

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

In the Matter of	)	
	)	
Auction of Advanced Wireless Services	)	AU Docket No. 14-78
Licenses Scheduled for November 13, 2014	)	
	)	
Comment Sought on Competitive Bidding	)	
Procedures for Auction 97	)	

**REPLY COMMENTS OF AT&T**

Michael P. Goggin  
Alex Starr  
Gary L. Phillips  
Lori Fink  
1120 20<sup>th</sup> Street NW, Suite 1000  
Washington, D.C. 20036  
(202) 457-3058

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*Attorneys for AT&T*

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY .....	1
II.	AT&T SUPPORTS THE BUREAU’S CHOSEN SIMULTANEOUS MULTIPLE- ROUND AUCTION FORMAT, WITH SOME MODIFICATIONS. ....	2
A.	The Simultaneous Multiple-Round Format is a Proven Success.....	2
B.	The Bureau Should Auction the AWS-3 Spectrum in a Single Auction. ....	2
1.	The Auction Should Determine Whether the Paired and Unpaired AWS-3 Bands are Complementary. ....	3
2.	To the Extent Parties Are Concerned About “Parking,” the Adoption of Package Bidding is Preferable to Bifurcating the Auction. ....	6
C.	The Bureau Should Adjust the Minimum Opening Bid Calculation.....	8
D.	The Bureau Should Limit the Maximum Bid Increment to Twenty Percent .....	12
III.	THE BUREAU MUST PROVIDE TRANSPARENCY AND CERTAINTY TO BIDDERS WITH RESPECT TO INCUMBENT FEDERAL OPERATIONS.....	12
IV.	THE BUREAU SHOULD TAKE ADDITIONAL STEPS TO PROMOTE AUCTION PARTICIPATION.....	15
A.	The Bureau Should Confirm That Post-Auction Payments Will Be Due in Early 2015.....	15
B.	The Bureau Should Waive the “Former Defaulter” Rule .....	17
V.	CONCLUSION .....	19

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**I. INTRODUCTION AND SUMMARY**

AT&T Services, Inc., on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”), respectfully submits these Reply Comments in response to the Wireless Telecommunications Bureau’s Public Notice seeking comment on the procedures to be used for the upcoming AWS-3 auction (Auction 97), currently scheduled for November 13, 2014.<sup>1</sup> As AT&T indicated in its opening Comments, the Bureau has selected an overall auction design with a proven track record of success. The opening comments, nonetheless, have made a number of proposals for modifications. In some cases, the proposals lack merit—if, for example, the Bureau chooses to address concerns about “parking,” it should do so by adjusting the minimum opening bid calculation and by permitting package bidding, not by bifurcating the auction as some parties have proposed. On the other hand, AT&T concurs with those suggesting lowering the maximum bid increase increment. Moreover, AT&T supports those proposing that the Bureau should take steps to facilitate effective communications between Federal incumbents and prospective bidders, and thereby help provide certainty regarding potential interference issues in

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<sup>1</sup> *Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014, Comment Sought on Competitive Bidding Procedures for Auction 97*, Public Notice, DA 14-669 (May 19, 2014) (“Public Notice”).

the AWS-3 spectrum. AT&T also agrees that the Bureau should adopt certain proposals advanced in this proceeding that will facilitate auction participation, such as setting particular payment dates in 2015 (rather than 2014) and waiving the former defaulter rule.

**II. AT&T SUPPORTS THE BUREAU’S CHOSEN SIMULTANEOUS MULTIPLE-ROUND AUCTION FORMAT, WITH SOME MODIFICATIONS.**

**A. The Simultaneous Multiple-Round Format is a Proven Success.**

The record in this proceeding demonstrates the wisdom of continuing the FCC’s tested and successful approach of conducting auctions using a simultaneous multiple-round (“SMR”) auction format.<sup>2</sup> As AT&T notes in its comments, the SMR format has been employed successfully for two decades to license the majority of mobile broadband spectrum in use today. Because the SMR format has been in place for so long, the wireless industry has developed great familiarity with this format and has made substantial investments in software, facilities, and personnel based on this model. AT&T believes that the use of SMR procedures in Auction 97 will promote a competitive and fair auction where both large and small bidders can make informed choices in an efficient manner. As noted further below, to the extent parties propose deviations from this format, the Bureau should proceed with caution and be mindful of the potential impact of such actions.

**B. The Bureau Should Auction the AWS-3 Spectrum in a Single Auction.**

Several parties have made proposals to effectively split Auction 97 into two auctions – one for the paired spectrum at 1755-1780 MHz/2155-2180 MHz and the other for the unpaired spectrum at 1695-1710 MHz. These proposals include the imposition of separate stopping rules

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<sup>2</sup> *Id.* at ¶¶ 17-23.

for the two bands,<sup>3</sup> maintaining separate eligibility pools for bidders,<sup>4</sup> and adopting separate activity waiver rules.<sup>5</sup> These arguments are premised on two false assumptions: (1) that the different technical characteristics of the paired and unpaired bands warrant separate auction treatment, and (2) that employing common auction procedures for both bands will encourage “parking.” AT&T addresses each of these arguments in turn.

1. The Auction Should Determine Whether the Paired and Unpaired AWS-3 Bands are Complementary.

AT&T disagrees with those commenters suggesting that the Bureau should assume the paired and unpaired AWS-3 bands do not exhibit complementary characteristics, rather than allowing the auction itself to make that determination. Both T-Mobile and DISH argue that there is no need for the paired and unpaired bands to be governed by common bidding procedures, as they are technically distinct<sup>6</sup> and are not likely to be substitutable.<sup>7</sup> While AT&T agrees that the paired and unpaired spectrum blocks exhibit some technically distinctive characteristics, holding

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<sup>3</sup> Comments of T-Mobile USA, Inc., AU Docket No. 14-78, at 2 (June 9, 2014) (“T-Mobile Comments”); Comments of DISH Network Corporation, AU Docket No. 14-78, at 2-17 (June 9, 2014) (“DISH Comments”).

<sup>4</sup> DISH Comments at 3.

<sup>5</sup> *Id.*

<sup>6</sup> DISH Comments at 3-4 (“Although the 1695-1710 MHz band and 1755-1780/2155-2180 MHz band licenses are all being offered at the same time under a single named auction – Auction 97 – the two sets of licenses are very different from one another in terms of, among other things, likely deployment scenarios and operational challenges.”); T-Mobile Comments at 3 (“Not only will licensees in these bands have different technical requirements, but they will also have different obligations with respect to coordination with federal users.”).

<sup>7</sup> DISH Comments at 3 (“As further explained below, combining auction procedures for bands that are not substitutable could enable bidders to employ bidding strategies designed to hurt smaller competitors and new entrants.”); T-Mobile Comments at 3 (“In light of these differences, the Bureau should consider whether applying the stopping rules associated with its SMR approach should apply to the auction based on activity across all licenses or just within a particular band.”).

separate auctions for the paired and unpaired AWS-3 spectrum, based on the presumption that no bidder would view these bands as substitutable or complementary, would serve chiefly to reduce competition in the auction. The Bureau's public interest objectives are best promoted by allowing the market to determine, through a single set of auction procedures, the degree to which market participants view the AWS-3 spectrum blocks as substitutable.

In their Comments, DISH and T-Mobile allege that the technical distinctions between the paired and unpaired bands make it unlikely that any auction bidder would see them as substitutes.<sup>8</sup> Specifically, DISH states that "it is unlikely that the two bands offer licenses that could be used as close substitutes. A given bidder would likely not see these bands as interchangeable: either the bidder would be interested in licenses in both bands for different planned uses for each, or the bidder would likely only need spectrum in one band, but not the other."<sup>9</sup> DISH also posits, without empirical support, that few network operators are likely to have an interest in unpaired uplink spectrum beyond a desire to engage in anti-competitive strategic bidding.<sup>10</sup>

AT&T believes that the unsupported assumption made by DISH and T-Mobile that the paired and unpaired AWS-3 bands could never be viewed as substitutes is incorrect. The rise in mobile broadband usage, the scarcity of spectrum resources, and evolutions in technology have resulted in considerable network design innovation by wireless carriers. Through technologies such as carrier aggregation, it is entirely possible that the paired and unpaired AWS-3 bands

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<sup>8</sup> DISH Comments at 5 ("[T]hey are unlikely to be seen as substitutes for one another from the perspective of any given Auction 97 bidder."); T-Mobile Comments at 3 ("The different requirements and configuration of these bands mean that they are not substitutes for each other.").

