



August 6, 2009

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW – A325
Washington, DC 20554

**Re: WT Docket Nos. 07-195 and 04-356 – Notification of Oral Ex Parte
Presentation**

Dear Ms. Dortch:

On August 5, 2009, I met with Austin Schlick, FCC General Counsel, to discuss the status of the AWS-3 item that is currently on circulation. I explained that the record in the above-referenced proceedings is ripe for adopting innovative service rules enabling two-way nationwide broadband service in the 2155-2180 MHz band while promoting affordability and competition in the broadband sector. I also discussed the fact that the one year statutory deadline for completing Commission initiated proceedings under Section 7(b) of the Communications Act's expired last September. This is yet another compelling reason for the Commission to act quickly and adopt the pending service rules for the AWS-3 band.

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 that reads 'John Muleta'. The signature is written in a cursive style with a long, vertical tail on the letter 'J'.

John Muleta

cc: Mr. Austin Schlick

Innovation. Freedom.

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

OFFICE 703.894.9500 FAX 703.894.9501

Timeline of the AWS-3 Proceeding

Free Broadband Is An Idea a long time in the making...

1992 --- Initial FCC order designating emerging technologies bands including AWS-3 as a follow up to PCS allocation.

- “By this Notice, the Commission proposes to establish new areas of the spectrum to be used for emerging telecommunications technologies. These new frequency bands would be designated from 220 MHz of the spectrum between 1.85 and 2.20 GHz.”

2003 --- the Commission seeks comment on the highest and best use of the 2155-2180 MHz band.

- “In the Third R&O, we reallocate spectrum in the 2020-2025 MHz and 2165-2180 MHz bands that were formerly allocated for MSS. Although these bands are reallocated for fixed and mobile services, we have not made a decision on the best use for these bands.”
- “We seek comment on potential uses of the 2020-2025 MHz and 2155-2180 MHz bands.”

2004 --- “We ought to have...universal, *affordable* access for broadband technology by the year 2007.” President George W. Bush.

2005 --- FCC designates AWS-3 band for Advanced Wireless Service.

- “Based on our determination that additional spectrum is needed for AWS use, and because the characteristics of the 2155-2175 MHz band make it well suited for such use, we conclude that designating this band for AWS will promote efficient use of the spectrum and allow for the rapid introduction of high-value services in the band. Because the 2155-2175 MHz band is adjacent to the 2110-2155 MHz and 2175-2180 MHz bands that have already been designated for AWS, an AWS designation for this band will create 70 MHz of contiguous spectrum that will promote the rapid introduction of new technologies and service offerings, and will foster the use of the highest potential spectrum.”

2006 --- the Commission reiterates that it will create service rules for the 2155-2175 MHz band.

- “We note that we are not deciding here how to assign this new AWS spectrum at 2155-2175 MHz but will consider this issue in a separate service rules proceeding at a later date.”

Free Broadband Is An Idea a long time in the making...

May 5, 2006 --- M2Z files application for AWS-3 license to provide a nationwide free broadband service.

September 19, 2007 --- FCC initiates the AWS-3 NPRM and unanimously commits to complete the proceeding by August 14, 2008 (9 months after the NPRM is published in the Federal Register).

