



June 10, 2010

Via Electronic Filing

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Atwell Baker
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Written Ex Parte Communication, WT Docket Nos. 07-195, 04-356 and GN Docket Nos. 09-51 and 09-157

Dear Chairman and Commissioners:

M2Z submits this ex parte letter in response to a May 27, 2010 filing by Steve Largent, President of CTIA.¹ M2Z has previously demonstrated that CTIA and its members are acting to delay resolution of the AWS-3 proceeding in order to block the emergence of a new nationwide broadband competitor.² CTIA's May 27th filing is a demonstration of CTIA's anti-competitive actions because the association implicitly seeks another round of delay to the resolution of the AWS-3 proceeding by suggesting a new band pairing plan and disposing of its original request.

CTIA's renewed call for FCC delay in issuing AWS-3 service rules is flatly inconsistent with the National Broadband Plan. The National Broadband Plan recommended that "NTIA, in consultation with the FCC, should conduct an analysis, to be completed by October 1, 2010, of the possibility of reallocating a portion of the 1755-1850 MHz band to pair with the AWS-3 band."³ If, however, there is no "strong possibility of reallocating a portion of [the 1755-1850 MHz band] to pair with the AWS-3" the Commission pledged to move "promptly to adopt final rules in 2010 and auction the AWS-3 spectrum on a stand-alone basis."⁴ As explained below, NTIA, to its credit, has expeditiously conducted its analysis and concluded that the 1755-1850 MHz band is not available for commercial reallocation. In light of this fact, the time has now come for the FCC to similarly move with dispatch and fulfill its commitment to promptly license AWS-3 as a stand-alone spectrum band.

¹ See Letter from Steve Largent, CTIA to Chairman Julius Genachowski and Assistant Secretary Strickling, GN Docket Nos. 09-51, 09-157 and WT Docket Nos. 07-157, 04-356 (filed May 27, 2010) ("CTIA May 27, 2010 Ex Parte").

² See Attachment A.

³ Connecting America: The National Broadband Plan at 86-87 (Mar. 16, 2010) ("NBP").

⁴ *Id.*

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During the past year, CTIA and its members have mounted a relentless campaign at the FCC to further delay the AWS-3 proceeding by advocating that the 1755-1780 MHz band be paired with the AWS-3 spectrum.⁵ Proponents of this pairing charade claimed that the 1755-1780 MHz band was “readily available”⁶ and that such pairing would “further the goals of international spectrum harmonization.”⁷ In response, M2Z has demonstrated that the proposal of CTIA and its members to pair AWS-3 with 1755-1780: (i) would not result in an internationally harmonized band;⁸ (ii) is not technologically neutral;⁹ (iii) would exacerbate the fact that the FCC has failed to license sufficient broadband spectrum on an unpaired basis;¹⁰ (iv) would result in years of unnecessary delay to the release of the AWS-3 spectrum band;¹¹ and (v) would be impractical, for a variety of reasons.¹²

Recently, NTIA Administrator Larry Strickling made it clear that the 1755-1780 MHz band is not available for commercial reallocation.¹³ Now that it is clear that the Commission cannot pair the 1755-1780 MHz band with AWS-3, CTIA is suddenly and disingenuously altering its advocacy to fit the facts. CTIA’s May 27, 2010 filing indicates that “CTIA and its members have strongly supported the pairing of AWS-3 spectrum with the federal *spectrum in or*

⁵ See Letter from Christopher Guttman-McCabe, CTIA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn and Commissioner Meredith Attwell Baker, GN Docket No. 09-51 at 16 (filed Sept. 29, 2009). In addition to CTIA, T-Mobile and MetroPCS have sought the pairing of the 1755-1780 band with AWS-3. See also Letter from Howard J. Symons, on behalf of T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 06-150, 07-195, PS Docket No. 06-229 and GN Docket Nos. 09-47, 09-51, 09-137, 09-157 (filed Feb. 5, 2010); Letter from Kathleen O'Brien Ham, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-195, and GN Docket Nos. 09-47, 09-51, (filed May 12, 2010); Letter from Carl W. Northrup, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Oct. 14, 2009); Letter from Carl Northrup, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51, (filed Nov. 5, 2009); Letter from Carl W. Northrup, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51, (filed Dec. 8, 2009); Letter from Carl W. Northrup, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Jan. 14, 2010); Letter from Michael Lazarus, on behalf of MetroPCS and Ericsson, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Jan. 14, 2010); Letter from Carl Northrup, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Feb. 4, 2010). Members of the Telecommunications Industry Association including representatives from Ericsson, Inc., Lockheed Martin, Nokia Siemens, Harris Corp. and Qualcomm have also advocated for the specific pairing of the 1755-1780 band with AWS-3. See also Letter from Patrick Sullivan, Telecommunications Industry Association to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Apr. 27, 2010); Letter from Patrick Sullivan, Telecommunications Industry Association to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 (filed Apr. 30, 2010)

