

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
M2Z NETWORKS, INC.) WT Docket No. 07-16
)
Application for License and Authority)
To Provide National Broadband Radio)
Service in the 2155-2175 MHz Band)

PETITION TO DENY OF MOTOROLA, INC.

Motorola, Inc. (Motorola) hereby files this petition to deny the application filed by M2Z Networks, Inc. (M2Z) for authority to provide a national broadband radio service in the 2155-2175 MHz band.¹ FCC consideration and grant of the M2Z application is premature as the Commission has not yet established service rules for use of the 2155-2175 MHz band. Use of that band must be predicated on the ability of the licensee to protect adjacent band services, which include the Advanced Wireless Service (AWS) where licensees recently paid more the \$14 billion for spectrum access rights. M2Z's proposed use of the band, most likely for time division duplex (TDD) operations, would need to be properly regulated to ensure non-interference to AWS licensees. Standards to ensure non-interference operation are best established through notice and comment rule making proceedings.

¹ M2Z Networks, Inc., Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (May 4, 2006). The M2Z application was placed on public notice by the FCC on January 31, 2007. *See* "Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.'s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band Is Accepted for Filing," *Public Notice*, WT Docket No. 07-16 (Jan. 31, 2007).

M2Z essentially rationalizes that the FCC should award it a license on a non-competitive basis because its network will improve broadband access across the country and thus provide untold benefits to the American public including public safety organizations. While Motorola is not addressing these claims, it notes that there is no reason to expect that other parties and carriers would not be in a position to make the exact same promises. Granting the license to M2Z simply because it filed its application first – at a time when the FCC was not soliciting applications but was instead contemplating the adoption of technical and licensing rules – would appear to be reminiscent of the old “Pioneer’s Preference” program that was disbanded by Congressional action. Motorola sees no reason for the FCC to deviate from its existing and lawful practices to award a license to M2Z prior to the adoption of service and licensing rules to govern the use of the spectrum.

Contrary to assertions by M2Z that there has been little interest in this spectrum, Motorola previously proposed a course of action for use of the 2155-2180 MHz band. In comments files as part of ET Docket 00-258, Motorola noted the desirability of this spectrum as an AWS downlink given its proximity to the 2110-2155 MHz AWS spectrum and its recognition as an international IMT-2000 band. Accordingly, Motorola proposed that the band be auctioned for use as an asymmetric downlink paired with other AWS spectrum or other commercial wireless spectrum as appropriate.² While it may be appropriate for the Commission to refresh the record regarding proposals for use of this band, it is not appropriate to ignore the existing record of proposed uses and give the spectrum to the first entity to ask for it.

Similarly situated licensees should be treated in the same fashion. The FCC cannot accept billions of dollars in auction revenues from AWS licensees only to turn around and

² See Comments of Motorola, Inc., ET Docket 00-258, 14-17 (filed Apr. 14, 2003).

immediately grant a license to a competitive, for-profit service provider without up-front costs.

Such an action would seriously undermine the regulatory process.

Respectfully Submitted,

/S/ Steve B. Sharkey

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March 2, 2007

CERTIFICATE OF SERVICE

I, Steve B. Sharkey, hereby certify that on March 2, 2007, I caused a copy of the foregoing Petition to Deny of Motorola, Inc. to be mailed via first-class postage prepaid mail to the following:

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/s/ Steve B. Sharkey

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