



March 27, 2009

Via Electronic Filing

Ajit Pai
Joseph Palmore
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Written Ex Parte Presentation in WT Docket Nos. 07-195 & 04-356

Dear Ajit and Joseph:

Thank you for your clarification in our telephone conversation today following up on the meeting last week. Per your request, attached please find the document summarizing our candor concerns in the AWS-3 proceeding. As we discussed previously, we look forward to a further meeting on this matter soon.

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,

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

Uzoma C. Onyeije

cc: James Carr

Innovation. Freedom.

2000 North 14th Street · Suite 600 · Arlington, VA 22201

OFFICE 703.894.9500 FAX 703.894.9501

March 20, 2009

Paula Michele Ellison
Acting General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Ellison:

It is with great interest that we at M2Z Networks, Inc. have read about the desire of the Federal Communications Commission (“Commission” or “FCC”) that the ex parte rules that govern communications between the agency and outside parties needs to be revised, strengthened and enforced to ensure that all interested parties can obtain relevant and substantive information about meetings at the FCC. This is important because the ex parte rules play a critical role in protecting the fairness of the FCC's proceedings by assuring that FCC decisions are not influenced by impermissible off-the-record-communications between decision-makers and others.

Perhaps more fundamentally, however, ex parte filings and other submissions to the FCC must be truthful. If parties advocating before the FCC believe that they can provide false testimony with impunity, the level of detail found in their submissions quickly becomes a secondary concern.

As the attached document demonstrates, for nearly two years, T-Mobile-USA has engaged in a scheme to deceive the Commission concerning (among other things) its indefensible decision to deploy filters in its AWS-1 devices that access the AWS-3 band (for which T-Mobile has no authorization). Initially, the company remained silent concerning this critical and material information. While such silence standing alone is problematic, the company went on to submit several filings that include explicit statements that are *unquestionably* false. In addition, three executive-level employees of T-Mobile committed perjury by providing false sworn testimony to the Commission. These false declarations/affidavits were submitted by: (i) Neville R. Ray, T-Mobile’s Senior Vice President for Engineering and Operations; (ii) Cole Brodman, T-Mobile’s Chief of Technology and Innovation, and (iii) Joachim Horn, CTO, T-Mobile International AG.

The repeated false testimony by T-Mobile appears designed to forward its goal of delaying the AWS-3 proceeding.¹ Unfortunately T-Mobile's fictitious advocacy has been successful to that end. The FCC unanimously agreed that the AWS-3 service rules proceeding would be resolved in August 2008. Several members of Congress have written the Commission indicating that the AWS-3 proceeding should have concluded in September 2009 and that the FCC is now in violation of Section 7 of the Communications Act. Yet, the proceeding has not been resolved. Further delay, however, is unwarranted as the root of the delay here is T-Mobile's false advocacy before the Commission.

Submitting pleadings or other presentations that lack candor or include misrepresentations constitutes a major violation of the Commission's rules. T-Mobile appears particularly brazen because, as every FCC advocate knows, the Commission may revoke the authorizations of a licensee that makes misrepresentations or lacks candor in dealing with the agency. M2Z, therefore, requests that the Commission punish T-Mobile's behavior, as appropriate, following an investigation.

Please let me know if you have any questions regarding this submission.

¹ T-Mobile has made its intentions clear by repeatedly and explicitly seeking delay of the AWS-3 proceeding based on a constantly evolving list of arguments. See Letter from Thomas J. Sugrue, T-Mobile to Chairman Kevin J. Martin, FCC, WT Docket 07-195, ¶ 1 (filed Jun 5, 2008) ("T-Mobile respectfully requests that, at a minimum, the Commission defer consideration of this matter until its August meeting..."); See Letter from Kathleen O'Brien Ham, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, ¶ 4 (filed Jun 6, 2008) ("T-Mobile also asked the FCC to defer action until it could undergo such an analysis and to consider the AWS-3 item in August at the earliest, as the agency had originally announced."); See Letter from Kathleen O'Brien Ham, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, (filed Jun 10, 2008) ("In particular, Mr. Dotson reiterated T-Mobile's request that the Commission defer action on this issue at least until August..."); See Letter from Thomas J. Sugrue and Neville Ray, T-Mobile to Chairman Kevin J. Martin, FCC, WT Docket 07-195, ¶ 8 (filed Jun 13, 2008) ("Also in a perfect world, the Commission or an independent third party would conduct the testing under parameters developed following the issuance of a *Further Notice* with opportunity for public comment."); See Letter from Howard J. Symons, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, AWS-3 Issues at 5 (filed Jun 13, 2008) ("The FCC Should Defer Action on AWS-3. The FCC should issue a *Further Notice* for public comment on testing parameters, and then oversee laboratory tests on interference issues either on its own or through an independent third party."); See T-Mobile Request for Extension of Time to File Comments, WT Docket Nos. 07-195 & 04-356, at 1, 8 (filed July 1, 2008) ("T-Mobile USA, Inc. ('T-Mobile') respectfully requests, pursuant to section 1.46 of the Commission's rules, that the Commission extend the date for filing comments in this proceeding by 90 days..."); See T-Mobile Reply to M2Z Networks, Inc. Opposition to Request for Extension of Time to File Comments, WT Docket Nos. 07-195 & 04-356, at 7 (filed July 8, 2008) ("For these reasons, the Commission should extend the date for filing comments by 90 days to allow for supervised testing of potential interference with AWS-1 operations. At the very least, the Commission should extend the comment deadline by no less than 30 days to allow T-Mobile to complete its testing and submit a comprehensive analysis of the results, with sufficient time for interested parties to evaluate and comment on those results in their reply comments. Such an extension is necessary to establish a reliable record on which to decide the serious interference issues presented by the Commission's proposed rules."); See Letter from Howard J. Symons, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, AWS-3 FCC Meetings at 10, (filed Jul. 18, 2008) ("The FCC Should Defer Action on AWS-3."). T-Mobile's calls for delay continued even after the FCC's August 2008 deadline and the September 2008 statutory deadline passed. 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."); See Letter from Howard J. Symons, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 07-195 & 04-356, Perspective on the AWS-3 Proceeding at 16, (filed Dec. 5, 2008) ("Given 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.")

