In re Applications of)
Verizon Communications Inc. and)
Straight Path Spectrum, LLC)

ULS File No. 0007783428

COMMENTS OF INCOMPAS

I. INTRODUCTION AND SUMMARY

INCOMPAS files these comments in response to the applications\(^1\) seeking consent to the transfer of control (the “Transaction”) of spectrum licenses in the Local Multipoint Distribution Service (LMDS) band, 39 GHz band, a 3650-3700 MHz band, as well as common carrier fixed point to point microwave licenses from Straight Path Communications, Inc.’s (“Straight Path’s”) subsidiary, Straight Path Spectrum, LLC, to Verizon Communications Inc. (“Verizon”) (collectively, “the Applicants”).\(^2\) If approved, the Transaction would undermine competition for 5G services and fixed wireless services by further concentrating millimeter wave spectrum in the hands of the largest wireless carrier; and produce an unjustified windfall to the Applicants, depriving taxpayers of their rightful compensation for this spectrum. We urge the Commission to carefully scrutinize this transaction and take appropriate steps to prevent these outcomes.

\(^1\) See Applications of Verizon Communications Inc. and Straight Path Communications for Transfer of Control of Licenses, ULS File No. 0007783428, Public Interest Statement, 1 (filed June 1, 2017) (“Public Interest Statement”).

II. VERIZON’S PURCHASE OF STRAIGHT PATH’S LICENSES WOULD FURTHER CONSOLIDATE HIGH-BAND 5G SPECTRUM

Straight Path’s licenses cover the 28 GHz and 39 GHz millimeter wave bands, which the Commission has identified as particularly valuable and crucial to the future deployment of 5G services in America because they can provide higher speeds and lower latency.3 These attributes make these bands particularly useful for the development of numerous applications, including “[advanced] fitness and healthcare devices, autonomous [vehicles], and home and office automation.” 4 These bands have and are used to provide fixed services, including backhaul supporting broadband. But the transformative nature of this spectrum will be lost if it is only concentrated in the hands of the nation’s two largest wireless providers, without any opportunity for competitive providers to acquire it either at auction or in the secondary market.

In addition to Verizon’s purchase of Straight Path’s millimeter wave spectrum, the Commission is currently considering two other high-band 5G spectrum transactions—Verizon’s purchase of XO’s spectrum portfolio that includes millimeter wave spectrum5 and AT&T’s purchase of FiberTower’s 24 GHz and 39 GHz spectrum band licenses.6 Taken together, these three transactions would allow Verizon and AT&T to establish a dominant position of available


4 See id. at 8020 ¶ 7.


high-band spectrum and limit competition for 5G and fixed wireless services that are well-suited for this spectrum.

Such a result would undermine competition, stifle innovation, and lead to inefficient use of spectrum, contrary to the Commission’s goal of “ensuring access to and the availability of sufficient spectrum [in order] to promot[e] competition, innovation, and investment.” It would effectively repeat the history of low-band spectrum—in which Verizon and AT&T controlled more than 90 percent of the spectrum below 1 GHz until this concentration was remediated by the incentive auction’s reallocation of the 600 MHz band. The Commission should learn from this history and act to prevent concentration in critical spectrum before it occurs.

III. IF THE COMMISSION APPROVES THE TRANSACTION, THE APPLICANTS WILL ENJOY A WINDFALL AT TAXPAYERS’ EXPENSE

Straight Path currently holds the licenses that it proposes to sell to Verizon solely as a result of a settlement that the company reached with Commission staff in the last days of the prior Administration, which resolved the agency’s investigation into whether Straight Path had violated the Commission’s build-out and discontinuance rules in connection with its licenses in

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7 Spectrum Frontiers Report and Order, 31 FCC Rcd at 8078 ¶ 178; see also id. at 8081 ¶ 183 (“We find it essential today to establish clear and transparent mobile spectrum holdings policies that will promote competition in the future, including competition in the development of 5G services, as well as promote the efficient use of mmW spectrum, and avoid an excessive concentration of licenses.”).

8 See Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6157 ¶ 46 (“Concentration in spectrum holdings by service providers of low-band spectrum has become particularly pronounced, with Verizon Wireless and AT&T together having aggregated more than 90 percent of all cellular spectrum.”).


10 The Commission has adopted a millimeter wave spectrum screen of 1250 megahertz. See Spectrum Frontiers Report and Order, 31 FCC Rcd at 8081, ¶ 184. If the Commission approves Verizon’s acquisition of XO and this Transaction, Verizon would hold 1250 megahertz or more of the frequencies that are subject to the screen in 761 of the 3,234 counties in the United States. Public Interest Statement at 9. Verizon has not met its burden of justifying why it should be permitted to exceed the screen.
the 28 GHz and 39 GHz spectrum bands. The Consent Decree clearly indicates that there was strong evidence that Straight Path misrepresented that it had met its build-out requirements with respect to its 39 GHz licenses. In fact, even Straight Path “admit[ted] . . . that the equipment deployed in connection with the buildout of its 39 GHz spectrum band licenses was put in place only for a short period of time” and that “a significant amount of the installed equipment was no longer present at the original locations at the time of the investigation.”

While Straight Path will be required to pay approximately $600 million to the U.S. Treasury under the terms of the settlement, under the Commission’s rules, all of Straight Path’s unconstructed licenses should have been automatically terminated and reverted back to the Commission for auction. It appears that the prior Administration, in a rush to reach a settlement with Straight Path, severely underestimated the value of the licenses at issue and allowed Straight Path to reap a huge windfall, even in the face of damning evidence of misconduct. In what was a surprise to most parties, the Transaction has established the market value of these licenses as $3.1 billion. Had the Commission followed regular order, the

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12 See id. at 284 ¶ 2 (“In short, the investigation found that Straight Path had not actually deployed equipment with any permanency.”); see also id. at 288 ¶ 4.

13 Id. at 284 ¶ 2.

14 Id. (stating that Straight Path has to remit 20 percent of the proceeds from selling its spectrum to the U.S. Treasury).

15 47 C.F.R. 1.946(c) (“If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically.”).

revenue from the sale of these licenses at auction would have accrued to the benefit of taxpayers and been deposited in the U.S. Treasury. Instead, Straight Path will receive a $2.5 billion windfall, with only $600 million going to the Treasury. Such an outcome would appear to have the perverse effect of rewarding spectrum speculators that also engaged in misrepresentations to the Commission. The FCC should therefore deny the subject transaction, not only because of the extreme consolidation of spectrum that would result, but also because the terms of the Consent Decree reward, rather than punish, Straight Path for its infractions. Indeed, while it should not be the general practice, in this particular case, the Commission should review the Consent Decree in light of the new information regarding the value of this spectrum to ensure that taxpayers, rather than spectrum speculators, benefit from its transfer.

IV. CONCLUSION

For the foregoing reasons, the Commission should carefully scrutinize this transaction to avoid the concentration of 5G spectrum in the hands of the nation’s two largest carriers, and to examine whether the public interest will be served by allowing Applicants to benefit from a private sale of licenses that should have reverted to the Commission for auction to the highest bidders.

Respectfully submitted,

/s/ Karen Reidy

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CERTIFICATE OF SERVICE

I, Karen Reidy, hereby certify that, on this 11th day of August, 2017, I caused a copy of the foregoing Comments of INCOMPAS to be filed electronically with the Commission through the ULS system and caused a copy of the foregoing to be served upon the following individuals by electronic mail:

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