



December 9, 2008

Via Electronic Filing

Matthew Berry  
General Counsel  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

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

Dear Mr. Berry:

On December 5, 2008, T-Mobile submitted an *ex parte* in which it requested that the Commission delay the upcoming vote in the AWS-3 proceeding. Specifically, T-Mobile stated that “[g]iven the important spectrum and broadband policies implicated by this proceeding, the new Administration, the new Congress, and the new FCC should have the opportunity to consider them carefully before allocating this band.”<sup>1</sup> We highlight this advocacy because T-Mobile’s suggestion, if accepted, would amount to the FCC ignoring a statutory mandate.

Even in the face of the deadline imposed by Section 7, T-Mobile has consistently sought the delay of this proceeding.<sup>2</sup> However, the carrier has never addressed the fact that the AWS-3 proceeding is subject to a congressional deadline for action. Notably, Section 7(b) of the Communications Act mandates that “[i]f the Commission *initiates its own proceeding* for a new technology or service, such proceeding shall be completed within 12 months after it is initiated.”<sup>3</sup> The FCC initiated “its own proceeding for a new technology or service” when it launched the AWS-3 rulemaking. Indeed, the *AWS-3 NPRM* specifically noted that the goal of the proceeding was the creation of new services when it stated that the Commission planned “to facilitate the

<sup>1</sup> Letter of Howard J. Symons, Counsel for T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 and 04-356 at page 16 of the attachment (filed Dec. 5, 2008).

<sup>2</sup> Even after the anniversary of the release of the AWS-3 NPRM, T-Mobile has continued to seek delay. See Letter from Lynn R. Charytan, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, ¶ 4, (filed Oct. 9, 2008). (“In this case, in which there have been myriad filings on a range of topics, the proper means for the Commission to do so would be to formally seek comment on OET’s analysis. And parties should be given at least 30 days to digest and respond to OET’s conclusions: that is the minimum period of time the courts have considered appropriate. Indeed, for the type of technical data and analysis at issue here, the Administrative Conference of the United States has concluded that 60 days is the minimum allowable time period for comment.”).

<sup>3</sup> 47 U.S.C. § 157(b).

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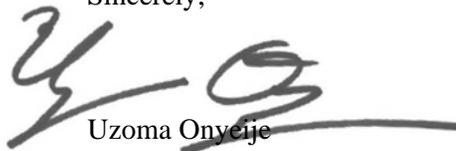
introduction of new and innovative wireless broadband services to American consumers as soon as possible.”<sup>4</sup>  
The Commission’s language mirrors the key language of Section 7(b).

There are only three dates that could plausibly serve as the date of “initiation” of this proceeding: (1) September 7, 2007 – the date of the *AWS-3 NPRM*’s adoption; (2) September 19, 2007 – the date on the *AWS-3 NPRM*’s release; or (3) November 14, 2007 – the date of the *AWS-3 NPRM*’s publication in the Federal Register. Depending on the selected date of initiation, the Commission’s decision would be due, by law, one year later. As is readily apparent from a plain reading of Section 7, additional delay of this proceeding would constitute a continuing violation of the Communications Act. Indeed, M2Z is now aware that in October Representative Hilda Solis wrote the FCC and highlighted the Commission’s statutory obligation to conclude the *AWS-3* proceeding immediately.<sup>5</sup>

M2Z recognizes that the December 18, 2008 Open Commission Meeting is the first public meeting in which the Commission can vote on this item since the passage of the one year period since November 14, 2008. Concluding the *AWS-3* proceeding next week would be consistent with the spirit of Section 7 as the December 2008 meeting is the first public opportunity for the Commission to adopt service rules following the most charitable view of the statutory deadline. Heeding the suggestion of T-Mobile, however, would fly in the face of both the letter and the spirit of an Act of Congress. This is highly inappropriate as the FCC is a creature of Congress and must, therefore, be responsive to the will of the legislature. Thus, there is no justification for the Commission to accept T-Mobile’s invitation to break the law.

Thank you for your consideration of these matters. 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: Mr. Charles Mathias  
Mr. Bruce Gottlieb  
Ms. Renée Crittendon  
Mr. Wayne Leighton  
Ms. Angela Giancarlo  
Mr. David Horowitz  
Mr. Ajit Pai

<sup>4</sup> See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, FCC 07-164 ¶ 4 (rel. Sept. 19, 2007) ¶ 4 (“*AWS-3 NPRM*”).

<sup>5</sup> Letter of Representative Hilda Solis to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 and 04-356 (2008) (attached).

**HILDA L. SOLIS**

32ND DISTRICT, CALIFORNIA

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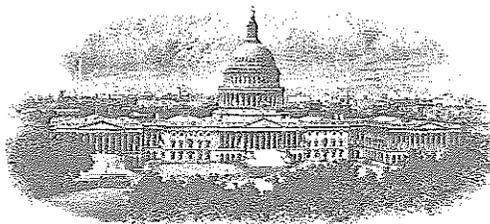
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October 3, 2008

Honorable Kevin Martin  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Martin,

As we work together to help close the broadband divide in our country, especially for low income, rural and minority communities, I urge you to move forward and complete the AWS III spectrum auction immediately. The auction of the currently fallow 2155-2180 MHz band to establish a "lifeline" free nationwide wireless broadband service could have a pivotal impact on the broadband access of underserved communities across the U.S.

As the first Latina to serve on the House Committee on Energy and Commerce, and a Member of the Subcommittee on Telecommunications and the Internet, I am very concerned about our country's stark broadband divide. In the Latino community, only 29% of adults have home broadband connections, according to the Pew Hispanic Center. While we have seen increasing availability of high-speed Internet services in the U.S., the high costs of computers coupled with monthly Internet service provider fees still deter many Americans from enjoying the economic, educational, and cultural benefits of the Internet. In fact, 120 million Americans lack access to broadband largely because broadband access is not affordable. With the auction of the 2155-2180 MHz band, the Commission has a distinct and important opportunity to narrow the digital divide in the U.S. with free nationwide broadband service.

I understand that in September of 2007, the Commission agreed to conclude the AWS-III rulemaking by August 14, 2008. Unfortunately, that date has come and gone with no Commission action despite the fact that an item was circulated in May, revised in June and remains pending to this day. Also, Section 7(b) of the Communications Act established a one-year deadline (September 6, 2008) for Commission to establish rules for AWS-3. With the ample time that has already been granted for review and comment of the AWS III proceeding as well as the passage of the statutory deadline imposed by Section 7(b) of the Communications Act, it is critical that the Commission complete this proceeding without further procedural

delays. Any further delay could be a continuing violation of the Communications Act and would impede the public interest by obstructing the rollout of free nationwide broadband.

The AWS III spectrum auction will offer competition, innovation, and help facilitate nationwide broadband deployment. Any additional delay of this auction is unwarranted after ample review by the Commission and interested parties and only serves to inhibit the numerous important public interest benefits of this auction. I urge the Commission to move forward in completing the AWS III proceeding to help close the broadband divide in underserved communities across the U.S.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilda L. Solis". The signature is fluid and cursive, with the first name "Hilda" being the most prominent.

HILDA L. SOLIS  
Member of Congress

cc: Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell