

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

In the Matter of)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002)	AU Docket No. 14-252
)	
)	
Policies Regarding Mobile Spectrum Holdings)	WT Docket No. 12-269

JOINT OPPOSITION TO T-MOBILE PETITION FOR RECONSIDERATION OR REQUEST FOR DECLARATORY RULING

SNR Wireless LicenseCo, LLC (“SNR”), Northstar Wireless, LLC (“Northstar Wireless”), and DISH Network Corporation (“DISH”) (collectively, the “Auction Participants”) hereby oppose the Petition for Reconsideration or Request for Declaratory Ruling (“Pleading”) filed by T-Mobile USA, Inc. (“T-Mobile”) superficially asking the Commission to “punish” the Auction Participants for their allegedly improper conduct during Auction 97 and the subsequent submission of full payment by SNR and Northstar Wireless, respectively, for less than all of the licenses for which each was the winning bidder in the auction.¹

T-Mobile’s claims regarding the participation of SNR, Northstar Wireless, and DISH in Auction 97 and their post-auction behavior are mistaken and should be seen for what they are – an attempt by T-Mobile to gain an unfair advantage by excluding or financially handicapping others in future spectrum auctions. Grant of T-Mobile’s requests would be harmful to

¹ Petition for Reconsideration or Request for Declaratory Ruling of T-Mobile USA, Inc., GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269 (filed Nov. 30, 2015). The Pleading was placed on public notice on December 10, 2015, and this Joint Opposition is timely filed. *Petitions for Reconsideration of Public Notice Regarding Application Procedures for Broadcast Incentive Auction*, Public Notice, 80 Fed. Reg. 76,649 (Dec. 10, 2015).

competition and contrary to the public interest and unnecessarily limit the revenue potential of future auctions.

T-Mobile's filing is simply an untimely challenge to the Commission's recently-revised former defaulter policies, its August 2015 order finding that none of the bidding conduct of the Auction Participants violated the Commission's rules, and the Wireless Telecommunications Bureau ("WTB") letters confirming the propriety of SNR and Northstar Wireless submitting full payment for less than all of the licenses for which each was the winning bidder in the AWS-3 auction. T-Mobile cannot now, months later, collaterally attack these final Commission conclusions or the WTB letters under the guise of a petition for reconsideration of a broadcast incentive auction procedural notice or a petition for declaratory ruling involving no unresolved controversy or uncertainty.

As to the substance, the Auction Participants are not former defaulters under the Commission's Auction 97 rules or its recently-revised auction rules because SNR and Northstar Wireless paid, within the relevant six-month window, all default payments due to the Commission. Long-standing Commission precedent and practice allow auction participants to submit full payment for less than all of the licenses won at auction, subject to the Commission's applicable default payment rules.² Accordingly, the T-Mobile Pleading is without merit and should be dismissed or denied.

² See, e.g., *Baker Creek Communications, L.P.*, Order, 14 FCC Rcd 11529 (WTB rel. July 15, 1999); *Tel-Com Wireless Cable TV Corporation, BTA No. B198 Multipoint Distribution Service*, Order, 12 FCC Rcd 6747 (WTB rel. May 23, 1997); *LMDS Communications, Inc. Request for Waiver of Sections 1.2109(a) and (c), 1.2104(g) and 101.1105(b) of the Commission's Rules Regarding BTA117, BTA122, BTA203, BTA215, BTA218, BTA287, BTA317, BTA328, BTA330, BTA335, BTA375 and BTA416*, Order, DA 00-556 (WTB rel. Mar. 17, 2000)

Background

At the close of Auction 97, SNR was the winning bidder for 357 licenses, with more than \$4 billion in net winning bids.³ Northstar Wireless was the winning bidder for 345 licenses, with more than \$5.8 billion in net winning bids.⁴ Certain entities (but not T-Mobile) filed challenges to the SNR and Northstar Wireless license applications and requests for bidding credits by the May 11, 2015 deadline for petitions to deny.⁵ Those entities argued, *inter alia*, that the Auction Participants' conduct during Auction 97 violated the FCC's rules⁶ and proposed a number of sanctions against the Auction Participants.⁷

The Commission issued an order on August 18, 2015 resolving all of the issues raised in the application proceedings.⁸ While the Commission determined that SNR and Northstar Wireless were not eligible for the more than \$3.2 billion total in bidding credits sought, the Commission concluded that "none of the Petitioners' allegations constitute grounds to render an adverse decision as to [SNR's and Northstar Wireless's] basic qualifications to hold licenses, or

³ See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97*, Public Notice, 30 FCC Rcd 630, Attachment A (WTB rel. Jan. 30, 2015).

