

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

In the Matter of	)	
	)	
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
	)	
	)	

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

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Predictably, M2Z Networks, Inc. (“M2Z”) has opposed the request by T-Mobile USA, Inc. (“T-Mobile”) and numerous other parties in this proceeding for an extension of time to enable the Commission itself, or interested parties, to submit empirical testing data on the question of interference. But the public interest would clearly be better served by a brief delay to ensure that a decision as important as the one the Commission has proposed – with such serious and long-term implications – is well considered and based on an informed and relevant record. The Commission accordingly should grant T-Mobile’s extension request, and either conduct its own supervised testing or allow interested parties the opportunity to amass and submit empirical data from their own independent testing.

## DISCUSSION

As T-Mobile and others have shown, adopting the *FNPRM*'s plan would create a serious risk of harmful interference to licensees in the AWS-1 bands.<sup>1/</sup> While M2Z insists that it has “rebutted these claims,”<sup>2/</sup> it notably does *not* suggest that it (or anyone else) has submitted any empirical testing data that speaks to the interference question. Instead, by its own admission, M2Z has submitted only letters embodying its “research and analysis.”<sup>3/</sup> M2Z urges the Commission to rely solely on its theoretical arguments as the basis for adopting a spectrum plan that not only could seriously disrupt ongoing and planned wireless communications, but also could permanently undermine the billions of dollars of investment made by the AWS-1 auction winners. It is no surprise that M2Z can find no precedent to support the notion that “[n]o testing is necessary”<sup>4/</sup> despite the risks at issue here. As T-Mobile and others have shown, both the Commission and the

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<sup>1/</sup> See, e.g., Comments of Verizon Wireless, filed Dec. 14, 2007, at 8-13 (describing how use of the AWS-3 band for mobile transmissions would cause harmful interference to services in adjacent bands); Comments of T-Mobile USA, filed Dec. 14, 2007, at 5-7 (stating that uplink / downlink use in the AWS-3 band would create significant interference challenges for incumbent AWS-1 licensees); Comments of CTIA, filed Dec. 14, 2007, at 2-7 (same); see also Notice of Proposed Rulemaking, *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, 22 FCC Rcd 17035, 17058 ¶¶ 49, 51 (2007) (noting that “[t]ransmissions originating in the AWS-3 band could potentially cause harmful interference to adjacent band services” and that “if a handset transmitting in the 2155-2175 MHz band is in close physical proximity to a handset receiving in the adjacent 2110-2155 MHz band, then ‘mobile-to-mobile’ interference could occur to the receiving handset”).

<sup>2/</sup> M2Z Networks, Inc. Opposition to T-Mobile Request for Extension of Time To File Comments, filed July 3, 2008, at 3 (“M2Z Opposition”).

<sup>3/</sup> *Id.* at 3 n.9, 4.

<sup>4/</sup> *Id.*

courts have held that empirical evidence is far preferable on disputed technical issues such as questions of interference.<sup>5/</sup>

M2Z's argument that testing was not required in *other* bands where new services were authorized<sup>6/</sup> misses the point: At issue here is not whether the Commission should *always* require interference testing, but whether it can responsibly make a decision in this instance in the absence of such testing. It manifestly cannot. Even Qualcomm, which had offered tentative support of TDD use in the AWS-3 band and which M2Z cites as a proponent of its own views, now believes that the risk of interference to AWS-1 operations is substantial and that empirical testing is necessary before the Commission acts. In that regard, Qualcomm has recently stated:

[T]here are no tests in the record to establish whether or not there will be harmful interference from two-way operations on 2155 to 2180 MHz into the AWS-1 receive band. Thus, for the expanded 2155 to 2180 MHz band, there is no evidence to prove whether or not there will be harmful interference into the AWS-1 mobile receive band. Qualcomm believes that the Commission should not adopt a ruling now on the basis of the incomplete record. Rather, the Commission should defer adopting a ruling in this proceeding until definitive testing can be completed to determine conclusively whether there will be harmful interference from two-way operations on AWS-3 . . . or whether operations on the AWS-3 band must be limited to downlink only.<sup>7/</sup>

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<sup>5/</sup> See, e.g., First Report and Order and Further Notice of Proposed Rulemaking, *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, 21 FCC Rcd 12266, 12272-73, 12283-84, 12290 ¶¶ 13-15, 48, 63 (2006); *Chamber of Commerce of U.S. v. Securities and Exchange Comm'n*, 412 F.2d 133, 142 (D.C. Cir. 2005) (“[A]n agency acting upon the basis of empirical data may more readily be able to show it has satisfied its obligations under the APA.”); *National Ass’n of Regulatory Utility Com’rs v. FCC*, 737 F.2d 1095, 1124 (D.C. Cir. 1984) (Commission should review raw data on highly technical issues); cf. *Amer. Radio Relay League v. FCC*, 524 F.3d 227, 240-41 (D.C. Cir. 2008) (reversing a technical finding grounded in theoretical modeling because the Commission had dismissed contrary empirical evidence).

