

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

FORFEITURE ORDER

Adopted: April 22, 2024

Released: April 22, 2024

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Communications Commission (Commission or FCC) has long standing rules that bar discussions between and among auction applicants during an auction and require auction applicants to self-report any such violations immediately upon their occurrence. On September 6, 2019, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability (NAL) for \$100,000 against AMG Technology Investment Group, LLC (AMG or Company), for apparently violating section 1.21002(b)1 of the Commission’s rules by repeatedly engaging in prohibited communications with AT&T Services, Inc. (AT&T), the parent company of New Cingular Wireless PCS, LLC (Cingular),2 during the Connect America Fund (CAF) Phase II (CAF-II) auction (Auction 903), and the Bureau also concluded that AMG apparently violated section 1.21002(c)3 by failing to notify the Commission of such communications in a timely manner.4 AMG filed a Response to the NAL on October 7, 2019, which in pertinent part, requested that the Commission cancel the NAL or in the alternative substantially reduce the amount of the

1 47 CFR § 1.21002(b).

2 At the time the NAL was issued, the Commission’s rule stated that the term “applicant” shall include “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) (2019). Because AT&T controls Cingular, AT&T is also considered an applicant in Auction 903 and therefore subject to all Auction 903 rules and procedures. In 2020, the Commission modified the definition of “applicant.” Establishing a 5G Fund for Rural America, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12259, para. 210 (2020) (Establishing a 5G Fund for Rural America).

3 47 CFR § 1.21002(c) (2019). In 2020, the rule for reporting prohibited communications was moved from section 1.21002(c) to section 1.21002(e) of the rules. See Establishing a 5G Fund for Rural America, 35 FCC Rcd at 12260, para. 211 (2020). See also Establishing a 5G Fund for Rural America, Final Rule, 85 Fed. Reg. 75770-01, 75816 (Nov. 25, 2020) (redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, under section 1.21002). Unless otherwise noted in this Forfeiture Order, citations to section 1.21002 are referring to the pre-amendment version as applied to AMG’s conduct during the relevant timeframe.

4 AMG Technology Investment Group, LLC, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7649 (EB 2019) (NAL).

proposed forfeiture.<sup>5</sup> After reviewing the record in this matter, we reject AMG's request to cancel or reduce the forfeiture penalty proposed in the *NAL*, and we impose the \$100,000 forfeiture.

## II. BACKGROUND

2. *Legal Framework.* The CAF-II auction was implemented to award up to \$198 million annually for 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas.<sup>6</sup> It was the first FCC auction to award ongoing high-cost universal service support using a multiple-round, reverse auction format.<sup>7</sup> For the CAF-II auction, section 1.21002(b) of the Commission's rules provided that 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.<sup>8</sup>

Auction 903's 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 6:00 p.m. EST (Quiet Period).<sup>9</sup> An applicant's duty to report potentially prohibited communications immediately or in any case within five business days was set out in section 1.21002(c) of the Commission's rules.<sup>10</sup>

3. *Factual Background.* AMG and AT&T's wholly owned subsidiary, Cingular, each submitted a short-form application to participate in Auction 903 and each entity qualified as a bidder.<sup>11</sup> In the *NAL*, the Bureau found that during the course of Auction 903, AMG apparently violated section 1.21002(b) of the rules by communicating with AT&T regarding "prohibited information about its bids, bidding strategies and bidding outcome to AT&T . . . on at least seven separate occasions . . . during the

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<sup>5</sup> Response to Notice of Apparent Liability from AMG Technology Investment Group, LLC, to Chief, FCC Enforcement Bureau (Oct. 7, 2019) (on file in EB-IHD-19-00028994) (*NAL Response*).

<sup>6</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (defining "voice telephony service" as the supported service and requiring Connect America Fund support recipients to offer broadband as a condition of receiving support).

<sup>7</sup> In prior Mobility Fund and Tribal Mobility Fund auctions, the Commission awarded one-time universal service support using a single-round, reverse auction. *USF/ICC Transformation Order*, 26 FCC Rcd at 17773-824. The CAF-II auction's bidding procedures were designed to enable a bidder to express in a simple and orderly way the amount of support it needed to provide a specified level of service to a specified set of eligible areas. *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, 1431 (2018) (*Procedures Public Notice*).

<sup>8</sup> 47 CFR § 1.21002(b).

<sup>9</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*).

<sup>10</sup> 47 CFR § 1.21002(c) (2019).

<sup>11</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*).

Quiet Period.”<sup>12</sup> The Bureau further found that AMG had failed to report these communications with AT&T to the Commission in a timely manner, in apparent willful violation of section 1.21002(c) of the Commission’s rules.<sup>13</sup> The *NAL* proposed a forfeiture in the amount of \$100,000 against AMG.<sup>14</sup>

4. On October 7, 2019, AMG filed its response to the *NAL*, requesting cancellation of the *NAL* or in the alternative, that the proposed forfeiture be substantially reduced.<sup>15</sup> In support of its position, AMG characterized the communications with AT&T as “mere” and not “prohibited” communications<sup>16</sup> and argued that: (1) the Bureau goes beyond its authority and construes any communication between applicants mentioning Auction 903 as a prohibited communication;<sup>17</sup> (2) the Bureau substantially expands the scope of the terms “bids or bidding strategies;”<sup>18</sup> (3) the Bureau “conflates” general business discussions between an applicant and an applicant’s affiliated entities with communications regarding the “post-auction market structure;”<sup>19</sup> (4) the Bureau is not authorized to render a decision on an issue of first impression regarding the sharing of information by an auction applicant with non-officers of an affiliate of an auction applicant;<sup>20</sup> (5) the relevant facts in this case do not support a forfeiture;<sup>21</sup> and (6) any forfeiture assessed should be reduced based on AMG’s history of compliance with the Commission’s rules.<sup>22</sup> AMG also claims it had no reason to believe that when the communications occurred there was anything to report as AMG and AT&T “were mutually unaware that Cingular was an applicant” in Auction 903.<sup>23</sup> For the reasons discussed below, AMG’s arguments are unavailing. Notably, AMG does not deny that the communications at issue took place, or the dates when the communications were made.

