

**Before the
Federal Communications Commission
Washington, D.C. 20554**

To: The Commission

**COMMENTS OF M2Z NETWORKS, INC.
IN GN DOCKET NO. 09-29**

M2Z Networks, Inc. (“M2Z”) respectfully submits these comments in response to the Public Notice released by the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the congressional directive that the Commission establish a comprehensive rural broadband strategy.¹ A wide-ranging and well designed rural broadband strategy will allow the FCC to fulfill its statutory obligation to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”²

M2Z recognizes that the effort to establish a comprehensive rural broadband strategy is multifaceted and complex. We fully expect that many aspects of the strategy will be highlighted by other commenters in this docket. Because radio spectrum will play a large part in the Commission’s plans, M2Z focuses these comments on two “must have” spectrum-related elements to any successful FCC rural broadband strategy. First, the FCC should concentrate on examining spectrum assignments and utilization to determine additional spectrum opportunities throughout the United States, including rural areas. Standing alone, however, an assessment of spectrum utilization will do nothing to promote rural broadband deployment. Thus, in addition to the assessment, the Commission should establish internal processes that will significantly streamline its spectrum allocation and assignment timelines. Getting more spectrum to the marketplace and getting it there faster will significantly

¹ See Public Notice, *Comment Date Established for Report on Rural Broadband Strategy*, DA 09-561, GN Docket No. 09-29 (rel. Mar. 10, 2009).

² See 47 U.S.C § 157 nt.

increase the likelihood of success for the Commission's rural broadband efforts. While these two forward-looking efforts are crucial, the Commission should also look at immediately completing pending proceedings that will promote rural broadband development, including the longstanding AWS-3 rulemaking.

Determining Broadband Utilization

Because wireless networks are not constrained by the same physical limitations of wireline and cable systems, they hold great promise for reaching geographic areas and isolated regions that so far have been out of reach for landline broadband operators. Moreover, the addition of wireless broadband carriers to the market has the potential to break the current broadband duopoly and foster more vibrant competition.

In order for this to occur, the FCC must have a renewed focus on identifying and bringing additional spectrum to the marketplace. There is a clear congressional desire for the FCC to conduct a comprehensive inventory to determine whether the nation's spectrum is being adequately utilized. Last year, the Wireless Internet Nationwide for Families Act ("WIN Act") was introduced in the House of Representatives and included a provision that required the FCC and the National Telecommunications and Information Administration to biennially examine the state of spectrum utilization and "provide specific recommendations for the reallocation or reassignment of spectrum found to be underutilized in light of the public interest, necessity and convenience found in promoting broadband availability and affordability."³ In the Senate, the Open Wireless Internet Act was introduced with a similar provision.⁴ More recently, the Radio Spectrum Inventory Act ("RISA") was introduced in the

³ H.R. 5846, 110th Cong. § 2 (H)(iv) (2008).

⁴ S. 5846 110th Cong. (2008).

Senate.⁵ RISA would require the FCC and the NTIA to provide data on the licenses or government users operating in every band between 300 MHz and 3.5 GHz, including the total spectrum allocation of each licensee or government user.⁶

The goal of determining how much spectrum is being squandered should not be subject to whether Congress passes any of these or other proposals. Instead, the FCC should utilize its own authority to conduct an inventory of commercial spectrum as part of its rural broadband strategy. The goal of the inventory would be to determine where the agency could reallocate or reassign spectrum in the public interest. Such an effort would significantly help the Commission's rural broadband efforts because it would better allow the FCC to examine additional opportunities for rural broadband deployment. Moreover, such an action is consistent with the request of Senator Dorgan that the FCC "should be examining ways in which spectrum can be most effectively used."⁷

Timely Execution of Commission Assignment Processes

The effort of identifying potential additional spectrum that is available or underutilized is insufficient (standing alone) to address the needs of rural and other underserved consumers. The Commission must also match that effort with a renewed desire to improve its internal processes in order to streamline the spectrum allocation and assignment process. Unidentified underutilized spectrum is one problem; but unnecessarily cumbersome regulatory processes presents yet another problem. Congress did not intend for the FCC's processes to slow the progress of bringing spectrum to market. Rather, Section 7(b) of the Communications Act states: "If the Commission initiates its own proceeding for a new technology or service, such

⁵ S. 649 111th Cong. (2009).

⁶ *Id.* at § 342 (a)(1).

⁷ See Letter of Senator Byron L. Dorgan to Chairman Kevin J. Martin, FCC, WT Docket Nos. 07-16 and 07-30 (Apr. 9, 2007).

proceeding shall be completed within 12 months after it is initiated.”⁸ Read properly, the last provision in Section 7(b) requires every Commission-initiated spectrum-related service rules proceeding to be completed within a year.⁹ Not only is such an effort achievable but it will provide certainty to smaller players in the spectrum marketplace.

