

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

In the Matter of)	
)	
Amendment of Part 2 of the Commission’s)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for)	
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	WT Docket No. 02-353
Service Rules for Advanced Wireless Services)	
In the 1.7 GHz and 2.1 GHz Bands)	
)	
)	
)	

PETITION FOR RECONSIDERATION

Pursuant to the provisions of 47 C.F.R. § 1.429, M2Z Networks, Inc. (“M2Z”) hereby submits this Petition for Reconsideration of the Wireless Telecommunications Bureau’s (“WTB’s”) March 8, 2007 Order in the above-referenced proceedings.¹ In the *March 8 Order*, the WTB formally selected CTIA—The Wireless Association® (“CTIA”) and PCIA—The Wireless Infrastructure Association (“PCIA”) to serve as neutral, not-for-profit clearinghouses to administer the Commission's cost-sharing plan under the incumbent relocation procedures established for the 2.1 GHz band.² As shown below, CTIA has recently expressed a significant bias against M2Z, a potential licensee in the AWS spectrum band, which suggests that it may be

¹ *In the Matter of Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Order, DA 07-1120 (WTB rel. Mar. 8, 2007) (“*March 8 Order*”).

² *Id.* ¶¶ 1, 35.

incapable of serving as a “neutral” clearinghouse with respect to relocation matters involving M2Z. Consequently, in order to avoid the potential for discriminatory treatment against a possible 2.1 GHz licensee, M2Z urges the WTB to remove CTIA’s designation as a clearinghouse in the 2.1 GHz band.

I. BACKGROUND

In the *AWS Relocation and Cost Sharing Report and Order*, the Commission delegated authority to the WTB “to select one or more entities to create and administer a neutral, not-for-profit clearinghouse to administer the cost-sharing plan for the Fixed Microwave Service (“FS”) incumbents in the 2.1 GHz band.”³ On June 15, 2006, the WTB invited proposals from entities that were “interested in serving as a neutral, not-for-profit clearinghouse responsible for facilitating cost-sharing among entrants benefiting from the relocation of incumbent licenses in the 2.1 GHz bands.”⁴ On October 4, 2006, the WTB issued a Public Notice in which it found

³ *In the Matter of Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Ninth Report and Order*, 21 FCC Rcd 4473, 4518 ¶ 83 (*recon. pending*) (“*AWS Relocation and Cost Sharing Report and Order*”) (2006).

⁴ *Wireless Telecommunications Bureau Opens Filing Window for Proposals to Develop and Manage the Clearinghouse That Will Administer the Relocation Cost Sharing Plan for Licensees in the 2.1 GHz Bands*, Public Notice, WT Docket No. 02-353 and ET Docket No. 00-258, DA 06-1279 at 1 (WTB rel. Jun. 15, 2006) (“*June 15 Public Notice*”). On July 17, 2006, CTIA and PCIA each submitted a proposal to serve as a clearinghouse. *See CTIA—The Wireless Association® Clearinghouse Plan*, DA 06-1279, ET Docket No. 00-258, and WT Docket No. 02-353 (fil. Jul. 17, 2006) (“*CTIA Clearinghouse Plan*”); *Clearinghouse Proposal of PCIA – The Wireless Infrastructure Association*, DA 06-1279, ET Docket No. 00-258, and WT Docket No. 02-353 (fil. Jul. 17, 2006).

that CTIA and PCIA were qualified to serve as clearinghouses, and stated that it would “issue a subsequent Order setting forth details of the clearinghouses’ duties and responsibilities.”⁵

On March 8, 2007, the WTB formally selected CTIA and PCIA as “neutral, not-for-profit clearinghouses” and set forth the details of the clearinghouses’ duties and responsibilities.⁶

Section III.A.2. of the *March 8 Order*, entitled “[n]on-discrimination and impartiality,” states:

CTIA and PCIA must provide clearinghouse services on a *non-discriminatory, impartial* basis. Specifically, if CTIA or PCIA has a direct affiliation with a class of relocators, licensees, operators, or other entities that provide services or products to clearinghouse users, the relationship must not affect the manner in which CTIA or PCIA performs clearinghouse services and the treatment of all relocators, licensees, or operators must be *non-discriminatory*. CTIA and PCIA may only refuse to provide clearinghouse services for good cause and must do so as soon as is practicable after receiving the request for service.⁷

In light of recent events, and in order to remove the possibility of discrimination against a future 2.1 GHz band entrant, M2Z hereby petitions for reconsideration of the WTB’s decision to designate CTIA as a “neutral” clearinghouse in the 2.1 GHz band.