### III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with section 503(b)(2)(B) of the Communications Act of 1934, as amended (Act),<sup>24</sup> section 1.80 of the Commission’s rules,<sup>25</sup> and the Commission’s Forfeiture Policy Statement<sup>26</sup> as well as previously assessed forfeitures for similar prohibited communications violations.<sup>27</sup> When we assess forfeitures, section 503(b)(2)(E) of the Act

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<sup>12</sup> *NAL*, *supra* note 4, at 7653, para. 12.

<sup>13</sup> *Id.* at 7654, para. 13.

<sup>14</sup> *Id.* at 7649, para. 2. A separate Notice of Apparent Liability was simultaneously issued to AT&T. *See AT&T Services, Inc.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7660 (EB 2019) (*AT&T NAL*).

<sup>15</sup> *See generally* *NAL* Response, *supra* note 5.

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

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 12.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> *Id.* at 19.

<sup>23</sup> *Id.* at iv.

<sup>24</sup> 47 U.S.C. § 503(b)(2)(B).

<sup>25</sup> 47 CFR § 1.80.

<sup>26</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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>27</sup> *See Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007) (*Star Wireless Order on Review*), *appeal denied*, *Star Wireless, LLC v. FCC & USA*, 522 F.3d 469 (D.C. Cir.

(continued....)

requires that we take into account 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, and such other matters as justice may require.”<sup>28</sup> We have fully considered the arguments in AMG’s NAL Response and find them unpersuasive. We therefore impose the \$100,000 forfeiture proposed in the NAL.

6. *Liability.* The record indicates that AMG, an Auction 903 applicant, engaged in several prohibited communications with AT&T, another Auction 903 applicant. AMG’s prohibited communications with AT&T on eight separate occasions during Auction 903’s Quiet Period was willful.<sup>29</sup> As detailed in the NAL, the communications were prohibited because the subject matter and substance were about AMG’s bids, bidding strategies, and bidding outcomes; occurred on multiple occasions, in numerous e-mails, and even in person and by video conference; and all of these incidents occurred during Auction 903’s Quiet Period.<sup>30</sup> Thus, AMG was an active participant in prohibited communications with AT&T surrounding AMG’s bids, bidding strategies, and bidding results, and then failed to report these communications to the Commission in violation of section 1.21002(b) and (c) of the Commission’s rules.<sup>31</sup>

7. AMG’s NAL Response attempts to turn the Commission’s rules and requirements for Auction 903 on their head to avoid application of the prohibited communications rule. In the Auction 903 *Procedures Public Notice*, the Commission was clear that “the terms contained in the Commission’s rules, relevant order, and public notices *are not negotiable.*”<sup>32</sup> The record demonstrates that AMG violated the Commission’s rules for Auction 903 regarding prohibited communications and as such, is liable for the entire forfeiture amount.

**A. The Bureau’s Determination that AMG’s Communications Are Prohibited Under the Commission’s Anti-Collusion Rules Was Well Within its Delegated Authority.**

8. We have considered each of AMG’s arguments and find that each argument fails on substantive grounds. AMG claims that the Commission finds fault with what AMG characterizes as “mere communications, as opposed to prohibited communications” and does so without a “complete analysis under the Commission’s rules and prior statements of policy that underpin the rule.”<sup>33</sup> Additionally, AMG asserts that the Commission’s rules expressly limit the scope of prohibited communications to those that involve “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,”<sup>34</sup> and the Bureau’s approach substantially expands the scope of the terms “bids or bidding strategies.”<sup>35</sup> Next, AMG accuses the Bureau of “conflating” general business discussions with communications regarding the post-auction market structure.<sup>36</sup> Lastly, AMG argues that the Bureau is acting outside its delegated authority to decide this matter as this is a case of first impression regarding the import of information

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2008) (*Star Wireless*); *Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009), *forfeiture issued*, Forfeiture Order, 28 FCC Rcd 141 (EB 2013), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015) (*Cascade NAL*).

<sup>28</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>29</sup> NAL, *supra* note 4, at 7652-53, paras. 8, 10; *see* 47 U.S.C. § 312(f)(1) (defining “willful”).

<sup>30</sup> NAL, *supra* note 4, at 7652-53, paras. 8, 10.

<sup>31</sup> *Id.* at 7653-54, para. 12-13.

<sup>32</sup> *Procedures Public Notice*, *supra* note 7, at 1432, para. 6 (emphasis added).

<sup>33</sup> NAL Response, *supra* note 5, at 5.

<sup>34</sup> *Id.* (citing 47 CFR § 1.21002(b)).

<sup>35</sup> *Id.* at 9.

<sup>36</sup> *Id.* at 10.

shared with non-officers of an affiliate of an auction applicant. We find that AMG's interpretations of the Commission rules are incorrect.

**1. The Auction 903 Rules and Policies are Clear that Communications Discussing Bids or Bidding Strategies During the Quiet Period Are Prohibited.**

9. AMG claims that the *NAL* extends the limited scope of communications that the Commission previously described as prohibited by treating the mere mention of auction participation as “information that affects, or has the potential to affect, bids and bidding strategies,” and that the Bureau offers “no explanation of how such general statements ‘could detract from a fair auction process.’”<sup>37</sup> AMG argues its communications with AT&T are non-violative because the communications provided “no substantive, actionable information that ‘has the potential to affect, bids and bidding strategies’”<sup>38</sup> and that “nothing of substance regarding the bidding process is conveyed.”<sup>39</sup> AMG asserts that the Commission has not expressly defined the terms “bids” or “bidding strategies” and specific elements may “vary according to the subject matter of the auction.”<sup>40</sup>

