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*Congress of the United States
House of Representatives
Washington, D.C. 20515*

*Anna G. Eshoo
Eighteenth District
California*

March 14, 2018

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Dear Chairman Pai,

I'm writing to express my concern that the FCC bent its rules to allow Straight Path and FiberTower to sell billions of dollars of public assets for private gain. I urge you to reverse the Wireless Telecommunications Bureau's actions, allow the full Commission to vote on these orders, revoke Straight Path and FiberTower's licenses, auction these licenses for the benefit of the public, and conduct a timely assignment auction of the other available millimeter bands.

After years of proceedings, the FCC found that Straight Path and FiberTower failed taxpayers by not deploying their spectrum as required by their FCC licenses. The FCC's policies unambiguously required Straight Path and FiberTower to forfeit their unbuilt spectrum licenses.¹ But rather than auction the reclaimed spectrum and promote timely deployment, the FCC's Wireless Telecommunications Bureau reached "resolutions" with Straight Path and FiberTower that allowed them to profit handsomely from their wrongdoing. Following the "resolution," Straight Path sold its assets to Verizon for nearly \$3.1 billion, and FiberTower is estimated to have sold its assets to AT&T for roughly \$2 billion.² The Bureau-level decisions awarded investors in Straight Path and FiberTower multi-billion dollar windfalls at the expense of taxpayers.

The Bureau's decisions also further concentrated critical input resources in the hands of the two dominant wireless incumbents. The purchasers of the public assets that Straight Path and FiberTower once held, Verizon and AT&T, already control a disproportionate amount of other critical spectrum available for immediate development. Up until recently the industry had an

¹ "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." 47 CFR § 1.946(c)

² The terms of FiberTower's transaction with AT&T are not publicly available, but the amount of spectrum equates to roughly \$2 billion if valued at the same rate as in Straight Path's transaction. Although Straight Path will pay approximately \$629 million to the U.S. government as a result of its Consent Decree, this fine still leaves Straight Path with a net profit of \$2.5 billion.

imbalance in favor of these companies in low-band spectrum that lasted for decades. The FCC now risks going down the same wrong path with high-band spectrum should the Commission continue down this course. Allowing Straight Path and FiberTower to "flip" public assets for private gain does nothing for taxpayers, but does much to further entrench the dominant incumbents' longstanding spectrum advantage over their rivals.

The procedural irregularities associated with the decisions also trouble me. In the case of Straight Path's sale of its licenses to Verizon, the FCC's Wireless Telecommunications Bureau approved the sale without the input of the full FCC leadership and just weeks after the Commission lifted a "spectrum screen" intended to guard against overconcentration of spectrum. In the case of FiberTower's sale of its licenses to AT&T, the Commission majority not only ignored Commissioner Mignon Clyburn's request for a full Commission vote, but also failed to adhere to precedent and your own transparency policy.³ I ask you to reconsider Commissioner Clyburn's request and reconsider both the Straight Path and FiberTower decisions.

Finally, I recognize that you have announced an auction of the 28 GHz band later in 2018. This would have been a step in the right direction, however, the Bureau's approval of the Straight Path transaction has since handed over a controlling interest in the band to Verizon. If anything, the Straight Path decision will distort the 28 GHz auction since now only Verizon has the ability to aggregate enough capacity on the band to justify a large investment in additional 28 GHz spectrum. As a result, the Commission's spectrum transfer to Verizon has cost taxpayers twice over, (1) spectrum that the Commission's rules suggest should have been auctioned will not be, and (2) the remaining portion of the band that will be auctioned will be sold at a substantial discount and almost certainly to Verizon. Finally, the FCC still has not provided a timeframe for auction of the rest of the available millimeter-wave spectrum.

I urge you to reverse the Bureau's decisions, reclaim the previously cancelled Straight Path and FiberTower licenses as the FCC's rules require, and conduct a timely assignment of this spectrum and the other available millimeter bands. Spectrum assignments should be neutral, transparent and efficient, and the current Bureau-level decisions are none of these things. I look forward to your timely response.

Sincerely,



Anna G. Eshoo
Member of Congress

cc: Members, Federal Communications Commission

³ You have previously testified before Congress that "it has long been customary at the FCC for Bureaus planning to issue significant orders on delegated authority to provide those items to Commissioners 48 hours prior to their scheduled release. Then, if any one Commissioner asked for the Order to be brought up to the Commission level for a vote, that request would be honored." See *Oversight of the FCC: Before the S. Comm. On Commerce, Sci., & Transp.*, 114th Cong. (2015) (March 18, 2015) (Statement of FCC Commissioner Ajit Pai). In this case, you denied this request from a fellow Commissioner.



Federal Communications Commission
Washington, D.C. 20554

July 23, 2018

The Honorable Anna G. Eshoo
U.S. House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515


Dear Congresswoman Eshoo:

Thank you for your letter regarding the millimeter wave spectrum once held by Straight Path and Fiber Tower. As you know, for several years, the Commission struggled to ensure that this spectrum was properly built out and put to its highest and best use. Those efforts culminated in a consent decree between the Enforcement Bureau and Straight Path in January 2017, followed by a similar settlement agreement between the Wireless Telecommunications Bureau and Fiber Tower in January 2018. Together, these agreements required the return of over 200 licenses in the 39 GHz band and the clearing of 24 GHz band, along with substantial penalty payments to the U.S. Treasury.

On July 2, 2018, the Commission unanimously upheld these agreements along with the following transfers of licenses to new owners. It did so in large part to accomplish the very goals we both share—moving forward with deploying high-speed broadband services in these bands and scheduling new high-band spectrum auctions. As the Commission put it, “[e]nding the litigation [associated with these holdings] will help to restore regulatory certainty concerning the status of licensing in the 24 and 39 GHz bands, including identifying unassigned spectrum that could be licensed under the new Upper Microwave Flexible Use Service rules, and permitting service to be deployed more efficiently and expeditiously in these bands.” Or to put it a different way, the bipartisan approval of these agreements was critical to the Commission’s ability to move forward with auctions of the 24 GHz and 28 GHz bands in the near term, as well as our ability to schedule an auction of the Upper 37 GHz, 39 GHz, and 47 GHz bands in 2019. These steps will help extend U.S. leadership in 5G.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,


Ajit V. Pai