

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Application of Verizon Communications Inc. and Straight Path Communications, Inc.	)	
	)	ULS File No. 0007783428
For Consent to Transfer Control of Local Multipoint Distribution Service, 39 GHz, Common Carrier Point-to-Point Microwave, And 3650-3700 MHz Service Licenses	)	

**REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Pursuant to Section 1.115(d) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>1</sup> Competitive Carriers Association (“CCA”) submits this reply to the Opposition to Application for Review (“Opposition”)<sup>2</sup> filed by Verizon Communications Inc. (“Verizon”) on March 5, 2018.

In granting the Verizon-Straight Path transfer application, the Wireless Bureau (“Bureau”) did not conduct a sufficient public interest review and failed to identify substantial public interest harms. The Bureau also did not conduct a meaningful review of the impact of the transaction’s spectrum aggregation on 5G competition. Finally, the Bureau refused to consider whether it should auction Straight Path’s spectrum—even though the transaction unjustly enriches Straight Path by almost \$2.5 billion—on the incorrect theory that the Straight Path Consent Decree precluded an auction.

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<sup>1</sup> 47 C.F.R. § 1.115(d).

<sup>2</sup> Verizon Communications Inc., Opposition to Application for Review, ULS File No. 0007783428, DA 18-52. Verizon’s Opposition was filed in response to CCA’s Application for Review (filed Feb 20, 2018) seeking full Commission review and reversal of the Bureau’s *MO&O*. See *Application of Verizon Communications Inc. and Straight Path Communications, Inc.*, Memorandum Opinion and Order, DA 18-51 (rel. Jan. 18, 2018).

**I. The Bureau Did Not Conduct a Sufficient Public Interest Review and Failed to Identify the Likelihood of Substantial Public Interest Harms Posed by the Transaction.**

The Bureau incorrectly assumed a thorough public interest analysis was unnecessary where the spectrum screen was not met, and summarily dismissed substantial public interest harms posed by the transaction. Contrary to Verizon's claims, CCA is not challenging the two decisions in the *Spectrum Frontiers* proceedings.<sup>3</sup> CCA's challenges are directed at the Bureau's failure to follow the Commission's well-established mobile spectrum holdings policies, including how to apply the spectrum screen when conducting the analysis. CCA and others presented overwhelming evidence that further and more comprehensive analysis was warranted.

In fact, the minimal potential public interest benefits that Verizon claims for 5G mobile are far outweighed by substantial consumer and competitive potential harms, including:

- allowing Straight Path to acquire nearly \$2.5 billion in ill-gotten gains after warehousing spectrum for years using licenses that should have been terminated and returned to the Commission;
- undermining the Commission's well-established mobile spectrum holdings policies by concentrating enough mmW spectrum in the hands of Verizon to shut out competitors from the 5G marketplace, which, in turn, threatens innovation and efficiency at a time when the deployment of 5G depends on fostering and promoting these conditions; and
- impeding the Commission from auctioning the Straight Path spectrum as dictated by FCC rules and policies and thus generating billions of dollars of revenues for the U.S. Treasury, which benefits U.S. taxpayers.

The public interest cannot be served by permitting Straight Path to derive an enormous financial reward as a result of its failure to comply with FCC's rules. Reversing the *MO&O* will correct this result and demonstrate that the Commission is serious about enforcing its construction and discontinuance rules.

Verizon's acquisition of Straight Path's millimeter wave (mmW) spectrum has the

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<sup>3</sup> Opposition at 7.

potential to cause significant harm to consumers and competition by excessively concentrating holdings of mmW spectrum and foreclosing competition in these bands. This transaction, together with Verizon's acquisition of Nextlink's mmW license, spectrum returned to Verizon from the canceled Vivint leases, and AT&T's acquisition of FiberTower's mmW spectrum, concentrates mmW spectrum holdings in the hands of the two dominant wireless carriers, making it all but impossible for genuine 5G competition to develop.

**II. The Bureau Did Not Sufficiently Review the Impact of the Transaction's Spectrum Aggregation on 5G Competition and Ignored the Importance of the 28 GHz and 39 GHz Bands.**

The Bureau failed to meaningfully review the impact of the transaction's spectrum aggregation on 5G competition, and wrongly assumed that all mmW bands are of equal value and that low- and mid-band spectrum could substitute for mmW spectrum. Specifically, the Bureau failed to accurately assess spectrum aggregation by evaluating spectrum holdings that "are 'suitable' and 'available' in the near-term for the provision of mobile telephony/broadband services," which is required under a well-established FCC standard.<sup>4</sup> Here again, Verizon wrongly asserts that CCA's only claim is that the 24 GHz and 47 GHz bands should not have been included in the spectrum threshold analysis.<sup>5</sup> To be clear, CCA's claim is not only that the Bureau prematurely applied the new threshold, but also that the Bureau failed to consider that the 24 GHz and 47 GHz bands are not currently available for mobile broadband operations, and thus should not be weighed equally in its competitive analysis.

Moreover, the Bureau ignored the unique importance of the 28 GHz and 39 GHz bands

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<sup>4</sup> See *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6133, 6169 ¶ 71 (2014).

<sup>5</sup> Opposition at 11.

relative to 5G competition. The 28 GHz band is critical because the band has technical characteristics that make it especially capable of delivering very high-capacity data services and low latency, compared with other bands.<sup>6</sup> The 28 GHz band is expected to support 5G deployments much sooner than other mmW bands, given the band has emerged as the focus of academic and industry efforts in 5G and equipment development in the 28 GHz band is more advanced.<sup>7</sup> The 39 GHz band also is uniquely important among all mmW spectrum due to the enormous amounts of contiguous bandwidth available and the existing licensing regime.

