

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

In the Matter of
AMG Technology Investment Group, LLC
File No.: EB-IHD-19-00028994
NAL/Acct. No.: 201932080022
FRN: 0021701891

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 6, 2019

Released: September 6, 2019

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Communications Commission (FCC or Commission) is committed to protecting the integrity and competitiveness of the Commission’s auction process. For this reason, the Commission has long-standing rules that bar discussions between and among auction applicants during an auction that could detract from a fair auction process. To that end, the Commission also requires auction applicants to self-report such violations promptly upon their occurrence. Timely reporting of these “prohibited communications” allows the Commission to timely address the effects to the auction process.

2. Accordingly, we propose a forfeiture of \$100,000 against AMG Technology Investment Group, LLC (AMG or Company),1 for apparently repeatedly engaging in prohibited communications of its bidding and bidding strategies during the Commission’s Connect America Fund (CAF) Phase II (CAF-II) auction (Auction 903), and its failure to timely report such prohibited communications. We find that AMG, an applicant in Auction 903 for financial support to offer voice and broadband service in underserved areas, apparently violated sections 1.21002(b)-(c) of the Commission’s rules (Rules)2 by engaging in prohibited communications of its bidding, bidding strategies, and bidding results to AT&T Services, Inc. (AT&T), the parent company of Auction 903 applicant New Cingular Wireless PCS, LLC, (Cingular), and by reporting these communications to the Commission outside of the required five-day reporting period.

II. BACKGROUND

3. AMG, doing business as Nextlink, provides Internet and voice services via fixed wireless and fiber optic technologies.3 AT&T is a global provider of telecommunications, media, and technology services.4 Both AMG and AT&T (through its wholly owned subsidiary Cingular), were applicants in

1 Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

2 47 CFR § 1.21002(b)-(c).

3 See Nextlink, About [Nextlink], http://nextlinkinternet.com/about/ (last visited Sep. 5, 2019); Nextlink, Frequently Asked Questions, http://nextlinkinternet.com/about/ (last visited Sep. 5, 2019).

4 See “AT&T, Inc, SEC Form 10-K,” at 1, https://www.sec.gov/Archives/edgar/data/732717/000119312519045608/d705958d10k.htm#toc705958\_2 (last visited Sept. 5, 2019).

Auction 903 for the competitive allocation of financial support to offer voice and broadband services to underserved portions of the country, including rural areas.<sup>5</sup>

4. On February 1, 2018, the Commission released a public notice setting forth the filing requirements and other procedures for Auction 903.<sup>6</sup> The *Procedures Public Notice* thoroughly explained the application of section 1.21002 of the Rules, which prohibits certain communications during the auction process in order to “serve the important public interest in a fair and competitive auction.”<sup>7</sup> The Commission explained that the rule “prohibits an applicant in Auction 903 . . . from communicating with any other applicant in any manner the substance of its own, or one another’s, or any other competing applicant’s bids or bidding strategies during the prohibition period.”<sup>8</sup> It noted that the rule provides an exception for communications between applicants that identify each other in their respective applications as members of a joint bidding arrangement and certify that the application identifies all real parties in interest to agreements related to the applicant’s participation in the auction.<sup>9</sup> The Commission emphasized that the prohibition applies to “all short-form applicants regardless of whether such applicants become qualified bidders or actually bid.”<sup>10</sup> The Commission also reminded prospective applicants that section 1.21002(c) requires applicants to report within five business days any communication made or received that “may be” a prohibited communication, and noted that the obligation “continues until the report has been made.”<sup>11</sup>

5. For Auction 903, the prohibited communications period (Quiet Period) commenced with the close of the FCC Form 183 (short-form) application filing window on March 30, 2018, at 6:00 p.m. EST, and concluded with the close of the FCC Form 683 (long-form) application filing window on October 15, 2018, at 6 p.m. EST.<sup>12</sup> AMG and Cingular each timely submitted short-form applications to participate in Auction 903 by the March 30, 2018 deadline.<sup>13</sup> On June 25, 2018, the Qualified Bidders

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<sup>5</sup> 220 Applicants Qualified to Bid in the Connect America Fund Phase II Auction (Auction 903), Bidding to Begin on July 24, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 6171, 6184-95 (Rural Broadband Task Force/WTB/WCB 2018) (Attach. A: Qualified Bidders sorted by applicant name) (*Qualified Bidders Public Notice*). An applicant means “any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.” 47 CFR § 1.21002(a).

