

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

In the Matter of)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 07-195
Services in the 2155-2175 MHz Band)	

To the Commission:

**REPLY COMMENTS OF THE
COUNTY EXECUTIVES OF AMERICA**

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EXECUTIVE SUMMARY:

Broadband is to the Digital Age what railroads were to America's Gilded Age – the necessary precondition to economic growth and development. Broadband Internet is the infrastructure upon which much of the 21st Century economy is being built. It is the means by which today's students will learn advanced skills and develop the innovative products and services that will shape the world of tomorrow. But we will only enjoy that bright future if the Federal Communications Commission makes good on its promise to extend the benefits of broadband to all Americans now.¹ CEA believes that the AWS-3 Notice of Proposed Rulemaking (“NPRM”) provides an incredibly important opportunity to advance these goals that the Commission should not squander.

Towards that end, CEA supports the adoption of public interest focused service rules based on its own organizational expertise and on the existing public record in this docket. The rules endorsed by CEA will help close the digital divide, ensure universal access to affordable broadband services, protect families from indecent and pornographic content online, and bolster the ability of municipalities and public safety agencies to use 21st Century technologies to better serve their constituencies. Specifically, we seek service rules for the 2155 to 2175 MHz band that require the eventual licensee to:

- a) offer a free nationwide wireless broadband Internet service;
- b) provide network based filtering of indecent and pornographic content to protect our families online and encourage other providers to develop and offer similar utilities for parents;
- c) serve unserved and under-served areas by mandating clear and enforceable buildout requirements; and

¹ The principal barriers to widespread broadband use are the retail cost of service and the fact that broadband infrastructure is not universally deployed.¹ Accordingly, the Commission has identified greater broadband access as a strategic goal, stating that “[a]ll Americans should have affordable access to robust and reliable broadband products and services.” Federal Communications Commission, Strategic Plan 2006-2011 at 5 (2006).

- d) support the efforts of municipalities and public safety agencies by operating an open access network that is interoperable with other planned and existing IP-based public safety networks.

These rules are consistent with the FCC's statutory obligations to ensure that all Americans have reasonably priced access to adequate communications facilities and its obligation to serve and protect the public interest.

Furthermore, in its consideration of the highest and best use of the 2155 to 2175 MHz spectrum band, the Commission should not be co-opted by the efforts of entrenched incumbents to subvert the public interest in order to preempt the competitive new entry. Thus, in addition to adopting the public interest commitments outlined in their filing, the FCC should also adopt the "Uplink/Downlink" standard and reject "Structured Uplink/Downlink" and "Downlink Only" protocols which are grossly unnecessary.

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County Executives of America (“CEA”)² supports the technical and service rules advocated by M2Z Networks, Inc. (“M2Z”) in the above-referenced docket.³ Those rules would mandate the deployment of a free and family-friendly wireless broadband Internet service in the 2155-2175 MHz band that would be available to 95 percent of the population within ten years. The creation of a ubiquitous, free, and family-friendly wireless broadband Internet service is consistent with the goals of CEA and will bolster our members’ efforts to extend the economic, educational, and civic benefits of broadband use to all Americans.

² CEA’s membership includes County Executives, County Judges, Parish and Borough Presidents, City-County Mayors and Commission Presidents in 700 city-county jurisdictions, boroughs (New York City), parishes (Louisiana), and judicial jurisdictions (Texas, Kentucky) throughout America.

³ CEA recognizes that one key question for the Commission is whether it will apply flexible technical rules to the 2155-2175 MHz band. In light of the fact that flexible technical rules will protect others from harmful interference and enable the delivery of a wide variety of services (including two-way broadband services), CEA has come to the conclusion that there is no reasonable basis to institute either the “structured uplink” or “downlink only” proposals. This position has strong support in the record. *See* Comments of Sprint Nextel at 2-4; Joint Comments of Free Press, Media Access Project, New America Foundation and Public Knowledge at 13; Comments of M2Z at 32-37; Joint Comments of Minority Media Telecommunications Council and Rainbow PUSH Coalition at 7; Comments of ArrayComm LLC at 4-7; Comments of CTIA- The Wireless Association at 5; Comments of Wireless Communications Association International, Inc. at 6-9; Comments of QUALCOMM Incorporated at 3-4.

