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**MAR 29 2007**

Federal Communications Commission  
Office of the Secretary

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**MAR 26 2007**

Federal Communications Commission  
Bureau / Office

In the Matter of )

M2Z NETWORKS, INC. )

Application for License and Authority to )  
Provide National Broadband Radio Service )  
In the 2155-2175 MHz Band )

WT Docket No. 07-16

Petition 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

and )

NEXTWAVE BROADBAND INC. )

WT Docket No. \_\_\_\_\_

Application for License and Authority to )  
Provide Nationwide Broadband Service )  
In the 2155-2175 MHz Band )

File No. \_\_\_\_\_

and )

OPEN RANGE COMMUNICATIONS, INC. )

WT Docket No. \_\_\_\_\_

Application for License to Construct and )  
Operate Facilities for the Provision of Rural )  
Broadband Radio Services in the 2155-2175 )  
MHz Band )

File No. \_\_\_\_\_

and )

COMMNET WIRELESS, LLC )

WT Docket No. \_\_\_\_\_

Application for License and Authority to )  
Construct and Operate a System to Provide )  
Nationwide Broadband Service in the )  
2155-2175 MHz Band )

File No. \_\_\_\_\_

and )

NETFREEUS, LLC	)	WT Docket No. _____
	)	
Application for License and Authority to	)	File No. _____
<i>Provide Wireless Public Broadband Service in</i>	)	
the 2155-2175 MHz Band	)	
	)	
and	)	
	)	
MCELROY ELECTRONICS	)	WT Docket No. _____
CORPORATION	)	
	)	File No. _____
Application for a Nationwide 2155-2175 MHz	)	
Band Authorization	)	
	)	
and	)	
	)	
TOWERSTREAM CORPORATION	)	WT Docket No. _____
	)	
Application for a Nationwide 2155-2175 MHz	)	File No. _____
Band Authorization	)	

To: Chief, Wireless Telecommunications Bureau

**CONSOLIDATED MOTION OF M2Z NETWORKS, INC.  
TO STRIKE AND DISMISS  
PETITIONS TO DENY AND ALTERNATIVE PROPOSALS**

W. Kenneth Ferree  
Erin L. Dozier  
Christopher G. Tygh  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, N.W., 11th Floor East  
Washington, DC 20005  
(202) 218-0000

Its Attorneys

March 26, 2007

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- EXHIBIT C:** Chart Summarizing Procedural Defects in Petitions to Deny

## EXECUTIVE SUMMARY

In this motion, M2Z requests that the Petitions to Deny and Alternative Proposals filed against the merits of M2Z's Application be dismissed with prejudice and struck from the record of this proceeding because they are procedurally defective under Section 309(d) of the Act. In this respect, as a threshold matter, the Alternative Proposals should be treated no differently than the Petitions to Deny because they attack the merits of the M2Z Application. As a result, both the Petitions to Deny and the Alternative Proposals were required to be formally served on M2Z under the statute. Yet several parties who petitioned to deny the M2Z Application, many of whom have questionable standing to do so, completely disregarded this statutory requirement and failed to serve M2Z, the very party they purport to attack in their pleadings.

In addition, none of the opposing parties have met their burden under Section 309(d) of the Act to make a *prima facie* showing, supported by specific allegations, as to why grant of the M2Z Application would be inconsistent with the public interest. Instead, the parties rely on broad and speculative assertions in attacking the M2Z Application. These general attacks, unsupported by specific allegations, fail to rebut the overwhelming weight of evidence of the public interest benefits of granting the M2Z Application. For all of these reasons, the Petitions to Deny and Alternative Proposals should be dismissed with prejudice as procedurally defective and struck from the record of this proceeding.

For convenience, a chart summarizing the procedural defects in the Petitions to Deny and Alternative Proposals filed against M2Z's Application is provided in Exhibit C to this Motion.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
M2Z NETWORKS, INC.	)	
	)	
Application for License and Authority to	)	WT Docket No. 07-16
Provide National Broadband Radio Service	)	
In the 2155-2175 MHz Band	)	
	)	
Petition for Forbearance Under	)	WT Docket No. 07-30
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	)	
	)	
and	)	
	)	
NEXTWAVE BROADBAND INC.	)	WT Docket No. _____
	)	
Application for License and Authority to	)	File No. _____
Provide Nationwide Broadband Service	)	
In the 2155-2175 MHz Band	)	
	)	
and	)	
	)	
OPEN RANGE COMMUNICATIONS, INC.	)	WT Docket No. _____
	)	
Application for License to Construct and	)	File No. _____
Operate Facilities for the Provision of Rural	)	
Broadband Radio Services in the 2155-2175	)	
MHz Band	)	
	)	
and	)	
	)	
COMMNET WIRELESS, LLC	)	WT Docket No. _____
	)	
Application for License and Authority to	)	File No. _____
Construct and Operate a System to Provide	)	
Nationwide Broadband Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	

NETFREEUS, LLC	)	WT Docket No. _____
	)	
Application for License and Authority to	)	File No. _____
Provide Wireless Public Broadband Service in	)	
the 2155-2175 MHz Band	)	
	)	
and	)	
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MCELROY ELECTRONICS	)	WT Docket No. _____
CORPORATION	)	
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Application for a Nationwide 2155-2175 MHz	)	
Band Authorization	)	
	)	
and	)	
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TOWERSTREAM CORPORATION	)	WT Docket No. _____
	)	
Application for a Nationwide 2155-2175 MHz	)	File No. _____
Band Authorization	)	

To: Chief, Wireless Telecommunications Bureau

**CONSOLIDATED MOTION OF M2Z NETWORKS, INC.  
TO STRIKE AND DISMISS  
PETITIONS TO DENY AND ALTERNATIVE PROPOSALS**

Pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act") and Section 1.41 of the rules of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> M2Z Networks, Inc. ("M2Z"), by its attorneys, respectfully moves to strike and

