marketplace and that the commission amounts are commercially reasonable. Beyond that, I can state only that the commission Comcast will pay Verizon Wireless for selling Comcast services is a one-time payment that is worth at most only a few percentage points of the net present value of a FiOS customer, which is many thousands of dollars per customer.

- 8. (a) At the hearing, you testified that Comcast did not begin to study and do research on deploying the SpectrumCo spectrum you acquired with your cable company partners in 2006 until after you acquired that spectrum. In fact, you testified, that “at the time we bought the spectrum we had every intention of at least exploring whether we had a viable wireless business.” Why was this – why wasn’t this issue explored before Comcast and your SpectrumCo partners acquired the spectrum? Shouldn’t Comcast have taken these steps prior to acquiring the spectrum, if it was serious about deploying the spectrum?**

Comcast has long believed that it needed a comprehensive wireless strategy. The FCC’s AWS auction offered Comcast, along with its SpectrumCo partners, the opportunity to explore the use of that spectrum to provide wireless services. Before the auction, and before we spent over \$2 billion, SpectrumCo expended significant time and resources to studying the feasibility of using the spectrum to deploy new wireless services. That said, there were a number of unknowns that all AWS bidders and eventual licensees faced – especially those that didn’t have an existing facilities-based wireless business. SpectrumCo made the considered decision to bid on the spectrum knowing that the Commission had determined that a 15-year build out requirement was appropriate (as opposed to the regular 10-year period).² In other words, it was obvious to the Commission and all the bidders that the exploration, development, and deployment of wireless services over the AWS spectrum was subject to greater uncertainties and complications than applied to previously-auctioned spectrum. Nonetheless, the AWS spectrum appeared to offer an opportunity for the SpectrumCo owners to invest in a long-term wireless strategy, with the knowledge that the license purchase was only the first step in developing the capability to offer new and advanced wireless services to consumers.

SpectrumCo did not acquire the licenses with the goal of simply launching the company into a capital-intensive and competitive marketplace without a sound business plan. It proceeded over the next several years to develop and explore potential uses of the AWS spectrum, including

² The Commission established an initial license term of 15 years for licensees in the AWS-1 band, agreeing with commenters that argued that the need to clear the band and relocate incumbents warranted a longer-than-usual initial license term. *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report & Order, 18 FCC Rcd. 25,162 ¶ 70 (2003) (“We agree with these commenters that the circumstances surrounding the future development and deployment of services in these bands warrant an initial license term longer than 10 years in order to encourage the investment necessary to develop these bands.”).

clearing the spectrum and testing 4G technologies and equipment on the spectrum. Meanwhile, consumers' demand for wireless broadband increased dramatically, beginning shortly after the AWS licenses were issued, with the release of the iPhone, iPad, and Android phones, and making it increasingly likely that SpectrumCo would only be able to deploy a competitive network if it were able to acquire additional spectrum or partner with an established provider. SpectrumCo expended substantial resources investigating all of its options, did everything a diligent new licensee could reasonably be expected to do, and took meaningful steps to develop, use, and identify long-term business plans for the spectrum. Ultimately it concluded that a sale to Verizon Wireless – coupled with the Commercial Agreements – was the best strategy.

(b) Does your answer that you had “every intention of at least exploring whether we had a viable wireless business” (emphasis added) when SpectrumCo bought the spectrum indicate that you recognized at that time there was a possibility that Comcast would never be able to economically launch a wireless business with this spectrum?

Given the substantial uncertainties involved with deploying a competitive nationwide wireless network at a time when consumer demand for broadband was (and still is) ever-growing, it was always possible that the launch of a successful wireless service might not be economically feasible. This is the nature of business in a highly competitive marketplace. Nevertheless, we hoped and expected that, having invested substantial time and resources, as well as several billion dollars in spectrum licenses, the AWS spectrum would enable us to develop a comprehensive wireless strategy. Our hopes for a comprehensive wireless strategy never changed, but the marketplace did. After acquiring the spectrum licenses, SpectrumCo proceeded over the next several years to develop and explore potential uses of the spectrum, doing everything a reasonably diligent new licensee might be expected to do. In the end, SpectrumCo's owners found that the substantial costs associated with construction of a wireless network, the lack of a reasonable guarantee of a return on the investment, and the risks associated with becoming an additional facilities-based competitor in the highly competitive wireless marketplace did not make business sense and could not be justified.

