

**Before the  
Federal Communications Commission  
Washington, D.C. 20054**

<b>In the Matter of</b>	)	
	)	
<b>Services Rules for Advanced Wireless Services in the 2155-2175 MHz Band</b>	)	<b>WT Docket No. 07-195</b>
	)	
<b>Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1955-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands</b>	)	<b>WT Docket No. 04-356</b>
	)	

**To: The Commission**

**REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION**

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**REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation ("U.S. Cellular"), by its attorneys, submits its reply comments in response to the comments filed concerning the Commission's Further Notice of Proposed Rulemaking (FCC 08-158) released June 20, 2008 ("FNPRM"), addressing service rules for the Advanced Wireless Services ("AWS") in the 2155-2180 MHz (AWS-3") band and the H Block" (1915-1920 MHz, 1995-2000 MHz), also known as AWS-2.

**Introduction and Summary**

The comments clearly and unequivocally demonstrate that there must be testing to determine how the AWS-2 and AWS-3 bands may be licensed without interfering with existing PCS, AWS-1 operations and prospective adjacent channel AWS-2/AWS-3 operations.

Potential interference will be an especially acute problem with respect to AWS-1 and PCS. The scientific evidence placed in the record by T-Mobile demonstrates the extent of interference which will be caused to AWS-1 (1710-1755 MHz, 2110-2155 MHz) operations by the AWS-3 operations contemplated under the FNPRM. Also, the FCC's proposal for the H

Block will result in interference to licensed PCS operations, as is shown in detail by AT&T in its comments.

The comments also support U.S. Cellular's position that the FCC should not adopt a nationwide license for AWS-3 operations. Smaller services areas have repeatedly proven their benefits to small and midsize carriers and thus to wireless competition, which is more important than ever in an era of wireless consolidation. The AWS-3 spectrum should be licensed by CMAs or BTAs.

The comments of MetroPCS demonstrate the extent to which the FNPRM has incorporated the business plan of M2Z Networks into the proposed AWS-3 rules and U.S. Cellular reiterates its opposition to that plan. As a general matter, replicating individual carriers' business plans in the FCC's Rules is contrary to public interest. Moreover, this particular business plan is uncertain in application and will not produce the results it seeks to accomplish.

Finally, the proposals for "free" service on a portion of the AWS-3 network and Internet "filtering" of material considered "harmful" to "teens" and other vaguely defined categories of customers are unwise, unworkable, and unconstitutional, as is shown in detail in the comments filed by wireless carriers and public interest organizations.

The FCC should not adopt this proposal and should look to the cellular and PCS services for appropriate and successful models for licensing the AWS-3 spectrum.

I. **The Comments Further Demonstrate That the Commission Must Adopt Interference Protection Requirements to Protect Licensed AWS-1 Spectrum and Existing PCS Operations from Harmful Interference.**

In our comments and in prior filings in these proceedings, we have described the interference issues which must be resolved to ensure that the remaining unoccupied commercial spectrum below 3 GHz in the AWS-3 and H Block bands can be licensed without harming

existing broadband PCS, and licensed AWS-1 service, or causing interference to future H Block or AWS-3 operations. In U.S. Cellular's view, the operational plan proposed in the FNPRM will not accomplish either objective and hence should not be adopted. At the least, we strongly believe that the Commission should not adopt any final decision in those proceedings until results are available from a testing program administered by the FCC or a third party, to determine appropriate requirements which would prevent interference. The comments filed provide persuasive scientific evidence to support that position.<sup>1</sup>

T-Mobile's comments and attached "Laboratory Test Report" make a carefully documented case that the FCC's proposed AWS-3 rules will inevitably result in harmful interference to mobile operations in the AWS-1 band by causing co-channel OOB interference that filters could not alleviate, as well as adjacent channel "blocking" interference.<sup>2</sup>

Also, T-Mobile ably discusses the troubling implications of a deliberate decision by the FCC to adopt a frequency allocation which will result in an increase in harmful interference. Such a decision would be flatly contrary to long-standing FCC policies which require the protection of existing services from newly created interference, and the prevention of adjacent band interference.<sup>3</sup> Moreover, T-Mobile rightly argues that a "mutual" resolution of interference concerns, which the FNPRM contemplates, is only appropriate when licensees share frequency bands and the FCC has made a deliberate decision that such sharing is appropriate.<sup>4</sup> This is not the case here. AWS-1 licensees should not have any obligation to resolve interference issues they had no reason to anticipate when they purchased their authorizations at auction.

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<sup>1</sup> We also note that the case for testing put forward in these proceedings has evidently been persuasive to the Chairman of the FCC. See, "*Martin Indicates the FCC May Do Joint Testing in AWS Proceeding.*" TR Daily, August 1, 2008.

<sup>2</sup> Comments of T-Mobile USA, Inc. pp. 6-7.

<sup>3</sup> T-Mobile Comments, pp. 24-28.

<sup>4</sup> T-Mobile Comments pp. 28-29.

