

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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In re Applications of

AT&T Mobility Spectrum LLC and  
FiberTower Corporation Seek FCC Consent  
to the Transfer of Control of 24 GHz and 39  
GHz Licenses

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) ULS File Nos. 0007652635 and 0007652637  
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**REPLY COMMENTS OF T-MOBILE USA, INC.**

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**REPLY COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”)<sup>1</sup> respectfully submits these reply comments on the application filed by FiberTower Corporation (“FiberTower”) and AT&T Mobility Spectrum LLC, (“AT&T”) (collectively, the “Applicants”) to transfer control of licenses in the 24 GHz and 39 GHz bands. Specifically, T-Mobile submits these comments to express its support for the comments of Competitive Carriers Association (“CCA”), the leading association for competitive wireless providers and stakeholders across the United States, of which T-Mobile is a member. As CCA has explained, the Federal Communications Commission (“FCC” or “Commission”) should carefully examine the proposed transaction and should return FiberTower’s 650 terminated licenses to the FCC in order to facilitate an auction as soon as possible. Doing so will not only properly enforce the Commission’s rules with respect to unconstructed licenses—it will also serve

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

the public interest by fostering competition in the market for the millimeter wave (“mmW”) spectrum bands that will be used for the deployment of 5G technology.

A re-auction of the terminated FiberTower licenses is especially necessary in view of the announcement earlier this week that AT&T plans to buy Straight Path Communications (“Straight Path”), one of the largest holders of high-band spectrum in the United States.<sup>2</sup> Allowing AT&T to obtain FiberTower’s terminated licenses *and* the 24 GHz and 39 GHz licenses currently held by Straight Path would give AT&T far too much control over spectrum in the mmW bands. Such an outcome, in turn, would undermine the Commission’s well-established mobile spectrum holdings policies and threaten competition, innovation, and efficiency at a time when the deployment of 5G depends on fostering and promoting those conditions.

**I. THE COMMISSION SHOULD DENY THE REQUEST TO TRANSFER CONTROL OF FIBERTOWER’S 650 TERMINATED LICENSES.**

The public interest favors returning FiberTower’s terminated licenses to the Commission for re-auction. As CCA explained in its initial comments, mobile carriers need access to mmW band spectrum in order to experiment with 5G technology and deploy 5G networks.<sup>3</sup> Likewise, T-Mobile and other competitive carriers have the means and ability to put spectrum in the 24 GHz and 39 GHz bands to good use.<sup>4</sup> Putting the terminated licenses out for competitive bidding would bring with it all of the numerous public benefits that auctions have created in the past, including creating opportunities for carriers to exert competitive pressure on one another and encouraging

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<sup>2</sup> Scott Moritz, *AT&T Buys Straight Path in \$1.6 Billion Deal for 5G Arsenal*, Bloomberg Technology (Apr. 10, 2017, 8:40AM), <https://www.bloomberg.com/news/articles/2017-04-10/at-t-to-acquire-straight-path-in-deal-valued-at-1-6-billion>.

<sup>3</sup> Comments of Competitive Carriers Association at 7, *In re Applications of AT&T Mobility Spectrum LLC and FiberTower Corporation*, ULS File Nos. 0007652635 and 0007652637 (Mar. 30, 2017).

<sup>4</sup> *Id.*

innovative services, promoting efficiency by identifying a winner that is most likely to maximize its use of the licenses, and generating revenue for the federal government.<sup>5</sup>

As CCA also explained, FiberTower has not met the heavy burden required to show that it should receive a waiver or extension of the construction deadlines associated with the terminated licenses.<sup>6</sup> Unlike many other CCA members that have expended significant efforts to meet and exceed high-band construction requirements to provide competitive services and options to consumers, FiberTower failed to meet these requirements for the vast majority of its licenses. The Commission should not reward FiberTower or AT&T for this failure, especially when doing so would harm competition and disincentivize innovation in the deployment of 5G services.

## **II. RECLAIMING THE TERMINATED LICENSES FOR AUCTION IS EVEN MORE JUSTIFIED IN LIGHT OF AT&T’S PROPOSED ACQUISITION OF STRAIGHT PATH.**

AT&T’s announcement that it plans to acquire Straight Path provides an additional compelling reason to deny the request to transfer FiberTower’s terminated licenses to AT&T. The Commission has long recognized both “the consumer benefits that stem from multiple providers being able to utilize” different types of spectrum and the “substantial likelihood of competitive harm if providers that currently lack sufficient access to such spectrum cannot acquire it.”<sup>7</sup> Indeed, the FCC acknowledged the importance of “facilitating competition, innovation, and the efficient use of” mmW band spectrum when it adopted the 1250 MHz spectrum aggregation limit for

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<sup>5</sup> Indeed, given the roughly \$0.01 per MHz-pop valuation that AT&T has agreed to pay for the Straight Path licenses, auctioning the terminated FiberTower licenses could result in approximately \$1 billion in revenue for the U.S. government.