9. Our subcommittee has heard concerns that the commercial agreements between Verizon Wireless and the cable companies could contain provisions allowing the parties to jointly negotiate for programming content. The concern is that, if so, the parties to these deals could obtain lower rates for content because of volume discounts that competitive pay TV services would not be able to obtain. Do the commercial agreements contain any provisions allowing Verizon Wireless and the cable companies to jointly negotiate for programming? If so, won't this disadvantage competitive pay TV providers?

There are no provisions in the Commercial Agreements addressing Verizon Wireless' and the cable companies' acquisition of programming.

10. (a) In an FCC filing made on September 30, 2009, Comcast described a “wireless marketplace that has come to be dominated by two firms, AT&T and Verizon.”³

³ Comments of Comcast Corporation, *Fostering Innovation and Investment in the Wireless Communications Market and A National Broadband Plan for Our Future*, GN Docket Nos. 09-157, 09-51 (filed September 30, 2009), available at: <http://apps.fcc.gov/ecfs/comment/view?id=6015191537>

Comcast also noted that “AT&T and Verizon not only have substantial ‘first mover’ advantages, but they have amassed prime spectrum in the 700 MHz and 800 MHz bands that, due to propagation characteristics, creates a significant economic advantage in the construction and deployment of broadband wireless networks.” Does the sale of the AWS spectrum to one of these two firms not exacerbate the competitive concerns you described in 2009?

The statements you quote are from comments filed in connection with the FCC’s development of the National Broadband Plan (“NBP”). While the passages you quote are from an introductory section, our primary objective in this filing was to persuade the FCC to address three priority issues: spectrum availability, automatic data roaming and home roaming, and pole attachment rates and availability. The NBP agreed with Comcast that all of these are high-priority areas to promote a more competitive wireless marketplace, and the Commission has taken meaningful action on each over the period since the comments you quote were filed. On roaming and pole attachments, the FCC has since adopted rules that substantially address the issues we raised. As to spectrum availability, the FCC successfully urged Congress to enact legislation to free up valuable spectrum through the use of incentive auctions – but this is an immensely complicated process that will take years to come to fruition, and it remains to be seen how much spectrum will become available and when. As the NBP noted, the difficulties associated with making new spectrum available make it all the more important that secondary markets remain capable of reallocating spectrum swiftly and efficiently, as is occurring in the SpectrumCo sale to Verizon Wireless. So the FCC, through its actions, and this Congress, through its recent legislation, have begun to address the concerns we raised in our comments in 2009.

Moreover, the 20 megahertz of spectrum we are proposing to transfer to Verizon Wireless will not take Verizon Wireless above the FCC-established spectrum screen in almost every single market in which Verizon Wireless operates. I would note, also, that the spectrum involved in the SpectrumCo sale is in the 1710-1755 and 2110-2155 MHz bands. No spectrum in the 700 or 800 MHz bands is involved here.

(b) In your September 30, 2009 FCC filing, Comcast further wrote that, “Scarcity of spectrum acutely affects the ability of companies to enter the wireless market and compete with incumbent carriers. AT&T and Verizon in particular have over the years amassed substantial amounts of spectrum, much of it in the lower bands” – which you identify as spectrum below 3 GHz – “that, as explained below, are in many ways the best suited for wireless broadband services.” You also noted that these factors “create significant challenges for new entrants and threaten to diminish wireless investment and innovation,” adding that “The Commission should examine these issues and consider appropriate policies to address them.” By your own logic, doesn’t this transaction – which further concentrates valuable commercial spectrum in the hands of one of these two dominant firms – create “significant challenges for new entrants” and further “threaten to diminish wireless investment and innovation?”