II. CTIA IS NOT “NEUTRAL” AND SHOULD BE REMOVED AS ONE OF THE CLEARINGHOUSES FOR THE 2.1 GHz BAND.

A. M2Z is an “Interested Person” in This Proceeding.

Section 1.429(a) of the Commission’s rules provides that any interested person may petition for reconsideration of a final action in a rulemaking proceeding. M2Z has applied for a nationwide license to provide National Broadband Radio Service (“NBR”) in the 2155-2175

⁵ *Wireless Telecommunications Bureau Finds CTIA and PCIA Qualified to Administer the Relocation Cost-Sharing Plan for Licensees in the 2.1 GHz Bands*, Public Notice, WT Docket No. 02-353 and ET Docket No. 00-258, DA 06-1984 at 1-2 (WTB rel. Oct. 4, 2006) (“*October 4 Public Notice*”).

⁶ *See March 8 Order*.

⁷ *Id.* at 5-6 (emphasis added).

MHz band.⁸ Its application to provide service in the 2155-2175 MHz band has been accepted for filing, and the formal pleading cycle relating to the application has ended.⁹ As a result, M2Z, as a potential licensee of spectrum covered under the 2.1 GHz band relocation requirements, has a significant interest in the designation of clearinghouse providers for the 2.1 GHz band and is an “interested person” for purposes of section 1.429(a).

B. CTIA’s Actions Suggest That it May Not Be Able to Act as a “Neutral” Clearinghouse in Matters Affecting M2Z.

When it first adopted the Part 24 clearinghouse rules to facilitate cost-sharing among AWS and MSS entrants in the 2.1 GHz AWS bands, the Commission delegated to WTB the authority to “select one or more entities to create and administer a *neutral*, not-for-profit clearinghouse.”¹⁰ The WTB required clearinghouse proposals to include, among other things, a “description of how the entity intends to remain *impartial* and how it will prevent any conflicts of interest” and “a description of how the entity intends to resolve disputes between parties.”¹¹ As noted above, in the *March 8 Order* the WTB stated that “CTIA and PCIA must provide clearinghouse services on a non-discriminatory, impartial basis,” and “that the treatment of all relocators, licensees, or operators must be non-discriminatory.”¹² CTIA’s recent actions,

⁸ *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 (fil. May 4, 2006 and amended Sept. 1, 2006) (“M2Z Application”).

⁹ “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, DA 07-492 (WTB rel. Jan. 31, 2007); *Wireless Telecommunications Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to Be Licensed in the 2155-2175 MHz Band*, Public Notice, WT Docket No. 07-16, DA 07-987 (WTB rel. Mar. 9, 2007).

¹⁰ *See AWS Relocation and Cost Sharing Report and Order* at 4518 ¶ 83 (emphasis added).

¹¹ *See June 15 Public Notice* at 3 (emphasis added).

¹² *March 8 Order* at 5-6.

however, undermine any claim it may have had that it could be a “neutral” clearinghouse for the 2.1 GHz band.

On March 2, 2007, CTIA filed a Petition to Deny M2Z’s Application to provide NBRS in the 2155-2175 MHz band.¹³ It followed its petition with a written *ex parte* further attacking M2Z’s Application.¹⁴ In addition, on March 19, 2007 CTIA filed an opposition to M2Z’s Forbearance Petition.¹⁵ Recently, CTIA requested an extension of the pleading deadlines regarding M2Z’s Application in an attempt to shore up its arguments against M2Z.¹⁶ Following denial of the extension request, CTIA filed a reply to M2Z’s Consolidated Opposition to Petitions to Deny.¹⁷ These actions raise significant questions regarding whether CTIA can, in

¹³ See CTIA – The Wireless Association® *Petition to Deny, In the Matter of 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 (fil. Mar. 2, 2007) (“CTIA Petition”).

¹⁴ See *Ex Parte Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch*, WT Docket No. 07-16 (fil. Mar. 16, 2007).

¹⁵ See CTIA – The Wireless Association® *Opposition, In the Matter of Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions*, WT Docket No. 07-30 (fil. Mar. 19, 2007); *Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(a) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions*, WT Docket No. 07-30, at 2 (filed Sept. 1, 2006) (the “Forbearance Petition”).

¹⁶ See CTIA – The Wireless Association® *Motion for Extension of Time, In the Matter of 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, *In the Matter of Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions*, WT Docket No. 07-30 (fil. Mar. 29, 2007).