<sup>9</sup> DISH Comments at 4.

<sup>10</sup> *Id.* at 5-6.

could be used together in a complementary network configuration. For this reason, the Commission should maintain its approach of auctioning these licenses under a common format, and allow bidders to decide whether these bands may be substitutable or complementary. AT&T further notes that it is not uncommon for the Commission to include in a single auction spectrum with dissimilar characteristics. For example, the two major 700 MHz auctions (Auctions 49 and 73) each included both paired and unpaired spectrum, and Auction 73 included both Upper and Lower 700 MHz band spectrum.<sup>11</sup>

AT&T supports, however, setting and operating separate and independent reserve prices for the paired and unpaired blocks. In particular, AT&T supports allowing the paired blocks to be sold if the reserve prices for those blocks are met or exceeded, even if the reserve prices for the unpaired blocks are not met. Given the rather substantial reserve proposed for the paired blocks, there is no basis in public policy for failing to consummate those transactions even if, in fact, significant demand for the unpaired blocks does not materialize. Notably, the Commission has established band-specific reserves without an aggregate reserve in prior auctions to good effect.<sup>12</sup>

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<sup>11</sup> See FCC, Auction 49, at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=49](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=49) (last visited June 19, 2014); FCC, Auction 73, at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=73](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73) (last visited June 19, 2014).

<sup>12</sup> *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008, Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, DA 07-4171, ¶ 199 (Oct. 5, 2007) (“Auction 73 Procedures Public Notice”).

2. To the Extent Parties Are Concerned About “Parking,” the Adoption of Package Bidding is Preferable to Bifurcating the Auction.

DISH and T-Mobile also support the adoption of separate procedures for the paired and unpaired spectrum on the basis that adopting a single set of procedures might encourage bidders to use the unpaired blocks to “park” eligibility. T-Mobile, for example, states that by leaving the entire auction open when interest in one band diminishes, a bidder may park bids in one band to preserve eligibility for the other, artificially prolonging the auction.<sup>13</sup> Meanwhile, DISH argues that a bidder that ultimately wants to win paired spectrum may park its eligibility in unpaired spectrum, driving up the price of that spectrum and driving out competitors.<sup>14</sup>

AT&T acknowledges that auction participants, particularly spectrum speculators, often engage in such parking strategies, but the parking scenario envisioned by DISH is highly unlikely and AT&T submits that the Commission should not alter its auction procedures in response to it. A bidder attempting to park eligibility in the AWS-3 auction would be unlikely to seek to do so in the unpaired blocks. First, the minimum opening bid prices (and therefore the bidding units) for each unpaired license are much lower than are those for the paired licenses, so the bidder would have to bid on a far larger number of unpaired licenses than paired licenses to “park” the same amount of eligibility. Second, because the bidding activity on the unpaired licenses is likely to be less than for the paired licenses, such a bidder would face a far more substantial risk of incurring default penalties when it later tried to move its bids to the licenses it actually wanted to acquire. So it is unrealistic to believe that a bidder engaged in parking would choose to do so in an unpaired license, which would shelter relatively few bidding credits and greatly increase the risk of ending up with an unwanted license or a default penalty.

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<sup>13</sup> T-Mobile Comments at 4.

<sup>14</sup> DISH Comments at 8.

A far more likely parking strategy is to bid on paired licenses in a few major markets. In this way, a bidder could park more bidding units per license. Moreover, because bidding on paired spectrum in major markets is likely to be intense, there is little risk of incurring default penalties when the bidder decides to shift its eligibility to the licenses it actually wants to win. Indeed, this is precisely the sort of parking strategy that speculators have used in past auctions,<sup>15</sup> and it helps to explain the skewed valuations in major market licenses that have resulted.<sup>16</sup> Thus, if the Bureau seeks to reduce the incentive and ability to engage in such parking schemes, this is the scenario that the Bureau should address.