⁴ See *id.*, Attachment A.

⁵ *Wireless Telecommunications Bureau Announces that Applications for AWS-3 Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands are Accepted for Filing*, Public Notice, 30 FCC Rcd 3795 (2015).

⁶ See, e.g., Petition to Deny of VTel Wireless, Inc. (May 11, 2015) ("VTel Petition to Deny"); Petition to Deny of Central Texas Telephone Investments LP and Rainbow Telecommunications (May 11, 2015) ("CTTI/Rainbow Petition to Deny"); Partial Opposition of AT&T To Petitions To Deny (May 18, 2015); Petition to Deny of Citizen Action Illinois (filed May 6, 2015); Petition to Deny of Communications Workers of America and the National Association for the Advancement of Colored People (filed May 11, 2015); Petition to Deny of Ev Ehrlich (filed May 11, 2015); Petition to Deny of Americans for Tax Reform, Center for Individual Freedom, Citizens Against Government Waste, MediaFreedom.org, National Taxpayers Union, and Taxpayers Protection Alliance (filed May 11, 2015); Petition to Deny of National Action Network (filed May 11, 2015).

⁷ See, e.g., CTTI/Rainbow Petition to Deny at 6; VTel Petition to Deny at 5-6.

⁸ *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) ("Auction 97 Licensing Order").

to grant any of the relief requested in the petitions.”⁹ No party sought review of, appealed, or otherwise challenged the Commission’s conclusion that the Auction Participants’ actions during Auction 97 did not violate the Commission’s rules.¹⁰

On October 1, 2015, SNR and Northstar Wireless each timely submitted additional payments that resulted in full payment for certain of the licenses for which each was the winning bidder in Auction 97 and the full amount of the associated default payments.¹¹ The WTB issued letters in response accepting those actions and confirming the accuracy of the SNR and Northstar Wireless payment amounts.¹² The WTB stated further in those letters that neither SNR nor Northstar Wireless were current defaulters under the FCC’s rules¹³ and that the decisions by SNR and Northstar Wireless to submit full payment for less than all of the licenses did not constitute gross misconduct, misrepresentation or bad faith under the FCC’s rules and “will not render SNR [or Northstar Wireless], its investors, or their respective affiliates ineligible to participate in future auctions.”¹⁴

⁹ *Id.* at 8951 ¶ 156. The Commission also held that petitioners had not demonstrated that the Auction Participants violated antitrust laws and declined to refer the matter to the United States Department of Justice for investigation. *Id.* at 8946-48 ¶¶ 146-150.

¹⁰ SNR and Northstar Wireless each sought review by and filed appeals with the United States Court of Appeals for the District of Columbia Circuit challenging the Commission’s decision denying the respective applicant’s eligibility for bidding credits. *See* SNR Wireless LicenseCo, LLC v. FCC, No. 15-1330 *et al.* (D.C. Cir.).

¹¹ Letter from Ari Q. Fitzgerald, Hogan Lovells US LLP, Counsel to SNR Wireless LicenseCo, LLC, to Jean L. Kiddoo, Deputy Bureau Chief, Wireless Telecommunications Bureau, FCC, ULS File No. 0006670667 at 2 (Oct. 1, 2015); Letter from Mark F. Dever, Counsel to Northstar Wireless, LLC, to Jean L. Kiddoo, Deputy Bureau Chief, Wireless Telecommunications Bureau, FCC, ULS File No. 0006670613 at 2-3 (Oct. 1, 2015).

¹² Letter from Roger Sherman, Chief, Wireless Telecommunications Bureau, FCC, to Ari Q. Fitzgerald, Counsel to SNR Wireless LicenseCo, LLC, ULS File No. 0006670667 at 3-4 (Oct. 1, 2015) (“*SNR Interim Default Letter*”); Letter from Roger Sherman, Chief, Wireless Telecommunications Bureau, FCC, to Mark F. Dever, Counsel to Northstar Wireless, LLC, ULS File No. 0006670613 at 3 (Oct. 1, 2015) (“*Northstar Wireless Interim Default Letter*”).

¹³ *SNR Interim Default Letter* at 4; *Northstar Wireless Interim Default Letter* at 3.

