

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	Report No. AUC-97 (Auction No. 97)
Northstar Wireless, LLC for Authority for)	File No. 0006670613
Advanced Wireless Services Licenses)	
)	
SNR Wireless LicenseCo, LLC for Authority)	File No. 0006670667
for Advanced Wireless Services Licenses)	
)	

PETITION TO DENY OF VTEL WIRELESS, INC.

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May 11, 2015

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To: Chief, Wireless Telecommunications Bureau

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I. INTRODUCTION AND SUMMARY

Pursuant to Sections 1.939 and 1.2108 of the Federal Communications Commission’s (“Commission”) rules and the *Public Notice*,¹ VTel Wireless, Inc. (“VTel”) hereby petitions the Commission to deny the Long-Form applications of Northstar Wireless, LLC (“Northstar”) and SNR Wireless LicenseCo, LLC (“SNR”) for the spectrum licenses they won in Auction 97.

In many respects, Auction 97 was a considerable success. The auction raised (in net bids) more than \$41 billion, with 31 winning bidders winning a total of 1,611 licenses. The amount raised was a record, vastly exceeding the approximately \$10 billion reserve price set by the Commission, and the auction proceeds will fund deployment of the nationwide public safety broadband network and contribute to federal deficit reduction.

¹ 47 C.F.R. §§ 1.939, 1.2108; *Wireless Telecommunications Bureau Announces that Applications for AWS-3 Licenses in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands are Accepted for Filing*, Public Notice, DA 15-503 (rel. Apr. 29, 2015) (“*Public Notice*”).

But the success of the auction should not obscure the misconduct of Northstar, SNR, and American AWS-3 Wireless I L.L.C. (“American I”), all of which are under the *de facto* control of DISH Network Corporation (“DISH”) and its controlling shareholders Charles and Cantey Ergen (collectively, the “DISH Entities”). The DISH Entities orchestrated a carefully crafted scheme to undermine the integrity of Auction 97, as an integral part of which DISH created Northstar and SNR, provided 98 percent of the funding for the licenses they won, and dictated their activities during the bidding process. Northstar and SNR were the vehicles by which DISH was able to suppress competitive bidding and obtain licenses at discounted prices to which it was not entitled – including two licenses in Vermont on which VTel actively bid.

As discussed in greater detail below, DISH arranged for Northstar and SNR to bid against each other and against DISH’s disclosed controlled entity, American I, to create the illusion that these bidding entities were independent of each other, when that was actually not the case. The scheme perpetrated by the DISH Entities led other bidders – including VTel – to believe erroneously that certain spectrum blocks were subject to more intense competition than was actually the case, which deterred VTel (and likely others) from submitting bids that were higher than the winning bids from Northstar and SNR. The DISH Entities also arranged for the prevailing bidder on each license they pursued to be either Northstar or SNR so the DISH Entities would benefit from the 25 percent bidding credit falsely claimed by Northstar and SNR as “very small business” entities.

The Commission cannot condone the conduct of the DISH Entities and thus should deny the Long-Form applications of Northstar and SNR. First, Northstar and SNR represented and certified that they were independent “very small business” entities entitled to a 25 percent bidding credit, when that was not the case. Northstar and SNR were ineligible for bidding

credits because, based on the Commission's totality of the circumstances test, they are under the *de facto* control of DISH, and thus DISH's average annual gross revenues of approximately \$14 billion are properly attributable to Northstar and SNR. The indicia of DISH's *de facto* control of Northstar and SNR include: (1) DISH provided nearly all of Northstar's and SNR's capital, financed nearly all of their total high bid commitments, and assumed responsibility for certain of their financial obligations; (2) the underlying agreements between the parties restricted the authority of Northstar and SNR to raise capital without DISH's approval; (3) Northstar and SNR could not take various operational activities without DISH's consent; (4) DISH has the authority and responsibility to manage the build-out and day-to-day operations of the Northstar and SNR wireless systems; and (5) DISH has the power to control Northstar's and SNR's business plans and budgets. These factors establish DISH's *de facto* control of Northstar and SNR under Commission precedent.

That DISH controls Northstar and SNR is further evidenced by the bidding conduct of the parties, which seemingly enabled DISH to dictate where, when, and how much Northstar and SNR bid. Although Northstar and SNR continue to hide the details from the public despite multiple amendments to their Long-Form applications, the evidence produced to date establishes that DISH dominated the bidding process, including having a representative in the same bidding location with Northstar and SNR and enjoying veto power over nearly all their bidding activities during the auction.

DISH's control over the bidding of Northstar, SNR, and American I is confirmed by their repeatedly placing exactly the same bids for the same licenses in the same markets in the same rounds. The placement of multiple simultaneous bids could not have occurred if Northstar and SNR were acting independently for their own business purposes. In later rounds, when Northstar

and SNR were the last two bidders on a license, they very rarely bid against each other. If acting independently, Northstar and SNR presumably would have economic incentives to outbid the other, which almost never happened.

Furthermore, the DISH Entities carefully coordinated their bidding to allow American I to exit from the auction without winning a single license. American I had bid on hundreds of licenses in the early rounds of Auction 97. However, it suddenly stopped bidding, and by the end of Round 22, American I did not hold a single license, courtesy of Northstar and SNR, which placed new bids on nearly all of the licenses for which American I was a provisional winner. This tactic, which again is inconsistent with independent activity and economic self-interest, enabled American I to exit the auction without any withdrawal payments or penalties and to replace its high bids with those from entities claiming a 25 percent bidding credit. The only reasonable conclusion that can be drawn from this bidding pattern is that DISH was controlling the activities of Northstar and SNR throughout the auction.

Despite being under the *de facto* control of DISH, Northstar and SNR did not accurately disclose their relationship with DISH or attribute DISH's gross revenues when certifying their eligibility for bidding credits in violation of Commission rules. The material misrepresentations and lack of candor exhibited by Northstar and SNR – in addition to their misconduct during the auction – are inconsistent with the basic character qualifications of a Commission licensee.

Second, the DISH Entities engaged in a collusive bidding scheme that would violate the federal antitrust laws if, as the DISH Entities contend, they are separate corporate entities. Through their bidding arrangements and auction activity, the DISH Entities were able to suppress price competition and divide geographic markets. Such conduct is a *per se* violation of

Section 1 of the Sherman Act and thus constitutes an independent basis for the Commission to deny Northstar's and SNR's Long-Form applications.

The conduct in which the DISH Entities engaged undermined Auction 97, harming VTel and likely other bidders in the process. All bidders were entitled to a fair auction in which participants played by the rules in securing the licenses that were available. Instead, bidders were victimized by the DISH Entities, which manipulated the auction process for their economic benefit. The DISH Entities' conduct also harmed customers of rural providers such as VTel, which lost a fair opportunity to win the A1 and B1 blocks for BEA004 that would have allowed VTel to bring additional mobile broadband services more readily to thousands of Vermont customers in remote areas of the State. VTel would have bid higher amounts for these licenses but for the pattern of coordinated auction bidding and illusory demand orchestrated by the DISH Entities.

VTel is sensitive to concerns about upsetting the results of Auction 97 and is not seeking to challenge every license won by Northstar and SNR or any license won by other entities. However, the Commission cannot condone the activities of the DISH Entities, nor should the Commission permit the DISH Entities to benefit from their improper conduct.

Under the circumstances, VTel respectfully requests that the Commission take the following action. First, the Commission should deny the Long-Form applications of Northstar and SNR. Second, the Commission should re-auction the licenses for the A1 and B1 blocks for BEA004, and any other license in a geographic area where another bidder can demonstrate that it was adversely impacted by the conduct of the DISH Entities, excluding the DISH Entities from participation in the re-auction and limiting qualified bidders to those entities that previously submitted a bid in the market being re-auctioned. Third, at the conclusion of any re-auction, the

Commission should require Northstar and SNR to pay any amounts that may be due under Section 1.2104(g)(2) of the Commission's rules. Fourth, for those licenses that are not re-auctioned, any licenses awarded to Northstar and SNR should be conditioned on their filing accurate Long-Form applications and repaying the bidding credits they received in Auction 97. Finally, the Commission should refer the activities of the DISH Entities to the Enforcement Bureau for investigation.

At a minimum, based on the evidence presented in this Petition, the Commission should find that there exist substantial and material issues of fact regarding the qualifications of Northstar and SNR and the conduct of the DISH Entities. Thus, the Commission should designate Northstar's and SNR's Long-Form applications for an evidentiary hearing pursuant to Section 1.2108(d)(3) of the Commission's rules.

II. STATEMENT OF INTEREST

Pursuant to Section 309(d) of the Communications Act, "[a]ny party in interest may file with the Commission a petition to deny any application."² The Commission repeatedly has recognized that "a competitor of an applicant qualifies as a party in interest."³ VTel is a provider of mobile communications services in Vermont, where it holds various licenses – including 700 MHz, Broadband Radio Service ("BRS"), broadband Personal Communications Services ("PCS"), and Advanced Wireless Service ("AWS") licenses – used to provide services in

² 47 U.S.C. § 309(d); *see also* 47 C.F.R. § 1.939(a) ("Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing").

