



June 20, 2008

Via Electronic Mail

Mr. Matthew Berry
General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Mr. Berry:

Recently T-Mobile suggested that the Commission has made an “unambiguous determination that proponents of TDD operations in the AWS-3 band bear the burden of ‘conclusively demonstrat[ing]’ that there will be no harmful interference to adjacent services.”¹ As M2Z has explained in a concurrently filed *ex parte*, the quoted language was simply stripped of its entire context. In addition to being an inaccurate recitation of the facts, T-Mobile’s suggestion would amount to a violation of law, namely Section 7 of the Communications Act.

T-Mobile’s suggestion that the Commission place the burden of proof on entities seeking to provide TDD and other advanced technologies in the AWS-3 band is wholly inconsistent with Section 7, which was specifically enacted 24 years ago to remove regulatory barriers to new technologies and new services getting to the market, and is especially relevant to this discussion. Section 7’s requirements are explicit: “[a]ny person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this chapter shall have the burden to demonstrate that such proposal is inconsistent with the public interest.”²

There is no legal justification for the Commission to abandon Section 7, much less turn it on its head. Indeed, the legislative history of Section 7 clarifies that it was enacted for just this type of situation — where incumbent carriers attempt to block the introduction of a new technology or a new service. In co-sponsoring the provision, Representative Dingell expressed concerns about delays in bringing new service to the marketplace by stating that a “major reason for such delays in authorizing new services is the fact that competitors to the companies proposing to offer the new

¹ See Letter of Kathleen O’Brien Ham to Ms. Marlene H. Dortch, WT Docket 07-195 (filed June 13, 2008).

² 47 U.S.C. § 157.

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service, not wanting to see increased competition, file in opposition to new services.”³ Mr. Dingell further explained that Section 7’s mandate that opponents to new technology or services maintain the burden of proof “is intended to shift the balance of the process in favor of new services.”⁴ In interpreting this provision, the Commission has recognized that Section 7 creates “a presumption that new services are in the public interest.”⁵

M2Z believes that the call of Section 7 combined with the need for the Commission to act consistent with its own technical precedent, as set out in the 700 MHz proceeding, precludes the sweeping changes in the spectrum policy and assignment sought by T-Mobile.

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.

Respectfully,



Uzoma Onyeije

cc: Chairman Kevin J. Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Aaron Goldberger
Bruce Gottlieb
Renee Crittendon
Wayne Leighton
Angela Giancarlo
Joel Taubenblatt
Peter Daronco
Brent Greenfield
Julius Knapp
Ira Keltz
Jamison Prime

³ See Extended Remarks of Hon. John R. Dingell on Amendments to H.R. 2755, 130 Cong. Rec. E73 (Jan. 24, 1984) (“Dingell Remarks”).

⁴ See Dingell Remarks, at E74.

⁵ *Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission’s Rules Concerning Use of Subsidiary Communications Authorization*, Memorandum Opinion and Order, 98 F.C.C.2d 792, ¶ 24 (1984).