⁶ CTIA has repeatedly indicated that the 1755-1780 MHz band is “readily-available” in *ex parte* submissions in the following dockets: GN Docket Nos. 09-157, 09-47, 09-137 and WT Docket Nos. 08-165, 08-166, 08-167, 09-66 on Sept. 30, 2009; Oct. 2, 2009; Oct. 5, 2009; Oct. 29, 2009; Nov. 3, 2009 and Nov. 13, 2009.

⁷ See Letter from David J. Redl, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-157, 09-51 at ¶ 8 (filed Mar. 4, 2010).

⁸ See Letter from Uzoma Onyeije, M2Z to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-51 (filed Oct. 2, 2009).

⁹ *Id.*

¹⁰ See Letter from Uzoma Onyeije, M2Z to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 (filed Dec. 8, 2008).

¹¹ See Letter from John B. Muleta, M2Z to Chairman Julius Genachowski, FCC, WT Docket Nos. 04-356, 07-195 and GN Docket Nos. 09-51, 09-157 (filed Feb. 19, 2010).

¹² *Id.*

¹³ “As many of you know, the FCC, largely at the request of industry, has suggested that NTIA evaluate the 1755-1780 band for possible pairing in an auction with the 20 MHz of AWS-3 spectrum at 2155-2175. We have concluded from our preliminary review of that band that there are too many agencies and assets involved to allow for a pairing with AWS-3 in the time frame the FCC has set for an auction.” See Remarks of Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, delivered at Public Knowledge Federal Spectrum Conference, Jun. 3, 2010. Multiple press reports have also cited Mr. Strickling as having declared the pairing of the 1755-1780 MHz band with AWS-3 as a moot point. Mr. Strickling explained to reporters that “the timeframe the FCC’s talking about for an auction . . . to pair it with AWS-3 - we can’t get that band [1755-1780 MHz] dealt with in that timeframe.” He went on to clarify “[t]hat’s not to say it isn’t a candidate for eventual reallocation down the road, but it’s a multi-year process. We have too many agencies in there.” See TRDaily, June 3, 2010. Previously Administrator Strickling debunked the “readily available” argument by noting that “[t]he band is used for many critical government operations” and that “[t]he idea that that is something that could be auctioned quickly is not one that I think could come to fruition.” See Communications Daily, May 4, 2010.

around 1.7 GHz.”¹⁴ This statement mischaracterizes CTIA’s own repeated and specific requests for pairing the 1755-1780 MHz, and that band alone, with AWS-3.¹⁵ In order to justify this change in tactics, CTIA also blatantly mischaracterizes the recommendations of the National Broadband Plan by stating that the Commission sought to “explore pairing the AWS-3 band with Federal spectrum in or around 1.7 GHz.”¹⁶ The Commission, however, did not make such an open-ended recommendation. Instead, the Commission made a very narrow recommendation in the National Broadband Plan to examine the feasibility of pairing only the 1755-1780 MHz band with AWS-3.¹⁷

CTIA and its members have used the FCC’s regulatory process to delay the AWS-3 rulemaking by nearly two years beyond the August 2008 deadline that was unanimously agreed to by the prior Commission.¹⁸ With NTIA’s assessment confirming that the 1755-1780 MHz band cannot be paired with AWS-3, the Commission should eschew further delay and immediately follow through on its commitment in the National Broadband Plan to conclude the AWS-3 proceeding promptly, on a stand-alone basis. CTIA’s introduction of a new pairing construct, presumably the 1675-1710 MHz band,¹⁹ is an attempt to delay and derail the FCC’s roadmap for AWS-3 mere weeks after release of the National Broadband Plan.

