

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

In the Matter of	)	
	)	
AT&T Services, Inc.	)	File No.: EB-IHD-19-00028991
	)	NAL/Acct. No.: 201932080023
	)	FRN: 0018716266

**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 \$75,000 against AT&T Services, Inc. (AT&T or Company),<sup>1</sup> for apparently engaging in prohibited communications during the Commission’s Connect America Fund (CAF) Phase II (CAF-II) auction (Auction 903), and failing to timely report such prohibited communications. We find that AT&T, the parent company of Auction 903 applicant New Cingular Wireless PCS, LLC (Cingular), apparently violated section 1.21002(b) of the Commission’s rules (Rules)<sup>2</sup> by engaging in prohibited communications with AMG Technology Investment Group, LLC (AMG), during Auction 903, and section 1.21002(c)<sup>3</sup> by reporting these communications to the Commission outside of the required five-day reporting period.

**II. BACKGROUND**

3. AT&T is a global provider of telecommunications, media, and technology services,<sup>4</sup> and a current recipient of CAF-II support awarded in 2015.<sup>5</sup> AMG, doing business as Nextlink, provides

<sup>1</sup> 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.

<sup>2</sup> 47 CFR § 1.21002(b).

<sup>3</sup> 47 CFR § 1.21002(c).

<sup>4</sup> See “AT&T, Inc., SEC Form 10-K,” at 1, [https://www.sec.gov/Archives/edgar/data/732717/000119312519045608/d705958d10k.htm#toc705958\\_2](https://www.sec.gov/Archives/edgar/data/732717/000119312519045608/d705958d10k.htm#toc705958_2) (last visited Sep. 5, 2019).

<sup>5</sup> 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, Attach. at 2, Response to Question 1 (May 29, 2019) (on file in EB-IHD-19-00028991) (AT&T LOI Response).

Internet and voice services via fixed wireless and fiber optic technologies.<sup>6</sup> Both AT&T, through its wholly owned subsidiary Cingular, and AMG were applicants in 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>7</sup>

4. On February 1, 2018, the Commission released a public notice setting forth the filing requirements and other procedures for Auction 903 (*Procedures Public Notice*).<sup>8</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>9</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>10</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 applicants’ participation in the auction.<sup>11</sup> The Commission emphasized that the prohibition applies to “all short-form applicants regardless of whether such applicants became qualified bidders or actually bid.”<sup>12</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 that the reporting obligation continues until the report has been made.<sup>13</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>14</sup> Cingular and AMG each submitted short-form applications to

<sup>6</sup> 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).

<sup>7</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>8</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>9</sup> *Id.* at 1476, para. 129.

<sup>10</sup> *Id.* at para. 128.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at para. 130.

<sup>13</sup> *Id.* at 1483, para. 156; 47 CFR § 1.21002(c).

<sup>14</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).

participate in Auction 903 by the March 30, 2018 deadline.<sup>15</sup> Cingular and AMG stated on their respective short-form applications that they did not have joint bidding agreements with any Auction 903 applicants.<sup>16</sup> Cingular and AMG also certified that the content of their respective applications was “true and correct.”<sup>17</sup>

6. On June 25, 2018, the Qualified Bidders Public Notice (*Qualified Bidders Public Notice*) was released announcing that Cingular and AMG, among others, were qualified to bid in Auction 903.<sup>18</sup> Auction 903 applicants were again reminded of their obligation to comply with section 1.21002 of the Rules, by not engaging in prohibited communications.<sup>19</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>20</sup> Applicants were again reminded of their obligation to report any communication made or received that “appears” to violate section 1.21002 within five business days.<sup>21</sup>

