

requested rescission of the proposed forfeiture.⁵ After reviewing the record in this matter, we affirm the proposed \$75,000 forfeiture penalty and reject AT&T's request to rescind the *NAL*.

II. BACKGROUND

2. *Legal Framework.* The Commission conducted the CAF-II auction to award up to \$198 million annually for 10 years to service providers that committed to offer voice and broadband services to fixed locations primarily in unserved rural areas.⁶ The auction was the first FCC auction to award ongoing universal service support using a multiple-round, reverse auction format.⁷ As part of its rules governing the CAF-II auction (designated as Auction 903), the Commission prohibited an auction applicant “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.” The rules further prohibited an auction applicant 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.⁸ The purpose of such a quiet period (Quiet Period) is to protect the integrity and competitiveness of the auction process.⁹ For Auction 903, the 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.¹⁰ The duty to report potentially prohibited communications within five business days was provided in section 1.21002(c) of the Commission’s rules.¹¹

3. *Factual Background.* AT&T (through its wholly owned subsidiary, Cingular)¹² and AMG each submitted a short-form application to participate in Auction 903, and each entity qualified as a

⁵ Response to Notice of Apparent Liability from AT&T Services, Inc. to Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 7, 2019) (on file in EB-IHD-19-00028991) (*NAL Response*).

⁶ 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).

⁷ 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’s auction 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*).

⁸ 47 CFR § 1.21002(b). During Auction 903, the term “applicant” included 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. See *id.* § 1.21002(a) (2019). In 2020, the Commission modified the definition of “applicant.” See *Establishing a 5G Fund for Rural America*, *supra* note 1, at 12259, para. 210; 47 CFR § 1.21002(a).

⁹ *Procedures Public Notice*, 33 FCC Rcd at 1476, para. 128.

¹⁰ See *id.* 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*).

¹¹ 47 CFR § 1.21002(c) (2019).

¹² 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, including section 1.21002(b) of the rules regarding prohibited communications. See *id.* § 1.21002(a) (2019).

bidder.¹³ In the *NAL*, the Bureau found that during the course of Auction 903, AT&T engaged in prohibited communications with AMG 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” during Auction 903’s Quiet Period.¹⁴ The *NAL* further found that AT&T failed to inform the Commission about its communication with AMG, in apparent willful violation of section 1.21002(c) of the Commission’s rules. The *NAL* proposed a forfeiture in the total amount of \$75,000 against AT&T.¹⁵

4. On October 7, 2019, AT&T filed its response to the *NAL* (*NAL* Response) and requested rescission of the proposed forfeiture. In its response, AT&T did not deny that it had communicated with AMG during the Auction 903 Quiet Period but argued that: (1) it did not impermissibly communicate with AMG about AMG’s bids or bidding strategies;¹⁶ (2) the discussions with AMG occurred *after* bidding in Auction 903 ended, were “post auction,” and could not have affected AMG’s “bids or bidding strategies;”¹⁷ (3) imposing the penalty on a party that “voluntarily reports” potential prohibited communications that “could not and did not affect the auction...” is “unjustified and unjustifiable;”¹⁸ and (4) Commission precedent does not support the proposed forfeiture against AT&T.¹⁹

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),²⁰ section 1.80 of the Commission’s rules,²¹ and the Commission’s Forfeiture Policy Statement,²² as well as previously assessed forfeitures for similar prohibited communications violations.²³ When we assess forfeitures, section 503(b)(2)(E) 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.”²⁴ We have fully considered AT&T’s *NAL* Response and discuss below why its

¹³ *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*).

¹⁴ *NAL*, *supra* note 4, at 7665, para. 12.

¹⁵ A separate Notice of Apparent Liability was simultaneously issued to AMG. *See AMG Technology Investment Group, LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7649 (EB 2019).

¹⁶ *NAL* Response, *supra* note 5, at 6.

¹⁷ *Id.* at 4, 6 (emphasis in original).

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 11.

²⁰ 47 U.S.C. § 503(b)(2)(B).

²¹ 47 CFR § 1.80.

²² *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).

²³ *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. 2008) (*Star Wireless*); *see also Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009) (*Cascade NAL*).

²⁴ 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*

(continued....)

arguments for rescission are unavailing. Accordingly, we find that the \$75,000 forfeiture penalty proposed in the *NAL* is appropriate.