EVIDENCE OF PERJURY AND CANDOR VIOLATIONS BY T-MOBILE IN WT DOCKETS 07-16, 07-30, 07-195 AND 04-356

There is clear evidence that T-Mobile USA, Inc. (“T-Mobile”) has repeatedly violated the Federal Communications Commission’s (“Commission”) accuracy and candor requirements. This document highlights instances in which T-Mobile has gone far beyond zealous advocacy and has either presented objectively false information or has concealed material information from the Commission. By doing so, T-Mobile has violated the accuracy and candor requirements in various written and oral presentations made in the above-referenced dockets by several of T-Mobile’s officers and by its other authorized representatives, often times in sworn statements.

Furthermore, T-Mobile had knowledge of material information not presented to the Commission in its submissions in the above-referenced dockets. Had this information been disclosed as required, it would have undermined T-Mobile’s arguments, as described below. These violations may not be limited to T-Mobile as it also appears other parties engaged in the same violations of the Commission’s candor and accuracy requirements. These other parties include various equipment vendors, manufacturers, trade associations, and other carriers that have submitted documents into the record of these proceedings.¹

The violations complained of herein make T-Mobile subject to a variety of possible Commission sanctions, including the striking of unsupported pleadings, exclusion from further participation in these proceedings, potential forfeitures, license or permit revocations, and other remedies within the Commission’s discretion.

BACKGROUND

The Commission is currently considering the adoption of service rules that would

¹ For example, in close proximity to the original expected vote on the AWS-3 rulemaking, Christopher Guttman-McCabe, Vice President for Regulatory Affairs, CTIA, asserted that “[in] the AWS-1/AWS-3 context, because the interference would be asymmetrical (received by AWS-1), it is not clear that all parties will have the appropriate incentives to operate under mutually beneficial technical parameters.” *See* Letter of Christopher Guttman-McCabe, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 07-195 & 04-356, at 9 (filed June 5, 2008). The claim that interference would be “asymmetrical” is incontrovertibly false, insofar as it suggests that interference would only be “received by AWS-1” operations and not by AWS-3 operations. M2Z has corrected the record concerning this untrue statement. *See* Letter from Uzoma C. Onyeije, M2Z Networks, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 07-195 & 04-356, at 5 (filed June 10, 2008). In addition to M2Z, both Verizon Wireless and T-Mobile have contradicted CTIA’s claim. *See* Verizon Wireless Reply Comments, WT Docket No. 07-195, at 8 (filed Jan. 14, 2008) (“[T]he risk of harmful interference to AWS-3 base stations is also significant.”); *see also* Comments of T-Mobile, USA, Inc., WT Docket Nos. 07-195 & 04-356, Exhibit 1, at 3 (filed July 25, 2008). M2Z is reviewing the record to determine the nature and extent of other potential false statements in these proceedings.

allow the provision of two-way nationwide broadband service in the AWS-3 band.² T-Mobile has filed comments in the above-captioned dockets in which T-Mobile has opposed aspects of the Commission's AWS-3 proposed service rules. In particular, T-Mobile has opposed the authorization of a two-way broadband service in the AWS-3 band based on T-Mobile's claim that such two-way operations would cause harmful interference to T-Mobile's AWS-1 system.³ T-Mobile raised this claim as early as March 2007.⁴

In order to develop its technical arguments concerning potential interference, T-Mobile made multiple requests for delay in the conclusion of the AWS-3 proceeding, including a request for a three month delay, purportedly to conduct testing, which is unprecedented in a service rules proceeding of this kind.⁵

On July 25, 2008, T-Mobile submitted its "AWS-3 to AWS-1 Interference Laboratory Test Report" (the "T-Mobile Report") as an exhibit to its comments filed in response to the *AWS-3 Further Notice*.⁶ The T-Mobile Report purported to replicate AWS-3 transmissions and demonstrate the need to limit AWS-3 operations in the AWS-3 band to one-way operations in order to protect adjacent band licensees.

From September 3 through September 5, 2008, the Commission observed tests conducted by T-Mobile that were intended to replicate portions of the prior tests described in the T-Mobile Report. These September 2008 tests sought new data as well.

