Before the
Federal Communications Commission
Washington, D.C. 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	)	

MEMORANDUM OPINION AND ORDER

Adopted: January 17, 2018 **Released: January 18, 2018**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of Verizon Communications Inc. (Verizon) and Straight Path Communications, Inc. (Straight Path, and together with Verizon, the Applicants) for Commission consent to the transfer of control of various spectrum licenses held by Straight Path's wholly-owned subsidiary Straight Path Spectrum LLC to Verizon. The proposed transfer consists of various licenses in the 28 GHz, 29 GHz, 31 GHz, and 39 GHz bands, some point-to-point microwave licenses, and one non-exclusive nationwide license in the 3650-3700 MHz band.[1] After carefully evaluating the likely public interest effects of the proposed transfer, we find that the likelihood of any public interest harms arising from the transfer is low. We note that Verizon's post-transaction spectrum holdings across the 28 GHz and 39 GHz bands do not raise particular competitive concerns in light of the current state of the marketplace as well as the recent availability of additional millimeter wave (mmW) spectrum and the corresponding revision to our mmW spectrum holdings threshold in the *Spectrum Frontiers Second Report and Order*.[2] Further, we find that some public interest benefits are likely to be realized from the transfer, including the expeditious use of this spectrum for the potential introduction of innovative 5G services to the benefit of American consumers. Based on the record before us and our competitive review, we find that the transfer proposed herein will serve the public interest, convenience, and necessity, and therefore we consent to the transfer of control.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

2. *Description of the Applicants.* Verizon, a publicly traded Delaware corporation, is a holding company whose operating subsidiaries provide a wide range of communications services in the United States and throughout the world to residential, businesses and government customers, as well as

[1] *Application of Verizon Communications, Inc. and Straight Path Communications, Inc. for Transfer of Control of Licenses*, ULS File No. 0007783428 (filed June 1, 2017) (Application).

[2] *Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, FCC 17-152, para. 74 (rel. Nov. 22, 2017) (*Spectrum Frontiers Second Report and Order*).

other carriers.[3] Straight Path, also a corporation organized under the laws of Delaware, is a publicly-traded communications asset company.[4]

3. *Description of the Transfer.* On June 1, 2017, Verizon and Straight Path filed an application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),[5] seeking Commission consent to the transfer of control from Straight Path Spectrum, LLC, a wholly-owned subsidiary of Straight Path to Verizon of 735 licenses in the 39 GHz band, 133 licenses in the 28 GHz, 29 GHz and 31 GHz bands, as well as nine common carrier point-to-point microwave licenses, and one non-exclusive nationwide license in the 3650-3700 MHz band. The agreement between Verizon and Straight Path provides that the latter will become a wholly-owned direct subsidiary of Verizon, while Straight Path Spectrum, LLC, the holder of the licenses, will become a wholly-owned indirect subsidiary.[6]

4. On July 21, 2017, the Wireless Telecommunications Bureau released a Public Notice seeking comment on the proposed transfer of control.[7] The Competitive Carriers Association (CCA), Public Knowledge and New America's Open Technology Institute (Public Knowledge), and U.S. Telepacific Corporation (Telepacific) filed petitions to deny in response to the Public Notice, and INCOMPAS filed comments.[8] Verizon and Straight Path filed a joint opposition to the petitions to deny and comments,[9] to which petitioners submitted replies.[10]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

5. Pursuant to Section 310(d) of the Act,[11] the Commission must determine whether the proposed transfer of control of the licenses held by Straight Path will serve the public interest,

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[3] *Application*, Ex. 1 – Description of Transaction and Public Interest Statement at 1-2 (Public Interest Statement).

[4] Public Interest Statement at 1; *Straight Path Communications, Inc. Ultimate Parent Company of Straight Path Spectrum, LLC*, Order and Consent Decree, 32 FCC Rcd 284, 288, para. 4 (EB 2017) (*Consent Decree*).

[5] 47 U.S.C. § 310(d).

[6] Public Interest Statement at 2.

[7] *Application of Verizon Communications Inc. and Straight Path Communications Inc. for Consent to the Transfer of Control of Local Multipoint Distribution Service, 39 GHz, 3650-3700 MHz, and Fixed Point-to-Point Microwave Licenses,* ULS File No. 0007783428, Public Notice, 32 FCC Rcd 5727 (WTB 2017) (Public Notice).

