

December 22, 2008

VIA ELECTRONIC FILING

Chairman Kevin J. Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: ***Ex Parte Communication, WT Docket Nos. 07-195 and 04-356***

Dear Chairman Martin and Commissioners:

In its latest attempt to strong arm the Commission into a favorable decision on the AWS-3 spectrum band, M2Z Networks, Inc. (“M2Z”) has returned to a completely misguided claim that the Commission must resolve the AWS-3 band proceeding within one year pursuant to Section 7(b) of the Communications Act. Section 7 is inapplicable to this proceeding. As the Commission has already concluded, M2Z is not proposing a new technology or a new service as referenced in Section 7.¹ Even if it were, nothing in Section 7 of the Act compels the Commission to adopt rules that mandate (rather than permit) provision of that technology or service. M2Z’s claim should come as no surprise to the Commission. M2Z has previously attempted to invoke this section of the Act to force Commission action on their application for a license in this band.² The Commission should not now be moved by previously rejected arguments. As it has before, the Commission should again reject M2Z’s claims.

As the Commission made clear in both its Order denying M2Z’s application for a license and its brief to the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), there is no new service or technology at stake in

¹ Section 7(b) states, “[t]he Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.” 47 U.S.C. § 157(b).

² Petition of M2Z Networks, Inc. for Forbearance under 47 U.S.C. §160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions, at 16, filed Sept. 1, 2006.

this proceeding.³ The service that both M2Z and the Commission in its rulemaking proceeding are proposing is a wireless broadband service. The Commission rightly noted that wireless broadband is “currently being offered by other service providers to consumers using both licensed and unlicensed spectrum.”⁴ Indeed, the Commission characterized M2Z’s proposed service as “unremarkable” when compared to existing broadband service.⁵ Even the required advertising-based broadband speed contemplated in the Commission’s Further Notice of Proposed Rulemaking for the AWS-3 band, while twice as fast as the service M2Z proposed, would only qualify as “basic broadband” under the Commission’s recently adopted changes to the definition of broadband.⁶

Similarly, the Commission rejected M2Z’s claims that Orthogonal Frequency Division Multiple Access (“OFDMA”), Time Division Duplexing (“TDD”) and Advanced Antenna Systems (“AAS”) are new technologies. M2Z admits that TDD and AAS are not new technologies and OFDMA, while a new variant of existing technology, is not itself a new technology.⁷ Even under the more expansive Pioneer’s Preference program of the 1990’s – which was created under Section 7 – the services and technologies under consideration in the AWS-2 and AWS-3 proceeding would not rise to the level of a “new service or technology.”⁸

Moreover, assuming *arguendo* that Section 7 applies to the AWS-3 proceeding, Section 7 does not provide for “deemed granted” language similar to that in Section 10 of the Act.⁹ Even if all of M2Z’s legal and technological claims were correct, the proper remedy for M2Z is action at the D.C. Circuit – the court that is already considering M2Z’s Section 7 claims.

³ See *Application for Licenses and Authority to Operate in the 2155-2175 MHz Band*, 22 FCC Rcd 16563 (2007) (“Order”).

⁴ Order at ¶ 13; *M2Z Networks, Inc. v. FCC*, Brief for Appellee/Respondents, at 34.

⁵ Order at ¶ 14.

⁶ *Development of Nationwide Broadband Data*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9701 (2008).

⁷ Order at ¶ 13; *M2Z Networks, Inc. v. FCC*, Brief for Appellee/Respondents, at 37.

⁸ See *M2Z Networks, Inc. v. FCC*, Brief for Appellee/Respondents, at 35 (citing *Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, 6 FCC Rcd 3488, 3494 (1991)).

⁹ 47 U.S.C. §160(c).

There are significant issues regarding service and technical rules for the AWS-3 band that must be resolved if the band is to be used to successfully bring additional mobile wireless broadband services to market. CTIA urges the Commission to resolve these concerns and ensure that the spectrum is used to benefit U.S. wireless consumers most. That means flexible service rules that do not mandate a particular business model and technical rules that adequately protect adjacent licensees from harmful interference.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being electronically filed with the FCC secretary's office. If you have any questions regarding this submission, please contact the undersigned.

Sincerely,

/s/ Christopher Guttman-McCabe

Christopher Guttman-McCabe

cc: Charles Mathias
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