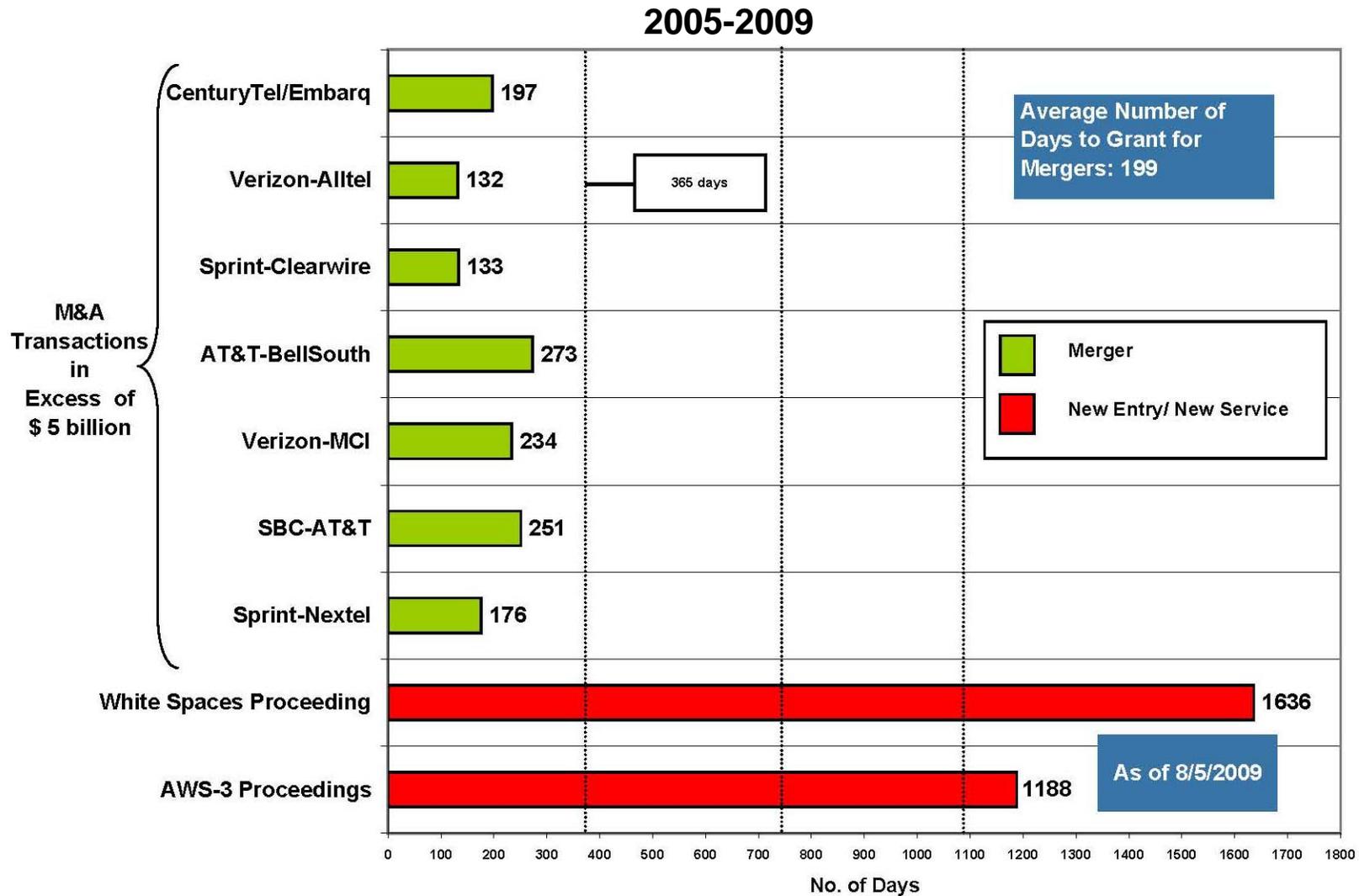
June 20, 2008 --- FCC issues a Further Notice of Proposed Rulemaking on AWS-3 and seeks additional comments.

September 3, 2008 --- At the behest of T-Mobile and other parties, FCC reviews AWS-3 interference tests conducted by T-Mobile with interested parties observing the tests (including AT&T, MetroPCS, Nokia, M2Z, and others).

October 10, 2008 --- FCC's Office of Engineering publicly releases Interference Report. ***OET Report concludes that, even under worst case scenarios assumed, using AWS-3 for 2-way broadband would not create a "significant risk of harmful interference."***

November 23, 2008 --- FCC Chairman Martin puts AWS-3 order on the December 18, 2008 Agenda meeting (meeting the internal FCC deadline for 3 weeks notice to the other Commissioners).

Consolidation Has Been A Priority Over New Entry and New Services During the Bush Administration*



* This chart depicts the number of days that these matters were pending prior to being granted.

What is at Stake in the Pending AWS-3 Order?

An order is pending at the FCC establishing AWS-3 (2155-2180 MHz) service rules to create a nationwide wireless broadband network on 25 MHz of fallow unpaired spectrum. The rules would specify the spectrum to be auctioned with the following public interest commitments:

- 1) **Open access network**: no blocking of content;
- 2) **Open platform network**: no proprietary end-user equipment (similar to 700 MHz “C” Block);
- 3) **Nationwide Free Service**: at least 25% of the network capacity dedicated to a free (no monthly subscription charge or other fees) at 768 kbps (the FCC’s definition of basic broadband);
- 4) **Aggressive build out requirements** – coverage of 50% of the population in 4 years; 95% within 10 years (with license revocation as a remedy for failure to comply)