

may require the BRS incumbent to cease operations and may opt not to pay the BRS incumbent's relocation costs.²⁸⁷

2. **AWS Band Relocations Will Likely Be at Least as Carefully Orchestrated as the Successful PCS Relocation**

In the late 1990s, the FCC required microwave facilities operating in the 1850-1990 MHz band ("the 1.9 GHz band") to vacate the band for entering PCS licensees.²⁸⁸ Prior to the microwave relocation, there were 8,846 private microwave licenses in the 1.9 GHz band established for PCS use.²⁸⁹ Most licensees had multiple base stations on their network, impacting more than one PCS new entrant. Thus, extensive cost reimbursement coordination was required for over 510,000 base stations.²⁹⁰ Despite these cost reimbursement complexities, the Commission's microwave relocation process was hugely successful.²⁹¹ Most incumbents were relocated on-time and on-budget. The Commission's then-Wireless Bureau Chief, Daniel Phythyon, hailed the 1.9 GHz relocation as a success-story for the Bureau, "further[ing] the rapid clearing of spectrum and the build out of PCS networks."²⁹²

By contrast, relocation in the 2155-2175 MHz band at issue in this proceeding will require far fewer relocations. Only 565 active BRS licenses exist in the 2150-2160/62 MHz

²⁸⁷ *Id.*

²⁸⁸ See *Amendment To The Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Third Notice of Proposed Rule Making, 11 FCC Rcd 8825, ¶ 3-7 (1996).

²⁸⁹ See *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Notice of Proposed Rule Making, 11 FCC Rcd 1923, ¶ 12 (1995).

²⁹⁰ *Semi-Annual Report of the PCIA Microwave Clearinghouse Regarding Operation of Microwave Relocation Cost Sharing Clearinghouse*, PCIA Microwave Clearinghouse Semi-Annual Report to the Commission (WT Docket No. 95-157) (rec'd Aug. 10, 2004).

²⁹¹ See *id.* (noting as well that representatives from Australia, Canada, France, Taiwan and Japan have studied the US microwave relocation process so that they may establish similar processes in their countries). See generally Peter Cramton et. al., *Efficient Relocation of Spectrum Incumbents*, 41 J.L. & ECON. 647 (1998).

²⁹² *Wireless Bureau Chief Daniel Phythyon Hails Success of Market-Based Spectrum Policies*, Press Release (rel. Sept. 11, 1997). Daniel Phythyon was the Chief of the former Wireless Bureau in 1997 and 1998.

band, and the actual number of constructed BRS facilities could be less.²⁹³ Furthermore, only 1356 active FS licenses exist in the 2155-2175 MHz band, with approximately 150 of these authorized by licenses expiring by December 2010 and the remainder authorized licenses, except 30, expiring in February 2011.²⁹⁴ With the cooperation of existing incumbents, that in the aggregate amount in numerical terms to nothing more than a fraction of the number of licensees that were relocated for PCS, M2Z believes that all required relocations will be accomplished in an efficient manner that allows intensive use of the band for M2Z's proposed NBRS.

Finally, because of its aggressive network construction build out commitments, M2Z will also have a strong incentive to facilitate a speedy resolution to the 2155-2175 MHz band relocation process. As noted in the Application, M2Z proposes that its license be conditioned upon its meeting certain very aggressive construction buildout commitments. In view of the foregoing, the Commission should be confident that grant of the Application will result in the intensive use of the 2155-2175 MHz band and a smooth transition for incumbents according to procedures previously established by the Commission for this band.

3. M2Z Must and Will Prevent Harmful Interference to Neighboring AWS Licensees and Will Be Able To Do So Using Currently Available Technology

The spread of Internet Protocol ("IP") technologies and discrete, packetized communications have spurred the development of new, more flexible methods of interference

²⁹³ *AWS 9th R&O*, ¶ 13 n.40. The *AWS 9th R&O* explained that 565 active BRS licensees exist in the ULS database, but noted that only 127 stations submitted responses to a Commission Order seeking BRS station data. Because the data request did not require responses from stations without built-out facilities, the Commission concluded that many licensees may not have constructed operational facilities. *Id.* CTIA cites the Commission's ULS database to report that there are instead 556 BRS licensees in the 2155-2175 MHz Band. See CTIA Petition to Deny at 12 n.33. M2Z's review of ULS indicates that fewer than 250 BRS transmission facilities have been constructed.

²⁹⁴ Federal Communication Commission, Universal Licensing System, available at: <http://wireless.fcc.gov/uls/index.htm?job=home> (searching for all "CF" designated-licensees in the 2155-2175 MHz bands) (last visited Mar. 16, 2007). CTIA's estimate again differs slightly, with CTIA asserting that there are 1,446 common carrier fixed microwave service licensees in the band. CTIA Petition to Deny at 12 n.33.

analysis and engineering. M2Z intends to employ such engineering techniques without abrogating its responsibility to avoid harmful interference. Unfortunately, some of the Petitioners challenge the M2Z proposal using dated engineering assumptions. They contend that theoretically possible interference scenarios could negatively impact future AWS operations in the 2110-2155 MHz and 2175-2180 MHz bands.²⁹⁵ Petitioners' engineering analyses might have been appropriate for the wireless telephony services of three, five, or even ten years ago, when such wireless services more closely resembled wireline telephony, but they are not appropriate today.

The Commission has recognized that "many portions of the radio spectrum are not in use for significant periods of time, and that spectrum use of these 'white spaces' (both temporal and geographic) can be increased significantly."²⁹⁶ Many of these white spaces exist because engineering analysis formerly focused on only one potential interference analysis variable – the transmission power of any two license holders involved in the interference analysis. In November 2002, the Commission's Spectrum Policy Task Force ("SPTF") made significant advancements in analyzing interference.²⁹⁷ Instead of calculating simple radiating power levels, the SPTF shifted the analysis toward "operations using real-time adaptation based on the actual RF environment through interactions between transmitters and receivers."²⁹⁸ Modern engineers,

²⁹⁵ The Commission has established these neighboring spectrum bands for AWS operations as well. *See Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, Public Notice, 21 FCC Rcd 4562 (2006) (announcing procedures and rules for the "AWS-1" auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order, 19 FCC Rcd 20720, ¶ 1 (2004).

²⁹⁶ *Spectrum Policy Task Force Report*, Federal Communications Commission, Office of Engineering & Technology, ET Docket No. 02-135, at 4, available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228542A1.pdf (2002) ("SPTF Report").

²⁹⁷ *Id.*

²⁹⁸ *SPTF Report* at 27.

following this breakthrough, now use four variables to calculate the potential for interference: frequency, power, space and time.²⁹⁹

*Some Petitioners in this proceeding have ignored modern engineering methods and instead referenced studies focusing on the “worst case scenario” – using single-variable power analysis. For example, AT&T unsuccessfully attempts to discredit M2Z’s engineering analysis by referencing a study conducted by the United Kingdom’s Office of Communications (“Ofcom”).*³⁰⁰ AT&T’s reliance on the Ofcom Report is misplaced at best. It appears that AT&T only reviewed portions of the Executive Summary of this report, and failed to digest it in full. A complete review of this report reveals the following:

- the Ofcom Report is a “worst case scenario” analysis which fails to account for the time and space domains;³⁰¹
- the majority of the Ofcom Report (over 75%) addresses interference scenarios other than the Frequency Division Duplex (“FDD”) mobile to TDD mobile interference potentially at issue in this application; and
- the portions of the Ofcom Report that are relevant actually support M2Z’s statistical analysis, as more fully explained below.³⁰²

The Ofcom Report further supports M2Z’s probability analysis that the potential for interference is slight between FDD and TDD mobiles. When discussing FDD and TDD mobile interference, the Ofcom Report concludes that “[t]he probability of the predicted worst-case scenario interference occurring is low.”³⁰³ Later in the report, Ofcom quantifies this finding by stating that it “performed a high level probabilistic assessment (covered in Appendix A), the results of

²⁹⁹ See the attached Affidavit of Michael J. Marcus, Sc. D., F-IEEE, ¶ 4 (“Marcus Affidavit”), attached hereto as Attachment C.

³⁰⁰ See AT&T Petition to Deny at 11–14 (citing Ofcom, 2500-2690 MHz, 2010-2025 MHz and 2290-2302 Spectrum Awards Engineering Study (Phase 2) (2006) (“Ofcom Report”).

³⁰¹ Ofcom Report at 7 (“The results of the *worst-case analysis* demonstrated that FDD/TDD, and TDD/TDD, co-existence is not feasible at either 10 or 15MHz offset without suitable interference mitigation.”) (emphasis added).

³⁰² *Id.* at 7, 35.

³⁰³ *Id.* at 7.

which suggest that 1.9% of mobile devices in high user density areas might suffer effects of 2.6 GHz MS-MS interference, for 1.4 % of the time.”³⁰⁴ According to Ofcom’s analysis, FDD and TDD mobile units would interfere with each other less than 0.03% of the time *without any mitigation techniques employed*.

Most networks do not transmit communications on a constant basis with little to no interference mitigation. Instead, modern digital networks have cycles of communications silence, and spectrum managers use these silent periods to synchronize communications, thereby avoiding interference. Consistent with this approach, M2Z detailed in the Application its proposal for avoiding harmful interference with proactive system configuration and design using emerging technologies, as described in more detail below.

Some Petitioners argue that the Application does not explain sufficiently the steps that M2Z would take to reduce potential out-of-band, adjacent channel interference that could be caused by M2Z’s proposed TDD system to AWS FDD systems in nearby bands.³⁰⁵ While none of these Petitioners have ever contacted M2Z for further technical details regarding interference, it appears that they have preconceived and decidedly false notions regarding the issue. For example, in its Petition to Deny, Verizon Wireless quoted the TDD/FDD engineering analysis of Motorola in the AWS proceeding.³⁰⁶ Motorola’s comments were filed in 2003, but their substance on this issue comes from an October 2001 Motorola filing³⁰⁷ developed before most carriers performed packet-based digital interference analysis.

³⁰⁴ *Id.* at 35.

³⁰⁵ See AT&T Petition to Deny at 11–14; Verizon Wireless Petition to Deny at 14–20; T-Mobile Petition to Deny at 6–7; CTIA Petition to Deny at 6; Motorola Petition to Deny at 1.

³⁰⁶ See Verizon Wireless Petition to Deny at 3 (citing Comments of Motorola, Inc., ET Docket No. 00-258, at 16 (submitted Apr. 14, 2003)).

³⁰⁷ Comments of Motorola, Inc., ET Docket No. 00-258, at 16 (submitted October 22, 2001). These comments actually base their conclusions on earlier studies by others that are referenced.

Because Petitioners were not very clear in identifying potential interference scenarios, it is important to point out that even if no interference mitigation techniques were employed, M2Z's proposed service could only cause one novel type of potential interference to FDD operations³⁰⁸ in adjacent bands. Namely, the following type of interference potentially could occur, TDD mobile uplink transmissions to FDD mobile base station reception in the adjacent bands [2110-2155 (upper portion) MHz and 2175-2180 MHz AWS bands].³⁰⁹ This single type of interference that M2Z's proposed use of the 2155-2175 MHz band could cause to adjacent channel licensees is a typical variety of "near/far" interference that could occur in virtually any service or with any type of radio receiver when the mobile receiver of the interference victim is located far away geographically from the desired signal transmitter and near geographically to the undesired signal transmitter.³¹⁰

Any two systems operating in adjacent or nearby spectrum bands can cause mutual problems if network managers do not pay careful attention to the coexistence of such networks during the planning and design process. Yet, licensees in other services have successfully overcome the problem of near/far interference.³¹¹ In fact, in contrast to its behavior in this proceeding, Verizon Wireless cooperated with the other carriers involved in a potential AWS-PCS interference scenario to develop a "Joint H Block Proposal," suggesting effective power

³⁰⁸ TDD base stations could cause interference to downlinks of FDD mobiles in adjacent bands, but this interference mechanism is not novel and would exist even if the 2155-2175 MHz band were used for FDD downlinks like both its neighboring bands. This intersystem downlink issue is well understood by the CMRS industry and addressed through intercarrier coordination of base station locations, usually resulting in siting adjacent band base stations near each other.