The best way to remove the incentive and ability to successfully pursue the eligibility parking strategy just described is to adopt package bidding.<sup>17</sup> Parking strategies are typically used in FCC spectrum auctions to preserve eligibility points for later rounds. This strategy might be used, for example, to mitigate against the exposure problem, which exists in auctions that do not have package bidding. And, as auction practitioners have pointed out, combinatorial auctions are specifically designed with an eye toward reducing the incentive for bidders to park eligibility. If the Bureau adopts package bidding, bidders will be less likely to be able to “park” eligibility successfully by maintaining the high bid in a few individual markets that shelter large amounts of bidding credits. Instead, speculators would be forced early on to bid on the licenses they actually hope to obtain.

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<sup>15</sup> Comments of Verizon Wireless, AU Docket No. 14-78, at 7 (June 9, 2014) (“Verizon Wireless Comments”).

<sup>16</sup> See discussion at pp. 8-12, *infra*, regarding minimum opening bid amounts.

<sup>17</sup> See Verizon Wireless Comments at 8-10.

**C. The Bureau Should Adjust the Minimum Opening Bid Calculation.**

In the Public Notice, the Bureau proposes to calculate minimum opening bids for Auction 97 on a license-by-license basis using a formula based on bandwidth and license area population.<sup>18</sup> The Public Notice sets forth a calculation based on \$0.15 per MHz-pop for paired licenses and \$0.05 per MHz-pop for unpaired licenses, “adjusted” to incorporate pricing information from previous auctions.<sup>19</sup> AT&T submits that the Bureau should not rely solely on past auction results when adjusting opening bid prices, as previous auctions may have involved bidder “parking” and inefficient pricing, and there is no reason to believe that competition would play out in a similar manner in Auction 97. AT&T proffers below a refinement that would be relatively easy to implement, would help prevent inefficient allocation of bidding units, and would help to discourage “parking,” a concern of several commenters in this proceeding.

As previously noted, the Public Notice proposes to adopt a minimum opening bid calculation that assigns a MHz-pop value to licenses and then adjusts based on results from past auctions. The Public Notice states that this adjustment results in minimum opening bid amounts ranging from \$0.01 per MHz-pop to \$0.53 per MHz-pop.<sup>20</sup> This approach is directionally correct, in that it is reasonable to assume that more densely populous areas will fetch higher average prices per MHz-pop than less densely populated areas. This is because licenses in more densely and largely populated areas are more valuable, and therefore a larger commitment should be made by participants interested in bidding on these licenses.

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<sup>18</sup> Public Notice at ¶ 54.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

However, it appears that the Bureau has very heavily based the bidding units and minimum opening bids *for each specific license* in the AWS-3 G Block on relative prices for the B Block in the 700 MHz auction (Auction 73). It also appears that the Bureau relied upon the recent H Block auction (Auction 96) to calculate minimum opening bid prices and bidding units for each license in the H, I, and J Blocks. By following this approach, the Bureau has baked in some anomalous results of unusual bidding patterns in previous auctions, distorting the allocation of eligibility units in Auction 97 today.<sup>21</sup> Indeed, the methodology results in the Chicago Cellular Market Area (“CMA”) and Tampa-St. Petersburg Economic Area (“EA”) having the highest pricing per MHz-pop, while the Los Angeles CMA would be priced lower than 59 other CMAs. There is no reason to believe that competition for individual blocks in Auction 97 would play out similarly to previous auctions.

Furthermore, because the Bureau has incorporated anomalous bidding patterns from previous auctions into its minimum opening bid calculations, it could inadvertently create greater parking opportunities than would normally exist in a typical SMR, ascending-price auction with geographic licensing. This is illustrated by the minimum opening bid per pop for some of the more populous G Block licenses under the Bureau’s skewed approach. The most expensive Cellular Market Area (“CMA”), measured in minimum opening bid per pop, is Chicago at \$5.282 per person. By contrast, the Columbus, Ohio CMA costs only \$0.84 per person to cover a population of over 1.5 million. These valuations are the result of unusual bidder behavior in past auctions and cannot be read as a reflection of the likely demand for these markets in the upcoming auction. A rational calculation of minimum opening bids is essential, as it affects the course of bidding throughout the auction. Bidders interested in parking points early in the

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<sup>21</sup> See Verizon Wireless Comments at 7.

an auction would be likely to park on a market like Columbus, because it would allow one to cheaply save up to 815,000 bidding units at an 80 percent activity level. The bidder could then perform a late-in-the-game switch of eligibility to licenses the bidder is actually interested in winning.

