

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Petition of M2Z Networks, Inc. for	)	
Forbearance Under 47 U.S.C. § 160(c)	)	WT Docket No. 07-30
Concerning Application of Sections 1.945(b) and	)	
(c) and Other Regulatory and Statutory Provisions	)	
	)	
M2Z Networks Inc.	)	
Application for License and Authority to Provide	)	WT Docket No. 07-16
A National Broadband Radio Service in the	)	
2155-2175 MHz Band	)	

To The Commission

**COMMENTS OF NETFREEUS, LLC  
ON PETITION FOR FORBEARANCE  
OF M2Z NETWORKS, INC.**

NetfreeUS, LLC (“NetfreeUS”), applicant for a new nationwide wireless broadband service authorization in the 2155-2175 MHz band,<sup>1</sup> hereby submits Comments in the above-referenced proceedings<sup>2</sup> in connection with the Petition for Forbearance<sup>3</sup> filed by M2Z

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<sup>1</sup> See NetfreeUS Application for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band, WT Dockets 07-16 and 07-30, filed March 2, 2007. (“NetfreeUS Application”) The NetfreeUS Application proposes a unique secondary market licensing system to enable new entrants, entrepreneurs and municipalities to expeditiously provide free, wireless broadband radio services on a “public commons” basis, with limited Commission involvement. In particular, NetfreeUS’s approach can accomplish the same objectives of providing free, nationwide broadband service as M2Z’s Application, but with distinguishing public interest benefits of local operation through secondary markets, open network architecture and entirely free service. No file number has been assigned to the NetfreeUS Application.

<sup>2</sup> These Comments are submitted pursuant to *Public Notice*, “Pleading Cycle Established for Comments on Petition of M2Z Networks, Inc. For Forbearance Under 47 U.S.C. Section 160(c) to Permit Acceptance and Grant of Its Application For A License To Provide Radio Service in the 2155-2175 MHz Band,” DA 07-736, rel. Feb 16, 2007.

<sup>3</sup> See generally Petition of M2Z Networks, Inc. for Forbearance under 47 U.S.C. §160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions, WT Docket No. 07-30 (filed Sept. 1, 2006) (“M2Z Forbearance Petition”).

Networks, Inc. (“M2Z”). The M2Z Forbearance Petition requests forbearance from certain Commission procedural rules to permit consideration of M2Z’s “Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band” (“M2Z Application”).<sup>4</sup>

In these Comments, NetFreeUS concurs with M2Z that the Commission should exercise its forbearance authority pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),<sup>5</sup> to facilitate licensing of new services in the 2155-2175 MHz band. Forbearance would permit the Commission to fulfill its statutory obligation to further deployment of broadband services, consistent with the public interest and with Congressional intent. However, unlike M2Z, NetFreeUS believes that the Commission should not grant M2Z exclusive access to this spectrum but rather should also consider other applications filed for this band. NetfreeUS submits that the plan described in the NetfreeUS Petition for Forbearance<sup>6</sup> will afford M2Z, NetfreeUS and other applicants the opportunity to have applications for the 2155-2175 MHz band considered on an expedited basis without being subject to auction or other time-consuming licensing processes.

Using existing processes, the Commission should establish a cut-off date for new applications to be filed and a short period of time for applicants to resolve application conflicts. The Commission would then act on the applicants’ proposed resolution or could move forward with an alternative licensing solution in the event that no resolution is reached.

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<sup>4</sup> See *Public Notice*, “Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.’s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band is Accepted for Filing,” DA 07-492, rel. Jan. 31, 2007 (“*Public Notice*”).

<sup>5</sup> See 47 U.S.C. §160.

<sup>6</sup> See NetfreeUS Petition for Forbearance Under 47 U.S.C. §160(c) Concerning Application of Sections 1.945(b) and (c) and Other Regulatory and Statutory Provisions, WT Dockets 07-16 and 07-30 (filed March 2, 2007) (“NetfreeUS Petition for Forbearance”).

By using regulatory tools other than competitive bidding to license the 2155-2175 MHz band, the Commission would fulfill its “obligation in the public interest to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.”<sup>7</sup> Specifically, NetfreeUS proposed that the Commission should adopt the following procedure:

- *Cut-off date.* The Commission would establish a clear cut-off date for the acceptance of applications in the 2155-2175 MHz bands by no later than May 1, 2007.<sup>8</sup>
- *Announcement of Eligible Applicants.* Within 10 days after the cut-off date, the Commission would issue a public notice announcing a list of all applicants deemed to have submitted substantially complete applications and to have satisfied the Commission’s threshold eligibility requirements. Nonqualifying applications would be listed separately as incomplete applicants, and the Commission would notify these applicants by letter regarding any identified deficiencies. Applicants with defective applications would have 15 days from the day of the Public Notice to amend their applications to correct any deficiencies.
- *Settlement period.* Once the pool of applicants is finalized, the Commission would announce by public notice a deadline by which applicants may jointly propose to settle the applications to remove any conflicts that would otherwise result in all or some of them being declared mutually exclusive. NetfreeUS recommends a 60-day settlement period. The settlement window approach serves the public interest because competing applications would not be deemed “mutually exclusive” until after the Commission has afforded applicants an opportunity to reach negotiated settlements. During the settlement window, applicants may submit engineering amendments or other settlement proposals for Commission approval.
- *Action on applications.* The Commission would take action on the applications based on responses submitted during the settlement window. If no joint settlement is proposed or accepted by the Commission, the Commission can proceed without delay to auction the spectrum or assign the spectrum by other means.

NetfreeUS acknowledges that this proposed procedure could defer licensing assignments until after the statutory deadline for action on the M2Z Forbearance Petition – *i.e.*, September 1,

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<sup>7</sup> 47 U.S.C. §309(j)(6)(E).

<sup>8</sup> Although this was the date specified in the NetfreeUS Petition for Forbearance, NetfreeUS notes that five applications were filed on March 2, 2007, which was 30 days from the date of the *Public Notice*. NetfreeUS would not object to a Commission finding that the cut-off date was March 2, 2007 and that no additional applications for this band will be accepted for filing.

2007 or November 30, 2007.<sup>9</sup> In order to discharge its statutory obligations, the Commission should act on the M2Z Forbearance Petition in a timely manner to allow the above-described process to move forward.

NetfreeUS respectfully submits that the public interest favors NetfreeUS's licensing proposal, which allows other parties to have their applications considered consistent with the Commission's obligations under Section 309(j)(6)(E) to allow negotiations to avoid mutual exclusivity.<sup>10</sup> With a minimum of Commission involvement, the settlement process would provide the Commission with a means to expeditiously place the spectrum in the hands of private interests that could immediately advance important public interest benefits such as service to rural and underserved areas of the country, facilities-based competition to incumbent providers, public participation in the provision of broadband service and enhancements to public safety communications.<sup>11</sup> The Commission would retain the authority to determine whether the

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<sup>9</sup> The Act provides that a "petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a)." 47 U.S.C. §160(c). Accordingly, Commission action is required on the M2Z Forbearance Petition by September 1, 2007, or by November 30, 2007 if the Commission issues the 90-day extension.

<sup>10</sup> In submissions filed in this proceeding on March 16, 2007, CTIA – The Wireless Association ("CTIA") and TowerStream Corporation ("TowerStream") assert that the existence of multiple applications requires the Commission to assign licenses for the 2155-2175 MHz band by competitive bidding. *See* Letter from Christopher Guttman-McCabe, CTIA, filed March 16, 2007; Consolidated Petition to Deny and Comments of TowerStream, filed March 16, 2007 ("TowerStream Comments"), at 4. CTIA further asserts that the pending applications should be dismissed. TowerStream filed its own application. *See* Application of TowerStream, submitted March 16, 2007. This position, however, presumes that the Commission has deemed the applications "mutually exclusive," a designation the Commission would not make were it to adopt NetfreeUS's proposal allowing for a negotiation period *before* any such declaration would be made (if at all).

<sup>11</sup> TowerStream also asks the Commission to conduct a formal proceeding to adopt licensing and service rules for the 2155-2175 MHz band. *See* TowerStream Comments at 4. TowerStream fails to acknowledge that the Commission has on a number of occasions granted applications

settlement was acceptable, and would also have the ability to implement other license assignment processes if the parties cannot achieve an acceptable settlement. Forbearance from applying the provisions of the Act and Commission rules specified in the NetfreeUS Application and the NetfreeUS Forbearance Petition would serve important public policy goals and would advance the public interest.

Respectfully submitted,

**NETFREEUS, LLC**

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March 19, 2007

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subject to service and operation rules adopted at a later date. For instance, the Commission did not adopt spectrum sharing rules in the 28 GHz band until five years after it granted the application of Hye Crest Management, Inc. (the predecessor-in-interest to NetfreeUS's parent, Speedus Corporation) for point-to-multipoint terrestrial use. *See* Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27-5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 11 FCC Rcd 19005 (1996). Moreover, these rules were adopted after the Commission opened a processing round for 13 Ka-band satellite applications. *See* Public Notice, Report No. SPB-20, DA 95-1689, rel. July 28, 1995.

## Certificate of Service

I, Kenneth B. Wolin, a legal assistant with the law office of Rini Coran, PC, hereby certify that on this 19<sup>th</sup> day of March, 2007, I caused a copy of the foregoing “Comments of NetfreeUS, LLC on Petition for Forbearance of M2Z Networks, Inc.” to be delivered by First-Class United States mail to the following:

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