10. The Auction 903 rules and requirements were unambiguous: “the prohibition on ‘communicating in *any* manner’ includes . . . private communications and indirect or implicit communications, *as well as express* statements of bids and bidding strategies.”<sup>41</sup> AMG’s statements communicating that the Company was { [REDACTED] }, and { [REDACTED] }<sup>42</sup> are directly related to AMG’s bidding in Auction 903 and convey information about AMG’s Auction 903 bids and bidding strategies. These communications fall squarely within the scope of the prohibited communications rule. The Commission stated that “communicating how a party will participate, including specific states and/or tier and latency combinations selected, specific percentages bid, and/or *whether or not the party is placing bids*, would convey bids or bidding strategies and would be prohibited.”<sup>43</sup> Nonetheless, AMG argues that this “does not support the conclusion that a party stating that it is actively participating violates the rule[.]”<sup>44</sup> AMG argues that “it is only a statement that an applicant is not bidding or has dropped out that ‘could detract from a fair auction process,’” that is within the scope of the prohibited communications rule.<sup>45</sup> AMG’s arguments miss the mark because the Commission’s rule encompasses a non-exhaustive list of the types of communications that may be prohibited. Further, this case is not simply about whether or not AMG *applied* to Auction 903, rather it is the substance of the relevant communications that implicate the prohibited communications rule. The substance of the communications reveal how AMG participated in Auction 903.

<sup>37</sup> *Id.* at 7 (citing *NAL*, *supra* note 4, at 7649, para. 1).

<sup>38</sup> *Id.* at 7 (citing *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6771, para. 492 (2014)).

<sup>39</sup> *Id.* at 7.

<sup>40</sup> *Id.* at 6.

<sup>41</sup> *Procedures Public Notice*, *supra* note 7, at 1477, para. 132 (emphasis added); *see also NAL*, *supra* note 4, at 7656, para. 18.

<sup>42</sup> *See NAL*, *supra* note 4, at 7652, para. 8. Material set off by braces and brackets { [ ] } is confidential business information and is redacted from the public version of this document.

<sup>43</sup> *Procedures Public Notice*, *supra* note 7, at 1478, para. 138 (emphasis added).

<sup>44</sup> *NAL Response*, *supra* note 5, at 7, n.32 (citing to *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction (Auction 1000)*, Public Notice, 30 FCC Rcd 10794, 10796, para. 8 (2015)).

<sup>45</sup> *Id.*

11. AMG also claims that its communications with AT&T that the Company was “[redacted]” provide no substantive, actionable information that “has the potential to affect, bids and bidding strategies” and that “nothing of substance regarding the bidding process is conveyed” by its communications.<sup>46</sup> As the Commission stated in the past, however, “it is the substance and timing of specific communications that are key in determining whether there has been a violation [of the prohibited communications rule], not the impact or claimed lack thereof on a particular auction.”<sup>47</sup> AMG’s statements were all delivered during the Quiet Period for Auction 903 and its statements each conveyed AMG’s bidding position or strategies in the auction. As such, the substance and timing of AMG’s communications violated the prohibited communications rules for Auction 903. That the Company does not believe it affected the results of Auction 903 is irrelevant because the prohibited communications rule does not require proof that the auction would have been altered but for the communications. Instead, the Company violated the prohibited communications rule by sharing communications during the Quiet Period with another auction applicant that were about Auction 903 and were precisely of the nature that the rule was intended to address.

12. In rendering its *NAL*, the Bureau followed the plain language of section 1.21002(b) of the Commission’s rules, the rule in place for Auction 903. AMG argues that “mere statements of AMG’s intention to bid or that it was actively bidding in the auction” made in the context of ongoing business discussions are not instances of prohibited communications.<sup>48</sup> AMG is incorrect. The plain language of section 1.21002(b) of the Commission’s rules, and its statements in the *Procedures Public Notice*, are clear and unambiguous and covers “any communications conveying, in whole or part, directly or indirectly, the applicant’s or a competing applicant’s bids or bidding strategies.”<sup>49</sup> Thus, whether it is “mere” statements during business discussions or direct communications among authorized bidders, if the communications convey an applicant’s bid or bidding strategies, such as whether an applicant is actively bidding, during an auction’s Quiet Period, the communication is prohibited. As such, AMG’s communications to AT&T, another applicant in Auction 903, during the Quiet Period, were prohibited.

## **2. The Bureau’s *NAL* Is Based on the Scope and Parameters for Prohibited Communications During Auction 903.**

13. According to AMG, the “effect” of the Bureau’s *NAL* is to expand the scope of prohibited communications arbitrarily “well beyond ‘bids and bidding strategies’ to encompass ‘bidding results’ and ‘bidding outcomes.’”<sup>50</sup> AMG questions “how *post-auction* statements about what has already occurred could have a retroactive adverse impact on the bids and bidding strategies that produced those results.”<sup>51</sup>

14. In adopting the procedures for Auction 903, the Commission was clear in its directive: “[t]he terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable.”<sup>52</sup> Also clear was the requirement to comply with section 1.21002(b) of the Commission’s

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<sup>46</sup> NAL Response, *supra* note 5, at 7.

<sup>47</sup> *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18639, para. 7 (EB 2004).

<sup>48</sup> NAL Response, *supra* note 5, at 3.

<sup>49</sup> *Procedures Public Notice*, *supra* note 7, at 1477-78, para. 135 (emphasis added). See also *id.* at 1478, para. 138 (“[C]ommunicating how a party will participate, including specific states and/or tier and latency combinations selected, specific percentages bid, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.”).

<sup>50</sup> NAL Response, *supra* note 5, at 9.

<sup>51</sup> *Id.* AMG’s question overlooks the potential for prohibited communications between applicants in the period between the announcement of winning bidders and the long-form application deadline to facilitate anti-competitive behavior.