¹⁴ *SNR Interim Default Letter* at 4; *Northstar Wireless Interim Default Letter* at 4.

On October 27, 2015, the WTB granted the respective SNR and Northstar Wireless applications with respect to the licenses for which each party submitted full payment.¹⁵ No party sought reconsideration or otherwise challenged the WTB's grant of the licenses.¹⁶

On November 30, 2015, T-Mobile submitted the Pleading superficially as a petition for reconsideration of the FCC's *Incentive Auction Application Procedures Public Notice*, which established final application and other procedural rules for the FCC's broadcast spectrum incentive auction (the "Incentive Auction").¹⁷ T-Mobile suggested in the alternative that the Pleading be treated as a petition for declaratory ruling.¹⁸ T-Mobile requested that the FCC declare that the Auction Participants are former defaulters under the FCC's rules and explained that doing so "is necessary to punish DISH and the DISH DEs for their prior behavior, to preserve the integrity of the auction processes, and to demonstrate that entities that abuse the auction process will be prevented from doing so again in the future."¹⁹ T-Mobile also asked that the Commission "declare that any entity in which DISH has a disclosable ownership interest pursuant to Section 1.2112(a) of the rules is a former defaulter."²⁰

¹⁵ *Wireless Telecommunications Bureau Actions on AWS-3 Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Public Notice, DA 15-1223 (Oct. 27, 2015).

¹⁶ On October 30, 2015, T-Mobile filed a letter in the Incentive Auction proceeding arguing, *inter alia*, that SNR should be considered a former defaulter in future auctions. See Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-170 *et al.* (filed Oct. 30, 2015); see also Letter from Kathleen O'Brien Ham, Senior Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-170 *et al.* (filed Nov. 17, 2015). As SNR and Northstar Wireless previously explained, the T-Mobile letter was an untimely request for reconsideration of the *Auction 97 Licensing Order* and procedurally flawed and, accordingly, could not be treated as a properly filed challenge to the grant of the SNR or Northstar Wireless applications. Letter from John Muleta, CEO, Atelum LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-170 *et al.* (filed Nov. 9, 2015); Letter from Allen M. Todd, Assistant Secretary and General Counsel, Northstar Wireless, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-170 *et al.* (filed Nov. 9, 2015).

¹⁷ See Pleading at 1.

¹⁸ *Id.* at 2 n.5.

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 1-2 n. 4.

Discussion

Upset about the success of the Auction Participants,²¹ T-Mobile has submitted this Pleading in a transparent attempt to gain an unfair advantage against the Auction Participants in future auctions. The Commission should not countenance this action, which would be harmful to competition and contrary to the public interest and unnecessarily limit the revenue potential of future auctions.

T-Mobile's Pleading is fundamentally an untimely challenge to the Commission's recently-revised former defaulter policies, its *Auction 97 Licensing Order*, the *SNR Interim Default Letter*, and the *Northstar Wireless Interim Default Letter*.²² The Commission fully addressed in the *Auction 97 Licensing Order* the conduct of the Auction Participants in response to the challenges raised by other entities in the SNR and Northstar Wireless application proceedings and concluded that none of the Auction Participants violated the Commission's rules.²³ T-Mobile cannot now, months later, collaterally attack that final Commission conclusion, the recently-revised former defaulter policies, or the WTB letters under the guise of a

²¹ See, e.g., John Legere, *Speak Up for America's Wireless Future*, T-Mobile Issues & Insights Blog (Feb. 18, 2015), <https://newsroom.t-mobile.com/issues-insights-blog/wireless-future.htm>; Comments of T-Mobile USA, Inc., WT Docket No. 14-170, *et al.*, at 6-7 (filed Feb. 20, 2015); see also Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 14-170, Attachment at 11 (Feb. 20, 2015) (stating that the Auction Participants outbid T-Mobile on 132 separate occasions in Auction 97).

²² The due date for petitions for reconsideration of the recently-revised former defaulter policies was October 19, 2015. See *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (“*Competitive Bidding Order*”), 80 Fed. Reg. 56,764 (Sep. 18, 2015). The due date for petitions for reconsideration of the *Auction 97 Licensing Order* was September 17, 2015. Challenges to the WTB letters should have been submitted by November 2, 2015. The Pleading is also untimely filed with respect to the WTB's October 27, 2015 decision to grant the SNR and Northstar Wireless applications.