[8] Competitive Carriers Association Petition to Deny the Verizon/Straight Path Application (filed Aug. 11, 2017) (CCA Petition); Petition to Deny of Public Knowledge and New America's Open Technology Institute (filed Aug. 11, 2017) (Public Knowledge Petition); U.S. Telepacific Corporation Petition to Deny the Verizon/Straight Path Application (filed Aug. 11, 2017) (Telepacific Petition); Comments of INCOMPAS (filed Aug. 11, 2017) (INCOMPAS Comments).

CCA also filed, on June 13, 2017, a motion to consolidate review of the Application with that of the application of Verizon Wireless and XO Holdings for consent to the transfer of control of Nextlink Wireless, LLC, ULS File No. 0007765708 (filed June 1, 2017). The CCA Motion to Consolidate was denied. *See Application of Cellco Partnership d/b/a Verizon Wireless and XO Holdings and Application of Verizon Communications, Inc. and Straight Path Communications, Inc.,* Memorandum Opinion and Order, 32 FCC Rcd 5058 (WTB BD 2017).

[9] Verizon and Straight Path Spectrum, LLC Joint Opposition to Petitions (filed Aug. 18, 2017) (Joint Opposition).

[10] CCA Reply to Joint Opposition of Verizon and Straight Path (filed Aug. 25, 2017) (CCA Reply); Reply of Public Knowledge and New America's Open Technology Institute (filed Aug. 25, 2017) (Public Knowledge Reply); U.S. Telepacific Reply to Joint Opposition of Verizon/Straight Path (filed Aug. 25, 2017) (Telepacific Reply).

[11] 47 U.S.C. § 310(d). Section 310(d) of the Act requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T-BellSouth Order*).

convenience, and necessity. In making this determination, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[12] If the proposed transaction does not violate a statute or rule, then the Commission considers whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[13]

6. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[14] The Department of Justice (DOJ) has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader. Notably, the Commission may impose and enforce narrowly tailored, transaction-specific conditions that address the potential harms of a transaction.[15] Specifically, the Commission has repeatedly held that it will impose conditions "only to remedy harms that arise from the transaction (i.e., transaction-specific harms)" and "related to the Commission's responsibilities under the Communications Act and related statutes," and it "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[16]

7. If the Commission has determined that a transaction raises no public interest harms or any such harms have been ameliorated by narrowly tailored conditions, the Commission next considers a transaction's public interest benefits. Notably, the Commission has long recognized the clear public interest benefits in a license or authorization holder being able to assign or transfer control of its license or

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[12] 47 U.S.C. § 310(d); *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9585, para. 8 (2017) (*CenturyLink-Level 3 Order*) (citing *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40, para. 18 (2015) (*AT&T-DIRECTV Order*)); *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247, para. 22 (2011) (*Comcast-NBCU Order*); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee,* Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*).

[13] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585, para. 9 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Comcast-NBCU Order*, 26 FCC Rcd at 4247, para. 22; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25)).

[14] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585, para. 9 (citing *Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*)); *see also Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

[15] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9585-86, para. 9 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 10 (2011) (*Qwest-CenturyLink Order*)).

[16] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 9 (citing *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18303, para. 19 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations et al.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21545-46, para. 43 (2004)); *see also Applications of Nextel Partners, Inc. Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7361, para. 9 (2006); *Applications of AT&T Inc. and CellCo Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8747, para. 101 (2010).

authorization freely.[17] Indeed, the Commission has adopted streamlining procedures—including the automatic approval of a transaction—when a "transaction is unlikely to raise public interest concerns."[18] The Commission also will review other claimed public interest benefits of a transaction, with the applicants bearing the burden of proving those benefits by a preponderance of the evidence.[19]

8. If the Commission is able to find that narrowly tailored, transaction-specific conditions are able to ameliorate any public interest harms and the transaction is in the public interest, it may approve the transaction as so conditioned.[20] In contrast, if the Commission is unable to find that a proposed transaction even with such conditions serves the public interest or if the record presents a substantial and material question of fact, then it must designate the application for hearing.[21]

IV. QUALIFICATIONS OF APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

9. Section 310(d) of the Act requires that we make a determination as to whether the Applicants have the requisite qualifications to hold Commission licenses.[22] Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[23] Therefore, as a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite

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[17] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 10 (citing *Amendment of Section 73.3596 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control)*, Memorandum Opinion and Order, 4 FCC Rcd 1710 (1988), affirming 59 RR 2d 1081 (1982) (affirming elimination of requirement that broadcast licenses be held three years before they can be assigned or transferred, stating "the public interest is usually best served by allowing station sales transactions to be regulated primarily by marketplace forces," and holding that the listening public benefits from freely allowing sales to new owners); *id.,* 55 RR 2d at 1087-88 (holding buyer who is willing to pay market price more likely to deliver service audiences desire and recognizing public benefit of ready market for broadcast licenses); *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10841-44 (2003) (eliminating anti-trafficking policy for satellite licenses expedites service to the public by facilitating the transfer of licenses to those parties that have the greatest incentive and ability to construct a satellite system; enables satellite spectrum to move more efficiently to its highest and best use; and helps licensees mitigate risk thereby encouraging investment)).

[18] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 10 (citing *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5533-35, paras. 29-34 (2002)).

[19] 47 U.S.C. § 309(e); *see CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 10 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Application of Adelphia Comms. Corp. and Time Warner Cable Inc. for Consent to Transfer of Control of Licenses*, 21 FCC Rcd 8203, 8217, para. 23 (2006); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25)).

[20] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 11 (stating that "[a]lthough the Commission has suggested in the past that it may employ a 'balancing test,'" *see, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18, or a 'sliding scale approach,'" *see, e.g.*, *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 203, "in practice the Commission has not allowed potential competitive harms to go unremedied nor allowed them to be offset by benefits that are not transaction-specific, i.e., benefits that do not naturally arise from the transaction at issue.").

[21] 47 U.S.C. § 309(e); *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586-87, para. 11 (citing *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20562-63, para. 3).

[22] 47 U.S.C. § 310(d).

[23] 47 U.S.C. §§ 308, 310(d); *see also AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24; *Qwest-CenturyLink Order,* 26 FCC Rcd at 4199, para. 11; *AT&T-BellSouth Order,* 22 FCC Rcd at 5756, para. 191; *SBC-AT&T Order*, 20 FCC Rcd at 18379, para. 171.

qualification requirements to hold and transfer licenses under Section 310(d) of the Act and the Commission's rules.[24]

10. We note that no issues were raised with respect to the basic qualifications of Verizon, and it has repeatedly been found qualified to hold Commission licenses,[25] including in our recent order consenting to an application filed by Verizon Wireless and XO Holdings/Nextlink for transfer of control of LMDS and 39 GHz licenses.[26] We therefore find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications of Verizon under the Act and our rules, regulations, and policies.[27]

11. On January 11, 2017, Straight Path and the Commission's Enforcement Bureau entered into a Consent Decree to resolve an investigation into allegations of buildout and discontinuance rule violations involving Straight Path's 28 GHz and 39 GHz licenses. In the Consent Decree, Straight Path agreed to pay to the United States Treasury a $100,000,000 civil penalty and to surrender to the Commission 196 of its licenses in the 39 GHz band.[28] The Consent Decree suspended Straight Path's payment of $85,000,000 of the $100,000,000 civil penalty on the condition that it file applications to transfer or assign its remaining license portfolio within 12 months and remit twenty percent (20%) of the proceeds of that sale to the Treasury as an additional civil penalty.[29] However, the Enforcement Bureau determined not to set the matter for hearing with respect to Straight Path's basic qualifications.[30]

12. No party specifically challenges Straight Path's basic qualifications, or advances any specific facts to support such a challenge. However, some petitioners opposing this transaction argued that Straight Path failed to comply with the Commission's buildout rules, and that the Commission was presented with "strong evidence" that Straight Path had misrepresented its compliance with those rules.[31] To the extent these claims involve collateral attacks on the Consent Decree, they are unwarranted. First, no party sought reconsideration or Commission review of the Consent Decree, so it is now a final action. Second, the Commission's determination to resolve these issues pursuant to the terms of the Consent Decree amounts to a decision not to pursue an enforcement action that is generally committed to an

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[24] *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24; *Qwest-CenturyLink Order,* 26 FCC Rcd at 4199, para. 11; *AT&T-BellSouth Order,* 22 FCC Rcd at 5756, para. 191.

[25] *See, e.g.*, *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 10698, 10714, para. 17 (2012); *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3777, para. 26 & nn.108-09 (2008).

[26] *Applications of Cellco Partnership d/b/a Verizon Wireless and XO Holdings for Consent to Transfer Control of LMDS and 39 GHz Licenses*, Memorandum Opinion and Order, DA 17-1154, para. 10 (2017).

[27] 47 U.S.C. § 310(d); 47 CFR § 1.948. The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing. *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 25; *Applications of Sprint Nextel Corp. and SoftBank Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9653, para. 27 (2013).

[28] *Consent Decree*, 32 FCC Rcd at 284, para. 3. Straight Path paid the 15 million dollars to the United States Treasury: it made payments of 4 million dollars on February 7, 2017 and April 7, 2017, and payments of 3.5 million dollars on July 10, 2017 and October 11, 2017.

[29] *Id*.

[30] *Id*., 32 FCC Rcd at 285, para. 5 & n.4 (citing 47 CFR § 1.93(b)).

[31] Public Knowledge Reply at 8. *See also* CCA Petition at 19-21; Public Knowledge Petition at 7-10; INCOMPAS Comments at 3-5

agency's absolute discretion.[32] To ensure that Straight Path fully complies with the Consent Decree, we condition our consent to the transfer of control upon its full compliance with the terms of the Consent Decree. Moreover, we will not accept any notice of consummation filed by the Applicants if this condition is not satisfied.

13. The proposed transaction also must comply with the Communications Act, other applicable statutes, and the Commission's rules before we can find that it is in the public interest.[33] We find that the proposed transaction will not violate any statutory provision or Commission rule.

V. POTENTIAL PUBLIC INTEREST HARMS AND BENEFITS

1. Potential Public Interest Harms

14. We find no evidence in the record to support a finding that the proposed transaction will result in potential public interest harms, and we reject petitioners' arguments that it will.

15. *Positions of the Parties.* The Applicants claim that the proposed does not pose anticompetitive risks.[34] The Applicants initially argued that the proposed transaction should be approved because it would pose no harm to competition even in areas where Verizon's post-transaction spectrum holdings would be above the *then effective* 1250 megahertz threshold for secondary market transactions in the 28 GHz, 37 GHz, and 39 GHz mmW frequencies.[35] The Applicants argue that the harms alleged by petitioners are "hypothetical" given that 5G and the services that will be offered in this spectrum are "in a nascent state."[36] Furthermore, the Applicants argue their plan to deploy in the 28 GHz and 39 GHz bands will not deprive other major wireless companies of "essential inputs" for 5G or reduce competition, because there is intense competition among major wireless companies to develop and deploy 5G services using a variety of other bands.[37] The Applicants further note that more spectrum for 5G may be made available, including spectrum in the 32 GHz, 42 GHz, 50 GHz, 71-76 GHz, 81-86 GHz, and above 95 GHz bands.[38]

16. Petitioners opposed approval of the proposed transaction primarily on the grounds that Verizon's resulting mmW holdings would exceed the 1250 megahertz mmW spectrum threshold in certain markets, and that the holdings resulting from this transaction would create competitive harms.[39] Petitioners argue that service providers will need access to diverse spectrum resources in order to meet future demand for 5G, and they assert that the proposed transaction represents anti-competitive

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[32] *See New York State Dep't of Law v. FCC,* 984 F.2d 1209 (D.C. Cir. 1993); *accord, NTCH, Inc. v. FCC,* 841 F.3d 497, 503 (D.C. Cir. 2016). *See also SEC v. Citigroup Global Markets Inc.,* 673 F.3d 158, 163 (2d Cir. 2012) (". . . the scope of a court's authority to second-guess an agency's discretionary and policy-based decision to settle is at best minimal").

[33] *AT&T-DIRECTV Order*, 30 FCC Rcd at 9154, para. 52.

[34] Public Interest Statement at 6.

[35] *Id.* at 7.

[36] Joint Opposition at 5.

[37] Joint Opposition at 6-9; Public Interest Statement at 6-8 (stating that T-Mobile, AT&T, Sprint, DISH, and others have all made claims regarding the plans they have for 5G deployment and some have noted various different bands they intend to use other than the ones at issue here).

[38] Public Interest Statement at 9.

[39] Public Knowledge Petition at 5-6; CCA Petition at 7. Public Knowledge and CCA noted that approval would bring Verizon's mmW holdings to 312 billion MHz/POPs, and taken together with AT&T's planned acquisition of FiberTower's 122 billion MHz/POPs, would permit the two companies to collectively hold more than half of all available 28 GHz spectrum and about two-thirds of the 39 GHz spectrum, even before a mmW spectrum auction had ever taken place. Public Knowledge Petition at 6-7; CCA Petition at 16-17.

aggregation of mmW spectrum.[40] In addition, opponents argue that approval of the transaction would harm the public interest because it would reward spectrum speculators that make misrepresentations before the Commission and would deprive the Commission of the opportunity to auction this spectrum and generate revenue for the U.S. Treasury.[41] Instead, they argue the instant transaction should be denied and Straight Path's spectrum auctioned.[42]

17. In addition, Telepacific[43] specifically argues that the Applicants have interpreted the Consent Decree incorrectly to limit Straight Path from entering any new spectrum lease or other agreement with any party with respect to any of the licenses in the License Portfolio (as defined in the Consent Decree).[44] Telepacific asks the Commission to clarify that the Consent Decree does not prevent it from renegotiating its existing leases with Straight Path.[45] In the alternative, Telepacific asks the Commission to extend existing spectrum lease agreements for five years past the closing of this transaction, to avoid a flash cut in service.[46] CCA and Telepacific claim that service providers have invested capital to use this spectrum to serve various local businesses, schools, and community institutions, and they expect to continue to do so in a 5G ecosystem, whereas stranding these users without services would be economically inefficient.[47]

18. The Applicants respond that opponents' claims are speculative.[48] Following adoption of the *Spectrum Frontiers Second Report and Order,* Verizon argued it will be below the *Second Report and Order*'s increased mmW spectrum threshold of 1850 megahertz in all markets where it is acquiring mmW spectrum, and that therefore this transaction does not trigger further competitive review.[49] Applicants further note the Department of Justice concluded its review of the instant transaction in June and found no competitive harm.[50] The Applicants further contend that the 28 and 39 GHz bands at issue are not "essential inputs" for the delivery of 5G service, as evidenced by the fact that T-Mobile, Sprint, DISH, AT&T, and Charter have all announced plans to use various other bands for 5G service, including the 600 MHz, 700 MHz, AWS-4, 2.5 GHz, 3.4-4.2 GHz, and 3.5 GHz bands.[51] The Applicants also point to the Commission's efforts to add more bands to the Part 30 UMFUS service.[52] In response to the Petitioners' argument that the Consent Decree should essentially be set aside with the instant transaction denied and Straight Path's spectrum auctioned, the Applicants argue that petitioners did not file any petitions for reconsideration in response to the Decree's finding that it was in the public interest for Straight Path to

[40] CCA Petition at 1 n.1 & 3.

[41] CCA Petition at 19-22; Public Knowledge Petition at 2, 9-10; INCOMPAS Comments at 5.

[42] *See* CCA Petition at 22; Public Knowledge Petition at 10; INCOMPAS Comments at 5.

[43] Telepacific currently leases 28 GHz spectrum from Straight Path to deliver unified communications, managed IT services, and network connectivity to more than 80,000 customer locations across the United States. Telepacific Petition at 3.

[44] Telepacific Reply at 3 (citing Consent Decree, 32 FCC Rcd 284, 291, n.18).

[45] Telepacific Reply at 5.

[46] Telepacific Petition at 9.

[47] CCA Reply at 7-8, 12-13 (discussing Pine Belt Communications, HTC, Central Texas Telephone Coop., and C-Spire); Telepacific Petition at 7-8.

[48] Joint Opposition at 1.

[49] Letter from Adam Krinsky, Counsel, Verizon Comms. Inc., to Marlene H. Dortch, Secretary, FCC, ULS File No. 0007783428 (filed Nov. 29, 2017) at 1.

[50] Joint Opposition at 2.

[51] *Id.* at 7-9.