<sup>52</sup> *Procedures Public Notice*, *supra* note 7, at 1432, para. 6.

rules regarding the prohibition of communications *during the Quiet Period*, which includes a period of time post-auction.<sup>53</sup> The Commission even clarified that the prohibition “applies to any communication conveying, in whole or part, directly or indirectly, the applicant’s or a competing applicant’s bids or bidding strategies.”<sup>54</sup>

15. AMG claims its communications with AT&T did not violate the prohibited communications rule because some occurrences occurred after the auction closed. This argument is not convincing since all communications at issue occurred during the Quiet Period. Furthermore, two of AMG’s e-mails were sent *prior to* the commencement of bidding; one e-mail was sent *during* the bidding process; one e-mail was sent prior to the FCC’s announcement of the winning bidders; one e-mail was sent the day the FCC announced the auction’s winning bidders; and two e-mails were sent after the Public Notice announcing the auction winners.<sup>55</sup> AMG’s e-mails were explicitly about AMG’s auction bidding plans before, during, and after the auction process, and each one was sent during the Quiet Period.<sup>56</sup> In addition to the Company’s e-mails, representatives from AMG and AT&T met at AMG’s headquarters and separately participated in a video conference—both meetings included discussions about AMG’s bidding results in the CAF-II auction and both meetings occurred during the Quiet Period.<sup>57</sup> AMG attempts to shorten the Quiet Period *sua sponte*, but does so in clear contravention of the Commission’s definition of auction Quiet Period.<sup>58</sup> All of the communications at issue occurred during the Quiet Period. Accordingly, AMG violated section 1.21002(b) of the rules.<sup>59</sup>

### 3. AMG’s Communications Were Not Post-Auction General Business Discussions.

16. AMG takes issue with the *NAL* by claiming that the Bureau finds fault with AMG’s communications because they involved the “post-auction market structure.”<sup>60</sup> AMG asserts that the *Procedures Public Notice* provides that “[b]usiness discussions and negotiations that are unrelated to bidding in Auction 903 and that do not convey information about CAF-II bids or bidding strategies are not prohibited by the rule,” and that “not all auction-related information is covered by the prohibition.”<sup>61</sup> AMG, however, mischaracterizes the Bureau’s reasoning in the *NAL*.

17. In its *NAL*, the Bureau determined that three of the eight communications cited in the *NAL* included discussions of AMG’s post-auction market structure.<sup>62</sup> The Bureau then looked to the

<sup>53</sup> *Id.* at 1476, para. 128.

<sup>54</sup> *Id.* at 1477-78, para. 135.

<sup>55</sup> See *NAL*, *supra* note 4, at 7652, para. 8.

<sup>56</sup> See generally, *NAL*, *supra* note 4.

<sup>57</sup> *Id.* at 7652, para. 8. As noted in the *NAL*, the parties’ meeting at AMG headquarters resulted in yet another e-mail to AT&T with Mr. Baker stating that he { [REDACTED] }.” *Id.* Moreover, the purpose of the video conference was to discuss with AT&T whether { [REDACTED] }.” *Id.*

<sup>58</sup> *Id.* at 7650, para. 5.

<sup>59</sup> 47 CFR § 1.21002(b).

<sup>60</sup> *NAL* Response, *supra* note 5, at 10 (*citing to NAL*, *supra* note 4, at 7654, para. 12).

<sup>61</sup> *Id.* at 10.

<sup>62</sup> *NAL*, *supra* note 4, at 7652, para. 8. On August 31, 2018, AMG’s managing member and majority owner, Mr. Bill Baker, sent an e-mail to AT&T stating that he “{ [REDACTED] }.” *Id.* Additionally, on September 4, 2018, representatives from

(continued...)

*Procedures Public Notice* which cautioned Auction 903 applicants to “avoid direct or indirect communications with another applicant that (i) relate to any [CAF-II] auction eligible area(s) and (ii) address [CAF-II] support levels, including potential arrangements regarding the post-auction market structure in eligible areas.”<sup>63</sup> According to the Bureau, “*not only* did AMG relay numerous messages about its bidding, and signal its aggressive bidding strategy to AT&T, but . . . it *also* communicated with AT&T about future business opportunities in Auction 903 eligible areas.”<sup>64</sup> Thus, each of the post-auction communications identified by the Bureau, made during the auction’s Quiet Period, either discussed AMG’s bids or its bidding strategies, including some that also discussed post-auction market structure options.

18. AMG attempts to obscure its “post-auction market structure” communication(s) by arguing that the market structure terminology may not be relevant to the CAF-II auction as the auction involved the award of subsidy funding and not the acquisition of new licenses to initiate service in specific markets.<sup>65</sup> AMG, however, does not and cannot point to any exemption in the CAF-II auction rules or policies regarding the relevance or irrelevance of post-auction market structure discussions.<sup>66</sup> Section 1.21002(b) provided that applicants are 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.”<sup>67</sup> As such, all of the communications outlined in the *NAL*, not just the communications discussing the post-auction market structure, were prohibited. And AMG does not convincingly demonstrate why any of the prohibited communications should be considered permissive, let alone all eight of them in order to prevail on its assertion that the communications were permissible. Indeed, AMG made no attempt to discuss each of the eight individual prohibited communications at all.

#### 4. AMG’s Prohibited Communications Do Not Constitute a Case of First Impression for the Bureau.

19. AMG is incorrect that this was a matter of first impression when it argues that “Commission staff have not addressed a situation where non-officers or directors receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.”<sup>68</sup> AMG is also incorrect that the Chief of the Enforcement Bureau is not authorized to resolve “matters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.”<sup>69</sup> The legal question before us is not novel for the Bureau or the Commission, rather it falls well within existing precedents, policies, and guidelines issued by both the Commission and the Bureau in similar cases involving prohibited

AMG and AT&T participated in a video conference whose purpose was to discuss whether { [REDACTED] } . . .” *Id.*

<sup>63</sup> *NAL*, *supra* note 4, at 7654, para. 12 (citing *Procedures Public Notice*, *supra* note 7, at 1478, para. 137).

<sup>64</sup> *Id.* at 7654, para. 12 (emphasis added).

<sup>65</sup> *NAL* Response, *supra* note 5, at 11.

<sup>66</sup> AMG attempts to deflate the significance of the communications by stating they were primarily with Jason K. Degele, the Regional Director of Sales, who managed the AMG account with AT&T for fiber transport services long before Auction 903. We find no merit or significance to this point because the relevant communications were ultimately received by officers and/or directors of AMG and AT&T and as discussed herein, the substance of the communications concerned AMG’s bids and bidding strategies within the meaning of the prohibited communications rule.