The Bureau also incorrectly determined that low- and mid-band spectrum could substitute for high-band spectrum and that all mmW bands could substitute for one another. Low- and mid-band spectrum cannot replicate the advantages—notably high-capacity throughput—that mmW spectrum promises. If mmW spectrum were fungible with low- and mid-band frequencies as the *MO&O* intimates, then the Commission would not have adopted an aggregation limit specific to mmW spectrum based on its unique propagation characteristics and available bandwidth.<sup>8</sup>

### **III. The Bureau Improperly Construed the Straight Path Consent Decree.**

The Bureau did not consider whether Straight Path's spectrum should be auctioned, and ignored Straight Path's misconduct, on the incorrect theory that the Consent Decree precluded an auction alternative and consideration of Straight path's unjust enrichment.

Verizon incorrectly asserts the Commission is prohibited from considering and addressing an auction as an alternative way to assign this spectrum.<sup>9</sup> Just the opposite. Section

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<sup>6</sup> See *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 8014, 8018 ¶ 4, 8022 ¶ 15 (2016).

<sup>7</sup> *Id.* at 8025 ¶ 23.

<sup>8</sup> *Id.* at 8084 ¶ 190.

<sup>9</sup> Opposition at 16.

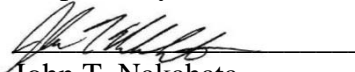
310(d) forbids the Commission from determining “whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”<sup>10</sup> As the D.C. Circuit has explained, this “provision was designed” to prevent “comparative consideration” of applications that would allow the Commission to pick winners and losers on the secondary market.<sup>11</sup> It does not prevent the Commission from determining whether the licenses at issue are even eligible for purchase on the secondary market in the first place.<sup>12</sup>

Moreover, by pursuing competitive bidding as required by Section 309(j), the Bureau hardly would have engaged in the “beauty contests” Section 310(d) was intended to eliminate. To the contrary, an auction would ensure a full and fair opportunity for *any* qualified applicant to gain access to this spectrum based on the strength of its bid. By pursuing a retroactive waiver and consent to transfer control, the Bureau evaded the statutorily mandated auction and effectively picked the winning bidder. Hence, the Commission should grant CCA’s Application for Review and auction the spectrum.

Steven K. Berry  
Rebecca Murphy Thompson  
Courtney Neville  
COMPETITIVE CARRIERS ASSOCIATION  
805 15<sup>th</sup> Street NW, Suite 401  
Washington, DC 20005  
(202) 449-9866

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Respectfully submitted,



John T. Nakahata  
Stephanie S. Weiner  
Jennifer P. Bagg  
Randall W. Sifers  
HARRIS, WILTSHIRE & GRANNIS LLP  
1919 M Street NW, Eighth Floor  
Washington, DC 20036  
(202) 730-1300  
*Counsel for CCA*

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<sup>10</sup> 47 U.S.C. § 310(d).

<sup>11</sup> *MG-TV Broadcasting Co. v. FCC*, 408 F.2d 1257, 1263-64 (D.C. Cir. 1968).

<sup>12</sup> *Id.* at 1264 (holding that Section 310(b) does not prohibit the Commission from determining the validity, and thus the eligibility for assignment, of a broadcasting permit).

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply were served this March 20, 2018, by First Class Mail to the following parties to the proceeding:

Russell H. Fox  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Ave., N.W., Suite 900  
Washington, DC 20004  
*Counsel to Straight Path Spectrum, LLC*

Straight Path Spectrum, LLC  
Attn: Davidi Jonas  
5300 Hickory Park Drive, Suite 218  
Glen Allen, VA 23059

William H. Johnson  
Gregory M. Romano  
Katharine R. Saunders  
Verizon  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005

Adam D. Krinsky  
Wilkinson Barker Knauer, LLP  
1800 M Street, NW  
Suite 800N  
Washington DC 20036  
*Counsel to Verizon Communications Inc.*

Lisa Chandler Cordell  
Breisach Cordell PLLC  
5335 Wisconsin Ave. NW, Suite 440  
Washington, DC 20015  
*Counsel to Hammer Fiber Optics  
Investments, Ltd.*

Karen Reidy  
INCOMPAS  
1200 G Street, NW, Suite 350  
Washington, DC 20005

Phillip Berenbroick  
Public Knowledge  
1818 N Street, NW, Suite 410  
Washington, DC 20036

William Hunt  
U.S. Telepacific Corp.  
10333 East Dry Creek Road, Suite 170  
Denver, CO 80112

Michael Calabrese  
Wireless Future Project  
New America's Open Technology Institute  
740 15th Street, NW, Suite 900  
Washington, DC 20005

I further certify that true and correct copies of this Reply were served this March 20, 2018, by First Class Mail and by email to the following Commission counsel:

Donald Stockdale  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission

Kate Matraves  
Competition and Infrastructure Policy Division  
Wireless Telecommunications Bureau

445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
donald.stockdale@fcc.gov

Linda Ray  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
linda.ray@fcc.gov

Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
catherine.matraves@fcc.gov

Jim Bird  
Office of General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
TransactionTeam@fcc.gov

/s/ Anne M. Menasche  
Anne M. Menasche  
Legal Assistant  
**Harris, Wiltshire & Grannis LLP**  
1919 M Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20036

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