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: June 29, 2018 **Released: July 2, 2018**

By the Commission:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order,* we dismiss, and in the alternative, deny the Application for Review, or in the alternative, Petition for Reconsideration filed by the Competitive Carriers Association (CCA)[1] and affirm a decision of the Wireless Telecommunications Bureau (Bureau) consenting to the transfer of 28 GHz, 29 GHz, 31 GHz, and 39 GHz licenses from Straight Path Communications' (Straight Path) subsidiary Straight Path Spectrum LLC to Verizon Communications Inc. (Verizon).[2]

II. BACKGROUND

2. *Consent Decree.* 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.[3] 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.[4] However, the Enforcement Bureau determined that "[i]n the absence of material new evidence relating to this matter or a subsequent violation of the Consent Decree, [the Enforcement Bureau would] not set for hearing the

[1] Application for Review, or in the Alternative, Petition for Reconsideration of Competitive Carriers Association (filed Feb. 20, 2018) (AFR).

[2] *Application of Verizon Communications, Inc. and Straight Path Communications, Inc. for Transfer of Control of Licenses,* Memorandum Opinion and Order, 33 FCC Rcd 188 (WTB 2018) ("*Consent Order*"). The transaction approved in the *Consent Order* is referred to herein as the "Transaction."

[3] *Straight Path Communications, Inc. Ultimate Parent Company of Straight Path Spectrum, LLC*, Order and Consent Decree, 32 FCC Rcd 284, 284, para. 3 (EB 2017) (*Consent Decree*).

[4] *Consent Decree*, 32 FCC Rcd at 284, para. 3.

question of Straight Path's basic qualifications to hold or obtain any Commission license or authorization."[5]

3. *Transfer of Control Application.* In June 2017, Verizon and Straight Path filed applications pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),[6] seeking Commission consent to the transfer of control of Straight Path Spectrum LLC, a wholly-owned subsidiary of Straight Path Communications to Verizon whereby Straight Path Spectrum LLC became a wholly-owned subsidiary of Verizon.[7] Pursuant to that application, Straight Path and Verizon argued that Verizon's acquisition of Straight Path's millimeter wave (mmW) spectrum licenses would facilitate Verizon's continued investment, innovation, and deployment of 5G technology that will benefit the U.S. economy, and the millions of consumers, businesses, and government users that increasingly rely on wireless broadband and soon, 5G.[8] The Bureau released a public notice seeking comment on the proposed transfer of control.[9] Several parties filed petitions to deny in response to the Public Notice, including CCA.[10]

4. In its *2016 Spectrum Frontiers Order*, the Commission had adopted a mmW spectrum threshold of 1250 megahertz out of the total 3250 megahertz of mmW spectrum made available at that time for the new Upper Microwave Flexible Use Service for its review of proposed secondary market transactions.[11] In the *FNPRM* accompanying the *Spectrum Frontiers Report and Order*, the Commission proposed increasing this threshold to stay at approximately one-third of the total amount of mmW spectrum it would make available in the future.[12] CCA contended that the sale of Straight Path's spectrum to Verizon would result in Verizon's total mmW holdings in the 28 GHz, 37 GHz, and 39 GHz bands being at or above the aforementioned 1250 megahertz threshold in 761 counties with the maximum spectrum holdings in any given county being 1650 megahertz, and had asked the Bureau to conduct a rigorous "enhanced factor review" of the transaction on that basis.[13] In the *Spectrum Frontiers Second Report and Order*, the Commission increased this threshold to 1850 megahertz.[14] This change in the threshold became effective on January 2, 2018.[15]

5. On January 18, 2018, the Bureau released the *Consent Order* rejecting the petitions to deny and consenting to the Transaction. The Bureau found "no evidence in the record to support a finding that the proposed transaction will result in potential public interest harms, and [it] reject[ed]

[5] *Consent Decree, 32 FCC Rcd* at 285, para. 5 (citing 47 CFR § 1.93(b)).

[6] 47 U.S.C. § 310(d).

[7] *Application of Verizon Communications Inc. and Straight Path Communications Inc. for Consent to the Transfer of Control of Licenses*, ULS File Nos. 0007783428 (filed Jun. 1, 2017) (Application), Ex. 1 – Description of Transaction and Public Interest Statement at 2 (Public Interest Statement).

