



December 8, 2008

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 Nos. 07-195 & 04-356

Dear Ms. Dortch:

On December 5, 2008, John Muleta and Renee Crittendon, Legal Advisor to Commissioner Adelstein, had a telephone conversation regarding the above-referenced proceedings. This *ex parte* letter highlights the key aspects of that discussion and responds to recent filings submitted by T-Mobile, RTG and Ericsson in the above-referenced proceedings that purport to address the needs of rural carriers. These parties focus on rural carriers instead of rural consumers is simply another run at wrong headed industrial policy for the benefit of incumbent carriers and is not the viewpoint universally held by rural carriers or rural constituents.¹

Mr. Muleta explained that M2Z believes that the recent *ex partes* by RTG and others highlight the gamesmanship that continues in the AWS-3 proceeding and the desire of T-Mobile and RTG to work collusively to ensure further delay in this proceeding or, in the alternative, create a bidding exposure problem for AWS-3 nationwide bidders planning to provide the Lifeline Broadband Service. T-Mobile and RTG previously collaborated to rewrite the AWS-1 band plan in favor of T-Mobile's business plan and, in the process, enabled T-Mobile to become the largest beneficiary of that Auction 66.² T-Mobile and RTG are now once again coordinating their advocacy to rewrite AWS-3 band in T-Mobile's favor.

¹ See NPRM Reply Comments of Broadband Wireless Partners, WT Docket No. 07-195, at 6 (filed Jan. 14, 2008); FNPRM Comments of American Association of Paging Carriers, WT Docket Nos. 07-195 and 04-356, at 1-2 (filed July 25, 2008) ("AAPC FNPRM Comments"); FNPRM Reply Comments of Broadband Wireless Partners, WT Docket Nos. 07-195 and 04 356, at 9 (filed Aug. 11, 2008). See also, e.g., E-mail from David Grandeffo, WT-07-195 (filed December 5, 2008) and Email to Commissioner McDowell from Justin Stricker, WT 07-195 (filed July 24, 2008).

² RTG's independence should be called into question as it has a history of serving as a "rural" proxy for T-Mobile's interests. Notably, RTG and T-Mobile successfully reduced the size of AWS-1 spectrum block even though Ericsson had proposed maintaining the Commission's original 15x15 MHz allocation by noting that the additional spectrum would help resolve AWS-1 licensees' interference concerns. See Letter from Thomas J. Sugrue, T-Mobile

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RTG's December 2nd *ex parte*, although opaquely worded, demonstrates that the latest scheme in this proceeding is to effectively block the AWS-3 band from being used to create nationwide competition. According to the RTG filing, "Ms. Bennet also indicated that RTG would be open to the idea of a flexible band plan that would allow a combination of blocks of spectrum to be aggregated in an auction provided certain safeguards are in place for the bidder to opt out of a block if the bidder did not successfully aggregate the needed spectrum."³ The RTG *ex parte* went on to suggest that the licenses be assigned on the basis of CMAs. M2Z notes with interest that RTG's acceptance of combinatorial bidding in the upcoming AWS-3 auction is a curiously timed reversal of RTG's opposition to such auctions earlier in this proceeding where RTG called combinatorial bidding as "fundamentally" unfair, having a history of failure, and unlawful.⁴

In its entirety, this latest round of advocacy by RTG and T-Mobile is designed to create an unfavorable bidding environment without absolutely any penalty for strategic behavior for blocking the nationwide competitor that could emerge from the AWS-3 band. Anonymous bidding would not offer any protection in this instance because the nationwide bidders will be readily identifiable and can be easily targeted. Moreover, these parties proposal to breakdown the license blocks into CMAs is specifically designed to create complex bidding constructs that would allow large incumbent carriers like T-Mobile to make blocking bids in urban markets and RTG affiliates to make blocking bids in rural areas in order to tacitly collude and prevent competition from nationwide bidders. This is exactly the type of behavior that Dr. Gregory Rose documented with the AWS-1 auction where collusive regional bidding took place to keep out nationwide competition.⁵ Indeed, in an observation that has never been rebutted on the AWS-3 record Mr. Rose specifically explained why "the Commission should avoid combinatorial bidding" in this proceeding.⁶

and Caressa D Bennet, Counsel to RTG, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 02-353, (filed Mar. 11, 2005). For its efforts to help rewrite the AWS-1 band plan to T-Mobile's liking, RTG issued a press release calling the revised rules "a major victory" and noting that "RTG is pleased to have been successful in its alliance with T-Mobile and looks forward to working with T-Mobile in the future." See RTG August 5, 2005 Press Release.

³ See Letter from Caressa Bennet, Counsel to RTG, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 and 04-356 (filed Dec. 3, 2008) (emphasis added).

⁴ Comments of the Rural Telecommunications Group, Inc., WT Docket Nos. 07-195 and 04-356 at 13 (filed July 24, 2008) ("In auctioning the AWS-2 and AWS-3 spectrum, the FCC should not utilize combinatorial bidding. Combinatorial bidding fundamentally disadvantages small and mid-sized companies and is inconsistent with Section 309(j) of the Act. The use of combinatorial bidding resulted in significant market distortion in Auction 73.").

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.

⁶ See FNPRM Reply Comments of Dr. Gregory Rose, WT Docket Nos. 07-195 and 04-56, Exhibit II, Sections II D and III, (filed Aug. 11, 2008).

In addition to inviting the anti-competitive practice of collusion at auction, the T-Mobile/RTG suggestion is a solution in search of a problem. Table 1 below shows spectrum made available by the FCC during the last 4 years, either through auction or through a rulemaking (e.g., unlicensed or restructuring of BRS/EBS). The information below shows that the majority of the spectrum auctioned during this period, 51%, was allocated in BTAs, REAGs, CMAs or BEAs and puts to rest the unsupportable⁷ 11th hour claim⁷ that rural carriers need more AWS spectrum to deploy broadband services. Notwithstanding RTG's recent statements to the contrary, the Commission has aggressively provided for multiple blocks of spectrum suitable for rural carriers to build-out wireless service in multiple bands. A fact readily acknowledged by RTG in the past.⁸

TABLE 1: 2005-2008 SPECTRUM GEOGRAPHIC BLOCKS DECISIONS			
Band	Total Spectrum (MHz)	Geographic Blocks	License Type as % of Total Across All Bands
3650-3700 MHz	50	UNLICENSED	46%
5.2-5.8 GHz	250		
BRS/EBS	190	BTA	29%
AWS-1	90	BEA/CMA/REAG	22%
700 MHz 2008 Auction**	52		
AWS-3*	25	NATIONWIDE	4%

Total 657

*AWS-3 is part of the pending rulemaking

** Excludes 10 MHz of D block designated public safety interoperability

An examination of the data highlights a significant disparity in the Commission's recent allocation decisions. Notably, nationwide allocation of spectrum during the last four years amounted to 4% of the total spectrum made available despite previous Commission statements highlighting "that nationwide assignments are more likely to stimulate investment in new

⁷ Unlike the AWS-1 proceeding where RTG had a real interest and submitted comments in response to the NPRM in order to help shape the rules for that auction, here RTG's first filing in the rulemaking occurred 5 months after the close of the comment cycle and a mere week before the original date that the Commission sought to vote on creating a free nationwide broadband network.

⁸ See Attached RTG Press Release: "RTG Lauds FCC for Providing Greater Opportunities to Small and Rural Providers in AWS Band"

technologies and can provide a critical means of achieving greater spectrum efficiency and promoting research and development.”⁹

As we have previously indicated in the record, the Commission has on many occasions called for the need to make available more unpaired spectrum in order to increase the opportunities for TDD technologies. Yet, as detailed in Table 2 below, the size and the amount of unpaired spectrum suitable for broadband technologies that has been made available in the last 7 years has been trivial compared to that made available for paired FDD allocations.¹⁰ T-Mobile and RTG’s continued insistence for forced pairing of the AWS-3 band (through the service rules or auction mechanism) is yet another attempt at squashing a competitive threat through regulatory rent seeking. M2Z believes the licensee should be free to operate the AWS-3 band in any spectrum configuration (standalone or with any other band that is available including the lower J block) it chooses to do so long as the public interest goals of having a nationwide Lifeline Broadband Service that utilizes open access and open platforms is achieved on a timely basis.

TABLE 2

**Broadband-Capable Paired and Unpaired Terrestrial Spectrum Below 3GHz Offered at Auction
 October 22, 2001 – November 20, 2008 (1,2)**

Auction	Year	Band Name	Total Spectrum (MHz)	Paired Spectrum (MHz)	Unpaired Spectrum (MHz)	% of Unpaired (MHz)
73	2008	Upper 700 MHz Band (3)	62	56	6	10%
69	2007	1.4 GHz Band (3)	8	6	2	25%
66	2006	AWS-1	90	90	0	0%
65	2006	800 MHz Air-Ground	4	4	0	0%
55	2004	900 MHz	5	5	0	0%
46	2003	1670-1675 MHz Band	5	0	5	100%
45	2002	Cellular RSA	25	25	0	0%
44	2002	Lower 700 MHz Band	18	12	6	33%
Total			217	198	19	9%

⁹ See In the Matter of Amendments to Parts 1,2,27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, AND 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd. 9980, ¶ 21 (2002).

¹⁰ See Letter from Uzoma Onyeije, Vice President for Regulatory for M2Z Networks, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195, 04-356, 07-16, and 07-30 (filed November 20, 2008) for more detailed information about Table 2. Spectrum in the table is only for new terrestrial spectrum below 3 GHz auctioned between 2001 and 2008 useable for delivering high throughput broadband services directly to consumers.

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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 C. Onyeije

cc: Mr. Charles Mathias
Mr. Bruce Gottlieb
Ms. Renée Crittendon
Mr. Wayne Leighton
Ms. Angela Giancarlo