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<sup>1</sup> See 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.41. As discussed herein, several parties have filed various pleadings and applications in this proceeding requesting that the M2Z Application be denied. This motion addresses the procedural defects of those filings under the standards for petitions to deny enumerated in Section 309(d) of the Act, which is the statutory authority under which the M2Z Application was accepted for filing. See "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," Public Notice, WT Docket No. 07-16, DA 07-492 (rel. Jan. 31, 2007). Section 309(d)(1) of the Act provides M2Z with the opportunity to respond to any petition to deny filed against the M2Z Application. See 47 U.S.C. § 309(d)(1). In separate concurrently filed pleadings, M2Z opposes

dismiss with prejudice the following petitions to deny styled as various pleadings and filed in the above-captioned proceeding:

- (1) *Comments of Leap Wireless International (“Leap” and the “Leap Petition”)*;<sup>2</sup>
- (2) *Opposition of EchoStar Satellite L.L.C. (“EchoStar” and the “EchoStar Petition”)*;<sup>3</sup>
- (3) *Comments of the Consumer Electronics Association (“CEA” and the “CEA Petition”)*;<sup>4</sup>
- (4) *CTIA – The Wireless Association Petition to Deny (“CTIA” and the “CTIA Petition”)*;<sup>5</sup>
- (5) *Petition to Deny of Motorola, Inc. (“Motorola” and the “Motorola Petition”)*;<sup>6</sup>
- (6) *Petition to Deny of T-Mobile USA, Inc. (“T-Mobile” and the “T-Mobile Petition”)*;<sup>7</sup>
- (7) *Petition to Deny of The Wireless Communications Association International, Inc. (“WCA” and the “WCA Petition”)*;<sup>8</sup>

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the petitions to deny on substantive grounds and addresses the merits of several alternative proposals for the 2155-2175 MHz band advanced by certain parties under Section 7 of the Act. *See Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals*, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007); *Consolidated Opposition of M2Z Networks to Petitions to Deny*, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007).

<sup>2</sup> *See Comments of Leap Wireless International, Inc.*, WT Docket 07-16 (filed Mar. 2, 2007) (“Leap Petition”).

<sup>3</sup> *See Opposition of EchoStar Satellite L.L.C.*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“EchoStar Petition”).

<sup>4</sup> *See Comments of the Consumer Electronics Association*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“CEA Petition”).

<sup>5</sup> *See CTIA – The Wireless Association Petition to Deny*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“CTIA Petition”).

<sup>6</sup> *See Petition to Deny of Motorola, Inc.*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“Motorola Petition”).

<sup>7</sup> *See Petition to Deny of T-Mobile USA, Inc.*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“T-Mobile Petition”).

<sup>8</sup> *See Petition to Deny of the Wireless Communications International, Inc.*, WT Docket No. 07-16 (filed Mar. 2, 2007) (“WCA Petition”).

- (8) Petition to Deny of Verizon Wireless (“Verizon” and the “Verizon Petition”);<sup>9</sup>
- (9) Petition to Deny of AT&T Inc. (“AT&T” and the “AT&T Petition”);<sup>10</sup>
- (10) *Petition to Deny of NextWave Broadband Inc.* (“NextWave” and the “NextWave Petition”);<sup>11</sup>
- (11) Comments of the Information Technology Industry Council (“ITI” and the “ITI Petition”);<sup>12</sup>
- (12) Consolidated Petition to Deny and Comments of TowerStream Corporation (“TowerStream” and the “TowerStream Petition”);<sup>13</sup> and
- (13) Consolidated Petition to Deny and Comments of The Rural Broadband Group (“Rural Carriers” and the “Rural Carriers Petition”)<sup>14</sup> (collectively, the “Petitioners” and the “Petitions”).

In addition, M2Z moves to strike and dismiss with prejudice the following defective petitions to deny styled as applications and filed in the above-referenced proceeding:

- (1) NextWave Broadband, Inc.’s Application for License and Authority to Provide Nationwide Broadband Service in the 2155-2175 MHz Band (the “NextWave Proposal”);<sup>15</sup>

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<sup>9</sup> See Petition to Deny of Verizon Wireless, WT Docket No. 07-16 (filed Mar. 2, 2007) (“Verizon Petition”).

<sup>10</sup> See Petition to Deny of AT&T Inc., WT Docket No. 07-16 (filed Mar. 2, 2007) (“AT&T Petition”).

<sup>11</sup> See Petition to Deny of NextWave Broadband Inc., WT Docket No. 07-16 (filed Mar. 2, 2007) (“NextWave Petition”).

<sup>12</sup> See Letter from Brian Peters, Director, Government Relations, Information Technology Industry Council, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-16 (filed Mar. 16, 2007) (“ITI Petition”).

<sup>13</sup> See Consolidated Petition to Deny and Comments of TowerStream Corporation, WT Docket Nos. 07-16 & 07-30 (filed Mar. 15, 2007) (“TowerStream Petition”).

<sup>14</sup> See Consolidated Petition to Deny and Comments of The Rural Broadband Group, WT Docket Nos. 07-16 & 07-30 (filed Mar. 16, 2007) (“Rural Carriers Petition”).

<sup>15</sup> See Application of NextWave Broadband Inc. for License and Authority to Provide Nationwide Broadband Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) (“NextWave Proposal”).

- (2) NetfreeUS, LLC's ("NetfreeUS") Application for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band (the "NetfreeUS Proposal");<sup>16</sup>
- (3) Commnet Wireless, LLC's ("Commnet") Application for License and Authority to Construct and Operate a System to Provide Nationwide Broadband Radio Service in the 2155-2175 MHz Band (the "Commnet Proposal");<sup>17</sup>
- (4) McElroy Electronics Corporation's ("McElroy") Application for a Nationwide 2155-2175 MHz Band Authorization (the "McElroy Proposal");<sup>18</sup> and
- (5) TowerStream Corporation's ("TowerStream") Application for a Nationwide 2155-2175 MHz Band Authorization (the "TowerStream Proposal")<sup>19</sup> (collectively, the "Applicants" and the "Alternative Proposals").<sup>20</sup>

Each of the foregoing Petitions and Alternative Proposals was filed against M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (the "M2Z Application") and M2Z's related Forbearance Petition.<sup>21</sup> As discussed below,

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<sup>16</sup> See Application of NetfreeUS, LLC for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("NetfreeUS Proposal").

<sup>17</sup> See Application of Commnet Wireless, LLC for License and Authority to Construct and Operate a System to Provide Nationwide Broadband Radio Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("Commnet Proposal").