³ *See, e.g.*, Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to John F. Garziglia, Esq., 28 FCC Rcd 12622 (MB 2013).

competition with any communications services that Northstar and SNR may offer using the licenses they acquired in Auction 97.⁴

Moreover, it is well established that a bidder in a Commission auction also qualifies as a party in interest.⁵ VTel was eligible to bid on various licenses in Auction 97 and actively participated in the auction process. In fact, VTel bid directly against the DISH Entities for several licenses that Northstar and SNR won in the state of Vermont.⁶ As a competing bidder and competitor, VTel is a party in interest with standing to file this petition to deny.

III. BACKGROUND

A. Overview of the Auction Process

On May 19, 2014, in accordance with Section 309(j)(3) of the Communications Act, the Wireless Telecommunications Bureau (“Bureau”) released a public notice announcing an auction of 1,614 licenses in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (collectively, the “AWS-3” bands).⁷ The Bureau established the procedures, reserve prices, and minimum opening bid amounts for the AWS-3 auction by public notice on July 23, 2014.⁸ Specifically, the Bureau adopted the Commission’s standard simultaneous multiple-round (“SMR”) auction format in a single auction event subject to uniform bidding procedures.⁹ The

⁴ Affidavit of Dr. J. Michel Guité at ¶ 7 (“Guité Affidavit”).

⁵ See, e.g., *High Plains Wireless v. FCC*, 276 F.3d 599 (D.C. Cir. 2002) (“[a] bidder in a government auction has a ‘right to a legally valid procurement process;’ a party allegedly deprived of this right asserts a cognizable injury”) (internal citations omitted).

⁶ Guité Affidavit at ¶ 19.

⁷ 47 U.S.C 309(j)(3); *Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014*, Public Notice, DA 14-669 (rel. May 19, 2014).

⁸ *Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014*, Public Notice, DA 14-1018 (rel. Jul. 23, 2014) (“*Auction Procedures Notice*”).

⁹ *Id.* at ¶ 4.

Bureau also adopted limited information disclosure procedures—namely, that information which may reveal the identities of bidders would be withheld until after the closing of bidding.¹⁰

In its *Auction Procedures Notice*, the Bureau determined that, for the AWS-3 auction, “a bidder with *attributed* average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid.”¹¹ Referencing the Commission’s designated entity rules, the Bureau also stated that the annual gross revenues of the following individuals and entities are *attributed*: the applicant, its “controlling interests,” its “affiliates,” “affiliates of its controlling interests,” and entities with which it has an “attributable material relationship.”¹² Each of those terms is defined in Section 1.2110(c) of the Commission’s rules.¹³

Consistent with past auctions, the Bureau reminded bidders that they remain subject to the Commission’s rules regarding prohibited communications as well as the antitrust laws. For example, the *Auctions Procedures Notice* stated that:

To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.¹⁴

¹⁰ *Id.*

¹¹ *Id.* at ¶ 82 (emphasis added).

¹² *Id.* at ¶ 84 (emphasis added).

¹³ 47 C.F.R. § 1.2110(c).

¹⁴ *Auctions Procedures Notice* at ¶ 36; *see also* 47 C.F.R. § 1.2109(d) (bidders who are found to have “violated the antitrust laws or the Commission’s rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount,

B. The Short-Form Applications

Short-form applications to participate in Auction 97 were due on September 12, 2014, and upfront payments were due on October 15, 2014.¹⁵ On or before that date, the Bureau received 80 such applications, including applications submitted by DISH—as an auction participant through its subsidiary, American I, and as a significant equity investor in Northstar and SNR through its subsidiaries American AWS-3 Wireless II L.L.C. (“American II”) and American AWS-3 Wireless III L.L.C. (“American III”).¹⁶ Northstar was formed on September 4, 2014, while SNR was formed on August 29, 2014 – eight days and fourteen days, respectively, before the short-form application deadline. Aside from their activity in Auction 97, neither Northstar nor SNR is engaged in any other lines of business, and has no operations, assets, or revenues.

In their applications, Northstar and SNR sought a 25 percent bidding credit as “very small businesses” and certified their eligibility to the Commission. In support of this request, both Northstar and SNR supplied ownership and revenue information pursuant to Sections 1.2112 and 1.2110 of the Commission’s rules.¹⁷ According to their short-form applications, both Northstar and SNR are similarly structured: both entities are limited liability companies with no officers or directors, and both entities have one member that also does not have any officers or directors. Ownership of the sole member is bifurcated in both cases—DISH, through its

(footnote cont’d.)

and may be prohibited from participating in future auctions”).

¹⁵ *Auctions Procedures Notice* at ¶ 60.

¹⁶ *See Northstar Wireless, LLC*, Form 175, ULS File No. 0006458325 (“Northstar Short-Form”); *SNR Wireless LicenseCo, LLC*, Form 175, ULS File No. 0006458318 (“SNR Short-Form”); *American AWS-3 Wireless I LLC*, Form 175, ULS File No. 0006458188 (“American I Short-Form”).

¹⁷ 47 C.F.R. §§ 1.2110, 1.2112.

subsidiaries American II and American III, holds 85 percent of the equity in each sole member, while a second limited liability company holds the remaining 15 percent. In both cases, the 15 percent equity holder serves as the general manager of the sole member and thus of the applicant.

The applications represented that DISH was a purely passive investor that could not exercise any control over either Northstar or SNR.¹⁸ Consistent with this representation, neither Northstar nor SNR attributed any revenues of DISH or its affiliates for purposes of determining eligibility for designated entity benefits. Instead, Northstar certified that the average annual gross revenues of Northstar, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it had any attributable material relationship, were zero dollars on a cumulative basis for the preceding three years.¹⁹ SNR certified that the average annual gross revenues of SNR, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, were \$399,566 on a cumulative basis for the preceding three years.²⁰ Both applications certified pursuant to Section 1.2110(o) of the Commission's rules that the gross revenues set forth in the applications were true, full, and accurate.

In addition to ownership and revenue information, the Short-Form applications for Northstar and SNR disclosed a variety of agreements between the entities and certain DISH

¹⁸ Northstar Short-Form at Exhibit A; SNR Short-Form at Exhibit A.

¹⁹ Northstar Short-Form at Exhibit B.

²⁰ SNR Short-Form at Exhibit B. This calculation was based on the gross revenues of John Muleta, the CEO of Atelum LLC, which is the sole manager of SNR Wireless Management, LLC, which holds 15 percent of all member interests in SNR Wireless HoldCo, LLC, which is SNR's sole member and manager member. SNR claimed zero average gross revenues from SNR Wireless Management LLC, SNR Wireless HoldCo, and SNR. *Id.* at 1-3.

Entities.²¹ These included management services agreements, LLC agreements, trademark license agreements, and certain pledge and credit agreements, among others. A brief summary of the agreements was provided with the applications.

Both Northstar and SNR also disclosed the existence of a Bidding Protocol and Joint Bidding Arrangement with DISH (through its affiliates). Their disclosure revealed that the DISH Entities “will be deemed to have knowledge of the other’s bids” and that their “coordination will be effected by communications among authorized representatives of the parties at regular intervals during the auction.”²² Although not disclosed in their Short-Form applications, the Bidding Protocol and Joint Bidding Agreements contained a “Schedule II” that listed the licenses upon which the companies would bid during the auction. This Schedule II provided not only a list of “Target” licenses but also a “preferred priority order” for acquiring the licenses, associated upfront payments to be made by each company, a maximum price for each license, and an overall bidding cap. Northstar and SNR were required to use their “reasonable best efforts” to acquire the licenses on—in the order set forth in—Schedule II.²³

However, the bidding arrangements to which the DISH Entities had agreed also provided a process for securing authorization to deviate from Schedule II, but only with the prior written approval of all other members of the relevant Auction Committees. Thomas Cullen, Executive Vice President—Corporate Development for DISH, was a member of both the Northstar and

²¹ Northstar Short-Form at Exhibit C; SNR Short-Form at Exhibit C.

²² See Northstar Short-Form, Exhibit C, at 27-28; SNR Short-Form, Exhibit C, at 25-26.

²³ See *Northstar Wireless, LLC*, Form 601, ULS File No. 0006670613 (“Northstar Long-Form”), at Exhibit D, Bidding Protocol and Joint Bidding Arrangement, Schedule II (dated Sep. 12, 2014) (“Northstar JBA”); *SNR Wireless LicenseCo, LLC*, Form 601, ULS File No. 0006670667 (“SNR Long-Form”), at Exhibit D, Bidding Protocol and Joint Bidding Arrangement, Schedule II (dated Sep. 12, 2014) (“SNR JBA”).

SNR Auction Committees and thus enjoyed veto power over any deviations to the agreed upon bidding plans.²⁴

VTel also submitted a short-form application to participate in the AWS-3 auction as a “small business” eligible for a 15 percent bidding credit.²⁵ On October 30, 2014, the Commission released a public notice identifying American AWS-3 Wireless, Northstar, SNR, and VTel Wireless as qualified bidders in Auction No. 97.²⁶

C. The Auction

Auction 97 began on November 13, 2014. In round 1 of the auction, VTel placed bids on licenses for the A1, B1, H, I and J blocks for BEA004 and for the G block in CMA248. Both BEA004 and CMA248 cover Burlington, Vermont, which is one of the primary geographic markets served by VTel.²⁷

VTel’s initial bid for the AWS-3 license for the A1 block in BEA004 was \$41,000. There were no competing bids for this license until round 17. In round 17, a second bid was placed of \$45,000. Because of the Commission’s anonymous bidding rules for Auction 97, VTel did not and could not know the identity of the second bidder.²⁸

In light of the higher bid, VTel raised its bid for the A1 block license in round 18 to \$52,000. A competing bid of \$52,000 was placed by another bidder in that same round. Accordingly, VTel raised its bid again in round 19 to \$62,000, and, again, a matching bid was

²⁴ See Northstar JBA at § 2(c), Schedule I; SNR JBA at § 2(c), Schedule I.

²⁵ *VTel Wireless, Inc.*, Form 175, ULS File No. 0006458438 (“VTel Short-Form”); Guité Affidavit at ¶ 8.

²⁶ *Auction of Advanced Wireless Services (AWS-3) Licenses, 70 Bidders Qualified to Participate in Auction 97*, Public Notice, DA 14-1564 (rel. Oct. 30, 2014); Guité Affidavit at ¶ 9.

²⁷ Guité Affidavit at ¶ 10.

²⁸ Guité Affidavit at ¶ 11.

placed by another bidder in the same round. In round 20, VTel raised its bid to \$74,000 in light of the previous matching bid. At this point, VTel believed that it was competing with one other bidder for this license and was prepared to continue bidding in order to win the license.²⁹

However, the bidding for the A1 block license changed dramatically after round 20. In round 21, three new bids were placed for the license. VTel routinely monitors the number of bidders and take this information into account in its bidding strategy. VTel interpreted the bidding activity in round 21 to mean that the company faced competition from three different bidders for the spectrum, rather than just the one bidder against which VTel had been competing in prior rounds. Judging that the significant competition for the spectrum from three bidders would drive up the price to levels VTel could not afford, VTel dropped out of the bidding.³⁰

This same pattern played out in the bidding for the B1 block in BEA004. VTel's initial bid for this license was \$82,000. There were no competing bids for this license until round 17. In round 17, a second bid was placed of \$90,000. Because of the Commission's anonymous bidding rules for Auction 97, VTel did not and could not know the identity of the second bidder.³¹

In light of the higher bid, VTel raised its bid for the B1 block license in round 18 to \$104,000. In round 19, competing bids of \$122,000 were placed by three bidders in that same round. VTel raised its bid again in round 20 to \$146,000, and, again, a matching bid was placed

²⁹ Guité Affidavit at ¶ 11

³⁰ Guité Affidavit at ¶ 13.

³¹ Guité Affidavit at ¶ 15.

by another bidder in the same round. In round 21, three bidders submitted identical bids of \$175,000.³²

Based on the bidding activity in both rounds 19 and 21, VTel believed that it faced competition from three different bidders for the B1 block. Judging that the significant interest in the spectrum from three different bidders would drive up the price to levels it could not afford, VTel dropped out of the bidding.³³

Evidence obtained after the close of the auction revealed that American I, Northstar, and SNR all placed identical bids on the A1 and B1 blocks on which VTel had bid. By placing triple bids, these entities created the false impression of more robust demand for the license, which deterred VTel from continuing to bid and caused it to drop out of the bidding.³⁴

Even though VTel is an experienced bidder, having participated and won licenses in nearly every spectrum auction conducted by the Commission, VTel did not win any licenses in Auction 97. The intensity of the sudden influx of competition, with two and three bidders suddenly arriving at the auction simultaneously at a price point where there might normally be one other bidder, or no other bidders, was outside the ordinary, and, in VTel's experience, unprecedented. As a result of the unexpected high demand by multiple bidders – demand that, in reality, was artificial – VTel made the decision to cease bidding for the A1 and B1 blocks.³⁵

VTel intended to use the A1 and B1 blocks to augment its 4G/LTE radios, tower sites, backhaul, and other mobile technologies VTel has in place today, which would have allowed VTel to bring mobile broadband services more readily to thousands of Vermont customers in

³² Guité Affidavit at ¶ 16.

³³ Guité Affidavit at ¶ 17.

³⁴ Guité Affidavit at ¶ 18.

³⁵ Guité Affidavit at ¶ 20.

remote areas of the State. VTel would have bid higher amounts for both the A1 and B1 blocks but for the false impression of greater interest in these licenses created by the unfair bidding conduct of the DISH Entities. As a result, the pattern of coordinated auction bidding and illusory demand orchestrated by the DISH Entities harmed VTel, its customers, as well as the United States' Treasury.³⁶

The Commission completed its auction of AWS-3 licenses on January 29, 2015, after 341 rounds of bidding spanning 45 days. Although DISH did not itself win a single license at auction—American I exited the auction following rounds 20-22—Northstar and SNR bid more than \$10 billion and claimed more than \$3 billion in bidding credits to acquire 25 MHz of spectrum, roughly 39 percent of the entire quantity of spectrum auctioned. Together, Northstar and SNR claimed 702 licenses and received 93 percent of the total designated discounts (\$3.3 billion out of \$3.6 billion).³⁷ And while more than half of the qualified bidders in Auction 97 were rural telephone companies, their affiliates or subsidiaries, or bidding groups comprised of these entities, only 11 had winning bids, obtaining only 25 of the 1,611 AWS-3 licenses and claiming only \$871,350 in bidding credits.³⁸

D. The Long-Form Applications

Northstar and SNR timely filed their Long-Form applications on February 13, 2015. Both applications were amended repeatedly before being accepted for filing by the Commission

³⁶ Guité Affidavit at ¶ 21.

³⁷ See Letter from Kathleen Grillo, Senior Vice President – Federal Regulatory and Legal Affairs, Verizon, to Marlene Dortch, Secretary, FCC, WT Docket No. 14-170, Attachment 1, at 3 (filed April 24, 2015) (“*Verizon Letter*”).

³⁸ Comments of the Blooston Rural Carriers, WT Docket No. 14-170 (filed Feb. 20, 2014).

on April 29, 2015. The Northstar Long-Form application was amended five times, while the SNR Long-Form application was amended six times.

The Long-Form applications reiterated the claims in the Short-Form applications and included further certifications as to Northstar's and SNR's ownership disclosures and bidding credit eligibility. Both Long-Form applications reasserted Northstar's and SNR's eligibility for a 25 percent bidding credit, claiming again that DISH held only a passive, non-controlling interest in either entity.

IV. ARGUMENT

A. **Northstar And SNR Violated Commission Rules By Misrepresenting Their Relationship With DISH And Failing To Attribute DISH's Revenues In Claiming Bidding Credits.**

1. **DISH has *de facto* control of Northstar and SNR based on the totality of the circumstances.**

While the DISH Entities went to great lengths to create a paper trail that purports to evidence a lack of *de facto* control by DISH over Northstar and SNR, the facts establish otherwise. The Commission repeatedly has stated that its analysis of *de facto* control is necessarily case-by-case and governed by the totality of the circumstances.³⁹ There is “no exact formula” for ascertaining whether *de facto* control exists,⁴⁰ because the inquiry “involves an

³⁹ See, e.g., *Ellis Thompson Corporation*, Memorandum Opinion and Order and Hearing Designation Order, 9 FCC Rcd 7138, ¶ 10 (1994) (“*Ellis Thompson Corporation*”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 447, ¶ 80 (1994) (“Fifth MO&O”). Indeed, even with respect to traditional factors such as board control, control over personnel, and the role in management decisions, the Commission has emphasized “that these criteria are guidelines only and are not necessarily dispositive of the issue of *de facto* control in all situations. Even where these criteria are met, therefore, the determination of whether *de facto* control exists will depend on the totality of the circumstances in the particular case.” *Id.*

⁴⁰ *Ellis Thompson Corporation* at ¶ 10.

issue of fact which must be resolved by the special circumstances presented.”⁴¹ Moreover, in the context of an application for an initial license won at auction, an applicant’s “representations as to its intention and related contractual provision are relevant, but the weight to be ascribed to these representations must be evaluated in the light of the entire conduct.”⁴²

Based on the totality of the circumstances, the Commission should find that DISH has *de facto* control of Northstar and SNR. Indeed, such a finding is compelled by the Commission’s *Baker Creek Order*, the facts of which are strikingly similar to those involving DISH and its related entities.

In its *Baker Creek Order*, the Commission found that an investor – Hyperion – had *de facto* control of the applicant – Baker Creek – and thus Hyperion’s gross revenues were properly attributable to Baker Creek.⁴³ Because attributing those revenues increased Baker Creek’s revenues above the small business cap, Baker Creek was required to pay back the full bidding credit as a condition to receiving its licenses.⁴⁴

In determining that Hyperion had *de facto* control of Baker Creek, the Commission relied upon various factors, including: (1) Hyperion was “the source of all but a negligible amount of Baker Creek’s capital” and financed not only Baker Creek’s up front auction payment but most of its total high bid commitments; (2) the agreements between the parties restricted Baker Creek’s authority to raise capital without Hyperion’s approval; (3) Baker Creek could not take various actions without Hyperion’s consent, including selling any debt or equity interest,

⁴¹ *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 819, ¶ 7 (1975).

⁴² *Application of Baker Creek Communications, LP*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18714 ¶ 8 (1998) (“*Baker Creek Order*”); *see also In the Matter of PVT Networks, Inc.*, Order on Reconsideration, 16 FCC Rcd 13155, 13159 ¶ 12 (2001).

⁴³ *Baker Creek Order* at ¶¶ 31-32.

⁴⁴ *Id.* at ¶ 32.

acquiring assets, or initiating or settling any litigation; (4) Hyperion had the responsibility to build and manage the wireless system, under a business plan that it itself authorized, and thus had an impermissible level of control over daily operations; and (5) Hyperion had the power to control Baker Creek's business plan and budget.⁴⁵

These same factors confirm DISH's *de facto* control of Northstar and SNR. First, according to DISH's February 20, 2015 Form 8-K filing with the Securities and Exchange Commission ("SEC"), DISH provided a total of approximately 98 percent (\$9.8 billion) of the net bid amounts paid by Northstar and SNR (\$10 billion) through loans and equity contributions.⁴⁶ Furthermore, under the various agreements disclosed with the Long-Form applications of Northstar and SNR, DISH remains liable for certain financial obligations of Northstar and SNR, which is an indicator of *de facto* control.⁴⁷ For example, if Northstar and SNR fail to qualify for designated entity benefits for any reason, the agreements contemplate that the relevant DISH subsidiaries will "promptly pay to the FCC, on behalf of the [designated entity], an amount equal to the aggregate amount of all payments due to the FCC ...(including

⁴⁵ The Commission also found that Hyperion was "actively involved in Baker Creek's bidding" and that Baker Creek "availed itself of the use of Hyperion's bidding facilities." It stated that "the fact that Hyperion may have dominated the bidding process, which is a prerequisite for applying for an LMDS license, is relevant to the inquiry of who has control over the applicant." But because the FCC found that Hyperion exercised control based on other grounds, it did not decide whether the parties' bidding behavior also demonstrated that Hyperion had *de facto* control of Baker Creek. *See Baker Creek Order* at ¶ 30, n.152.

⁴⁶ *See* DISH Network Corporation, United States Securities and Exchange Commission Form 8-K, at 2-3 (filed Feb. 20, 2015).

⁴⁷ *See, e.g.,* Northstar Long-Form, Exhibit D, Limited Liability Company Agreement of Northstar Spectrum, LLC by and between Northstar Manager, LLC and American AWS Wireless II LLC, § 11.4 (dated as of Sep. 12, 2014) ("Northstar Spectrum Agreement"); SNR Long-Form, Exhibit D, First Amended and Restated Limited Liability Company Agreement of SNR Wireless Holdco, LLC, by and between SNR Wireless Management, LLC, John Muleta, and American AWS-3 Wireless III LLC, § 11.4 (dated as of Oct. 13, 2014) ("SNR Holdco Agreement").

any unjust enrichment payment).”⁴⁸

Second, neither Northstar nor SNR has the authority to raise capital without DISH’s approval. Specifically, DISH’s prior consent is required before Northstar or SNR can offer, issue, purchase, or repurchase equity interests or securities.⁴⁹

Third, the agreements restrict Northstar and SNR from taking a wide range of actions without DISH’s prior approval. For example, DISH’s consent is required before either Northstar or SNR can: (i) incur indebtedness in excess of ten percent of the annual budget; (ii) merge, combine, or consolidate; (iii) initiate any bankruptcy proceeding; (iv) acquire any significant portion of assets from another person or form any partnership or joint venture; (v) change its business purpose; (vi) authorize or adopt any amendment to corporate formation documents; (vii) agree to pay any director, officer, employee, or agent \$200,000 or more in a twelve-month period; (viii) acquire any new spectrum licenses; (ix) make any expenditure in excess of certain specified amounts; or (x) sell any asset outside the ordinary course of operation, among others.⁵⁰

Fourth, DISH has the duty and authority to manage the build-out and day-to-day operations of any Northstar and SNR wireless systems.⁵¹ Specifically, a DISH subsidiary will

⁴⁸ *Id.*

⁴⁹ Northstar Spectrum Agreement at § 6.3; SNR Holdco Agreement at § 6.3.

⁵⁰ *See id.* These restrictions go beyond mechanisms that are designed to protect non-majority or non-voting shareholders, without such shareholders being deemed to be in *de facto* control. *See, e.g., NextWave Personal Communications*, 12 FCC Rcd 2030 (WTB 1997). For example, while a provision that requires a supermajority or similar mechanism to change compensation for senior management may not indicate *de facto* control, DISH controls the compensation of every director, officer, employee, or agent of Northstar and SNR above a specified threshold.

⁵¹ Northstar Long-Form, Exhibit D, Management Services Agreement by and between American AWS-3 Wireless II LLC and Northstar Wireless, LLC, § 2.1 (dated Sep. 12, 2014) (“Northstar Management Services Agreement”); SNR Long-Form, Exhibit D, Management Services Agreement by and between American AWS-3 Wireless III LLC and SNR Wireless

arrange for (a) administrative, accounting, billing, credit, collection, insurance, purchasing, clerical, and other general services necessary to administer the wireless systems of Northstar and SNR; (b) operational, engineering, construction, maintenance, repair, and other technical services; (c) marketing, sales, advertising, and other promotional services; and (d) assistance in the preparation of filings with regulatory authorities and negotiation of transactions involving the AWS-3 licenses.⁵²

Fifth, DISH has the power to control Northstar's and SNR's business plans and budgets. Specifically, Northstar and SNR are prohibited from taking any action inconsistent with the business plans they develop in consultation with DISH and cannot enter into any agreement or arrangement involving a payment or liability greater than 10 percent of their annual budgets.⁵³

In short, under the traditional factors the Commission considers under its totality of the circumstances test, DISH has *de facto* control of both Northstar and SNR.

2. DISH's *de facto* control of Northstar and SNR is confirmed by the parties' bidding activities.

In addition to the foregoing indicia of control, DISH's *de facto* control of Northstar and SNR is underscored by the conduct of the parties during the auction.⁵⁴ This conduct includes:

(footnote cont'd.)

LicenseCo, LLC, § 2.1 (dated Sep. 12, 2014) ("SNR Management Services Agreement").

⁵² *See id.*

⁵³ Northstar Spectrum Agreement at §§ 6.3, 6.5; SNR Holdco Agreement at §§ 6.3, 6.5.

⁵⁴ Consistent with the *Baker Creek Order*, the conduct of the DISH Entities during the auction is relevant to the Commission's control analysis, particularly when the structure of Northstar and SNR does not lend itself to conventional control analysis. For example, Northstar and SNR and their immediate controlling entities have manager members and thus are not governed by a board of directors or management committee. *See* 47 C.F.R. § 1.2110(c)(2)(A). Likewise, because neither Northstar nor SNR is engaged in any lines of business and has no operations, assets, or revenues – apart from the spectrum acquired in Auction 97 – there are no “day-to-day activities to oversee” and no “management decisions” to be made, at least in the near term, now that the auction is complete. *See* 47 C.F.R. § 1.2110(c)(2)(B), (C).

(1) DISH's dominance of the bidding activities of Northstar and SNR, including having a representative physically present in the same location with Northstar and SNR as well as enjoying veto power over deviations from the bidding plans to which the DISH Entities had agreed; (2) coordinated bidding by the DISH Entities that resulted in Northstar, SNR, and American I repeatedly placing exactly the same bids for the same licenses in the same markets in the same rounds; (3) the acceptance of random assignments by Northstar and SNR for their mutual benefit in lieu of bidding against one another; and (4) DISH's handoff of licenses to Northstar and SNR in exiting the auction early, creating a multi-billion dollar windfall to DISH.

As an initial matter, the documents filed with the Northstar and SNR Long-Form applications demonstrate that DISH dominated the bidding process. Specifically, Schedule II to the Bidding Protocol and Joint Bidding Arrangement executed by DISH with each Northstar and SNR specified the licenses upon which the companies would bid, a "preferred priority order" for acquiring the licenses, associated upfront payments to be made by the company, a maximum price for each license, and an overall bidding cap.⁵⁵ Although the agreements provided for flexibility during the auction, that flexibility was controlled by DISH. Specifically, the Bidding Protocol and Joint Bidding Arrangement included a process for securing authorization to deviate from Schedule II; pursuant to this process, the Bidding Manager (Allen Todd for Northstar and John Muleta for SNR) could bid on licenses not in Schedule II or exceed the Schedule II maximums "only with the prior written approval of all other members of the Auction Committee."⁵⁶ Given that the respective Auction Committees of Northstar and SNR included Thomas Cullen, Executive Vice President—Corporate Development for DISH, DISH could veto

⁵⁵ See Northstar JBA at Schedule II; SNR JBA at Schedule II.

⁵⁶ Northstar JBA at §2(c); SNR JBA at §2(c).

any deviations to the agreed upon bidding plans of the parties, even when such deviations were in the best interests of Northstar or SNR.

Although not disclosed in the Bidding Protocol and Joint Bidding Arrangement, it also appears from the bidding records submitted as part of Northstar's and SNR's multiple amendments to their Long-Form applications that representatives of DISH, Northstar, and SNR were physically present in the same location during the auction. As just one example, prior to Round 19, which ran from 4:00 p.m. to 5:00 p.m. on November 19, 2014, Mr. Cullen signed documents authorizing Northstar and SNR to depart from the original Schedule II (the "Round 19 Change Orders"). Because Round 18 closed at 3:00 p.m. on November 19, 2014, obtaining such authorization required that Northstar and SNR: (i) review the Round 18 results; (ii) determine the need to deviate from prior auction arrangements for Round 19; (iii) prepare a multi-page, multi-billion dollar list of proposed bids for Round 19 (Northstar's list was nine pages long, valued at \$3.5 billion, and SNR's list was eight pages, valued at \$3.3 billion); (iv) provide the list to the respective Auction Committees; (v) allow DISH to examine the impact of the presumably increased commitments; (vi) obtain Mr. Cullen's original signature; and (vii) enter, verify, and submit these bids prior to the 5:00 p.m. deadline.

It would seem almost impossible to complete these tasks in the allotted time unless Mr. Cullen was physically present at the same location where Northstar and SNR were bidding or otherwise in constant communication. If the DISH Entities were bidding from the same location, which seems to be a plausible conclusion based on the available records, the practical ability of DISH to dictate the parties' bids becomes even more sinister.⁵⁷

⁵⁷ The fact that both Northstar and SNR decided to redact the time stamp from the bid proposals attached to their respective Round 19 change orders raises an inevitable question that remains unanswered: why redact this information unless the DISH Entities are trying to obscure

DISH’s direction of the bidding is further evidenced by the sheer number of change orders by Northstar and SNR to the Schedule IIs—including deviations in the very first round of bidding in the case of SNR. Even assuming Northstar and SNR had independently conceived a bidding plan (which does not appear to be the case, as discussed below), the slightest deviation in those plans required DISH’s approval. Indeed, the change orders had to be “proposed” by the bidding entity—either John Muleta from SNR or Allen Todd from Northstar—but approved by a DISH executive, Mr. Cullen. The Commission often has objected to minority shareholder rights such as vetoes over extraordinary expenses when those limits are set so low as to afford a party veto rights over all expenses – a principle that applies equally here.⁵⁸ To the extent the theoretically independent “bidding plans” of Northstar and SNR triggered near constant approval rights that were, effectively, solely in the hands of a DISH executive, there can be no question that DISH enjoyed actual control of Northstar’s and SNR’s bidding.

Indeed, Northstar, SNR, and American I repeatedly placed exactly the same bids for the same licenses in the same markets in the same rounds, which would not have occurred unless DISH was directing their bidding activity. In later rounds, when Northstar and SNR were the last two bidders on a license, they very rarely bid against each other. If acting independently,

(footnote cont’d.)

that a DISH representative was physically present in the same location during the auction? VTel can conceive of no legitimate purpose for redacting the time stamps—much less each company independently determining that the time stamps should be redacted – since there appears to be no commercial sensitivity whatsoever to the time when the documents were prepared.

⁵⁸ See, e.g., *Baker Creek Order* at ¶ 30; see also *Applications of Quincy D. Jones and Quest Broadcasting LLC*, Memorandum Opinion and Order, 11 FCC Rcd 2481, ¶ 29 (1995) (clarifying that the right to participate in extraordinary corporate actions is ordinarily non-attributable so long as narrowly circumscribed).

Northstar and SNR presumably would have economic incentives to outbid the other. However, this almost never happened.⁵⁹

Likewise, the acceptance of random assignments by the DISH Entities cannot be explained except as the byproduct of DISH's control of Northstar and SNR. Under the procedures governing the auction, in cases when two or more bidders submitted the same bid, the provisionally winning bidder was determined by a random number generator. The DISH Entities often submitted multiple, identical bids in the same round, apparently as a tactic to scare off competition. Yet, in the overwhelming majority of cases where identical bids were submitted by Northstar and SNR, they elected to allow the results to stand and did not choose to outbid one another. Indeed, according to an analysis conducted by the former Chief Economist for the Commission, rather than competing, Northstar and SNR "accepted" the Commission's random assignment of one of them as the randomly picked provisionally winner after they each bid the same amount for 27 percent of the licenses they won at auction (190 licenses); this phenomenon occurred only five other times in the AWS-3 auction for all other bidders.⁶⁰

If Northstar and SNR supposedly acted in their own economic self-interest—as the underlying agreements purport to reflect and their Commission filings represent—the idea that each of these entities got the markets they desired through these random coin-flips is astronomically small. The inexorable conclusion is that neither Northstar nor SNR was acting in

⁵⁹ In addition to suppressing competition, the placement of multiple bids on the same licenses in the same round adversely impacted the auction in other demonstrable ways by allowing the DISH Entities to: (1) utilize the unpaired blocks to store freely bid units between rounds that could be redeployed for the paired blocks in a coordinated fashion; (2) lower the "effective" activity requirement relative to other bidders; and (3) delay expressing their true intentions on a large portion of their bidding units. *See* Letter from Joan Marsh, AT&T, to Marlene Dortch, Secretary, FCC, WT Docket No. 14-170, Attachment at 5-11 (filed Feb. 20, 2015).

⁶⁰ *Verizon Letter*, at 2.

its own self-interest but coordinated and allocated licenses during the auction under the direction of DISH.

DISH's ability to exit the auction early, without risk and without penalty, by handing off the licenses to Northstar and SNR is further evidence of DISH's *de facto* control. Specifically, when American I exited the auction following round 20 when it was the high bidder on several hundred licenses, Northstar and SNR topped American I's previous high bids and replaced American I on 91 percent of the licenses in these rounds which American I had provisionally won.⁶¹ This arrangement allowed DISH to avoid the risk of having to pay for any of these licenses and permitted Northstar and SNR to become the high bidders at a 25 percent lower price, "saving" DISH more than \$3 billion. Because it seems unlikely to the point of being almost inconceivable that Northstar and SNR would help DISH in this manner if they were acting independently in their own economic self-interest, this coordinated exit strategy confirms the dominance of DISH over the bidding activities of Northstar and SNR.

3. Northstar and SNR made material misrepresentations to the Commission and exhibited a lack of candor in their license applications.

Because they were under the *de facto* control of DISH, Northstar and SNR were required to disclose DISH as an "Affiliate" and a "Controlling Interest" in both their Short- and Long-Form applications and to attribute DISH's average gross revenues over the past three years in establishing their eligibility for bidding credits.⁶² Northstar and SNR failed to make these required disclosures and attributions. Likewise, Northstar and SNR affirmatively certified that

⁶¹ *Id.*

⁶² *See, e.g.*, 47 C.F.R. § 1.2110(c)(2) ("Controlling Interests" include individuals or entities that have control over the applicant under the principles of either *de jure* or *de facto* control); *see also* 47 C.F.R. § 1.2110(b).

their disclosures were correct, even though that was not the case. By virtue of these false representations and certifications, Northstar and SNR received bidding credits to which they were not entitled. The material misrepresentations and lack of candor on the part of the DISH Entities – in addition to their scheme to undermine the integrity of the auction – are inconsistent with the basic character qualifications of a Commission licensee and violate the Commission’s rules.⁶³

Section 1.17(a)(2) of the Commission’s rules provides that no person shall, “in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁶⁴ The rule applies to any applicant for any Commission authorization.⁶⁵ The Commission has explained a false statement may constitute an actionable violation of Section 1.17—even absent the intent to deceive—if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.⁶⁶

⁶³ See, e.g., *Worldcom, Inc.*, 18 FCC Rcd 26484, ¶ 13 (2003) (endorsing the use of the Commission’s character policy in the wireless and other common carrier contexts); see also *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, ¶ 60 (1986), *modified*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *recon. granted in part*, Memorandum Opinion and Order, 6 FCC Rcd 3488 (1991), *modified in part*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992) (“*Character Policy Statement*”); see also *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243 (Rev. Bd. 1972); *Nick J. Chaconas*, Decision, 28 FCC 2d 231 (Rev. Bd. 1971).

⁶⁴ 47 C.F.R. § 1.17(a)(2).

⁶⁵ *Id.* at (b)(1).

⁶⁶ See *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4017 ¶ 4 (stating

The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”⁶⁷ Full and clear disclosure of all material facts in an application is essential to the efficient administration of the Commission’s licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide.

In the instant case, the claim for bidding credits by Northstar and SNR in both their Short-Form and Long-Form applications was premised upon their representations that they were “very small businesses.” In connection with these representations, Northstar and SNR were required to provide the Commission full and complete information, including information relating to gross revenues and information about all entities having an attributable interest in the bidding entities. However, both entities omitted information about DISH, which is an affiliate and controlling interest. By doing so, Northstar and SNR provided “incorrect” and “misleading” material factual information about their ownership interests and gross revenues in violation of section 1.17(a)(2). Indeed, Northstar and SNR seemingly have engaged in a continued pattern of obfuscation and misdirection, incrementally disclosing information about the nature and extent of their relationship with DISH through a number of amendments to their Long-Form applications, presumably made only at the direction of the Bureau. The problem is that each of these new disclosures suggests more, instead of less, culpability.

(footnote cont’d.)

that the revision of Section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

⁶⁷ See, e.g., *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (internal citation omitted).

Northstar and SNR also made several certifications in their applications that were false, or, at a minimum, made without a reasonable basis for believing that the statements were correct and not misleading. Section 1.2105 of the Commission’s rules requires an applicant that applies as a designated entity to provide a declaration under penalty of perjury that it is qualified as a designated entity under Section 1.2110.⁶⁸ In their short-form applications, Northstar and SNR certified that they provided gross revenues for all relevant interests, a statement that clearly was not true. In addition, in their long-form applications, Northstar and SNR certified that “all statements made in the application and in the exhibits, attachments, or documents incorporated by reference are material, are part of [the] application, and are true, complete, correct, and made in good faith” – a certification that was not true.

This is not a situation where an applicant was merely careless or inexperienced in complying with complex Commission rules. The DISH Entities are sophisticated parties with access to significant resources. They understood their legal disclosure obligations to the Commission and the rules of auction, going to considerable time and expense to create Northstar and SNR and establish a paper record that purported to reflect their independence. However, the DISH Entities proceeded to engage in a scheme to enjoy the benefit of approximately \$3.3 billion in bidding credits by misrepresenting the *de facto* control of DISH and failing to attribute DISH’s revenues to Northstar and SNR. This case represents a carefully orchestrated attempt to circumvent the Commission’s rules and federal antitrust laws, which the Commission should not condone.

⁶⁸ 47 C.F.R. § 1.2105.

B. The DISH Entities Exhibited Collusive Behavior In Violation Of The Antitrust Laws.

The bidding patterns of Northstar, SNR, and American I evidence a collusive bidding scheme by which the parties fixed prices and allocated markets, which represents anticompetitive conduct prohibited by the antitrust laws.⁶⁹ As ostensible competitors, the agreement by Northstar, SNR, and American I about the licenses on which they would bid, the rounds in which they would bid, and the amount of their bids constitutes bid rigging, which is a *per se* violation of Section 1 of the Sherman Act.⁷⁰

Collusive bidding is particularly pernicious because it is considerably easier for the colluding parties to enforce and thus more difficult for regulators to detect.⁷¹ Indeed, federal sentencing guidelines provide an enhancement for bidding rigging as compared to ordinary price fixing because the antitrust laws punish “more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of the crime.”⁷²

⁶⁹ See, e.g., P. Areeda and H. Hovenkamp, *Antitrust Law*, ¶¶ 2005-2006 (3rd ed. 2012).

⁷⁰ See 15 U.S.C. § 1 (“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal”); *United States v. David E. Thompson, Inc.*, 621 F.2d 1147, 1149-50 (1st Cir. 1980); *United States v. Brighton Building & Maintenance Co.*, 598 F.2d 1101, 1103, 1106 (7th Cir.), *cert. denied*, 444 U.S. 840, 62 L. Ed. 2d 52, 100 S. Ct. 79 (1979); *United States v. Mobile Materials, Inc.*, 881 F.2d 866 (10th Cir. 1989), *cert. denied*, 493 U.S. 1043 (1990); *United States v. Portsmouth Paving Corp.*, 694 F.2d 312, 325 n.18 (4th Cir. 1982) (“Collusive bidding is ‘an agreement between competitors in a bidding contest to submit identical bids or, by preselecting the lowest bidder, to abstain from all bona fide effort to obtain the contract’”) (quoting 1 R. Callmann, *The Law of Unfair Competition, Trademarks and Monopolies* 203 (4th ed. 1981)).

⁷¹ See *Antitrust Law* at ¶ 2005b (“bid-rigging has been treated with greater hostility than price fixing generally”).

⁷² *United States v. Heffernan*, 43 F.3d 1144, 1148 (7th Cir. 1994).

In those markets where Northstar and SNR won licenses in Auction 97, the effect of the collusive bidding scheme in which they were engaged with DISH was to permit Northstar and SNR to acquire AWS-3 spectrum at anticompetitive prices. For example, in the A1 and B1 blocks on which VTel actively bid, the collusive bidding of the DISH Entities suppressed price competition by creating the false impression that multiple other parties were interested in these licenses and by generally avoiding bidding against one another. The result was to deprive federal taxpayers of the full amount of funds that would have been received under a competitive auction not tainted by the collusive bidding activities of the DISH Entities.

That the DISH Entities may have disclosed their bidding arrangements in their Short-Form applications is both inaccurate as well as irrelevant. While Northstar and SNR included certain high-level information about their bidding agreements at the outset of the auction, they did not disclose their scheme to fix prices or allocate markets, nor did they inform the Commission of the extent to which DISH would dictate their bidding activities. And, in any event, as the Commission has repeatedly made clear, such disclosures do not insulate parties from antitrust violations.⁷³

Equally irrelevant is that there has been no finding by a court that the DISH Entities violated Section 1 of the Sherman Act. First, the Commission has the independent authority to find a violation of the federal antitrust laws by the DISH Entities, and there is ample evidence in the record upon which to base such a finding.⁷⁴ Second, a conviction or civil judgment is

⁷³ See, e.g., *Auction Procedures Notice* at ¶ 36.

⁷⁴ See *U.S. v. FCC*, 652 F.2d 72, 94 (D.C. Cir. 1980) (concluding that the Commission has the authority to consider antitrust policies, including Sherman Act violations, as part of its public interest mandate). To be sure, the Department of Justice has enforced the antitrust laws in the context of Commission spectrum auctions. See, e.g., *United States v. Omnipoint Corp.*, Proposed Final Judgments and Competitive Impact Statements, 63 Fed. Reg. 65228 (Nov. 25,

unnecessary before the government can debar a federal contractor that is a party to a collusive bidding agreement.⁷⁵ The same rationale should apply in the auction context to prohibit entities engaged in a collusive bidding scheme from acquiring licenses as a result of that scheme.⁷⁶

C. **Because Of The Misconduct Of Northstar And SNR, The Commission Should Re-Auction Those Licenses Where Another Bidder Was Adversely Impacted By Such Misconduct And Take Other Appropriate Remedial Steps.**

Although Northstar and SNR are not permitted under law to receive the benefit of the bidding credits to which they are not entitled, this relief alone is not sufficient to right the wrongs committed by the DISH Entities in Auction 97. Merely requiring that Northstar and SNR pay the full price of the licenses they “won” during the auction – a price they should have paid in the first place – would still allow the DISH Entities to benefit from licenses acquired only as a result of their auction misconduct and collusive bidding, including the A1 and B1 blocks for BEA004 in Burlington, Vermont on which VTel actively bid.

(footnote cont’d.)

1998). However, , the Commission is not required to refer violations of the federal antitrust laws

⁷⁵ See, e.g., *Leitman v. McAusland*, 934 F.2d 46, 51-52 (4th Cir. 1991) (upholding debarment for anticompetitive collusive bidding, finding no requirement “that a conviction or civil judgment be obtained before a debarment proceeding based on collusive bidding agreements be initiated”).

⁷⁶ To be sure, a corporation and its divisions or wholly owned subsidiaries that comprise a “single entity” are incapable of concerted action that impairs competition in the marketplace in violation of Section 1. See *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 767 (1984). However, the “key” is whether the “contract, combination..., or conspiracy” joins together “separate decisionmakers,” i.e., “separate economic actors pursuing separate economic interests.” *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 195 (2010). If so, the agreement may “deprive[] the marketplace of independent centers of decisionmaking[.]” *Id.* at 195. Here, in their short- and long-form applications, Northstar and SNR affirmatively asserted that they were not under DISH’s control and represented that they are separate economic actors pursuing their separate economic interests. Under the circumstances, the *Copperweld* doctrine does not insulate the DISH Entities from antitrust liability.

Instead, consistent with Commission rules and precedent, the Commission should re-auction the A1 and B1 blocks. The Commission should offer the same remedy in other geographic areas where another bidder can demonstrate that it was adversely impacted by the illusion created by the DISH Entities that licenses on which they bid were subject to more intense competition than was actually the case.

Section 1.2109 of the Commission’s rules provides that the Commission may “re-auction licenses” if the winning bidder (a) “withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed;” or (b) “is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment.”⁷⁷

When the Commission first adopted rules governing default of an auction winner, it stated, as a general rule, that the best course of action is to re-auction the spectrum.⁷⁸ In the *Competitive Bidding Second Report and Order*, the Commission explained that one of its primary concerns is that licenses be awarded to the parties that value them most highly, and, in

⁷⁷ 47 C.F.R. §§ 1.2109(b), (c).