As I noted in my answer to the previous question, the FCC has in fact examined the issues Comcast raised in its 2009 filing and has not just considered but has actually adopted appropriate policies to address them. In describing the challenges faced by new entrants, it was entirely

appropriate for Comcast to identify the advantages enjoyed by long-established and successful carriers. Comcast did not propose that those carriers be prevented from acquiring additional spectrum, but it did urge that additional spectrum be made available in the marketplace. With additional authority recently provided by Congress, the FCC is working hard to do just that. Finally, the FCC has a well-established mechanism for determining whether a proposed spectrum transaction is in the public interest, and Verizon Wireless and SpectrumCo have demonstrated that the proposed transaction meets the public interest standard.

11. One of the key ways of increasing capacity on wireless networks is to offload demand onto WiFi networks, such as those the cable companies and Verizon have built into consumers' homes. Will you commit to offer WiFi offload on an open, non-discriminatory basis to other carriers not parties to the commercial agreements? If not, why not?

There is nothing in these agreements that grants any rights to Verizon Wireless to offload its traffic onto Comcast's Wi-Fi network. Comcast has viewed its network of Wi-Fi hotspots as an extension of its residential Xfinity Internet business, and we provide this service to our Xfinity Internet customers (and to Internet customers of Cablevision and Time Warner Cable) regardless of whether they use Verizon Wireless, AT&T Wireless, T-Mobile, Sprint, MetroPCS, or any one of the scores of other wireless carriers. Any efforts we may undertake to reach commercial arrangements with wireless carriers in connection with Wi-Fi offloads would be independent of and unrelated to the spectrum assignment and the Commercial Agreements.

12. Do you have any response to the suggestions of Prof. Wu, Mr. Kelsey and Mr. Berry given at the hearing as to possible conditions the Justice Department or FCC ought to place on your deals with the cable companies, should the deals be approved?

Our transactions with Verizon Wireless are pro-competitive and pro-consumer. They comply with all applicable laws, rules, and policies. There is no basis for imposing any conditions on these agreements.

- 1. I understand that Verizon Wireless purchased the spectrum at issue in these agreements for a total of about \$3.9 billion. Some, including Mr. Berry who was at the hearing, have suggested that the licenses are really worth significantly more and that the cable companies could have commanded a much higher price for the spectrum from other carriers. Although there was discussion of negotiations and incentives at the hearing, there still seems to be some confusion about this issue.**

Can you please explain what Comcast did to make certain that it got the best deal possible for its spectrum sale?

As I testified, Comcast engaged in discussions with almost every major party in the wireless industry with respect to this spectrum. The specific details of our discussions with individual parties are highly confidential, and for the most part are subject to non-disclosure obligations. I can say that SpectrumCo fully explored (1) building out its own wireless network, (2) acquisitions, joint ventures, and network sharing arrangements with other wireless companies, and (3) transactions of the sort that we ultimately entered into with Verizon Wireless. SpectrumCo expended substantial resources investigating these options, but concluded, for a variety of reasons, that each option had significant limitations and would not provide a comprehensive and viable long-term wireless solution.⁴

While we appreciate the reasons why Mr. Berry might now claim that the spectrum at issue is worth more than Verizon Wireless has agreed to pay, I can assure you that those who negotiated the sale on behalf of SpectrumCo were informed and sophisticated experts who were committed to achieving the best bargain possible for SpectrumCo's owners. Had they been able to get a better deal elsewhere, they would have.

- 2. The primary consideration of our antitrust laws is consumer welfare. Accordingly, in considering the effects of a transaction on competition, we must give appropriate weight to resulting efficiencies. At the hearing, there was some discussion of the efficiencies resulting from having a quadruple play available.**

Can you please describe any evidence or marketing research information Comcast has indicating that consumers do in fact want a quad play?

