



November 2007

2155-2175 MHz: Up For Grabs, But How?

*By Ron Whitworth
whitworth@fhhlaw.com
703-812-0478*

On the heels of rejecting M2Z Networks' (M2Z's) proposal to develop a nationwide broadband network in exchange for free spectrum, the Commission took the next step in deciding how to distribute the prime real estate located in the 2155-2175 MHz band. The Commission issued a Notice of Proposed Rulemaking (*NPRM*) on September 19, 2007, seeking comment on several possible options. An M2Z appeal to the U.S. Court of Appeals did not slow the Commission's momentum in moving forward with alternate proposals.

The offer by M2Z to provide a free, nationwide, wireless network using the 2155-2175 MHz band was undoubtedly a unique one. The Silicon Valley outfit headed by former Wireless Telecommunications Bureau Chief John Muleta drew considerable attention and led to a bevy of lobbying in the Commission offices upon the filing of its application.

The FCC Commissioners recognized that the 2155-2175 MHz band holds a vast array of opportunities as an avenue to provide free broadband service nationwide. What is uncertain is what method of distributing the spectrum is most sound from a legal and policy standpoint.

The M2Z proposal, along with similar pitches by NetfreeUS and five others, generated a steady buzz within the communications industry because of their novelty and the interesting issues they raised. But ultimately, the proposals were struck down by the Commission as being counter to the Communications Act, which requires an auction to select among competing applicants.

Rather than giving the spectrum away for free, it appears that the FCC is headed for another auction for advanced wireless services (AWS). The 2155-2175 MHz band, which currently hosts microwave services, was left untouched when an earlier proceeding cleared surrounding spectrum for AWS services. That proceeding resulted in new rules governing how incoming AWS licensees must move out the incumbents who will be forced to relocate to other frequencies.

One of the most significant issues which the Commission must address is the absence of paired frequencies in the band. Two-way communication (FDD) can work in a single band (one for each direction), but this works best when the respective members of the pair are spaced well apart, which is not possible in this band.

The FCC suggested alternative methods to address this issue in the *NPRM*, such as having the transmitter and receiver alternate using the same or nearby frequencies, using separate sections of the band for communications in different directions, or using the band only for base-to-handset transmissions, leaving communications in the opposite direction to a different band.

There is a laundry list of additional issues which remain to be resolved in the proceeding, including the amount of spectrum each licensee should be given, bidding procedures, eligibility restrictions and technical rules.

As of press time, the proceeding had not appeared in the Federal Register, which will trigger a 30-day deadline for the submission of comments (and 60-day deadline for reply comments). Let us know if you have questions about the *NPRM* and/or would like to get involved.