⁷⁸ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, ¶ 204 (1994) (“We believe that, as a general rule, when an auction winner defaults on its final payment or is otherwise disqualified after having made the required down payment, the best course of action would be to re-auction the license. Although this may cause a brief delay in the initiation of service to the public, the passage of time between the original auction and the disqualification may have seen circumstances change so significantly as to alter the value of the license and the identity of the highest bidder.”) *“Competitive Bidding Second Report and Order”*); see also *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use; 4660-4685 MHz*, Third Report and Order, 13 FCC Rcd 374, ¶ 152 (1998) (*“Competitive Bidding Third Report and Order”*).

the situation of a winning bidder's withdrawal after the close of an auction, this can best be assured through a re-auction.⁷⁹

Consistent with Commission's preference to re-auction defaulted licenses, the Bureau re-auctioned 18 defaulted broadband PCS C Block licenses for which the winning bidders failed to submit timely initial down payments, despite requests from some bidders to award the licenses to the other highest bidders.⁸⁰ In upholding the Bureau's decision, the Commission restated its position that "the best course of action is to re-auction the license."⁸¹

By failing to pay the full amount of its bids and by taking advantage of bidding credits to which it was not entitled, Northstar and SNR are in default. This default should trigger a re-auction of the A1 and B1 blocks for BEA004 in Burlington and any other geographic areas where another bidder can demonstrate that it was adversely impacted by the conduct of the DISH Entities. Absent such a demonstration, the Commission would have no reason to find that the results of the auction would have been different, even had the DISH Entities not engaged in misconduct during the auction.

⁷⁹ *Id.*

⁸⁰ See Public Notice, *18 Defaulted PCS Licenses to be Reauctioned*, DA 96-872 (rel. May 30, 1996).

⁸¹ *Reauction of Defaulted PCS C Block Licenses, Emergency Application for Review of Mountain Solutions, Ltd., Inc.*, 12 FCC Rcd 17688, ¶ 4 (1997) (internal quotations omitted). The Commission also has rejected requests to waive Section 1.2109 to award licenses that remained unsold at the end of an auction to unsuccessful bidders after the provisionally winning bidders had withdrawn their bids and the petitioning parties had insufficient bidding eligibility to bid on the licenses, opting instead to re-auction the licenses. See, e.g., Letter from Kathleen O'Brien Ham, Deputy Bureau Chief, to John E. Mason, Harbor Wireless, 16 FCC Rcd 3615 (WTB 2001); Letter from Margaret W. Wiener, Division Chief, to Gregory M. Schmidt, Banks Broadcasting, 18 FCC Rcd 10431 (Auc. Div. 2003); *Requests for Waiver of Section 1.2109(b) of the Commission's Rules and Request for Discretionary Implementation of Section 1.2109(b) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 3969 (2007).

In conducting a re-auction of licenses in those affected geographic areas, the Commission should exclude the DISH Entities from participating directly or indirectly in the re-auction. Excluding the DISH Entities from the re-auction is consistent with the Commission's auction procedures, which provide that "a bidder that is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process ... may be prohibited from participating in future auctions."⁸²

The qualified bidders in any re-auction also should be limited to those entities that previously submitted a bid in Auction 97 in the market being re-auctioned. This limitation would place those bidders harmed directly by the misconduct of the DISH Entities in the same position that they would have been in but for such misconduct. This approach also would be consistent with the Commission's policy to ensure that licenses are awarded to the bidder that values it most highly.⁸³ In the absence of this bidding limitation, other bidders who had no interest in Auction 97 in the licenses being re-auctioned would be able to game the system and thereby potentially profit from the DISH Entities' improper bidding scheme at the expense of innocent bidders such as VTel.

At the conclusion of any re-auction, Northstar and SNR should be required to pay the amounts that may be due under section 1.2104(g)(2) of the Commission's rules.⁸⁴ Section 1.2014(g)(2) provides that, when a winning bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the following payment obligations: (1) an additional payment amount, which is equal to 15 percent of the applicable bid for Auction 97 or

⁸² *Auction Procedures Notice* at n.14.

⁸³ *See, e.g., Competitive Bidding Third Report and Order*, ¶ 153.

⁸⁴ 47 C.F.R. § 1.2104(g)(2).

the subsequent winning bid, whichever is less; and (2) the deficiency payment amount, which applies in the event that the subsequent winning bid the next time a license covering the same spectrum is won in an auction is less than the defaulted bid and which is equal to the difference between the amount of the defaulter's bid and the amount of the subsequent winning bid.⁸⁵

These payments will ensure that Northstar and SNR are held accountable for their misconduct and that the federal government is made whole.

For those licenses that are not subject to re-auction – *i.e.*, those licenses for which another bidder cannot demonstrate that it was adversely impacted by the conduct of the DISH Entities – the Commission should: (1) deny Northstar's and SNR's Long-Form applications; (2) require that Northstar and SNR file accurate Long-Form applications identifying DISH as an affiliate and controlling interest holder and attributing DISH's average gross revenues consistent with Commission rules; and (3) repay all of the bidding credits received by Northstar and SNR to which they were not entitled.

Finally, the Commission should refer this matter to the Enforcement Bureau. The violations of the Commission's rules by the DISH Entities are egregious and should not be tolerated.⁸⁶

⁸⁵ *Id.*

⁸⁶ In December 2014, the Enforcement Bureau imposed a \$25,000 forfeiture against VTel for allegedly violating section 1.17 by failing to disclose the gross revenues of Dr. Walter B. Hewlett, a disclosable interest holder of VTel's at the time, in its applications seeking bidding credits in Auction 86. *Vermont Telephone Company, Inc.; Participant in Auction No. 86*, Forfeiture Order, DA 14-1804 (rel. Dec. 23, 2014), *application for review pending* (filed Jan. 22, 2015). In that case, unlike here, there was no dispute that any alleged gross revenues of Dr. Hewlett did not affect VTel's status as a small business entity or its eligibility for a bidding credit. Furthermore, in that case, unlike here, Dr. Hewlett's revenues represented personal income or were associated with family and estate planning trusts, nonprofit organizations, and the like. Allowing DISH, with annual corporate revenues in excess of \$14 billion, to benefit from more than \$3.3 billion in bidding credits while punishing VTel, a legitimate small business,

D. At A Minimum, The Commission Should Conduct A Hearing On the Long-Form Applications Of Northstar And SNR.

VTel believes that the information in this Petition provides a sufficient basis for the Commission to deny the Long-Form applications of Northstar and SNR and grant the other requested relief. However, if it concludes otherwise, the Commission should find that there exist substantial and material issues of fact regarding the qualifications of Northstar and SNR and the conduct of the DISH Entities and designate Northstar's and SNR's Long-Form applications for an evidentiary hearing pursuant to Section 1.2108(d)(3) of the Commission's rules.

Despite amending their Long-Form applications multiple times, Northstar and DISH continue to engage in a concerted effort to hide material information from public view. For example, Northstar and DISH have sought confidential treatment of many specifics about the markets where they were bidding and the details of the "change orders" used to make their bids. At issue in this proceeding is whether DISH has *de facto* control of Northstar and SNR, and DISH's active involvement in and influence over Northstar's and SNR's bidding is plainly relevant to that inquiry. Thus, the question of the latitude afforded to Northstar and SNR in their respective Schedule IIs is of particular relevance as is the content of the various change orders to which the DISH Entities agreed. Although Northstar and SNR have sought to shield these materials from disclosure, a hearing would lift the curtain on their dealings with DISH.

A hearing also would allow the DISH Entities to explain bidding conduct that otherwise appears inexplicable. For example, at round 237, SNR had the provisionally winning bid for the B1 license in Boston (\$108.9 million), and Northstar had the provisionally winning bid for the B1 license in Philadelphia (\$103.1 million). But the parties subsequently swapped the licenses,

(footnote cont'd.)

would be both absurd to the point of being Kafkaesque.

with SNR executing a bid withdrawal in Boston in round 238, and Northstar executing a bid withdrawal in Philadelphia in round 239.⁸⁷ The result of these transactions was that Northstar became the provisional winning bidder in Boston at \$97.8 million, while SNR became the provisional winning bidder in Philadelphia at \$103.1 million in addition to incurring a withdrawal penalty. It is difficult to understand the reasons Northstar and SNR engineered this “swap,” and a public hearing would give the DISH Entities the opportunity to explain their actions.

V. CONCLUSION

For the foregoing reasons, the Commission should: (1) deny the Long-Form applications of Northstar and SNR; (2) re-auction the licenses won by Northstar or SNR in geographic areas where another bidder can demonstrate that it was adversely impacted by the conduct of the DISH Entities, excluding the DISH Entities from participation and limiting qualified bidders to those entities that previously submitted a bid in the market being reaucted; (3) require, at the conclusion of any re-auction, that Northstar and SNR pay any amounts that may be due under section 1.2104(g)(2) of the Commission’s rules; (4) for those licenses that are not subject to re-auction, condition any licenses awarded to Northstar and SNR on their filing of accurate Long-Form applications and repaying the bidding credits they received in Auction 97; and (5) refer the activities of the DISH Entities to the Enforcement Bureau for investigation.

⁸⁷ SNR’s “change order” has a mysterious block that is not on other change orders indicating a redaction, but the withdrawal from its B1 bid in Boston is not otherwise mentioned. Likewise, Northstar’s change order also appears to be redacted and does not explicitly authorize Northstar to bid on the B1 license in Boston.

Respectfully submitted,

By: /s/ Bennett L. Ross

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May 11, 2015

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In re Applications of)	
)	Report No. AUC-97 (Auction No. 97)
Northstar Wireless, LLC for Authority for)	File No. 0006670613
Advanced Wireless Services Licenses)	
)	File No. 0006670667
SNR Wireless LicenseCo, LLC for Authority)	
for Advanced Wireless Services Licenses)	

AFFIDAVIT OF DR. J. MICHEL GUITÉ

1. My name is Dr. J. Michel Guité. I am submitting this Affidavit in support of VTel Wireless Inc.'s ("VTel Wireless") Petition to Deny the Long-Form applications of Northstar Wireless, LLC ("Northstar") and SNR Wireless LicenseCo, LLC ("SNR") for the spectrum licenses they won in in the Federal Communications Commission's ("Commission") Auction 97.

2. I am the President and Chairman of the Board of the Vermont National Telephone Company, Inc. ("National"). I have been involved with National and its subsidiaries, Vermont Telephone Network, Inc. and VTel Wireless (collectively, "VTel"), since 1993, when the companies were formed to purchase from GTE (now Verizon) 17,500 rural telephone lines serving 14 southern Vermont towns and villages.

3. In 1995, VTel became the first telephone company in Vermont, and one of the first in North America, to offer Internet services to its customers. By April 2001, VTel had what we believe was the highest DSL penetration in North America.

4. Today, VTel operates a 1,400 mile optical fiber network connecting Vermont to Montreal, New York, and Boston, with 100 Gigabyte data circuits, serving rural farmhouses,

remote schools, and three research universities in the Northeast. VTel was one of the largest recipients of broadband funding under the American Recovery and Reinvestment Act, receiving approximately \$130 million in loans and grants to deploy a three-state 4G/LTE wireless and fiber broadband network. Today, VTel delivers GigE Internet access services to over 80 percent of its homes served by fiber.

5. VTel is committed to delivering broadband services – both fixed and mobile – to its rural customers on a cost-effective basis, and the company has proved it in many ways over the years. For example, Internet technology blogs reported last year that VTel’s GigE Internet service in rural Vermont was priced 50 percent below Google’s comparable-speed Internet service in Kansas City.

6. Prior to my involvement with VTel, I was an equities analyst covering Telecommunications Equipment stocks for Salomon Brothers in New York, where I was ranked by Institutional Investor a leader in this field. I hold a BA from Dalhousie University, Halifax, Nova Scotia, (1969), a Master of Science from MIT, (1972), and a PhD from Stanford University (1977). While a graduate student at Stanford, and afterward, I worked with several telecommunications-for-rural-development projects in Canada’s Newfoundland and Labrador, the Upper Amazon of Peru, The Philippines, Lesotho, and Sudan.

7. VTel is one of the largest owners of Commission wireless licenses in Vermont. Through National and its subsidiaries, I have participated in almost every spectrum auction of commercial mobile radio licenses conducted by the Commission. Specifically, under my direction, VTel was a bidder in Auctions 5, 11, 35, 49, 58, 66, 73, 78, 86, 96, and 97. Moreover,

National, either directly or through its subsidiaries, was a successful bidder in nearly all of these auctions.

8. On September 12, 2014, VTel submitted a short-form application to participate in Auction 97. In its application, VTel sought eligibility for a “small business” bidding credit. The application identified Frances M. Stocker, an officer of National and VTel, and me as authorized bidders for VTel.

9. VTel submitted its upfront payment for Auction 97 on October 15, 2014. On October 30, 2014, the Commission released a Public Notice identifying VTel as a qualified bidder. The October 30, 2014, Public Notice also listed American AWS-3 Wireless I LLC (“American I”), Northstar, and SNR (collectively, the “DISH Entities”) as qualified bidders. Northstar and SNR claimed entitlement to bid as “very small businesses” eligible for a 25 percent bidding credit.

10. Auction 97 began on November 13, 2014. In round 1 of the auction, VTel placed bids on licenses for the A1, B1, H, I and J blocks for BEA004 and for the G block in CMA248. Both BEA004 and CMA248 cover Burlington, Vermont, which is one of the primary geographic markets served by VTel.

11. VTel’s initial bid for the AWS-3 license for the A1 block in BEA004 was \$41,000. There were no competing bids for this license until round 17. In round 17, a second bid was placed of \$45,000. Because of the Commission’s anonymous bidding rules for Auction 97, VTel did not and could not know the identity of the second bidder.

12. In light of the higher bid, VTel raised its bid for the A1 block license in round 18 to \$52,000. A competing bid of \$52,000 was placed by another bidder in that same round. Accordingly, VTel raised its bid again in round 19 to \$62,000, and, again, a matching bid was placed by another bidder in the same round. In round 20, VTel raised its bid to \$74,000 in light of the previous matching bid. At this point, VTel believed that it was competing with one other bidder for this license and was prepared to continue bidding in order to win the license.

13. However, the bidding for the A1 block license changed dramatically after round 20. In round 21, three new bids were placed for the license. We routinely monitor the number of bidders and take this information into account in VTel's bidding strategy. I interpreted the bidding activity in round 21 to mean that VTel faced competition from three different bidders for the spectrum, rather than just the one bidder against which VTel had been competing in prior rounds. Judging that the significant competition for the spectrum from three bidders would drive up the price to levels VTel could not afford, I decided that VTel should drop out of the bidding.

14. Evidence obtained after the close of the auction now confirms that the demand for the A1 block license was entirely artificial. In round 21, American I, Northstar, and SNR all placed identical bids on the license. By placing triple bids, these entities created the false impression of more robust demand for the license, which deterred VTel from continuing to bid and caused it to drop out of the bidding. Once VTel dropped out, SNR then "accepted" the Commission's random assignment of the provisional winner, without having to bid against American I's or Northstar's identical bids.

15. This same pattern played out in the bidding for the B1 block in BEA004. VTel's initial bid for this license was \$82,000. There were no competing bids for this license until

round 17. In round 17, a second bid was placed of \$90,000. Because of the Commission's anonymous bidding rules for Auction 97, VTel did not and could not know the identity of the second bidder.

16. In light of the higher bid, VTel raised its bid for the B1 block license in round 18 to \$104,000. In round 19, competing bids of \$122,000 were placed by three bidders in that same round. VTel raised its bid again in round 20 to \$146,000, and, again, a matching bid was placed by another bidder in the same round. In round 21, three bidders submitted identical bids of \$175,000.

17. Based on the bidding activity in both rounds 19 and 21, I believed that VTel faced competition from three different bidders for the B1 block. Judging that the significant interest in the spectrum from these three different bidders would drive up the price to levels it could not afford, I decided that VTel should drop out of the bidding.

18. Evidence obtained after the close of the auction now confirms that DISH Entities created artificial demand for the B1 block license – much like for the A1 block. American I, Northstar, and SNR were the three entities that placed identical bids on the licenses, which created the false impression of more robust demand, which deterred VTel from continuing to bid, and which caused it to drop out of the bidding for the B1 block license.

19. The post-auction evidence further confirms that American I, Northstar, and SNR engaged in this type of bidding conduct throughout the auction. For BEA004, these entities placed double or triple bids in the H block as well. In fact, the DISH Entities bid against VTel for every license on which it bid with the exception of the I block license.

20. The intensity of the sudden influx of competition, with two and three bidders suddenly arriving at the auction simultaneously at a price point where there might normally be one other bidder, or no other bidders, was outside the ordinary, and, in my experience, unprecedented. As a result of the unexpected high demand by multiple bidders – demand that, in reality, was entirely artificial – I made a decision that VTel should cease bidding for the A1 and B1 blocks.

21. VTel did not win any licenses in an auction in which it was an active participant due to the bidding conduct of the DISH Entities. VTel intended to use the A1 and B1 blocks to augment its 4G/LTE radios, tower sites, backhaul, and other mobile technologies VTel has in place today, which would have allowed VTel to bring mobile broadband services more readily to thousands of Vermont customers in remote areas of the State. VTel would have bid higher amounts for both the A1 and B1 blocks but for the false impression of greater interest in these licenses created by the bidding conduct of the DISH Entities. As a result, the pattern of coordinated auction bidding and illusory demand orchestrated by the DISH Entities harmed VTel, its customers, as well as the United States' treasury.

I, Dr. Michel Guité, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. I also have reviewed the Petition to Deny and, to the best of my knowledge, information and belief, the facts set forth therein are true and correct.



Dr. Michel Guité

Executed on May 11, 2015

CERTIFICATE OF SERVICE

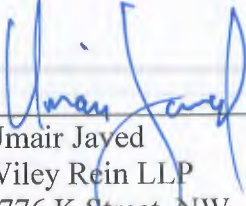
I, Umair Javed, an attorney at Wiley Rein LLP, hereby certify that on this 11th day of May, 2015, I caused a true and correct copy of the foregoing Petition to Deny to be served by electronic mail (*) or overnight mail (+) on:

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