<sup>18</sup> See Application of McElroy Electronics Corporation for a Nationwide 2155-2175 MHz Band Authorization, WT Docket No. 07-16 (filed Mar. 2, 2007) ("McElroy Proposal").

<sup>19</sup> See Application of TowerStream Corporation for a Nationwide 2155-2175 MHz Band Authorization, WT Docket No. 07-16 (filed Mar. 15, 2007) ("TowerStream Proposal").

<sup>20</sup> Open Range Communications, Inc. ("Open Range") also filed an application similar to the Alternative Proposals. See Application of Open Range Communications, Inc. for License to Construct and Operate Facilities for the Provision of Rural Broadband Radio Services in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("Open Range Proposal"). Because the Open Range Proposal does not attack the merits of the M2Z Application, it is not the subject of the instant motion. However, concurrently with this motion, M2Z has filed another motion addressing the failures of the Open Range Proposal, and each of the Alternative Proposals, and seeking dismissal under Section 7 of the Act. See Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007).

<sup>21</sup> See Application of M2Z Networks, Inc. for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (originally filed May 5, 2006; amended

however, each of the foregoing Petitions and Alternative Proposals is procedurally defective in one or more ways as a petition to deny under the requirements specified in Section 309(d) of the Act, and therefore must be dismissed with prejudice.

**I. ALL OF THE PETITIONS AND ALTERNATIVE PROPOSALS THAT ATTACK THE MERITS AND REQUEST DENIAL OF THE M2Z APPLICATION AND FORBEARANCE PETITION OPERATE AS PETITIONS TO DENY.**

Irrespective of how the Petitioners and Applicants have styled and titled their filings in this proceeding, if the pleadings or proposals attack the merits or request denial of the M2Z Application and related Forbearance Petition, they are, as a legal matter, petitions to deny and must be treated as such. In prior cases, the Commission has recharacterized pleadings that request the denial of an application as petitions to deny regardless of how such pleadings were titled or styled.<sup>22</sup> In this case, although several of the Petitions and Alternative Proposals appear on the surface to be nominally unrelated to the merits of granting the M2Z Application, in

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Sept. 1, 2006). The M2Z Application was amended on September 1, 2006, to incorporate by reference M2Z's subsequently filed petition for forbearance. *See* 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) (the "Forbearance Petition").

<sup>22</sup> *See, e.g., Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13053, n.264 (2005) (although petitioner filed a pleading titled "Comments in Opposition," the pleading was treated as a petition to deny because it requested denial of the applications); *County of Albemarle Informal Objections against Application for Wireless Radio Station Authorization (FCC Form 601) with Environmental Assessment*, Memorandum Opinion and Order, 18 FCC Rcd 10647, n.14 (2003) (letter styled as "comments" rather than an "objection" or "petition to deny" was nonetheless in substance an objection to application and therefore treated as such); *Application of BTV Digital Services for Authority to Construct a Digital Termination System in Seattle, Washington*, Memorandum Opinion and Order, File No. 200-CDM-P-84, 1986 FCC LEXIS 3099 (CCB 1986) (treating a petition for reconsideration as a petition to deny); *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 37 F.C.C.2d 181, n.4 (1972) (treating a "Petition to Prevent Continued Violation of Commission's Equal Employment Opportunities Rules" as a petition to deny the applications for renewal of the licenses of the stations).

actuality these Petitions and Applications seek the denial of the M2Z Application and Forbearance Petition. For this reason, these Petitions and Alternative Proposals should be recharacterized as petitions to deny.

Accordingly, although they are nominally titled “comments” or “opposition,” the following Petitions must be treated as petitions to deny because they request denial of the M2Z Application and Forbearance Petition:

- (1) The Leap Petition, arguing that “M2Z’s proposal is an obvious ‘end run’ around the Commission’s normal licensing processes that is not in the public interest”;<sup>23</sup>
- (2) The EchoStar Petition, arguing that “the Commission should reject M2Z’s proposal”;<sup>24</sup>
- (3) The CEA Petition, arguing that “Commission grant of M2Z’s application would represent an unnecessary departure from the Commission’s pro-competitive spectrum access regime”;<sup>25</sup> and
- (4) The ITI Petition, arguing that the M2Z Application “should be rejected.”<sup>26</sup>

Furthermore, because they also attack the merits of the M2Z Application and Forbearance Petition, the following Alternative Proposals operate as petitions to deny:

- (1) The NextWave Proposal, attacking M2Z’s interpretation of the Commission’s authority under Section 309(j)(6)(E) of the Act to grant spectrum licenses without conducting an auction;<sup>27</sup>
- (2) The NetfreeUS Proposal, arguing that “[t]he question for the Commission . . . is not whether M2Z can fulfill its business plan, but whether other alternatives can better serve the public interest than the single-license, single-provider approach urged by M2Z”;<sup>28</sup>

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<sup>23</sup> Leap Petition at 2.

<sup>24</sup> EchoStar Petition at 4.

<sup>25</sup> CEA Petition at 3.

<sup>26</sup> ITI Petition at 1.

<sup>27</sup> See NextWave Proposal at 7-8.

<sup>28</sup> NetfreeUS Proposal at 4.

- (3) The Commnet Proposal, attacking the M2Z Application as “defective and not acceptable for filing”,<sup>29</sup>
- (4) The McElroy Proposal, arguing that the Commission has rejected M2Z’s “extraordinary request that its application be both insulated from competing applications and treated as a non-auctionable license application.”<sup>30</sup>
- (5) The TowerStream Proposal, arguing that “[i]t would be manifestly inconsistent with the public interest for the Commission to grant M2Z’s application.”<sup>31</sup>

**II. THE PETITIONS TO DENY AND THE ALTERNATIVE PROPOSALS ARE PROCEDURALLY DEFECTIVE UNDER SECTION 309(d) AND SHOULD BE DISMISSED WITH PREJUDICE AND STRUCK FROM THE RECORD OF THIS PROCEEDING.**

Having established that the Petitions and Alternative Proposals operate as petitions to deny, the Petitioners and Applicants are required to adhere to certain minimal procedural requirements under Section 309(d) of the Communications Act of 1934, as amended (the “Act”),<sup>32</sup> which the Petitioners and Applicants failed to do. In particular, as discussed below, many of the Petitioners and Applicants failed to serve M2Z with their filings requesting denial of the M2Z Application, in blatant disregard of the Act’s service requirement. In addition, none of the Petitioners and Applicants has made a *prima facie* showing as to why granting the M2Z Application would be inconsistent with the public interest, as they also are required to do under the Act. Finally, inasmuch as the Petitioners and Applicants allege that grant of the M2Z Application would not be in the public interest, they failed to support such allegations with affidavits or to plead standing as the Act further requires. For convenience, each of these

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<sup>29</sup> Commnet Proposal at Exhibit 7, p. 1.