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *In re Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6163-64 ¶¶ 58, 60 (2014) (“*Mobile Spectrum Holdings R&O*”).

spectrum acquired through auction in the 28 GHz, 37 GHz, and 39 GHz bands.<sup>8</sup> If AT&T were to acquire both Straight Path’s licenses and the terminated FiberTower licenses, it would trigger the 1250 MHz spectrum threshold adopted by the Commission in the *Spectrum Frontiers Order* in a number of cellular market areas (“CMAs”), including both urban and rural markets.<sup>9</sup> And that does not even account for FiberTower’s 24 GHz band licenses—which, if included, would give AT&T control over more than 1200 MHz of mmW band spectrum in many of the most populous CMAs.<sup>10</sup> Importantly, in most of the markets where approval of both the FiberTower and Straight Path transactions would result in the 1250 MHz threshold being triggered, the FiberTower licenses are comprised mostly or, in some cases, exclusively of the terminated licenses.<sup>11</sup>

Wholly apart from exceeding the 1250 MHz threshold, allowing one of the largest mobile carriers in the country to amass so much spectrum in the mmW bands would undermine competition, stifle innovation, and lead to inefficient use of spectrum—precisely the same

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<sup>8</sup> *In re Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8178 ¶ 483 (2016) (“*Spectrum Frontiers Order*”); see also *In re Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Notice of Proposed Rulemaking, 30 FCC Rcd 11,878, 11,933 ¶ 190 (2015) (“The Commission has held that the Communications Act requires a close examination of the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is allocated and assigned in a manner that serves the public interest, convenience and necessity, and avoids the excessive concentration of licenses.”).

<sup>9</sup> See Universal Licensing System, Advanced License Search (analysis of licenses held by FiberTower and Straight Path in the 28 GHz and 39 GHz bands).

<sup>10</sup> See Universal Licensing System, Advanced License Search (analysis of licenses held by FiberTower and Straight Path in the 24 GHz, 28 GHz, and 39 GHz bands).

<sup>11</sup> See Universal Licensing System, Advanced License Search (analysis of licenses held by FiberTower and Straight Path in the 28 GHz and 39 GHz bands with cross-reference to status of FiberTower licenses).

outcomes that the Commission’s mobile spectrum holdings policies have sought to avoid.<sup>12</sup> Such an outcome would be especially problematic in the mmW bands, where momentum around developing technologies “continues to build” and where innovation and “spectral . . . efficiency” are key.<sup>13</sup> Rather, the best way for the Commission to achieve its goal of promoting the deployment of 5G is to ensure that all carriers have sufficient access to suitable spectrum in the mmW bands to deploy 5G networks. Because permitting AT&T to control both the Straight Path licenses and the terminated FiberTower licenses would compromise the Commission’s ability to do so and would threaten competition and innovation, the Commission should instead recover the terminated FiberTower licenses and auction them so that they can be put to their highest and best use.<sup>14</sup>

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<sup>12</sup> See, e.g., *Spectrum Frontiers Order*, 31 FCC Rcd at 8078 ¶ 178; *Mobile Spectrum Holdings R&O*, 29 FCC Rcd at 6143-44 ¶ 17; see also Petition for Reconsideration of Competitive Carriers Association at 13, *In re Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177 (Dec. 14, 2016) (“Failure to protect against spectrum aggregation will harm competitive carriers who need access to upper mmW bands to deploy competitive offerings to consumers.”).

<sup>13</sup> *Spectrum Frontiers Order*, 31 FCC Rcd at 8021-22 ¶¶ 9, 15.

<sup>14</sup> See *Mobile Spectrum Holdings R&O*, 29 FCC Rcd at 6167-68 ¶¶ 67-69.

## CONCLUSION

For the reasons discussed above, T-Mobile respectfully asks the Commission to undertake a careful review of this transaction and requests that the Commission reclaim FiberTower's terminated licenses so that they may promptly be put up for auction.

Respectfully submitted,

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April 13, 2017