AT&T proposes a refinement to the Commission’s formula that would preserve the relative premium on major market pricing, but would avoid the incorporation of anomalous results from past auctions in individual markets. This should result in more efficient pricing and, therefore, less gamesmanship. Specifically, AT&T suggests that the Bureau maintain its minimum opening bid and bidding unit approach on a decile basis. Under this approach, the Bureau would start with its current assignments of minimum opening bid prices, then rank each license in descending order by population and group licenses by decile rankings. Within each decile, however, the Bureau could distribute bidding units and minimum opening bids on a “per pop” basis. This would have the effect of leaving minimum opening bids on rural licenses largely undisturbed, while fixing the significant distortions that exist within population centers. To understand how this would work, consider the distribution, by population decile, of proposed bidding units and minimum opening bids in the H and I Blocks of Auction 97:

**Table 1: Distribution of Minimum Opening Bids and Bidding Units by Population Decile (H and I Blocks)**

Decile	No. Licenses	% Pops	% Bid Units	% Min Bids
1	18	49.89%	69.80%	69.80%
2	18	16.29%	13.34%	13.34%
3	18	10.32%	6.50%	6.50%
4	17	6.69%	2.83%	2.83%
5	18	5.20%	2.43%	2.43%
6	17	3.76%	2.01%	2.01%
7	18	2.90%	1.15%	1.15%
8	17	2.33%	0.96%	0.97%
9	18	1.73%	0.69%	0.69%
10	17	0.90%	0.29%	0.29%

Under the Bureau’s proposed bidding unit and minimum opening bid structure, the 18 most populated Economic Areas (“EAs”) in the H and I Blocks would comprise 69.8 percent of the bidding units and minimum opening bids. AT&T proposes that these amounts (163,088,000 bid units and \$326,176,000) remain unchanged. However, AT&T proposes that these amounts be spread among the top 18 EAs based on population. This would result in the following changes being made:

**Table 2: Current and Suggested Bidding Units and Minimum Opening Bids for the Top Population Decile (H and I Blocks)<sup>22</sup>**

Market	Area	Pops	Bid Units (Current)	Min Bid (Current)	Bid Units (Proposed)	Min Bid (Proposed)
BEA010	New York, NY	26,663,330	35,396,000	\$70,792,000	27,861,000	\$55,722,000
BEA160	Los Angeles	19,800,937	26,874,000	\$53,748,000	20,690,000	\$41,380,000
BEA064	Chicago	10,758,118	14,625,000	\$29,250,000	11,241,000	\$22,482,000
BEA163	San Francisco	9,759,108	7,610,000	\$15,220,000	10,197,000	\$20,394,000
BEA013	Wash-Balt	9,515,921	10,380,000	\$20,760,000	9,943,000	\$19,886,000
BEA127	Dallas-FW	9,092,705	9,321,000	\$18,642,000	9,501,000	\$19,002,000
BEA003	Boston	8,228,930	10,859,000	\$21,719,000	8,598,000	\$17,196,000
BEA012	Philadelphia	7,735,541	10,024,000	\$20,047,000	8,083,000	\$16,166,000
BEA131	Houston	6,949,709	4,074,000	\$8,148,000	7,262,000	\$14,524,000
BEA057	Detroit	6,827,726	5,292,000	\$10,584,000	7,134,000	\$14,268,000
BEA040	Atlanta	6,690,595	5,412,000	\$10,824,000	6,991,000	\$13,982,000
BEA031	Miami	6,291,880	4,727,000	\$9,454,000	6,574,000	\$13,148,000
BEA107	Minneapolis	4,895,391	3,502,000	\$7,005,000	5,115,000	\$10,230,000
BEA170	Seattle	4,686,669	3,846,000	\$7,692,000	4,897,000	\$9,794,000
BEA141	Denver	4,685,203	2,653,000	\$5,305,000	4,896,000	\$9,792,000
BEA055	Cleveland	4,583,408	1,183,000	\$2,366,000	4,789,000	\$9,578,000
BEA030	Orlando	4,562,642	3,835,000	\$7,671,000	4,768,000	\$9,536,000
BEA158	Phoenix	4,351,644	3,475,000	\$6,949,000	4,547,000	\$9,094,000

The effect of the population weighting proposed by AT&T is to preserve the relative premium on major markets, while smoothing out anomalies regarding bidding units and minimum opening bids within the top 18 most populated EAs. This outcome is more in line with

<sup>22</sup> In this table, the sum of proposed bid units and the sum of current bid units differ by 1,000 due to rounding error. The FCC could rectify this by simply adding 1,000 bid units to any license.

population and expected auction competitiveness. As a result, it is much less likely that any one license in this group would be subjected to significant amounts of parking during the auction. This should improve the efficiency of the auction, which serves the interests of both the Commission and auction participants.

**D. The Bureau Should Limit the Maximum Bid Increment to Twenty Percent.**

AT&T agrees with U.S. Cellular that, as in past auctions the maximum bid increment should be 20 percent.<sup>23</sup> As U.S. Cellular notes, a higher percentage increment “may result in reduced auction revenue and economic efficiency.”<sup>24</sup> Moreover, a higher percentage increment could lead to some ridiculous auction valuations in markets with high opening bid prices and substantial bidding activity.<sup>25</sup> The incentives for speculative parking created by skewed minimum bid levels, combined with the absence of package bidding only increases the likelihood of such extreme, undesirable results. For these reasons, AT&T agrees with U.S. Cellular and Verizon Wireless that the maximum incremental bid increase should be limited to 20 percent.<sup>26</sup>

**III. THE BUREAU MUST PROVIDE TRANSPARENCY AND CERTAINTY TO BIDDERS WITH RESPECT TO INCUMBENT FEDERAL OPERATIONS.**

Because the 1755-1780 MHz and 1695-1710 MHz bands are currently occupied by Federal incumbents, effective coordination between Federal incumbent users and new AWS-3 licensees will be essential. Licenses to operate in these bands are subject to the condition that the

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<sup>23</sup> Comments of United States Cellular Corporation, AU Docket No. 14-78, at 17-18 (June 9, 2014) (“U.S. Cellular Comments”).

<sup>24</sup> *Id.* at 17.

<sup>25</sup> *See, e.g.*, Verizon Wireless Comments at 8.

<sup>26</sup> In this same vein, AT&T opposes the proposal by Aloha Partners to add a “third stage” to the auction that would require 100 percent of eligibility to be placed, with bidding increments increased to 20 percent or greater per round. Comments of Aloha Partners II, L.P., AU Docket No. 14-78, at 2 (June 9, 2014).

licensee must not cause harmful interference to an incumbent Federal entity relocating from these bands under an approved Transition Plan.<sup>27</sup> In addition, the Bureau has proposed that Auction 97 applicants be required to submit with their short-form applications a signed statement acknowledging that the applicant's operations in the 1755-1780 MHz band may be subject to interference from Federal systems in certain areas, that applicants must accept this interference, and that applicants have considered the risk prior to submitting bids.<sup>28</sup> As discussed below, AT&T agrees with T-Mobile both that these statements should be narrowly tailored and that NTIA should be encouraged to insist upon the maximum amount of system disclosure in agency transition plans. In other words, applicants should only have to acknowledge and accept such risks as have been clearly disclosed to them in advance by incumbent federal users.

AT&T agrees with T-Mobile that any acknowledgment statements signed by auction applicants must be limited in scope—an acknowledgement of impairments is warranted, but such acknowledgements should not act to alter the interference protection accorded to Federal licensees. In particular, AT&T supports T-Mobile's proposal that the requirement to acknowledge and accept potential interference must be limited to the periods when Federal users legitimately remain on the channels.<sup>29</sup> As T-Mobile observes, “[l]icense winners should not be required to accept interference indefinitely from federal users when the spectrum is clear and the licensees have no expectation of such interference.”<sup>30</sup> AT&T submits that the acknowledgment should make explicit that after NTIA withdraws a Federal authorization from the AWS-3 bands,

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<sup>27</sup> Public Notice at ¶ 7.

<sup>28</sup> *Id.* at ¶ 24.

<sup>29</sup> T-Mobile Comments at 7.

