

**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

REPLY OF AT&T TO PETITION FOR RECONSIDERATION

AT&T Services Inc. (“AT&T”), on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”), hereby submits this response to the Petition for Reconsideration or Request for Declaratory Ruling filed by T-Mobile USA, Inc. (“T-Mobile”) in the above-captioned proceedings.¹ In its Petition, T-Mobile asks the Federal Communications Commission (“FCC” or “Commission”) to declare that DISH Network Corporation (“DISH”) and two of its controlled subsidiaries (Northstar Wireless LLC and SNR Wireless LicenseCo, LLC, together the “DISH DEs”) be considered “former defaulters” under the Commission’s rules.² This finding by the Commission would require DISH and/or the DISH DEs to make upfront payments in amounts 50 percent higher than would otherwise apply if they wish to participate in the

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 (Nov. 30, 2015) (“Petition”).

² Petition at 1-2. T-Mobile also asks that the Commission extend this finding to any entity in which DISH is deemed to hold a disclosable interest pursuant to Section 1.2112(a) of the rules, noting that “DISH and the DISH DEs should not be permitted to evade the relief that T-Mobile seeks by investing in another applicant at a level above that which is disclosable but below that which is controlling.” Petition at n.4. AT&T agrees that any determination of former defaulter status should extend to any bidding vehicle in which DISH holds a significant interest.

upcoming incentive auction.³ AT&T agrees with T-Mobile that DISH and the DISH DEs should be considered former defaulters, but believes that it would be more procedurally appropriate to make this finding in a declaratory ruling or policy statement, and that an Order on Reconsideration of the *Application Procedures Public Notice* is not required for the relief sought.

Under the Commission’s rules, an applicant is considered a “former defaulter” when, as of the FCC Form 175 deadline, “it or any of its controlling interests has defaulted on any Commission construction permit or license.”⁴ The Commission adopted its former defaulter rule to “preserve the integrity of the auction process and to ensure that bidders are capable of meeting their financial commitments to the Commission.”⁵ Further, the Commission’s aim in adopting its former defaulter policies was to deter “unrealistic bids and bidding defaults that could threaten the integrity of the auction.”⁶

DISH’s actions in Auction 97 unquestionably produced these negative results, and thus AT&T agrees that DISH and the DISH DEs should be considered “former defaulters” for purposes of the Commission’s auction procedures.⁷ By engaging in gamesmanship that distorted

³ *Id.* at 1.

⁴ *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016, Technical Formulas for Competitive Bidding*, Public Notice, DA 15-1183, at ¶ 138 (Oct. 15, 2015).

⁵ *Uniform Auction Rules*, Fifth Report and Order, 15 FCC Rcd 1231, ¶ 40 (2000).

⁶ *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*, Order, 29 FCC Rcd 10828, ¶ 15 (2015).

⁷ Because DISH was deemed by the FCC to have control over the DISH DEs, any “former defaulter” status extended to the DISH DEs should apply with equal force to DISH itself. *Northstar Wireless, LLC and 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, ¶¶ 6-7 (2015).

auction results and then selectively defaulting on a large number of winning bids, DISH significantly and irreparably undermined the AWS-3 auction. In so doing, DISH “deprived other bidders of the ability to fairly win licenses that they intended to put to use promptly, instead forcing the FCC to delay deployment of the defaulted licenses until a re-auction in the future.”⁸ DISH’s actions produced the very result the Commission aimed to prevent in adopting its former defaulter rules: it bid irresponsibly and to the detriment of other participants and, when confronted with its financial obligations to the Commission, failed to pay the amount owed. DISH’s default, while “selective,” was a default nonetheless and should be treated as such for purposes of applying the former defaulter rule.

While AT&T agrees with the substance of T-Mobile’s Petition, it does not believe that an Order on Reconsideration is necessary or appropriate. Instead, AT&T supports T-Mobile’s alternative proposal that the Commission issue a declaratory ruling consistent with T-Mobile’s request.⁹ As T-Mobile notes, it “does not seek reconsideration of the former defaulter rules themselves.”¹⁰ Rather, it seeks confirmation by the Commission that it will apply these policies to DISH. Although the *Application Procedures Public Notice* noted the applicability of the former defaulter rules to Auction 1002, it did not alter the rules themselves, nor did it make any specific mention of DISH, the DISH DEs, or applicability of the former defaulter rule to these

⁸ Petition at 2.

⁹ *Id.* at n. 5.

¹⁰ *Id.* at 5.

entities. For this reason, the relief sought by T-Mobile can accurately be described as a request to “terminat[e] a controversy or remov[e] uncertainty” regarding DISH’s status.¹¹

For the reasons stated above, AT&T supports T-Mobile’s request for a declaratory ruling by the Commission.

Respectfully submitted,

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Dated: December 28, 2015

¹¹ 47 C.F.R. § 1.2 (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

CERTIFICATE OF SERVICE

I, Hannah Lynn, do hereby certify that on this 28th day of December, 2015, I caused copies of the foregoing to be served on the following, First Class Mail, postage pre-paid:

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