<sup>6/</sup> M2Z Opposition at 5.

<sup>7/</sup> Letter from Dean R. Brenner, Vice President Government Affairs, QUALCOMM Incorporated, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-195 (filed June 8, 2008).

M2Z's head-in-the-sand approach to the relevant evidence in this significant, industry-wide rulemaking would not serve the public interest – it would simply serve M2Z's specific interest in rushing this proceeding through to closure. The Commission's own recent experience illustrates how poorly the public interest is served where the full impact of interference concerns is not considered until *after* a service is approved: In 2001, the Commission granted Special Temporary Authority to Sirius and XM Radio to operate terrestrial repeaters in the 2.3 WCS band, without first obtaining evidence that these repeaters could be operated alongside WCS services. As a result, the WCS band remains unused for its primary purpose, due to uncertainty “regarding . . . the degree to which WCS operations will be protected from harmful interference.”<sup>8/</sup>

In short, as T-Mobile and numerous others have repeatedly stressed, testing data is a critical component of any responsible decision on the *FNPRM*. Therefore, the Commission should provide sufficient time for its own supervised testing or at least for T-Mobile and others to submit independent testing data. M2Z's suggestion that T-Mobile has “indeed had enough time” to do so previously<sup>9/</sup> is misinformed or disingenuous. As M2Z itself concedes, T-Mobile has made “repeated calls for testing”<sup>10/</sup> throughout this proceeding. Until June, T-Mobile hoped to convince the Commission to lead the way for the entire industry by performing supervised testing or engaging in joint testing.<sup>11/</sup> When it became clear that the Commission would not do so, T-Mobile

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<sup>8/</sup> See Order, *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses*, 21 FCC Rcd 14134, 14137 ¶ 5 (2006).

<sup>9/</sup> M2Z Opposition at 3.

<sup>10/</sup> *Id.* at 5.

<sup>11/</sup> See Letter from Kathleen O'Brien Ham, Vice President, Regulatory Affairs, T-Mobile USA, to Marlene H. Dortch, FCC, WT Docket No. 07-195 (filed June 4, 2008); Letter from Thomas J. Sugrue, Vice President, Government Affairs, and Neville Ray, Senior Vice President,

took it upon itself to perform its own independent testing. All of this took place against a backdrop of the Commission’s having reassured the industry that it had no intention of authorizing TDD in the AWS spectrum unless “proponents of TDD can *conclusively demonstrate* that such technologies could be used in these bands or some segments of these bands without causing interference to other spectrum users”<sup>12/</sup> – which of course has never happened.<sup>13/</sup>

Despite this, T-Mobile should be in a position to analyze and submit comprehensive testing data in 30 days, which is hardly a significant delay in this proceeding. Indeed, that is typically the *minimum* amount of time that the courts require for comment, especially in complex proceedings such as this one.<sup>14/</sup> And the 90 days that T-Mobile has suggested for the Commission to supervise independent testing is similarly within the range typically allowed for consideration of interference and other difficult technological questions: the LOCAL TV Act permitted 60 days of testing and 30 days for comment, for example.<sup>15/</sup> And the Administrative Conference of the United States

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Engineering and Operations, T-Mobile USA, to Kevin Martin, Jonathan Adelstein, Michael Copps, Robert McDowell, and Deborah Taylor Tate, FCC, WT Docket No. 07-195 (filed June 13, 2008).

<sup>12/</sup> Report and Order, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162, 25204-05 ¶ 111 (2003) (emphasis added); *see id.* at 25179 ¶ 46 (same).

<sup>13/</sup> M2Z’s efforts to dismiss the Commission’s statement as isolated or irrelevant fall flat: In that same Order, the Commission noted that even the TDD Coalition had acknowledged the concern that “the co-existence of TDD and FDD systems on adjacent bands in the same geographic area would cause interference to the stations of both systems.” *Id.* at 25203 ¶ 107.