[8] Public Interest Statement at 5-6.

[9] *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).

[10] *See Consent Order,* 33 FCC Rcd. at 189, para. 4.

[11] *Consent Order,* 33 FCC Rcd. at 196, para. 21 (citing *Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd at 8014, 8081-84, paras. 184, 189 & n.493 (2016) (*Spectrum Frontiers Report and Order or FNPRM*, as appropriate).

[12] *See Spectrum Frontiers FNPRM*, 31 FCC Rcd at 8180, para. 491.

[13] AFR at 10 n.26; *see also Consent Order*, 33 FCC Rcd at 196, para. 22.

[14] *Use of Spectrum Bands Above 24 GHz 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, 32 FCC Rcd 10988, 11011, para. 74 (2017) (*Spectrum Frontiers Second Report and Order*).

[15] *See Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 83 Fed. Reg. 37 (Jan. 2, 2018).

petitioners' arguments that it will."[16] The Bureau also found that Verizon's maximum spectrum holdings in any given county fell below the revised 1850 megahertz mmW spectrum threshold.[17] Accordingly, given the proposed transaction did not trigger the mmW spectrum threshold, and based on its careful review of the record as well as its examination of the various relevant factors, the Bureau found Verizon's post-Transaction spectrum holdings did not raise competitive concerns in light of the current state of the marketplace.[18] The Bureau also analyzed and rejected arguments that approving the transaction would harm the public interest by rewarding Straight Path for unlawfully warehousing mmW spectrum to the detriment of taxpayers and competitive providers (who could have gained if the transaction had been denied and the spectrum auctioned) as inappropriate collateral attacks on the Consent Decree.[19] After finding that "as a direct result of the transaction, Verizon likely would be better able to develop and deploy innovative 5G services to the benefit of American consumers,"[20] the Bureau consented to the Transaction as serving the public interest, convenience, and necessity.[21]

6. CCA filed both the subject AFR of the *Consent Order* as well as a Petition for Stay seeking to stop consummation of the Transaction.[22] The Wireless Bureau denied the Petition for Stay after concluding under the relevant factors that CCA was unlikely to succeed on the merits of its arguments or to suffer irreparable harm through granting the transaction, and that other parties and the public interest would be harmed by the transaction's denial.[23]

III. DISCUSSION

7. As a preliminary matter, CCA has not demonstrated standing to seek review of the Bureau's consent to the transfer applications. Under Section 155(c)(4) of the Communications Act of 1934, as amended, and Section 1.115(a) of the Commission's rules, a filer has standing to submit an application for review of a decision by which it is "aggrieved."[24] The Commission accords party-in-interest standing to a petitioner that alleges facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.[25] In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.[26] To demonstrate a causal link, petitioners must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed

[16] *Consent Order,* 33 FCC Rcd. at 193, para. 14.

[17] *Consent Order,* 33 FCC Rcd. at 196, para. 22.

[18] *Consent Order,* 33 FCC Rcd. at 196, para. 22.

[19] Consent Order, 33 FCC Rcd at 196, para. 24.

[20] Consent Order, 33 FCC Rcd at 198, para. 29.

[21] Consent Order, 33 FCC Rcd at 198, para. 30.

[22] *See* AFR; Petition for a Stay of Competitive Carriers Association (filed Feb. 20, 2018). Verizon has filed an opposition to the AFR. Opposition to Application for Review of Verizon (filed Mar. 5, 2018) (Verizon Opposition). T-Mobile submitted comments in support of the AFR. Comments of T-Mobile USA, Inc. (filed Mar. 7, 2018). CCA filed a reply. Reply to Opposition to Application for Review of CCA (filed Mar. 20, 2018).

[23] *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, Order Denying Petition for Stay, DA 18-328 (WTB rel. Apr. 2, 2018) at para. 18 ("*Stay Order*").

[24] 47 U.S.C. § 155(c)(4); 47 CFR § 1.115(a)(1).