6. AT&T's participation in prohibited communications with AMG during Auction 903's Quiet Period was willful.²⁵ The factual record indicates that "AT&T, an Auction 903 applicant, 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."²⁶ The communications occurred on multiple occasions, in numerous e-mails, and the parties even met in person and by video conference during Auction 903's Quiet Period.²⁷ Thus, AT&T was an active participant in discussions with AMG 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.²⁸ AT&T does not dispute that any of the prohibited communications took place.²⁹ Instead, AT&T essentially argues that its communications during the Auction 903 Quiet Period were harmless. AT&T's argument presupposes that "harm" is an element of the prohibited communications rule. 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.³⁰

A. AT&T Communicated with AMG About AMG's Bids and Bidding Strategies.

7. AT&T's argument that it did not communicate with AMG about AT&T's own bids or bidding strategies is irrelevant because, as AT&T itself noted in its response, the *NAL* does not make such a finding.³¹ Moreover, AT&T's assertion that it did not communicate with AMG about AMG's bids and bidding strategies as alleged in the *NAL* is without merit.³² AT&T claims that these communications related "solely to AMG's existing business with AT&T . . . [and] none related to AMG's bids or bidding strategies in the auction."³³

8. As noted in the *NAL*, e-mails from AMG's CEO stating that AMG was { [REDACTED] } and { [REDACTED] } all contain content

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).

²⁵ See 47 U.S.C. § 312(f)(1) (defining "willful").

²⁶ *NAL*, *supra* note 4, at 7665, para. 12. Because AT&T controls Cingular, AT&T is considered an applicant in Auction 903 and therefore subject to all the Auction 903 rules and procedures, including section 1.21002(b) of the rules regarding prohibited communications.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *NAL* Response, *supra* note 5, at 6.

³⁰ *Northeast Communications of Wisconsin, Inc.*, Forfeiture Order, 19 FCC Rcd 18635, 18639, para. 7 (EB 2004); *Application of Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18630, para. 8 (EB 2004) (*Star Wireless Forfeiture Order*).

³¹ *NAL* Response, *supra* note 5, at 4. AT&T's *NAL* Response begins by admitting that the "Bureau does not allege that AT&T communicated with AMG regarding AT&T's own bids and bid strategy in the auction. . . ." *NAL* Response at 2. AT&T, however, proceeds to then dedicate a portion of its *NAL* Response to supporting its claim that AT&T did not communicate with AMG regarding its bids or bidding strategies. *Id.* at 5-7.

³² *NAL* Response, *supra* note 5, at 1.

³³ *Id.* at 1-2.

that extends beyond the scope of “existing business” between the companies.³⁴ Rather, these statements all indicate AMG’s desire for the existing business relationship potentially to expand based on the Auction 903 bidding strategy that AMG was implementing. AT&T’s “existing business” argument fails when we consider the mix of existing business with the status of AMG’s bids and bidding strategies during the course of Auction 903, premising one upon the other. For example, as noted by AT&T, AMG requested from AT&T a proposal { [REDACTED] }³⁵ This discussion by itself related to existing business, however, in the same e-mail, AMG also discussed its plans to bid in Auction 903 when it stated that “{ [REDACTED] }”. AT&T does not and cannot identify an exception to our auction rules in which an active auction participant like AMG could permissibly communicate its bidding strategy in Auction 903 to another applicant so long as it is also discussing existing business. AT&T cannot selectively ignore the portions of AMG’s communications that discuss AMG’s bids or bidding strategies in the CAF-II auction. Granting such an exception would essentially render the prohibited communications rule meaningless.³⁶

9. Additionally, AT&T argues that it has rigorous safeguards in place for auctions that protect against inadvertent communications from reaching employees who are part of the company’s auction bid team.³⁷ It attempts to rely on its internal processes to comply with an otherwise non-existent element of the prohibited communications rule. Accordingly, AT&T’s assertion that the Company employees who received AMG’s Auction 903 bidding plans “were not part of AT&T’s bid team, and thus could not engage in any collusive behavior with AMG”³⁸ is unavailing.³⁹ The Commission put Auction 903 participants on notice 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. Information received by a party related to the applicant may be deemed to have been received by the applicant under certain circumstances.”⁴⁰ While the particular Company employees who received AMG’s plans may not have been part of AT&T’s Auction 903 bid team, in fact AMG’s e-mail information

³⁴ *NAL*, *supra* note 4, at 7663-64, paras. 8-9. Material set off by braces and brackets { [] } is confidential business information and is redacted from the public version of this document.

³⁵ Letter from Cathy Carpino, Assistant Vice President and Sr. Legal Counsel, AT&T Services, Inc., to Margaret W. Weiner, Chief, Auction and Spectrum Access Division, Wireless Telecommunications Bureau, FCC, Attachment 1 (Sept. 20, 2018) (on file in EB-IHD-19-00028991) (AT&T Disclosure Letter).

³⁶ AT&T also argues that its communications were permissible because the Auction 903 process itself “signaled that the Commission wanted and expected winning bidders to engage in network planning as soon as possible post auction” and that “smaller companies, like AMG, would want to have conversations with potential suppliers to that end[.]” *NAL* Response, *supra* note 5, at 15-16. In the same vein, AT&T asserts that its communications to AMG related “only to AMG’s *existing* footprint – and, specifically AMG’s existing business with AT&T or the opportunity to provide service to AMG’s *existing* [network].” *Id.* at 6-7 (emphasis in original). It further asserts that the Commission stated that “business discussions and negotiations that are *unrelated* . . . to post-auction market structure are not prohibited[.]” *Id.* at 7. AT&T’s arguments fall short because it is based on misplaced presumptions of the prohibited communications rule and the Commission’s intent. As discussed herein, the substance of the relevant communications demonstrate that they were about AMG’s bids and bidding strategies within the scope of the prohibited communications rule.

³⁷ *NAL* Response, *supra* note 5, at 4-5.

³⁸ *Id.* at 4, 8.

³⁹ See, e.g., *Procedures Public Notice*, *supra* note 7, at 1480, para. 144 (noting that although precautionary measures can be taken when communication bids or bidding strategies to a third-party, it “is not an absolute defense to liability, if a violation of the rule has occurred.”).

⁴⁰ *Id.* at 1477, para. 133. Although information received by a party related to an applicant may be deemed to have been received by an applicant, there is no provision in the rule that the communication must be received by an applicant’s authorized bidder(s) or bidding team for a prohibited communication to occur.

ultimately reached AT&T's Assistant Vice President and Senior Legal Counsel, who reported AMG's communications to the Commission.⁴¹

B. The Quiet Period Controls.

10. AT&T does not deny that the communications occurred or when they occurred. AT&T contends, however, that the meetings and discussions with AMG that occurred after bidding in Auction 903 ended were "post auction" and "could not have, and did not, affect AMG's 'bids or bidding strategies.'"⁴² AT&T argues that its introductory discussions with AMG "about business opportunities over the next several years, *occurring after bidding was completed and the Commission announced winning bidders*, were not the collusive communications the Commission's rule was designed to identify."⁴³ Further, AT&T alleges that it lacked notice that the Bureau would interpret the Commission's rules to "prohibit such post-auction, high level discussions."⁴⁴

11. The Company characterizes the communications as permissible by interpreting the Commission's rules to include a "post-auction but still during the Quiet Period" exception to the prohibited communications rule. Such an exception does not exist. AT&T's interpretation contradicts the Commission's rules and policies regarding prohibited communications during Auction 903's Quiet Period. First, the prohibited communications rule set forth in section 1.21002(b) and applicable to Auction 903 states that: "[a]fter the deadline for submitting applications to participate [in an auction], an applicant is prohibited from communicating with any other applicant in any manner the substance . . . [of] one another's . . . bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications."⁴⁵ It is the substance and timing of specific communications that are key in determining whether there has been a violation of the prohibited communication rule, not the impact or claimed lack thereof on a particular auction or auction applicant.⁴⁶ Second, the *Auction 903 Closing Public Notice* informed applicants that the Quiet Period extended until the deadline for filing the long-form application portion of FCC Form 683, i.e., October 15, 2018, at 6:00 p.m. ET.⁴⁷ It is undisputed that AMG's various e-mails to and meetings with AT&T all occurred before October 15, 2018. Thus, these "post-auction but still during the Quiet Period" communications fall clearly within the scope of the rule, and the "notice" that AT&T purportedly lacked had been provided at various stages throughout the Auction 903 process. As such, we find that AT&T is liable for violating section 1.21002(b) of the Commission's rules.

C. AT&T Failed to Report the Prohibited Communications in a Timely Manner.

12. The disclosure requirements of section 1.21002(c) of the Commission's rules are straight forward, "[a]n applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs."⁴⁸ "An applicant" is defined as

⁴¹ See AT&T Disclosure Letter, *supra* note 35.