<sup>30</sup> McElroy Proposal at Exhibit 1, pp. 2-3.

<sup>31</sup> TowerStream Proposal at Exhibit A, p. 8.

<sup>32</sup> See 47 U.S.C. § 309(d)(1).

procedural defects is summarized by Petitioner and Applicant in the chart attached hereto as Exhibit C.<sup>33</sup>

**A. Several Petitioners and All of the Applicants Failed to Serve M2Z with a Copy of Their Petitions to Deny and Alternative Proposals.**

A fundamental provision of the Act, Section 309(d)(1), requires a petitioner to serve a copy of its petition to deny upon the party whose application the petitioner is opposing, in this case M2Z.<sup>34</sup> The Commission has implemented and enforces several longstanding rules reflecting the importance of service to the orderly processing of applications.<sup>35</sup> In the case of petitions to deny, service may be perfected by hand delivering or mailing the petition to deny to the applicant or its attorney on or before the day on which the petition to deny is filed.<sup>36</sup>

Despite having more than adequate notice of the M2Z Application and the abundance of available information about M2Z's counsel of record in this proceeding, many Petitioners and all of the Applicants still neglected to serve M2Z with a copy of their petitions to deny. M2Z filed its Application with the Commission on May 5, 2006, and subsequently amended the

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<sup>33</sup> See "Procedural Defects in Petitions to Deny," attached hereto as Exhibit C.

<sup>34</sup> See 47 U.S.C. § 309(d)(1). ("The petitioner shall serve a copy of [its] petition on the applicant.").

<sup>35</sup> See, e.g., 47 C.F.R. § 1.939(c) ("A petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47."); 47 C.F.R. § 1.47(d) ("Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.736, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address.; 47 C.F.R. § 1.736. ("Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form.").

<sup>36</sup> See 47 C.F.R. § 1.47(b), (e) & (f). The Commission's rules also require a petitioner to provide proof of service demonstrating the time and manner of service. See 47 C.F.R. § 1.47(g).

Application on September 1, 2006.<sup>37</sup> On November 20, 2006, M2Z filed a letter formally notifying the Commission that its counsel of record for matters concerning the Application is the undersigned and that any inquiries concerning matters relating to the Application should be directed to the undersigned.<sup>38</sup> This letter subsequently was included in the record of this proceeding. On January 31, 2007, the Wireless Telecommunications Bureau released a Public Notice announcing that the M2Z Application was accepted for filing.<sup>39</sup> The Petitioners and Applicants filed their petitions to deny against the M2Z Application on March 2, 2007, thirty days after the release date of the Public Notice. However, in blatant disregard of the Act's service requirement, many of the Petitioners and all of the Applicants failed to serve either M2Z or its counsel of record with a copy of their Petitions on the filing date.<sup>40</sup>

Incomprehensibly, CTIA certified that a copy of its petition was sent by first class mail or electronic mail to Chairman Martin and each FCC Commissioner but failed to do the same for M2Z—the one party CTIA was required to serve under the statute.<sup>41</sup> This failure is particularly

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<sup>37</sup> See Application of M2Z Networks, Inc. for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (originally filed May 5, 2006; amended Sept. 1, 2006).

<sup>38</sup> See Letter from Uzoma C. Onyeije, Vice President Regulatory Affairs of M2Z Networks, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 20, 2006). The Application, as amended, also was filed by M2Z's new counsel of record on September 1, 2006.

<sup>39</sup> See "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," Public Notice, WT Docket No. 07-16, DA 07-492 (rel. Jan. 31, 2007).

<sup>40</sup> See Declaration of Uzoma Onyeije in Support of Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals, attached hereto as Exhibit A; Declaration of Erin L. Dozier in Support of Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals, attached hereto as Exhibit B (collectively, the "Declarations").

<sup>41</sup> See CTIA Petition at 15 (Certificate of Service).

inexcusable given that M2Z is a member in good standing of CTIA and CTIA has M2Z's address. Yet to date neither M2Z nor its counsel has been served with a copy of the CTIA Petition.<sup>42</sup> In addition, the petitions to deny filed by CEA, EchoStar, Leap, ITI, TowerStream, and the Rural Carriers contain no certificate of service whatsoever, and M2Z was never formally served with such petitions.<sup>43</sup> Likewise, to date, the Alternative Proposals filed by NextWave, Commnet, NetFreeUS, McElroy, and TowerStream have never been served on M2Z, even though, as discussed above, they attack the merits of the M2Z Application.<sup>44</sup>

The failure of these Petitioners and Applicants to serve M2Z should not go without a remedy. The Commission has authority to dismiss a petition to deny if such petition does not comply with the service requirements found in the Act.<sup>45</sup> In this case, the Commission should promptly dismiss the Petitions filed by CTIA, EchoStar, CEA, Leap, ITI, TowerStream, and the Rural Carriers in light of these Petitioners' blatant disregard for the Act's well-established service requirement. Likewise, the Commission also should dismiss the Alternative Proposals

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<sup>42</sup> See Declarations, attached hereto as Exhibits A & B.

<sup>43</sup> See *id.* At the request of undersigned counsel to M2Z, CEA sent a copy of its Petition by electronic mail to the undersigned on March 5, 2007, more than two days after the Petition was filed. See Declaration of Erin L. Dozier in Support of Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals, attached hereto as Exhibit B. Although this gesture is appreciated, they do not cure the service defects in the CEA Petition as CEA was required to serve M2Z on the day their petitions were filed. See 47 C.F.R. § 1.47(b) ("Where any person is required to serve any document filed with the Commission, such service shall be made by that person or by his representative on or before the day on which the document is filed."). See also 47 C.F.R. § 1.47(g) (requiring the inclusion of a proof of service showing "the time and manner of service.").