[25] *See, e.g., Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*), *citing Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). *See also New World Radio, Inc. v. FCC,* 294 F.3d 164 (D.C. Cir. 2002). *See generally T-Mobile License LLC, AT&T Mobility Spectrum LLC, New Cingular Wireless PCS LLC*, Memorandum Opinion and Order, 29 FCC Rcd 6350, 6355, para. 12 (2014).

[26] *Wireless Co.*, 10 FCC Rcd at 13235, para. 7.

by the relief requested.[27] For these purposes, an injury must be both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[28] There must be more than an "objectively reasonable likelihood" of threatened injury; such injury must be "certainly impending."[29] An organization may meet these standards in its own right or may demonstrate that one or more of its members meets these requirements.[30]

8. In applying those standards to CCA's AFR, we conclude that CCA has not adequately demonstrated standing. Here, CCA has not proffered evidence concerning any actual and certain harm it will suffer as a direct result of the Commission's approval of the subject Transaction.[31] CCA makes generalized statements about competitive harm resulting from the transaction's concentration of this spectrum in Verizon's hands,[32] or Straight Path's unjust enrichment resulting from its multi-billion-dollar sale of licenses,[33] neither of which demonstrates how it, or its members, are aggrieved or injured by the grant of the Transaction. Transaction proceeds going to Straight Path do not constitute a harm or confer such standing. Nor has CCA demonstrated that any of its members could or would be in a position to acquire the spectrum at issue here, or that any such member would benefit from Straight Path's retention of the licenses. To the extent that CCA seeks an auction of the spectrum, it has failed to provide anything other than speculation about that possibility or that any of its members would be willing and able to purchase such spectrum. Therefore, we dismiss CCA's AFR for lack of standing.

9. Nor has CCA demonstrated standing to file its alternative petition for reconsideration. Pursuant to Section 405 of the Act and Section 1.106(b)(1) of the Commission's rules, a petition for reconsideration may be filed by "any party to the proceeding, or any other person whose interests are adversely affected."[34] To qualify as a party to the proceeding, the petitioner must have filed a valid petition to deny.[35] While CCA filed a petition to deny, based on our evaluation of the record, CCA has not demonstrated the existence of a direct, certainly impending injury that could be traced to the proposed transaction.[36] However, in the alternative, in order to provide a clear resolution of the substantive issues, we also address the allegations in CCA's pleading below and reject its arguments on the merits.

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[27] *Id*. Because "a licensing proceeding before the Commission is not an Article III proceeding," the Commission may determine in the public interest to allow participation by parties pursuant to Section 309(d) of the Communications Act who would lack Article III standing. Channel 32 Hispanic Broadcasters, Ltd., *Order,* 15 FCC Rcd 22649, 22651, para. 7 (2000), *aff'd per curiam,* 22 Fed. Appx. 12 (2001). However, wireless applications have generally been reviewed using the foregoing Article III standard. Rockne Educational Television, Inc., *Memorandum Opinion and Order*, 26 FCC Rcd 14402, 14405, para. 7 (WTB BD 2011). *See, e.g., Cellco Partnership,* 27 FCC Rcd at 10713, para. 36. For the reasons stated above, we find no public interest reason to depart from this practice here. *See Airadigm Communications, Inc.*, Order on Reconsideration, 21 FCC Rcd 3893, 3897, para. 14 & n.30 (WTB 2006), *review dismissed,* 26 FCC Rcd 6739 (WTB 2011).

[28] *Conference Group, LLC v. FCC,* 720 F.3d 956 (D.C. Cir. 2013), *quoting Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992).

[29] *Clapper v. Amnesty International USA,* 568 U.S. 398, 410 (2013).

[30] *See, e.g., Friends of the Earth, Inc.,* Memorandum Opinion and Order, 18 FCC Rcd 23622, 23622-23, paras. 2-3 (2003).

[31] Verizon also argues that CCA "fails to identify a legitimate harm, let alone a transaction specific one." Verizon Opposition at 18.

[32] AFR at 15-18.

[33] AFR at 18-19.

[34] 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

[35] *See, e.g., Gulfcoast Broadcasting, Inc*., Memorandum Opinion and Order, 8 FCC Rcd 483 (1993).