I. PUBLIC INTEREST COMMITMENTS WILL ENSURE THAT THE 2155-2175 MHZ BAND IS PUT TO ITS HIGHEST AND BEST USE

In this NPRM, the Commission specifically seeks comment on whether it should adopt a number of possible public interest commitments into the service rules for this band. The Commission has asked whether the service rules should require the licensee to provide broadband “free of service charges” or include “mechanisms designed to filter content inappropriate for children.”⁴ CEA strongly believes that the FCC should incorporate these and other public interest commitments into the rules for this band. In addition to requiring a free and family-friendly service, the Commission should also mandate that the eventual licensee of this band must buildout the spectrum rapidly, with defined and enforceable buildout benchmarks, and support the efforts of public safety agencies with in counties and municipalities.

Setting service rules that incorporate these public interest commitments will ensure that this spectrum is used in the public interest and that all Americans benefit from the use of our spectrum. The following summary of support for specific public interest commitments, both from the initial comment round of the NPRM and previous considerations of this spectrum band, is intended to help the Commission to focus its attention on the public interest opportunities that this band affords. Seizing these opportunities will serve the public interest as well as the diverse constituency that CEA’s members represent; including, school children, public safety officials, small businesses, and millions upon millions of Americans.

- ***Free service*** – The Commission has received hundreds of comments in support of a free nationwide wireless broadband service in this band. Free broadband service will

⁴ *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Dockets No. 07-195, Notice of Proposed Rulemaking, FCC 07-164 at 42 and 86 (rel. Sept. 19, 2007) (“NPRM”).

provide a host of benefits to a diverse set of constituencies.⁵ A selection of these comments are summarized below:

- The joint filing of the Minority Media and Telecommunications Council (MMTC) and Reverend Jesse L, Jackson, Sr.'s Rainbow PUSH Coalition (RPC) sheds light on the great need of our minority citizens to access the educational and economic opportunities that broadband Internet access provides via an *affordable* service offering. The digital divide disproportionately impacts minority Americans and their children. MMTC and RPC strongly urged the Commission to adopt rules for this band that would help correct this staggering inequity.⁶
- The Electronic Retailing Association (ERA) explained that small businesses and direct to consumer entrepreneurs would benefit greatly from a free wireless broadband service as the availability of such a service would bolster our national economic position by both increasing the number of consumers with access to broadband as well as the range of online commerce opportunities available to small businesses. Based on Small Business Administration Data, ERA estimates that over 16 million small firms in America have been left behind by the digital economy.⁷
- ***Family-friendly filtering of indecent and pornographic content*** – Again the Commission has received numerous comments that support the inclusion of a filter for indecent and pornographic content in the service rules for this band. Though many other commenters have already supported the inclusion of such a feature,⁸ the

⁵ See Comments of the Association of Community Organizations for Reform Now, WT Docket Nos. 07-16 & 07-30, at 1–2 (submitted Feb. 2, 2007); Comments of One Economy Corporation, WT Docket Nos. 07-16 & 07-30, at 2 (submitted Mar. 1, 2007); Comments of the California Association for Local Economic Development, WT Docket Nos. 07-16 & 07-30, at 2-3 (submitted February 28, 2007); Comments of the County Executives of America, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted February 27, 2007); Comments of The Public Technology Institute, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted February 27, 2007); Comments of the Antelope Valley Chambers of Commerce at 1, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted March 14, 2007); Comments of the Latino Coalition, WT Docket Nos. 07-16 & 07-30 at 2 (submitted Mar. 22, 2007); Comments of U.S. Representative Danny Davis, WT Docket Nos. 07-16 & 07-30, at 2 (Submitted July 31, 2007); Comments of U.S. Representative Edolphus Towns, WT Docket Nos. 07-16 & 07-30, at 1 (Submitted January 30, 2007).

⁶ See Comments of the Minority Media and Telecommunications Council and Rainbow PUSH Coalition, (WT Docket 07-195).

⁷ See Comments of the Electronic Retailing Association, WT Docket 07-195, at 4 (submitted December 14, 2007).

⁸ See Comments of the Family Research Council, WT Docket Nos. 07-16 and 07-30, at 2 (submitted Aug. 22, 2007); Comments of Most Reverend Paul S. Loverde, WT Docket Nos. 07-16 & 07-30, at 2 (submitted Mar. 2, 2007); Comments of Enough is Enough, WT Docket Nos. 07-16 and 07-30, at 1 (submitted Mar. 13, 2007); Comments of

comments of the Family Research Council (FRC) and the joint filing of the Higher Education Wireless Access Consortium (HEWAC) and College Parents of America (CPA) are summarized below:

- The Family Research Council explained in its comments that the Commission should act quickly, consistent with its authority under Section 230 of the Communications Act, to mandate a family-friendly service in order to aid families in their efforts to protect themselves from the alarming rise of Internet pornography. There is no shortage of evidence for this call to action. FRC cited several statistics from a recent University of New Hampshire study that, among other findings, reported that the number of children who are inadvertently exposed to unwanted pornographic material online grew from one quarter to over one third in just four years.⁹
- The Higher Education Wireless Access Consortium and College Parents of America jointly touted the incredible benefits to our educational system that would result from the deployment of a free and family-friendly broadband service in this band. Within the context of a family-friendly service offering, HEWAC and CPA wrote: “Specifically, HEWAC and CPA strongly support requiring the licensee of the 2155-2175 MHz band to provide a free, two-way broadband service that includes protection against children accessing pornography. Such a network will ensure that children and families have access to the full education opportunities of broadband in a safe and responsible manner.”¹⁰
- ***Defined and enforceable buildout requirements*** – In order to ensure that all Americans have access to the great opportunities that the Digital Age affords, we will all need access to an affordable broadband connection. To date, the telecommunications carriers have not built networks out to all Americans. In order to correct this problem, the FCC should (consistent with its actions in the 700 MHz

U.S. Representative Joseph R. Pitts, WT Docket Nos. 07-16 and 07-30, at 1 (submitted May 24, 2007); Comments of the National PTA, WT Docket Nos. 07-16 and 07-30, at 2 (submitted March 1, 2007); Comments of United Families International, WT Docket Nos. 07-16 and 07-30, at 1–2 (submitted Mar. 16, 2007); Comments of Family Watch International, WT Docket No. 07-16 and 07-30, at 2 (submitted March 23, 2007); Comments of U.S. Senator Sam Brownback, WT Docket Nos. 07-16 and 07-30, at 1 (submitted April 5, 2007); Comments of U.S. Senator Orrin G. Hatch, WT Docket Nos. 07-16 and 07-30, at 1 (submitted February 28, 2007).

⁹ See Comments of the Family Research Council, WT Docket No. 07-195, at 7 (submitted December 14, 2007).

¹⁰ See Comments of the Higher Education Wireless Access Consortium and College Parents of America, WT Docket 07-195, at 1-2 (submitted December 14, 2007).

proceeding) incorporate a set of defined and enforceable buildout requirements into the service rules for this band. This opinion is shared by many parties that have commented in this proceeding and others:¹¹

- Free Press, Media Access Project, New America Foundation and Public Knowledge collectively noted that broadband is unavailable in approximately 10 percent of homes and has not been adopted in over 50 percent of homes, urged the Commission to “act in this proceeding to promote its broadband policy goals of increasing access and openness.”¹² Moreover, these parties have urged the Commission to use this proceeding to address accessibility issues by requiring the licensee to meet strict buildout requirements.
 - The Vermont Telecommunications Authority (VTA) also gave considerable attention to the issue of buildout in its comments. Vermont, as VTA explained to the Commission, is a state in which the digital divide is expanding. As such, VTA recommended that the FCC to adopt rules for this spectrum that would require the licensee, as a condition of holding the license, to provide a universal wireless broadband service with the further requirement that the spectrum be built out on an “accelerated timeframe...with preferential treatment given to under-served and unserved areas.”¹³
- ***Support from municipalities and public safety agencies*** – CEA members face great challenges in coordinating the growth of their counties and municipalities within the context of the digital economy. They must also work with local, state and federal public safety agencies to ensure that their residents are safe when disaster strikes.