The September 2008 tests were open to the public, and were attended by representatives of several companies, including M2Z.

The September 2008 tests revealed flaws in the testing methodology and the results described in the T-Mobile Report. In particular, the September 2008 tests demonstrated that T-Mobile's earlier, unobserved tests had been conducted in a manner that grossly exaggerated the potential for interference to AWS-1 licensees from two-way operations in the AWS-3 band.⁷ T-Mobile did not accurately describe its testing

² 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, 23 FCC Rcd 10527 (2008) ("AWS-3 Further Notice").

³ See, e.g., Comments of T-Mobile, USA, Inc., WT Docket No. 07-195, at 2 (filed Dec. 14, 2007).

⁴ See Petition to Deny of T-Mobile, USA, Inc., WT Docket Nos. 07-16 & 07-30, at 6-7 (filed March 2, 2007).

⁵ See T-Mobile Request for Extension of Time to File Comments, WT Docket Nos. 07-195 & 04-356, at 1 (filed July 1, 2008).

⁶ See Comments of T-Mobile, USA, Inc., WT Docket Nos. 07-195 & 04-356, Exhibit 1 (filed July 25, 2008) ("T-Mobile Report").

⁷ T-Mobile's claim that two-way operations in the AWS-3 band would result in harmful interference to AWS-1 operations was rejected in a report by the Commission's Office of Engineering and Technology. See "The FCC's Office of Engineering and Technology Releases Analysis of AWS-3 Interference Tests," Public Notice, WT Docket Nos. 04-356, 07-195 (OET rel. Oct. 10, 2008) ("OET Public Notice"), *announcing release of Federal Communications Commission Office of Engineering and Technology, "Advanced Wireless Service Interference Tests Results and Analysis,"* at 3 ("OET Report") (concluding that the AWS-3 rules proposed by the Commission in June 2008 can be employed "without a significant

methodology and results when it submitted the T-Mobile Report, and has not corrected the record at any time since the initial submission of that report.

The record in these proceedings demonstrates that T-Mobile has violated the Commission's candor requirements in several instances, as described in greater detail below. T-Mobile has also misrepresented and/or omitted facts in its presentations to the Commission when doing so was beneficial to T-Mobile's interests.

T-Mobile's conduct in the above-referenced dockets violates its duties as a Commission licensee, creates a fundamentally unfair regulatory environment, disserves the public interest, and wastes precious Commission resources. The Commission should impose meaningful sanctions on T-Mobile for these violations, especially in light of the fact that this is not the first time T-Mobile has failed to comply with the Commission's rules.⁸

RELEVANT FACTS

Potential interference among the AWS-1, AWS-3, and MSS bands comes from two sources: adjacent channel emissions, and out-of-band emissions.⁹ These are distinct engineering issues and that is why the Commission's technical rules address them separately.

Adjacent channel emissions create interference due to limitations in receiver design. The selection of particular filters and other radio frequency devices in certain AWS-1 receivers could limit the capacity of those AWS-1 receivers to reject signals transmitted lawfully over AWS-3 licensed spectrum by future AWS-3 devices.¹⁰

Out-of-band emissions create interference due to the limitations of the transmitter design and the operating signal levels of the receiver. Out-of-band emissions ("OOBE") are emissions by an adjacent channel emitter (such as an AWS-3 mobile device) on the same channel intended for use by a receiver operating in another band (such as an AWS-

risk of harmful interference.").

⁸ On October 19, 2006, the Commission found T-Mobile USA, Inc., apparently liable for constructing a facility before completing environmental review, in apparent willful violation of Section 1.1307(a)(4) of the Commission's Rules. *See In the Matter of T-Mobile Northeast, L.L.C.*, Notice of Apparent Liability for Forfeiture, File No. EB-06-SE-344, DA 06-2065 (rel. Oct. 19, 2006). In 2003, T-Mobile entered into a consent decree terminating an investigation into possible violations of the E911 Phase II provisions set forth in Section 20.18 of the Commission's Rules, 47 C.F.R. § 20.18, and in the Commission's Order granting T-Mobile a waiver of the E911 Phase II rules. *See T-Mobile USA, Inc.*, 18 FCC Rcd 15123 (2003). More recently, the Enforcement Bureau of the Federal Communications Commission entered into a consent decree with T-Mobile that terminated an investigation concerning potential T-Mobile violations of Part 4 of the Commission's rules, concerning a carrier's duty to report network outages. *See In the Matter of T-Mobile USA, Inc.*, Order, File No. EB-07-SE-237, DA 08-711 (rel. March 28, 2008).

⁹ *See, e.g.*, Reply Comments of M2Z Networks, Inc. WT Docket Nos. 07-195 & 04-356, at 21 (filed Aug. 11, 2008) ("M2Z Further Notice Reply Comments").

¹⁰ *See id.* at 21-22.

1 mobile device).¹¹ The Commission's OOB definition is "[e]mission on a frequency or frequencies immediately outside the necessary bandwidth which results from the modulation process, but excluding spurious emissions."¹² Selection of transmitter filters and the frequency offset from the band-edge limits out-of-band emissions. The level of interference resulting from out-of-band emissions depends on a combination of the out-of-band emissions from the transmitter and the reception of the desired signal level by the receiver.