Unfortunately, Section 7 has been historically ignored by the FCC. For that reason, the Commission should establish an explicit internal shot clock for the management of items subject to Section 7 similar to its 180 day merger review process.¹⁰ So long as a predictable process is developed, the Commission will be able to comply with Section 7’s eminently reasonable one-year deadline. In a different context involving market entry, the Commission’s staff ably and faithfully handled complex applications that generated voluminous records based on an aggressive 90 day statutory timeline.¹¹ The same should be true for market-opening spectrum opportunities. This will significantly benefit all consumers but especially rural consumers.

The Impact of the AWS-3 Proceeding on Rural Broadband

There is considerable evidence in the AWS-3 proceeding that the proposed rules in the June 2008 FNPRM¹² include several elements that would promote the needs of rural

⁸ 47 U.S.C. § 157(b).

⁹ By its very nature, a service rules proceeding is the very method by which the FCC establishes “new” services. See http://wireless.fcc.gov/services/index.htm?job=wtb_services_home (listing numerous new services emanating from service rule proceedings).

¹⁰ See Public Notice, *FCC Implements Predictable, Transparent And Streamlined Merger Review Process* (rel. Jan. 12, 2000) available at http://www.fcc.gov/Bureaus/OGC/News_Releases/2000/nrgc0001.html. A transparent and streamlined process would be particularly helpful here because, unlike merger review, there is a statutory mandate for time-limited decision-making on Section 7 matters.

¹¹ See http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/.

¹² See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands, WT Docket Nos. 07-195 & 04-356, Further Notice of Proposed Rulemaking, FCC 08-158 (rel. June 20, 2008) (“FNPRM”). We note that news reports indicate that the content filtering rule proposed in June 2008 is no longer included in the item that is currently on circulation. See Lynnette Luna, FCC’s Martin Circulates New AWS-3 Plan,

consumers. First, the rules would include ground breaking build out requirements that would obligate the licensee to build to at least 95% of the U.S. population.¹³ These rules will eliminate the financial incentive for a carrier to focus on only the most profitable markets and instead force the future licensee to establish a profitable service that will cover multiple markets. This is important because a licensee is a trustee of the people's spectrum, not an owner. A licensee should have no discretion to deny services to large swaths of the population when providing service is a feasible task.

Second, the AWS-3 rules deal directly with the broadband affordability problem in several ways. Establishing a nationwide service area¹⁴ will allow for scale and scope for parties involved in the manufacture of AWS-3 devices. This, in turn, will make it easier and cheaper for consumers to buy the equipment they need to access the service. Similarly, the inclusion of open access and open platform rules¹⁵ will work together to expand consumer choice and reduce the cost of consumer equipment. The free service requirement¹⁶ will eliminate the monthly fees that many rural and lower income people cannot afford. A free service requirement will also lead to additional broadband competition.¹⁷ A free service requirement not only deals with affordability and competition but will also help increase

(2008), available at: http://www.fiercebroadbandwireless.com/story/fccs-martin-circulates-new-aws-3-plan/2008-12-31?utm_medium=nl&utm_source=internal&cmp-id=EMC-NL-FBW&dest=FBW.

¹³ See FNPRM ¶ 3 and Appendix A (proposed rule 27.14(q)).

¹⁴ See FNPRM ¶ 3 and Appendix A (proposed rule 27.6(h)(5)).

¹⁵ See FNPRM ¶ 3 and Appendix A (proposed rule 27.16).

¹⁶ See FNPRM ¶ 3 and Appendix A (proposed rule 27.1191).

¹⁷ In the precursor proceeding to the AWS-3 rulemaking, two key studies were submitted that demonstrated the considerable value of establishing a free nationwide wireless broadband network. See Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band, Appendix 5, The Benefits of Broadband Competition, WT Docket Nos. 07-16 and 07-30, (filed May 5, 2006) (In this study, Gregory L. Rosston and Scott Wallsten explain the positive impact of a free nationwide service on universal service). See also Simon Wilkie, "The Consumer Welfare Impact of M2Z Networks Inc.'s Wireless Broadband Proposal," WT Docket Nos. 07-16 and 07-30, (filed Mar. 02, 2007) (concluding that a slower free broadband service that that proposed in the AWS-3 proceeding would have a net present value of benefits to U.S. consumers ranging from "\$18 billion to more than \$25 billion."); see also Kostas Liopiros, "The Value of M2Z Networks' Public Interest Commitments and the Cost of Delay to American Consumers," WT Docket Nos. 07-16 and 07-30, (filed Mar. 19, 2007) (concluding that the value of a free nationwide broadband service would be over 32 billion dollars and each year of delay will cost consumers 4.7 billion in unrealized benefits).

broadband adoption as subscribers will not have to sign a lengthy contract which will allow many more people to “experiment” with broadband. Consumer research shows that making broadband access affordable encourages consumers to value it and use it more often.¹⁸

