



Joan Marsh
Vice President
Federal Regulatory

AT&T Services, Inc.
1120 20th St. NW, Suite 1000
Washington, D.C. 20036
Phone 202 457-3120
Fax 832 213 0172
joanmariemarsh@att.com

October 9, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-B204
Washington, D.C. 20554

Re: Updating Part 1 Competitive Bidding Rules, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, WT Docket No. 14-170, GN Docket No. 12-268

Dear Ms. Dortch:

By this letter, AT&T, Inc. (“AT&T”) is requesting that the FCC take heed of recent events in its deliberations regarding appropriate default penalties for the forward auction phase of the Broadcast Television Incentive Auction, Auction No. 1002 (the “Incentive Auction”). In particular, the FCC should strengthen its proposed penalties to provide a meaningful deterrent to strategic defaults that could undermine the promise of the 600 MHz band. As the FCC is aware, there have been two recent “selective” defaults with respect to Auction No. 97 that have resulted in the loss, at least in the short term, of billions of dollars in auction revenue. As discussed below, AT&T believes that similar defaults in the Incentive Auction, particularly given its two-sided format, could imperil the outcome of the auction and carry significant consequences for the American public. Under the circumstances, the FCC should ensure that its default penalties create appropriate safeguards against this type of strategic default behavior in Auction No. 1002.

On October 1, 2015, the FCC accepted selective defaults in Auction No. 97 from SNR Wireless LicenseCo, LLC (“SNR”) and Northstar Wireless, LLC (“Northstar,” and, with SNR, the “DISH DEs”), two entities that the FCC had previously determined were under the *de facto* control of DISH Network Corporation (“DISH”) and therefore did not qualify for small business bidding credits.¹ Notwithstanding that “[a] bidder assumes a binding obligation to pay its full bid amount upon acceptance of the winning bid at the close of an auction,”² the FCC default rules permitted

¹ See Letter from Roger C. Sherman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Ari Q. Fitzgerald, counsel for SNR Wireless LicenseCo, LLC, DA 15-1108 (Oct. 1, 2015); Letter from Roger C. Sherman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Mark F. Dever, counsel for NorthStar Wireless, LLC, DA 15-1108 (Oct. 1, 2015); *see also* Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands, *Memorandum Opinion and Order*, FCC 15-104 (rel. Aug. 18, 2015).

² 47 C.F.R. §1.2105(g)(2).

DISH's alter egos to walk away from over \$3.4B in bids and pay an interim penalty of approximately \$516M. Because the DISH DEs are permitted to participate in the re-auction for these licenses, the consequences of this default may, in fact, be minimal—if the licenses are re-auctioned in three years and DISH bids the same amounts at that time for the licenses, some analysts have observed that DISH may ultimately have received billions in financing from the FCC at an effective rate of 5 percent. Clearly, the FCC's penalty provisions are not acting as a sufficient disincentive to engage in strategic default behavior.

The consequences of a large strategic default in the Incentive Auction are potentially dramatic. The FCC itself proposed the maximum default penalty percentage of 20 percent in the *Auction Comment Notice*, “given the importance of deterring defaults in order to minimize the possibility that the auction will not generate shortly after its conclusion the full amount of the proceeds indicated by winning bids.”³ But even that tentative conclusion, which may have seemed sufficient at the time, was prior to the era of a \$3.4B default—a number that is sufficiently large that it might, in fact, alter whether the revenue actually realized from Auction No. 1002 is sufficient for the FCC to meet its obligations to broadcasters participating in Auction No. 1001 *after* the FCC has closed the auction. The FCC's *Incentive Auction Order* stated its expectation “that payments to broadcasters relinquishing spectrum usage rights will be among the first disbursements once amounts become available for distribution,” which it represented addressed “contention[s] that broadcasters should not bear financial risks stemming from any forward auction licensing delays or forward auction bidder defaults.”⁴ But if broadcasters will not bear the risk of post-auction defaults, it will be American taxpayers that must shoulder the burden. The FCC, accordingly, should do everything it can to avoid this possibility.

In that regard, AT&T agrees that the FCC should set the penalty at the highest possible level, which is 20 percent under Section 1.2104(g). However, to avoid the possibility that participation in a future auction can be arbitrated as low cost financing, the FCC should also take the additional step of prohibiting defaulting parties from participating in the re-auction of defaulted spectrum.

Alternatively, the FCC could take the extraordinary step of prohibiting defaults—and certainly prohibiting selective defaults—and simply enforce its rule that a bidder “assumes a binding obligation to pay its full bid amount upon acceptance of the winning bid at the close of an auction.”

Given the adverse consequences that could arise from a calculated default in the Incentive Auction context, the FCC must utilize all reasonable measures to penalize attempts to engage in strategic defaults. Recent events have illustrated how even a massive post-auction default—one that cost the FCC nearly \$3B in available funds—might be economically rationalized by a bidder with motivations that are other than promptly deploying the spectrum to provide service to U.S.

³ “Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 101 and 1002,” *Public Notice*, AU Docket No. 14-252, GN Docket No. 12-268 at ¶209 (Dec. 17, 2014) (“*Auction Comment Notice*”).

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 at n. 1526, ¶536 (“*Incentive Auction Order*”).

consumers. Accordingly, the FCC should take heed of these recent defaults and consider how such conduct might affect the outcome of the Incentive Auction.

Please direct any questions concerning this submission to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'J' and 'M' followed by a horizontal line extending to the right.

Joan Marsh

cc: Gary Epstein
Howard Symons
Roger Sherman