Finally, M2Z notes that now that the Commission is finally poised to act on the promise it made in the National Broadband Plan, CTIA’s May 27st filing also tries to revive the bogus claims that two-way AWS-3 operations would “result in unacceptable levels of interference to existing licensees”²⁰ in order to create more delay. CTIA flatly ignores OET’s AWS-3 interference report from October 2008 – testing that it requested and which resulted in delay of an imminent resolution of the in the AWS-3 proceeding. Relying on a worst-case, static analysis, OET concluded in its October 2008 report that the AWS-3 rules proposed by the Commission in the June 2008 AWS-3 FNPRM could be employed for two-way operations “without a significant risk of harmful interference” to adjacent systems.²¹ More recently, the Commission’s WCS-SDARS Report and Order²² adopted a probabilistic framework, which has long been championed by M2Z, as a way of analyzing interference between neighboring systems in order to make efficient use of spectrum and introduce more broadband spectrum into the marketplace. The October 2008 Report from OET explained that a probabilistic analysis could lead to even more lenient technical rules in AWS-3 because “[t]he statistical nature of calling patterns, frequency selection, transmitter and receiver location, and signal

¹⁴ CTIA May 27, 2010 Ex Parte at ¶ 3 (emphasis added).

¹⁵ See *supra* note 3 and note 6.

¹⁶ CTIA May 27, 2010 Ex Parte at ¶ 3.

¹⁷ The Commission specifically explained that “[t]here are a number of countries that have allocated spectrum in the 1710-1780 MHz band for commercial use and devices already exist in the international market for that spectrum. Consequently, pairing the AWS-3 band with spectrum from the 1755-1780 MHz band has the potential to bring benefits of a global equipment ecosystem to this band.” See NBP at 86.

¹⁸ See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band, 22 FCC Rcd 17035 ¶ 4 (2007) (“We commit to issuing an order adopting rules in this proceeding within nine months following the publication of this Notice in the Federal Register.”). The AWS-3 NPRM was published in the Federal Register on November 14, 2007. See 72 Fed Reg. 64013-64018 (November 14, 2007). Thus, the Commission promised regulatory certainty for the companies interested in this spectrum by August 14, 2008. Unfortunately, the former FCC did not live up to its commitment to take final action. And with this failure, resolution of the assignment of AWS-3 has been pending for over 4 years. See Attachment B.

¹⁹ Press reports have recently suggested that the 1675-1710 MHz band could be paired with AWS-3. See TRDaily, June 3, 2010.

²⁰ CTIA May 27, 2010 Ex Parte at ¶ 9.

²¹ See “Advanced Wireless Service Interference Tests Results and Analysis” at 3 (rel. Oct. 10, 2008). OET further concluded that “when factoring in actual operation under non-static conditions, the situation only improves.” Advanced Wireless Service Interference Tests Results and Analysis at 16.

²² See Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band: Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band Report and Order, Second Report and Order, WT Docket No. 07-293 (rel. May 20, 2010).

levels only serves to improve the predicted performance and results in fewer instances of interference than would be predicted by this static case.”²³ Similar to the AWS-3 context, the use of probabilistic analysis in WCS-SDARS helped to resolve a longstanding impasse and “provide[s] WCS licensees with the ability to offer mobile broadband services, while limiting the potential for harmful interference to incumbent services operating in adjacent bands.”²⁴ CTIA’s advocacy ignores state-of-the-art spectrum management techniques in favor of inaccurate and anachronistic methods in order to bog down the AWS-3 proceeding and impede new competition. M2Z respectfully asks that the Commission also disregard this piece of CTIA’s anticompetitive rhetoric as it moves to complete the service rules for AWS-3.

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,



Uzoma C. Onyeije

cc: Mr. Edward Lazarus
Mr. Bruce Gottlieb
Ms. Ruth Milkman
Mr. Julius Knapp
Mr. John Giusti
Ms. Angela Giancarlo
Mr. Louis Peraertz
Mr. Charles Mathias
Mr. Jim Schlichting
Mr. John Leibovitz
Mr. Ira Keltz
Ms. Blaise Scinto
Ms. Margaret Weiner
Mr. Peter Daronco
Mr. Gary Michaels
Mr. Kevin Holmes
Mr. Paul Malmud
Mr. Brian Wondrack
Mr. Stephen Zak

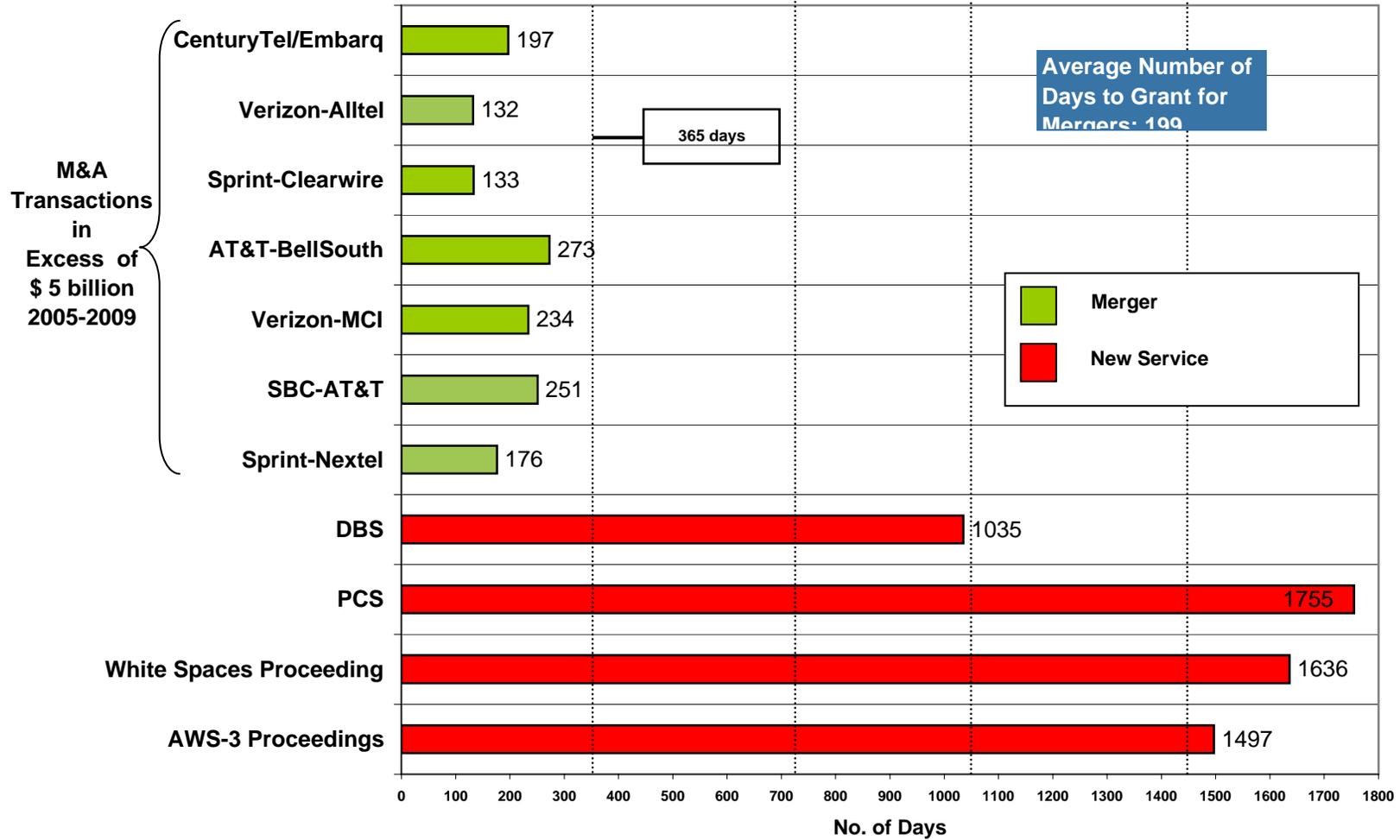
²³ Advanced Wireless Service Interference Tests Results and Analysis at 16

²⁴ *Id.* at ¶ 2.

ATTACHMENT A: AWS-3: A PUBLIC ASSET HAS BEEN HELD HOSTAGE FOR OVER FOUR YEARS DUE TO A CONSTANTLY EVOLVING CAMPAIGN FOR DELAY

Major Calls for Delay	Illustrative Filings
<p>2010: The AWS-3 band should be paired with the 1675-1710 MHz band.</p>	<p>Previously, CTIA and its members repeatedly requested that the FCC pair the AWS-3 band specifically with the 1755-1780 MHz band. In May of 2010, NTIA Administrator Larry Strickling dismissed this as a possibility. In response, CTIA has changed its stance and now seeks pairing of AWS-3 spectrum with “federal spectrum in or around 1.7 GHz.” <i>See</i> Letter from Steve Largent, CTIA to Chairman Julius Genachowski and Assistant Secretary Strickling, GN Docket Nos. 09-51, 09-157 and WT Docket Nos. 07-157, 04-356 (filed May 27, 2010) (emphasis added).</p>
<p>2009-2010: The AWS-3 band should be paired with the 1755-1780 MHz band.</p>	<p>CTIA has repeatedly indicated that the 1755-1780 MHz band is “readily-available” and should be paired with the AWS-3 band in ex parte submissions in the following dockets: GN Docket Nos. 09-157, 09-47, 09-137 and WT Docket Nos. 08-165, 08-166, 08-167, 09-66 on Sept. 30, 2009; Oct. 2, 2009; Oct. 5, 2009; Oct. 29, 2009; Nov. 3, 2009 and Nov. 13, 2009 respectively. T-Mobile and MetroPCS have also made this claim.</p>
<p>2008: The Obama Administration should decide what rules to adopt for the AWS-3 band.</p>	<p><i>See</i> 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 consider them carefully before allocating this band.”).</p>
<p>2008: The FCC should conduct an analysis of the harmful interference resulting from AWS-3 to AWS-1.</p>	<p>While concerns about harmful interference were first raised in March 2007, demands for unprecedented interference test were not made until well over a year later in June 2008 as the AWS-3 rulemaking was drawing to a close. <i>See e.g.</i> Letter from Christopher Guttman-McCabe, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 (filed Jun. 5, 2008); Letter from Carl Northrop, on behalf of MetroPCS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 04-356, 07-195 (filed Jun. 5, 2008); Letter from Cecil Cohen, Nokia to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 04-356, 07-195 (filed Jun. 5, 2008); Letter from Kathleen O’Brien Ham, T-Mobile to Marlene H. Dortch, Secretary, FCC, WT Docket 07-195, (filed Jun 6, 2008). After OET concluded that the AWS-3 service rules previously proposed by the Commission could be employed “without a significant risk of harmful interference,” industry representatives either ignore the test results or insist that OET’s analysis is “flawed.” <i>See</i> “Advanced Wireless Service Interference Tests Results and Analysis,” at 3 (rel. Oct. 10, 2008); Letter from AT&T, Comcast, CTIA, Ericsson, Motorola, Nokia, Nortel, Qualcomm, T-Mobile, U.S. Cellular, to Chairman Kevin. J. Martin, WT Docket Nos. 07-195 and 04-356 (filed Oct. 20, 2008).</p>
<p>2007: The FCC should conduct a rulemaking proceeding to license AWS-3.</p>	<p>In response to M2Z’s license application, multiple parties filed petitions to deny and requested that the FCC decide how to allocate the AWS-3 band through a rulemaking proceeding. <i>See e.g.</i> Petition to Deny of AT&T, Inc., WT Docket 07-16 (filed Mar. 2, 2007); Petition to Deny of CTIA, WT Docket 07-16 (filed Mar. 2, 2007); Petition to Deny of Motorola, WT Docket 07-16 (filed Mar. 2, 2007); Petition to Deny of T-Mobile, Inc. USA, WT Docket 07-16 (filed Mar. 2, 2007); Petition to Deny of Verizon, WT Docket 07-16 (filed Mar. 2, 2007).</p>

Attachment B: Consolidations Versus New Services A Question of Priorities?*



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