7. Bidding in Auction 903 began on July 24, 2018, and concluded on August 21, 2018.<sup>22</sup> AT&T states that after conducting a financial analysis of the Auction 903 eligible areas, it decided, on June 14, 2018, not to bid in the auction.<sup>23</sup> AMG emerged as the largest winner of CAF-II financial support.<sup>24</sup> On August 28, 2018, the winning bidders were announced in the Auction 903 Closing Public Notice (*Auction 903 Closing Public Notice*), which also established October 15, 2018, as the deadline for winning bidders to submit the required post-auction long-form application for CAF-II funding support, as well as the ending date of the prohibited communications period.<sup>25</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>26</sup>

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<sup>15</sup> See New Cingular Wireless PCS, LLC, Auction 903 FCC Form 183 Application, File No. 0008151983, (filed June 4, 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); 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=10816513&file\\_num=0008155703&version=2&PStart=1&auction\\_id=903](https://auctionfiling.fcc.gov/form175/search175/results_detail_appInfo.htm?searchLevel=B&application_id=10816513&file_num=0008155703&version=2&PStart=1&auction_id=903); (AMG Short-Form Filing).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See also *Procedures Public Notice*, 33 FCC Rcd at 1439, para. 24.

<sup>18</sup> *Qualified Bidders Public Notice*, 33 FCC Rcd at 6184-95 (Attach. A: Qualified Bidders sorted by applicant name).

<sup>19</sup> *Id.* at 6178-79, paras. 38-42.

<sup>20</sup> *Id.* at 6178, para. 40.

<sup>21</sup> *Id.* at para. 42.

<sup>22</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>23</sup> AT&T LOI Response at 1, Attach. at 2, 4, 8, Responses to Questions 1, 3, 10.

<sup>24</sup> Information calculated from Auction 903 winning bidder data. See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257, Attach. A.

<sup>25</sup> *Id.* at 8257, 8260, paras. 1, 14; 47 CFR § 1.21004(a).

<sup>26</sup> *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8267-68, paras. 31-33.

8. From June 27, 2018 through September 7, 2018, within the Quiet Period, AT&T received and responded to more than a half-dozen e-mails sent to various AT&T personnel by AMG personnel, including Bill Baker, AMG's managing member, majority owner, and one of the authorized bidders for AMG.<sup>27</sup> The aforementioned e-mails discussed AMG's bidding, bidding strategies, and bidding results, and AT&T and AMG also met in person and by video conference within the Quiet Period and discussed Auction 903 related business opportunities.<sup>28</sup> For example:

- On June 27, 2018, Mr. Baker e-mailed Jason Degele, Regional Director, AT&T Business, stating that AMG was [REDACTED]<sup>29</sup>
- On July 18, 2018, five days prior to the start of Auction 903 bidding, Mr. Baker notified Mr. Degele that [REDACTED]<sup>30</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>31</sup>
- On August 27, 2018, one day before the Commission publicly announced the winning bidders, Mr. Baker alerted AT&T that [REDACTED]<sup>32</sup>
- On August 28, 2018, the very day that the Commission issued the *Auction 903 Closing Public Notice*, in which applicants were reminded to not engage in prohibited communications, Mr. Baker e-mailed to AT&T's Messrs. Bill Eifert, Assistant Vice President, Select Accounts, and Jason Degele, Sales Manager, a news article reporting that AMG was the top winning bidder in Auction 903.<sup>33</sup>

<sup>27</sup> See AMG Short-Form Filing.

<sup>28</sup> AT&T LOI Response, Attach. at 6-8, Responses to Questions 8-10.

<sup>29</sup> AT&T LOI Response, Attach. at 4, Response to Question 5; 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]

[REDACTED]. During the Auction 903 prohibited communications period AMG sought [REDACTED]

AMG anticipated as a result of its predicted bidding results in Auction 903. *Id.*

<sup>30</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>31</sup> AT&T LOI Response, Attach. at 4-5, Response to Question 5; E-mail from Bill Baker, CEO/Owner, Nextlink, to Jason K. Degele, Regional Director, AT&T Business (July 31, 2018, 11:35 CST).