<sup>44</sup> See Declarations, attached hereto as Exhibits A & B.

<sup>45</sup> See, e.g., 47 C.F.R. § 1.939(g); see also *Application of Americom Network, Inc.*, Order, 16 FCC Rcd 18450, 18452 (WTB 2001) (dismissing petition to deny filed against application because petitioner failed to serve proposed transferee); *Letter to Mr. V. Alex, WBET(AM), Brockton, MA, Application for Renewal of License*, 21 FCC Rcd 8674, 8674-75 (MB 2006) (dismissing petition to deny as procedurally defective because petitioner failed to serve either the applicant or its counsel).

filed by NextWave, Commnet, NetFreeUS, McElroy, and TowerStream because they operate as petitions to deny which were not served on M2Z.

The purpose of the Act's service requirement is to provide an applicant such as M2Z with adequate notice of an adverse filing and an opportunity to respond in a timely manner.<sup>46</sup> This concept is fundamental to the due process M2Z must be afforded in the Commission's processing of the M2Z Application and also is a central precept of the Commission's orderly decision making process. Other parties filing Petitions against the M2Z Application properly served M2Z, and there is no credible reason why these Petitioners and Applicants could not also have done the same. The Commission should not give these parties another chance to revise or amend their Petitions and Alternative Proposals because it has already given them one opportunity to do so.<sup>47</sup> M2Z believes that petitions to deny were due on March 2, 2007.<sup>48</sup> Apparently, the Petitioners also believed that was deadline for petitions to deny as almost all of the Petitions were filed on March 2, 2007. After that deadline, however, the Commission

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<sup>46</sup> See 47 U.S.C. § 309(d)(1). Although the Petitions and Alternative Proposals eventually appeared in the electronic docket established for this proceeding (WT Docket No. 07-16), the docket was not updated to make available the majority of these filings until Monday, March 5, 2007, more than two days after they were filed. Notwithstanding M2Z's ability to access the Petitions and Alternative Proposals in the Commission's electronic docketing system ("ECFS"), albeit days after they were filed, the ECFS is no substitute for formal service and parties should not be encouraged to effectuate service in any manner other than how the Act and the Commission's rules have long specified.

<sup>47</sup> On March 9, 2007, exactly one week after the Petitions and Alternative Proposals were filed, the Wireless Telecommunications Bureau released a public notice announcing the pleading cycle for the M2Z Application, which extended the deadline for filing petitions to deny to March 16, 2007. See "Wireless Telecommunications Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to Be Licensed in the 2155-2175 MHz Band," Public Notice, DA 07-987 (rel. Mar. 9, 2007).

<sup>48</sup> See M2Z Networks, Inc., Motion for Leave to File a Consolidated Opposition (filed Feb. 14, 2007).

provided an additional two weeks, until March 16, 2007, for parties to file petitions to deny.<sup>49</sup> With that backdrop, there is no reason to yet again extend the time period in which these parties could file pleadings that comport with the law. Thus, because the Petitioners and Applicants did not cure the procedural defects in their Petitions and Alternative Proposals by the second filing deadline, their pleadings should be dismissed without the opportunity to refile.

Accordingly, in the interests of preserving the integrity of longstanding service procedures, the Petitions and Alternative Proposals filed by the following Petitioners and Applicants should be dismissed with prejudice and struck from the record of this proceeding for failure to serve M2Z: (1) CTIA; (2) EchoStar; (3) CEA; (4) Leap; (5) NextWave; (6) Commnet; (7) NetfreeUS; (8) McElroy; (9) ITI; (10) TowerStream; and (11) the Rural Carriers.

**B. The Petitioners and Applicants Have Not Met Their Burden to Make a *Prima Facie* Showing as to Why a Grant of the M2Z Application Would Be Inconsistent with the Public Interest.**

Under Sections 309(d)(1) and (2) of the Act, a petition to deny must satisfy a two-step test.<sup>50</sup> First, the petition must set forth “specific allegations of fact sufficient to show that . . . a grant of the application would be inconsistent with [the public interest, convenience, and necessity].”<sup>51</sup> Second, the petition must present a “substantial and material question of fact” concerning whether grant of the application would serve the public interest.<sup>52</sup> Viewed against

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<sup>49</sup> See “Wireless Telecommunications Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to Be Licensed in the 2155-2175 MHz Band,” Public Notice, DA 07-987 (rel. Mar. 9, 2007).

<sup>50</sup> See 47 U.S.C. § 309(d)(1) & (2); see also, e.g., *Maritime Communications/Land Mobile, LLC, Paging Systems, Inc., Petitions to Deny filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC LLC, and Telesaurus Holdings GB LLC*, Order, 21 FCC Rcd 8794, ¶ 4 (WTB 2006), citing *Astroline Communications Co. v. FCC*, 847 F.2d 1556, 1562 (D.C. Cir. 1998).

<sup>51</sup> 47 U.S.C. § 309(d)(1).

<sup>52</sup> 47 U.S.C. § 309(d)(2).

the great weight of evidence in the record of this proceeding demonstrating the public interest benefits of granting the M2Z Application,<sup>53</sup> the Petitioners and Applicants fail to meet this standard. Rather, their Petitions and Alternative Proposals contain broad, conclusory, and unsupported assertions against the grant of the M2Z Applications. For example:

- The Leap Petition asserts without support or elaboration that “M2Z has made no case that it has any unique experience or expertise, or that its proposal has other extraordinary virtues.”<sup>54</sup>
- The EchoStar Petition declares only that “M2Z fails to provide a compelling explanation as to why the competitive bidding rules governing AWS-1 should not also govern the 2155-2175 MHz band.”
- The CEA Petition contends merely that the M2Z Application is “unprecedented” and that “the Commission should encourage M2Z to seek access to spectrum in the same manner as other for-profit enterprises.”<sup>55</sup>

Indeed, some of the Petitions and Alternative Proposals go so far as to concede that they are failing to meet their burden of pleading under Section 309(d) by not rebutting the public interest showing made by M2Z. For example:

- The Motorola Petition flatly acknowledges that “Motorola is not addressing these claims [concerning ‘the untold benefits’ of M2Z’s proposal to the American public and public safety organizations], [but Motorola] notes that there is no reason to expect that other parties and carriers would not be in a position to make the exact same promises.”<sup>56</sup>
- The Commnet Proposal speculates airily that it “it believes the M2Z application to be defective and not acceptable for filing, for reasons that shall be set forth, possibly in

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<sup>53</sup> See M2Z Application at 22-33; *see also* Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, WT Docket Nos. 07-16 & 07-30, at nn.16-22 (filed Mar. 26, 2007) (documenting examples of the filings in support of the M2Z Application because of the public interest benefits).

