June 10, 2008

Via Electronic Filing

Chairman Kevin J. Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WT Docket No. 07-195 & 04-356– Notification of Written Ex Parte Presentation

Dear Chairman Martin and Commissioners:

This *ex parte* is designed to better inform each of you about much of the recent advocacy related to the above-referenced proceedings. As you will see below, many of the filings related to AWS-3/AWS-2 do not appear intended to provide the Commission with additional relevant data in order to establish service rules for the 2155-2180 MHz band. Instead, the arguments seem designed to:

- Impede the progress of the AWS-3 band going to market;
- Obscure the fact that free service has been proposed by many potential licensees, interest groups and consumers alike;
- Disguise poor business decisions under the guise of interference concerns; and
- Conceal the fact that the AWS-3 and AWS-1 licensees can and must work together to resolve any deployment concerns.

This *ex parte* will further demonstrate that many of the parties that are opposed to free broadband service in the 2155-2180 MHz band have a credibility gap as it relates to how the Commission could best proceed with the 2155-2180 MHz band.

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I. CTIA and Spectrum Incumbents are Inconsistent on the Desire to Move Spectrum to Market Quickly

In previous proceedings in which incumbent interests were the likely beneficiaries of additional spectrum, CTIA and other parties have consistently called on the FCC to move spectrum to market quickly.[1] Rapid spectrum assignments are generally the mantra of the wireless industry, but that does not appear to be the case here. For example, two months after the NPRM in WT Docket 07-195 was released and a week before the comment deadline, MetroPCS sought (and was denied) a four month delay in the FCC obtaining a complete set of comments.[2]

Until recently, CTIA's sole filing in this proceeding was its December 2007 comments. Over the past two weeks, however, as the Commission edged toward reaching a decision for more broadband competition, CTIA submitted **11** *ex partes* with the explicit goal of delay. It is impossible to reconcile a voluntary five month moratorium on advocacy with CTIA's recent suggestion that the Commission "delay the vote on the AWS order and open a dialogue to determine the most appropriate use of the spectrum."[3] That dialogue began nine months ago when the NPRM in this proceeding was released in September 2007. CTIA now seeks an even longer gestation period.

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[1] In the lead up to the 700 MHz auction (Auction 73), CTIA opposed "encumbering this valuable spectrum" but never suggested that delay in getting the spectrum to market was appropriate. "CTIA urges the Commission to act without delay to adopt straightforward, market-oriented rules and conduct the 700 MHz auction in accordance with the deadlines set forth in the DTV Transition and Public Safety Act. Such prompt action is necessary to ensure that the Nation's 235 million wireless consumers have the spectrum they need to continue to enjoy the benefits of broadband investment and innovation by Commission licensees." CTIA Reply Comments, WT Docket No. 06-150 (June 4, 2007) (the same language was also in CTIA's May 23rd comments in that docket). In the end, Verizon Wireless and AT&T bid more than $16 billion, constituting the vast majority of the overall $19.6 billion that was bid in the FCC auction (including winning the "encumbered" C Block). After the Commission heeded CTIA's calls for expedited development of rules for AWS-1, it congratulated the Commission. *See* CTIA Comments, AU Docket No. 06-30 (Feb 14, 2006) ("CTIA applauds the FCC for diligently prosecuting actions necessary to ensure the timely auction of AWS spectrum."). The incumbent bias of that auction is still subject to an ongoing lawsuit. Unfortunately, with AWS-3, which has the promise of new competitive entry, CTIA is taking a completely different approach toward timing.

[2] Letter of Carl W. Northrop, Counsel for MetroPCS to Marlene H. Dortch, WT Docket 07-195 (Dec. 6, 2007) (MetroPCS sought to have much of the comments in this proceeding due on March 31, 2008 and reply comments due on April 14, 2008 purportedly to avoid conflict with the anti-collusion rules in effect during Auction 73. When Auction 73 ended and the anti-collusion prohibition was lifted, MetroPCS was free to discuss all aspects of the service rules (including those that related to the 700 Mhz band). Instead, MetroPCS chose not to file any ex partes in this proceeding until late May (and only then after it was announced that an item was on circulation). Thus, its extension request (which was appropriately denied) can now be seen as a delay tactic rather than a sincere desire to build a meaningful record. The same is true for more recent requests for delay.

[3] Letter of Christopher Guttman-McCabe to Marlene H. Dortch, WT Docket 07-195 & 04-356 (June 5, 2008). Christopher Guttman-McCabe, vice president-regulatory affairs for CTIA was recently quoted as saying "[w]e are happy with the delay . . ." *See* TR DAILY, June 6, 2008.