Moreover, as is conclusively shown in the comments filed by AT&T, the technical proposals in the FNPRM for H Block mobile operations will not adequately protect mobile PCS operations in the 1930-1990 MHz band.<sup>5</sup> As AT&T demonstrates, previous tests by CTIA have shown that both the OOB "attenuation" and power limitations proposed in the FNPRM would be insufficient to "reject strong signals from the H-Block spectrum."<sup>6</sup> AT&T suggests that the following technical limitations would be necessary to safeguard the existing PCS service of millions of customers: (1) an OOB level allowed into the 1930-1990 MHz band of - 66 dBm/MHz," and (2) mobile transmit power of 13 dBm. U.S. Cellular has not tested those limits but believes that they may have merit. Those limits (and others) should certainly be tested before the FCC adopts any H Block technical plan that may place the PCS service provided to millions of customers at risk.

## **II. The FCC Should Adopt Smaller Service Areas for AWS-3 Licensees.**

In our Comments, U.S. Cellular strongly opposed Section 27.6(h)(5) of the proposed rules, which contemplates that the AWS-3 license would be nationwide in scope, arguing that licensing the AWS-3 spectrum based on smaller service areas would give smaller, rural and regional wireless carriers a fair chance to participate in the provision of advanced services and survive in the future wireless environment.

U.S. Cellular notes the support which licensing AWS-3 spectrum in smaller service areas has received from a variety of commenters. For example, the Rural Independent Competitive Alliance (RICA), as well as the Organization for the Promotion and Advancement of Small Telephone Companies (OPASTCO) and the Western Telecommunications Alliance (WTA) argue that competition and the public interest would best be served by licensing AWS-3

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<sup>5</sup> Comments of AT&T, Inc., pp. 4-12.

<sup>6</sup> AT&T Comments, p. 6.

spectrum on the basis of Cellular Market Areas.<sup>7</sup> The Rural Telecommunications Group, Inc. ("RTG"), also supports a CMA based licensing system, without combinatorial bidding, as well as adopting a limit on spectrum aggregation to preserve opportunities for smaller and rural carriers.<sup>8</sup> A CMA or BTA plan would be acceptable to U.S. Cellular, as either would enable smaller carriers to participate in the provision of AWS-3 service, which is vital at a time when smaller carriers are disappearing at an ever increasing rate.<sup>9</sup> And U.S. Cellular also agrees with RTG's opposition to combinatorial bidding, which also locks out smaller carriers from auctions in which they have a vital interest.

However, U.S. Cellular does not agree with RICA's proposal to "limit [AWS-3] eligibility for bidding to rural telephone companies and other DEs."<sup>10</sup> U.S. Cellular is a strong supporter of Designated Entities and the bidding credits they receive under FCC rules. However, just as we oppose adopting service rules based on the business plan of any one party, we also oppose any limitation of bidding eligibility to suit particular applicants, other than perhaps a generally applicable limit on spectrum aggregation. FCC spectrum allocations should not serve the interests of particular applicants, rather they should serve the public interest.

### **III. The FCC Should Not Adopt The Proposals of M2Z or Any Other Single Prospective Applicant.**

In our comments, U.S. Cellular opposed the replication of the business plan of one applicant, M2Z Networks, Inc. in the proposed rules for the AWS-3 spectrum. The comments only reinforce our concerns.

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<sup>7</sup> RCLCA Comments, p. 4; OSASTCO/WTA Comments, pp. 3-4

<sup>8</sup> RTG Comments, pp. 11-13.

<sup>9</sup> See, e.g., Applications of Verizon Wireless and Rural Cellular Corporation, For Consent To Transfer of Control of Licenses, Authorizations, and Spectrum Manager Leases, Memorandum Opinion and Order and Declaratory Ruling, released August 1, 2008.

<sup>10</sup> RICA Comments, p. 5.

MetroPCS Communications, Inc. ("MetroPCS") demonstrates the extent to which the proposed Part 27 rules do in fact replicate the M2Z proposal and draws attention to the perils of any "designer allocation" of spectrum.<sup>11</sup> Auctions based on such "designer" plans will not be "robust." Moreover, the FCC cannot delegate its policy making role to a private party.<sup>12</sup>

Moreover, the particular designer plan chosen by the FCC is likely to fail, owing to two unique provisions discussed extensively by U.S. Cellular and other commenters. In our Comments, U.S. Cellular opposed what we characterized as "two extraordinary and unprecedented provisions" of the proposed AWS-3 rules. They are proposed Section 27.1191, which would require that the AWS-3 licensee devote twenty five percent of its network to "free" service at a "minimum engineered data rate of 768 kbps downstream per user," and Section 27.1193 which would require "filtering" of that free spectrum to keep it free of "obscenity and pornography" as measured by "contemporary community standards," as well as delete "any images or text that otherwise would be harmful to teens or adolescents."

The comments demonstrate that neither of those requirements is workable or sensible. MetroPCS shows that the FCC's failures adequately to define "free" service, and spell out what it will mean to devote "25 percent" of a system's capacity to such service, could lead to an inferior service used by few customers. T-Mobile's comments demonstrate that a free service requirement is unnecessary given the current development of multiple broadband networks. A free service requirement would lower the value of the AWS-3 spectrum and would thus unjustly enrich M2Z, the only likely bidder for the spectrum.<sup>13</sup> CTIA notes that the "free" broadband requirement is ill defined in the proposed rules, and would not provide a "Lifeline" service, in that it would not include the cost of providing equipment to lower income consumers as Lifeline

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<sup>11</sup> MetroPCS Comments, pp. 22-33.

<sup>12</sup> Ibid, p. 23.

<sup>13</sup> Comments of T-Mobile USA, Inc. pp. 40-50.

services must do under the Part 54 rules.<sup>14</sup> CTIA also accurately notes the history of failure of "free" broadband service offerings.<sup>15</sup> U.S. Cellular would note that the failure of a "free" municipal Wi-Fi network, while unfortunate, only affects one city. However, if the current AWS-3 plan fails the whole country will be affected and national broadband development will be set back for many years.

Many commenters also echo U.S. Cellular's point that the FCC has no authority under the Communications Act to prescribe any "rate," including a zero rate, for this service. T-Mobile argues that wireless broadband access, which the AWS-3 spectrum will provide, has been defined by the FCC as an information service, and hence is not subject to the FCC's Title II authority to regulate rates and other terms and conditions of service.<sup>16</sup> MetroPCS takes the argument one step further and shows that the FCC has no authority to prescribe a new rate under either Title I, II or III of the Act.<sup>17</sup> We would note that the FNPRM did not even refer to these bitterly contested issues. The FCC would certainly have to demonstrate that it has the authority to require a zero rate before it could adopt these rules. In that demonstration, it would have to explain how adopting a zero rate was consistent with both its information service designation for wireless broadband access and its consistent refusal, over almost three decades, to regulate analogous wireless rates for voice or data. But again, it would make far more sense for the FCC not to adopt either the zero rate or the free services requirement, and license the AWS-3 spectrum along the lines successfully used in the past.

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<sup>14</sup> Comments of CTIA, pp. 9-10.

<sup>15</sup> CTIA Comments, pp. 11-15.

<sup>16</sup> T-Mobile Comments, pp. 55-56.

<sup>17</sup> MetroPCS Comments, pp. 26-34.

The FNPRM's "filtering" proposal is, if anything, even more likely to cause this allocation to fail. It is impractical, unworkable and cannot be sustained legally. Again, the comments demonstrate this conclusively.

The ACLU demonstrates that proposed Section 27.1193 of the FCC's Rules constitutes a content based restriction of speech and thus would be subject to "strict scrutiny" review, which means that the government must choose the "least restrictive" means of accomplishing of blocking speech which has no constitutional protection.<sup>18</sup>

The ACLU then shows that the FCC could not possibly meet that test, given the vagueness of the rule's definition of the material to be blocked and the lack of any guidance in the rule as to how such a mandate would be carried out.<sup>19</sup> Moreover, the rule's slapdash attempt at allowing "adults" to access "indecent" material also constitutionally infirm.<sup>20</sup> Lastly, the ACLU observes that there is obviously a less intrusive and constitutionally permissible means of dealing with objectionable material, namely "voluntary blocking and filtering software" which parents can easily obtain.

These arguments are echoed, amplified, and expanded in the comments filed by a coalition of public interest organizations led by the Center for Democracy and Technology ("CDT") and Media Access Project ("MAP"). Their "Joint Comments" demonstrate both the unconstitutionality of the filtering requirement and its contravention of Section 326 and 230 of the Communications Act.<sup>21</sup> The Joint Comments also usefully demonstrate that the breadth of the filtering requirement would, in practical terms, cripple any access to Internet on the affected

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<sup>18</sup> Comments of American Civil Liberties Union ("ACLU") pp 2-3.

<sup>19</sup> *Ibid.*, pp. 3-6.

<sup>20</sup> *Ibid.*, pp. 6-9.

<sup>21</sup> Joint Comments, pp. 9-10.

spectrum and would thus lead to inevitable litigation, likely resulting in injunctions and certainly resulting in uncertainty, and delay, as buildout deadlines approached.

The filtering proposal is unworkable and unlawful. The FCC should not adopt it.

**Conclusion**

The comments previously filed demonstrate that the FCC's proposed rules for AWS-3 and H Block spectrum will result in interference to AWS-1, PCS, and AWS-2/AWS-3 operations. It is contrary to the public interest and should not be adopted. Also, the AWS-3 band should not be licensed to single nationwide licensee. On the contrary, that band, like the H Block, should be licensed on CMA or BTA basis. Moreover, the proposed AWS-3 rules, with their impractical requirement for "free" services, unwisely reflect the business plan of only one applicant. This is contrary to the public interest in itself. Finally, the AWS-3 content "filtering" proposal is both unconstitutional and unworkable. As we have previously stated, the FCC should not go forward with this proposal and should reassess its approach to the AWS-3 and H-Block band plan and service rules.

Respectfully submitted,

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