<sup>54</sup> Leap Petition at 2.

<sup>55</sup> CEA Petition at 1 & 3.

<sup>56</sup> Motorola Petition at 2.

WT Docket No. 07-30 ” but offers no explanation why Commnet was unable to shoulder its burden to articulate any reason to deny the M2Z Application.<sup>57</sup>

Clearly none of these general and unsubstantiated statements, and similarly vague claims from the other Petitioners and Applicants, meet the evidentiary standards set forth in Section 309(d). The Act plainly places the burden on the Petitioners and Applicants to demonstrate with specificity why grant of the M2Z Application is not in the public interest. M2Z and its supporters have made an overwhelming showing in this proceeding of the public interest benefits that would arise if the M2Z Application is granted. None of the Petitioners and Applicants even come close to meeting their burden to rebut these public interest benefits by raising substantial and material questions. At best, the Petitioners and Applicants generally oppose the M2Z Application and attack M2Z without substantively addressing the merits of the public interest showing M2Z has made. These general and unsupported allegations from the Petitioners and Applicants are insufficient to overcome the concrete public interest benefits of granting the M2Z Application. On this ground alone, all of the Petitions and Applications should be dismissed with prejudice because they fail to meet their statutory burden of making a *prima facie* case as to why grant of the M2Z Application would be inconsistent with the public interest.

Moreover, inasmuch as the Petitioners and Applicants attempt to make the required *prima facie* showing under the Act, they fail to support their allegations, and their status as parties in interest,<sup>58</sup> with the requisite affidavits. The Act requires that petitions to deny must “contain specific allegations of fact sufficient to show that the petitioner is a party in interest”

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<sup>57</sup> Commnet Proposal at Exhibit 7, p. 1.

<sup>58</sup> CTIA claims it has standing by citing a case that is germane only to suits filed in the federal court. See CTIA Petition at n.4. Assuming *arguendo* that the case is applicable here, simply citing it is not a “specific allegation[] of fact sufficient to show that the petitioner is a party in interest” as required under Section 309.

and parties must swear to the accuracy of any allegation in an “affidavit of a person or persons with personal knowledge thereof.”<sup>59</sup> With the exception of AT&T and NextWave,<sup>60</sup> none of the Petitioners and Applicants include such affidavits in support their Petitions and Alternative Proposals. This defect further demonstrates why the Petitions and Alternative Proposals are procedurally improper and should be dismissed with prejudice and struck from the record of this proceeding.<sup>61</sup>

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<sup>59</sup> See 47 U.S.C. § 309(d)(1); see also 47 C.F.R. § 1.939(d) (petitions to deny must contain specific allegations of fact supported by affidavit of a person with personal knowledge thereof)

<sup>60</sup> Only AT&T and NextWave filed declarations in support of their petitions to deny. See AT&T Petition at Attachment A; NextWave Petition at Exhibit A. The other parties subject to this motion could have satisfied the Act’s affidavit requirement merely by filing similar unsworn declarations in support of their Petitions and Alternative Proposals but failed to do even that. See 47 C.F.R. § 1.16 (unsworn declarations may be used in lieu of affidavits).

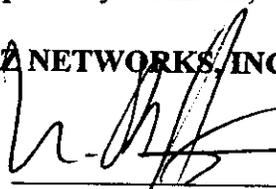
<sup>61</sup> See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 20 (2006) (“we agree that the pleadings filed . . . fail to meet the requirements of section 309(d)(1) because neither group attached a sworn statement as required by statute.”); *Multicultural Radio*, 15 FCC Rcd 20630 (2000) (holding that petitioner’s failure to provide a supporting affidavit rendered his pleading procedurally defective as a petition to deny).

**III. CONCLUSION**

For the forgoing reasons, the Petitions and Alternative Proposals fail to meet the bare minimum requirements for petitions to deny established in the Act. Accordingly, the Petitions and Alternative Proposals are procedurally defective under the Act and must be dismissed with prejudice and struck from the record of this proceeding.

Respectfully submitted,

**M2 NETWORKS, INC.**

By:  \_\_\_\_\_

W. Kenneth Ferree  
Erin L. Dozier  
Christopher G. Tygh  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, N.W., 11th Floor East  
Washington, DC 20005  
(202) 218-0000

Its Attorneys

March 26, 2007

**LIST OF EXHIBITS**

**EXHIBIT A:** Affidavit of Uzoma C. Onyeije in Support of Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals

**EXHIBIT B:** Affidavit of Erin L. Dozier in Support of Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals

**EXHIBIT C:** Chart Summarizing Procedural Defects in Petitions to Deny



A

**Exhibit A**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )

M2Z NETWORKS, INC. )

Application for License and Authority to )  
Provide National Broadband Radio Service )  
In the 2155-2175 MHz Band )

WT Docket No. 07-16

Petition 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

and )

NEXTWAVE BROADBAND INC. )

WT Docket No. \_\_\_\_\_

Application for License and Authority to )  
Provide Nationwide Broadband Service )  
In the 2155-2175 MHz Band )

File No. \_\_\_\_\_

and )

OPEN RANGE COMMUNICATIONS, INC. )

WT Docket No. \_\_\_\_\_

Application for License to Construct and )  
Operate Facilities for the Provision of Rural )  
Broadband Radio Services in the 2155-2175 )  
MHz Band )

File No. \_\_\_\_\_

and )

COMMNET WIRELESS, LLC )