³⁰⁹ See Marcus Affidavit, ¶¶ 9-11.

³¹⁰ *Id.*, ¶¶ 10, 12.

³¹¹ See *Service Rules for Advanced Wireless Services*, Joint Reply Comments of Sprint Corporation, Verizon Wireless, and Nextel Communications, WT Docket Nos. 04-356, 02-353 (submitted Feb. 8, 2005) ("Joint Reply Comments"). When the Commission developed the AWS-1 service rules, Sprint, Verizon Wireless and Nextel came to the realization that near/far interference would result between 1915-20 MHz and 1995-2000 MHz (AWS "H Block") and PCS operations, and worked together to resolve that issue.

limits and out-of-band emission limits to guard against interference.³¹² In the joint proposal that those carriers filed with the Commission, the parties even recognized that advancements in filtering technology may eliminate the need for the proposed limits.³¹³ This recognition of future advancements in the H-Block proposal is significant – in so doing, all carriers took note of the packet-based digital analysis of Nextel Communications.³¹⁴

With respect to the problem of adjacent TDD/FDD interference, there are long-standing examples of TDD systems that peacefully co-exist alongside FDD operations outside the United States. For instance, Personal Handyphone Systems (“PHS”) are used in several Asian countries including China, and have a worldwide subscriber base today of over 100 million users.³¹⁵ Although these cases do not present the same adjacent band TDD/FDD coexistence scenarios presented by M2Z’s Application, they nonetheless demonstrate that coordination and cooperation can occur.

Finally, the Commission has supported TDD and FDD deployment in close proximity. As the Commission recently stated in the BRS/EBS proceeding, the “current Rules would allow ITFS or MDS operators to safely use either FDD or TDD technology. Providing users with the flexibility to deploy the technologies of their choice is consistent with the Commission’s goal of allowing licensees to operate technology independent.”³¹⁶ Accordingly, in this same decision,

³¹² Joint Reply Comments, Attachment.

³¹³ Joint Reply Comments at 2.

³¹⁴ See *Service Rules for Advanced Wireless Services*, Comments of Nextel Communications, WT Docket Nos. 04-356, 02-353 (submitted Dec. 8, 2004). Nextel Communications used packet-based analysis to determine the actual probability that interference would occur. As illustrated by Nextel’s approach, other methods of analysis do not “take into account the probability of these legacy handsets would actually experience interference. . . . [although] mobile-to-mobile interference is highly probabilistic and depends upon the coincident occurrence of four factors.” *Id.* at 38.

³¹⁵ See Marcus Affidavit, ¶ 20; see also PHS MoU Group Press Release, “PHS MoU Group announced breakthrough of 100,000,000 PHS users worldwide” (Nov. 9, 2006), available at <http://www.phsmou.org/news/en/745.aspx>.

³¹⁶ *EBS/BRS Report and Order*, ¶ 133.

the Commission approved the operation of TDD and FDD in close spectral proximity when it revised the rules for BRS/EBS operation in the 2495-2690 MHz band.³¹⁷ Consistent with the current state of interference mitigation, M2Z will consider utilizing numerous techniques and engineering solutions to avoid interference during the planning, construction, and operation of its proposed NBRS network.³¹⁸ M2Z understands that AWS-1 and AWS-2 licensees are entitled to operate free of harmful interference from the proposed M2Z system, but is convinced that, through careful use of these interference avoidance techniques, M2Z can avoid harmful interference with its neighbors.