[52] *Id.* at 7.

retain and dispose of its licenses, leaving the Decree final and binding on Straight Path.[53] Furthermore, they argue that denying the transaction in favor of future hypothetical auctions that may better serve taxpayers violates the Communications Act.[54]

19. The Applicants also argue the Commission cannot mediate private contractual disputes such as the one between them and Telepacific so as to obtain better lease terms for Telepacific, as this intervention would be outside the scope of the Commission's secondary market transactions review.[55] Nevertheless, the Applicants initially committed that once Straight Path was under Verizon's control, Verizon would honor its contractual obligations under existing leases with third parties so that approval of the transaction would not affect an existing lessee's rights under its agreement with Straight Path.[56] In the interim, Verizon has filed an *ex parte* indicating that it has entered into an agreement with Telepacific under which Telepacific will move its operations to new spectrum bands in Los Angeles and San Francisco, and lease spectrum in a new market (Las Vegas), and Verizon will allow it to continue providing service in these markets over an extended period of time.[57] While these agreements were not conditioned on Telepacific's withdrawing its pleading, Verizon essentially argues that we should consider Telepacific's prior lease-based arguments to be moot.[58]

20. *Discussion*. In reviewing proposed transactions, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.[59] Spectrum is an essential input in the provision of wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the wireless marketplace.[60]

21. Although the Commission's spectrum screen historically has not included the mmW bands,[61] the Commission, in the *Spectrum Frontiers Order,* found that the mmW bands are likely to

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[53] *Id.* at 20-21 (citing 47 CFR § 1.106(f), 1.115(d)).

[54] Joint Opposition at 20 (citing 47 U.S.C. § 310(d) ("the Commission may not consider whether the public interest, convenience or necessity might be served by the transfer, assignment or disposal of the permit or a license to person other than the proposed transferee.')).

[55] Joint Opposition at 22-23.

[56] *Id.* at 23.

[57] Letter from Adam Krinsky, Counsel, Verizon Comms. Inc., to Marlene H. Dortch, Secretary, FCC, ULS File No. 0007783428 (filed Dec. 26, 2017) (Verizon Dec. 26 *Ex Parte*) at 1-2.

[58] *Id.*

[59] *See, e.g.*, *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3635-36, para. 9 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2745, para. 20 (WTB, IB 2014) (*AT&T-Leap Order*).

[60] *See, e.g.*, *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015); *AT&T-Leap Order*, 29 FCC Rcd at 2745-46, para. 21.

[61] *See, e.g.*, *Sprint-Shentel-NTELOS* Order, 31 FCC Rcd at 3637, para. 13; *Mobile Spectrum Holdings Report and* Order, 29 FCC Rcd at 6169, para. 70.

become a critical component in the development of 5G services,[62] and it concluded that proposed secondary market transactions, such as this one, should be analyzed on a case-by-case basis using a specific mmW spectrum threshold as an initial analytical tool to aid in identifying certain markets for further review.[63] In the *Spectrum Frontiers Order*, the Commission adopted a mmW spectrum threshold of 1250 megahertz for proposed secondary market transactions, out of the total of 3250 megahertz of mmW spectrum made available at that time.[64] In its recent *Spectrum Frontiers Second Report and Order*, the Commission raised this threshold to 1850 megahertz because it adopted rules making an additional 1700 megahertz of mmW spectrum available from the 24 GHz and 47 GHz bands, increasing the total available mmW spectrum to 4950 megahertz.[65]

22. We observe that post-transaction, Verizon will remain below the revised mmW spectrum threshold of 1850 megahertz in all the markets at issue.[66] Its maximum spectrum holdings in any given county would be 1650 megahertz. Considering that the proposed transaction does not trigger the mmW spectrum threshold, and based on our careful review of the record, as well as our examination of the various factors present in this case described below, we find that Verizon's post-transaction spectrum holdings do not raise concerns in light of the current state of the marketplace.

23. We are not persuaded by Petitioners' arguments that Verizon's post-transaction spectrum holdings would lead to competitive harms through foreclosure and anticompetitive spectrum aggregation.[67] First, we find that their allegations of competitive harm are speculative, generalized in nature and not specific to this transaction. Further, we find that Verizon's acquisition of the licenses at issue is unlikely to foreclose rival service providers from obtaining access to sufficient spectrum for their own development of new products and services. As noted above, to date, the Spectrum Frontiers proceeding has made available for wireless use five bands of mmW spectrum totaling 4950 megahertz. Moreover, mmW spectrum is not the only spectrum available that may be useful for providing 5G services. For these reasons, we find that the likelihood of competitive harms arising from this particular transaction is low.