Late in these proceedings, T-Mobile finally, although obliquely, admitted that its Universal Mobile Telecommunications System (UMTS) AWS-1 devices incorporate a filter that does not comport with T-Mobile's authorized U.S. spectrum assignments.¹³ The ability to develop and implement proper filters for mitigating adjacent band interference concerns is within the control of T-Mobile and its suppliers.

The Commission does not review or approve filter technology and the Commission does not regulate the signal reception capabilities or technologies of mobile devices. Moreover, the AWS-1 spectrum allocation in the United States is not globally harmonized with international spectrum allocations in the band.¹⁴

If two-way services were permitted in the AWS-3 band, as contemplated by the Commission's *AWS-3 Further Notice*, AWS-3 and AWS-1 licensees would face a mutual potential for interference. There is a theoretical potential for the AWS-1 licensee to experience mobile-to-mobile interference and there is a theoretical potential for the AWS-3 licensee to experience base-to-base interference.¹⁵

A licensee's complete candor is essential to the Commission because "effective regulation is premised upon the agency's ability to depend upon the representations made

¹¹ See *id.*, App. 3, at 21.

¹² See 47 C.F.R. § 2.1(c).

¹³ Despite the fact that the AWS-1 band, for which T-Mobile is the largest licensee, ends at 2155 MHz, T-Mobile utilizes handsets that have receiver passbands covering at least the 2110-2170 MHz band. See T-Mobile Report at 9 ("AWS-1 receiver filters designed for the 2110-2155 MHz pass band instead of the current 2110-2170 MHz pass band would only attenuate the interfering adjacent band AWS-3 signals.") (emphasis added); see also Letter from Uzoma C. Onyeije, M2Z Networks, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 07-195 & 04-356, Overview of Technical Issues Concerning the AWS-3 Service Rules, at 11 (filed July 2, 2008). M2Z performed its own tests of AWS-1 handsets deployed by T-Mobile, and those tests indicated that the phones included passbands covering up to 2180 MHz.

¹⁴ See, e.g., *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223, ¶ 35 (2003). The ITU and FCC allocation table footnote 5.388 indicates that neither the Commission nor the ITU require any regulatory body to implement the standard 3G band plan. See 47 U.S.C. § 2.106 In fact, Industry Canada joined the United States when it decided to allocate the AWS-1 band in a manner that is not globally harmonized. See, e.g., *Standard Radio System Plan 513 – Technical Requirements for Advanced Wireless Services in the Bands 1710-1755 MHz and 2110-2155 MHz*, Industry Canada (Feb. 2008), available at <http://www.ic.gc.ca/epic/site/smt-gst.nsf/en/sf08884e.html>.

¹⁵ See M2Z Further Notice Reply Comments at 12.

to it by its licensees.”¹⁶ Section 1.17 of the Commission’s rules prohibits misrepresentations and lack of candor in Commission filings.¹⁷ Misrepresentation is defined by the Commission as “an intentional misrepresentation of fact intended to deceive.”¹⁸ Lack of candor involves concealment, evasion, and other failures to be fully informative, accompanied by deceptive intent.¹⁹

Submitting pleadings or other presentations that lack candor or include misrepresentations constitutes a major violation of the Commission’s rules. It is for that reason that the Commission may impose various sanctions for lack of candor or accuracy in submissions. The Commission may strike pleadings that are a sham or false. *See* 47 C.F.R. § 1.52. The Commission also may impose forfeitures for lack of candor. *See id.* § 1.80(b)(4) nt. Finally, the Commission may disqualify a license application or revoke the authorizations of a licensee that makes misrepresentations or lacks candor in dealing with the agency.²⁰

VIOLATION NUMBER 1 – WILLFUL MISREPRESENTATION OF MATERIAL FACTS PROVIDED IN A SWORN DECLARATION

Neville R. Ray, T-Mobile’s Senior Vice President for Engineering and Operations, submitted a declaration under penalty of perjury in support of T-Mobile’s June 5th *ex parte* presentation in some of the above-referenced proceedings. Portions of the declaration by Mr. Ray, an officer of T-Mobile, conveyed false information.

Specifically, Mr. Ray claimed that: “[t]o ensure that the AWS-1 spectrum was ready for commercial rollout, T-Mobile has been selling handsets that contain the AWS-1 spectrum since late 2007. . . . These handsets have used standards-based equipment,

¹⁶ *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980); *see also In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990); *In re Applications of Richardson Broadcast Group*, 7 FCC Red 1583 (1992).

¹⁷ 47 C.F.R. § 1.17.

¹⁸ *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994).

