

**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)	

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ submits these comments in response to Competitive Carriers Association’s (“CCA”) Application for Review² of the Wireless Telecommunications Bureau’s (the “Bureau”) Memorandum Opinion and Order approving the transfer of spectrum from Straight Path Communications, Inc. (“Straight Path”) to Verizon Communications, Inc. (“Verizon”).³ T-Mobile supports CCA, the leading association for competitive wireless providers and stakeholders across the United States, of which T-Mobile is one of nearly 100 carrier members.

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² Application for Review or, In the Alternative, Petition for Reconsideration of Competitive Carriers Association, ULS File No. 0007783428 (filed Feb. 20, 2018) (“Application for Review”).

³ *Application of Verizon Communications, Inc. and Straight Path Communications, Inc. for Transfer of Control of Licenses*, Memorandum Opinion and Order, ULS File No. 0007783428, DA 18-52 (rel. Jan. 18, 2018) (“Verizon-Straight Path MO&O”); *see also* Application of Verizon Communications, Inc. and Straight Path Communications, Inc. for Transfer of Control of Licenses, ULS File No. 0007783428 (filed Jun. 1, 2017) (“Application”). *See* 47 C.F.R. § 1.115.

As CCA has explained, the Verizon-Straight Path MO&O concentrates an even greater amount of millimeter wave spectrum into the hands of Verizon. Approval of the transaction also unjustly enriches Straight Path to the tune of nearly \$2.5 billion along with relieving it of its \$85 million fine, despite the fact that it violated the law and committed an egregious act of fraud on the Federal Communications Commission (the “Commission” or “FCC”) by warehousing spectrum for years. This outcome undermines the Commission’s well-established mobile spectrum holdings policies and threatens competition, innovation, and efficiency at a time when the deployment of 5G depends on fostering and promoting those conditions.

The Bureau’s conclusion was reached in error. Critically, the Bureau failed to conduct a meaningful review of the impact of the transaction’s spectrum aggregation on 5G competition. Instead, the Bureau applied a new 1850 megahertz threshold adopted while the Verizon-Straight Path Application was pending.⁴ Even under the more permissive 1850 megahertz threshold, the Bureau summarily dismissed concerns that the transaction created competitive harms on the 5G marketplace. Instead, the Bureau incorrectly assumed that it need not conduct a thorough public interest analysis where the threshold was not met.⁵

⁴ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 8014 (2016). Notably, the new screen was published in the Federal Register just days before the Verizon-Straight Path MO&O’s release. *See Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, 83 Fed. Reg. 37 (Jan. 2, 2018) (“83 Fed. Reg. 37”).

⁵ The Bureau also failed to account properly for the spectrum returned to Verizon from the cancelled Vivint leases. Verizon and Straight Path explained in their Application that Verizon would not have access to spectrum that had been leased to Vivint with a “bargain purchase option.” Application, Public Interest Statement at 9. However, the parties’ changed course at the last minute and Verizon acknowledged that the Vivint leases would be terminated and returned to Verizon. *See Letter from Adam Krinsky, Counsel, Verizon Comms. Inc., to Marlene H. Dortch, Secretary, FCC, ULS File No. 0007783428* (filed Dec. 26, 2017). Instead of considering the impact or seeking input from the public on this development, the Bureau simply attributed

Doubling-down on its use of the new spectrum screen, the Bureau applied it to the transaction with no notice or comment.⁶ Moreover, the application of the newly adopted spectrum screen to the review of an ongoing transaction is a new and novel question of law and policy that must be addressed by the Commission in the first instance.⁷

In addition, the Bureau refused to consider whether it should auction Straight Path's spectrum on the incorrect basis that the Consent Decree precluded such an auction.⁸ Instead, the Bureau concluded that considering an alternative would be a "collateral attack" on the Consent Decree.⁹ The Bureau's analysis of the Consent Decree is incorrect; the Consent Decree did not compel the Bureau to approve the proposed transfer of Straight Path's licenses, and certainly did not compel the Bureau to approve a transfer that concentrates critical millimeter spectrum holdings into the hands of one carrier.