<sup>32</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>33</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>. See AT&T LOI Response, Attach. at 7, Response to Question 8(d).

- On August 29, 2018, representatives from AT&T and AMG met at AMG headquarters.<sup>34</sup> According to AT&T, Mr. Baker informed AT&T during this meeting that AMG [REDACTED]  
[REDACTED]  
[REDACTED]<sup>35</sup>
- On August 30, 2018, Mr. Baker sent a follow-up e-mail to Mr. Eifert, regarding the August 29, 2018 meeting, stating that he [REDACTED]  
[REDACTED]<sup>36</sup> Mr. Eifert responded on August 30, 2018, that “[w]e were equally encouraged about working with you on all areas discussed. We are working on the items from our discussion and will be back to you.” Mr. Chris Percy, Regional Vice President, Select Accounts (retired from AT&T)<sup>37</sup> responded on August 30, 2018, congratulating Mr. Baker on AMG’s award.<sup>38</sup>
- On September 4, 2018, representatives from AT&T and AMG participated in a video conference. According to AT&T, the [REDACTED]  
[REDACTED]  
[REDACTED]<sup>39</sup>
- On September 7, 2018, Mr. Baker wrote to Mr. Eifert that [REDACTED]  
[REDACTED]<sup>40</sup> On September 11, 2018, in response to the September 7, 2018 communication, Paul Theiss, an attorney for AT&T, informed AMG’s outside counsel that AT&T would not further discuss Auction 903-related opportunities until after the Quiet Period ended.<sup>41</sup>

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>42</sup> On September 21, 2018, AMG through its counsel also notified staff of

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<sup>34</sup> Calendar Meeting Print Out: Jason K. Degele, Organizer, AMG/AT&T Meeting, AMG Corporate HQ, Aug. 29, 2019, 9:30 AM CST.

<sup>35</sup> AT&T LOI Response, Attach. at 7, Response to Question 8(c).

<sup>36</sup> AT&T LOI Response, Attach. at 9, Response to Question 12; E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Aug. 31, 2018, 2:08 CST).

<sup>37</sup> AT&T LOI Response, Attach. at 7, Response to Question 9(a).

<sup>38</sup> *Id.* at 9, Response to Question 12.

<sup>39</sup> *Id.* at 8, Response to Question 9(c).

<sup>40</sup> *Id.* at 10, Response to Question 12; E-mail from Bill Baker, CEO/Owner, Nextlink, to Bill Eifert, Regional Vice President, AT&T Business (Sept. 7, 2018, 12:08 CST).

<sup>41</sup> *See* AT&T LOI Response, Attach. at 10, Response to Question 12.

<sup>42</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).

“potential prohibited communications” with AT&T in connection with Auction 903.<sup>43</sup> Subsequently, this matter was referred to the Enforcement Bureau (Bureau).

### III. DISCUSSION

#### A. AT&T 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>44</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>45</sup>

12. We find that AT&T apparently engaged in prohibited communications with AMG during Auction 903, in violation of section 1.21002(b) of the Rules. The record indicates that AT&T, an Auction 903 applicant,<sup>46</sup> engaged in prohibited communications with AMG, another Auction 903 applicant, by cooperating with and participating in discussions with AMG while AMG was repeatedly communicating to AT&T information about its bids, bidding strategies, and bidding results. As detailed above, the communications occurred on multiple occasions, in numerous e-mails, and the parties even met in person and by video conference during the Quiet Period to discuss business opportunities directly associated with AMG's bids in Auction 903. Thus, AT&T was an active participant in discussions with AMG to cooperate and collaborate on future business opportunities surrounding “Auction 903-eligible census blocks in [REDACTED]”<sup>47</sup> Cingular, an AT&T subsidiary, did not disclose in its short-form application any agreements with AMG that would have permitted its e-mails and meetings discussing AMG's bids, bidding strategies, and bidding results during the Quiet Period. Furthermore, AT&T did not report these communications until September 20, 2018, 86 days after the first known prohibited communication on June 27, 2018, and 13 days after the last known prohibited communication on September 7, 2018. AT&T's failure to timely report these apparently prohibited communications to the Commission within five business days of their occurrence is an apparent violation

<sup>43</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>44</sup> 47 CFR § 1.21002(b).