<sup>6</sup> *Connect America Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1430, para. 1 (2018) (*Procedures Public Notice*).

<sup>7</sup> *Id.* at 1476, para. 129.

<sup>8</sup> *Id.* at para. 128.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at para. 130.

<sup>11</sup> *Id.* at 1483, para. 156; 47 CFR § 1.21002(c).

<sup>12</sup> See *Procedures Public Notice*, 33 FCC Rcd at 1432, 1477, 1490, paras. 10, 134, 185; *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257, 8267, para. 31 (Rural Broadband Auctions Task Force/WTB/WCB 2018) (*Auction 903 Closing Public Notice*). The purpose of the long-form application was for winning bidders to file their application for CAF-II funding and for the Commission to determine whether a long-form applicant is qualified to receive such financial support from the Universal Service Fund. See *Procedures Public Notice*, 33 FCC Rcd at 1438, para. 20; 47 CFR § 1.21004(a).

<sup>13</sup> See AMG Technology Investment Group LLC, Auction 903 FCC Form 183 Application, File No. 0008154358, (filed May 24, 2018); [https://auctionfiling.fcc.gov/form175/search175/results\\_detail\\_appInfo.htm?searchLevel=B&application\\_id=108165](https://auctionfiling.fcc.gov/form175/search175/results_detail_appInfo.htm?searchLevel=B&application_id=108165)

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Public Notice (*Qualified Bidders Public Notice*) was released, announcing that AMG and Cingular were qualified to bid in Auction 903.<sup>14</sup> The *Qualified Bidders Public Notice* reminded Auction 903 applicants of their obligation to comply with section 1.21002 of the Rules, by not engaging in prohibited communications.<sup>15</sup> The *Qualified Bidders Public Notice* also emphasized that the rule against prohibited communications applied to all applicants regardless of whether the applicant even bid in Auction 903.<sup>16</sup> Applicants were also again reminded of their obligation to report any communication made or received that “appears” to violate section 1.21002 within five business days.<sup>17</sup>

6. Bidding in Auction 903 began on July 24, 2018, and concluded on August 21, 2018.<sup>18</sup> AMG emerged as the largest winning bidder.<sup>19</sup> Cingular, on the other hand, did not bid.<sup>20</sup> On August 28, 2018, the winning bidders were announced in the Auction 903 Closing Public Notice (*Auction 903 Closing Public Notice*), which also announced October 15, 2018, as the deadline for winning bidders to submit the required post-auction long-form applications for CAF-II funding support, as well as the end of the prohibited communications period.<sup>21</sup> In the *Auction 903 Closing Public Notice*, all applicants were again reminded to comply with the prohibited communications rule until after the long-form submission deadline.<sup>22</sup>

7. AMG and Cingular each stated on their respective short-form applications that they did not have joint bidding agreements with any Auction 903 applicants.<sup>23</sup> AMG and Cingular also each certified that the content of their respective applications was “true and correct.”<sup>24</sup> On its short-form application, AMG listed Bill Baker, managing member and majority owner of AMG, as one of the authorized bidders.<sup>25</sup> The AMG short-form application also listed Mr. Baker as the “responsible party.”<sup>26</sup>

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[13&file\\_num=0008155703&version=2&PStart=1&auction\\_id=903](https://auctionfiling.fcc.gov/form175/search175/results_detail_appInfo.htm?searchLevel=B&application_id=10808058&file_num=0008155703&version=2&PStart=1&auction_id=903); (AMG Short-Form Filing); New Cingular Wireless PCS, LLC, Auction 903 FCC Form 183 Application, File No. 0008151983, (filed Mar. 28, 2018); [https://auctionfiling.fcc.gov/form175/search175/results\\_detail\\_appInfo.htm?searchLevel=B&application\\_id=10808058&file\\_num=0008151983&version=2&PStart=1&auction\\_id=903](https://auctionfiling.fcc.gov/form175/search175/results_detail_appInfo.htm?searchLevel=B&application_id=10808058&file_num=0008151983&version=2&PStart=1&auction_id=903); (AT&T Short-Form Filing).

<sup>14</sup> *Qualified Bidders Public Notice*, 33 FCC Rcd at 6184-95 (Attach. A: Qualified Bidders sorted by applicant name).

<sup>15</sup> *Id.* at 6178-79, paras. 38-42.

<sup>16</sup> *Id.* at 6178, para. 40.

<sup>17</sup> *Id.* at para. 42.