We don't really know what percentage of consumers will find it important to obtain their video, voice, Internet, and wireless services from a single supplier – or from two suppliers but a single sales agent. We do know that many of our customers value the option to procure two or three

⁴ See Verizon Wireless-SpectrumCo Application Form 603, WT Docket 12-4, Ex. 4 ¶¶ 3-14 (Dec. 16, 2011) (Declaration of Robert Pick). In its efforts to develop and explore potential uses of the AWS spectrum, SpectrumCo expended many millions of dollars to identify and clear incumbent microwave links; test different 4G technologies and equipment; and evaluate the investment necessary to deploy and operate a network using AWS spectrum. SpectrumCo ultimately decided not to enter the wireless marketplace as a standalone facilities-based provider for a number of reasons, not the least of which include a massive capital-intensive investment (estimated at \$10 - \$11 billion) that carried with it substantial risks and no assurance of a return; a likewise capital-intensive and ongoing need for additional spectrum as consumers' appetite for spectrum-intensive services grows; the high cost of obtaining and providing cutting-edge wireless devices; and the difficulty of securing roaming agreements. See *id.*

products in a money-saving package; currently, about two thirds of our video customers buy voice or data services from us, and about one third buy all three services (video, voice, *and* data). About 95 percent of Comcast's customers already have wireless service, so we do not have inflated assumptions about the extent to which they will wish to order wireless service from Comcast. On the other hand, we think this is an option they ought to be able to have. Moreover, this is an option our competitors are already offering.

- 3. Some have expressed concerns about potential anticompetitive effects of the agreement between Verizon and the cable companies to invest in a new joint operating entity. Critics speculate that this agreement contains exclusive arrangements with respect to backhaul and Wi-Fi offloading, or that the companies will use the new product to gain an undue advantage and force others out of the market.**

Could you comment on the joint operating entity—specifically, what is included in that arrangement, what types of products you anticipate might be developed, whether those technologies will be licensed to third parties, and why your company felt it important to enter into this arrangement?

We formed the Innovation Technology Joint Venture, or JOE, for the purpose of developing technology and intellectual property to create innovative and compelling new products that seamlessly integrate wired and wireless technologies. We hope JOE's products will effectively compete with products developed by AT&T, Dish Network, Google, Microsoft, Apple, and others. JOE will allow Verizon Wireless and the cable companies to bring their collective expertise to the table to develop next-generation technologies that the companies alone could not effectively develop.

JOE is still a nascent organization and has not yet developed any specific processes for deciding what products should be developed or how they should be developed. But it may explore a range of consumer-friendly technologies that include, for example: allowing consumer devices to seamlessly transition between Wi-Fi and mobile wireless networks; integrating services like voice mail, caller ID, and contact lists across home and wireless phones; and enabling seamless access to content like photos, videos, and music on both home televisions and mobile devices.

While it is our hope that JOE will develop many exciting integrated technologies, it is far too early to speculate as to the success of JOE and its technologies. If we succeed in this competitive marketplace in creating valuable technologies that enhance consumer products, we will evaluate ways to monetize those technologies, including through third-party licensing agreements. And JOE is generally permitted to license technology to third parties. But those business decisions should remain with JOE. We are entering a very competitive space with well-heeled players like Apple, Microsoft, and Google, who are under no obligation to open up their intellectual property to others. Preserving the freedom of intellectual property owners to license or not, and if so on what terms, spurs all market players to continue investing and innovating, which ultimately benefits consumers.

- 4. At the hearing, Senator Franken asked Randall Milch: "Will you commit to opening up the technology and intellectual property that your companies create to your**

competitors so that they can obtain the technology at fair reasonable and non-discriminatory rates?”

(a) On behalf of Comcast, what is your reaction to this request?

I think Mr. Milch answered this question appropriately. He made three key points. First, we are starting from scratch and do not currently have any technology or intellectual property. Second, we are entering a very competitive marketplace with formidable players such as Apple and Google. And third, if we are successful in developing a new technology, it isn't clear why our intellectual property shouldn't have the same protections as other companies' intellectual property. We should be permitted to do as we see fit with our intellectual property, in the same way that Apple and Google do. I agree with Mr. Milch on each of these points.

I might add that our efforts to develop new technology will spur other companies to respond, perpetuating a cycle of competitive investment and innovation. This virtuous circle of innovation would be thwarted if we were required to license our technology to all comers.

(b) If Comcast and Verizon are forced to license or sell new technologies, how will this reduce the incentives that Comcast has to invest capital in this research and development joint operating agreement?

A forced licensing regime necessarily reduces incentives to invest and innovate. The best way to promote the investment of time and capital necessary to develop intellectual property is to respect the creators' property rights in the fruits of their labors. The Framers understood this, which is why they concluded that “[t]o promote the Progress of Science and useful Arts,” Congress should be empowered to “secur[e] for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” It is on this authority that Congress has since the 18th Century enacted (and from time to time revised) patent and copyright laws.

- 1. I understand that, under the terms of Joint Marketing Agreements, Comcast, Time Warner, Cox, Bright House Networks, and Verizon Wireless will now each be able to offer the quadruple play of video programming, broadband, voice, and mobile wireless services. I have heard concerns that this bundling of services will reduce the value of a competing company's video and broadband product because it will be more expensive for competitors to get access to must-have programming, resulting in consumers suffering through higher costs. Can you respond to these concerns?**

Nothing about these transactions will in any way affect the ability of Comcast's video competitors to obtain must-have programming. Nor will anything in these transactions affect Comcast's incentive to license programming to its competitors. I can say categorically that no term of any of the Commercial Agreements provides for the licensing of NBCUniversal content to Verizon Wireless (or, of course, Verizon, which is not even a party to these agreements). And, in all events, any content licensing deal between NBCUniversal and either Verizon or Verizon Wireless would have to be consistent with the relevant FCC and DOJ conditions from the NBCUniversal transaction, and the FCC's rules.

Moreover, the joint marketing arrangements are by no means unique to Comcast, Time Warner Cable, Cox, Bright House Networks, and Verizon Wireless. In this highly competitive and dynamic marketplace, there are numerous of situations where one provider markets the services of another. I gave several examples in my written testimony, including the following:

- Frontier Communications and AT&T Mobility announced a three-year agency agreement on November 15, 2011 that enables Frontier to offer customers access to AT&T smartphones and the AT&T mobile broadband network bundled with Frontier's broadband Internet, voice, and satellite TV services, all on a single bill from Frontier;
 - AT&T and DIRECTV signed a three-year commercial agreement on November 3, 2011 through which both companies are able to offer customers a quadruple-play bundle of AT&T/DIRECTV video service and AT&T broadband, home phone, and wireless voice services, as well as bundled discounts; and
 - CenturyLink and Verizon Wireless announced an agreement on February 15, 2011, under which CenturyLink became an authorized agent of Verizon Wireless and can offer customers Verizon Wireless service with CenturyLink's High-Speed Internet, unlimited local and long distance, and television services.
- 2. The 1996 Telecommunications Act reduced regulation based on the assumption that cross-platform competition would drive innovation, lower prices, and new services to benefit consumers. Just two years ago, Verizon touted the importance of the "competitive rivalry between cable companies and telcos" resulting in benefits to consumers of "better broadband services and lower prices."**

- a. What is your view of that rivalry now?**

Competition that has emerged since the passage of the Telecommunications Act of 1996 is more robust and vibrant than could reasonably have been expected 16 years ago. Certainly the century-old Bell monopoly in phone services has been destroyed; Comcast (which did not provide any phone services in 1996) has now become a major residential phone services provider in the United States. The video marketplace has become vastly more competitive as well, with AT&T and Verizon (neither of which provided any video services in 1996) having become the seventh and eighth largest MVPDs, DirecTV and Dish Network (which were both quite small in 1996) having become the second and third largest MVPDs, and online video providers (Netflix, Amazon, YouTube, Hulu, and countless others, none of which could hardly have been imagined in 1996) flourishing beyond anyone's expectations. Competition has driven massive investment and innovation in broadband networks, with Comcast having deployed DOCSIS 3.0 across nearly all of our footprint, thereby enabling competitive video and voice services along with innumerable new opportunities in social networking, telehealth, distance learning, telecommuting, and on and on.

b. How do the joint marketing agreements affect that view?