[36] Section 1.939(d) of the Commission's rules requires that a petition to deny contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that grant of the application would be inconsistent with the public interest, convenience, and necessity. 47 CFR § 1.939(d). To establish

10. In its AFR, CCA argues the Bureau's *Consent Order* failed to conduct a meaningful analysis of the negative effect Verizon's spectrum aggregation would have on 5G competition as a result of the transaction.[37] CCA challenges the Bureau's use of the 1850 megahertz spectrum threshold adopted in the *Spectrum Frontiers Second Report and Order*.[38] CCA argues the Bureau failed to conduct a meaningful review of the transaction's anticompetitive effects, by misapplying the standard under which spectrum will be considered 'available' for mobile broadband use for purposes of determining the impact on spectrum aggregation, and ignored the Commission policy recognizing the value of mmW spectrum to next generation mobile networks.[39] CCA also argues the Bureau failed to properly punish Straight Path's misconduct through denial of the proposed transaction and auction of its spectrum.[40] After a thorough review of the AFR and the record, we reject CCA's arguments.

11. CCA's argument that the Commission improperly applied the 1850 megahertz mmW spectrum threshold to the transaction in the *MO&O* instead of the prior 1250 megahertz threshold without notice is without merit.[41] At the time the Commission adopted the 1250 megahertz threshold, the Commission proposed increasing this threshold to stay at approximately one-third of the total amount of mmW spectrum it would make available in the future.[42] Following notice and comment, as the 24 GHz and 47 GHz bands were added, the Commission updated the threshold to 1850 megahertz,[43] and expressly noted that this increase would become effective upon publication in the Federal Register,[44] or January 2, 2018.[45] Therefore, CCA and others were provided with sufficient notice of, and an opportunity to comment on, both the Commission's intent to apply a secondary market threshold to analyze competition, and the revised threshold of 1850 megahertz. Moreover, the Bureau's application of the revised threshold is consistent with past practice of applying law in existence at the time it acts and there was no basis for the Bureau to apply any threshold other than the 1850 megahertz screen as of the date the *Consent Order* was adopted.[46] Indeed, the Commission has revised an analogous tool—the general spectrum screen that it applies to secondary market transactions—in various orders and has applied its revised screen to pending transactions.[47]

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standing as a party in interest, a petitioner must allege facts sufficient to demonstrate that grant of the petitioned application would cause the petitioner to suffer a direct injury. *See supra* at n.25.

[37] AFR at 2.

[38] AFR at 10-14.

[39] AFR at 8-9.

[40] AFR at 4.

[41] *See Stay Order*, DA 18-328 at para. 6.

[42] *Spectrum Frontiers FNPRM*, 31 FCC Rcd at 8180, para. 491.

[43] *Spectrum Frontiers Second Report and Order*, 32 FCC Rcd at 11011, para.74.

[44] *Spectrum Frontiers Second Report and Order*, 32 FCC Rcd at 11011, 11074, paras. 74, 268, n.189. While CCA disagrees about inclusion of the bands not yet auctioned because it asserts that the 24 GHz and 47 GHz spectrum are not "available," (*see* Petition for Stay at 8), that is not the pertinent standard for purposes of application of the mmW spectrum threshold for secondary market transactions at issue here.

[45] *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 83 Fed. Reg. 37 (Jan. 2, 2018).

[46] *See Washington Ass'n for Television and Children v. FCC*, 665 F.2d 1264, 1268-69 (D.C. Cir. 1981)) (stating that when an agency decides "in an intervening proceeding" to change a policy, it "cannot be required to apply a policy it has rejected" in lieu of the new one it has adopted, because expecting it to do so would amount to a command to the agency to disregard its statutory mandate: it would have to employ a policy that by its own determination, did not serve the public interest."))