²³ See *Auction 97 Licensing Order*, 30 FCC Rcd at 8941-51 ¶¶ 133-156.

petition for reconsideration of a wholly different decision²⁴ or a petition for declaratory ruling involving no unresolved controversy or uncertainty.²⁵

Even if T-Mobile's requests were appropriate to consider in the context of the Incentive Auction proceeding, the requests are nonetheless procedurally barred because they introduce arguments and propose new rules long after such proposals would have been due.²⁶ T-Mobile participated actively in both Auction 97 and the Incentive Auction proceeding and has long been aware of the SNR and Northstar Wireless applications.²⁷ Yet, T-Mobile did not suggest in the Incentive Auction proceeding that the Commission revise the definition of former defaulter or limit the ability of applicants to submit full payment selectively for licenses won at auction until several months after the close of the comment cycle.²⁸ Thus, T-Mobile's eleventh-hour request to change the Incentive Auction rules should be dismissed.²⁹

²⁴ See, e.g., *Motions for Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, Memorandum Opinion and Order, 14 FCC Rcd 12752, 12757-58 ¶ 11 (1999) (“[I]ndirect challenges to Commission decisions that were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.”).

²⁵ See 47 C.F.R. § 1.2 (FCC may issue a declaratory ruling to terminate or remove “controversy” or “uncertainty”); *Petition for Declaratory Ruling That Any Interstate Non-Access Serv. Provided by S. New England Telecommunications Corp. Be Subject to Non-Dominant Carrier Regulation*, Order, 11 FCC Rcd 9051 ¶ 4 (1996) (rejecting a petition for declaratory ruling because it “does not ask us to resolve a controversy or uncertainty,” and “is more properly addressed in the context of either a petition for rulemaking or a petition for waiver”); *Improving Pub. Safety Commc'ns in the 800 MHz Band*, Order, 26 FCC Rcd 2035 ¶ 10 (PSHSB rel. Feb. 24, 2011) (rejecting a petition for a declaratory ruling for because the petitioner is “not ‘uncertain’ about the findings [but] merely disagree[s] with them.”).

²⁶ See, e.g., *Request for Further Comment on Issues Related to Competitive Bidding Proceeding, Updating Part 1 Competitive Bidding Rules*, Public Notice, 30 FCC Rcd 4153 ¶ 3 (rel. Apr. 17, 2015) (establishing May 2015 comment and reply deadlines specifically to consider any proposals based on the Auction 97 results).

²⁷ See, e.g., Comments of T-Mobile USA, Inc., AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015); Letter from John Legere, Chief Executive Officer, T-Mobile, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (filed June 26, 2015).

²⁸ For the same reason, the FCC should reject T-Mobile's extraordinary request that the Commission “declare that any entity in which DISH has a disclosable interest is a former defaulter.” Pleading at 1-2 n.4. That request, as T-Mobile concedes, is inconsistent with the FCC's rules, which provide that defaults or delinquencies of an applicant's controlling interest holders, but not an applicant's disclosable interest holders, are attributable to the applicant. Pleading at 2 n.4.

²⁹ Basic administrative law principles require that there be notice and an opportunity for comment before there can be a change in an agency's rules or established precedent or practice. 5 U.S.C. § 553(b)-(c).

As to the substance, as T-Mobile itself acknowledges,³⁰ the Auction Participants are not former defaulters under the Commission's rules. Parties that cure their defaults within six months after receiving notice of the final payment deadline or delinquency are expressly excluded from the definition of former defaulter.³¹ The Auction Participants have paid all applicable interim default payments due within the relevant six-month period and, under the clear language of the rules, are not former defaulters with respect to those obligations.³²

Far from "gamesmanship," long-standing Commission precedent and practice has allowed applicants to submit full payment for less than all of the licenses for which they were the winning bidder at an auction, subject to the applicable default payment rules.³³ While T-Mobile is correct that the Commission has broad discretion to establish auction procedures and processes that are fair to all auction participants, the Commission cannot simply ignore or overturn without fair notice and an opportunity for public comment long-standing precedent and practice, as T-Mobile proposes.³⁴ If T-Mobile believes that changes should be made to the FCC's default rules

³⁰ Pleading at 6-7 ("[N]one of [the Commission's] tools directly address [sic] the behavior in which DISH and the DISH DEs engaged.").

