

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	AU Docket No. 18-85
Comment on T-Mobile US, Inc. and Sprint)	
Corporation Requests for Declaratory Ruling)	
or Waiver of the Commission's Rules for)	
Auctions 101 and 102)	

COMMENTS OF VERIZON

The Commission should take all steps necessary to ensure that all applicants in Auctions 101 and 102 fully comply with the Commission's joint bidding and anti-collusion rules. T-Mobile US, Inc. ("T-Mobile") and Sprint Corporation ("Sprint") seek a clarification and declaratory ruling on the certification requirement in Section 1.2105(a)(2)(ix) of the Commission's rules,¹ or alternatively a waiver of that provision, designed to ensure that their Business Combination Agreement ("BCA") will not bar their independent participation in these auctions. We have no opinion on those specific requests; the Commission should evaluate and determine whether the BCA constitutes a joint bidding arrangement under its rules and take any precautions it deems prudent to ensure that the spirit and letter of the joint bidding prohibition are satisfied. Making sure that the Commission's joint bidding and anti-collusion rules are followed will serve both T-Mobile and Sprint as well as any other participants in Auctions 101 and 102 by promoting certainty and administrative ease and protecting the integrity of the auction outcomes.

¹ 47 C.F.R. § 1.2105(a)(2)(ix).

I. THE COMMISSION SHOULD USE ITS JUDGMENT TO APPLY ITS JOINT BIDDING AND ANTI-COLLUSION RULES TO DETERMINE THE PROPER RELIEF, IF ANY, FOR T-MOBILE AND SPRINT.

Verizon urges the Commission to analyze the facts asserted by T-Mobile and Sprint in accordance with its existing precedent and rules, applying such rules objectively. The Commission's goal should be to ensure that the final outcome of the auction is irreproachable. As the Commission has seen, an auction marred by controversy (and often, litigation) can delay the spectrum being put to beneficial use.

The Commission's competitive bidding rules have built-in safeguards to prevent collusion. To implement the prohibition on joint bidding arrangements, the Commission's rules require each auction applicant to certify in its short form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned.² An applicant must also certify that it has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.³ After the short form filing deadline, the rules specify that certain communications between applicants are prohibited, and the Commission imposes a "duty to report" for parties that make or receive a prohibited communication.⁴ These rules protect and foster fair competition in the time leading up to and during auctions.

Given the centrality of the prohibition on joint bidding and the anti-collusion rules to the integrity of the auction process, the Commission should ensure that these rules are vigilantly

² 47 C.F.R. § 1.2105(a)(2)(viii). Winning bidders must make detailed disclosures regarding any such arrangements in the post-auction long form application. *See* 47 C.F.R. § 1.2107(d)

³ 47 C.F.R. § 1.2105(a)(2)(ix).

⁴ 47 C.F.R. § 1.2105(c).

enforced. With respect to the proposed T-Mobile/Sprint transaction, the Commission should take actions to ensure that the companies are not engaging in unlawful joint bidding. For example, the Commission could review the BCA, which would be kept confidential, to ensure that its terms do not give rise to the possibility of joint bidding. The Commission could also seek additional certifications from Sprint and T-Mobile as necessary. Both parties state that they will take certain actions to insulate bidding personnel from interactions with the other merger party, such as use of firewalls and third party non-disclosure requirements.⁵ The Commission could monitor these commitments by periodically seeking attestation that these procedures remain operative.

And, as it has tried to do in the past, the Commission should scrutinize bidding patterns during the auction—for all participants—to identify instances where collusion may be occurring.⁶ This is important because bidding irregularities often are raised by other participants.⁷ To prevent collusive conduct, the Commission on its own initiative should ensure it is actively watching for irregularities.

If collusion is alleged or apparent, the Commission should conduct a prompt and thorough investigation and/or refer the matter to the Department of Justice for investigation.

⁵ Sprint, Petition for Expedited Declaratory Ruling or Waiver Regarding Joint Bidding and Request for Limited Waiver of Auction Form Rules, AU Docket No. 18-85, at 4 (filed Aug. 6, 2018); T-Mobile, Request for Confirmation or Alternatively, for Waiver, AU Docket No. 18-85, at 5 (filed Aug. 6, 2018).

⁶ See Implementation of Section 309(j) of the Commc'ns Act Competitive Bidding, *Memorandum Opinion & Order*, 9 FCC Rcd 7684, ¶ 12 (1994).

⁷ See, e.g., Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970 (1997) (describing an apparent violation of the anti-collusion rules where the bidder placed trailing numbers at the end of its bids that disclosed its bidding strategy. The Commission was alerted of the activity by another bidder filing an Emergency Motion for Disqualification).

Collusive behavior can also violate the United States antitrust laws. And if the Commission finds collusion, it should subject the offending parties to severe sanctions, including forfeiture of payments and revocation of licenses.⁸ All such steps should be consistent with past practice and current rules, to ensure a bidding process that is fair and inspires confidence.

An unblemished bidding process will be key for a successful auction. As the Commission has seen, controversy over compliance with rules can lead to flawed auction outcomes and delays that slow realization of FCC priorities. For example, litigation involving the eligibility of DISH Network Corporation (“DISH”) subsidiaries to receive bidding credits in the AWS-3 auction has resulted in legal challenges spanning four years and counting.⁹ Uncertainty remains about whether there will be a re-auction of the nearly 200 licenses relinquished by DISH to the FCC following the auction.¹⁰ In the meantime, this valuable AWS-3 spectrum in major metropolitan markets lies fallow. Such delays frustrate the Commission’s mandate under the Communications Act to promote “efficient and intensive use of the electromagnetic spectrum” when designing auction procedures.¹¹

II. CONCLUSION

The Commission should scrutinize the merits of the T-Mobile and Sprint requests to ensure that the BCA does not open the door to activities that may violate the Commission’s joint bidding or anti-collusion rules and consider whether further action is needed to ensure T-Mobile and Sprint’s compliance with these rules. Safeguarding the integrity of the auction process will

⁸ See 47 C.F.R. § 1.2109(d).

⁹ See *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017).

¹⁰ See Malathi Nayak, “Dish Affiliates Surrender Some Spectrum Licenses: FCC Official,” Reuters, <https://www.reuters.com/article/us-dish-network-fcc-idUSKCN0RV5UB20151002> (Oct. 1, 2015).

¹¹ 47 U.S.C. § 309(j)(3)(D).

provide certainty to auction participants and benefit the public by facilitating the acquisition of spectrum by qualified bidders who will expeditiously put the licenses to good use.

Respectfully submitted,

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