⁴² NAL Response, *supra* note 5, at 4, 6 (emphasis in original).

⁴³ *Id.* at 12 (emphasis in original).

⁴⁴ *Id.* at 9.

⁴⁵ 47 CFR § 1.21002(b).

⁴⁶ *Star Wireless Forfeiture Order*, *supra* note 30, at 18630, para. 8. See *Star Wireless*, *supra* note 23, at 475 ("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.'") (citations omitted).

⁴⁷ *Auction 903 Closing Public Notice*, *supra* note 10, at 8268, para. 31.

⁴⁸ 47 CFR § 1.21002(c) (2019).

all controlling interests in the entity submitting an application to participate in a given auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the application, and all officers and directors of that entity.⁴⁹

13. As noted in the *NAL*, AT&T did not report the prohibited communications with AMG until 86 days after the first known prohibited communications on June 27, 2018, and 13 days after the last known prohibited communication on September 7, 2018. Notably, on September 11, 2018, AT&T's legal counsel informed AMG that AT&T would cease communications with AMG until the Quiet Period ended.⁵⁰ However, AT&T did not notify the Commission of the communications until September 20, 2018.⁵¹ This was beyond the five-day deadline set by section 1.21002(c) for applicants to notify the Commission of any communication made or received that may be a prohibited communication. Nevertheless, AT&T argues that the Commission "has never fined a party solely for not meeting the Commission's five-business-day reporting deadline."⁵² It also argues that penalizing a party that "voluntarily reports" potential prohibited communications that "could not and did not affect the auction, even if the report is not made within the five days the rule requires" is "unjustified and unjustifiable."⁵³ We reject these arguments as clearly contrary to the rule on its face and the purpose underlying the enactment of the rule.

14. To be clear, AT&T is not being fined *solely* for not meeting the Commission's five-business-day reporting deadline. It is being fined both for violating the Commission's rules on prohibited communications during an auction Quiet Period *and* for violating the five-business day reporting deadline.⁵⁴ The requirements of section 1.21002(c) of the rules are unambiguous, "[a]n applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs."⁵⁵ The reporting requirement does not stand alone. First, there must be a violation of the prohibited communications rules in order for there to be something to report within five business days. Second, if the prohibited communication is not reported within five business days, then there is a violation of the reporting requirement. Timely reporting a prohibited communication is mandatory and there is no exception based upon the effect a prohibited communication purportedly has on the auction. AT&T's reporting of the prohibited communications was neither immediate, nor within 5 business days. Accordingly, the Commission's finding of a violation of section 1.21002(c) of the Commission's rules is appropriate in these circumstances.

D. Commission Precedent Supports the Forfeiture.

15. AT&T maintains that the Commission has never issued an enforcement action or entered into a consent decree with a party that had discussions with another auction applicant during the Quiet Period but "*after bidding concluded and after the Commission publicly announced winning bidders.*"⁵⁶

⁴⁹ 47 CFR § 1.21002(a) (2019).

⁵⁰ *NAL*, *supra* note 4, at 7664, para. 8.

⁵¹ *Id.* at 7664, para. 9.

⁵² *NAL* Response, *supra* note 5, at 20.

⁵³ *Id.*

⁵⁴ *See, e.g., LTD Broadband, LLC*, DA 22-482, Notice of Apparent Liability, 37 FCC Rcd 5736, 5736, para. 2 (EB 2022) (proposing a forfeiture penalty against the company for repeatedly engaging in prohibited communications during Auction 904 and its failure to timely report such prohibited violations).

⁵⁵ 47 CFR § 47.21002(c) (2019).

⁵⁶ *NAL* Response, *supra* note 5, at 14 (emphasis in original).

AT&T argues that the “*NAL* expands the application of the anti-collusion rule to a context that bears no relationship to its underlying purpose and for which there is no precedent.”⁵⁷

16. The history of the prohibited communications rule demonstrates that our auction rules are concerned about the potential of the communications and not merely the effect, and it is not limited to prohibited communications made before bidding has closed.⁵⁸ To put it another way, were AT&T’s interpretation of the Quiet Period correct, applicants could ignore the Quiet Period and discuss their bids and bidding strategies as long as the applicants could later show that there was no collusive effect. AT&T’s assertion that the underlying purpose of the prohibited communications rule is not served by a Quiet Period that extends to after bidding has concluded is erroneous. AT&T 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. The rule guards against collusion among winning bidders, and between winning bidders and non-bidding applicants or non-winning bidders, including, but not limited to, coordination of defaults.

17. AT&T further argues that the Bureau arrived at its conclusions in the *NAL* by relying on a “novel and unnecessarily broad reading of the prohibited communications rule.”⁵⁹ AT&T’s position is misplaced as section 1.21002(b) plainly prohibits certain communications within the clearly defined Quiet Period. The Commission’s interpretation is neither novel nor broad. Nonetheless, AT&T argues that Commission precedent related to the Commission’s prohibited communications rules involve communications between “auction applicants while bidding was ongoing.”⁶⁰ Whether the Commission has infrequently issued an enforcement action or entered into a consent decree with a party that engaged in prohibited discussions in a specific context does not in and of itself invalidate the rule. The responsibility for determining the elimination or modification of a Commission rule lies with the Commission, not a licensee. Moreover, participants have an affirmative obligation to know and abide by the Commission’s rules under Auction 903, including their obligations during the Quiet Period.⁶¹

⁵⁷ *Id.* at 16.

⁵⁸ See *Star Wireless Forfeiture Order*, *supra* note 30, at 18630, para. 8 (“[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.”). As noted by AT&T, the prohibited communications rule was first adopted in 1994 to prevent parties “from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders,” thereby “undermin[ing] the competitiveness of the bidding process and prevent[ing] the formation of a competitive post-auction market structure.” *NAL*, *supra* note 4, at 12-13 (citing *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2386 para. 221 (1994) (*Competitive Bidding Second Report and Order*)). The prohibited communications rule was designed to reinforce existing laws and facilitate detection of collusive conduct by requiring applicants to disclose in their short form applications information about any partnerships, joint ventures, consortia or other agreements, arrangements or understandings relating to the licenses being auctioned. See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2387-877, para. 225. Once the short-form applications are filed, “bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder’s short-form application.” *Id.* Thus, a prohibited communication can only occur when, as here, the communication occurs after the filing of the short form applications and during the Quiet Period.

⁵⁹ *NAL* Response, *supra* note 5, at 1. Although AT&T alleges that it engaged in high-level meetings and “ordinary course business planning discussions that could have no impact on the integrity of the auction, AT&T then offers that the discussions were necessary for the “efficient business planning and operations required to make this auction a success.” *Id.* at 1, 2.

⁶⁰ *Id.* at 17.

⁶¹ 47 CFR § 0.406 (“Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business. All of the rules have been published and are readily available.”). See also *Commission's Forfeiture Policy Statement and Amendment of section 1.80 of the Rules to*

(continued....)

Participants were given ample notice of the Quiet Period and that timeframe, as discussed above, is well-defined. Given the unambiguous language of the Commission's rules, the duration of the Quiet Period should have been readily apparent to AT&T. There is no exception to section 1.21001(b) of the rules regarding conversations after bidding concluded and after public announcement of an auction's winning bidders. Hence, the forfeiture is appropriate in these circumstances.

IV. CONCLUSION

18. Based on the record before us, we conclude that AT&T willfully violated section 1.21002(b) and (c) of the Commission's rules. Pursuant to section 503(b)(2)(E) of the Act and section 1.80 of the Commission's rules, AT&T is liable for a \$75,000 forfeiture of these violations. We decline to cancel or reduce the forfeiture amount proposed in the *NAL*.

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and sections 0.111, 0.311, and 1.80 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.80, AT&T Services, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventy-five thousand dollars (\$75,000) for willfully violating section 1.21002(b) and (c) of the Commission's rules.⁶²

20. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. AT&T Services, Inc. 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, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, and 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, 47 U.S.C. § 504(a).

21. In order for AT&T Services, Inc. to pay the proposed forfeiture, AT&T Services, Inc. shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, and Tram Pham at 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:⁶³

- 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 159⁶⁴ or printed CORES form⁶⁵ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to

Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17099, para. 22 (1997), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) ("The Commission expects, and it is each licensee's obligation, to know and comply with all of Commission's rules.").

⁶² 47 CFR § 1.21002(b)-(c).

⁶³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁶⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁶⁵ 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>.

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 (Payor FRN).⁶⁶ 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.

22. 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.

23. **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 Cathy Carpino, AT&T Services, Inc., 1120 20th Street, NW, Suite 1000, Washington, DC 20036 and Glenis McKoy, AT&T Services, Inc., 601 New Jersey Ave NW, Suite 400, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

⁶⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.