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II. CTIA Makes Inaccurate Claims on the Interest of Multiple Parties to Provide Free Service

While M2Z's application[4] was pending, CTIA claimed that "[b]ecause of the competing applications . . . the Commission now is under a requirement to auction this spectrum" and aggressively sought a rulemaking.[5] CTIA and others spilled a considerable amount of ink last year trying to convince the Commission that it should deny M2Z's license application based on the existence of other applications many of which specifically sought to provide free and family-friendly services. These parties argued that circumstances required a rulemaking and an auction. Some parties to the instant proceeding, including CTIA, now claim that the Commission's plan to create a free and family-friendly service pursuant to a rulemaking proceeding (which received substantial public comment) amounts to "a specially tailored auction designed to advance the particular business model of a single company."[6]

In the end, CTIA simply wants delay. It previously argued that quick action could not occur because a rulemaking and an auction of AWS-3 are required. But now that a record has been developed and the Commission seeks to establish generally applicable service and technical rules and public interest obligations for the soon-to-be auctioned spectrum via a rulemaking, CTIA wants even more delay.

III. The Real Motivation Behind T-Mobile's Claims of Potential Harmful Interference to AWS-1 is Becoming More Apparent

During the two years that the future of AWS-3 spectrum band has been in debate, T-Mobile's advocacy on technical issues has been largely horatory without the specifics needed to do a reasoned analysis of the technical risks and benefits associated with using the AWS-3 band for the delivery of broadband services. T-Mobile's Petition to Deny M2Z's initial license application contained a 2 paragraph statement that claimed significant harm from potential interference and requested that the FCC undertake a <u>rulemaking and subsequent auction</u> as the prudent course to protect its interest.[7]

In the current rulemaking, T-Mobile was casually informative by attaching a 1 and ½ page narrative to serve as a "technical" appendix to its comments. The analysis contained therein used self-referential statistics and business plan assumptions to show that the only course of action would be for the FCC to set aside 15 MHz of spectrum as a guard band between AWS-3 and its AWS-1 thereby violating any attempt at spectral efficiency and disregarding FCC precedents. T-Mobile obliquely refers to its filter selection problem by stating that "TDD/HFDD operations would require extremely robust filters to prevent capacity degradations…"[8] in AWS-1 systems. To make its interference

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[4] M2Z's application sought an exclusive lease of 20 MHz of spectrum with 5% of its gross revenues going to the Federal Treasury. In exchange for this right, M2Z would be obligated to provide broadband service at 386 kbps (nearly two times the prior broadband definition) to 95% of the population ten years after it commenced service.

[5] Letter of Christopher Guttman-McCabe to Marlene H. Dortch, WT Docket 07-16 & 07-30 (Mar. 17, 2007).

[6] Letter of Christopher Guttman-McCabe to Marlene H. Dortch, WT Docket 07-195 & 04-356 at 1 (June 5, 2008).

[7] *See* T-Mobile USA, Inc. Petition to Deny, WT Docket 07-16 at 7 (filed March 2, 2007) ("the Commission should first establish technical rules and then assign the license or license [sic] to entities that agree to comply with them.").

[8] *See* T-Mobile Comments, WT 07-195 at 8 (filed Dec. 14, 2007)

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concerns real, T-Mobile creates a new definition of "harmful interference" for its casual analysis by stating that "[i]n calculating the needed out of band emissions protections, T-Mobile has assumed that its capacity or coverage degradation will be limited to 10 percent, per T-Mobile's capacity and deployment strategy." [9]

Given the unfounded accusations that the Commission's pending decision would favor only the business plans of a single entity, it is highly ironic that T-Mobile's claims of interference rest on only its own business plans and deployment strategy. This inconsistent advocacy, masked by use of technical terms and using calculations unsupported by any meaningful expert validation, should be rejected by the Commission as highly inadequate for determining long term spectrum policy and assignment.

With such a half-hearted effort in the past, T-Mobile has recently changed its tone on interference issues. T-Mobile has abandoned its prior advocacy which intimates that the Commission in its expert judgment (and not interested outside parties) is in the best position to establish technical rules for this spectrum band. Rather than permit the Commission to follow precedent and good policy and establish such rules, T-Mobile seeks unreasonable protections that will foreclose broadband service in the AWS-3 band. Last week, however, M2Z gained a better understanding of why T-Mobile is doggedly pursuing restrictive technical rules in light of the revelation that T-Mobile (and perhaps others) are currently attempting to place handsets in the marketplace that use cheap filters never designed for and inconsistent with its AWS-1 spectrum assignments that will render its own handsets more susceptible to interference.[10]

CTIA and T-Mobile are now trying to clean up the mess created by the AWS licensees' unjustifiable business decision[11] by rationalizing it without meaningful quantification of exaggerated interference claims, stating that "even if manufacturers were to construct U.S.-centric mobile devices with filters designed to receive signals at 2110-2155 MHz, the interference dynamic between mobile transmit adjacent to mobile receive remains."[12] Based on that false premise, these parties seek to saddle the AWS-3 licensee with heightened adjacent band interference protection that is both inconsistent with the 700 MHz precedent (where the FCC permitted deployments that would put mobiles next to mobiles) and wholly unnecessary given the tools available to manage interference.

Years ago, in claiming that the FCC need not develop receiver standards, CTIA argued that: "CMRS operators have worked closely with manufacturers of radio equipment and, in fact, many operators have extensive labs where products are exhaustively tested before being deployed in the field. This allows the carrier to design its network with a great deal of precision."[13] That vaunted

[9] *Id.* (emphasis added).

[10] These admissions highlight the critical need in this proceeding for the FCC to independently arrive at reasonable technical rules based on precedent and its own expert judgment and view claims of unmanageable interference skeptically.

[11] M2Z has previously explained that "AWS-1 licensees have been on notice for years that service, including TDD services, could enter the 2155-2175 MHz band. In 2003, for example, the Commission expressly noted that this 20 megahertz spectrum block 'could be used to provide an asymmetric pairing or TDD operations.'" *See* M2Z Reply Comments, WT Docket 07-195 n. 66 (filed Jan. 14, 2008). Selecting filters that are both consistent with T-Mobile's license parameters and the multiple Commission pronouncements concerning TDD is exactly the type of due diligence that T-Mobile (prior to Auction 66) agreed that it would perform.

[12] *See* Letter of Christopher Guttman-McCabe to Marlene H. Dortch, WT Docket 07-195 & 04-356 at 9 (June 5, 2008).

[13] *Id* at 2-3 (emphasis added).

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precision now appears to be non-existent. According to CTIA, AWS-1 licensees like T-Mobile, AT&T and Verizon Wireless[14] should not have their feet held to the fire for faulty filter selection even though this indifference belies its prior Commission advocacy that "it is neither necessary nor appropriate for the Commission to impose receiver standards"[15] and that "market incentives and voluntary industry programs have been far more effective than any proposed regulatory regime that would subject all receivers to a set of mandatory standards."[16]

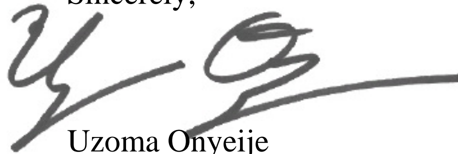
IV. Claims of Asymmetric Interference Here are Simply Untrue

Recently, CTIA damaged its credibility concerning interference claims further by arguing that "[i]n 700 MHz (and elsewhere), licensees have an incentive to work cooperatively with similarly situated license holders to ensure that all operations proceed without interference. 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."[17]

Any neutral RF engineer could see that CTIA's claim of one-sided interference is false. In fact, TDD operations in AWS-3 would likely face significant base-to-base interference if the AWS-1 licensee did not cooperate to avoid such interference. This concern is much more daunting than the intermittent and probabilistic interference potential complained of by the AWS-1 licensees because base-to-base interference is constant. Thus, establishing the unreasonable technical rules suggested by T-Mobile and CTIA would not only break from well-established precedent but would also create perverse incentives for the AWS-1 licensee to unilaterally block the availability of broadband service in 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,



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[14] Verizon Wireless recently argued that appropriate filters for AWS-1 do not currently exist but it doesn't matter. *See* Letter from Donald Brittingham t*o* Ms. Marlene H. Dortch, WT Docket 07-195 at 2 (June 5, 2008). M2Z believes that it does matter that certain equipment in AWS-1 is essentially defective and that defect (which is only recently coming to light) has been used to promote excessive technical restrictions in an adjacent spectrum band.

[15] *See* CTIA Comments, In the Matter of Interference Immunity Performance Specifications for Radio Receivers, ET Docket No. 03-65 at 2 (July 21, 2003).

[16] CTIA Reply Comments, In the Matter of Interference Immunity Performance Specifications for Radio Receivers, ET Docket No. 03-65 at 2 (Aug. 18, 2003). Although CTIA would like to believe that the "marketplace" solves all problems in telecommunications, that is not so.

[17] *See* Letter of Christopher Guttman-McCabe to Marlene H. Dortch, WT Docket 07-195 & 04-356 at 9 (June 5, 2008).

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