¹⁹ *Fox River Broadcasting, Inc.*, Order, 93 F.C.C. 2d 127, ¶ 6 (1983). The Commission has defined lack of candor as an applicant’s failure “to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited.” *Swan Creek*, 39 F.2d at 1222 (quoting *Silver Star Communications-Albany, Inc.*, 3 F.C.C.R. 6342, 6349 (Rev. Bd. 1988)). The definition is purposely broad in order to include situations when needed information was intentionally omitted, rather than merely including situations in which affirmative misrepresentations have been made. D.C. Circuit Judge Mikva explained this concept in *RKO General, Inc. v. FCC* when he stated: “We need not decide whether RKO’s pleadings were affirmatively misleading – it is enough to find that they did not state the facts.” 670 F.2d 215, 230 (D.C. Cir. 1981). Therefore, intentional omissions and lack of full forthrightness violate the Commission’s candor requirements.

²⁰ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000); *see also* 47 U.S.C. § 312(a)(1), (2), (4), which authorizes the Commission to revoke any license for false statements knowingly made either in the application or in any statement of fact that may be required pursuant to Section 308; because of conditions coming to the attention of the Commission that would warrant it in refusing to grant a license application; or for willful or repeated violation of, or willful or repeated failure to observe any provision of the Act or any rule or regulation of the Commission.

including filter technology, that has been *reviewed and approved* by the Federal Communications Commission for use in the United States.”²¹

The Commission does not “review and approve” filter technology and does not regulate mobile devices in the manner suggested by Mr. Ray. The declaration claimed that T-Mobile’s AWS-1 filters received Commission approval, yet there were no facts presented to the Commission (nor indeed could there have been any such facts in existence) to support that false assertion. T-Mobile’s selection of filters for its mobile devices, like the selections made by all wireless carriers, was not reviewed or approved by the Commission.

The fact that T-Mobile sought to characterize its own activities as somehow approved by technical staff at the Commission evidences a misrepresentation that appears designed to deceive members of the Commission who may be unfamiliar with the Commission’s equipment approval process.

VIOLATION NUMBER 2 – WILLFUL MISREPRESENTATION OF MATERIAL FACTS PROVIDED IN A SWORN DECLARATION

Mr. Ray also asserted under penalty of perjury that T-Mobile’s AWS-1 handsets “use filters that are consistent with international standards and have been specified and designed for use in the AWS-1 band for more than 18 months.”²² This statement is false.

T-Mobile’s AWS-1 handset filters are not “specified and designed for use in the AWS-1 band.” This claim is directly contradicted by Mr. Ray’s statements in an interview with Sue Marek, editor-in-chief of Fierce Wireless. In response to a question on the number of devices in the AWS band, Mr. Ray highlighted the importance of T-Mobile’s AWS-1 handsets working internationally: “what is key for us is that we have a very large mobile business outside the U.S. We are leveraging our international buying power with handset vendor partners to make sure the 1.7 and 2.1 is a relevant and included band in the 3G space.”²³

As indicated in above, the AWS-1 spectrum allocation in the United States is not globally harmonized. Thus, the AWS-1 handsets cannot be and, in fact, are not “specified and designed for use in the AWS-1 band,” as such a design would be limited to the domestic marketplace.

Further evidence that T-Mobile’s AWS-1 filters are not “specified and designed for use in the AWS-1 band” may be found in submissions made in the AWS-3 proceeding by V-COMM and Avago on behalf of Verizon Wireless. V-COMM explained that “AWS-1 filters are being designed to cover the entire 2110-2170 MHz

²¹ See Letter from Thomas J. Sugrue, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-195, Declaration of Neville R. Ray, ¶ 4 (filed June 5, 2008) (emphasis added) (“June 5 Declaration of Neville Ray”).

²²*Id.*

²³ See “On the Hot Seat with T-Mobile USA’s Neville Ray,” Fierce Wireless, May 6, 2008, at <http://www.fiercewireless.com/story/hot-seat-t-mobile-usas-neville-ray/2008-05-06>.

band to accommodate UMTS Band IV (2110-2155 MHz) in the U.S. and UMTS Band X (2110-2170 MHz) in South America.”²⁴ Avago clarified that “[m]any filters on the market for AWS-1 have intentionally been designed with a wide enough pass band to also support South American UMTS Band X (Tx 1710-170 MHz Rx 2110-21170 MHz). These filters would not protect AWS-1 devices from AWS-3 signals.”²⁵

VIOLATION NUMBER 3 – WILLFUL MISREPRESENTATION OF MATERIAL FACTS PROVIDED IN AN *EX PARTE* PRESENTATION

On July 17, 2008, Cole Brodman, T-Mobile’s Chief of Technology and Innovation, participated in an oral *ex parte* presentation that included the claim that “[c]urrently deployed AWS handsets use FCC-approved filters that are used in handsets worldwide in this band.”²⁶

The Commission does not “approve” filter technology and the Commission does not regulate mobile device receiver capabilities in the manner suggested by Mr. Brodman.²⁷ While the July 17th *ex parte* presentation claimed that T-Mobile’s AWS-1 filters received Commission approval, yet there were no facts presented to the Commission (nor indeed could there have been any such facts in existence) to support that false assertion.

As explained in above, T-Mobile’s filter selection was not reviewed, much less approved, by the Commission. The fact that T-Mobile sought to characterize its own activities as both reviewed and approved by technical staff at the Commission evidences a misrepresentation that appears designed to deceive members of the Commission who may be unfamiliar with the Commission’s equipment approval process.

VIOLATION NUMBER 4 – WILLFUL MISREPRESENTATION OF MATERIAL FACTS PROVIDED IN A COMMISSION PLEADING

On August 11, 2008, T-Mobile submitted a letter into the record from Joachim Horn, CTO, T-Mobile International AG, to Mr. Neville Ray.²⁸ The letter from Mr. Horn contends that “[i]n Eastern Europe, we operate a UMTS-TDD system adjacent to an

²⁴ See Comments of Verizon Wireless, WT Docket 07-195, V-Comm Attachment at 9 (filed Dec. 14, 2007).

²⁵ See *id.*, Avago Attachment at 16.

²⁶ See Letter from Howard J. Symons, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-195, AWS-3 FCC Meetings Presentation at 6 (filed July 18, 2008).

²⁷ For CMRS equipment, the only receiver regulation imposed by the Commission concerns unintentional emissions below 960 MHz.

²⁸ See Reply Comments of T-Mobile, USA, Inc., WT Docket Nos. 07-195 & 04-356, Exhibit 1, Letter from Joachim Horn to Neville Ray, ¶ 2 (filed Aug. 11, 2008) (“Horn Letter”).

FDD-UMTS system operated by Telefonica O2 Czech Republic” and that “there is an effective 5 MHz guard band between the systems.”²⁹

That statement is false. The designated guard band in the Czech Republic is a mere 200 kHz. In the Czech Republic, T-Mobile and Telefonica are separated by a 5 MHz block of spectrum that is not “guard band.” Rather the spectrum is simply *unassigned* at the current time.³⁰

Although T-Mobile later modified its description of the 5 MHz block to refer to it as “de facto guard band,” that modification was only made after M2Z highlighted to the Commission that a 5 MHz guard band does not exist in the Czech Republic.³¹ This after-the-fact rationalization is an invention of T-Mobile’s, as no such term appears in the translated version of the relevant Czech Republic regulations.³²

VIOLATION NUMBER 5 – WILLFUL AND INTENTIONAL CONCEALMENT/MISREPRESENTATION OF MATERIAL FACTS

For an extended period of time, T-Mobile concealed the material fact that its AWS-1 handsets do not comport with T-Mobile’s AWS-1 spectrum assignments, and therefore contribute to the interference concerns raised by T-Mobile in the AWS-3 proceeding and predecessor Commission proceedings.

T-Mobile’s first submission that directly admitted this failure to comport with spectrum assignments was not submitted until September 3, 2008 (18 months after T-Mobile’s first filing concerning alleged AWS-3 interference issues). In that filing, T-Mobile explained that its “Commercial AWS-1 handsets have receive filters with a pass band from 2110 to 2170 MHz.”³³ The filing also noted that “[a]t the 2155 MHz upper end of AWS-1 band the filter rolls off outside the band edge.”³⁴

This filing confirms that T-Mobile utilizes open band pass filters that receive both desired signals (*i.e.*, AWS-1) and undesired signals (*i.e.*, AWS-3 and AWS-2).³⁵

²⁹ *Id.*

³⁰ There is 5.2 MHz between T-Mobile’s TDD Czech assignment and the closest FDD system. The Czech band plan states that 5 MHz is another TDD block that at present is not assigned and 0.2 MHz is actually designated as a guard band. See Article 5 of Part No. PV-P/6/06.2007-7 of the Radio Spectrum Utilisation Plan for the frequency band 1900–2200 MHz, Czech Telecommunication Office, available at <http://www.radiospektrum.cz/eng/pvrse.html> (“Czech Republic 1900-2200 MHz Rules”).)

³¹ See Horn Letter ¶ 2.

³² See Czech Republic 1900-2200 MHz Rules, *supra* note 30.

³³ See Letter from Kathleen O’Brien Ham, T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 07-195 & 04-356, T-Mobile USA Presentation to FCC OET on AWS-3 Lab Testing at 7 (filed Sept. 3, 2008) (“T-Mobile September 3, 2008, *Ex Parte*”).

³⁴ *Id.*

³⁵ See T-Mobile Report at 9; see also M2Z Further Notice Reply Comments, App. 2, at 15.

Because the AWS-1 handset filter is not properly designed for T-Mobile's spectrum assignment and does not reject unwanted signals emitting from adjacent channels, there is an increased likelihood of blocking interference to the AWS-1 handset.

The facts about T-Mobile's filter design and implementation choices were material to the Commission's deliberations in these proceedings, and were known only to T-Mobile and the manufacturers of its filters during the year and a half that T-Mobile actively concealed the above facts from the Commission.

Moreover, prior to September 3, 2008, T-Mobile submitted several filings to the Commission that were knowingly false in light of the information T-Mobile possessed concerning the filters it uses in its UMTS AWS-1 handsets. On numerous occasions – both before and *after* September 3, 2008 – T-Mobile submitted a diagram misleadingly suggesting that the roll off of its AWS-1 filters is much steeper than what T-Mobile admitted on September 3, 2008.³⁶

Since April 2007, T-Mobile has submitted several filings pertaining to the potential for interference between AWS-1 and AWS-3 operations, yet T-Mobile omitted any reference to its filters and instead suggested that interference would be due to uplink transmissions in the AWS-3 band.

