

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

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| In the Matter of |) | |
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| Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band |) | WT Docket No. 07-195 |
| |) | |
| Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands |) | WT Docket No. 04-356 |
| |) | |

**M2Z NETWORKS, INC. OPPOSITION TO T-MOBILE REQUEST
FOR EXTENSION OF TIME TO FILE COMMENTS**

M2Z Networks, Inc. (“M2Z”) hereby submits this Opposition to the T-Mobile Request for Extension of Time to File Comments¹ filed on July 1, 2008, in connection with the Commission’s *Further Notice* in the above-captioned dockets.² T-Mobile and the other parties filing in support of this unwarranted request for an extension³ have failed to provide an adequate justification for a grant of the request seeking further delay in a proceeding that the Commission has committed to concluding this August.⁴ As the Commission indicated in the *Further Notice*, it is well positioned to meet that commitment thanks to the “the current extensive record in these

¹ See T-Mobile Request for Extension of Time to File Comments, WT Docket Nos. 07-195 & 04-356 (filed July 1, 2008) (“T-Mobile Request”).

² See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands*, Further Notice of Proposed Rulemaking, FCC 08-158 (rel. June 20, 2008) (“*Further Notice*”).

³ See Comments of Ericsson Inc and Sony Ericsson Mobile Communications (USA) Inc. in Support of T-Mobile Request for Extension , WT Docket Nos. 07-195 & 04-356 (filed July 2 2008) (“Ericsson/Sony Comments”); Rural Telecommunications Group and National Telecommunications Cooperative Association, Comments in Support of T-Mobile Request for Extension of Time to File Comments WT Docket Nos. 07-195 & 04-356 (filed July 2 2008) (“RTG/NTCA Comments”); Comments of AT&T Inc. in Support of T-Mobile’s Request for Extension of Time to File Comments, WT Docket Nos. 07-195 & 04-356 (filed July 2, 2008) (“AT&T Comments”); United State Cellular Corporation, Statement of Support, WT Docket Nos. 07-195 & 04-356 (filed July 2, 2008) (“USCC Statement”).

⁴ See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, ¶ 4 (2007) (“*Initial Notice*”). In the *Initial Notice* issued in WT Docket No. 07-195, the Commission indicated that it would “commit to issuing an order adopting rules in this proceeding within nine months following the publication of this Notice in the Federal Register.” *Id.* The *Initial Notice* was published in the Federal Register on November 14, 2007, see 72 Fed. Reg. 64013 (Nov. 14, 2007), making August 14, 2008, the Commission’s nine-month target date for an order adopting service rules in this proceeding.

proceedings,” and thus “seek[s] expedited comment on a proposed set of rules for these bands.”⁵

For these reasons, the Commission should deny T-Mobile’s request, which – like most of the filings made in this proceeding by incumbent licensees and their representatives over the course of the last several weeks – is wrong on both the law and the facts.

As an initial matter, M2Z notes that the Commission does not favor requests for extension of time and has adopted a clear policy against granting them. The rule section that permits the filing of such requests states at the outset that “extensions of time shall not be routinely granted.”⁶ The Commission does not and should not depart from this policy when an established timeframe for deciding a matter, such as the August deadline established by the *Initial Notice* in the AWS-3 proceeding, counsels against additional extensions and delays such as the one sought by T-Mobile.⁷

T-Mobile and the parties filing in support of the extension request continue to claim prior submissions in this proceeding demonstrate that “TDD transmissions in the AWS-3 band would create a serious risk of harmful interference to licensees in the recently-auctioned

⁵ *Further Notice* ¶ 2.

⁶ 47 C.F.R. § 1.46(a); see also *Aloha Partners, L.P. Request for Waiver of Section 27.60; Request for Expedited Ruling; Request for Extension of Time To File Response*, Order, DA 05-2360, ¶ 7 (WTB rel. Aug. 26, 2005); *Letter from William H. Huber, Associate Chief, Auctions and Spectrum Access Division, to Robert M. Gurss, Esq. and Raymond J. Quianzon, Esq.*, 19 FCC Rcd 8105 (WTB 2004) (“[T]he Commission’s general policy is that extensions of time are not routinely granted.”); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Order, 16 FCC Rcd 9589, ¶ 3 (WTB 2001) (denying request for extension of time to comment in Lower 700 MHz Band proceeding).

⁷ See *Spectrum Policy Task Force Seeks Public Comment on Issues Related to Commission’s Spectrum Policies*, Order, 17 FCC Rcd 12874, ¶¶ 1-2 (OET 2002) (denying extension requests that were based in part on “the absence of personnel on scheduled annual vacations” for one party seeking the extension, and on another party’s desire to complete research it could not conclude prior to the comment deadline); see also *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest’s xDSL Services*, Order 20 FCC Rcd 39, ¶ 2 (WCB 2005) (“All parties had notice that comments would be due after the holidays, and granting an extension at this date would not provide ample notice of the additional time such that all commenters could take advantage of the extension.”).

