

**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 RESPONSE TO REPLY OF AT&T SERVICES INC.

SNR Wireless LicenseCo, LLC (“SNR”), Northstar Wireless, LLC (“Northstar Wireless”), and DISH Network Corporation (“DISH”) (collectively, the “Auction Participants”) hereby submit this Joint Response to the Reply of AT&T Services Inc. (“AT&T Reply”) in the above-captioned proceedings.¹ The AT&T Reply merely rehashes the flawed arguments made in the Petition for Reconsideration or Request for Declaratory Ruling (“Pleading”) filed by T-Mobile USA, Inc. (“T-Mobile”)² and provides no basis for grant of T-Mobile’s request to treat the Auction Participants as former defaulters. AT&T’s filing, like that of T-Mobile, is nothing more than a transparent effort by an established wireless operator to create obstacles to limit participation in the upcoming auction for low-band spectrum that is critical for new wireless market entry.³ The Commission should not countenance such regulatory gamesmanship.

¹ Reply of AT&T to Petition for Reconsideration, GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269 (filed Dec. 28, 2015); *see also* 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).

² Joint Opposition to T-Mobile Petition for Reconsideration or Request for Declaratory Ruling, GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269, at 6 (filed Dec. 28, 2015) (“Joint Opposition”).

³ *See Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, 6134-35 ¶ 2 (2014).

As previously explained, the allegations of improper conduct by the Auction Participants are untimely challenges to Commission and Wireless Telecommunications Bureau decisions and actions that have already addressed and effectively rejected those allegations.⁴ Neither AT&T nor T-Mobile may now collaterally attack those decisions and actions.

Styling the requested relief as a petition for declaratory ruling, which AT&T supports, does not change that fact.⁵ The Commission's rules provide that it may issue declaratory rulings to terminate or remove "controversy" or "uncertainty" – neither of which is present here.⁶ Further, the Commission rejects "declaratory ruling" requests where the requesting party simply disagrees with prior Commission decisions or should have, more appropriately, sought relief in a rulemaking proceeding.⁷

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.⁸ Long-standing Commission precedent and practice allow auction participants to submit full payment for less than all of the licenses they won at auction, subject to the Commission's applicable default payment rules.⁹ SNR and Northstar have fully complied with

⁴ Joint Opposition at 4.

⁵ AT&T Reply at 2.

⁶ 47 C.F.R. § 1.2.

⁷ See, e.g., *Improving Pub. Safety Commc'ns in the 800 MHz Band*, Order, 26 FCC Rcd 2035, 2039 ¶ 10 (PSSHB 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."); *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, 9052 ¶ 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").

⁸ Joint Opposition at 2.

⁹ *Id.*; 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)*

the Commission's applicable default payment rules. Nothing in the AT&T Reply suggests otherwise.

The Commission is on the eve of a "once-in-a-generation" auction for low-band spectrum that is critical for new wireless market entry¹⁰ and should not countenance the transparent efforts by established wireless operators to create obstacles to limit participation in that auction. For all of the reasons stated above and in the Joint Opposition, the Commission should reject the AT&T Reply and dismiss or deny the T-Mobile Pleading.

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).

¹⁰ *See supra* note 3.

Respectfully submitted,

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January 7, 2016

CERTIFICATE OF SERVICE

I, John Muleta, hereby certify that on January 7, 2016, a true and correct copy of the foregoing Joint Response to Reply of AT&T Services Inc. was sent by United States Mail, first class postage prepaid, to:

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