¹⁷ CTIA filed a Reply regarding M2Z’s Application and Forbearance Petition. See *Reply of CTIA – The Wireless Association®, In the Matter of 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, *In the Matter of Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions*, WT Docket No. 07-30 (fil. Apr. 3, 2007).

fact, act as a “neutral” and “impartial” party in clearinghouse activities involving M2Z, once M2Z is granted a license to operate its NBRS in the 2155-2175 MHz band.

In the *CTIA Clearinghouse Plan*, CTIA states that it will ensure that “all actions taken by the clearinghouse are fair and impartial.”¹⁸ In the last several weeks, however, CTIA has gone out of its way to target M2Z’s Application to provide service in one of the very spectrum bands for which CTIA would act as a clearinghouse. CTIA affirmatively chose to oppose M2Z’s Application and Forbearance Petition, despite the fact that some CTIA members opposed M2Z’s Application and Forbearance Petition individually,¹⁹ making CTIA’s opposition (based on alleged “associational standing”²⁰) unnecessary. CTIA’s filings in the proceedings concerning M2Z’s Application and Forbearance Petition merely underscore its bias against one of its members, M2Z, in favor of other members. Having made the choice to oppose M2Z’s 2.1 GHz license application, it is difficult to imagine how CTIA can now qualify as “neutral” in 2.1 GHz relocation matters involving M2Z.

CTIA states that “it will employ fair, practical dispute resolution procedures in the event that parties are unable to settle disagreements over cost-sharing amounts,”²¹ yet its opposition to M2Z’s Application raises questions regarding CTIA’s likely response if M2Z and an incumbent licensee are not able to agree on cost-sharing matters and ask CTIA to intervene. At that point, M2Z would have serious doubts regarding whether CTIA would be willing to craft a fair resolution of the issues. In fact, one of the issues raised by opponents of M2Z’s Application and

¹⁸ *CTIA Clearinghouse Plan* at 14.

¹⁹ *See, e.g.*, Petition to Deny of T-Mobile USA, Inc., WT Docket No. 07-16 (fil. Mar. 2, 2007); Petition to Deny of AT&T, Inc., WT Docket No. 07-16 (fil. Mar. 2, 2007); Petition to Deny of Verizon Wireless WT Docket No. 07-16 (fil. Mar. 2, 2007); Petition to Deny of Motorola, Inc. WT Docket No. 07-16 (fil. Mar. 2, 2007).

²⁰ *See CTIA Petition to Deny* at 2 n.4.

²¹ *CTIA Clearinghouse Plan*, Executive Summary.

Forbearance Petition is the manner in which M2Z will relocate incumbents, including incumbent FS licensee Verizon Wireless.²² As noted above, by opposing M2Z's Application and Forbearance Petition, CTIA already has demonstrated a bias against M2Z and in favor of other CTIA members. It is reasonable to question CTIA's ability to remain neutral in its capacity as a clearinghouse that resolves disputes when it already has taken a position in support of an incumbent to be relocated and against a potential new licensee in the band.²³ CTIA further states that it will provide "legal and regulatory personnel" to assist the clearinghouse.²⁴ However, these personnel will likely be the same personnel who are responsible for the adverse filings CTIA has made against M2Z. To the extent that CTIA's filings may have been influenced by some of its members, the Commission should also be concerned about broader bias from the clearinghouse—the *CTIA Clearinghouse Plan* states that the clearinghouse will be created and maintained with CTIA funds "as an added Member service."²⁵

²² See Petition to Deny of Verizon Wireless in WT Docket No. 07-16 at 19-20 (fil. Mar. 2, 2007); Reply of Verizon Wireless in WT Docket No. 07-16 at 6-7 (fil. Apr. 3, 2007) (describing its concerns "as a fixed microwave service licensee in the 2155-2175 MHz band"). M2Z has thoroughly addressed the issue of whether and how it will relocate incumbents. See M2Z Application at 13, 19, 34 and Appendix 2; Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 at 87-92 (filed Mar. 26, 2007).

²³ CTIA has requested the dismissal of M2Z's Application and all other alternative proposals. See Letter to Marlene H. Dortch, FCC Secretary, from Christopher Guttman-McCabe, Vice President, CTIA (dated Mar. 16, 2007) ("... CTIA believes that the competitive bidding requirements of Section 309(j) of the Communications Act of 1934, as amended, mandate that the Commission promptly dismiss all pending applications for licenses of 2155-2175 MHz spectrum, including the application of M2Z."). Even parties that seek an auction-based outcome are among CTIA's targets, raising the question of whether there is any basis for CTIA's attacks other than preventing competition from new entrants against favored incumbent members. This does not portend neutral clearinghouse activity by CTIA.