<sup>67</sup> 47 CFR § 1.21002(b).

<sup>68</sup> *NAL* Response, *supra* note 5, at 12 (quoting *Procedures Public Notice*, *supra* note 7, at 1477, para. 133).

<sup>69</sup> *Id.* at 12, n.44 (quoting 47 CFR § 0.311).



communications.<sup>70</sup> No new standards or rules regarding prohibited communications during auctions were created by the *NAL*.

20. The Bureau's primary focus and jurisdiction in this matter relates to enforcement of the auction's prohibited communications rule.<sup>71</sup> Pursuant to section 0.201(a)(1) of the Commission's rules, the Commission may delegate authority to act in non-hearing matters and proceedings to bureau chiefs and other members of Commission staff.<sup>72</sup> The Enforcement Bureau serves as the primary Commission entity responsible for enforcement of the Act, the Commission's rules, and Commission orders.<sup>73</sup> Here, the Commission's orders, public notices, and rules for Auction 903 provide the Chief of the Enforcement Bureau with sufficient existing guidelines to determine the appropriate action in response to this investigation and to enforce the Commission's rules.<sup>74</sup>

21. AMG argues that this is a case of first impression because the *NAL* addresses the receipt of information regarding a competing applicant's bids or bidding strategies by non-officers or directors of an applicant.<sup>75</sup> However, the Company's argument does not adequately address the relevant portion of the *Procedures Public Notice* which provides, in part:

Applicants subject to section 1.21002 should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any other applicant's bids or bidding strategies. *Information received by a party related to the applicant may be deemed to have been received by the applicant under certain circumstances.* For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant, and, absent a disclosed agreement that makes the rule's exception applicable, the shared officer creates an apparent violation of the rule. Commission staff have not addressed a situation where non-officers or directors receive information regarding a competing

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<sup>70</sup> *NAL*, *supra* note 4, at 7654, 7654-55, paras. 13, 16 & n.53; *see also* *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18641, para. 11 (EB 2004) (*Northeast Communications of Wisconsin*), order granted in part *sub nom*, *Star Wireless Order on Review*, *supra* note 27; *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (*Cascade Forfeiture Order*); *Emmis Radio License Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 18343 (EB 2002); *US West Communications, Inc.*, Notice of Apparent Liability, 14 FCC Rcd 8816 (1999), *Mercury PCS II, LLC*, Notice of Apparent Liability, 12 FCC Rcd 17970 (1997).

<sup>71</sup> *See Star Wireless Order on Review*, *supra* note 27, at 8952, para. 20. At the time, *Star Wireless* referred to the restriction as the "anti-collusion" rule, but as of 2010, the Commission has since referred to the rule as concerning prohibited communications. *See Procedural Amends. to Comm'n Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 1776, para. 3 (2010). This change had no substantive effect on the rule nor the Commission's interpretation and application of the rule.

<sup>72</sup> 47 CFR § 0.201(a)(1).

<sup>73</sup> *Id.* § 0.111.

<sup>74</sup> *See generally* *Procedures Public Notice*, *supra* note 7; *Qualified Bidders Public Notice*, *supra* note 11; *Auction 903 Closing Public Notice*, *supra* note 9.

<sup>75</sup> AMG argues that it "could not be expected to perceive that these [AT&T] individuals would have been engaged in any way with the Auction 903 activities of Cingular, of which they were neither employees nor decisionmakers, and therefore were not covered parties for purposes of the Commission's Prohibited Communications Rule." Response to Letter of Inquiry 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 3 (May 8, 2019) (on file in EB-IHD-19-00028994) (AMG LOI Response). The facts of this case prove this perception to be misconceived.

applicant's bid or bidding strategies *and whether that information should be presumed to be communicated to the applicant.*<sup>76</sup>

22. In this case, the question of whether the communication is presumed to be made to an officer or director of a competing applicant never surfaces because the communication was certainly *received* by an officer of a competing applicant. Here, the communications to Mr. Degele were transmitted to a Senior Counsel and Assistant Vice President of AT&T.<sup>77</sup> The Bureau did not need to make any presumptions regarding the receipt of the prohibited communications by an officer or director of AT&T, because there is no dispute that the relevant communications were in fact received by an officer of AT&T. This is demonstrated by the fact that the Senior Counsel and Assistant Vice President of AT&T disclosed the prohibited communications to the Commission, thereby alerting the Commission to the prohibited communications in the first instance.<sup>78</sup> For purposes of the prohibited communications rule, the fact that such communications were received by an officer or director of an applicant is sufficient to implicate the rule. AT&T's disclosure, coupled with the record the Bureau developed by its investigation,<sup>79</sup> demonstrates that AMG engaged in prohibited communications with another Auction 903 applicant, and the information in those communications was in fact delivered to the competing applicant. Thus, there was nothing for the Bureau to presume.<sup>80</sup> Moreover, whether the recipient of the communications was an officer or director of an applicant was not an outcome determinative factor. Rather, the fact that the communication actually reached an officer of a competing applicant during the Quiet Period, answered the question of whether the information was communicated to an officer of the competing applicant. Indeed, the *NAL* made clear that the Bureau relied on the disclosure and record evidence in developing the Bureau's conclusions.<sup>81</sup>

23. Additionally, while applicants for Auction 903 were directly cautioned to take special care in circumstances where officers, directors *and employees* "may receive information directly or indirectly relating to any other applicant's bids or bidding strategies," it is the conveyance of the

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<sup>76</sup> *NAL* Response, *supra* note 5, at 12 (*quoting Procedures Public Notice, supra* note 7, 33 FCC Rcd at 1477, para. 133) (emphasis added).