[47] *See, e.g., Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16470, para. 31 (2012) (adding WCS A and B blocks to the

12. To the extent that CCA is arguing that some of the spectrum included in the mmW spectrum threshold—such as the 24 GHz and 47 GHz—will not be available for years, its remedy was to file a petition for reconsideration of the *Spectrum Frontiers Second Report and Order*.[48] It did not do so. Under those circumstances, the only proper action for the Bureau was to apply the 1850 megahertz mmW threshold adopted by the Commission and in effect. In addition, the Commission plans to make the bands to which the spectrum threshold applies available as soon as practicable.[49] For instance, the Commission recently sought comment on procedures for the auction process for the 24 GHz and 28 GHz bands, with bidding on 28 GHz scheduled to begin November 14, 2018.[50]

13. The Bureau's finding that Verizon's spectrum holdings post transaction remained below the revised mmW 1850 megahertz spectrum threshold in all markets, which we affirm, informed the conclusion that the transaction would not result in competitive harms through foreclosure and anticompetitive spectrum aggregation. CCA argues that the spectrum threshold serves only as an "analytical tool" and does not absolve the Bureau from considering other sources of competitive harm.[51] But the Bureau did so and found Verizon's post-transaction spectrum holdings do not raise concerns in light of the current state of the marketplace.[52] Nevertheless, CCA states the Bureau's assertion that "mmW spectrum is not the only spectrum available that may be useful for providing 5G services" is "patently false."[53] CCA also argues that all service providers need access to specific mmW bands like 28 GHz and 39 GHz to support 5G deployment.[54] Neither claim is supported by the record.

14. First, CCA's claim that mmW spectrum is necessary for 5G is belied by CCA's own assertions in various Commission filings that there are various spectrum paths to 5G,[55] and that various CCA members including Sprint, T-Mobile and DISH have announced plans to develop 5G in the 2.5 GHz, 600 MHz, AWS-4, and 700 MHz bands, respectively.[56] Furthermore, the Commission has stated that holding a mix of spectrum bands benefits competition and consumers, and that mmW spectrum is likely to serve as a supplement to lower-band spectrum;[57] this band is one of several mmW bands and the mmW bands are among many that have the potential to be used for 5G services. As the Bureau previously noted, Verizon's acquisition of mmW spectrum is unlikely to foreclose rival service providers

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spectrum screen); *Applications of AT&T Corporation and Dobson Communications Corporation*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20312-13, paras. 30-31 (2007) (adding 700 MHz spectrum to the spectrum screen).

[48] *See Stay Order*, DA 18-328, at para. 6; *see also* Verizon Opposition at 11.

[49] *See Spectrum Frontiers Second Report and Order*, 32 FCC Rcd 10991, para. 6.

[50] *See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Licenses*, Public Notice FCC 18-43 (rel. Apr. 17, 2018).

[51] AFR at 14.

[52] *See Consent Order* at 33 FCC Rcd at 196, para. 22.

[53] AFR at 14-15 (citing *Consent Order*, 33 FCC Rcd at 196, para. 23).

[54] AFR at 17.

[55] Verizon Opposition at 13 (citing Letter from Rebecca Murphy Thompson, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 17-79 et al., at 3 (filed Feb. 5, 2018) (encouraging the Commission to "unlock valuable spectrum resources to pave the road to next-generation technologies and 5G," and in particular, supporting the 3.5 GHz rulemaking as part of that effort); CCA Reply Comments, WT Docket No. 17-183, at 2 (filed Nov. 15, 2017) ("[T]he 3.7-4.2 GHz band is particularly well-suited for 5G wireless services.")).

[56] Verizon Opposition at 13-14 (citing Verizon/Straight Path Joint Opposition to Petitions to Deny, ULS File No. 0007783428, at 7-9 (filed Aug. 18, 2017)).

[57] *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8081, para. 184.

from obtaining access to sufficient mmW spectrum for development of their own products and services.[58] Second, with respect to CCA's request that we focus specifically on the 28 GHz and 39 GHz bands, we have already rejected CCA's request for band-specific aggregation screens in the rulemaking proceeding.[59] The Commission has grouped the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands together for purposes of applying spectrum holdings policies, given their "similar technical characteristics and potential uses,"[60] and nothing in the AFR persuades us that a different approach is warranted. Given the nascent state of the current mmW marketplace and of the 5G services potentially utilizing these bands, and that multiple bands may supply inputs key to this effort, we find any assertions about any adverse competitive impact of Verizon's post-transaction spectrum holdings in two bands to be speculative at best.[61] In light of that conclusion, we reject CCA's alternative request that we require Verizon to divest spectrum.[62]

