

June 3, 2008

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW – A325
Washington, DC 20554

Re: Written Ex Parte Presentation in WT Docket No. 07-195 & 04-356

Dear Ms. Dortch:

Press reports indicate that the Commission is considering adopting rules in its June 2008 meeting for the 2155-2180 MHz band that would establish a free nationwide wireless network. We applaud this effort. Broadband competition from a free service will directly benefit consumers and force incumbents to respond with lower prices and better service.¹

For Americans who are privileged enough to have high-speed Internet at home or in the office, it is easy to take always-on broadband connectivity for granted. Unfortunately, millions of citizens, particularly low-income, minority and rural Americans, do not enjoy high speed access to the Internet. The current state of affairs is due, in large part, to incumbent broadband providers successfully dominating the regulatory and auction processes in order to block competition from new entrants. Without meaningful competition, incumbents are content to charge expensive monthly subscription prices and focus build out only to highly profitable areas regardless of demand. Hispanic Telecommunications and Technology Partnership and the Minority Media and Telecommunications Council, therefore, respectfully encourage the Commission to adopt rules mandating a free wireless broadband service and permit only new entrants — entities without terrestrial spectrum licenses or other broadband operations — to participate in the auction of the 2155-2180 MHz band.

As a matter of policy, the 2155-2180 MHz band should be opened only to new nationwide entrants that do not hold terrestrial spectrum licenses (including ATC authority) or are otherwise engaged in providing broadband services. Such a decision is consistent with the statutory mandate that the Commission ensure that it issue spectrum licenses in the public interest.² Indeed, the Commission has an obligation under Section 309(j)(3) of the Communications Act to conduct a 2155-2180 MHz band auction that "promote[s] economic opportunity and competition," "avoid[s] excessive concentration of licenses," and "recover[s] for the public a portion of the value of

¹ See Simon Wilkie, "The Consumer Welfare Impact of M2Z Networks, Inc.'s Wireless Broadband Proposal" WT Docket Nos. 07-16 and 07-30 (filed March 3, 2007); see also Kostas Liopiros "The Value of Public Interest Commitments and the Cost of Delay to American Consumers" WT Docket Nos. 07-16 and 07-30 (filed March 19, 2007).

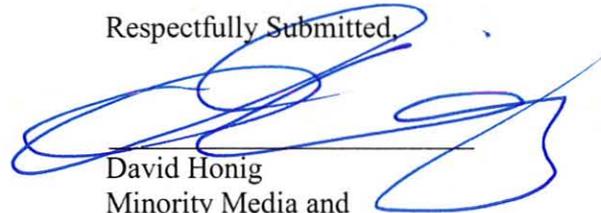
² See 47 U.S.C. § 310(d).

the public spectrum resource . . .³ Establishing a new entrant band at AWS-3 would achieve each of the mandates outlined in 47 U.S.C. § 309(j)(3).

The Commission has repeatedly noted that it is committed to promoting competition into the market for wireless services. Competition requires multiple competitors, and allowing dominant players to acquire additional spectrum in the 2155-2180 MHz band will not be conducive to vibrant, competitive markets which is one of the Commission's goals for spectrum management. It has become increasingly clear that incumbents have a great incentive to bid in a manner that will drive out new competitors.⁴ The AWS-1 and 700 MHz auction results bear this out.⁵ Thus, in order to get the necessary marketplace benefits from new entry, the Commission should establish the 2155-2180 MHz auction as a new entrant auction.

In this proceeding, incumbent interests have expressed little or no interest in delivering consumer services on the 2155-2180 MHz band. Instead, they have submitted extensive comments that appear designed to prevent additional competition. These comments, if headed, would trample competition and disserve the public interest. Instead, the Commission can connect millions of low-income, minority and rural Americans to affordable and high-quality broadband Internet services consistent with the letter and spirit of the Communications Act.

Respectfully Submitted,



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³ 47 U.S.C. § 309(j)(3).

⁴ See Letter to Chairman Kevin Martin from Professor Simon J. Wilkie, WT Docket 07-195 (Dec. 14, 2007) (resubmitting paper entitled "Spectrum Auctions are Not a Panacea: Theory and Evidence of Anti-competitive Rent-seeking Behavior in FCC Rulemakings and Auction Design").

⁵ The fact that incumbents continue to dominate spectrum assignments to the detriment of diversity has been raised in litigation related to Auction 66. In their motion for expedited review, petitioners Council Tree Communications, Inc., Bethel Native Corporation, and the Minority Media and Telecommunications Council explained that "the post-700 MHz auction news release issued by FCC Commissioner Jonathan Adelstein serves to alert this Court to the alarmingly poor results therein for new entrant DEs: 'Preliminary FCC data regarding winning bidders in the 700 MHz auction indicated that, based on self-reporting, women-owned bidders failed to win any licenses and minority-owned bidders won less than one percent of licenses (7 of 1,090 licenses, or .64%), despite the fact that women constitute over half the U.S. population and minorities around one-third of the U.S. population.' In response, Commissioner Adelstein stated: 'It's appalling that women and minorities were virtually shut out of this monumental auction. It's an outrage that we've failed to counter the legacy of discrimination that has kept women and minorities from owning their fair share of the spectrum. Here we had an enormous opportunity to open the airwaves to a new generation that reflects the diversity of America, and instead we just made a bad situation even worse.' " Motion for Expedited Briefing Schedule and Expedited Review on the Merits at 8-9, *Council Tree Commc'ns, Inc. v. FCC*, No. 08-2036 (3d Cir. May 28, 2008). See also Kang, Cecilia, "FCC Names Winners of Wireless Auction," *Washingtonpost.com* (Washington Post), published March 21, 2008, at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/20/AR2008032002140.html>