<sup>77</sup> The *NAL* delineated the various prohibited communications that occurred. *See NAL, supra* note 4, at 7652, para. 8. These communications show that AT&T employees, Mr. Jason Degele, Regional Director of AT&T Business, and Mr. Bill Eifert, AT&T Regional Vice President of AT&T Business, were involved in discussions concerning AMG's bids and bidding strategies and these communications reached Paul Theiss, an AT&T Assistant Vice President and Senior Legal Counsel, who terminated discussions with AMG. *See* 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 (May 8, 2019) (on file in EB-IHD-19-00028994), Attachment 1 – Email Correspondence. Subsequently, Cathy Carpino, AT&T Assistant Vice President and Senior Legal Counsel, reported the communications to the Commission.

<sup>78</sup> Specifically, on September 11, 2018, in response to the September 7, 2018 communication by AMG, 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. *AT&T NAL, supra* note 14, at 7663, para. 8. On September 20, 2018, AT&T, through its Senior Counsel and Assistant Vice President, notified the Commission's Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff of the potential prohibited communications with AMG. *Id.* at 7664, para. 9. *See* 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) (on file in EB-IHD-00028991).

<sup>79</sup> *NAL, supra* note 4, at 7652-53, para. 8.

<sup>80</sup> Furthermore, the paragraph AMG cites to prop up its first impression argument notes that applicants should be aware of direct and indirect receipt of information relating to another applicant's bid or bidding strategies. *See NAL* Response at 12 (*citing Procedures Public Notice, supra* note 7, at 1477, para. 133).

<sup>81</sup> *NAL, supra* note 4, at 7653-54, 7656, paras. 12, 18; *see also* AMG LOI Response, *supra* note 75, at 9, 11-15.

communication that is prohibited.<sup>82</sup> The Commission's rules provide that an applicant for a Commission auction may not convey certain information to other auction applicants during the "quiet period" which commences on the deadline for filing a short-form application and terminates on the deadline for winning bidders to submit their long form applications.<sup>83</sup> Thus, AMG's argument has no foundation given the facts of this case and Commission's existing caselaw<sup>84</sup> regarding prohibited communications.

**B. The Facts of this Investigation Support AMG's Assessed Forfeiture.**

24. AMG asserts that "there is simply no factual basis upon which the Bureau could have concluded, as a legal matter, that the broad statements made by AMG's CEO had any impact on the conduct of Auction 903."<sup>85</sup> AMG provides that "all the facts pertaining to the case . . . yields the definitive conclusion that there was no prohibited communication because there was no nexus between the communications and the conduct of Auction 903."<sup>86</sup> AMG's arguments fail to refute the main legal issue: that AMG violated section 1.21002(b) of the Commission's rules during Auction 903 by sending several e-mails to AT&T discussing AMG's Auction 903 bids, bidding strategies and bidding results, all during Auction 903's Quiet Period and section 1.21002(c) of the Commission's rules by failing to report the prohibited communications.

25. AMG does not deny that the communications took place. Neither could the Company do so because there is dated and documented evidence of this fact.<sup>87</sup> The standard for prohibited communications as outlined in section 1.21002(b) is not solely whether the applicant "possessed sufficient information to permit any prohibited collaboration to occur."<sup>88</sup> It is whether an applicant communicated with "any other applicant in any manner the substance of its own . . . bids or bidding strategies."<sup>89</sup> We reject AMG's claim that it conveyed no substantive information to AT&T.<sup>90</sup> In the context of the rule, the term "substance" does not refer to the quality of the information delivered, rather it refers to the nature of what was conveyed and whether that nature discussed the applicant's bids or bidding strategies.<sup>91</sup> The quality of the information conveyed to AT&T is not relevant, it is the actual wording and nature of what was communicated that is significant. The nature of the information provided by AMG indeed referred to its actual bids and bidding strategies in violation of our rule against prohibited communications.

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<sup>82</sup> *Procedures Public Notice*, *supra* note 7, at 1477, para. 133.

<sup>83</sup> *See Nikola Engineering, Inc.*, Consent Decree, 36 FCC Rcd 12155, para. 3 (EB 2021) (*Nikola Engineering*).

<sup>84</sup> *See generally supra* note 27.

<sup>85</sup> NAL Response, *supra* note 5, at 14.

<sup>86</sup> *Id.* at 14.

<sup>87</sup> *See NAL*, *supra* note 4, at 7652-53, para. 8.

<sup>88</sup> NAL Response, *supra* note 5, at 14-15.

<sup>89</sup> 47 CFR § 1.21002(b).

<sup>90</sup> NAL Response, *supra* note 5, at 15.

<sup>91</sup> *See Application of Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18630, para. 8 (2004) (*Star Wireless Forfeiture Order*) ("[I]t is the substance and timing of specific communications that are key in determining whether there has been a violation of section 1.2105(c), not the impact or claimed lack thereof on a particular auction."). *See also Star Wireless*, *supra* note 27, at 475 ("[A]s the Commission observes, general bright-line prophylactic measures, such as the anti-collusion rule, are appropriate when 'the probability of abuse in transactions between related organizations is significant enough that it is more efficient to prevent the opportunity for abuse from arising than it is to try to detect actual incidents of abuse.'" (citing *Biloxi Reg'l Med. Ctr. v. Bowen*, 835 F.2d 345, 350 (D.C. Cir. 1987); *accord Weinberger v. Salfi*, 422 U.S. 749 (1975)).

26. AMG continues to rely on unavailing arguments and asserts that all of the Company's communications occurred after AT&T decided not to bid.<sup>92</sup> Despite its decision not to bid in the CAF-II auction, AT&T was still considered an applicant for Auction 903 and as such, any communications with AT&T were subject to section 1.21002(b) of the Commission's rules.<sup>93</sup>

27. Lastly, AMG argues that the parties reported the prohibited communications upon becoming aware of the fact that both AMG and AT&T's affiliate had submitted Auction 903 applications.<sup>94</sup> Even if AMG could not discern the rather obvious link between the Cingular bidding entity and AT&T, this is not a defense, rather a demonstration of the Company's lack of diligence. Moreover, such reporting occurred outside of the five-day reporting window. The reporting requirement of section 1.21002(c) of the Commission's rules is unambiguous when it states that "[a]n applicant that *makes* or receives communications that may be prohibited . . . shall report such communications to the Commission staff immediately. . . ."<sup>95</sup> Thus, AMG violated the Commission's rules first by communicating with another auction applicant as to AMG's bids and bidding strategies during the Auction 903 Quiet Period, and then again when it failed to report its actions by the required deadline. Accordingly, the Commission's finding of a violation of section 1.21002(c) of the Commission's rules for failure to report the prohibited communications is justified.