In light of these errors, T-Mobile supports CCA's call for the full Commission to review and reverse the Bureau's decision in the Verizon-Straight Path MO&O. Specifically, to remedy the harm from the Verizon-Straight Path transaction, the Commission should grant CCA's Application for Review, deny the transaction, return Straight Path's licenses to the Commission's inventory, and make the spectrum available for competitive bidding at auction. Alternatively, the Commission should divest Straight Path's licenses in markets where Verizon would exceed

Vivint's spectrum to Verizon and dismissed the resulting aggregation impact. Verizon-Straight Path MO&O ¶ 22 n. 66.

⁶ *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 239-240 (D.C. Cir. 2008).

⁷ See 47 C.F.R. § 0.331(a)(2).

⁸ Verizon-Straight Path MO&O ¶¶ 12, 24. *Straight Path Communications, Inc. Ultimate Parent Company of Straight Path Spectrum, LLC*, Order and Consent Decree, 32 FCC Rcd. 284 (EB 2017) ("Consent Decree").

⁹ Verizon-Straight Path MO&O ¶¶ 12, 24.

the 1250 megahertz millimeter wave spectrum screen and designate such spectrum for immediate competitive bidding.

Regardless of which option the Commission chooses with respect to the Application for Review, the Commission should continue its efforts to make millimeter wave spectrum available for mobile wireless broadband services by initiating the process of auctioning together the spectrum that has already been made available for that purpose. These bands include the 24 GHz, 28 GHz, 37 GHz, 39 GHz and 47 GHz bands. The Verizon-Straight Path transaction, along with recent transactions,¹⁰ makes auctioning these bands together—and quickly—particularly important. Auctioning all bands together will allow more entities to have access to millimeter wave spectrum, which will result in a more robust and competitive auction.

T-Mobile applauds the Commission’s efforts to make millimeter wave spectrum available for advanced and innovative 5G services. However, 5G competition—and the resulting recovery to the U.S. Treasury from competitive bidding—will be further delayed if the Commission refuses to move forward with spectrum auctions pending action by Congress. While recognizing the concerns regarding the deposit of upfront payments,¹¹ the Commission should take steps now

¹⁰ See *Application of Cellco Partnership d/b/a Verizon Wireless and XO Holdings For Consent to Transfer Control of Local Multipoint Distribution Service and 39 GHz Licenses*, Memorandum Opinion and Order, ULS File No. 0007765708, DA 17-1154 (rel Nov. 29, 2017) (approving transfer of 28 GHz and 39 GHz licenses from XO Holdings to Verizon); *Application of AT&T Mobility Spectrum LLC and FiberTower Corporation et al.*, Memorandum Opinion and Order, ULS File Nos. 0007652635, 0007652637, DA 18-125, (rel. Feb. 8, 2018) (approving transfer of 24 GHz and 39 GHz licenses from FiberTower to AT&T).

¹¹ See *id.* (“In order for us to start an auction in November, we need the U.S. Congress to pass legislation by May 13 addressing the handling of upfront payments.”). See also Press Release, Ajit Pai, Testimony of FCC Chairman Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, “Oversight and Reauthorization of the Federal Communications Commission,” (July 25, 2017), <http://docs.house.gov/meetings/IF/IF16/20170725/106312/HHRG-115-IF16-Wstate-PaiA-20170725.pdf> .

to prepare for auctions by putting out an auctions public notice for all spectrum that has been made available for millimeter wave and setting a target date in the near time while awaiting a legislative fix.¹²

Respectfully submitted,

/s/

Steve B. Sharkey
Joshua L. Roland
T-Mobile USA, Inc.
601 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 654-5900

March 7, 2018

¹² See, e.g., Spectrum Auction Deposits Act of 2017, H.R. 4109, 115th Cong. § 2 (1st Sess. 2017).

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Comments were served this March 7, 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

/s/
Joshua L. Roland