<sup>30</sup> *Id.*

non-Federal licensees should no longer be subject to potential interference. Similarly, such acknowledgments should not preclude agreements and discussions between Federal agencies and AWS-3 licensees to enable commercial use of the AWS-3 bands and take actions to mitigate interference. Nor should the acknowledgment statement be read as a requirement that auction participants coordinate with Federal users to accept interference, in addition to protecting Federal systems. To avoid these consequences, the Bureau should ensure that any required acknowledgment be narrowly drafted—the acknowledgement should be limited to make clear that applicants accept only the risks of federal interference as have been fully and clearly disclosed to them in advance—and construed such that the acknowledgment will not preclude later actions to make this spectrum available for commercial use.

Further, AT&T supports T-Mobile’s position that auction applicants must be in a position to make meaningful and informed decisions if they are to sign such an acknowledgment. The purchase—and ultimate build-out—of AWS-3 licenses will involve a massive financial commitment by licensees. If parties are to make this commitment, they must be fully informed in advance about potential obligations and limitations with respect to the spectrum being acquired. Specifically, it is essential that agency transition plans are made public in a timely manner and that agencies provide as much information as possible about the potential interference environment in the areas surrounding their facilities. If bidders lack the information they need to make informed choices, they may be deterred from signing the statement, thus dropping out of the auction process altogether.<sup>31</sup> At a minimum, bidding on the spectrum will be depressed to compensate for any uncertainty potential licensees perceive.

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<sup>31</sup> *Id.* at 6.

As T-Mobile indicates in its Comments, the Commission may issue a subsequent Public Notice announcing a process for supplemental information disclosure between the FCC, NTIA, affected Federal agencies, and industry stakeholders. AT&T echoes T-Mobile's appreciation of this effort and is committed to assisting with any process that will provide transparency and clarity to bidders regarding Federal incumbent operations. Because this information is so critically important, AT&T agrees with T-Mobile that any supplemental information process must be completed before auction participants are required to sign the acknowledgment proposed in the Public Notice.<sup>32</sup>

#### **IV. THE BUREAU SHOULD TAKE ADDITIONAL STEPS TO PROMOTE AUCTION PARTICIPATION.**

Several commenters in this proceeding advance additional proposals to increase bidder flexibility and enable participation in the auction. AT&T takes this opportunity to echo its support for two such proposals. Specifically, AT&T supports the request made by several parties to establish dates certain in 2015 for post-auction payments. This will greatly improve participants' ability to plan for and participate in the auction. AT&T also supports requests for waiver of the Commission's "former defaulter" rule, and believes that by taking such a step the Commission will remove a draconian and disproportionate penalty, lower barriers to participation in the auction, and ensure a competitive auction process.

##### **A. The Bureau Should Confirm That Post-Auction Payments Will Be Due in Early 2015.**

The timing of Auction 97 raises a unique challenge for bidders—whether winning bidders will need to make their post-auction payments in 2014 and/or 2015—a challenge the Bureau can easily resolve without any cognizable public interest cost. This uncertainty was first

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<sup>32</sup> *Id.* at 7.

observed by CTIA – The Wireless Association (“CTIA”) and NTCA – The Rural Broadband Association (“NTCA”) in an *ex parte* filing.<sup>33</sup> As they noted, Auction 97 is currently set to commence on November 13, 2014. It is unknown how long the auction will last. However, when the auction ends, “down payment” and “final payment” deadlines are typically set at ten business days and twenty business days, respectively, after the Public Notice announcing the close of the auction.<sup>34</sup> As a result, it is possible that both down and final payments for AWS-3 licenses could be due in 2014, both could be due in 2015, or one could be due in each year.

Given the large amounts of cash at stake, AT&T agrees with commenters’ statements that uncertainty regarding the payment due dates creates a significant challenge for bidders that could ultimately chill participation in the auction. As CTIA and NTCA note, these timing issues could determine and/or complicate how capital is raised, management of a company’s cash flow, and matters of financial reporting.<sup>35</sup> The Competitive Carriers Association echoes this assessment, noting that “[c]larifying that final payments would not be due until 2015 would provide potential bidders certainty, for the purposes of arranging financing for the auction and the overall management of business plans that any final payments on spectrum won in Auction 97 would be due in the next calendar year.”<sup>36</sup>

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<sup>33</sup> Letter from Scott K. Bergmann and Jill Canfield to Marlene H. Dortch, WT Docket No. 13-185 (May 14, 2014) (“CTIA/NTCA Payments *Ex Parte*”).

<sup>34</sup> See, e.g., Auction 73 Procedures Public Notice at ¶¶ 307-308 (setting the down payment deadline at ten business days after release of the auction closing Public Notice, and setting the final payment deadline at ten business days following the down payment deadline); *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, Public Notice, FCC 06-47, ¶¶ 246-247 (2006) (same).

<sup>35</sup> CTIA/NTCA Payments *Ex Parte* at 2.

<sup>36</sup> Comments of the Competitive Carriers Association, AU Docket No. 14-78, at 4 (June 9, 2014) (“CCA Comments”).

The Bureau should resolve this uncertainty by clarifying to bidders that regardless of the length of the auction, down payments and final payments on Auction 97 licenses will not be due until 2015. While the timeline for down payments and final payments is codified in the Commission's rules, these rules give the Bureau authority to depart from its usual procedures so long as it announces any changes through a Public Notice.<sup>37</sup> CTIA and NTCA have proposed a schedule under which down payments would be due by the later of January 15, 2015 or ten business days after the auction closes, and final payments would be due by the later of January 29, 2015 or twenty business days after the auction closes.<sup>38</sup> Adopting this schedule would not significantly delay the Commission's receipt of funds – depending on the auction's length, it may result in no delay at all – but it would be extremely helpful for bidders, while still allowing sufficient time to grant AWS-3 licenses by the February 22, 2015 deadline.

**B. The Bureau Should Waive the “Former Defaulter” Rule.**

Several parties ask the Bureau to grant a waiver of its “former defaulter” rule in Auction 97.<sup>39</sup> Under the “former defaulter” rule, auction applicants with former monetary defaults may be required to submit an upfront payment equal to 150 percent of the normal payment set for each particular license.<sup>40</sup> The rule applies to any delinquent debt, regardless of amount, and no matter how long ago it may have been paid off in full. Moreover, there is little if any rational relationship between the rule's effect (the wild inflation of up-front payments for many

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<sup>37</sup> See 47 C.F.R. § 1.2107(b); 1.2109(a).

<sup>38</sup> CTIA/NTCA Payments *Ex Parte* at 2. See also, Verizon Wireless Comments at 2.

<sup>39</sup> CCA Comments at 4-5; DISH Comments at 19-20; Verizon Wireless Comments at 3-4; Letter from Rebecca Murphy Thompson *et al* to Marlene H. Dortch, AU Docket No. 14-78 (May 30, 2014) (“Joint Associations Defaulter Rule *Ex Parte*”).

<sup>40</sup> 47 C.F.R. § 1.2106(a)

applicants, regardless of present means or credit history) and its intended purpose (to provide additional security to the FCC in the case of applicants who may be unable to pay in full for licenses they win at a current auction). AT&T submits that the former defaulter procedures should be waived for purposes of Auction 97. In the alternative, AT&T agrees with those who propose a limited waiver of the former defaulter rule in Auction 97 for: (1) debts that were resolved more than three years prior to the application deadline, or (2) debts that were for the lesser of \$100,000 or 0.1% of the average annual revenues of the applicant.<sup>41</sup> A waiver would relieve bidders of the need to make substantial additional upfront payments in Auction 97 – payments that could potentially preclude participation in the auction.

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<sup>41</sup> See Joint Associations Defaulter Rule *Ex Parte*.

## V. CONCLUSION

For the reasons indicated above, AT&T generally supports the procedures proposed by the Bureau for Auction 97, but believes that certain adjustments should be made to reduce incentives for speculative “parking” strategies and to prevent inefficient license pricing. The Bureau should run a single auction, rather than reduce competition by dividing the auction in two, as some suggest. The Bureau also can also promote the auction’s success by providing bidders with certainty regarding Federal interference and the transition process, and by granting proposals that will facilitate bidder flexibility and participation. This auction is critical to meeting the public’s demand for mobile broadband spectrum and the Commission’s policy objectives with respect to spectrum. AT&T respectfully submits that by following the procedures advanced herein, the Bureau will promote a successful auction that ultimately provides great public interest benefits to American wireless consumers.

Respectfully submitted,

By: /s/ Michael P. Goggin

Michael P. Goggin  
Alex Starr  
Gary L. Phillips  
Lori Fink  
1120 20<sup>th</sup> Street NW, Suite 1000  
Washington, D.C. 20036  
(202) 457-3058

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*Attorneys for AT&T*