15. The other harm which CCA believes the Bureau did not adequately assess involves Straight Path's purported unjust enrichment. In its AFR, CCA repeats its prior argument that the terms of the Consent Decree entered into with Straight Path did not prevent the Commission from denying the sale of its licenses to Verizon and auctioning Straight Path's spectrum instead.[63] And even if the Consent Decree terms could be interpreted as requiring the Transaction's approval, it has argued those terms could be superseded by any subsequent Rule or Order adopted by the Commission—giving the Commission the flexibility it needs to conduct an independent analysis of the transaction's benefits and harms.[64] With no constraint placed on it, according to CCA, the Bureau should therefore have evaluated whether denying the transaction would have better served the public interest by making the revoked licenses available through competitive bidding.[65]

16. As the Bureau concluded when CCA raised the same arguments in its petition to deny, these amount to an impermissible collateral attack on the Enforcement Bureau's exercise of its enforcement discretion in entering into the Consent Decree.[66] The Bureau'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 agency's absolute discretion.[67] CCA raises no new allegations that persuade us that we should designate this matter for hearing. To the extent that CCA argues the Commission should auction spectrum held by an existing licensee, the argument is also difficult to square with the statutory endorsement of secondary market transactions in Section 310(d) of the Act, that provision's bar on considering alternative transferees of Straight Path's spectrum within the context of this transaction, and adoption of the spectrum screen, which applies to Verizon and other potential buyers of this spectrum on the secondary market. Nor may the Commission accord any weight

[58] *Consent Order*, 33 FCC Rcd at 196, para. 23; *see also Stay Order* at para. 7.

[59] *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8082, para. 185-186; *Spectrum Frontiers Second Report and Order*, 32 FCC Rcd at 11041, para. 162.

[60] Verizon Opposition at 8 (citing *Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8082, para. 186 and *Spectrum Frontiers Second Report and Order*, 32 FCC Rcd at 11011, para. 74.).

[61] *See Consent Order*, 33 FCC Rcd at 196, paras. 22-23.

[62] AFR at 4, 25.

[63] AFR at 18.

[64] AFR at 19.

[65] AFR at 20.

[66] *Consent Order*, 32 FCC Rcd at 192, para. 12.

[67] *Consent Order*, 32 FCC Rcd at 192-93, para. 12 (*citing 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")).

to the prospect of enhanced auction revenues for the U.S. treasury.[68] Accordingly, we reject CCA's arguments in this regard.

17. In the *Consent Order*, the Bureau found it to be a public interest benefit that "as a direct result of the transaction, Verizon likely would be better able to develop and deploy innovative 5G services to the benefit of American consumers."[69] We see no basis for reversing that conclusion.[70] For the reasons set forth above, we affirm that the Bureau's consent to the Transaction was in the public interest.

IV. CONCLUSION

18. As noted above, we conclude CCA has failed to demonstrate it had standing to file the AFR at issue, and we dismiss it on that ground. Nevertheless, having considered CCA's arguments in the alternative, we find that the AFR filed by CCA mostly repeats arguments already considered and rejected in the *Consent Order*. CCA has not demonstrated that the Bureau erred in its analysis or was inconsistent with precedent. Therefore, in the alternative, we deny CCA's AFR on the merits.

V. ORDERING CLAUSES

19. Accordingly, having reviewed the application and the record in this matter, **IT IS ORDERED** that, pursuant to the authority of Sections 1, 4(i), 4(j), 5, 310 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c)(5), 310, 405, and Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.115, the Application for Review, or in the Alternative Petition for Reconsideration filed by the Competitive Carriers Association **IS DISMISSED.** In the alternative, the Application for Review/Petition for Reconsideration **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[68] *See* 47 U.S.C. § 309(j)(7)(A) (Commission may not premise public interest finding, in determining whether to assign a band of frequencies to a use for which licenses will be issued through auction, on "the expectation of Federal revenues from the use of" auctions).

[69] *See Consent Order*, 33 FCC Rcd at 198, para. 29.

[70] The Commission has recognized that the 39 GHz band will need to be reconfigured to create contiguous spectrum to make the band more usable. *See Spectrum Frontiers Report and Order*, 31 FCC Rcd at 8053-56, paras. 97-100.