AWS-1 spectrum.”⁸ Yet, M2Z and others have rebutted these claims several times over in the robust record developed during the course the past nine months in this proceeding,⁹ and did so as well during the M2Z application and forbearance proceedings that began in May 2006.¹⁰ T-Mobile, along with some other incumbent licensees and entrenched interests, have side-stepped or ignored M2Z’s many showings in this regard. The incumbents refuse to respond to the merits of M2Z’s rebuttals, preferring instead to claim that further testing, empirical data, and – of course – additional delay, are necessary prior to the adoption of service rules for the AWS-3 band, a block of spectrum that has been under consideration and debate before the Commission in one form or another for the past fifteen years. T-Mobile itself has called for delay on two other occasions within the last month,¹¹ but has failed each time to justify its requests with anything other than self-serving and unsupported claims.

T-Mobile claims in its latest request, for example, that “the Commission must provide enough time for the agency, and individual parties, to amass, submit, and review” empirical testing data, arguing for the importance of such evidence rather than “just theoretical modeling or arguments by analogy [] to resolve questions of potential harmful interference between co-channel or adjacent spectrum uses.”¹² Of course, it should be patently obvious that T-Mobile and others have indeed had enough time to “amass, submit, and review” data since the adoption of the *Initial Notice* in this proceeding in November 2007, and through the rounds of comments,

⁸ T-Mobile Request at 2.

⁹ See, e.g., Letter from Uzoma C. Onyeije, M2Z, to Ms. Marlene H. Dortch, WT Docket Nos. 07-195 & 04-356, at 3-4, nn. 8, 11 (filed June 3, 2008) (“M2Z June 3 *Ex Parte*”); Letter from Uzoma C. Onyeije, M2Z, to Marlene H. Dortch, Esq., WT Docket Nos. 07-195 & 04-356, at 2-4 (filed June 17, 2008); M2Z Reply Comments, WT Docket No. 07-195, at 13 (filed Jan. 14, 2008); M2Z Comments, WT Docket No. 07-195, at 12-13, 38-44 (filed Dec. 14, 2007).

¹⁰ See, e.g., M2Z Networks, Inc. *Ex Parte* Response to Replies and Oppositions, WT Docket Nos. 07-16 & 07-30, at 23-29 (filed April 16, 2007).

¹¹ See Letter of Kathleen O’Brien Ham to Ms. Marlene H. Dortch, WT Docket 07-195 (filed June 13, 2008); Letter of Kathleen O’Brien Ham to Ms. Marlene H. Dortch, WT Docket 07-195 (filed June 10, 2008).

¹² T-Mobile Request at 3; see also USCC Statement at 2; RTG/NTCA Comments at 1.

reply comments, and *ex parte* submissions that followed. No testing is necessary now to supplement the research and analysis submitted into the record by M2Z¹³ and other proponents of neutral technical rules for the AWS-3 band,¹⁴ nor should the Commission allow more time for consideration of T-Mobile arguments that have already been raised and refuted by M2Z and others in this proceeding several times over.¹⁵

The *Further Notice* does not change or modify in any fundamental way the interference analyses already undertaken during the past two years by parties on both sides of the issue. The Commission acknowledged in the *Further Notice* the already extensive record in these proceedings, built as it was on consideration of the TDD/FDD issues originally set forth for comment in exhaustive detail in the *Initial Notice* last November. The *Further Notice* simply seeks comment on whether it would be appropriate for the Commission to adopt more stringent mobile out-of-band emissions (“OOBE”) limits if additional spectrum (in the form of the 2175-2180 MHz block) were added to make 25 megahertz available in the AWS-3 band.¹⁶

The *Initial Notice* in WT Docket No. 07-195 included an extensive treatment of technical issues including detailed questions about whether the Commission should deviate in the 2155-2175 MHz band from its “standard $43 + 10 \log P$ dB limit.”¹⁷ The limited additional inquiry in the *Further Notice* about whether more restrictive emissions limits are appropriate in a wider

¹³ See *supra* note 9.

¹⁴ See, e.g., Comments of QUALCOMM Incorporated, WT Docket No. 07-195, at 3-6 (filed Dec. 14, 2007); Reply Comments of Sprint Nextel Corporation, WT Docket No. 07-195, at 2-20 (filed Jan. 14, 2008); Letter from Trey Hanbury, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 07-195 (filed Mar. 5, 2008).

¹⁵ On June 3, 2008, M2Z expressed concern to the Commission that many submissions made by other participants in this longstanding proceeding tended to “ignore the fact that the views expressed therein have previously been rebutted on the record.” M2Z June 3 *Ex Parte* at 1. T-Mobile’s rebutted yet repeated claims concerning the need for a testing requirement for TDD services in AWS-3 only proves this point again. See *infra* notes 22-23 and accompanying text.