4. Further Technical Study for the Development of Service Rules is Unnecessary

In light of the foregoing, and due to the comprehensive nature of the interference mitigation solutions proposed in the Application (as further explained herein), the Commission need not conduct further technical study of the interference issues raised by use of the 2155-2175 MHz band in a separate rulemaking before authorizing M2Z's use of the 2155-2175 MHz band. The Commission has moved increasingly towards streamlining and harmonizing its Part 27 technical requirements, adopting the same or similar rules in proceeding after proceeding, in order to encourage spectrum use flexibility and interchangeability.³¹⁹ By working to standardize

³¹⁷ *Id.*, ¶ 134.

³¹⁸ See Marcus Affidavit, ¶¶ 16–21. Both Verizon Wireless and AT&T recommend that 5 MHz “guard bands” be created between M2Z’s frequency of operation and the adjacent bands. See Verizon Wireless Petition to Deny at 18–19; AT&T Petition to Deny at 14–15. Such a proposal would create an artificial, demilitarized zone between M2Z and other AWS licensees and would specify a technical approach to mitigating interference (*i.e.*, the institution of a guard band) instead of allowing licensees to determine the best technical solutions to ensure protection. Mandating guard bands would be contrary to the Commission’s policy of technology neutrality, and the Commission should avoid this approach. See, *e.g.*, *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 69 (1997). The Commission should focus on preventing harmful interference, but should not dictate the measures to be used in meeting this goal. M2Z will commit to any reasonable interference control requirement imposed as a condition of its license as long as the requirement is technologically neutral and preserves M2Z’s flexibility to respond to the interference issue with the modern interference mitigation techniques discussed above.

³¹⁹ See *e.g.*, *AWS 1st Report and Order*, ¶ 41 (stating the Commission sought to harmonize the technical rules developed for BRS/EBS licensees with the those imposed on PCS and AWS licensees).

rules across wireless services, the Commission has eliminated artificial regulatory barriers that separate similar wireless services that differ from each other in only a few band-specific and service-specific respects. A rulemaking proceeding on technical matters is all the more unnecessary because the Commission allocated the 2155-2175 MHz band in the context of issuing AWS service rules. The Commission's reform efforts have streamlined the market-focused regulatory regime under Part 27, and in the process made the Commission's rules more consistent and standard across wireless services. Another lengthy and time-consuming rulemaking proceeding would only needlessly delay the long-awaited nationwide deployment of wireless broadband infrastructure and the commencement of M2Z's promising new service.

IV. PETITIONERS DO NOT RAISE ANY SUBSTANTIAL AND MATERIAL QUESTIONS REGARDING THE BENEFITS OF M2Z'S PROPOSAL OR THE VALIDITY OF THE PROPOSAL UNDER APPLICABLE LAW

A. M2Z's Provision of a Free, Portable Broadband Internet Access Service Represents A Significant Step Forward in the Deployment of Advanced Services

1. M2Z's Proposed Connection Speed of 384 Kbps Sets a Floor, Not a Ceiling, and Represents a Six-Fold Increase in Speed Over Dial-Up Service

Petitioners criticize M2Z for proposing to offer connection speeds of 384 kbps downstream and 128 kbps upstream, arguing that other wireless providers already offer mobile data rates at or in excess of the base level proposed in the Application.³²⁰ However, the Application establishes these data rates as minimum guarantees and enforceable promises regarding the level of service that M2Z would provide via the NBRS, and all of the specifics of the service that M2Z would eventually deploy are, of course, subject to the Commission's regulatory authority. Furthermore, in order to respond to technological and marketplace

³²⁰ See, e.g., CTIA Petition to Deny at 12; T-Mobile Petition to Deny at 8, 11.

developments, M2Z's service will be scalable and adaptable over time. Finally, the Commission should not turn its back on its principles of competitive and technological neutrality³²¹ by mandating data rates for broadband service providers.

