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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:

On June 5, 2008, the undersigned on behalf of Broadband Wireless Partners ("BWP") and Kathleen Wallman on behalf of M2Z Networks, Inc. ("M2Z") met with Commissioner Deborah Taylor Tate to discuss BWP's support for service rules proposed by M2Z in this proceeding. We discussed BWP's concern that recent *ex parte filings* by some associations of rural carriers reflect the fact that some rural carriers may not be fully informed with regard to the proposed rules under consideration in this proceeding for the licensing of 25 MHz of spectrum between 2155-2180 MHz. These rules would, in fact, significantly serve the interests of rural carriers and the needs of their rural consumers.

BWP is a consortium of rural telecommunications providers committed to the deployment and provision of broadband wireless services throughout rural America. The consortium was founded by 20 rural telephone companies to foster the interests of rural telephone companies that currently provide service to approximately two million rural consumers in 35 states[1] in their efforts to bring spectrum based broadband services to rural and underserved areas of the nation.

The spectrum auction process has generally failed to result in the dissemination of spectrum to rural telephone companies that would utilize the spectrum to serve rural communities in the manner Congress intended. Large area spectrum licenses have been obtained and aggregated by

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[1] The BWP consortium founders operate rural telephone companies in:
Alabama. Alaska, California, Georgia, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wisconsin.

large carriers. While large communities and highways receive services, rural communities are often unserved and the spectrum available to serve those communities goes unused.

Recognizing the challenges faced by small and rural carriers in FCC's spectrum licensing processes, BWP is committed to pursuing alternative opportunities and arrangements through negotiation with nationwide carriers to ensure that rural consumers and their communities are served with the most advanced and affordable types of broadband services. BWP is particularly interested in establishing wholesale relationships with motivated national partners because we believe the Congressional mandate to provide spectrum to rural carriers and other designated entities to serve rural customers has not been effectively met. Even in those few instances where rural carriers have obtained spectrum in the AWS and 700 MHz auctions, rural carriers are finding it difficult to reach agreements with national carriers in order to ensure that the services they bring to their rural communities can be part of a nationwide interconnected system. The lack of a broadband wireless roaming mandate from the FCC as well as the in-market license limitation to roaming even for voice services have certainly made it difficult for rural carriers to provide their customers with a viable means of being integrated into the national broadband grid.

Recent filings in this docket by certain parties suggest that the Commission's proposed order in the 2155-2180 MHz band would harm rural carriers.[2] Such views are inconsistent with BWP's experience and the record in this proceeding.[3] BWP continues to believe that this rulemaking presents the Commission with a golden opportunity to promote rural broadband deployment. As the Commission prepares to license 2155-2180 MHz, the Commission should require the licensee to adhere to the following critical public interest obligations:

- ***Meaningful wholesale arrangements in rural areas.*** BWP notes that recent press reports indicate that the FCC is considering adopting service rules that would require the AWS-3 licensee to provide a free wireless broadband service on a portion of the spectrum's capacity while at the same time reserving for use, at the licensee's discretion, the remainder of the spectrum. BWP believes that portions of the capacity not subject to the free broadband service should incorporate a meaningful wholesale requirement. In particular, such a requirement should disallow the AWS-3 licensee from having retail price controls on its wholesale partners. In order to maximize full retail competition, wholesale partners of the licensee should not have to perform the underlying public interest obligations associated with the AWS-3 license and licensee.

- ***Require build out of the license to cover 95% of the country's population.*** BWP proposes that the licensee have 6 years to reach 40% of the population and 12 years to reach 90% of the population and 15 years to reach 95% of the population. If the first benchmark is missed, the licensee would then be obligated to build out to 95% of the population by the 12 year mark. If the second benchmark were missed (regardless of whether the first benchmark was achieved) the licensee would lose the

[2] Although BWP is a consortium of rural carriers, BWP recognizes that the Commission's focus is properly on the interests of rural consumers. Irrespective of the business interests of a few that may purport to reflect the interests of rural carriers, BWP respectfully submits that the interests of rural consumers will be best served by the adoption of rules as proposed herein that foster the expedient delivery of services to rural consumers.

[3] BWP provided detailed reply comments in which it explained that this proceeding could be the vehicle for enhanced rural broadband deployment. *See* Reply Comments of Broadband Wireless Partners, WT Docket 07-195 (Jan. 14, 2008) (explaining BWP wholesale partnership relationship with M2Z and the benefits that will accrue to rural communities).

entire license. If both of the first two benchmarks are reached, the carrier would receive a "carrot" (perhaps some form of support similar to the suggested broadband universal service grant program under consideration by the Commission in the context of WC Docket No. 05-337 and CC Docket No. 96-45 in which the Commission is reviewing the USF program) to reach 95% of the population (and beyond). Specifically, BWP also recommends that AWS-3 build out, however, should not be based on a "keep what you use" enforcement paradigm that is reportedly under consideration by the Commission. The inclusion of any such provisions will create a perverse incentive for urban-only deployments by the licensee (where the licensee's penalty for not meeting its build out obligation would only be the return of unbuilt areas which are likely to be rural areas).

- ***Permissive Partitioning To Rural Telephone Companies and other Designated Entities (DEs).*** BWP submits that the Commission can serve both the overall public interest and the unfulfilled Congressional mandate to disseminate spectrum to rural telephone companies and other DEs by permitting and encouraging the licensee to partition the spectrum to rural telephone companies and other DEs that propose to provide service to areas that were included within rural service areas (RSAs) for cellular service licensing purposes. In order to promote further the timely deployment of broadband services in these rural service areas, the rules should provide that in those instances where the licensee participates in any such partition, the build-out by the partitioning DE will count toward the licensee's effort to meet the build-out requirements. In the event that the licensee does not meet the first proposed build-out requirement (40% of the population within 6 years), BWP additionally suggests that rural telephone companies should be provided with the right to "fill-in" by partition of the license in the otherwise unserved portion of any RSA where the partitioning rural telephone company provides landline or wireless services. This "fill-in" concept is consistent with a process that the Commission adopted as part of its cellular rules to ensure that cellular spectrum was not under utilized.[4] BWP recognizes that a permissive partitioning provision must be implemented in a coordinated manner using the same technology as services already deployed in order to avoid harmful interference with the operations of the licensee.

- ***Only new entrants should be eligible for the national license.*** BWP encourages the Commission to proactively deal with the likelihood of blocking in the auction context by ensuring that entities (i) that already have existing terrestrial wireless licenses or (ii) provide Commission-regulated broadband services are ineligible for this auction. There is no rational reason for such licensee and carriers to cannibalize their existing businesses to obtain a license with free broadband service requirements unless they seek the license to preempt competition. BWP is concerned that existing national wireless carriers have great incentive to participate in an AWS-3 auction to ensure that any potential competitors do not make it to market. As long as these incumbents are motivated by a desire to protect their current business models from competition, they will use a "blocking premium" to thwart new entry by outbidding would-be rivals, especially those that are new entrants. Without restricting the AWS-3 auction to new entrants, the outcome will be business as usual -- with no new broadband options in sight for consumers and spectrum hoarded because of inadequate penalty for failure to build out. BWP believes that such behavior is well

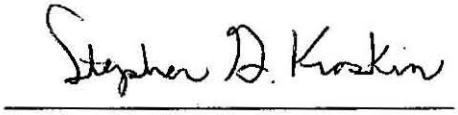
[4] See 47 CFR § 22.949.

documented in past FCC auctions[5] and the result of the Commission's most recent auction gives us pause about incumbent participation.

In addition to these license or auction specific provisions, BWP also recommends that the Commission address additional concerns that impede the provision of broadband services in rural areas. Rural carriers are burdened with the high cost of back-haul transport facilities for broadband services. Rural carriers that partner with the AWS-3 licensee should get tangible relief to help solve the rural broadband challenges that our country faces. The FCC should establish a form of relief for rural partners of the AWS-3 licensee, whether that is in the form of USF-like support or RUS-like loans and grants, to help build out the special access facilities such as fiber optics to wireless towers in order to support and accelerate build out in rural communities.

An electronic copy of this ex parte has been filed pursuant to Section 1.1206(b) of the Commission rules.

Respectfully Submitted,



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[5] See Gregory Rose and Mark Lloyd "The Failure of FCC Spectrum Auctions" at 15 available at: *http://www.americanprogress.org/kf/spectrum_auctions_may06.pdf*; see also Gregory Rose "How Incumbents Blocked New Entrants in the AWS-1 Auction: Lessons for the Future" at 9 available at: *http://www.mediaaccess.org/file_download/180* See also Google Policy Blog: "The 700 MHz spectrum auction: where things stand" Monday, July 30, 2007 at 12:24 PM Posted by Richard Whitt, Washington Telecom and Media Counsel