24. We reject petitioners' arguments that approval of the transaction would harm the public interest by rewarding "Straight Path for unlawfully warehousing mmW spectrum to the detriment of taxpayers and competitive mobile operators eager to invest in 5G technologies."[68] As noted above, these arguments are an inappropriate collateral attack on the Consent Decree. In any event, none of the

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[62] *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, 8081, para. 184 (2016) (*Spectrum Frontiers Order*).

[63] *Id.* at 8082-84, paras. 185 & 190.

[64] *Id.* at 8081-84, paras. 184, 189 & n.493.

[65] *Spectrum Frontiers Second Report and Order*, FCC 17-152, at para. 74. This change in the threshold became effective on January 2, 2018. *See Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 83 Fed. Reg. 37 (Jan. 2, 2018).

[66] *See, e.g.,* Verizon-Straight Path Application, Exhibit 2, Spectrum Aggregation Exhibit at "Before Vivint Exercises Bargain Purchase Option." Applicants initially argued that of the spectrum being acquired by Verizon from Nextlink, Nextlink had entered 79 long-term *de facto* leases with Vivint, which controlled that spectrum and held a bargain purchase option entitling it to purchase these leases for one dollar – which they argued was tantamount to making the underlying spectrum Vivint's asset and therefore not attributable to Verizon. Public Interest Statement at 9. Verizon recently acknowledged that some of Vivint's leases (and the associated option to purchase) will be terminated pursuant to a recent agreement, presumably returning the spectrum to Verizon. Verizon Dec. 26 *Ex Parte* at 1. Accordingly, we will attribute all of the Nextlink-acquired spectrum to Verizon for purposes of our competitive analysis, including that which may have been leased previously to Vivint.

[67] Public Knowledge Petition at 2, 5-6; CCA Petition at 7, 18-19, INCOMPAS Comments at 3.

[68] CCA Petition at 19-20; *see also* Public Knowledge Petition at 7-10; INCOMPAS Comments at 3-5.

petitioners provide any new information with respect to the matters resolved by the Consent Decree.

25. Telepacific asks that we interpret the language of the Consent Decree in such a way that it will free Straight Path to renegotiate its expiring lease agreements with Telepacific. We note that, by its terms, the Consent Decree's limitation on Straight Path's leasing spectrum expires once Straight Path completes its obligations under Paragraphs 12 through 16 of the Consent Decree.[69] Further, while Telepacific also asks that we condition our approval of Verizon's purchase by extending the terms of existing spectrum lease agreements post-closing, the Commission is not the correct forum for resolving contractual issues.[70] In addition, as noted above, Verizon has indicated it has entered into an agreement with Telepacific under which the latter will move its operations to new spectrum bands and lease spectrum in a new market, and that Verizon will allow it to continue providing service in Los Angeles, San Francisco, and Las Vegas over an extended period of time.

2. Potential Public Interest Benefits

26. Having found there are no significant potential public interest harms of the transaction, we next review the potential public interest benefits of the particular transaction, beyond fostering the free transferability of licenses and authorizations. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms only "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[71] Specifically, the Commission finds a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction[72]—and verifiable, and it has observed that it is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost."[73]

27. *Claims of the Parties*. According to the Applicants, Verizon is committed to commercial deployment of 5G in 2018, and it asserts that allowing it to acquire this spectrum will trigger capital investment to construct new antennas and structures, new fiber backhaul networks, and countless other facilities.[74] The Applicants maintain that Verizon has been driving the 5G ecosystem towards rapid commercialization with testing, standards development, fiber deployment, acquisitions for backhaul, and planned launches of pre-commercial 5G service trials.[75] The Applicants also maintain that allowing this secondary market sale to determine the holder of this spectrum will allow it to flow to its highest valued use.[76] They also posit that transfer of these mmW licenses will further the Commission's objective of

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[69] Consent Decree, 32 FCC Rcd at 291, n.18.

[70] *S.A. Dawson*, Memorandum Opinion and Order, 17 FCC Rcd 472, 474 n.15 (WTB 2002) (*citing AirTouch Paging, Inc.*, Order, 14 FCC Rcd 9658 (WTB CWB P&RB 1999)); *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987). *See also Rudolph J. Geist, Esq.*, Letter, 29 FCC Rcd 15282 (WTB BD 2014); *Antilles Wireless, L.L.C. d/b/a USA Digital*, Order on Reconsideration, 24 FCC Rcd 4696, 4699, para. 8 (WTB 2009).

[71] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5760, para. 201).

[72] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 202 (stating "[o]r as the Commission has previously put it, 'more likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects'")).

[73] *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9604, para. 50 (citing *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 202).

[74] Joint Opposition at 6.

[75] *Id.* at 3-5; *see also* Public Interest Statement at 1, 4-5.

[76] Joint Opposition at 5-6.

fostering innovation in 5G technologies and facilitating the rapid deployment of 5G services and products to the benefit of American consumers and the United States economy.[77]

28. Public Knowledge describes the Applicants' claimed benefits as "underwhelming."[78] It faults Verizon for not committing to a specific deployment schedule and for not promising to deploy service in unserved areas.[79] It also claims that it is unclear whether Verizon needs the Straight Path spectrum to deploy its planned 5G network.[80]

29. *Discussion.* We have reviewed the Applicants' claimed public interest benefits. As noted in the *Spectrum Frontiers* proceeding, the 28 GHz and 39 GHz spectrum that is included in the proposed transaction, among other spectrum bands, is likely to be used for 5G deployment,[81] and Verizon has been taking a number of steps towards developing standards and technology for 5G deployment.[82] We find that, as a direct result of the transaction, Verizon likely will be better able to develop and deploy innovative 5G services to the benefit of American consumers. Therefore, we believe that consenting to the subject transaction will allow Verizon to develop important uses and new technology for these mmW spectrum bands.

VI. CONCLUSION

30. Based on our careful evaluation of the likely competitive effects, we find that the transaction is unlikely to result in any significant public interest harms. In addition, we find that the record provides general support for the Applicants' assertions that the transaction likely will result in certain public interest benefits. As a result, based on our review of the record before us, we find that consent to the proposed transfer of control would serve the public interest, convenience, and necessity.

VII. ORDERING CLAUSES

31. Accordingly, having reviewed the application and the record in this matter, **IT IS ORDERED** that, pursuant to Sections 4(i)-(j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 303(r), 309, 310(d), the application for consent to the transfer of control filed by Verizon Communications Inc. and Straight Path Communications, Inc. **IS GRANTED, SUBJECT TO** the conditions set forth herein, including in paragraph 33.

32. **IT IS FURTHER ORDERED** that, pursuant to Sections 63.10, 63.13, and 1.939 of the Commission's Rules, 47 CFR §§ 63.10, 63.13, 1.939, the petitions of the Competitive Carriers Association, Public Knowledge and New America's Open Technology Institute, and U.S. Telepacific Corporation to deny the application and the comments filed by INCOMPAS **ARE DENIED** as discussed above.

33. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 310(d) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 310(d), and Section 1.948 of the Commission's Rules, 47 CFR § 1.948, that the following condition shall be placed on the consent to the application:

> Consent to this Application shall be conditioned upon full compliance by Straight Path Communications, Inc. and Straight Path Spectrum, LLC with the Consent Decree between those companies and the Commission's Enforcement Bureau released on January 12, 2017 (DA 17-40), including without limitation Paragraphs 12 through 16

[77] Public Interest Statement at 3.

[78] Public Knowledge Petition at 4.

[79] *Id.* at 4-5.

[80] *Id.* at 5.

[81] *Spectrum Frontiers Order*, 31 FCC Rcd at 8025, 8044-45, paras. 23, 76.

[82] Public Interest Statement at 4-5.

thereof. The Wireless Telecommunications Bureau will not accept any notice of consummation of the transaction if this condition is not satisfied.

34. **IT IS FURTHER ORDERED** that the above grant shall include authority for Verizon Communications Inc., consistent with the terms of this Memorandum Opinion and Order, to acquire control of: (1) any licenses and authorizations issued to Straight Path Communications, Inc. during the Commission's consideration of the Application and the period required for consummation of the transaction following approval; (2) any applications that have been filed by Straight Path Communications, Inc. that are pending at the time of consummation of the transaction; and (3) licenses that may have been inadvertently omitted from the Application that are held by Straight Path Communications, Inc. at the time of consummation of the transaction.

35. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon release. Petitions for Reconsideration under Section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

36. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Donald Stockdale
Chief
Wireless Telecommunications Bureau