For this reason, each filing made by T-Mobile during the relevant time period exaggerated (and thus deceptively misrepresented) the interference potential properly attributable to two-way operations in the AWS-3 band. It appears that T-Mobile's failure to reveal its imprudent choice of a filter that could materially increase the likelihood of interference was an attempt by T-Mobile to willfully and intentionally conceal these facts from the public and the Commission.

VIOLATION NUMBER 6 – DECEPTION AND WILLFUL MISREPRESENTATION OF MATERIAL FACTS

Between June and July 2008, T-Mobile conducted unilateral tests purporting to measure the impact of AWS-3 mobile operations on T-Mobile's AWS-1 mobile handsets. These tests were conducted at the Boeing EMC Laboratory in Seattle, Washington.³⁷

On July 25, 2008, T-Mobile submitted to the Commission the T-Mobile Report describing the results of its tests.

³⁶ Attachment 1 to this complaint includes the diagram typically used by T-Mobile in these proceeding and a more recent submission depicting the same filters. *See, e.g.*, T-Mobile Report at 8; T-Mobile September 3, 2008, *Ex Parte* at 6-7; *Ex Parte* Letter by T-Mobile, WT Docket Nos. 07-195 & 04-356 (filed Sept. 23, 2008); *Ex Parte* Letter by T-Mobile (Meeting with OET), WT Docket Nos. 07-195 & 04-356, at 7 (filed Sept. 18, 2008); *Ex Parte* Letter by T-Mobile, WT Docket Nos. 07-195 & 04-356, at 5 (filed Sept. 18, 2008); *Ex Parte* Letter by T-Mobile, WT Docket Nos. 07-195 & 04-356, at 5 (filed Sept. 17, 2008). The T-Mobile September 3, 2008, *Ex Parte* submission conveys a radically different message concerning the ability of T-Mobile's AWS-1 handsets to block unwanted signals.

³⁷ *See* Comments of T-Mobile, USA, Inc., WT Docket Nos. 07-195 & 04-356, Declaration of Neville R. Ray, ¶ 7 (filed July 25, 2008).

According to a sworn declaration by Mr. Ray in support of the T-Mobile Report and accompanying comments, T-Mobile tested guard bands providing 5 megahertz, 10 megahertz, and 15 megahertz of separation between AWS-1 and AWS-3 operations. As a result, Mr. Ray contended that “none of these guard bands is sufficient to mitigate fully AWS-3 interference” and that while “AWS-3 interference would be somewhat reduced by a guard band, adequate protection can be achieved only when combined with corresponding limitations on AWS-3 transmit power levels and limitations on AWS-3 OOB.”³⁸

From September 3, 2008 through September 5, 2008, additional tests were performed at the Boeing EMC Laboratory. These tests were open to the public and were observed by the Commission’s staff, and also by M2Z representatives Paul Kolodzy and Chuck Beam.³⁹

At the request of the Commission’s staff, the T-Mobile personnel performed the adjacent channel interference test using transmissions in the AWS-3 band and in multiple other bands – many of which were not adjacent to AWS-1, but are instead spectrally distant from the AWS-1 band.

The additional tests requested by the Commission’s staff demonstrated that T-Mobile had derived its July 25, 2008, test results from an inappropriate and misleading testing environment. Specifically, the additional tests showed that regardless of the separation distance which was tested, the results of the test as constructed by T-Mobile indicated that AWS-1 suffered essentially the same level of interference.

The final test requested by the Commission staff of the T-Mobile personnel involved testing AWS-1 performance when subject to emissions from unlicensed devices in the 2.4 GHz band. Despite nearly 300 megahertz of separation between the upper edge of the AWS-1 band and the lower edge of the 2.4 GHz band, the 2.4 GHz test results showed interference because the spectral separation was purportedly insufficient to protect T-Mobile’s AWS-1 operations.

The results from the Commission staff-ordered interference tests demonstrated that T-Mobile conducted unfair tests and submitted misleading results on July 25, 2008. In particular, the T-Mobile Report is based on testing methodologies and testing environments that appear rigged to show potential harmful interference in situations where no harmful interference could occur.

* * *

³⁸ *Id.* ¶ 21.

³⁹ See “The FCC’s Office of Engineering and Technology Announces Testing for AWS-3 Interference,” WT Docket Nos. 07-195 & 04-356, Public Notice, DA 08-1995 (rel. Aug. 27, 2008).

Attachment 1

DRAFT

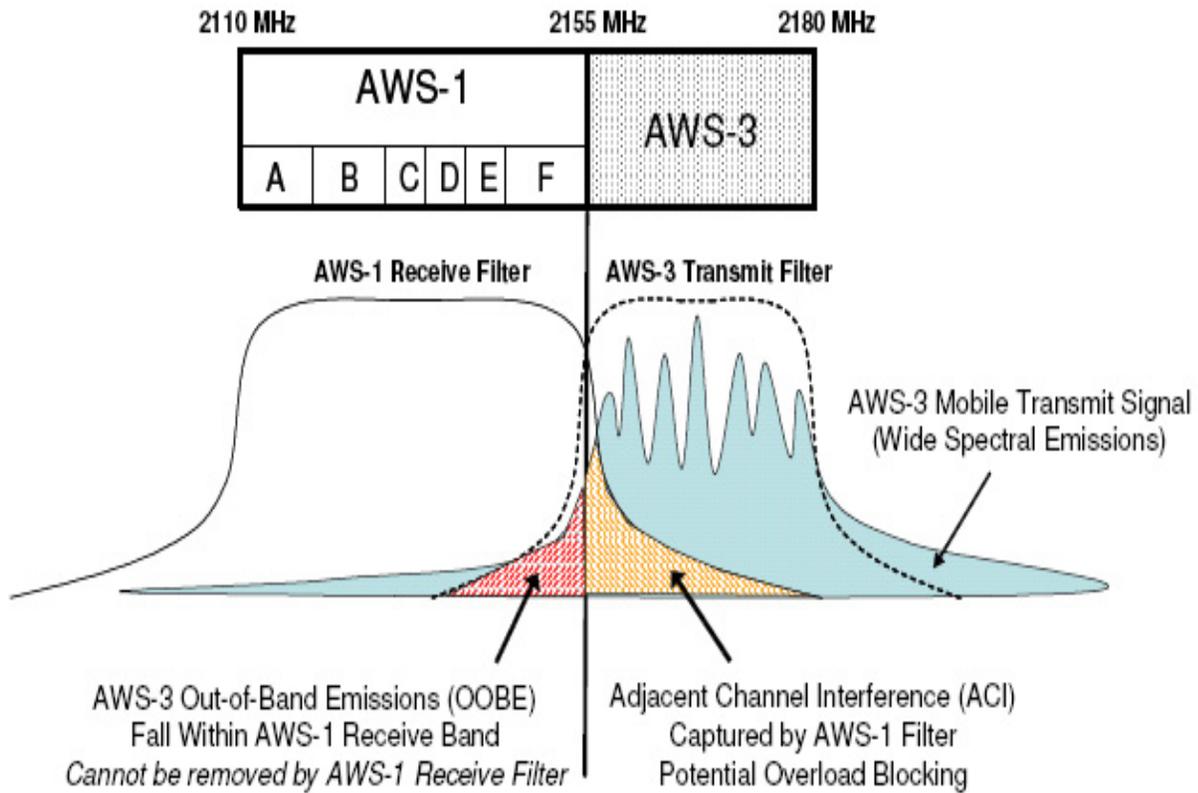


Figure 1. Illustration of Interference Mechanisms from AWS-3 into AWS-1.

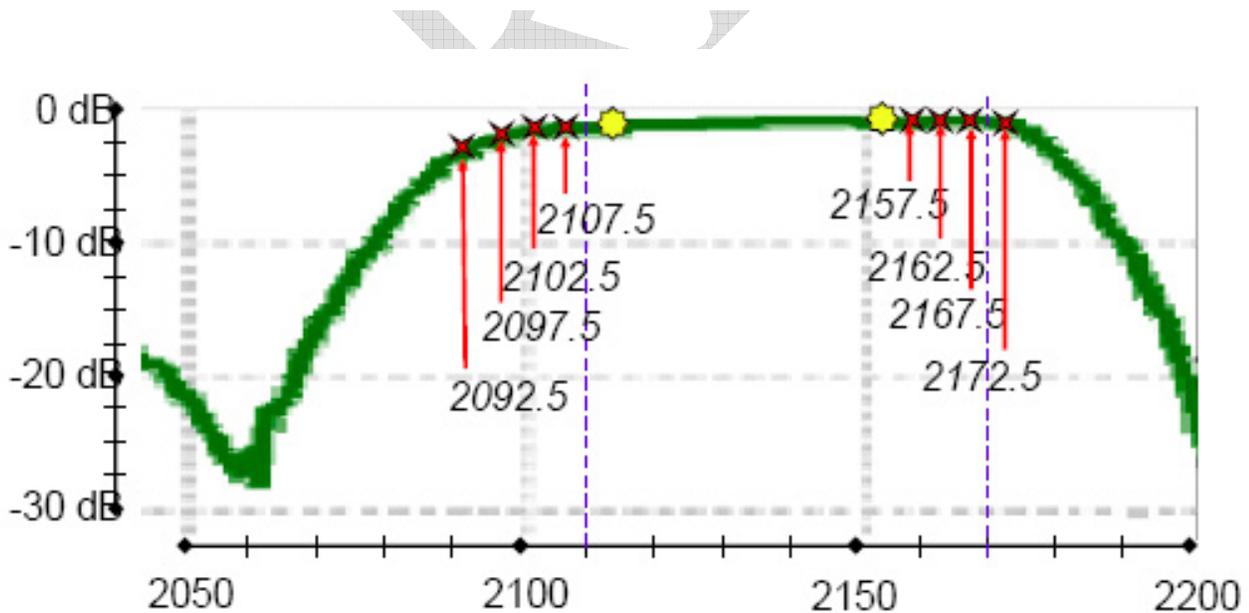


Figure 2 Band Pass Filter Chart from T-Mobile's September 3rd Ex Parte.