The Agency Agreements are entirely consistent with the views just expressed. As noted above, these arrangements are not unusual. These kinds of arrangements are reflective of intense competition, and they do in fact bring lower prices and new purchase options to consumers.

It is important to note that Comcast's joint marketing agreements are with Verizon Wireless, not with Verizon Telecom. Comcast and Verizon will continue to compete vigorously against one another for voice, video, and Internet services and Comcast will continue to have powerful incentives to invest and innovate in its services.

- 1. In December, AT&T announced that it was terminating its plans to acquire T-Mobile USA. This occurred just days after you announced your plans to sell your spectrum to Verizon Wireless. As we discussed during the hearing, there were many indicators that this deal was on the verge of collapsing long before AT&T's announcement in December. Can you please indicate when you talked to T-Mobile about acquiring your spectrum? Did you talk to them subsequent to the Justice Department's decision to sue to block the deal, or after the FCC signaled that it intended to fight the merger as well? If not, please explain why Comcast did not engage with T-Mobile at that time, especially since it seems likely that T-Mobile would have been willing to pay a premium over what Verizon paid to acquire this spectrum, which is adjacent to its current spectrum holdings.**

As I explained at the hearing, my ability to divulge the timing of our discussions with T-Mobile is constrained by non-disclosure agreements. I was comfortable confirming that we spoke to T-Mobile in 2010 because I was merely confirming the representation of Robert Dotson, then-President of T-Mobile, that he was in discussions with us about this spectrum. As I also said at the hearing, the discussions stopped no later than the time Deutsche Telekom ("DT") announced it was selling T-Mobile to AT&T (which they did on March 20, 2011). I think it is fair to add that T-Mobile did not approach us about purchasing the spectrum while its deal with AT&T was pending. After many months of negotiations, we finalized our agreements with Verizon Wireless in early December 2011, while AT&T, T-Mobile, and DT were still pursuing their planned transaction. We announced our agreements on December 2, 2011. AT&T and DT did not abandon their transaction until December 19, 2011. Comcast and T-Mobile did not engage in discussions at that time because by then we had already entered into binding commitments with Verizon Wireless.

- 2. Please explain why Comcast chose to accept Verizon's bid over other companies' bids? Did Verizon bid more for this spectrum than all other companies? How did Comcast account for the potential economic benefits that it could derive from Verizon's decision to permit Comcast to market its products in areas where FiOS was available? Did this factor into Comcast's decision to accept Verizon's bid over other companies that do not have a product that competes directly with Comcast's products?**

We did not formally auction the spectrum. We did market the spectrum, in the sense of holding discussions with virtually every major player in wireless industry either about selling them the spectrum or partnering with them to develop it. We were looking to develop a comprehensive strategic wireless solution for our company and for our customers, and ultimately we found that solution with Verizon Wireless.

We see the Agency and Reseller Agreements as beneficial across our entire footprint, with no particular advantages in areas where FiOS is available as opposed to areas where it is not. The Agreements enable us to be more competitive by offering a quad-play bundle across our entire footprint, in much the same way as our competitors are doing. Any suggestion of competitive concerns does not even make sense for most of the country; FiOS is not even available in more

than 85 percent of the cable companies' footprint. In those areas in which FiOS is available, we have no advantage over FiOS in our relationship with Verizon Wireless. Verizon is free to market Verizon Wireless services in competition with the cable companies, and Verizon Wireless itself will market both the cable companies' and the FiOS services on an equal basis. Indeed, in those areas in which FiOS is available, Verizon Wireless retail stores may simply become another space in which the cable companies and Verizon FiOS compete head to head for wired services (Verizon Wireless is not required to sell the services of either Comcast or Verizon FiOS in its retail stores, but, to the extent that it chooses to do so, it must treat both equally).