### C. AMG's Forfeiture Is Consistent with Commission Precedent.

28. We reject AMG's assertion that issuing a forfeiture in this case would be "inconsistent with *all* prior Commission precedent enforcing the anti-collusion rules."<sup>96</sup> AMG argues that auction participants were not aware of the Bureau's expansive interpretation of "bids and bidding strategies" and any prior sanctions have related "solely to the sharing of substantive, actionable information regarding bids, typically with respect to specific markets."<sup>97</sup>

29. To support its position, AMG notes that in *Mercury PCS*, the Commission rescinded its finding of forfeiture liability because Mercury did not receive "adequate notice that the activities in which it engaged would violate the anti-collusion rule."<sup>98</sup> In *Mercury PCS*, the allegations surrounded Mercury's use of bid signaling—a non-verbal activity that the Commission had not previously addressed in its prohibited communication's rules but was subsequently determined by the Commission to undermine the integrity of the auction process and was therefore prohibited under the anti-collusion rule.<sup>99</sup> AMG asserts that the Commission cannot impose a harsher penalty in this instance where there is no evidence of an "intent to influence the auction or any actual impact on the bidding process . . . ."<sup>100</sup>

30. However, comparisons between AMG's communications and *Mercury PCS* are not apt. First, unlike the non-verbal activity at issue in *Mercury PCS*, the allegations here involve verbal and

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<sup>92</sup> NAL Response, *supra* note 5, at 16.

<sup>93</sup> *Qualified Bidders Public Notice*, *supra* note 11, at 6178, para. 40. *See also Star Wireless Forfeiture Order*, 19 FCC Rcd at 18628, para. 4 & n.19 (observing that the Commission has repeatedly made clear that the prohibited communications rule applies to applicants regardless of whether they are qualified to bid).

<sup>94</sup> NAL Response, *supra* note 5, at 17.

<sup>95</sup> 47 CFR § 1.21002(c) (2019).

<sup>96</sup> NAL Response, *supra* note 5, at 17 (emphasis added).

<sup>97</sup> NAL Response, *supra* note 5, at 17 (citing *Star Wireless*, *supra* note 27, at 472; *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998) (*Mercury PCS*); *US WEST Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 8286, 8290-91, para. 11, and 8297, para. 30 (1998)).

<sup>98</sup> NAL Response, *supra* note 5, at 18 (citing *Mercury PCS*, 13 FCC Rcd at 23759-60, para. 10).

<sup>99</sup> *Mercury PCS*, 13 FCC Rcd at 23760, para. 11.

<sup>100</sup> NAL Response, *supra* note 5, at 18.

written activity. In *Mercury PCS*, the company used specific bid signals, coded within its bid.<sup>101</sup> Second, as previously discussed and unlike in *Mercury PCS*, the Bureau did not establish a new “expansive” interpretation of the terms “bids and bidding strategies,” nor is this a case of first impression calling for the dismissal of the underlying *NAL*. The Bureau applied section 1.21002(b) of its rules as the rule is written and intended: applicants are 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.<sup>102</sup> Sending e-mails, an established method of “communicating,” to another applicant, which AT&T was considered, “in any manner,” in this case *via* e-mail, the “substance of its own . . . bids or bidding strategies,” { [REDACTED] } and { [REDACTED] } are statements regarding the substance of AMG’s bids. To borrow from AMG’s previous statements, the terms “bids” or “bidding strategies” and specific elements may “vary according to the subject matter of the auction.”<sup>103</sup> Comparing the terms from one auction to another is unrealistic and impractical given the unique nature of many of our auctions, particularly Auction 903 which awarded ongoing high-cost universal service support to auction winners. AMG’s comparison of its actions to those in *Mercury PCS* is misguided and misplaced.

31. Moreover, the Bureau’s decision in the *NAL* is consistent with prior Bureau decisions regarding prohibited communications.<sup>104</sup> In *Northeast Communications of Wisconsin*, the Bureau found that “Northeast knew or should have known that any communications with [another auction applicant] during the restricted period about either one or both of their bidding strategies would be patently inconsistent with the letter and spirit of section 1.2105(c).”<sup>105</sup> The Bureau also found that application of the prohibited communications rule is not based on an interpretation of the rule, but rather on the plain language of the rule.<sup>106</sup>

32. In *Cascade Access, LLC*, the Bureau found that the a single communication (as opposed to the eight communications at issue here) from Cascade’s representative to another auction applicant stating that it had dropped out of the subject auction and was “ready to talk/meet,” (as opposed to the actual meetings that occurred here) was considered a prohibited communication about Cascade’s bidding strategy, even though the words “bids” or “bidding strategies” were not used.<sup>107</sup> In issuing its Forfeiture Order, the Bureau found that such an interpretation of the Commission’s anti-collusion rules is “both reasonable and supported by case precedent.”<sup>108</sup> As noted by the Bureau in the *Cascade Forfeiture Order*, “[i]t is axiomatic that the facts and circumstances of two cases will never be identical . . . .”<sup>109</sup> The Bureau’s *NAL* rests securely in the hands of sufficient precedent to support its issuance of a forfeiture to AMG.

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<sup>101</sup> *Mercury PCS*, 13 FCC Rcd at 23757, para. 5.

<sup>102</sup> 47 CFR § 1.21002(b).

<sup>103</sup> *NAL Response*, *supra* note 5, at 6.

<sup>104</sup> In *Router 12 Networks, LLC*, the CEO of an auction applicant posted a statement on a Facebook Group indicating it did not intend to place any bids in the auction. See *Router 12 Networks, LLC*, Consent Decree, 36 FCC Rcd 12166 (EB 2021). Similarly, in *Nikola Engineering, Inc.*, the president of an auction applicant sent an e-mail to WISPA members stating it was backing out of the auction. See *Nikola Engineering*, *supra* note 83, at 12160, para. 6.