³¹ See *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014 (Auction 97)*, Order, 29 FCC Rcd 10828 ¶ 19 (2014) ("Auction 97 Waiver Order") (creating exclusions to definition of former defaulter in Auction 97); see also 47 C.F.R. § 1.2105(a)(2)(xii); *Competitive Bidding Order*, 30 FCC Rcd at 7566-67 ¶ 173. The exclusions to the recently adopted former defaulter rule will be effective upon approval by the Office of Management and Budget. See *Updating Competitive Bidding Rules*, 80 Fed. Reg. 56,764 (Sep. 18, 2015).

³² See *SNR Interim Default Letter* at 4; *Northstar Wireless Interim Default Letter* at 3.

³³ See *SNR Interim Default Letter* at 2 ("The Commission has previously allowed winning bidders at auction to default selectively on licenses"); see also, e.g., *Baker Creek Communications, L.P.*, Order, 14 FCC Rcd 11529 (WTB rel. July 15, 1999); *Tel-Com Wireless Cable TV Corporation, BTA No. B198 Multipoint Distribution Service*, Order, 12 FCC Rcd 6747 (WTB rel. May 23, 1997); *LMDS Communications, Inc. Request for Waiver of Sections 1.2109(a) and (c), 1.2104(g) and 101.1105(b) of the Commission's Rules Regarding BTA117, BTA122, BTA203, BTA215, BTA218, BTA287, BTA317, BTA328, BTA330, BTA335, BTA375 and BTA416*, Order, DA 00-556 (WTB rel. Mar. 17, 2000).

³⁴ Pleading at 8. None of the cases cited by T-Mobile are applicable here. In those decisions, the FCC simply noted that it could tailor remedies in situations where the relevant entities had engaged in conduct in willful violation or flagrant disregard of the Commission's rules. *Ashtabula Cable TV, Inc., Complainant v. Ashtabula Telephone Co., Defendant*, Decision, 17 FCC 2d 113, 116 ¶ 10 (1969) ("[I]t is manifest that Ashtabula Telephone's violations of

and procedures, the proper approach would have been for T-Mobile to make its proposal in the context of a generally applicable notice and comment rulemaking proceeding.

Conclusion

The Commission is on the eve of a “once-in-a-generation” auction for low-band spectrum that is critical for new wireless market entry,³⁵ and economists have estimated that the auction could raise billions of dollars for the United States.³⁶ Creating obstacles to participation in that auction, especially by parties that have contributed to the success of a recent auction, would not serve the public interest.³⁷ For this and all of the reasons stated above, the Commission should dismiss or deny the T-Mobile Pleading.

section 214 of the act were not only willful, but that its conduct demonstrates a flagrant disregard of the requirements of the Communications Act and the Commission’s order....”); *Warrensburg Cable, Inc., Complainant v. United Telephone Co. of Missouri, United Utilities, and United Transmission, Inc., Defendants*, Memorandum Opinion and Order, 27 FCC 2d 727, 735 ¶ 20 (1971) (“If the unlawful [Section 214] conduct charged against the affiliated companies is established, the remedies available are not so limited as United of Missouri seems to argue.”); *Time Warner Cable, A Division of Time Warner Entertainment Company L.P.*, Order on Reconsideration, 21 FCC Rcd 9016, 9028 ¶ 36 (MB rel. Aug. 7, 2006) (FCC has authority to grant injunctive relief for temporary carriage of NFL channel, where cable operator undisputedly violated 30-day channel termination notice provision).

³⁵ See *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, 6134-35 ¶ 2 (2014).

³⁶ See, e.g., <http://www.fiercewireless.com/story/analysts-600-mhz-incentive-auction-could-generate-60-billion-mhz-prices-cou/2015-09-30>; Peter Cramton *et al*, *Design of the Reverse Auction in the FCC Incentive Auction* at 20 (Feb. 19, 2015), attached to Comments of Expanding Opportunities for Broadcasters Coalition, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 19, 2015) (“*EOBC Comments*”); Kagan Media Appraisals, *Can the FCC Attract a Full House for the 2016 Broadcast Incentive Auction?* at 8 (Feb. 11, 2015), attached to *EOBC Comments*.

³⁷ See Reply Comments of Council Tree Investors, Inc., GN Docket No. 12-268, WT Docket Nos. 14-170, 05-211, RM-11395 (filed Mar. 6, 2015).

Respectfully submitted,

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December 28, 2015

CERTIFICATE OF SERVICE

I, John Muleta, hereby certify that on December 28, 2015, a true and correct copy of the foregoing Joint Opposition to T-Mobile Petition for Reconsideration or Request for Declaratory Ruling was sent by United States Mail, first class postage prepaid, to:

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