

December 14, 2007

Chairman Kevin Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Room # 8B-201  
Washington, DC 20554

**RE: Creating the Right Incentives to Promote the Public Interest in the 2155 to 2175 MHz Band (WT Docket 07-195)**

Dear Chairman Martin,

In March of this year, I submitted an economic study entitled “Spectrum Auctions are not a Panacea: Theory and Evidence of Anti-Competitive and Rent-Seeking Behavior in FCC Rulemaking and Auction Design,” into the public record in WT Dockets 07-16 and 07-30. The paper supported the application of M2Z Networks, Inc. (M2Z) to use the spectrum at issue in the above captioned docket and Notice of Proposed Rulemaking (NPRM). While the Commission has decided to assign the spectrum following this rulemaking, the underlying concerns in the paper remain relevant to the Commission’s decision-making. For these reasons, I respectfully resubmit the study to provide the FCC with the benefit of the evidence and the many findings contained therein.

As I wrote in my study, “[t]oday’s telecommunications sector presents a high degree of concentration.” More specifically, the duopolistic nature of the United States’ broadband market has been confirmed by the Congressional Research Service, the Government Accountability Office, and the Congressional Budget Office. This is significant because the Commission must recognize that the current broadband marketplace requires regulatory intervention. Industry supporters are quick to cite the mobile voice market as evidence of competition among carriers and handsets, yet the reality is that the mobile voice and the data markets are distinct. Moreover, it is not clear that the mobile voice market is sufficiently competitive in all aspects, as evidenced by the Commission’s decision to intervene in the 700 MHz proceeding to ensure the availability of an “open platform.” Concerning the market for broadband data, there is significant evidence that it is even less competitive than the mobile voice market and similarly requires immediate intervention. Given the high level of market concentration in broadband, it has become clear that the most likely source of competition will be from innovative new wireless entrants using advanced technology. The public interest will be served through the adoption of rules that promote such entry.

Spectrum is an exceedingly scarce resource, and access to spectrum is ensconced behind a high wall of regulatory barriers to entry. As the FCC goes about the process of setting rules for the 2155 to 2175 MHz band, I urge the Commission to adopt rules that directly address the incentive of incumbents to “game” the system in order to limit competitive new entry. My paper specifically analyzed several tactics that incumbent market players can and do use to entrap valuable spectrum within their “warehouses” in order maintain high prices and even higher profits:

1. Delaying the rulemaking process through drawn-out debates over technical rules, un-specifiable and unquantifiable arguments of technical interference and other means;
2. Outbidding new entrants in unfettered auctions that do not expressly address the risk of incumbents carriers' potentially anti-competitive tactics; and
3. The strategic warehousing of spectrum following auction wins in order to prevent entry of potential competitors, while avoiding additional infrastructure investments.

The FCC should remain mindful of these common incumbent schemes as it considers service rules and the allocation procedure for this band of spectrum. It is absolutely essential that these tactics receive short shrift at the Commission as they limit not only competition in the country, but the deployment of faster, more advanced systems and services in the telecommunications industry.

With these findings in mind, I wish to express my support for rules that truly promote the public interest and ensure that consumer services are quickly deployed in the 2155-2175 MHz band. Specifically, to promote the interest of consumers, the Commission should require the 2155-2175 MHz licensee to ensure that its network will be "open" to all compatible devices and applications. To discipline the licensee and encourage rapid development of the network, the Commission should establish a five year spectrum holding requirement for the ultimate licensee, eligibility requirements that ensure that, at a minimum, companies that have failed to meet substantial service requirements in other bands are ineligible to bid here, and a set of enforceable build out requirements that guarantee the provision of service in years, not decades. This will avoid spectrum speculation, spectrum warehousing and delays in deployment — none of which is in the public interest here.

Respectfully,



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## **ESSENTIAL ELEMENTS OF SERVICE RULES IN THE 2155-2175 MHz BAND TO PROMOTE THE PUBLIC INTEREST**

### **Consumer Benefits**

- To promote ubiquitous broadband adoption, the FCC should consider the possibility that the 2155-2175 MHz licensee be required to provide a no fee wireless broadband option to consumers without subscription, airtime, usage, or other charges.
- To ensure that consumers have choice in selecting a device manufacturer, the 2155-2175 MHz licensee should provide service in a manner that permits open access to affiliated and unaffiliated consumer devices by providing, publicly and royalty-free, published technical standards for developing and deploying subscriber equipment that can operate on the network.

### **Carrier Discipline**

- To avoid spectrum speculation, the 2155-2175 MHz licensee should hold the spectrum and be prohibited from participation in the secondary market until its service is available to 33% of the United States' population but, in any event, for no shorter time period than 5 years.
- To avoid delayed deployment, the 2155-2175 MHz licensee should be subject to enforceable build out requirements mandating that, if the Commission requires offering a no fee service, that it must be available to 95% of the nation's population with 12 years of licensing (with appropriate interim benchmarks).
- To avoid spectrum hoarding, eligibility to hold the 2155-2175 MHz license should exclude any entities that have failed to meet the letter of the Commission's substantial service requirements or any other build out commitments, as outlined in the Commission's rules, in any other spectrum band.