In the AWS-3 proceeding, there have been numerous filings that demonstrate the immediate rural needs that will be met through the adoption of the proposed rules. We include with this filing a few notable filings from WT Docket 07-195. Specifically, we include the joint comments of the Minority Media Telecommunications Council and the Rainbow Push Coalition. In their joint comments, MMTC and RPC explain that “[b]ecause the Commission would break important new policy ground by establishing a free broadband service, MMTC and RPC enthusiastically support the establishment of service rules for a free broadband service and the immediate auction of a single license to provide such a service.”¹⁹ Also included are Broadband Wireless Partners’ (“BWP”) NPRM reply comments²⁰ and FNPRM reply comments.²¹ BWP urges the Commission to “assist rural carriers in their efforts to extend the benefits of broadband Internet service to underserved communities.”²² Among other things, it “call[ed] on the Commission to adopt rules that would facilitate national wholesale agreements between entities like BWP and the eventual AWS-3 licensee.”²³ In addition to its dual set of reply comments, BWP filed an ex parte letter which addressed some rural-related concerns raised by other parties.²⁴ We request that the above-referenced AWS-3 filings be incorporated into the docket in this proceeding. Moreover, we

¹⁸ See S. “Derek Turner, Broadband Reality Check II” at 5 (2006), available at: <http://www.freepress.net/files/bbrc2-final.pdf>.

¹⁹ See NPRM Comments of Minority Media and Telecommunications Council and Rainbow PUSH Coalition, WT Docket No. 07-195 (filed Dec. 20, 2007).

²⁰ See NPRM Reply Comments of Broadband Wireless Partners, WT Docket No. 07-195 (filed Jan. 14, 2008).

²¹ See FNPRM Reply Comments of Broadband Wireless Partners, WT Docket Nos. 07-195 and 04-356 (filed Aug. 11, 2008).

²² See NPRM Reply Comments of Broadband Wireless Partners at 1.

²³ *Id.*

²⁴ See Letter from Stephen G. Kraskin, Broadband Wireless Partners, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 and 04-356 (filed Jun. 5, 2008).

believe that a review of this filing and the proposed rules for the AWS-3 band demonstrates an immediate need for action on AWS-3 consistent with the Commission's goal of additional rural broadband development.

Summary

The Commission will achieve significant results in working towards establishing a successful rural broadband strategy if it purposely focuses some of its efforts on actions that can be done internally. One key step that the Commission must undertake is to fully analyze spectrum utilization and reallocate and reassign spectrum as appropriate. It must, however, take those actions swiftly consistent with its Strategic Goals and explicit statutory guidance. While these efforts are underway, the FCC should quickly conclude the pending AWS-3 rulemaking and allow that portion of spectrum to be put to use for urban, suburban and rural consumers alike.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Uzoma Onyeije', with a long horizontal stroke extending to the right.

Uzoma Onyeije

March 25, 2009

KEY DOCUMENTS CITED FROM OTHER COMMISSION PROCEEDINGS

- Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band, Appendix 5, The Benefits of Broadband Competition, WT Docket Nos. 07-16 and 07-30, (filed May 5, 2006) (Study in which Gregory L. Rosston and Scott Wallsten explain the positive impact of a free nationwide service on universal service). This study is available at:
[http://www.m2znetworks.com/xres/uploads/documents/Appendix%205%20-%20Benefits%20of%20Broadband%20Competition%20\(4\).pdf](http://www.m2znetworks.com/xres/uploads/documents/Appendix%205%20-%20Benefits%20of%20Broadband%20Competition%20(4).pdf)
- Simon Wilkie, “The Consumer Welfare Impact of M2Z Networks Inc.’s Wireless Broadband Proposal,” WT Docket Nos. 07-16 and 07-30, (filed Mar. 02, 2007) (concluding that a slower free broadband service that that proposed in the AWS-3 proceeding would have a net present value of benefits to U.S. consumers ranging from “\$18 billion to more than \$25 billion.”). This study is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909371
- “The Value of M2Z Networks’ Public Interest Commitments and the Cost of Delay to American Consumers,” WT Docket Nos. 07-16 and 07-30, (filed Mar. 19, 2007) (concluding that the value of a free nationwide broadband service would be over 32 billion dollars and each year of delay will cost consumers 4.7 billion in unrealized benefits). This study is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518913247
- NPRM Comments of Minority Media and Telecommunications Council and Rainbow PUSH Coalition, WT Docket No. 07-195 (filed Dec. 20, 2007). This filing is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519820112
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519820113
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519820114
- NPRM Reply Comments of Broadband Wireless Partners, WT Docket No. 07-195 (filed Jan. 14, 2008). This filing is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519822931
- FNPRM Reply Comments of Broadband Wireless Partners, WT Docket Nos. 07-195 and 04-356 (filed Aug. 11, 2008). This filing is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520037734
- Letter from Stephen G. Kraskin, Broadband Wireless Partners, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 and 04-356 (filed Jun. 5, 2008). This filing is available at:
http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520012762