In view of the always changing nature of the broadband marketplace, it would be unwise for the Commission to attempt to determine what optimum broadband speeds will be five, ten, or fifteen years into the future. Moreover, the Commission should take comfort in the fact that no matter what the actual data rates provided may be when M2Z first deploys its service within two years after grant of the license requested in the Application, those data rates will represent a marked increase over the dial-up data rates associated with the Internet access services that are available in many parts of the country. Grant of the Application would add one more competitive option to the broadband marketplace, resulting in a clear net gain for consumers.³²² Any broadband service that comes free of airtime charges would be a welcome alternative for millions of Americans currently locked into receiving high-priced wireline broadband service, receiving dial-up wireline service, or unable to receive any broadband service at all.³²³

³²¹ See, e.g., *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 69 (1997). T-Mobile argues that the Commission should not be in the position of picking "winners and losers" for licensing purposes, but failure to adhere to technological neutrality principles – by favoring FDD over TDD technology, for instance – is far more likely to result in the Commission picking winners and losers than would grant of M2Z's Application to provide nationwide broadband service in competition with incumbent wireline and wireless offerings.

³²² See Wilkie, "Consumer Welfare Impact," at 3, 8.

³²³ Petitioners also criticize M2Z's proposal to provide service free of airtime charges by noting that consumer equipment necessary to receive the service could initially cost \$250. See, e.g., WCA Petition to Deny at 3 n.7. Furthermore, WCA implies that M2Z will profit directly from the sale of this equipment, but that implication is false, as M2Z does not have a stake in equipment sales. See, e.g., Wireless Communications Association International, Inc., Opposition to Petition for Forbearance, WT Docket No. 07-30, at 7 (submitted Mar. 19, 2007). As with the data rates promised in the Application, this estimate is a conservative one intended to serve as an enforceable condition of the license. As Verizon Wireless notes, the Application makes clear that M2Z anticipates that the equipment initially will cost *less than* \$250, and that the cost will decline over time. See Verizon Wireless Petition to Deny at 13 n.50 (citing Application at 3 n.6). Finally, even a \$250 initial investment amortized over just a single year of service would amount to a charge of little more than \$20/month, with that effective monthly rate declining over time as the term of service increases.

2. M2Z's Proposed Buildout Schedule Exceeds What Has Been Required of or Delivered by Other Licensees

Some Petitioners criticize M2Z's buildout schedule and imply that it will not result in rapid deployment of advanced services.³²⁴ No matter how onerous a buildout schedule the Commission may or may not have imposed on other services, the true test of a deployment schedule is how fast the provider actually brings its offering to the market and begins serving consumers. In other words, even the most rigorous buildout schedule is of little use if the licensees in the service seek waiver after waiver from the Commission or fail for other reasons to make good on their promises.

Unfortunately, many of the wireless services that have been auctioned by the Commission in the past as a possible hope for wireless broadband services have failed to live up to expectations. Numerous services that have been subject to the Commission's relaxed "substantial service" construction buildout standard have proven incapable, thus far, of delivering a viable third national broadband provider that can compete head-to-head against wireline providers of broadband service. For the most part, the Commission has excused the failure of licensees in the wireless broadband spectrum bands to build out their networks, allowing a large swath of valuable spectrum to lay fallow. The latest example of such treatment is the grant of additional time for network buildout provided to 2.3 GHz WCS licensees.³²⁵ In

³²⁴ See, e.g., AT&T Petition to Deny at 18-19; T-Mobile Petition at 8-9; WCA Petition to Deny at 5. While WCA questions whether M2Z's three-year build out milestone is adequate, the organization is on record stating that a three-year extension after nine years of inactivity is "an important step" in bringing services to consumers: "WCA applauds the FCC for granting the request of the WCS Coalition, of which WCA is a member, for an extension of the WCS build-out deadline. This represents an important step in the effort to bring WiMAX and other advanced technologies to U.S. consumers . . ." See WCA, WCA Applauds FCC For Granting WCS Coalition's Request For 2.3 GHz Buildout Deadline Extension, Press Release (rel. Dec. 1, 2006) available at: http://www.wcai.com/pdf/2006/p_wcaDec1.pdf

³²⁵ The Commission recently granted all WCS licensees, including entities such as AT&T, NextWave, and Verizon Wireless, an additional three years until July 2010 to satisfy their applicable construction build out requirements. See Wilkie II at 23 (citing *In the Matter of Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134, ¶ 13 (2006)). The WCS waiver order

contrast to the licensees in this failed service, M2Z has made a concrete, realistic, and enforceable proposal to serve as much as 95% of the United States' population within ten years after commencing service. While Petitioners may quibble over the difference between 95% and 100%,³²⁶ M2Z notes that no deployment schedule or buildout requirement previously imposed by the Commission has yielded results as dynamic or beneficial for improving broadband deployment as those promised in the Application.