<sup>18</sup> *Id.* at 6171, para. 1; *Procedures Public Notice*, 33 FCC Rcd at 1432, para. 10; *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, para. 1

<sup>19</sup> Information calculated from Auction 903 winning bidder data. *See Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, Attach. A.

<sup>20</sup> Letter from Stephen E. Coran, Esq., Counsel to AMG Technology Investment Group, LLC, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, and Genevieve Ross, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 2 (May 8, 2019) (on file in EB-IHD-19-00028994) (AMG LOI Response).

<sup>21</sup> *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, 8260, paras. 1, 14; 47 CFR § 1.21004(a).

<sup>22</sup> *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8267-68, paras. 31-33.

<sup>23</sup> *See* AMG Short-Form Filing; AT&T Short-Form Filing.

<sup>24</sup> *See id.*

<sup>25</sup> *See* AMG Short-Form Filing.

<sup>26</sup> *Id.*

8. During the Quiet Period, Mr. Baker sent more than a half-dozen e-mails to AT&T, including management-level personnel, discussing AMG's Auction 903 bids, its bidding strategies, and bidding results. For example, on June 27, 2018, Mr. Baker e-mailed Jason Degele, Regional Director, AT&T Business, stating that AMG was [REDACTED].<sup>27</sup> On July 18, 2018, five days before the start of Auction 903 bidding, Mr. Baker notified Mr. Degele that [REDACTED].<sup>28</sup> On July 31, 2018, in the midst of the Auction 903 bidding, Mr. Baker again wrote to Mr. Degele at AT&T stating, [REDACTED].<sup>29</sup> On August 27, 2018, one day before the Commission publicly announced the winning bidders, Mr. Baker alerted AT&T that AMG would be [REDACTED].<sup>30</sup> On August 28, 2018, the very day that the *Auction 903 Closing Public Notice* was released, in which applicants were reminded to not engage in prohibited communications, Mr. Baker e-mailed the regional director and regional vice president of AT&T Business a news article reporting that AMG was the top winning bidder in Auction 903.<sup>31</sup> Representatives from AT&T and AMG met at AMG headquarters,<sup>32</sup> which resulted in yet another e-mail to AT&T with Mr. Baker stating that he [REDACTED].<sup>33</sup> On September 4, 2018, representatives from AMG and AT&T participated in a video conference. According to AMG, the purpose of the video conference was to discuss with AT&T whether [REDACTED].<sup>34</sup> On [REDACTED].

<sup>27</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (June 27, 2018, 10:05 CST) (AMG E-mail, June 27, 2018). The e-mails from Bill Baker to AT&T identified Mr. Baker as CEO/Owner of Nextlink, the d/b/a for AMG. At the time of Auction 903 and presently, AMG has been a customer of AT&T for, among other services, [REDACTED]. During the Auction 903 prohibited communications period AMG sought [REDACTED]. [REDACTED] AMG anticipated as a result of its predicted bidding results in Auction 903. *Id.*

<sup>28</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (July 18, 2018, 17:31 CST).

<sup>29</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (July 31, 2018, 11:35 CST).

<sup>30</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (Aug. 27, 2018, 10:07 CST).

<sup>31</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Aug. 28, 2018, 21:28 CST). Bill Baker sent Bill Eifert a link to the following article: Mike Dano, "Here are the top 100 winners of the FCC's \$1.5B CAF II Auction," *Fierce Wireless*, Aug. 28, 2018 available at <https://www.fiercewireless.com/wireless/here-are-top-100-winners-fcc-s-1-5b-caf-ii-auction>.

<sup>32</sup> Calendar Meeting Print Out: Jason K. Degele, Organizer, AMG/AT&T Meeting, AMG Corporate HQ, (Aug. 29, 2019, 9:30 AM CST).

<sup>33</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Aug. 31, 2018, 2:08 CST).

<sup>34</sup> AMG LOI Response at pages 14-15, Response to Question 16(d).

September 7, 2018, Mr. Baker wrote to Mr. Eifert that he would get AT&T a [REDACTED]

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9. On September 20, 2018, AT&T, through its counsel, notified the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff of potential prohibited communications with AMG.<sup>36</sup> On September 21, 2018, after learning of AT&T's disclosure to FCC staff, AMG, through its counsel, also notified Commission staff of "potential prohibited communications" with AT&T in connection with Auction 903.<sup>37</sup> Subsequently, this matter was referred to the Enforcement Bureau (Bureau).

### III. DISCUSSION

#### A. AMG Apparently Violated Sections 1.21002(b)-(c) of the Rules

10. Section 1.21002(b) of the Rules provides, in pertinent part, that:

After the deadline for submitting applications to participate [in an auction], an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the application . . . .<sup>38</sup>

11. Section 1.21002(c) of the Rules provides, in pertinent part, that:

An applicant that makes or receives communications that may be prohibited pursuant to this paragraph shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.<sup>39</sup>

12. We find that AMG apparently engaged in prohibited communications with AT&T during Auction 903, in violation of section 1.21002(b) of the Rules. The record indicates that AMG, an Auction 903 applicant, communicated prohibited information about its bids, bidding strategies, and bidding outcomes to AT&T, the parent company of Auction 903 applicant Cingular,<sup>40</sup> on at least seven separate occasions, as detailed above, during the Quiet Period. The Commission has been clear that even communicating whether or not a party is placing bids constitutes the conveying of bids or bidding

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<sup>35</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Sept. 7, 2018, 12:08 CST).

<sup>36</sup> Letter from Cathy Carpino, Senior Counsel, AT&T Services, Inc., to Margaret Weiner, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau (Sept. 20, 2018) (AT&T Disclosure Letter).

<sup>37</sup> Letter from Stephen E. Coran, Lerman Senter PLLC, Counsel to AMG Technology Investment Group, LLC, to Margaret Weiner, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau (Sept. 21, 2018) (AMG Disclosure Letter).

<sup>38</sup> 47 CFR § 1.21002(b).

<sup>39</sup> 47 CFR § 1.21002(c).

<sup>40</sup> As noted above, an "applicant" means "any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant." 47 CFR § 1.21002(a). Because AT&T controls Cingular, AT&T is also considered an applicant in Auction 903 and therefore subject to all the Auction 903 rules and procedures.

strategies and is prohibited.<sup>41</sup> Furthermore, in addition to the express prohibition against communicating about an entity's bids in section 1.21002(b), the *Procedures Public Notice* cautioned Auction 903 applicants "to avoid direct or indirect communications with another applicant that (i) relate to any Phase II auction eligible area(s) and (ii) ... including potential arrangements regarding the post-auction market structure in eligible areas."<sup>42</sup> Here, not only did AMG relay numerous messages about its bidding, and signal its aggressive bidding strategy to AT&T, but in connection with its bidding revelations, it also communicated with AT&T about future business opportunities in Auction 903 eligible areas.<sup>43</sup>

13. AMG did not disclose in its short-form application any agreements between AMG and AT&T (or AT&T's subsidiary Cingular) that would have permitted its e-mails and meetings discussing its bids, bidding strategies, and bidding results during the Quiet Period. Furthermore, AMG's failure to timely report these apparently prohibited communications to the Commission within five business days of their occurrence apparently violated section 1.21002(c) of the Rules. AMG did not report these communications until September 21, 2018, 87 days after the first known prohibited communication on June 27, 2018 and 14 days after the last known prohibited communication on September 7, 2018. AMG notified the Commission only after AT&T came forward to disclose AMG's pattern of prohibited communication.<sup>44</sup> Thus, we find that AMG apparently willfully and repeatedly violated sections 1.21002(b)-(c) of the Rules by its repeated pattern of prohibited communications during Auction 903 with AT&T and its failure to timely report its prohibited communications.

#### B. Proposed Forfeiture

14. Section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."<sup>45</sup> Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of

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<sup>41</sup> See *Procedures Public Notice*, 33 FCC Rcd at 1478, para. 1387; citing *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794, 10796-97, paras. 6-9 (WTB 2015).

<sup>42</sup> *Procedures Public Notice*, 33 FCC Rcd at 1478, para. 137.

<sup>43</sup> See AMG LOI Response, page 15, Response to Inquiry 16(c) [REDACTED]

*Id.*

According to AT&T, the parties were engaged in communications about "Auction 903 generally and potential projects/collaborations between AMG and AT&T [REDACTED]

[REDACTED]. Response to Letter of Inquiry from Cathy Carpino, Senior Legal Counsel, AT&T Services, Inc. to Genevieve Ross, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 1 (filed May 29, 2019) (on file in EB-IHD-19-00028991) (AT&T LOI Response).

<sup>44</sup> See AMG Disclosure Letter at 1-2. AMG states "Attached hereto are eight pages of e-mails containing communications between Bill Baker of AMG and various employees of AT&T. AMG learned late yesterday that AT&T has submitted this same information to you. AMG is providing this information as soon as possible upon learning of AT&T's submission and within the five-business-day period specified in 1.21002(c)." *Id.*

<sup>45</sup> 47 U.S.C. § 503(b)(1)(B).

[any] act, irrespective of any intent to violate” the law.<sup>46</sup> This definition of willful applies to section 503(b) of the Act, and the Commission has so interpreted the term in the section 503(b) context.<sup>47</sup>

15. Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against AMG of up to \$201,340 per violation, or for each day of a continuing violation, up to a statutory maximum of \$2,013,399 for a single act or failure to act.<sup>48</sup> In exercising our forfeiture authority, we consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, substantial economic gain, and such other matters as justice may require.<sup>49</sup> As required by the Act, the Commission will apply these statutory factors to determine a forfeiture based on the Commission’s evaluation of each individual case on its own merits.<sup>50</sup> We may also adjust the base forfeiture upward or downward, taking into account the particular facts of each individual case.<sup>51</sup> In cases in which the Commission has not established a base forfeiture amount for an apparent violation, it has looked to forfeitures established or issued in analogous cases for guidance.<sup>52</sup>

16. Given the importance of the prohibited communications rule to maintaining the integrity and competitiveness of the auction process, the Commission has previously assessed a forfeiture in the amount of \$100,000 for violations of this rule.<sup>53</sup> The Commission has also seen fit to adjust the forfeiture

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<sup>46</sup> 47 U.S.C. § 312(f)(1).

<sup>47</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (“[C]onsistent with congressional intent, recent Commission interpretations of ‘willful’ do not require licensee intent to engage in a violation.”), *recons. denied*, 7 FCC Rcd 3453 (1992).

<sup>48</sup> 47 U.S.C. § 503(b)(2)(C); 47 CFR § 1.80(b)(3). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(C) of the Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (4). The Bureau released the order making the 2019 annual adjustment on December 19, 2018. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-1272, 2018 WL 6722625 (EB 2018); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 83 Fed. Reg. 4600 (Feb. 1, 2019) (setting February 1, 2019, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase.” See 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended § 6.

<sup>49</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note § II.

<sup>50</sup> 47 U.S.C. § 503(b).

<sup>51</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (*1997 Forfeiture Policy Statement*) (noting that “[a]lthough [the Commission has] adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, [the Commission] retain[s] the discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under [the] general forfeiture authority contained in Section 503 of the Act”), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>52</sup> See *Cumulus Radio LLC; Radio Licensing Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, Notice of Apparent Liability for Forfeiture, FCC 19-70, 20019 WL 3716420, at \*4, para. 14 (Aug. 6, 2019) (citing *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3304, para.19 (2000)).

<sup>53</sup> See, e.g., *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *appeal denied*, *Star Wireless, LLC v. FCC & USA*, 522 F.3d 469 (D.C. Cir. 2008) (*Star & Northeast Order*). In the Order on Review, the Commission affirmed the Bureau’s determination that Star Wireless and

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amount when warranted by the totality of the facts unique to each case. For example, the Commission has assessed a lower forfeiture for violations of its Rules in previous auctions because the parties had an otherwise unblemished history of compliance.<sup>54</sup>

17. Considering the facts and circumstances of the instant case, and the extent and the import of the violations, this case does not merit a reduction from the \$100,000 forfeiture amount the Commission has previously imposed for engaging in prohibited communications. The record shows that AMG exhibited a disregard for the rule against prohibited communications. For nearly three months, through the pre-bidding, bidding, and the post-bidding phases of the Quiet Period, Mr. Baker—the Company’s top executive and the person designated as “responsible party”<sup>55</sup> for AMG’s Auction 903 activities—engaged in persistent prohibited communications with AT&T. During the Quiet Period, AMG alerted AT&T that it would be a substantial bidder across multiple states, informed AT&T of its bidding results before the Commission had publicly announced the winning bidders, and engaged in meetings to discuss its auction winnings, even alerting AT&T that AMG would provide AT&T with the coverage areas for which AMG was the winning bidder of Auction 903.<sup>56</sup> In its prohibited communications with AT&T, AMG even stated that it was communicating with other Auction 903 applicants.<sup>57</sup>

18. AMG persisted in its prohibited communications with AT&T despite the Commission’s repeated and explicit admonitions against prohibited communications in each phase of the auction process. The Commission’s warnings were emphasized throughout Auction 903, from the *Procedures Public Notice*, to the *Qualified Bidders Public Notice*, and then in the *Auction 903 Closing Public Notice*.