WT Docket No. \_\_\_\_\_

Application for License and Authority to )  
Construct and Operate a System to Provide )  
Nationwide Broadband Service in the )  
2155-2175 MHz Band )

File No. \_\_\_\_\_

and )

NETFREEUS, LLC	)	WT Docket No. _____
	)	
Application for License and Authority to	)	File No. _____
Provide Wireless Public Broadband Service in	)	
<i>the 2155-2175 MHz Band</i>	)	
	)	
and	)	
	)	
MCELROY ELECTRONICS	)	WT Docket No. _____
CORPORATION	)	
	)	File No. _____
Application for a Nationwide 2155-2175 MHz	)	
Band Authorization	)	
	)	
and	)	
	)	
TOWERSTREAM CORPORATION	)	WT Docket No. _____
	)	
Application for a Nationwide 2155-2175 MHz	)	File No. _____
Band Authorization	)	

To: Chief, Wireless Telecommunications Bureau

**AFFIDAVIT OF UZOMA C. ONYEIJE  
IN SUPPORT OF CONSOLIDATED MOTION OF M2Z NETWORKS, INC.  
TO STRIKE AND DISMISS PETITIONS TO DENY AND ALTERNATIVE PROPOSALS**

I, Uzoma C. Onyeije, do hereby declare under penalty of perjury the following:

1. I am Vice President for Regulatory Affairs of M2Z Networks, Inc. ("M2Z").
2. As of the filing date of the foregoing Consolidated Motion of M2Z to Strike and Dismiss Petitions to Deny and Alternative Proposals, neither I, nor anyone at M2Z has been formally served with a copy of the petitions to deny filed against M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band in the above-captioned proceeding on March 2, 2007 by the following parties: (1) CTIA – The Wireless Association; (2) EchoStar Satellite L.L.C.; (3) The Consumer Electronics Association; (4) Leap Wireless International, Inc.; (5) NextWave Broadband, Inc.; (6) NetfreeUS, LLC; (7) Commnet Wireless, LLC; and (8) McElroy Electronics Corporation; (9) TowerStream Corporation; (10) Information Technology Industry Council; and (11) The Rural Broadband Group.

Signature: *Uzonia C. Onyeije*  
Uzonia C. Onyeije  
Vice President, Regulatory Affairs  
M2Z Networks, Inc.  
12000 North 14th Street  
Suite 600  
Arlington, VA 22201

Date: 03/26/07

**Subscribed and sworn to before me this 26th day of March, 2007.**

Notary Public *L. T. My. Baygett*

My Commission expires: April 14, 2008

Residing at: District of Columbia

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**B**

**Exhibit B**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
M2Z NETWORKS, INC.	)	
	)	
Application for License and Authority to Provide National Broadband Radio Service In the 2155-2175 MHz Band	)	WT Docket No. 07-16
	)	
Petition 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
	)	
and	)	
	)	
NEXTWAVE BROADBAND INC.	)	WT Docket No. _____
	)	
Application for License and Authority to Provide Nationwide Broadband Service In the 2155-2175 MHz Band	)	File No. _____
	)	
and	)	
	)	
OPEN RANGE COMMUNICATIONS, INC.	)	WT Docket No. _____
	)	
Application for License to Construct and Operate Facilities for the Provision of Rural Broadband Radio Services in the 2155-2175 MHz Band	)	File No. _____
	)	
and	)	
	)	
COMMNET WIRELESS, LLC	)	WT Docket No. _____
	)	
Application for License and Authority to Construct and Operate a System to Provide Nationwide Broadband Service in the 2155-2175 MHz Band	)	File No. _____
	)	
and	)	
	)	

NETFREEUS, LLC )  
Application for License and Authority to )  
Provide Wireless Public Broadband Service in )  
the 2155-2175 MHz Band )

WT Docket No. \_\_\_\_\_

File No. \_\_\_\_\_

and )  
MCELROY ELECTRONICS )  
CORPORATION )

WT Docket No. \_\_\_\_\_

File No. \_\_\_\_\_

Application for a Nationwide 2155-2175 MHz )  
Band Authorization )

and )

TOWERSTREAM CORPORATION )

WT Docket No. \_\_\_\_\_

Application for a Nationwide 2155-2175 MHz )  
Band Authorization )

File No. \_\_\_\_\_

To: Chief, Wireless Telecommunications Bureau

**AFFIDAVIT OF ERIN L. DOZIER  
IN SUPPORT OF CONSOLIDATED MOTION OF M2Z NETWORKS, INC.  
TO STRIKE AND DISMISS PETITIONS TO DENY AND ALTERNATIVE PROPOSALS**

I, Erin L. Dozier, do hereby declare under penalty of perjury the following:

1. I am counsel of record to M2Z Networks, Inc. ("M2Z") on matters relating to M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (the "Application") and related Petition 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.
2. As of the filing date of the foregoing Consolidated Motion of M2Z to Strike and Dismiss Petitions to Deny and Alternative Proposals, neither I, nor anyone in my office, has been formally served with a copy of the petitions to deny filed against M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band in the above-captioned proceeding on March 2, 2007 by the following parties: (1) CTIA – The Wireless Association; (2) EchoStar Satellite L.L.C.; (3) The Consumer Electronics Association; (4) Leap Wireless International, Inc.; (5) NextWave Broadband, Inc.; (6) NetfreeUS, LLC; (7) Commnet Wireless, LLC; and (8) McElroy Electronics Corporation; (9)

TowerStream Corporation; (10) Information Technology Industry Council; and  
(11) The Rural Broadband Group.

3. At my request, CEA provided me with a courtesy copy of their Comments via  
electronic mail on March 5, 2007.

Signature: 

Erin L. Dozier  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, N.W.  
11th Floor East  
Washington, DC 20005

Date: 3-26-07

**Subscribed and sworn to before me this 26th day of March, 2007.**

Notary Public

My Commission expires:

Residing at:

Lu T. My. Buggett  
April 14, 2008  
District of Columbia



c

**Exhibit C**

**Procedural Defects in Petitions to Deny**

Applicant/ Petitioner	Failure to Serve M22	Failure to Make <i>Prima Facie</i> Showing	Failure to Include Affidavits	Failure to Plead Facts Demonstrating Standing
Leap	✓	✓	✓	✓
Echostar	✓	✓	✓	✓
CEA	✓	✓	✓	✓
CTIA	✓	✓	✓	✓
Motorola		✓	✓	✓
T-Mobile		✓	✓	
WCA		✓	✓	
Verizon		✓	✓	
AT&T		✓		
NextWave	✓	✓		✓
Rural Carriers	✓	✓	✓	
IN	✓	✓	✓	✓
TowersUSA	✓	✓	✓	
Netteelus	✓	✓	✓	✓
Commnet	✓	✓	✓	✓
McElroy	✓	✓	✓	✓

**CERTIFICATE OF SERVICE**

I, Erin L. Dozier, an attorney in the law office of Sheppard Mullin Richter & Hampton, LLP, hereby certify that I have on this 26th day of March 2007 caused a copy of the foregoing Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals to be delivered by first-class mail to the following:

Linda Kinney  
Bradley Gillen  
EchoStar Satellite L.L.C.  
1233 20th Street, N.W.  
Washington, DC 20036-2396

Julie M. Kearney  
Consumer Electronics Association  
2500 Wilson Boulevard  
Arlington, VA 22201

Shant S. Hovnanian  
Speedus Corp., Managing Member of  
NetfreeUS, LLC  
9 Desbrosses Street, Suite 402  
New York, NY 10013

Stephen E. Coran  
Rudolfo L. Baca  
Jonathan E. Allen  
Rini Coran, PC  
1615 L Street, NW, Suite 1325  
Washington, DC 20036  
*Counsel to Speedus Corp. and NetfreeUS, LLC*

Louis Tomasetti  
Commnet Wireless, LLC  
400 Northridge Road, Suite 130  
Atlanta, GA 30350

David J. Kaufman  
Brown Nietert & Kaufman, Chartered  
1301 Connecticut Ave., NW, Suite 450  
Washington, DC 20036  
*Counsel to Commnet Wireless, LLC*

Jennifer McCarthy  
NextWave Broadband Inc.  
12670 High Bluff Drive  
San Diego, CA 92130

Russell D. Lukas  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Boulevard, Suite 1500  
McLean, VA 22102  
*Counsel to McElroy Electronic Corporation*

Robert J. Irving, Jr.  
Leap Wireless International, Inc.  
10307 Pacific Center Court  
San Diego, CA 92121

James H. Barker  
Latham & Watkins, LLP  
555 11th Street, NW, Suite 1000  
Washington, DC 20004  
*Counsel to Leap Wireless International, Inc.*

John T. Scott III  
Verizon Wireless  
1300 Eye Street, NW, Suite 400 West  
Washington, DC 20005

Nancy J. Victory  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
*Counsel to Verizon Wireless*

Steve B. Sharkey  
Motorola, Inc.  
1455 Pennsylvania Ave., NW, Suite 900  
Washington, DC 20004

Andrew Kreig  
The Wireless Communications Association  
International, Inc.  
1333 H Street, NW, Suite 700 West  
Washington, DC 20005

George E. Kilguss  
TowerStream Corporation  
Tech 2 Plaza  
55 Hammarlund Way  
Middletown, RI 02842

Brian Peters  
Director, Government Relations  
Information Technology Industry Council  
1250 Eye Street, NW  
Suite 200  
Washington, DC 20005

Stephen C. Liddel  
Open Range Communications, Inc.  
6465 South Greenwood Plaza Blvd.  
Centennial, CO 80111

Thomas Sugrue  
Kathleen O'Brien Ham  
Sara Leibman  
T-Mobile USA, Inc.  
401 9th Street, NW, Suite 550  
Washington, DC 20004

Paul K. Mancini  
Gary L. Phillips  
Michael P. Goggin  
David C. Jatlow  
AT&T Inc.  
1120 20th Street, NW  
Washington, DC 20036

Gregory W. Whiteaker  
Donald L. Herman, Jr.  
Bennet & Bennet, PLLC  
10 G Street NE  
Suite 710  
Washington, DC 20002  
*Counsel to TowerStream Corporation and The  
Rural Broadband Group*

Michael F. Altschul  
Christopher Guttman-McCabe  
Paul W. Garnett  
Brian M. Josef  
CTIA – The Wireless Association  
1400 16<sup>th</sup> Street, N.W., Suite 600  
Washington, DC 20036

Joe D. Edge  
Drinker, Biddle & Reath, LLP  
1500 K Street, NW  
Suite 1100  
Washington, DC 20005  
*Counsel to Open Range Communications, Inc.*

In addition, courtesy copies of the foregoing Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals were delivered by hand upon the following:

*Chairman Kevin J. Martin*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B201  
Washington, D.C. 20554

*Daniel Gonzalez, Chief of Staff*  
Office of Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B201  
Washington, D.C. 20554

*Erika Olsen, Acting Legal Advisor*  
Office of Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B201  
Washington, D.C. 20554

*Commissioner Michael J. Copps*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B115  
Washington, D.C. 20554

*John Branscome, Acting Legal Advisor*  
Office of Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B115  
Washington, D.C. 20554

*Commissioner Jonathan S. Adelstein*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B302  
Washington, D.C. 20554

*Barry Ohlson, Legal Advisor*  
Office of Commissioner Jonathan Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-B302  
Washington, D.C. 20554

*Commissioner Deborah Taylor Tate*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-A204  
Washington, D.C. 20554

*Aaron Goldberger, Legal Advisor*  
Office of Commissioner Deborah Taylor Tate  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-A204  
Washington, D.C. 20554

*Commissioner Robert M. McDowell*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-C302  
Washington, D.C. 20554

*Angela Giancarlo, Legal Advisor*  
Office of Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-C302  
Washington, D.C. 20554

*Samuel Feder, General Counsel*  
Office of General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 8-C750  
Washington, D.C. 20554

*Catherine Bohigian, Chief*  
Office of Strategic Policy and Planning  
Analysis  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 7-C347  
Washington, D.C. 20554

Fred Campbell, Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

Cathy Massey  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

Peter Daronco  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

David Hu  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

Joel Taubenblatt  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

Walter Strack  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554

Jennifer Tomchin  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 3-C250  
Washington, D.C. 20554



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Erin L. Dozier