Many commenters agree that the assistance of the FCC in making more, advanced

¹¹ See Comments of Alaska State Representative Bill Thomas, WT Docket 07-16, at 1 (submitted January 24, 2007); Comments of Tennessee State Representative John Litz, WT Docket Nos. 07-16 & 07-30, at 1 (submitted February 6, 2007); West Virginia Delegate Walter Duke, WT Docket Nos. 07-16 & 07-30, at 1 (submitted April 17, 2007); Comments of Mayor Robert B. Partin, Town of Scotland Neck, NC, WT Docket Nos. 07-16 & 07-30, at 1 (submitted April 2, 2007); Tennessee State Senate Minority Leader Roy Herron, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted March 16, 2007); Illinois State Representative Mike Boland, WT Docket Nos. 07-16 & 07-30, at 1 (submitted August 1, 2007); Mayor John F. Bean, Town of Barton, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted April 24, 2007); Tennessee State Senator Tommy Kilby, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted April 4, 2007); Mississippi State Representative Lee Jarrell Davis, WT Docket Nos. 07-16 & 07-30, at 1 (submitted April 4, 2007).

¹² See Comments of Free Press, Media Access Project, New America Foundation and Public Knowledge, WT-Docket 07-195, at 2 (submitted December 14, 2007).

¹³ See Comments of the Vermont Telecommunications Authority, WT Docket 07-195, at 3-4 (submitted December 14, 2007).

telecommunications services and networks available at *lower costs* will be invaluable in that process:¹⁴

- The National Association of Telecommunications Officers and Advisors, which is made up of local government officials and staff charged with promoting and serving the communications needs of their counties and municipalities, was among the most outspoken on the need to ensure that this spectrum is used to support the needs of local government and public safety. "...NATOA strongly encourages the Commission to promulgate service rules for the 2155-2175 MHz band that are consistent with the goals of local government to ensure affordable, universal access to broadband services for first responders, public safety officers, schools, libraries, city and county agencies, and all residents." NATOA advocated that the Commission adopt a specific rule that would require the licensee of this band to build a network that would be interoperable with planned and existing IP-based public safety systems.¹⁵

These comments and others clearly demonstrate strong support for the service rules that have been proposed by M2Z Networks and the reality that such rules will ensure that the eventual licensee using the spectrum serves the public interest. As stated above, those rules should include, but not be limited to: the provisioning of a free wireless broadband Internet service, the filtering of that service for indecent and pornographic content at the network level, set and enforceable build out requirements, and support for the efforts of counties ,

¹⁴ See Joint Comments of the Association of Public-Safety Communications Officials-International, International Association of Chiefs of Police, and the International Association of Fire Chiefs, WT Docket Nos. 07-16 & 07-30, at 1 (submitted August 30, 2007); Comments of the National Troopers' Coalition, WT Docket Nos. 07-16 & 07-30, at 1-2 (submitted February 6, 2007); Police Chief Michael Tabor, City of Crisfield, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted May 25, 2007); Comments of Police Chief Jason Crotwell, City of Raymond, MS, WT Docket Nos. 07-16 & 07-30, at 1 (submitted February 6, 2006); Comments of Police Chief Rodney R. Cox, Town of Denton, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted May 31, 2007); Comments of Chief Inspector Dan Maniff, Office of Fire Prevention, City of Revere, MA, WT Docket Nos. 07-16 & 07-30, at 1 (March 2, 2007); Comments of Police Chief Arnold Downing, Berlin, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted May 15, 2007); Comments of Policy Chief J.D. Ervin, Pocomoke City, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted May 30, 2007); Police Chief Eugene Parker, City of Snow Hill, MD, WT Docket Nos. 07-16 & 07-30, at 1 (submitted May 29, 2007).

¹⁵ See Comments of the National Association of Telecommunications Officers and Administrators, WT Docket 07-195, at 1 (submitted December 14, 2007).

municipalities and public safety agencies by operating an open access network that is interoperable with other planned and existing IP-based public safety networks.

