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November 17, 2015

Via ECFS and ULS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 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, AU Docket No. 14-252, WT Docket No. 12-269, MB Docket No. 15-146; Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, Auction of Advanced Wireless Services (AWS-3) Licenses, GN Docket No. 13-185, AU Docket No. 14-78; 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, ULS File Nos. 0006670613, 0006670667.

Dear Ms. Dortch:

Having gamed the system once, SNR Wireless LicenseCo, LLC ("SNR") and Northstar Wireless, LLC ("Northstar," and with SNR, the "DISH DEs") want the Commission to allow them to do it again. The Commission should not allow DISH or the DISH DEs to hide behind procedural arguments to avoid the consequences of their attempts to undermine the integrity of the AWS-3 auction. Instead, as T-Mobile has proposed, to appropriately address the behavior of DISH and its DEs and discourage similar action by others, the Commission should bar DISH and the DISH DEs from participating in the re-auction of AWS-3 spectrum and require them to pay an additional 50% upfront payment if they choose to participate in the upcoming incentive auction.^{1/}

^{1/} The Commission cited a litany of disturbing facts in finding that DISH controlled the DISH DEs. *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, 30 FCC Rcd. 8887 (2015) ("*DISH DE Order*"). True to form, the DISH DE letters are nearly identical, suggesting that like their AWS-3 bidding strategy, their response was carefully coordinated, perhaps by DISH. If DISH

In response to the reasonable recommendations that T-Mobile made in its October 30, 2015 letter to ensure the integrity of the AWS-3 re-auction and the incentive auction, the DISH DEs provide only procedural objections, none of which prevent the Commission from taking the actions T-Mobile has suggested.^{2/} Indeed, the Commission should not allow DISH and the DEs to use procedural arguments to shield them from the logical and appropriate consequences of their behavior during the AWS-3 auction and in the months since the auction closed. As T-Mobile explained in its October 30th letter, the Communications Act specifically directs the Commission, in designing auction methodologies, to “include safeguards to protect the public interest in the use of the spectrum.”^{3/} Accordingly, there must be real consequences for the behavior of DISH and the DEs. Otherwise, there is no deterrent to DISH, its DEs, or others who would abuse the Commission’s auction procedures.

The DISH DEs fail to provide any substantive reason why the Commission should not take the steps that T-Mobile has recommended to ensure the integrity of its future auctions. The far-reaching consequences of DISH and the DISH DEs’ improprieties in the AWS-3 auction process must be addressed. The Commission cannot allow history to repeat itself and empower others to attempt to manipulate auctions – including the ground-breaking incentive auction. To the contrary, the Commission should and can act to prevent DISH and the DISH DEs from once again gaming the system and threatening the integrity of its future auctions.

Moreover, it is simply not true, as the DISH DEs suggest, that the Commission approved of all of their activities in the AWS-3 auction and is now prohibited from taking further steps to prevent them from attempting similar abuses in the future. The Commission has identified certain behavior by DISH and the DISH DEs that improperly influenced the outcome of the AWS-3 auction.^{4/} Analysts have already determined that the behavior of DISH and the DISH DEs drove prices up in the AWS-3 auction, forcing other carriers to pay more in order to acquire much

is directing the activities of the DISH DEs, this undermines their position in the U.S. Court of Appeals for the D.C. Circuit that the *DISH DE Order* was wrong.

^{2/} SNR Wireless LicenseCo, LLC Ex Parte, WT Docket No. 14-170, GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269, MB Docket No. 15-146, GN Docket No. 13-185, and AU Docket No. 14-7, at 2 (filed Nov. 9, 2015); Northstar Wireless, LLC Ex Parte, WT Docket No. 14-170, GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269, MB Docket No. 15-146, GN Docket No. 13-185, and AU Docket No. 14-7, at 2-3 (filed Nov. 9, 2015).

^{3/} 47 U.S.C. § 309(j)(3).

^{4/} For example, the Commission found that the DEs (1) used the same list of target licenses, demonstrating that it was immaterial which one of them actually ended up with the licenses; (2) placed identical bids for identical licenses in the same markets in the same rounds, rather than submitting independent competing bids; (3) accepted the random computer assignments that are triggered when identical mutually exclusive bids are submitted for the same licenses in the same rounds, rather than continuing to bid against one another; and (4) placed and withdrew bids that were contrary to their own independent economic interests, but that resulted in an economic “wash” to them when combined. *DISH DE Order*, ¶¶ 109-112.

needed spectrum – costs that will ultimately be passed on to consumers.^{5/} Further, the DISH DEs’ improper reliance on the small business discount, and their associated actions during the auction, likely hurt the *actual* small businesses who wished to place bids.^{6/}

And each day brings more evidence of the scope and extent of DISH and the DISH DEs’ willingness to game the system – through the post-auction licensing process – harming consumers and the public interest. Since the auction ended, DISH has been able to reap substantial benefits from its DEs’ subsequent selective default on the licenses they won. As T-Mobile has explained, DISH and its DEs have now forced the FCC to delay deployment of the defaulted licenses until a re-auction at some uncertain point in the future, and to the extent that DISH or its DEs reacquire some or all of the defaulted licenses, DISH or its DEs will have effectively given themselves *both* an extension of time to pay the full amount of the default penalties they owe and an extension of the build-out requirements for the licenses. Ironically, unless the Commission takes action, DISH and the DEs can actually be economically better off by having the DEs selectively default and acquiring those licenses in a re-auction. If DISH or the DEs borrowed to purchase the selectively defaulted licenses, they would pay interest on that debt. However, if DISH or the DEs merely acquire the licenses at re-auction for the same price as the original high bid, they will avoid those debt payments for several years and only be obligated instead to pay the limited default penalties the Commission imposes.^{7/} And now, most recently, DISH has gone so far as to boast about the significant tax benefits it has been able to realize through its gaming of the FCC’s processes.^{8/} Each of these new developments on its own more than adequately justifies the Commission actions T-Mobile has called for.

^{5/} Phil Goldstein, *Analysts: Dish could strike a spectrum deal with Verizon or a perpetual leasing agreement*, FIERCE WIRELESS (Oct. 9, 2015), <http://www.fiercewireless.com/story/analysts-dish-could-strike-spectrum-deal-verizon-or-perpetual-leasing-agree/2015-10-09>.

^{6/} Kyle Daly, *DISH designated entity controversy raises questions about incentive auction*, SNL KAGAN (May 1, 2015).

^{7/} *FCC Plans To Reauction AWS-3 Licenses Surrendered by Dish-Affiliated DEs*, COMMUNICATIONS DAILY (Oct. 5, 2015), <http://www.communicationsdaily.com/article/view?s=62819&p=1&id=477423>.

^{8/} *DISH Network (DISH) Charles William Ergen on Q3 2015 Results – Earnings Call Transcript*, SEEKING ALPHA (Nov. 9, 2015), <http://seekingalpha.com/article/3669026-dish-network-dish-charles-william-ergen-on-q3-2015-results-earnings-call-transcript?all=true&find=DISH%2Bnetwork>.

The DISH DEs would simply have the Commission ignore all of these facts and declare its hands tied, but the public interest demands otherwise – for DISH, its DEs, and others who would similarly attempt to game the auction process. The Commission should therefore fashion relief appropriate in this case – requiring DISH and the DEs to pay an additional 50% upfront payment if they choose to participate in the incentive auction and prohibiting them from participating in the reauction of AWS-3 spectrum.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

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