<sup>14/</sup> *See, e.g., Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992) (although the APA “mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment”).

<sup>15/</sup> Launching Our Communities Access to Local Television Act of 2000 (“LOCAL TV Act”), Pub. L. No. 106-553, div. B § 1012, 114 Stat. 2762, 2762A-141 (requiring independent testing and public demonstration of any terrestrial service technology proposed within the DBS frequency band, and allowing up to 60 days for testing and an additional 30 days for public comment); *see*

has made clear that *sixty* days is the *minimum* time for responses to “proposals that are complex or based on scientific or technical data.”<sup>16/</sup> The Commission cannot responsibly refuse to extend the record for these reasonable periods of time given what is at stake in the proceeding, and given that it cannot engage in reasoned decisionmaking here in the absence of hard data on the interference concerns that have been placed on the record. The Commission has repeatedly allowed extensions in other proceedings in order to permit testing,<sup>17/</sup> and it should do so here.<sup>18/</sup>

As a final resort, M2Z argues that the Commission should not extend the comment deadline here given the “established timeframe for deciding [this] matter” – the August 14 “nine-month target date” for an order in this proceeding.<sup>19/</sup> But the Commission should roundly reject

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*also* Radio Broadcasting Preservation Act of 2000, Pub. L. No. 106-553, div. B § 632(b), 114 Stat. 2762, 2762A-111-112 (requiring “third-adjacent channel” interference testing for low-power FM stations by an independent contractor).

<sup>16/</sup> *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984) (citing Administrative Conference of the United States, A GUIDE TO FEDERAL AGENCY RULEMAKING 124 (1983)).

<sup>17/</sup> *See, e.g.,* Order, *Creation of a Low Power Radio Service*, 14 FCC Rcd 4096, 4097 ¶ 4 (1999) (extending comment deadlines to four months after NPRM was issued, despite a desire to “conclude th[e] proceeding expeditiously,” because of the need to allow parties to conduct “quality engineering and other studies”); Order, *Creation of a Low Power Radio Service*, 14 FCC Rcd 11096, 11097 ¶ 6 (1999) (granting an additional 60-day extension of comment deadlines to allow parties to complete testing); Order, *Creation of a Low Power Radio Service*, 15 FCC Rcd 7158, 7159 ¶¶ 4, 7 (1999) (granting yet another extension of the reply comment deadline because “parties need time to analyze the voluminous information submitted into the record,” namely, engineering studies and technical material, and “parties’ ability to review this material is limited by vacation schedules during the month of August”); Order, *Creation of a Low Power Radio Service*, 15 FCC Rcd 7161, 7162 ¶ 7 (1999) (extending reply period a fourth time); Public Notice, “Office of Engineering and Technology Announces Plans for Conducting Measurements of Additional Prototype TV White Space Devices,” DA 08-118 (Jan. 17, 2008) (Commission’s most recent public notice extending the white spaces proceeding to allow for additional testing).

<sup>18/</sup> *See Petry*, 737 F.2d at 1201 (citing Administrative Conference of the United States, A GUIDE TO FEDERAL AGENCY RULEMAKING 124 (1983)).

<sup>19/</sup> M2Z Opposition at 2, 1 n.4.

the notion that a general, optimistic “*target date*” should be allowed to trump the public interest in making the important AWS-3 decision based on an adequate record that contains empirical interference testing data. Nothing whatsoever compels the Commission to rush forward here. No statutory deadline applies, and no party will suffer from a few months’ delay; indeed, it is noteworthy that M2Z has not even claimed that it or any other party would be prejudiced if T-Mobile’s request is granted. The converse does not hold, however: the AWS-1 auction winners and the consumers they serve stand to be irreparably injured if the *FNPRM* proposals are adopted without analysis of testing data which already, based on preliminary information, indicate a serious risk of interference.

### **Conclusion**

For these reasons, the Commission should extend the date for filing comments by 90 days to allow for supervised testing of potential interference with AWS-1 operations. At the very least, the Commission should extend the comment deadline by no less than 30 days to allow T-Mobile to complete its testing and submit a comprehensive analysis of the results, with sufficient time for interested parties to evaluate and comment on those results in their reply comments. Such an extension is necessary to establish a reliable record on which to decide the serious interference issues presented by the Commission’ proposed rules.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

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