<sup>105</sup> *Northeast Communications of Wisconsin*, *supra* note 70, at 18641, para. 11, *order granted in part sub nom, Star Wireless Order on Review*, *supra* note 27; see *NAL*, *supra* note 4, at 7655, para. 16, n.53.

<sup>106</sup> *Northeast Communications of Wisconsin*, *supra* note 70, at 18641, para. 12.

<sup>107</sup> See *Cascade Access LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350 (EB 2009).

<sup>108</sup> See *Cascade Forfeiture Order*, *supra* note 70, at 144, para. 7; see also *NAL*, *supra* note 4, at 7656, para. 16, n.54.

<sup>109</sup> *Cascade Forfeiture Order*, *supra* note 70, at 144, n.23.

33. As both these cases reflect, the Bureau's *NAL* is in line with previous cases regarding prohibited communications. While the auction format may differ from auction to auction, the prohibited communications rule must be rigorously enforced to maintain the integrity of the Commission's auctions.

**D. Reduction of AMG's Forfeiture Amount Is Not Warranted.**

34. In the *NAL*, the Bureau found that "this case does not merit a reduction from the \$100,000 forfeiture amount."<sup>110</sup> AMG argues that a reduction in the amount of the forfeiture is "manifestly warranted" based on Commission precedent where forfeiture amounts have been reduced when a party has a history of compliance with Commission rules.<sup>111</sup> While citing to other prohibited communications decisions, AMG does not provide enough evidence to demonstrate why a forfeiture reduction is warranted in this instance.<sup>112</sup> Although AMG provides that it has never been cited for a violation of the Commission's rules,<sup>113</sup> the fact remains that in the instant case, AMG violated our prohibited communications rules on eight distinct occasions and also failed to report that violation in a timely manner as further required by our rules. This was not an instance of one prohibited communication as was the case in *Cascade*, it is the culmination of several prohibited communications.<sup>114</sup> As such, no reduction in the forfeiture amount is warranted.

35. The Commission's *Forfeiture Policy Statement* specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act, such as "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, and such other matters as justice may require."<sup>115</sup> We have carefully considered each of these factors, including AMG's history of compliance with the Commission's rules, and find no basis for mitigating the proposed forfeiture amount. AMG's misconduct was willful, serious, and repeated. Given the numerous reminders about prohibited communications issued to applicants in Auction 903, AMG knew or should have known that the communication in which it engaged was prohibited. It also knew or should have known to report such prohibited communications to the Commission in a timely manner.

36. *Forfeiture Amount.* AMG engaged in several prohibited communications with another applicant, during the Quiet Period for Auction 903 and failed to report the prohibited communications to the Commission within 5 business days. As both these actions were willful, we impose the \$100,000 forfeiture amount proposed in the *NAL*.<sup>116</sup>

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<sup>110</sup> *NAL* Response, *supra* note 5, at 20 (citing *NAL*, *supra* note 4, at 7652, para. 8).

<sup>111</sup> *NAL* Response, *supra* note 5, at 21, 22.

<sup>112</sup> AMG leans heavily on the Bureau's decision in *Cascade Wireless* where the Bureau's initial forfeiture amount was \$75,000. AMG argues that that *Cascade*'s forfeiture reduction was "presumably, although not explicitly, factored into the original forfeiture amount in the *NAL*." This is pure conjecture by AMG and provides no support to its premises for a reduction in its assessed forfeiture amount. See *NAL* Response, *supra* note 5, at 20, n.73.

<sup>113</sup> *NAL* Response, *supra* note 5, at 21.

<sup>114</sup> See *Cascade NAL*, 24 FCC Rcd at 1354, para. 14; see *NAL*, *supra* note 4, at 7655, para. 16, n.53.

<sup>115</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11); see also 47 CFR § 1.80(b)(2) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 503(b)(2)(B) at \$244,958 for each violation or each day of a continuing violation, up to \$2,449,575 for a violation); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

<sup>116</sup> *NAL*, *supra* note 4, at 7649, para. 2.

#### IV. CONCLUSION

37. Based on the record before us we conclude that AMG willfully violated section 1.21002(b) and (c)<sup>117</sup> of the Commission's rules and pursuant to section 503(b)(2)(E) of the Act and section 1.80 of the Commission's rules is liable for a \$100,000 forfeiture of these violations.

#### V. ORDERING CLAUSES

38. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, AMG Technology Investment Group, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one-hundred thousand dollars (\$100,000) for willfully violating section 1.21002(b) and (c) of the Commission's rules.<sup>118</sup>

39. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>119</sup> AMG Technology Investment Group, LLC shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, and Tram Pham, Enforcement Bureau, Federal Communications Commission, at [Patrick.McGrath@fcc.gov](mailto:Patrick.McGrath@fcc.gov), [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), and [Tram.Pham@fcc.gov](mailto:Tram.Pham@fcc.gov) on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>120</sup>

40. In order for AMG Technology Investment Group, LLC to pay the proposed forfeiture, AMG Technology Investment Group, LLC shall notify Patrick McGrath at [Patrick.McGrath@fcc.gov](mailto:Patrick.McGrath@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), and Tram Pham at [Tram.Pham@fcc.gov](mailto:Tram.Pham@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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>121</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>122</sup> or printed CORES form<sup>123</sup> 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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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

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<sup>117</sup> 47 CFR § 1.21002(c) (2020).

<sup>118</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>119</sup> 47 CFR § 1.80.

<sup>120</sup> 47 U.S.C. § 504(a).

<sup>121</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>122</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>123</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

(Payor FRN).<sup>124</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from 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 that financial institution that the designated account has authorization to accept ACH transactions.

41. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

42. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Stephen E. Coran, Esq., counsel for AMG Technology Investment Group, LLC, Lerman Senter PLLC, 2001 L Street, NW, Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Chief  
Enforcement Bureau

<sup>124</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.