19. When AMG disclosed its prohibited communications to the Commission, as required by section 1.21002(c) of the Rules,<sup>58</sup> it was well past the deadline of five business days and only after AT&T

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Northeast Communications were each liable for a monetary forfeiture of \$100,000 for violation of the auctions prohibited communications rule, but reduced the forfeiture to \$75,000 because each company had a history of compliance with Commission rules. Subsequently, the Bureau, applied this compliance record reduction to the only other prohibited communications decision before the Bureau until now. See *Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009) (*Cascade NAL*).

<sup>54</sup> *Star Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 17648 (EB 2003), Forfeiture Order, 19 FCC Rcd 18626 (EB 2004), *order granted in part sub nom, Star and Northeast*, 22 FCC Rcd at 8943; *Northeast Communications of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 17672 (EB 2003), Forfeiture Order, 19 FCC Rcd 18635 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007). In the Order on Review, the Commission affirmed the Bureau’s determination that Star Wireless and Northeast Communications were each liable for a monetary forfeiture of \$100,000 for violation of the auctions prohibited communications rule, but reduced the forfeiture to \$75,000 because each company had a history of compliance with Commission rules. Subsequently, the Bureau, applied this compliance record reduction to the only other prohibited communications decision before the Bureau until now. See *Cascade NAL*, 24 FCC Rcd at 1354, para. 14; Forfeiture Order, 28 FCC Rcd 141(EB 2013), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015). To be sure, the Commission may also decide in the future that it is appropriate to make an upward adjustment to the forfeiture up to the statutory maximum allowed under its Rules. See 47 CFR § 1.80.

<sup>55</sup> See AMG Short-Form Filing.

<sup>56</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Sept. 7, 2018, 12:08 CST).

<sup>57</sup> E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (Jun. 30, 2018, 10:05 CST). AMG CEO Bill Baker mentioned [REDACTED], which was among the Auction 903 winning bidders. See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8272-82 (Attach. A: Winning Bidder Summary (sorted by bidder name)).

<sup>58</sup> 47 CFR § 1.21002(c).

did so first.<sup>59</sup> Taking into consideration the facts in this matter pursuant to section 503(b)(2)(E) of the Act, the *1997 Forfeiture Policy Statement*, and section 1.80 of the Rules, we find that AMG is apparently liable for a forfeiture of \$100,000.

#### IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act and sections 0.111, 0.311, and 1.80 of the Rules,<sup>60</sup> AMG Technology Investment Group, LLC, **IS HEREBY NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for willful and repeated violations of sections 1.21002(b)-(c) of the Rules.<sup>61</sup>

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,<sup>62</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, AMG Technology Investment Group, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 24-25 below.

22. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>63</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>64</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>65</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fee/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account — the bill number is the NAL Account number with the first two digits excluded — and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.

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<sup>59</sup> See AMG Disclosure Letter at 1-2.

<sup>60</sup> 47 CFR §§ 0.111, 0.311, 1.80.

<sup>61</sup> 47 CFR §§ 1.21002(b)-(c).

<sup>62</sup> 47 CFR § 1.80.

<sup>63</sup> Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

<sup>64</sup> For questions regarding payment procedures, please contact the Financial operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>65</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form 159/159.pdf>.

- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay the ACH, log-in using the FRN caption above. If payment must be split across FRNs, complete this process for each FRN. Next select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account — the bill number is the NAL Account number with the first two digits excluded — and then choose the “Pay by Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with the financial institution that the designated account has authorization to accept ACH transactions.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer — Financial Operations, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 1-A625, Washington, D.C. 20554.<sup>66</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk, by telephone, at 877-480-3201, or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include, a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Rules.<sup>67</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffery J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Rizwan Chowdhry at [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), Robert Krinsky at [Robert.Krinsky@fcc.gov](mailto:Robert.Krinsky@fcc.gov), and Genevieve Ross at [Genevieve.Ross@fcc.gov](mailto:Genevieve.Ross@fcc.gov).

25. The Commission will not consider reducing or cancelling a forfeiture in response to a claim of inability to pay unless AMG Technology Investment Group, LLC, submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claims of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

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<sup>66</sup> 47 CFR § 1.1914.

<sup>67</sup> 47 CFR §§ 1.16, 1.80(f)(3).

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to Bill Baker, Managing Member, AMG Technology Investment Group, LLC, 95 Parker Oats Lane, Hudson Oaks, Texas 76087, and to Stephen E. Coran, Esq., Counsel to AMG Technology Investment Group, LLC, Lerman Senter PLLC, 2001 L Street, NW, Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau