**STATEMENT of  
CHAIRMAN AJIT PAI**

Re: *Northstar Wireless, LLC,* File Nos. 0006670613, 0008243409; *SNR Wireless LicenseCo, LLC,* File Nos.0006670667, 0008243669; *Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands*, Report No. AUC-97AUC

The FCC concluded Auction 97, our auction of 65 megahertz of spectrum in the AWS-3 band, on January 29, 2015. In that auction, two entities, Northstar Wireless and SNR Wireless LicenseCo, bid more than $13.3 billion combined on the plurality of licenses offered, even though neither company had ever generated a dime of revenue. And these two companies sought FCC bidding credits—essentially, a taxpayer-funded subsidy intended to benefit very small business entities—totaling approximately $3.3 billion.

This, of course, raised an obvious question. How were very small businesses with no experience, no network, no real assets, no scale, and no revenue able to afford billions of dollars of spectrum? Well, the only reason they were able to bid this much was because they had the backing of DISH Network, a Fortune 250 corporation which held an 85% ownership stake in both entities and, as of the close of the auction, had annual revenues of nearly $14 billion, a market capitalization of over $32 billion, and over 14 million customers. Following the auction, Northstar and SNR were indebted to DISH Network to the tune of approximately $10 billion. In addition to these financial shackles, DISH entered into a series of agreements with the two entities giving it control over nearly every aspect of their businesses.

Northstar and SNR’s participation in Auction 97 (in tandem with DISH’s participation) had meaningful consequences. Those entities used their very small business discounts to outbid genuine communications service providers in the heartland, from Nebraska, Kansas, and Oklahoma to Illinois and Vermont.[[1]](#footnote-2) As I noted at the time, DISH’s participation made a mockery of the Commission’s designated entity program.[[2]](#footnote-3) A program designed to help small businesses was being abused for the benefit of a company worth tens of billions of dollars to the tune of billions of dollars.

Fortunately, the Commission has thrown the flag on these shenanigans. In 2015, the Commission determined that SNR and Northstar were not eligible designated entities because DISH, as a matter of fact and law, had control over these companies. The U.S. Court of Appeals for the D.C. Circuit unanimously affirmed this determination and held that “the FCC reasonably concluded that SNR and Northstar were acting as two arms of DISH, working together to advance DISH’s goals.”[[3]](#footnote-4) However, the court did remand the matter to the Commission to give the applicants a chance to “cure” DISH Network’s *de facto* control over the entities and otherwise come into compliance with our designated entity requirements.

After affording the parties ample opportunity to resolve these deficiencies, today we find that they have failed to do so. Indeed, the exercise has only reconfirmed that Northstar and SNR are not kings of their own destiny, but pawns. For example, even though the two entities are in significantly different positions in terms of their finances and spectrum portfolios, they curiously submitted to the Commission nearly identical revisions to their agreements with DISH Network.[[4]](#footnote-5) These agreements maintain DISH Network’s stranglehold over the two companies’ businesses and restrict the entities’ ability to raise capital, lease their spectrum, or enter into mergers or other corporate transactions. Meanwhile, the parties have negotiated a combination of put rights and repayment terms that will reward Northstar’s and SNR’s managing members if they sell their interests to DISH Network (regardless of business performance) and penalize them if they refuse to sell.

The parties’ endgame is as clear today as it was half a decade ago: DISH Network and its shell bidders want this spectrum at a taxpayer-funded discount. The Commission’s answer is as clear today as it was half a decade ago: No. Any well-established business that wants to buy spectrum at an FCC auction is more than welcome to do so through our spectrum auctions (and this FCC has made more spectrum available through auctions and has enabled more participation in those auctions than at any other time in its history). But they’re not doing it on the taxpayers’ dime; they’re paying full freight. Americans are sick of regulatory arbitrage and corporate welfare, and so are we.

In short, we find that DISH Network continues to possess *de facto* control over Northstar and SNR, and that these entities are therefore ineligible for very small business designated entity bidding credits.

My thanks to the FCC staff who worked on this item: Mike Carlson, Maureen Flood, Tom Johnson, Bill Richardson, and Elliot Tarloff from the Office of General Counsel; Kari Hicks, Jean Kiddoo, Paul Malmud, Blaise Scinto, Dana Shaffer, Nadja Sodos-Wallace, Cecilia Sulhoff, and Becky Tangren from the Wireless Telecommunications Bureau; and Patrick Sun from the Office of Economics and Analytics. I also note the valuable participation of Neil Dellar in OGC who sadly passed away earlier this year.

1. Statement of Commissioner Ajit Pai on How Abuse of the FCC’s Small Business Program Hurts Small Businesses, Press Release, http://go.usa.gov/3fcXH (Mar. 16, 2015). *See also* Kelly Ayotte and Ajit Pai, “Ending Welfare for Telecom Giants,” *The Wall Street Journal* (Feb. 4, 2015) (“To nobody’s surprise, the biggest competitors have figured out a way to game the system. Industry giants are claiming those taxpayer-funded discounts for themselves and using them to outbid smaller, would-be competitors.”), *available at* https://www.wsj.com/articles/kelly-ayotte-and-ajit-pai-ending-welfare-for-telecom-giants-1423095287. [↑](#footnote-ref-2)
2. Statement of Commissioner Ajit Pai on Abuse of the Designated Entity Program, Press Release, http://go.usa.gov/3fcXj (Feb. 2, 2015). [↑](#footnote-ref-3)
3. *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021, 1041-42 (D.C. Cir. 2017). [↑](#footnote-ref-4)
4. Plus ça change*,*plus*c’est la même chose*. *See* *SNR Wireless LicenseCo, LLC*, 868 F.3d at 1041 (“SNR and Northstar have not established that they had any joint venture or shared business with each other that could explain their a-symmetric cooperation during [Auction 97] bidding as reflecting anything other than their control by DISH. At oral argument, their counsel asserted that they did have some shared ventures, but we find no evidence in the record to support that assertion. The only contractual agreement in the record that was signed by SNR and Northstar was the joint bidding agreement. That agreement suggests that SNR and Northstar wanted to coordinate their bids with DISH so that the three companies could combine their products and services to the extent contemplated by their governing agreements. But the governing agreements refer to SNR and Northstar as if they are separate companies who just happen to have the same business manager and financial backer (DISH). Without any other explanation for their non-mutually-beneficial bidding, the FCC reasonably concluded that SNR and Northstar were acting as two arms of DISH, working together to advance DISH’s goals”). [↑](#footnote-ref-5)