

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

In the Matter of)
NTCH, Inc.) AU Docket No. 13-178
Petition for Reconsideration of Public Notice)
Announcing Procedures and Reserve Price for)
Auction of H Block Licenses (Auction 96))

MEMORANDUM OPINION AND ORDER

Adopted: November 27, 2013

Released: November 27, 2013

By the Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we deny a petition for reconsideration filed by NTCH, Inc. ("NTCH").¹ NTCH asks us to reconsider certain procedures adopted for use in the upcoming auction of licenses in the 1915-1920 MHz and 1995-2000 MHz bands ("H Block"), which is designated as Auction 96.² As explained below, NTCH's Petition fails to satisfy the applicable reconsideration standard and fails to show that reconsideration is warranted.

II. BACKGROUND

2. The Commission is offering H Block licenses in Auction 96 pursuant to, inter alia, the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act").³ The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.⁴ The Spectrum Act

¹ Petition for Reconsideration of NTCH, Inc., AU Docket No. 13-178 (filed Oct. 18, 2013) ("NTCH Petition").

² Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and other Procedures for Auction 96, AU Docket No. 13-178, Public Notice, DA 13-1885 (WTB 2013) ("Auction 96 Procedures PN"). A summary of this public notice was published at 78 Fed. Reg. 65982 (Nov. 4, 2013).

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) ("Spectrum Act").

⁴ Spectrum Act § 6401(b), 47 U.S.C. § 1451(b). The Commission concluded in the H Block Report and Order that both blocks of the H Block spectrum are already allocated for non-Federal Fixed and Mobile use on a primary basis, with their present spectrum pairing, and that no further action to allocate the frequencies in the H Block bands for commercial use is necessary to meet the Spectrum Act's allocation requirements. See Service Rules for Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Jobs Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, Report and Order, 28 FCC Rcd 9483, 9490 ¶14 (2013) ("H Block Report and Order") See also Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, RM-9498, RM-10024, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223, 2238 ¶ 28 (2003); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile

(continued...)

specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband network by the First Responder Network Authority (FirstNet).⁵

3. On July 15, 2013, the Wireless Telecommunications Bureau (“Bureau”) released the *Auction 96 Comment PN* announcing Auction 96 and seeking comment on procedures for conducting the auction.⁶ The *Auction 96 Comment PN* proposed to set a reserve price and sought comment on what factors should be considered in determining the reserve amount and whether the reserve price should be disclosed, asking commenters to describe in detail the specific factors that informed their conclusions.⁷

4. In response to the *Auction 96 Comment PN*, interested parties submitted 23 topical filings in the form of comments, reply comments, and/or *ex parte* letters. NTCH was not among the parties that made filings. On September 9, 2013, DISH Network Corporation (DISH) filed an *ex parte* submission supporting the *Auction 96 Comment PN*’s proposal to set a reserve price. DISH suggested that the H Block spectrum should be valued at “at least \$0.50 per megahertz of bandwidth per population (‘MHz-pop’) on a nationwide aggregate basis,” noting that the 2006 AWS-1 spectrum auction had resulted in an average valuation of \$0.54 per MHz-pop, that recent secondary market purchases of AWS spectrum had valued it between \$0.61 and \$0.69 per MHz-pop, and that financial institutions give current estimates of the value of the H Block spectrum at between \$0.62 and \$1.00 per MHz-pop.⁸

5. On September 9, 2013, DISH also filed a Petition for Waiver and Request for Extension of Time of certain Commission rules for terrestrial use of the 2000-2020 MHz and 2180-2200 MHz band spectrum (“AWS-4 band”), which has since been placed in its own docket.⁹ The DISH Petition seeks waiver of certain technical requirements to provide AWS-4 Licensees with the operational flexibility to use the lower AWS-4 block, 2000-2020 MHz, currently designated as an uplink band, for either uplink or downlink operations.¹⁰ In addition, DISH requests an extension of the final build-out requirement for

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and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, IB Docket No. 99-81, *Sixth Report and Order, Third Memorandum Opinion and Order and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20722 ¶1 (2004).

⁵ Spectrum Act §§ 6401(c)(4), 6413, 47 U.S.C. §§ 309(j)(8)(F), 1457; *see also* Spectrum Act § 6202(a), 47 U.S.C. § 1422(a).

⁶ *See* Auction of H-Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96, AU Docket No. 13-178, *Public Notice*, 28 FCC Rcd 10013 (WTB 2013) (“*Auction 96 Comment PN*”). A summary of this public notice was published at 78 Fed. Reg. 45524 (Jul. 29, 2013).

⁷ *Auction 96 Comment PN*, 28 FCC Rcd at 10026 ¶52-53.

⁸ Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH, to Marlene H. Dortch, Sec’y, Federal Communications Commission at 1, AU Docket No. 13-178 (filed Sept. 9, 2013) (*DISH Ex Parte Letter*).

⁹ *See* Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time filed by DISH Network on September 10, 2013, WT Docket 13-225 (“DISH Petition”).

¹⁰ Pursuant to sections 1.3 and 1.925(b)(3)(i) of the Commission’s rules, DISH seeks a waiver of section 27.5(j), which sets forth pairing requirements for AWS-4, and section 27.53(h)(2)(ii), which imposes out-of-band emission limits for AWS-4 operations in the 2000-2020 MHz band, as well as other technical AWS-4 rules “to the extent required.” DISH Petition at 2 & n.2, 6 & n.11, 9-12. *See* 47 C.F.R. §§ 27.5(j), 27.53(h)(2)(ii); *see also* Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142, *Report and Order and Order of Proposed Modification*, 27 FCC Rcd 16102 (2012) (“*AWS-4 Report and Order*”), *recon. pending*.

each of the AWS-4 licenses.¹¹ The DISH Petition was placed on public notice,¹² and NTCH has filed comments in that matter.¹³

6. On September 13, 2013, in response to both the *Auction 96 Comment PN* and the record that had been developed, the Bureau released the *Auction 96 Procedures PN*, which established procedures, a reserve price, and minimum opening bid amounts for the auction of H Block licenses. The *Auction 96 Procedures PN* noted that “the limited comment we received on [the reserve price] issue is generally supportive of our reserve price proposals, and we received no opposition to the use of a reserve.” It noted DISH’s estimated valuation of at least \$0.50 per MHz-pop based on prior auction results, secondary market transactions, and financial institutions’ estimates.¹⁴ The Bureau also determined that “this amount will appropriately recover for the public a portion of the value of the spectrum, especially in light of the Spectrum Act’s requirement” to deposit the proceeds for use by FirstNet.¹⁵ A later public notice announced new dates for the auction and pre-auction deadlines.¹⁶ Auction 96 is now scheduled to begin on January 22, 2014, and short-form applications were due by November 15, 2013.

7. On September 16, 2013, the Rural Wireless Association, Inc., f/k/a Rural Telecommunications Group, Inc. (RWA), filed a petition for reconsideration of the Commission’s *H Block Report and Order*, regarding the geographic license areas and performance requirements adopted in that order.¹⁷ Pursuant to the Commission’s established rules governing petitions for reconsideration of rulemaking orders,¹⁸ the RWA Petition has been placed on public notice.¹⁹

8. On October 18, 2013, NTCH, Inc. filed its petition for reconsideration of the Bureau’s *Auction 96 Procedures PN*.

III. DISCUSSION

9. For the reasons discussed below, we conclude that NTCH has not demonstrated any material error or omission in the procedures we established for Auction 96, and has not raised any additional facts not known or existing or that were not fully considered prior to the release of the *Auction 96 Procedures PN*. Nor has NTCH’s submission otherwise shown that reconsideration is warranted or appropriate in this case. In particular, we reject NTCH’s requests that (i) the Bureau must act prior to Auction 96 on the RWA Petition seeking reconsideration of the Commission’s *H Block Report and Order*, (ii) the Bureau should lower the aggregate reserve price established in the *Auction 96 Procedures*

¹¹ Pursuant to section 1.946(e) of the Commission’s rules, DISH requests a one-year extension of the final construction requirement set forth for AWS-4 licenses in Section 27.14(q). 47 C.F.R. § 27.14(q).

¹² See Wireless Telecommunications Bureau Opens Docket to Seek Comment on DISH Network Corporation’s Petition for Waiver and Request for Extension of Time, WT Docket No. 13-225, *Public Notice*, (rel. Sept. 13, 2013). A summary of this public notice was published at 78 Fed. Reg. 59633 (Sept. 27, 2013).

¹³ See NTCH Comments, WT Docket No. 13-225 (filed on Sept. 30, 2013.)

¹⁴ *Auction 96 Procedures Public Notice* at ¶¶170, 172.

¹⁵ *Id.* at ¶172.

¹⁶ Auction for H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Rescheduled for January 22, 2014, Notice of Changes to Auction 96 Schedule Following Resumption of Normal Commission Operations; AU Docket No. 13-178, *Public Notice*, DA 13-2033 (WTB 2013) (“*Auction 96 Rescheduled Public Notice*”).

¹⁷ Petition for Reconsideration filed by Rural Wireless Association, Inc., f/k/a Rural Telecommunications Group, Inc. on September 16, 2013, WT Docket No. 12-357 (“RWA Petition”); see also *H Block Report and Order*.

¹⁸ 47 C.F.R. § 1.429(e).

¹⁹ See Petition for Reconsideration of Action in Rulemaking Proceeding, *Public Notice*, Consumer & Governmental Affairs Bureau Reference Information Center, Report No. 2991, WT Docket No. 12-357 (rel. Sept. 20, 2013).

PN, (iii) any proceedings related to the DISH Petition or to DISH's *ex parte* comments filed in the current proceeding should be made part of the Auction 96 proceeding, and (iv) the DISH Petition should be resolved before Auction 96 begins.

10. *Threshold Procedural Matter.* We resolve NTCH's Petition for Reconsideration pursuant to section 1.106 of the Commission's rules.²⁰ Under Section 1.106(c), when a petition for reconsideration purports to rely on facts or arguments not previously presented to the Commission (as the NTCH Petition states that it does), the petition may be granted only under the following circumstances: (1) the petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; (2) the petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission determines that consideration of the facts or arguments relied on is required in the public interest.²¹

11. *RWA Petition.* NTCH argues that the Commission must address the RWA Petition seeking reconsideration of the *H Block Report and Order's* geographic license areas and performance requirements before Auction 96 begins. NTCH states that, as argued by RWA, the use of Economic Areas (EAs) as the geographic unit for H Block licenses is a decision contrary to the public interest, and that therefore granting the RWA Petition and reconsidering the *H Block Report and Order* prior to Auction 96 would be in the public interest.

12. A few parties submitted comments in response to the *Auction 96 Comment PN* suggesting that the H Block be licensed using smaller geographic license areas. The *Auction 96 Procedures PN* noted that the Commission rule using EAs as the geographic area for H Block licenses cannot be amended by the Bureau in the context of establishing auction procedures because the Bureau lacks delegated authority to do so.²² The Commission will address the RWA petition separately in due course, and we cannot commit the Commission to any particular schedule. Moreover, in light of the statutory deadline for licensing H Block, the immediate need for additional spectrum for wireless broadband noted by the Commission in the *H Block Report and Order*,²³ and the various public interest objectives we must promote in using a system of competitive bidding – including in this case, contributing to the funding of FirstNet – we decline to delay the current schedule for Auction 96.²⁴ The existing rules governing license areas and performance requirements for H Block licenses will remain in effect for Auction 96, unless and until the Commission decides otherwise. This approach is consistent with practice in prior auctions which were held as scheduled despite outstanding challenges to the auction procedures or to the licenses being auctioned.²⁵ This approach is also consistent with the Commission's statutory authority and rules,²⁶

²⁰ 47 C.F.R. § 1.106. NTCH petitions for reconsideration of the *Auction 96 Procedures PN* pursuant to sections 1.429(a) and (b) of the Commission's rules. Sec. 1.429(a) permits interested persons to petition for reconsideration of a final action in a rulemaking proceeding conducted under subpart C of the Commission's Part 1 rules. However, the Bureau's pre-auction establishment of auction procedures is not a rulemaking proceeding, but rather is an implementation of the Commission's Part 1 competitive bidding rules to establish specific procedures to govern the day-to-day conduct of a particular auction. See *MetroPCS Communications, Inc.*, AU Docket No. 08-46, *Order*, 25 FCC Rcd 2209, 2213 n. 36 (WTB 2010) ("*MetroPCS Order*").

²¹ 47 C.F.R. § 1.106(c); 47 C.F.R. § 1.106(b)(2); see also *General Motors Corporation and Hughes Electronics, Order on Reconsideration*, 23 FCC Rcd 3131, 3132 ¶ 4 (2008).

²² *Auction 96 Procedures PN* at ¶4 n.7.

²³ *H Block Report and Order*, 28 FCC Rcd at 948 ¶2.

²⁴ Spectrum Act § 6401(b), 47 U.S.C. § 1451(b); Spectrum Act §§ 6401(c)(4), 6413, 47 U.S.C. §§ 309(j)(8)(F), 1457; see also Spectrum Act § 6202(a), 47 U.S.C. § 1422(a); 47 U.S.C. § 309(j)(3).

²⁵ See *MetroPCS Order*, 25 FCC Rcd at 2214-15 ¶17 (noting that Auction 78 went forward despite open challenges).

and with long established precedent that the Commission is “under no duty . . . to postpone final [licensing] action . . . until it ha[s] disposed of [a rulemaking] proceeding” whose “supposititious eventualities” might include “modify[ing] its rules.”²⁷ Accordingly, we deny NTCH’s Petition with regard to the RWA Petition.

13. *Reserve Price.* NTCH next argues that the aggregate reserve price set in the *Auction 96 Procedures PN* should be significantly reduced.²⁸ NTCH asserts (without supporting citations) that there was no reason to think that the Auction 96 reserve price would be “radically different” from the sum of the minimum opening bids proposed for each license, which effectively function as license-by-license reserve prices.²⁹ NTCH further alleges that the H Block reserve price was based on DISH’s commitment to bid its suggested 50 cents per MHz-pop reserve price in Auction 96 “in exchange for certain waivers and extensions which it also sought.”³⁰ NTCH also argues that there was no adequate opportunity to comment on DISH’s “proposal.”³¹ Finally, NTCH also argues that the established reserve price prevents smaller carriers from competing and winning licenses in Auction 96 and “exacerbates the skewing of the auction that is posed by the Commission’s decision to require Sprint to be reimbursed for its clearing efforts in this band on a pro rata basis across the entire band.”³²

14. We find NTCH’s arguments unpersuasive and will not reduce the aggregate reserve established in the *Auction 96 Procedures PN*. The Bureau clearly indicated in the *Auction 96 Comment PN* that it was proposing to establish an aggregate reserve in an amount different from the sum of the minimum opening bids, and cited as a rationale its public interest obligation to recover for the public a portion of the value of the spectrum resource, revenues which in this case will help to support FirstNet.³³ The Bureau explained that, although a minimum opening bid acts as a reserve price in that no lower bids will be accepted, a minimum opening bid and a reserve price have distinct purposes. In particular, the Bureau stated that a minimum opening bid is “generally used to accelerate the competitive bidding process,” while a reserve price is an “absolute minimum below which an item or items will not be sold.”³⁴ Accordingly, NTCH’s argument that there was no reason to believe that there would be a reserve price different from the aggregate of the minimum opening bids is unfounded.

15. Further, the NTCH Petition fails to demonstrate any error by the Bureau in setting the reserve price for Auction 96. While other commenters commented on methodologies for setting a reserve price, only DISH Network’s comments suggested a specific reserve price and provided evidence supporting that price.³⁵ In any event, the Bureau adopted that suggested reserve price and the related

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²⁶ See 47 U.S.C. § 405 and 47 C.F.R. § 1.429(k) (both stating generally that the filing of a petition for reconsideration does not excuse non-compliance with a rule or stay its enforcement).

²⁷ *FCC v. WJR, the Goodwill Station*, 337 U.S. 265, 272 (1949). See also 47 U.S.C. § 154(j); *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 664 (D.C. Cir. 1984) (noting Commission’s “wide discretion in fashioning its own procedures” under Section 4(j) of the Act as recognized in *FCC v. Schreiber*, 381 U.S. 279, 289-90 (1965)).

²⁸ NTCH Petition at 3-6.

²⁹ NTCH Petition at 3-4.

³⁰ NTCH Petition at 4; see also DISH Petition at 15.

³¹ NTCH Petition at 4. We note, as the discussion in this item shows, that NTCH has had an opportunity to present its views regarding the DISH submission, and this decision addresses those contentions.

³² *Id.* at 5.

³³ *Auction 96 Comment PN*, 28 FCC Rcd at 10026 ¶¶52-53.

³⁴ *Id.* at 10025 ¶50.

³⁵ *DISH Ex Parte Letter* at 1.

methodology as reasonable after careful consideration.³⁶ NTCH offers no evidence to suggest that the Bureau's determination was in error. It simply asserts that the Auction 96 established reserve price is "astronomical,"³⁷ but, as noted by DISH, and based on reserve prices and results in other auctions, it is in fact in line with publicly available information on spectrum license prices.³⁸

16. Finally, the Bureau must balance a variety of public interest objectives in setting the reserve price, including promoting efficient and intensive use of spectrum and recovery for the public of a portion of the value of the spectrum resource,³⁹ funds which in this case will be used to support FirstNet. We find that no factual or legal basis exists, and NTCH provides none, for its claims that the reserve price and band clearing cost-sharing requirements "seem[] to have been designed to ensure that only Sprint and DISH will be able to win licenses" to the detriment of smaller bidders. Accordingly, we deny NTCH's Petition with respect to the reserve price. Further, it does not appear that NTCH's mention of band-clearing costs was an attempt to seek reconsideration of the cost-sharing rules, but to the extent that NTCH seeks reconsideration of the cost-sharing rules adopted in the *H Block Report and Order*, the request is untimely and should have been addressed to the Commission, and we dismiss it for these reasons.

17. *DISH Petition.* NTCH next argues that if the Commission agreed with DISH that it would bid at its suggested reserve price of \$0.50 per MHz-pop in exchange for grant of its request for waiver, the details of "this arrangement" must be made part of the record.⁴⁰ This assertion, however, fails to acknowledge that DISH's reserve price comments are already part of the record in the Auction 96 procedures proceeding.⁴¹ Moreover, DISH's Petition relating to the AWS-4 technical and service requirements is a matter of public record and the subject of a separate proceeding in which comment is being sought and upon which NTCH had already submitted comments prior to filing the petition we are now addressing.⁴² The DISH Petition will be addressed in its own docket on its own merits. There has been no determination made on the DISH Petition, and a petition for reconsideration of the *Auction 96*

³⁶ *Auction 96 Procedures PN* at ¶172.

³⁷ NTCH Petition at 5.

³⁸ See, e.g., Auction 66 and Auction 73, in which separate aggregate reserve prices were established in addition to minimum opening bids. In Auction 66 the aggregate reserve price was almost double the sum of the minimum opening bids. See 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 66, AU Docket No. 06-30, *Public Notice*, 21 FCC Rcd. 4562, 4566 ¶6 and Attachment A (2006) ("*Auction 66 Procedures PN*"). In Auction 73 the aggregate reserve prices, the amounts of which were comparable to the one proposed for Auction 96, were an average of four times the corresponding sums of minimum opening bids. See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, and other Procedures for Auctions 73 and 76, AU Docket No. 07-157, *Public Notice*, 22 FCC Rcd 18,141, 18,145 ¶6 and Attachment A (2007) ("*Auction 73 Procedures PN*"). We note that those auctions resulted in prices of \$0.54/MHz-pop for Auction 66 and \$1.29/MHz-pop for Auction 73 (data available at <http://wireless.fcc.gov/auctions/>). See also Jonathan Chaplin, Spencer Kurn, *Sprint/Softbank Details Emerge; Positive For Sprint And Other Carriers; Mixed For Towers*, Credit Suisse, Equity Research - Wireless Telecommunication Services, at 3 (Oct. 15, 2012) (projecting that the value of the paired H block would be \$2-3 billion, which implies a price of at least \$0.67-\$1.00 per MHz-pop; see also Philip Cusick, CFA, Eric Pan CFA, Richard Choe, Derya Erdemli, CFA, *DISH Network, Wireless Business Update: We Estimate \$5.5b NPV of Business Based on Shared Network Buildout*, at 2, 4 (Nov. 26, 2012) (estimating the value of the paired H block at \$1-2 billion). These analyst projections were cited by the Commission in the *AWS-4 Report and Order* at 27 FCC Rcd 16129 ¶66.

³⁹ 47 U.S.C. § 309(j)(3)(C).

⁴⁰ NTCH Petition at 6.

⁴¹ See DISH *Ex Parte Letter* at 1.

⁴² See DISH Petition. See also NTCH Comments (filed Sept. 30, 2013).

Procedures PN is not the appropriate vehicle for a premature attack on any possible resolution of that request.

18. NTCH also argues that the technical issues raised in the DISH Petition should be resolved before Auction 96 begins. NTCH contends that, if the DISH Petition is granted, DISH would then be able to choose whether to employ the adjacent AWS-4 band for uplink or downlink operations thereby giving DISH “an enormous advantage over all other bidders” because bidders would lack certainty about the interference potential from the adjacent band.⁴³

19. As noted, the DISH Petition will be resolved in a separate proceeding. We cannot commit here to a specific decision in that proceeding or its timing. Auction 96 applicants can assess the impact of existing rules and the possible impact, if any, of the technical changes proposed by DISH. Prior to an auction, we consistently advise bidders that they are solely responsible for conducting due diligence to investigate and evaluate all technical and marketplace factors that may bear upon their decision to bid upon a license being offered at auction, including pending matters.⁴⁴ Thus, we urge bidders to consider any pending challenges or waiver requests in determining whether and how much to bid on licenses at auction. It is well settled that the Commission does not routinely delay the offering of spectrum licenses while it resolves all such challenges.⁴⁵ Furthermore, if we were to delay Commission auctions or refrain from offering licenses at auction each time a regulatory or court challenge arose, it would undermine our ability to promote the public interest through the policy objectives of Section 309(j) of the Communications Act. We therefore conclude that the public interest is served not by delaying Auction 96, but rather by proceeding with the auction as scheduled, and therefore deny NTCH’s arguments concerning the DISH Petition.

20. In conclusion, NTCH’s Petition for Reconsideration fails to satisfy the applicable standard for obtaining reconsideration and fails to show that reconsideration of the *Auction 96 Procedures PN* is appropriate or warranted.

IV. ORDERING CLAUSE

21. Accordingly, IT IS ORDERED, pursuant to the authority granted in Sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 309(j), as well as Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by NTCH, Inc., IS DENIED. This action is taken under delegated authority pursuant to Sections 0.131, 0.331, and 1.106 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331, 1.106.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
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Wireless Telecommunications Bureau

⁴³ NTCH Petition at 7.

⁴⁴ See, e.g., *Auction 96 Procedures PN* at ¶¶41-45.

⁴⁵ See *MetroPCS Order*, 25 FCC Rcd 2209, 2214-15 ¶17, and authorities cited therein.