



Michael P. Goggin
Assistant Vice President –
Senior Legal Counsel

AT&T Services, Inc.
1120 20th St NW, Suite 1000
Washington, DC 20036

+1.202.457.2055
michael.p.goggin@att.com

NOTICE OF EX PARTE

August 17, 2021

By ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services, AU Docket No. 20-429*

Dear Ms. Dortch:

On August 13, 2021, Michael Goggin, Alex Starr, Thomas Lowe, and Raquel Noriega of AT&T Services Inc. (“AT&T”) and Christopher Shenk of Sidley Austin LLP on behalf of AT&T, spoke by telephone with Jonathan Campbell, Bill Huber, Gary Michaels, Martha Stancill, Erik Beith, and Emily Burke of the Office of Economics and Analytics of the Federal Communications Commission (“Commission” or “FCC”), as well as Susan Mort, Blaise Scinto, John Schauble, Madelaine Maior, and Melvin Del Rosario of the Commission’s Wireless Telecommunications Bureau. The discussion was consistent with the points made in AT&T’s opening and reply comments.¹

During the meeting, we discussed that, in most circumstances, a simultaneous multiple-round (“SMR”) auction is a better approach for allocating new spectrum compared to a single-round auction. But due to the unique circumstances of this auction of 2.5 GHz overlay licenses (“Auction 108” or “Auction”), a single-round, pay-as-bid, auction is very likely to be substantially more successful than an SMR auction.

¹ See generally AT&T Comments and AT&T Reply Comments. Unless otherwise stated, all references herein to comments and reply comments pertain to those filed in AU Docket No. 20-429 on or about May 3, 2021 and May 27, 2021, respectively.

The problems with an SMR auction in the unique circumstances here are well documented.² T-Mobile controls, through leases, the majority of incumbent 2.5 GHz licenses on a nationwide basis and has strong incentives to fill out that nationwide footprint with the 2.5 GHz overlay licenses from Auction 108. By contrast, it is likely that other bidders will “have more localized interests” in those licenses. *Notice* ¶ 36. In these circumstances, the multiple rounds of an SMR auction would enable T-Mobile to discover which licenses have little or no competition and to win them at prices below its valuation, often at or near the reserve price. T-Mobile would then have strong incentives to shift those excess bidding resources to the more competitive licenses and win those, too, even if other bidders value them more highly. As explained by the Commission, T-Mobile would “be able to ‘cost-average’ by paying more for some licenses than its stand-alone valuation would otherwise indicate because it would be able to leverage savings from other licenses that it wins at less than its valuation.” *Id.* In short, the “price discovery” mechanism of an SMR auction, which in normal circumstances is a key benefit, would cut the other way here by giving T-Mobile an enormous advantage and undermining the success of the Auction. It is not surprising that T-Mobile is strongly favoring the SMR auction format.

We also discussed other aspects of an SMR auction that, in the unique circumstances here, would make it so “onerous” that many potential bidders “may choose not to participate,” which could only enhance T-Mobile’s advantages. *Notice* ¶ 35. For example, with more than 8,300 unique licenses, an SMR auction could “last for months,” which is a “resource commitment that is demanding . . . particularly for smaller entities.” *Id.*³ And the corresponding “longer prohibited communications quiet period” would further deter participation. *Id.*

For all of these reasons, many potential bidders of all sizes agree that, given the unique circumstances here, a single-round, pay-as-bid auction is the better approach.⁴ As the Commission correctly points out, a single-round, pay-as-bid auction “could be completed within a week” and would give participants that attempt to bid against T-Mobile “a better opportunity to win,” which will make them “more likely to participate.” *Notice* ¶¶ 35-36. A single-round, pay-

² See, e.g., Public Notice, *Comment Sought on Competitive Bidding Procedures for Auction 108*, FCC 21-14, AU Docket No. 20-429, ¶¶ 34-40 (rel. Jan. 13, 2021) (“*Notice*”); AT&T Comments at 3-8; AT&T Reply Comments at 2-5; Dish Reply Comments at 2-5; North American Catholic Educational Programming Foundation (“NACEPF”) and Mobile Beacon Comments at 5-8; NACEPF and Mobile Beacon Reply Comments at 6-8; Select Spectrum Comments at 1-3; SoniqWave Comments at 2-8; Voqal Reply Comments at 1-3; The Wireless Internet Service Providers Association (“WISPA”) Comments at 6-16; WISPA Reply Comments at 3-13.

³ T-Mobile’s overwhelming advantages may deter participation to such an extent that an SMR action could be completed more quickly than “months.” But that outcome would be antithetical to broad participation and the efficient allocation of spectrum.

⁴ See, e.g., AT&T Comments at 3-8; AT&T Reply Comments at 2-5; Dish Reply Comments at 2-5; NACEPF and Mobile Beacon Comments at 5-8; NACEPF and Mobile Beacon Reply Comments at 6-8; Select Spectrum Comments at 1-3; SoniqWave Comments at 1-8; Voqal Reply Comments at 1-3; WISPA Comments at 6-16; WISPA Reply Comments at 3-13.

as-bid auction would also force T-Mobile to bid closer to its actual valuation for all licenses, because it would not be able to discover which licenses are subject to less competition so that, overall, “prices can . . . be expected to be closer to the winning bidder’s valuation.” *Id.* ¶ 36.

We also discussed the ability of auction participants to develop bidding strategies in a single-round, pay-as-bid auction. As the Commission points out, bidders will generally have “specific local or regional interests, and therefore, they will not be hampered significantly by a lack of price discovery over multiple rounds for alternative areas.” *Notice* ¶ 37. Moreover, these bidders will typically have substantial experience in those areas and thus have a strong understanding of the value of spectrum to them.⁵ As WISPA confirmed, its members “will not be disadvantaged” in a single-round auction because they “know their market.”⁶

We also re-emphasized that, whatever auction format is adopted, the Commission should address key information asymmetries between T-Mobile and other bidders. Due to network economies, the cost of harmonization with nearby licensees, and band-specific economies of scale related to vendor equipment, the value of an overlay license will depend significantly on whether and when the winner could also obtain rights to incumbent licenses within the overlay area and the broader region. That will often depend on the terms of lease arrangements between the incumbent licensees and T-Mobile. At this time, T-Mobile is the *only* likely bidder with that information. Thus, as commenters point out,⁷ the Commission should level the playing field by obtaining and disclosing to bidders the relevant terms of those leases, including but not limited to the duration of the leases, whether there are rights of first refusal to renew the lease or purchase the incumbent’s licenses, and lease termination provisions.

The Commission has ample authority to require such disclosures. *See, e.g.*, 47 U.S.C. §§ 303(r), 309(j), and 316. Indeed, the Commission’s leasing rules already require parties to spectrum leases to “retain a copy of the lease agreement and to make it available upon request by the Commission.”⁸ Moreover, the Commission routinely collects information that is arguably far more sensitive than these lease agreements and makes that information available to interested parties, often pursuant to appropriate protective orders. As just one example, in the Business

⁵ *See, e.g., Notice* ¶ 37 (due to their “better knowledge of the local landscape,” these local bidders may even “be able to price their bids more accurately than larger entities without ties to such local rural areas.”).

⁶ WISPA Reply Comments at 9. *See also* WISPA Comments at 12-13 (same).

⁷ *See, e.g.,* AT&T Comments at 8-10; AT&T Reply Comments at 5-6; NACEPF and Mobile Beacon Reply Comments at 8-9; United States Cellular Corporation Comments at 15-16; Verizon Comments at 3-4; Verizon Reply Comments at 3; Voqal Reply Comments at 4-5; WISPA Comments at 14. *See also* Letter from Gregory Romano (Verizon) to Marlene H. Dortch (FCC), *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services*, AU Docket No. 20-429, at 2 (July 15, 2021) (“Verizon 7/15 Ex Parte Letter”).

⁸ Report and Order and Further Notice of Proposed Rulemaking, *Promoting Efficient Use of Spectrum*, 18 FCC Rcd 20604, ¶¶ 105 & 153 (2003); *see also, e.g.,* 47 C.F.R. § 1.9020(b)(3) (same).

Marlene H. Dortch
August 17, 2021
Page 4

Data Services proceedings, the Commission collected, and made available to parties (subject to protective orders), highly competitively sensitive data from the industry, which showed the specific routes, capacities, and service locations of each carrier's networks.⁹

Finally, AT&T expressed concern about the uncertainty surrounding the spectrum inventory for Auction 108. As summarized by Verizon, "[p]arties have pointed to the evident availability of unencumbered spectrum over water, in unpopulated areas, or of such small size as to be *de minimis* in nature."¹⁰ AT&T agrees that the Commission should, well in advance of the Auction, establish an accurate inventory of unencumbered spectrum in each of the overlay license products.

Should any questions arise concerning this *ex parte*, please do not hesitate to contact me at (202) 457-2055.

Sincerely,

/s/ Michael P. Goggin

Michael P. Goggin

cc (by email):

Jonathan Campbell (jonathan.campbell@fcc.gov)
Bill Huber (william.huber@fcc.gov)
Gary Michaels (gary.michaels@fcc.gov)
Martha Stancill (martha.stancill@fcc.gov)
Erik Beith (erik.beith@fcc.gov)
Emily Burke (emily.burke@fcc.gov)
Susan Mort (susan.mort@fcc.gov)
Blaise Scinto (blaise.scinto@fcc.gov)
John Schauble (john.schauble@fcc.gov)
Madelaine Maior (madelaine.maior@fcc.gov)
Melvin Del Rosario (melvin.delrosario@fcc.gov)

⁹ See Order and Data Collection Protective Order, *Special Access for Price Cap Local Exchange Carriers*, DA 14-1424, WC Docket No. 05-25, RM-10592 (Oct. 1, 2014).

¹⁰ Verizon 7/15 Ex Parte Letter at 2.