II. THE COMMISSION SHOULD TAKE A LEADERSHIP ROLE IN PROTECTING AND PROMOTING THE PUBLIC INTEREST

There is copious support for a free and family-friendly broadband service in this docket and in previous considerations of the highest and best use of the 2155-2175 MHz spectrum band. Predictably, though, the Commission also received a handful of comments in opposition to a free and safe wireless broadband Internet service in the band. This opposition has come almost entirely from incumbent wireless service providers who appear to want unfettered access to the nation's airwaves without any responsibility to the consumer. It is ironic that these same carriers, through their trade organization, have simultaneously committed a great deal of resources to convince policymakers in Washington of the great public benefits of their wireless services. Administered by CTIA: The Wireless Association, the "Wireless Unites America" campaign is designed to highlight the work that the incumbent wireless carriers are doing to connect Americans to the power of 21st century technologies. The campaign website states:

Whether you're young or old, live in a big city or small town, or work in a corner office or the corner store, wireless is how opportunity calls for more than 240 million Americans. Wireless gives people access to amazing technology with plans almost anyone can afford and more choices than anywhere else in the world.¹⁶

In direct contradiction to the goals and expressions of this campaign, the wireless carriers are now attempting to stifle innovative use of the 2155 to 2175 band of spectrum that would extend the benefits of wireless services even further.

¹⁶ See "Wireless Unites America Campaign" at http://www.ctia.org/media/ad_oct07

In their initial round comments, both Verizon Wireless (“Verizon”) and T-Mobile USA, Inc. (“T-Mobile”) advocated that the Commission set aside the AWS-3 band for “Downlink Only” use. Their basis for this assertion is that either an “Uplink/Downlink” or “Structured Uplink/Downlink” approach would cause harmful interference in the AWS-1 and AWS-2 bands, bands in which these incumbent wireless carriers hold multiple licenses. Verizon and T-Mobile are certainly right to be concerned about interference with their future systems and consumers’ electronics. However, these parties should be chastised for raising an interference red herring. Sprint Nextel, M2Z, ArrayComm, Qualcomm, CTIA, MMTC and others demonstrate that the AWS-3 band indeed can be used for a two-way broadband Internet service without causing harmful interference to the adjacent licensees. Knowing this, Verizon and T-Mobile still asserted that the public interest would be best served by a “Downlink Only” regime. In fact, Verizon went so far as to assert the following three-pronged test for determining that highest and best use of the AWS-3 band:

...Congress has recognized these benefits and authorized the Commission to allocate spectrum in a manner that provides flexibility of use, subject to certain conditions:

1. Such use must be in the public interest;
2. Such use must not deter investment in communications services and systems, or technology development; and
3. Such use must not result in harmful interference among users.¹⁷

CEA agrees with Verizon’s interpretation of Congress’ methodology for allocating spectrum is a flexible way. However, it is difficult to understand how any of these three prongs are met by their proposal. On the other hand, CEA believes that this methodology can lead the Commission to the right answer – free and family-friendly broadband.

In considering the public interest, the Commission need ask itself only one question: what use has the best chance of closing the digital divide and connecting the more than 100 million

¹⁷ See Comments of Verizon Wireless, WT Docket 07-195, at 4 (submitted December 14, 2007).

Americans and their children who do not have broadband at home today? Broadband requires both uplink and downlink functionality, and any other technical regime will fall far short of providing the ubiquitous broadband necessary to close the digital divide. Second, encouraging investment in communications services, systems and technologies is best accomplished by increasing competition in the broadband marketplace through innovative new entrepreneurial ventures making use of state of the art technologies. Setting service rules that are only designed to ease the unreasonable jitters of incumbent carriers does not accomplish this goal. The final consideration is whether the proposed use will cause harmful interference to adjacent license holders. As we have already outlined, several parties have shown that an uplink/downlink approach will not cause interference in the AWS-1 and AWS-2 bands. The incumbents' Downlink Only proposal is not the only means to eliminate interference, but it is an effective way to stifle innovation and prevent broadband services in this spectrum band. The calls for unreasonable technology restrictions in this band should be roundly rejected.

III. CONCLUSION

CEA calls on the FCC to see through the obfuscatory tactics of entrenched incumbents and focus its deliberation concerning rules for this band on the real issue – can this band be used to connect the more than 100 million Americans that currently lack a broadband connection at home in a way that is safe and affordable? CEA and many others believe that the answer to that question is an emphatic ‘yes.’ By promulgating service rules for this band that require the provision of a free and family-friendly broadband Internet service, the Commission can finally engage in a comprehensive national strategy designed to close the digital divide for good and level the playing field for all Americans. The public statements of the Chairman and the

Commissioners elucidate the fact that broadband deployment and adoption is the greatest policy goal of the FCC. Please act decisively and courageously to make a real difference.

Yours truly,

/s/

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