



June 20, 2008

Via Electronic Mail

Chairman Kevin J. Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: WT Docket Nos. 07-195 & 04-356– Notification of Written *Ex Parte*
Presentation**

Dear Chairman Martin and Commissioners:

As the Commission nears an end to the AWS-3 rulemaking, T-Mobile USA, Inc. (“T-Mobile”) has recently suggested that the Commission extend its final decision in favor of an unprecedented testing regime that it claims would result in delay of “a few months.”¹ This request comes at the heels of an *ex parte* from T-Mobile earlier in the same week for a minimum two month delay.² M2Z is responding to these calls for unwarranted delays to this long pending matter and explains why T-Mobile’s request is based on an incorrect reading of the Commission’s previous statements in other rulemakings. Furthermore, T-Mobile’s basic proposition for imposing a testing regime on proponents of TDD use in the AWS-3 band would stifle competitive new entry through bureaucratic delay which is specifically prohibited by Section 7 of the Act as explained in a concurrently filed *ex parte* to the Commission’s General Counsel.

In support of its call for “testing,” T-Mobile falsely claims that the Commission has made an “unambiguous determination that proponents of TDD operations in the AWS-3 band bear the burden of ‘conclusively demonstrat[ing]’ that there will be no harmful interference to adjacent services.”³ Even the most casual reader of the relevant Order can see that T-Mobile has taken the quoted language out of context to bolster its claim that the Commission has already determined that AWS-3 TDD proponents have to make a technical showing. Instead, the Commission was clearly

¹ See Letter of Kathleen O’Brien Ham to Ms. Marlene H. Dortch, WT Docket 07-195 (filed June 13, 2008) (“T-Mobile June 13 *Ex Parte*”).

² See Letter of Kathleen O’Brien Ham to Ms. Marlene H. Dortch, WT Docket 07-195 (filed June 10, 2008).

³ See T-Mobile June 13 *Ex Parte*.

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referring to the fact that parties in the AWS-1 proceeding had asked for AWS-1 to be available for both TDD and FDD operations within that band at the discretion of the licensee.⁴ In declining to make the AWS-1 band available for TDD operations, the Commission expressed that it would be willing to revisit TDD operations within AWS-1 if “portions of *this spectrum* could be used for such transmissions without causing interference to Federal Government users or other licensees.”⁵ The context of the quote shows that the Commission was referring to the AWS-1 spectrum and not to AWS-3. This is bolstered by the fact that the specific reason that the Commission cites for not permitting TDD operations is potential interference to Federal Government users. In the context of the AWS-1 and AWS-3 bands, Federal Government users do not (and did not) use the 2155-2175 MHz which comprises AWS-3. Instead, Federal Government operations only occur in the 1710-1755 MHz portion of AWS-1 band and to some limited degree in the 2025-2110 block adjacent to 2110 (next to the A block of AWS-1).

Far from establishing a hurdle for TDD in AWS-3, the portion of AWS-1 Order misquoted by T-Mobile actually stands for the proposition that the FCC would actively promote TDD technology in the 2155-2175 MHz band. In the very next sentence of the language relied on by T-Mobile, the Commission states “we will make every effort to provide spectrum opportunities for TDD systems in future allocation and spectrum proceedings, such as in the *AWS Allocation* proceeding.”⁶ The Commission’s commitment to “make every effort” to provide opportunities for TDD are not empty words. It was only because there were sensitive Federal Government operations surrounding the AWS-1 band that the Commission made the difficult decision to adopt service rules that were not technologically neutral for that band. With that backdrop in place, the Commission then used clear language to indicate that it would be proactive in adopting rules that would promote TDD deployments in the future. The fact that the Commission specified that it would seek TDD opportunities in AWS spectrum and had previously indicated that AWS-3 was the likely home of TDD⁷ rebuts T-Mobile’s after-the-fact claim that the Commission sought to erect a barrier to such deployments.

Now that T-Mobile’s selective reading of the Commission’s Orders has been shown to be obfuscatory and without merit, we once again turn to the substance of the question at hand. As previously indicated by M2Z, the most logical course for the Commission to resolve interference issues related to AWS-3 would be for it to follow its own technical precedents governing other spectrum designated for broadband services including the AWS-1, 700 MHz, and BRS/EBS bands. *See* Attachment 1. The Commission should not rely on T-Mobile and other broadband competitors’ self-serving statements that the Commission should establish rules that will preclude the AWS-3

⁴ *See* ArrayComm Comments, WT Docket 02-353 at 2 (filed Jan. 27, 2003); TDD Coalition Reply Comments, WT Docket 02-353 at 22 (filed Mar. 14, 2003).

⁵ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, 18 FCC Rcd. 25162, 25179 ¶ 46 (2003) (emphasis added).

⁶ *Id.* (emphasis added).

⁷ Amendment of Part 2 of the Commission’s 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, *Third Report and Order*, 18 FCC Rcd 2223 ¶¶ 68-69 (Feb. 10, 2003).

band from being used to deliver broadband services. Additionally, taking T-Mobile's suggestion for testing and other forms of delay to heart would lead to an unprecedented new licensing regime where the expert agency would turn over its core function of interference management to third parties paid for by competitors.

T-Mobile characterizes its elaborate and unprecedented regime of testing as a "perfect world" but in reality its suggestion is tantamount to requiring that the Commission place the burden of proof on entities seeking to provide TDD and other advanced technologies in the AWS-3 band. This suggestion is wholly inconsistent with Section 7 of the Communications Act which was specifically enacted 24 years ago to remove regulatory barriers to new technologies and new services getting to the market, and is especially relevant to this discussion. Section 7's requirements are explicit: "[a]ny person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this chapter shall have the burden to demonstrate that such proposal is inconsistent with the public interest."⁸ Yet, despite their rhetoric, T-Mobile and its anti-competitive cohorts cite no evidence that permitting broadband in AWS-3 is not in the public interest.⁹

M2Z believes that it would be bad policy for the Commission to erect barriers to entry at the behest of incumbent licensees. With a full record before it and the Commission's own multiple technical precedents as its guide, the Commission can use its own independent judgment as the expert agency and determine whether the AWS-3 band should be used to provide American consumers more broadband choices nationwide. M2Z respectfully requests that the Commission move expeditiously and conclude this rulemaking on or before the July 29th Agenda meeting date

Pursuant to Section 1.1206(b) of the Commission rules, an electronic copy of this letter is being filed. Please let me know if you have any questions regarding this submission.

Sincerely,



Uzoma Onyeije

cc: Aaron Goldberger; Brent Greenfield; Bruce Gottlieb; Renée Crittendon; Wayne Leighton; Amy Blankenship; Angela Giancarlo; Julius Knapp; Jim Schlichting, Joel Taubenblatt

⁸ 47 U.S.C. § 157.

⁹ To the contrary, there is clear evidence that broadband use in the AWS-3 band is very much in the public interest. *See* H.R. 5846 (cosponsor list as of June 19, 2008— available at <http://thomas.loc.gov/>) (Attachment 2).

ATTACHMENT 1

Broadband Emission Limits Adjusted Over 1 MHz

In various recent broadband proceedings including Broadband PCS, BRS/EBS, AWS-1, and 700 MHz, the Commission has used three different measurement bandwidths to specify OOB limits: 1 MHz, 6.25 kHz, and 100 kHz. *See* 47 C.F.R. § 27.53(c), (g). This Attachment provides the values for the specific OOB limits in each band and normalizes these figures to a common 1 MHz bandwidth. As can be readily seen in the chart below, the Commission has been exceptionally consistent in finding that $43 + 10 \log (P)$ should be the OOB limit normalized to the operational bandwidth of the adjacent band. In fact, a close reading of the emissions limits for the remainder of the 700 MHz band (other than the small portion of the band on which T-Mobile fixates) shows that the OOB limits for other portions of the 700 MHz spectrum are actually more relaxed than the AWS-1, BRS, and Broadband PCS limits previously set by the Commission: when the 700 MHz limits are normalized over 1 MHz, they equal $33 + 10 \log (P)$.

Emission Band	Permitted Channel Adjacencies	OOBE Limit	OOBE Measurement Bandwidth	Adjusted OOBE LIMIT @ 1 MHz bandwidth ¹⁰
Broadband PCS	FDD – downlink only	$43 + 10 \log (P)$	1 MHz	$43 + 10 \log (P)$
BRS	FDD and TDD (mobile-to-mobile)	$43 + 10 \log (P)$	1 MHz	$43 + 10 \log (P)$
AWS-1	FDD – downlink only	$43 + 10 \log (P)$	1 MHz	$43 + 10 \log (P)$
700 MHz– Public Safety	FDD and TDD (mobile-to-mobile)	$65 + 10 \log (P)$	6.25 KHz	$43 + 10 \log (P)$
700 MHz	FDD and TDD (including mobile-to-mobile)	$43 + 10 \log (P)$	100 kHz	$33 + 10 \log (P)$

¹⁰ Conversion from $A + 10 \log (P)$ over bandwidth BW (in kilohertz) to $B + 10 \log (P)$ over 1 MHz bandwidth is $B = A + 10 \log (BW/1000)$. Thus $65 + 10 \log (P)$ over 6.25 kHz computes to $B = 65 + 10 \log (6.25/1000) = 65 - 22 = 43$, and thus is equal to $43 + 10 \log (P)$ over 1 MHz.

ATTACHMENT 2

H.R.5846

Title: To require the Federal Communications Commission to auction spectrum for a free and open access broadband service.

Sponsor: [Rep Eshoo, Anna G.](#) [CA-14] (introduced 4/17/2008) [Cosponsors](#) (13)

Latest Major Action: 4/17/2008 Referred to House subcommittee. Status: Referred to the Subcommittee on Telecommunications and the Internet.

All Information (except text)	Text of Legislation	CRS Summary	Major Congressional Actions
Titles	Cosponsors (13)	Committees	All Congressional Actions
Related Bills	Amendments	Related Committee Documents	All Congressional Actions with Amendments With links to <i>Congressional Record</i> pages, votes, reports
CBO Cost Estimates	Subjects		

COSPONSORS(13), ALPHABETICAL [followed by Cosponsors withdrawn]: (Sort: [by date](#))

Rep Cannon, Chris [UT-3] - 4/17/2008	Rep Carson, Andre [IN-7] - 6/9/2008
Rep Carter, John R. [TX-31] - 5/8/2008	Rep Clay, Wm. Lacy [MO-1] - 6/18/2008
Rep Davis, Danny K. [IL-7] - 6/5/2008	Rep Doyle, Michael F. [PA-14] - 4/23/2008
Rep Honda, Michael M. [CA-15] - 4/24/2008	Rep Jackson, Jesse L., Jr. [IL-2] - 6/18/2008
Rep Lee, Barbara [CA-9] - 6/12/2008	Rep Lofgren, Zoe [CA-16] - 4/29/2008
Rep Markey, Edward J. [MA-7] - 4/17/2008	Rep Solis, Hilda L. [CA-32] - 5/7/2008
Rep Thompson, Bennie G. [MS-2] - 5/14/2008	