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|  | 1300 NORTH 17th STREET, 11th FLOOR  ARLINGTON, VIRGINIA 22209  OFFICE: (703) 812-0400  FAX: (703) 812-0486  www.fhhlaw.com  www.commlawblog.com    June 25, 2019 | DONALD J. EVANS  (703) 812-0430  evans@fhhlaw.com |

Ms. Marlene Dortch

Secretary

Federal communications commission

445 12th Street SW

Washington, DC 20554

Re: WT Docket No. 19-116

Written ex parte response

Dear Ms. Dortch:

This letter responds to the June 14, 2019 summary of an ex parte meeting submitted by Ligado networks LLC with respect to a meeting held with Commission staff on that same day. The meeting concerned Ligado’s expression of willingness to “participate robustly” in the proposed auction of the 1675-1680 MHz band which is at issue in this proceeding. NTCH, Inc. is interested in participating in this auction if it is implemented. As a potential auction participant, NTCH must object to any linking of action by the Commission on Ligado’s pending waiver request for the 35 MHz band to Ligado’s participation, robust or otherwise in the 1675-1680 auction.

Several years ago the Commission entered into a quid pro quo arrangement with DISH Network providing that DISH would bid at least $1.5 billion in the PCS H Block auction then planned for early 2014 if the Commission would grant it certain waivers related to DISH’s independent AWS-4 license. Under this agreement, DISH did bid the $1.5 billion and the Commission did grant the waivers.[[1]](#footnote-1) NTCH is currently challenging that action in the D.C. Circuit under consolidated case numbers 18-1241 and 1242. The thrust of NTCH’s appeal is that the grant or denial of waivers cannot be predicated on bids in a separate auction which would provide greater remuneration to the Commissions but would also skew the auction by giving one participant more benefits for its bids than other participants. Waivers must be granted solely on their public interest merits, not in exchange for promises of cash bids to the Commission. The Commission’s action in the DISH case was unprecedented and unsustainable as a matter of agency policy or administrative law.

Now, inevitably, another supplicant has come before the Commission seeking similar treatment based on its not very subtle suggestion that it would be very willing to participate in the auction here – but only if the FCC grants it other unrelated concessions. NTCH writes here to urge the Commission not to follow the seriously misguided precedent set by the DISH case, at least until the Court has an opportunity to rule on the issue. Make no bones about it: NTCH believes the cash-for-waivers policy is bad law and bad policy. If, however, the Commission decides that it is appropriate to grant waivers on unrelated matters in exchange for promises to bid in this auction, that opportunity should be available to all potential auction participants. That is, *everyone* should be entitled to receive benefits such as rule waivers or other favorable Commission actions in exchange for “robust participation” -- otherwise this auction would be skewed just as the H Block auction was. Such a policy might be fair, but it would require the Commission to review and approve diverse waiver requests proffered by the prospective bidders before the auction could proceed, thus delaying the auction considerably.

NTCH offers no view on the merits of Ligado’s waiver request, but linking action on that waiver to this auction either -- explicitly or implicitly -- should be rejected.

Sincerely,

Donald J. Evans

Counsel for NTCH, Inc.

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1. See *DISH Network Corporation, Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) of the Commission’s Rules and Request for Extension of Time*, WT Docket No. 13-225, FCC 18-123 (adopted Aug. 14, 2018; released Aug. 16, 2018) for a fuller description of the proceeding. [↑](#footnote-ref-1)