¹⁶ See, e.g., *Further Notice* ¶¶ 3, 5.

¹⁷ *Initial Notice* ¶ 56.

spectrum band is no justification for the extensive delays that T-Mobile and others continue to seek in contravention of the Commission's stated goal of concluding this proceeding next month. There is no reason that these issues should "require technical analysis which cannot be completed within the abbreviated pleading cycle established by the Commission,"¹⁸ because the issues are largely the very same ones that have been in play since the Commission commenced this proceeding last year. Thus, supporters of further delay are incorrect when they argue that "additional time is necessary to conduct testing to determine the extent of interference issues raised by the FCC proposal."¹⁹ The Commission already has before it a full record on the adoption of the typical 43 +10 log P dB standard in a 20 megahertz spectrum block from 2155-2175 MHz, and the proposed addition of another 5 megahertz to the AWS-3 band does not necessitate any extension of the comment deadlines here.

Furthermore, the few examples of Commission-sanctioned empirical testing primarily relied upon in the T-Mobile Request – for television "white spaces," low-power FM, and "terrestrial service in the direct broadcast satellite band"²⁰ – involved testing for proposed *secondary* uses, not primary allocations for new services in adjacent spectrum blocks. As M2Z explained in a June 20th submission in this proceeding, T-Mobile's repeated calls for testing are unprecedented, as no such testing was required by the Commission in the AWS-1, 700 MHz, EBS/BRS, or other proceedings involving primary allocations for new services.²¹ M2Z demonstrated in that same filing that T-Mobile's claims – alleging that TDD proponents somehow bear a special burden in this regard – are likewise unfounded and without merit.²² T-

¹⁸ Ericsson/Sony Comments at 1.

¹⁹ RTG/NTCA Comments at 1.

²⁰ T-Mobile Request at 3-5.

²¹ See Letter from Uzoma C. Onyeije, M2Z, to Chairman Kevin J. Martin and Commissioners, WT Docket Nos. 07-195 & 04-356, at 1 (filed June 20, 2008).

²² See *id.* at 1-2.

Mobile has claimed previously, and repeats in its extension request, that the Commission has imposed a special burden of proof on proponents of TDD in the AWS-3 band. That assertion is based on a single Commission statement regarding the use of *AWS-1* spectrum rather than AWS-3 spectrum, however, which T-Mobile has taken out of context and improperly attempted to adopt for its own purposes here.²³

The parties filing in support of T-Mobile's request offer arguments that are just as flawed and presumptuous as T-Mobile's. AT&T, for example, asserts that "the Commission's proposed service rules would permit mobile operations in both the AWS-3 band and the H Block while providing insufficient interference protection to adjacent PCS and AWS-1 operations," but AT&T cites only the *Further Notice* itself in support of the claim that these neutral technical rules would provide "insufficient" protection.²⁴ The parties complaining about the complexity of the interference analysis are once again guilty of assuming the truth of a proposition that they have not proved when it comes to the realistic likelihood of harmful interference to incumbent licensees, as they concentrate on worst-case scenarios and ignore available mitigation techniques. They also fail to recognize, acknowledge candidly, or even engage with M2Z's submissions showing that the proposed service and technical rules for AWS-3 are far more protective of adjacent band users than are the rules for AWS-1 or 700 MHz.²⁵

In sum, the engineering analysis required to predict the potential for harmful interference between two-way operations in the AWS-3 band and other nearby uses is a straightforward one,

²³ See *id.* In fact, in the remainder of the passage that T-Mobile conveniently truncates and erroneously applies to the AWS-3 band, the Commission reiterated its desire to "make every effort to provide spectrum opportunities for TDD systems in future allocation and spectrum proceedings, such as in the *AWS Allocation* proceeding." *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶ 46 (2003).

²⁴ AT&T Comments at 2 & n.4.

²⁵ See, e.g., Overview of Technical Issues Concerning the AWS-3 Service Rules at 3 (submitted as an attachment to Letter from Uzoma C. Onyeije, M2Z, to Ms. Marlene H. Dortch, WT Docket Nos. 07-195, 04-356, 07-16 & 07-30 (filed July 2, 2008)).

and it has been ongoing for more than two years in this proceeding and in the application and forbearance proceedings that pre-dated it. That analysis has shown conclusively that neutral technical rules and standard mitigation techniques will be more than sufficient to protect both the new AWS-3 licensee and incumbents from the risk of harmful interference. The Commission should stay on schedule in its consideration of comments and reply comments according to the timetable set in the *Further Notice*, and for these reasons should deny the T-Mobile Request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Uzoma C. Onyeije', is written over a horizontal line.

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