<sup>45</sup> 47 CFR § 1.21002(c).

<sup>46</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.

<sup>47</sup> See AT&T LOI Response at 1.

of section 1.21002(c) of the Rules. Thus, we find that AT&T apparently willfully and repeatedly violated sections 1.21002(b)-(c) of the Rules by its pattern of prohibited communications during Auction 903 with AMG and its apparent failure to timely report these prohibited communications.

### **B. Proposed Forfeiture**

13. 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>48</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>49</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>50</sup>

14. Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against AT&T 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>51</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>52</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>53</sup> We may also adjust the base forfeiture upward or downward, taking into account the particular facts of

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<sup>48</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>49</sup> 47 U.S.C. § 312(f)(1).

<sup>50</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.”), *recon. denied*, 7 FCC Rcd 3453 (1992).

<sup>51</sup> 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(B) 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 Enforcement 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>52</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note § II.

<sup>53</sup> 47 U.S.C. § 503(b).

each individual case.<sup>54</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>55</sup>

15. Given the importance of the prohibited communications rule to maintaining the integrity and competitiveness of the auctions process, the Commission has previously assessed a forfeiture in the amount of \$100,000 for violations of this rule.<sup>56</sup> The Commission has also seen fit to adjust the forfeiture 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>57</sup>

16. We believe that a downward adjustment of \$25,000 is appropriate here and propose a forfeiture penalty of \$75,000 against AT&T. We find a number of factors counsel a downward adjustment from the forfeiture amount that we have assessed for similar violations in the past.<sup>58</sup> In this case, the prohibited communications were initiated by AMG in an effort to secure discounts from AT&T and there is no evidence in the record that AT&T relayed any information to AMG about Cingular's participation in the auction. The record further shows that AT&T was the party that ultimately stopped the prohibited communications by advising AMG that it could no longer engage in discussions regarding Auction 903. Finally, we note that AT&T self-disclosed its prohibited communications with AMG, even

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<sup>54</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>55</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, 2019 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>56</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 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>57</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>58</sup> 47 U.S.C. § 503(b)(2)(E).



though it did so outside of the five-day grace period provided by the Rules. Accordingly, based on the totality of the record, we believe that it is appropriate to reduce the proposed penalty from what we have previously assessed for similar violations of auction prohibited communications periods. Considering all of the elements required under section 503(b)(2)(E) of the Act, the *1997 Forfeiture Policy Statement*, and section 1.80 of the Rules, we find that AT&T is apparently liable for a forfeiture of \$75,000.

#### IV. ORDERING CLAUSES

17. 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>59</sup> AT&T Services, Inc., **IS HEREBY NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventy-five thousand dollars (\$75,000) for willful and repeated violations of sections 1.21002(b)-(c) of the Rules.<sup>60</sup>

18. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,<sup>61</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, AT&T Services, Inc., **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 21-22 below.

19. 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>62</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>63</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>64</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> 47 CFR §§ 0.111, 0.311, 1.80.

<sup>60</sup> 47 CFR § 1.21002(b)-(c).

<sup>61</sup> 47 CFR § 1.80.

<sup>62</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>63</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>64</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.

20. 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>65</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).

21. 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>66</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).

22. The Commission will not consider reducing or cancelling a forfeiture in response to a claim of inability to pay unless AT&T Services, Inc. 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>65</sup> 47 CFR § 1.1914.

<sup>66</sup> 47 CFR §§ 1.16, 1.80(f)(3).

23. **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 Ms. Cathy Carpino, Senior Legal Counsel, AT&T Services, Inc., 1120 20th Street NW, Suite 1000, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau