



September 30, 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 and GN 09-51 – Notification of Oral  
Ex Parte Presentation**

Dear Ms. Dortch:

On September 29, 2009, John Muleta and the undersigned, on behalf of M2Z, met with Thomas Reed and Carolyn Fleming-Williams of the Office of Communications Business Opportunities, to discuss the impact of regulatory delay on entrepreneurs and small businesses. The enclosed materials were provided at the meeting and outline the topics of our discussion.

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 Onyeije', with a long horizontal flourish extending to the right.

Uzoma Onyeije

cc: Mr. Thomas Reed  
Ms. Carolyn Fleming-Williams

Innovation. Freedom.

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# **AWS-3 Case Study: The Impact of FCC Regulatory Delay on Entrepreneurs and Small Businesses**

**September 29, 2009**

# Who is M2Z?

- Silicon Valley backed firm seeking to provide nationwide wireless broadband services in the AWS-3 spectrum band
- African-American led start up with a 40% minority board of directors and 70% minority staff.

## Founders and Board committed to innovation, open networks and consumer empowerment

Name	Firm	Select Investments	Other Board Memberships
John Doerr	Partner, Kleiner Perkins Caufield & Byers		Google, Amazon, Intuit, Homestore, Sun, Good Technology, Miasole, Purkinje, Spatial Photonics
Bruce Sachs	Partner, Charles River Ventures		iControl, BigBand Networks, Celerica, Cedar Point Communications, Acopia Networks and Vertex Pharmaceuticals, Inc.
Geoff Yang	Partner, Redpoint Ventures		Ask Jeeves, Tivo, Azul Systems, BigBand Networks, Calix, Caymas Systems, Efficient Frontier, M2Z Networks, MySpace, JotSpot and Oodle
Milo Medin	Chairman & CTO, M2Z		
John Muleta	CEO, M2Z		First Avenue Networks, HRSmart, PacketHop, Visto

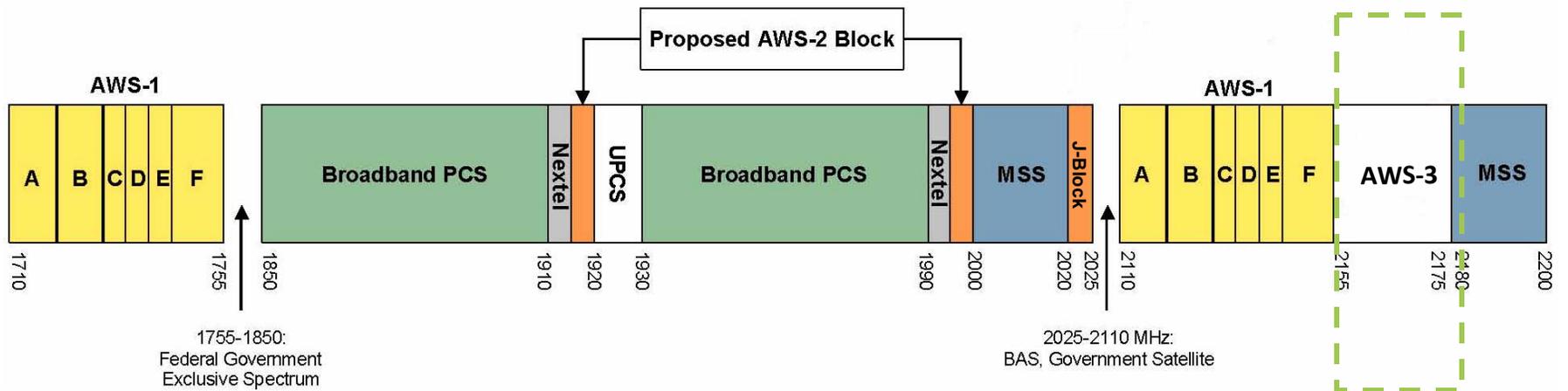
## **M2Z's Mission is to eliminate cost as a barrier to broadband adoption**

- **According to PEW Research, 37% of the population still does not have broadband primarily due to affordability and the impact is on the poor and on minorities.<sup>1</sup>**
  
- **A July 2009 study by the University of Illinois (Chicago) on citywide technology use within Chicago finds:<sup>2</sup>**
  - Nearly 40 percent of Chicago residents, especially African-Americans, Latinos and those aged 67 or more, have limited or no access to the Internet.
  - Both African-Americans and Latinos without Internet access at home are more likely than whites to cite costs as the main reason for not being online, rather than a lack of interest.

# What is the AWS-3 Spectrum Band?

## Advanced Wireless Services Band Plan

- 25 MHz Unpaired Allocation at 2155-2180 MHz.
- Designation and Relocation Proceedings completed in 2006.<sup>3</sup>
- AWS-3 still has no service rules in place.



## What is at stake in the pending AWS-3 Order?

Pending service rules that create a nationwide wireless broadband network on 25 MHz of fallow unpaired spectrum. As we understand it, the pending rules would specify the 2155-2180 MHz spectrum is to be auctioned with the following public interest commitments outlined in the June 2008 FNPRM:

- 1) **Open access network**: no blocking of content (similar to 700 MHz “C” Block);<sup>4</sup>
- 2) **Open platform network**: no proprietary end-user equipment (similar to 700 MHz “C” Block);<sup>5</sup>
- 3) **Nationwide Free Broadband Service**: at least 25% of the network capacity dedicated to a free (no monthly subscription charge or other fees) service with a minimum of 768 kbps (download) which is the FCC’s definition of basic broadband;<sup>6</sup>
- 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).<sup>7</sup>

# AWS-3 Provides Much Needed Nationwide Competition in Broadband

Two economic studies in the record estimate the net present value of consumer benefits from the proposed AWS-3 service rules and public interest obligations could exceed \$18 billion.

*Current Advertised Rates for Wireless Broadband Access  
(Proprietary Consumer Equipment purchased separately)*

\$ 60.00/ month <sup>8</sup>
with typical data rates of up to 600-1.7 Mbps downloads
Proprietary CPE



\$59.99/ month <sup>9</sup>
with typical data rates of up to 600-1.4 Mbps downloads
Proprietary CPE



\$ 59.99/ month <sup>10</sup>
with typical data rates of up to 700-1.5 Mbps downloads
Proprietary CPE



\$ 40.00/ month <sup>11</sup>
with data rates of 400-700 kbps download
Proprietary CPE



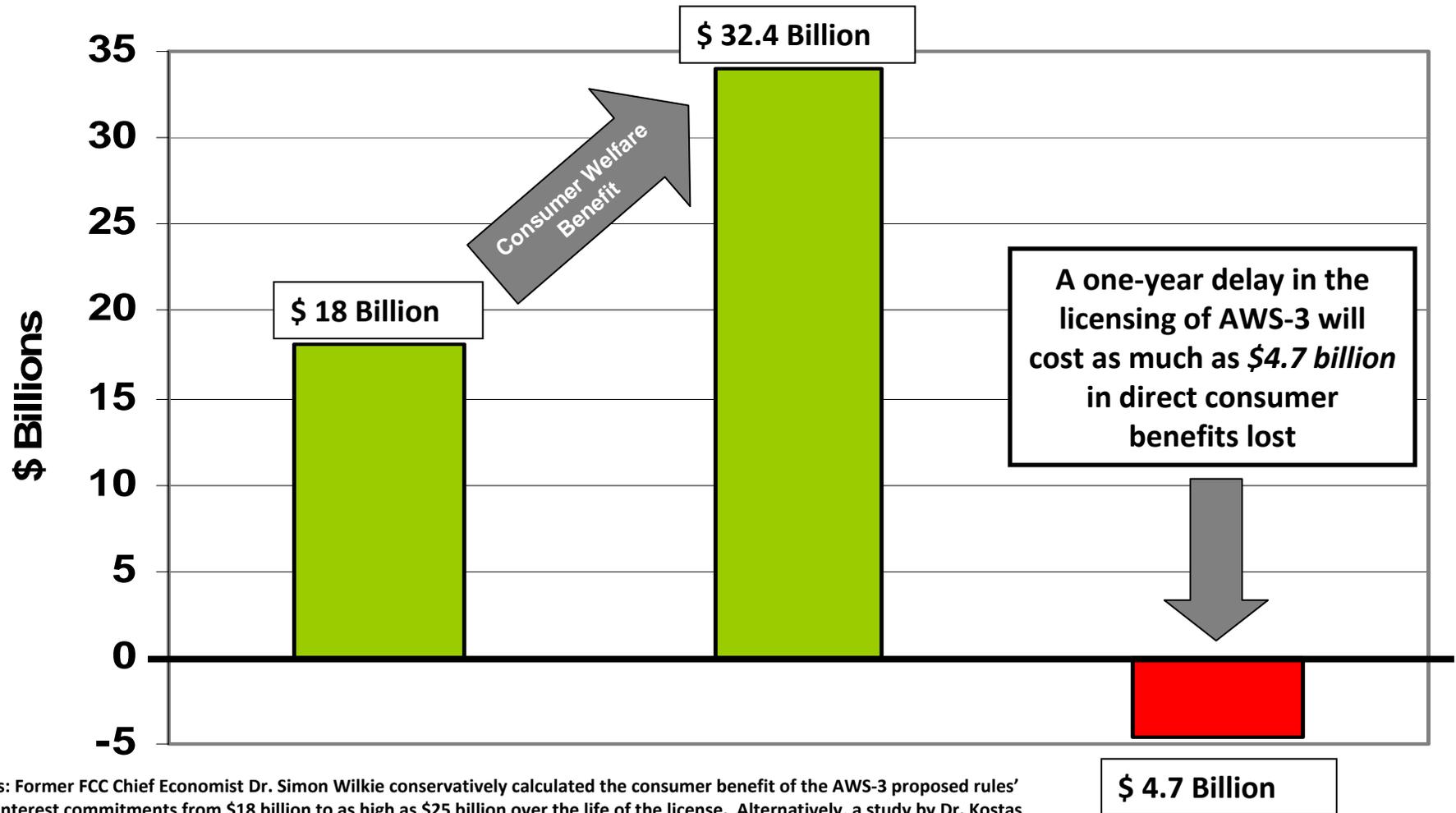
\$ 20.00/ month <sup>12</sup>
with data rates of up to 768 kbps download
Proprietary CPE (?)



\$ 0.00/ month <sup>13</sup>
with data rates of 768 kbps
Open Device Platform

AWS-3

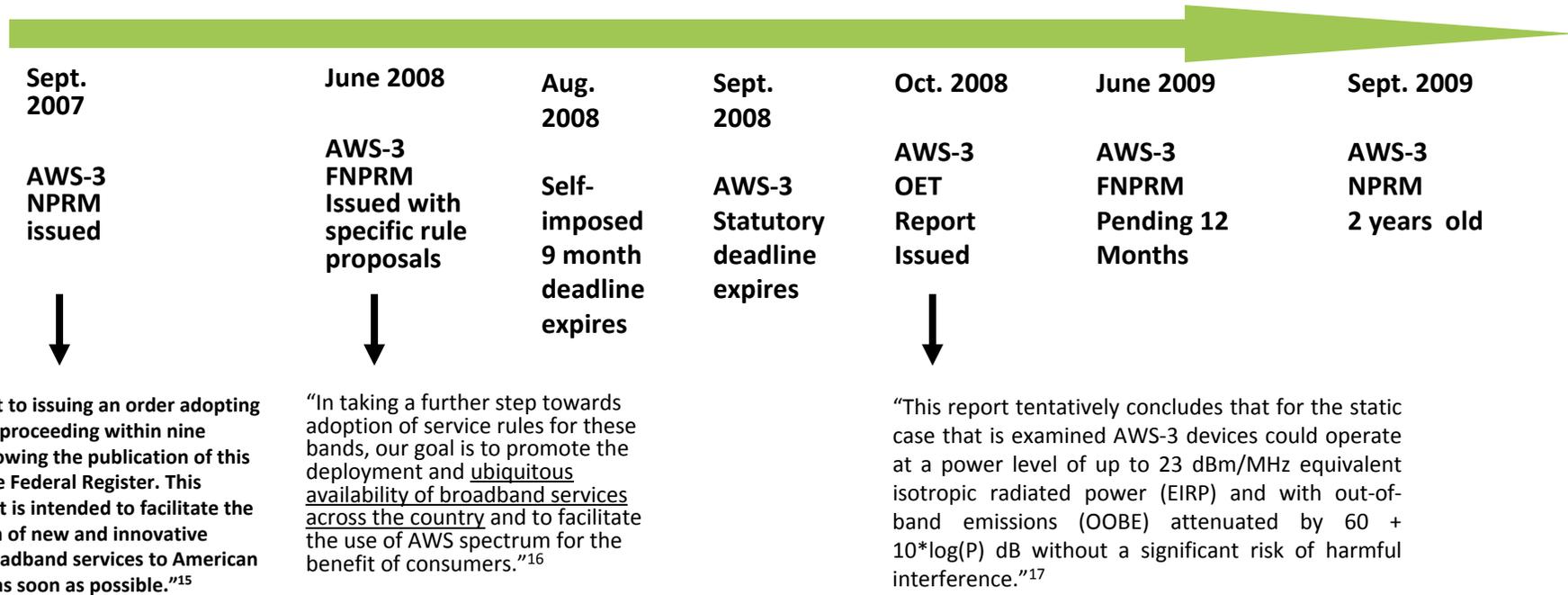
# AWS-3 will have Significant Impact on Consumer Welfare



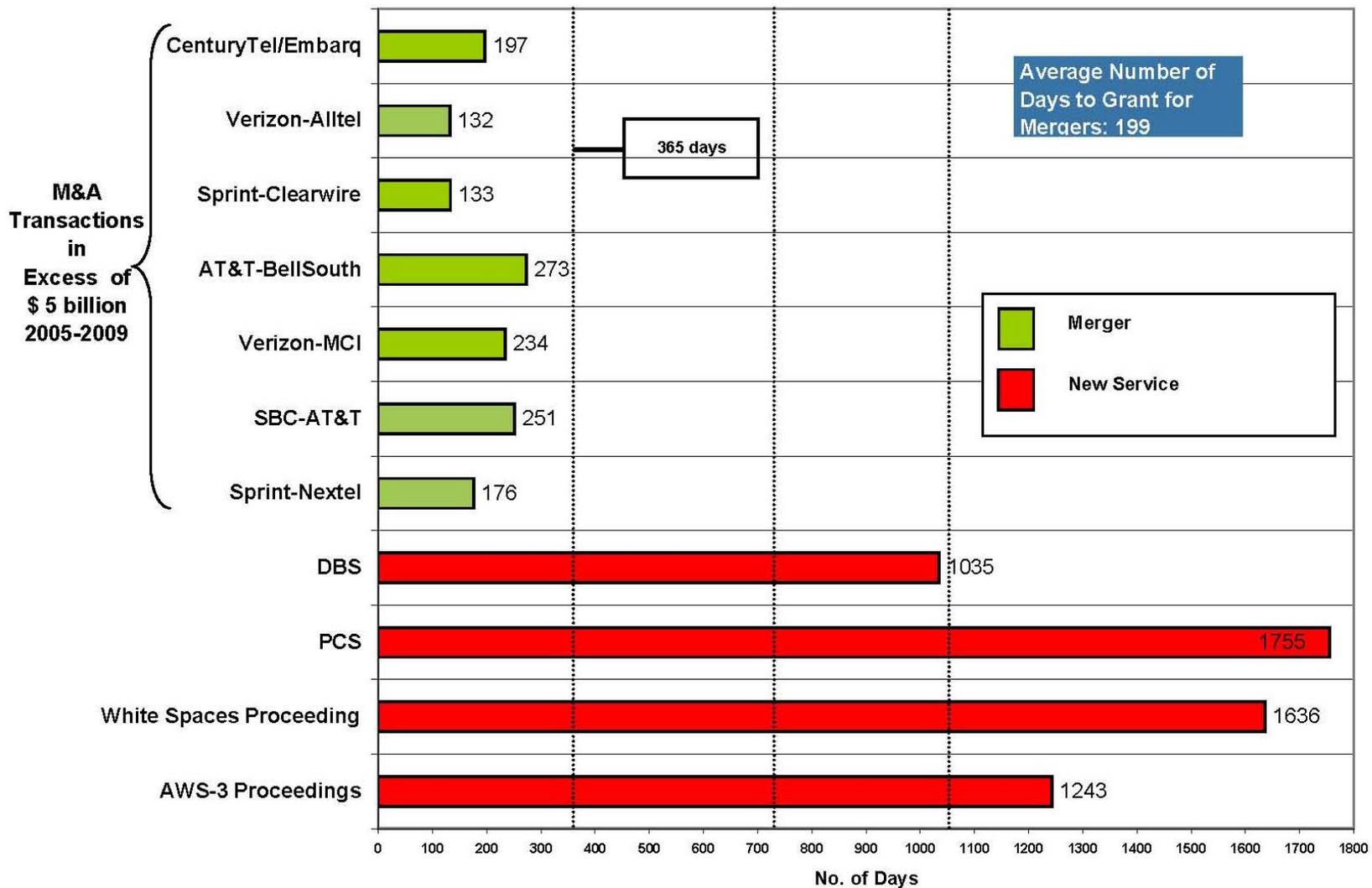
Sources: Former FCC Chief Economist Dr. Simon Wilkie conservatively calculated the consumer benefit of the AWS-3 proposed rules' public interest commitments from \$18 billion to as high as \$25 billion over the life of the license. Alternatively, a study by Dr. Kostas Liopiros found that those benefits could reach as high as \$32.4 billion. The direct cost to consumer benefit of a one-year delay in the grant of that license was calculated at up to \$4.7 billion.<sup>14</sup>

# The AWS-3 Rulemaking is Long Overdue

M2Z applied for a spectrum license in May 2006 and the FCC took 18 months to decide that matter. In light of the delay, the FCC opened up an NPRM. That NPRM has now been pending for two years and the proceeding for over 3 years.



# New Entrants and Small Businesses Should be Provided with a Level Regulatory Certainty that Compares to Large Firms\*



\* This chart depicts the number of days that these matters were pending prior to being granted.<sup>18</sup>

## Regulatory Delays Hurt New Entrants and Capital Formation

- **The Commission's processes have often been criticized for unnecessary delays when it comes to concluding proceedings, especially those that deal with new technologies or new services.<sup>19</sup>**
- **Many policy groups and economists have identified how incumbents are dominating spectrum auctions and stifled innovation.<sup>20</sup>**

# How can the FCC ensure the robust participation of Innovators and New Entrants?

## Canadian AWS-1 Auction as a Model

- **Prior to the 2008 Canadian AWS-1 auction, less than 60 percent of the population subscribed to wireless mobile services. To address that dismal number, the 2008 Canadian AWS-1 auction set aside for new entrants three of the six blocks (accounting for 40% of the available spectrum).<sup>21</sup>**
  
- **In the end the auction shattered all expectations and a number of new potential wireless carriers (ranging from startups backed by financial entities to power companies) participated in the bidding for the new entrant blocks and led to a four-fold increase in the expected revenues from the auction.**
  - At the conclusion of the auction, Minister of Industry Jim Prentice stated: “The auction exceeded our expectations in terms of the level of competitive bidding activity. I hope the industry keeps this competitive spirit alive as it enhances and expands its services with improved access to the spectrum.”<sup>22</sup>
  - “The set-aside spectrum [for new entrants] was, in our opinion, one of the key factors that led to the high level of competitive bidding (and hence, higher prices), luring in bidders that would have otherwise not participated in the auction.”<sup>23</sup>

# The Commission should conclude the AWS-3 Proceeding and Auction the Spectrum

**The Commission should add a New Entrant Requirement to AWS-3 in order to allow small businesses a real opportunity to succeed at auction.**

- Anti-competitive behavior by incumbents have gamed the regulatory processes at the FCC, especially in spectrum auctions.
- A New Entrant Requirement for the AWS-3 band would give innovators, entrepreneurs, as well as small businesses a chance to acquire spectrum for the provision of revolutionary new services.

# End Notes

1. See John Horrigan, Pew Internet & American Life Project, “Home Broadband Adoption 2009” p. 3, 37, Jun. 17, 2009, available at: <http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx>.
2. See Karen Mossberger and Caroline J. Tolbert, “Digital Excellence in Chicago” p. 6, Jul. 2009, available at: [http://egov.cityofchicago.org/webportal/COCWebPortal/COC\\_ATTACH/Digital\\_Excellence\\_Study\\_2009\\_Web.pdf](http://egov.cityofchicago.org/webportal/COCWebPortal/COC_ATTACH/Digital_Excellence_Study_2009_Web.pdf).
3. See 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, including Third Generation Wireless Systems, ET Docket No. 00-258, Ninth Report and Order, FCC 06-45 (rel. Apr. 21, 2006) (“AWS 9th R&O”) (establishing procedures for relocation of incumbent users)
4. AWS-3 FNPRM at ¶ 3 and proposed rule 27.16(b).
5. Id.
6. AWS-3 FNPRM at ¶ 3 and proposed rule 27.1191.
7. Id at ¶ 3 and proposed rule 27.14(a).
8. Advertised Rates by AT&T available at: <http://www.att.com/gen/general?pid=11023>.
9. Advertised Rates by Verizon available at: <http://www.verizonwireless.com/b2c/mobilebroadband/?page=plans&lid=//global//plans//mobile+broadband+plan>.
10. Advertised Rates by T-Mobile available at: <https://www.t-mobile.com/shop/plans/cell-phone-plans-detail.aspx?tp=tb1&rateplan=T-Mobile-webConnect-Data>.
11. Advertised Rates by Cricket available at: <http://www.mycricket.com/cricketplans/details/broadband>.
12. Advertised Rates by Clearwire available at: <http://www.clearwire.com/>.
13. See AWS-3 FNPRM at ¶ 3 and proposed rule 27.1191 (b).
14. See e.g. 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); Kostas Liopiros, “The Value of Public Interest Commitments and the Cost of Delay to American Consumers,” WT Docket No. 07-16 (submitted Mar. 19, 2007).
15. See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band, 22 FCC Rcd 17035, at ¶ 4 (2007) (“AWS-3 NPRM”). The NPRM was published in the Federal Register on November 14, 2007. Federal Communications Commission, Proposed Rules, Advanced wireless services in 2155-2175 MHz band, 72 Fed Reg. 64013–64018, at (November 14, 2007). Thus, the Commission promised regulatory certainty for the companies interested in this spectrum by August 14, 2008.
16. 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, at ¶ 1 (rel. Jun. 20, 2008) (“AWS-3 FNPRM”).

# End Notes

17. See Advanced Wireless Service Interference Test Results and Analysis, WT Docket. Nos. 07-195 & 04-356, at 3, (rel. Oct. 10, 2008) (“OET AWS-3 Test Results and Analysis”).
18. Information developed from FCC Office of General Counsel Major Transactions Page. (<http://www.fcc.gov/transaction/mergerorderschron.html>)
19. See e.g. Michael J. Marcus, *Comments and Observations on Weiser “FCC Reform and the Future of Telecommunications Policy,”* (Jan. 2009) available at: <http://fcc-reform.org/response/comments-and-observations-weisers-fcc-reform-and-future-telecommunications-policy> (“The lack of a clear FCC policy towards innovation complicates capital formation for innovative technologies. The start and stop nature of recent FCC rulemaking is very stressful on companies funded with venture capital – a fact rarely recognized at FCC.”); Thomas Hazlett, “Washington’s Wireless Wars”, Presented at the Manhattan Institute Forum, Autumn 2002, at 2. Available at <http://mason.gmu.edu/~thazlett/presentations.html>; Digital Age Communications Act, Report from the Working Group on New Spectrum Policy n.6 (March 2006) (“The idea here would be to define a timetable that gives the FCC extremely limited discretion in order to limit the ability of incumbents to slow the introduction of new services.”); Gregory L. Rosston, *The Long and Winding Road: The FCC Paves the Path with Good Intentions, Telecommunications Policy*, Vol. 27, No. 7. 501-515, August 2003; “Comments of 37 Concerned Economists” in the Matter of Promoting Efficient use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, February 7th, 2001. Page 6, available at: <http://www.aeibrookings.org/admin/authorpdfs/page.php?id=417> (“Strict time limits should streamline the process whereby an entrant requests permission to use unoccupied frequencies, others are given opportunity similarly to request the desired rights, and competitive bidding procedures are used to resolve the conflict.”).
20. See e.g. Gregory Rose and Mark Lloyd “The Failure of FCC Spectrum Auctions” at 15 (May 2006) available at: [http://www.americanprogress.org/kf/spectrum\\_auctions\\_may06.pdf](http://www.americanprogress.org/kf/spectrum_auctions_may06.pdf); Gregory Rose “How Incumbents Blocked New Entrants in the AWS-1 Auction: Lessons for the Future” at 9 (Apr. 20, 2007) available at: [http://www.mediaaccess.org/file\\_download/180](http://www.mediaaccess.org/file_download/180); Gregory Rose, “Tacit Collusion in the AWS-1 Auction: The Signaling Problem” (Apr. 20, 2007) available at: [http://www.mediaaccess.org/file\\_download/181](http://www.mediaaccess.org/file_download/181); Letter to Chairman Kevin Martin from Professor Simon J. Wilkie, WT Docket 07-195 (filed Dec. 14, 2007) (resubmitting paper entitled “Spectrum Auctions are Not a Panacea: Theory and Evidence of Anti-competitive Rent-seeking Behavior in FCC Rulemakings and Auction Design”).
21. See Licensing Framework for the Auction for Spectrum Licenses for Advanced Wireless Services and other Spectrum in the 2 GHz Range, Gazette Notice DGRB-011-07 (Dec. 2007) available at [http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapi/awslicensing-e.pdf/\\$FILE/awslicensing-e.pdf](http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapi/awslicensing-e.pdf/$FILE/awslicensing-e.pdf) ; see also News Release, Industry Canada, “Government of Canada Opens Up Wireless Industry to More Competition” (May 27, 2008) available at <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/04212.html> . Industry Canada also mandated that existing carriers share towers and roaming spectrum in order to give new entrants an opportunity for achieving scale.
22. See News Release, Industry Canada, “15 Companies Bid Almost \$4.3 Billion for Licenses for New Wireless Services” (Jul. 21, 2008) available at: <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/04175.html> .
23. See, e.g., David George-Cosh, “Wireless auction raises \$4.25 billion; About 300 licenses up for grabs. Canadians will have up to five more firms to choose from in each province, territory,” *Montreal Gazette*, July 22, 2008 at B2; David George-Cosh, “Wireless Users Stand to Win; Bidding Ends; New choices to emerge in cellphone market,” *National Post*, July 22, 2008 at A1; see also CIBC World Markets, “AWS Auction Finally Ends – \$4.25B Is A Big Tally,” at 4 (Jul. 21, 2008)