²⁴ *CTIA Clearinghouse Plan* at 2.

²⁵ *Id.* at 11.

C. The 2.1 GHz Transition Can Be Accomplished Just as Effectively Without CTIA's Participation as a Clearinghouse.

If the Commission were to remove CTIA as a clearinghouse, all of the parties involved in the 2.1 GHz relocation process would still be able to receive the clearinghouse services required for an effective relocation process due to the fact that PCIA would remain as a clearinghouse designee.²⁶ Indeed, even CTIA itself has noted that “practical experience suggests that a single cost-sharing clearinghouse in the 2.1 GHz band may be appropriate and most efficient.”²⁷

The Commission used the single clearinghouse model in the late 1990s, when it required microwave facilities operating in the 1.9 GHz band to vacate the band for entering PCS licensees.²⁸ Prior to the microwave relocation, there were 8,846 private microwave licenses in the 1.9 GHz band established for PCS use.²⁹ Most licensees had multiple base stations on their network, impacting more than one PCS new entrant. Thus, extensive cost reimbursement coordination was required for over 510,000 base stations.³⁰ Despite these cost reimbursement complexities, the Commission's microwave relocation process was hugely successful.³¹ Most

²⁶ If the Bureau feels that it is necessary to have two clearinghouses, it can always reopen the window for clearinghouse proposals.

²⁷ *CTIA Clearinghouse Plan* at 14 (highlighting the fact that in the 1.9 GHz relocation process, “the market ultimately could support only one cost-sharing clearinghouse”).

²⁸ *See Amendment To The Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Third Notice of Proposed Rule Making, 11 FCC Rcd 8825 ¶ 3–7 (1996).

²⁹ *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Notice of Proposed Rule Making, 11 FCC Rcd 1923 ¶ 12 (1995).

³⁰ *Semi-Annual Report of the PCIA Microwave Clearinghouse Regarding Operation of Microwave Relocation Cost Sharing Clearinghouse*, PCIA Microwave Clearinghouse Semi-Annual Report to the Commission, WT Docket No. 95-157 (rec'd Aug. 10, 2004).

³¹ *See id.* (noting as well that representatives from Australia, Canada, France, Taiwan, and Japan have studied the U.S. microwave relocation process so that they may establish similar processes in their countries). *See generally* Peter Cramton et. al., *Efficient Relocation of Spectrum Incumbents*, 41 J.L.& ECON. 647 (1998).

incumbents were relocated on-time and on-budget. In fact, the Commission's Wireless Bureau Chief at the time, Daniel Phythyon, hailed the 1.9 GHz band relocation as a success-story for the Bureau, "further[ing] the rapid clearing of spectrum and the build out of PCS networks."³² As CTIA itself notes, however, the market in the 1.9 GHz band relocation process ultimately could support only one clearinghouse. The same conclusion can be drawn for the 2.1 GHz band, where a far smaller number of relocations will be required. In this case, PCIA should certainly be able to handle the cost-sharing administration as a sole clearinghouse with no significant problems.

D. M2Z's Concerns Are Being Raised at the First Opportunity.

CTIA explicitly and formally displayed its bias against M2Z over the past few weeks. It is only now that M2Z can demonstrate that CTIA is not a neutral entity as it has claimed.³³ CTIA filed its Petition to Deny M2Z's Application on March 2, and the Bureau issued its *March 8 Order* explaining its reliance on CTIA's claim of neutrality in the instant proceeding less than a week later. Thus, because the actions of CTIA that give rise to M2Z's concern have only occurred recently, M2Z did not have an opportunity to apprise the Commission of its concerns in advance of the *March 8 Order*.

The Commission's consideration of the facts presented herein is also in the public interest. In the *March 8 Order*, the Commission carefully noted that clearinghouses must be "neutral."³⁴ Without such neutrality, a clearinghouse such as CTIA could potentially take actions that thwart the Commission's relocation and cost-sharing goals.

³² *Wireless Bureau Chief Daniel Phythyon Hails Success of Market-Based Spectrum Policies*, Press Release (rel. Sept. 11, 1997). Daniel Phythyon was the Chief of the Wireless Bureau in 1997 and 1998.

³³ See 47 C.F.R. § 1.429(b).

³⁴ See *AWS Relocation and Cost Sharing Report and Order* at 4518 ¶ 83; see also 47 C.F.R. § 27.1162.

III. CONCLUSION.

For the foregoing reasons, M2Z respectfully requests that the *March 8 Order* be modified to remove CTIA as a clearinghouse for the 2.1 GHz band.

Respectfully submitted,

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