3. M2Z's Proposal Is Consistent with the Concept of a Marketplace Broadband Solution—It Will Permit New Entry into the Market and Spur Competition

The unfettered marketplace has done a good job of promoting ubiquitous wireless competition in the realm of traditional voice services, but despite the Commission's repeated efforts that marketplace has failed miserably in fostering the deployment of a ubiquitous and robust wireless broadband service that is competitive with wireline broadband offerings. Although spectrum capable of supporting wireless broadband has been auctioned in the WCS, LMDS, 39 GHz, 24 GHz, BRS, and other services,³²⁷ none of that spectrum is currently being used to provide nationwide broadband service in competition against the wireline broadband

limited the breadth of the original request because it lacked certainty and "could act as a disincentive for WCS licensees to expeditiously develop technological solutions for the band and construct systems" and "undermine one of the purposes of the construction requirement – to prevent spectrum warehousing." *Id.*, ¶ 14.

³²⁶ See, e.g., CTIA Petition to Deny at 10 n.25. What CTIA fails to appreciate once again is that M2Z's commitment to serve 95% of the nation's population is a minimum benchmark that M2Z has proposed as a condition of its license, but it is not intended to serve as a maximum service area. See Application at 23.

³²⁷ Amendments to Parts 1, 2, 87 and 101 of the Commission's rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934 (2000); Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0GHz Bands, Report and Order and Second Notice of Proposed Rule Making, 12 FCC Rcd 18600 (1997); 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, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997); Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785 (1997); Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Report and Order, 10 FCC Rcd 9589 (1995).

providers. However, the fact that no individual or isolated Commission spectrum policy action will guarantee the attainment of ubiquitous wireless broadband service cannot serve as a justification for the Commission refusing to try. M2Z has identified one concrete action – grant of the Application – that the Commission could take to positively impact the state of competition in the broadband marketplace. The Commission has an obligation to consider this fact in its review of the Application. Notwithstanding claims to the contrary made by CTIA and others, the state of broadband deployment throughout the United States today is not acceptable.³²⁸ Grant of the Application would spur widespread deployment of M2Z’s wireless broadband service, which would serve as more than a mere complement to duopoly wireline broadband services.³²⁹

B. M2Z’s Proposed Spectrum Usage Fee Provides a Generous Revenue Stream for the U.S. Treasury, and Neither That Voluntary Payment Nor the Commission’s Acceptance of the Proposal Violates The Act or Other Applicable Law

Certain Petitioners lodge unsubstantiated criticisms against the value of M2Z’s proposal to make voluntary, direct payments to the U.S. Treasury of a usage fee equal to five percent of gross revenues from M2Z’s premium service.³³⁰ Economic studies entered into the record in this proceeding since the time that the Application was filed in May, 2006, serve to demonstrate the validity of M2Z’s estimates for the total amount of the annual usage fee contribution.³³¹ Petitioners criticizing M2Z’s estimates in this regard can offer nothing but speculation as they attempt, unsuccessfully, to refute the showing that M2Z made in its Application and the reasoned estimates submitted since that time.

³²⁸ See, e.g., CTIA Petition to Deny at 11–12; NextWave Petition to Deny at 8–9.

³²⁹ See *Wilkie II* at 15–19.

³³⁰ See, e.g., WCA Petition to Deny at 6. These unsubstantiated attacks on M2Z’s projected valuation differ markedly from the substantial supporting evidence offered in support of M2Z’s estimate. See *Wilkie*, “Consumer Welfare Impact,” at 19–20; *Liopiros* at 32–33.

³³¹ See *Wilkie*, “Consumer Welfare Impact,” at 19–20.

Unsatisfied with simply questioning the amount of M2Z's voluntary contributions, however, AT&T and Verizon Wireless also challenge the Commission's authority to accept such voluntary payments on behalf of the U.S. Treasury, and question the validity of M2Z's entire proposal under certain statutes regulating federal agencies' financial dealings and contracts with private entities. As shown below, however, these arguments are likewise without merit.

1. The Commission Has the Authority and Discretion to Accept M2Z's Proposal to Pay a Voluntary Usage Fee for the Spectrum Rights M2Z Seeks in the Application

AT&T erroneously asserts that the Commission lacks authority to collect M2Z's proposed five percent usage fee. It argues that any payments imposed by the Commission must be "reasonably related to the value of the spectrum resource being received."³³² In lieu of such a connection, AT&T states, the fee is simply a gross receipts tax.³³³ These arguments are without merit.

First, under M2Z's proposal, the U.S. Treasury – and not the Commission – would "collect" the payments. Second, M2Z's payments would be *voluntary* – the Commission has not imposed any fee or tax whatsoever on M2Z's services. Instead, the payments are designed to recover a "portion" of the value of the public spectrum resource used to provide M2Z's service, as specified as a goal in Section 309(j)(3)(C) of the Act. Such voluntary payments are accepted by the U.S. Treasury – even from certain Petitioners in this docket – in numerous wireless, licensing, enforcement, and merger review contexts in the form of consent decree settlements.³³⁴

³³² AT&T Petition to Deny at 19.

³³³ *Id.*

³³⁴ See, e.g., *In the Matter of AT&T Inc. Compliance with the Commission's Rules and Regulations Governing Customer Proprietary Network Information*, Order, File Nos. EB-05-TC-047 and EB-06-TC-059, NAL/Acct. No. 200632170003, FCC 06-100 (rel. Jul. 7, 2006) (adopting a \$550,000 Consent Decree to resolve a CPNI compliance investigation); *In the Matter of T-Mobile USA, Inc. Compliance with the Commission's Rules and Regulations Governing the National Do-Not-Call Registry*, Order, File No. EB-04-TC-010, NAL/Acct. No. 200532170012, DA 05-3038 (Enforcement. Bur. rel. Nov. 23, 2005) (adopting a \$100,000 Consent Decree); see also *In the Matter of Sprint*

The D.C. Circuit decision that AT&T relies upon, *NCTA v. FCC*,³³⁵ has no bearing on M2Z's Application. In *NCTA*, the Supreme Court reversed and remanded a Commission fee structure that sought to recover the full cost of cable television (or "CATV") oversight through annual per-subscriber fees imposed on CATV system operators.³³⁶ In that case, the issue was whether the Commission could lawfully recover its own costs in full from regulated entities, or whether the value of the Commission's services to the CATV systems was lower. M2Z has voluntarily offered to submit a payment to the U.S. Treasury, and there is no dispute as to whether the Commission is requiring the payment in return for services rendered to M2Z.

Third, AT&T is incorrect that M2Z's payments are not tied to the value of the 2155-2175 MHz spectrum. Once again, AT&T tries to force the Commission into auctioning the spectrum, essentially arguing that no payment could possibly represent the value of the spectrum to M2Z other than the amount that would be received at auction. In truth, M2Z's payments to the U.S. Treasury will grow as its premium service subscriber base increases. In other words, as M2Z derives additional revenue from the license, so will the U.S. Treasury, providing the tie that AT&T believes necessary. Further, the five percent usage fee could appropriately be described as the value that M2Z places on the 2155-2175 MHz band, when understood in context and in conjunction with all of M2Z's additional commitments to provide the public interest and consumer welfare benefits enumerated in Part I to this Opposition. In any event, as discussed in detail in Part II above, the Commission is not required to auction off licenses in the 2155-2175 MHz band, and in lieu of such a requirement it would be utterly inappropriate to assume that a

Communications Company, LP Verification of Orders for Telecommunications Services, Order, File No. EB-03-TC-056, NAL/Acct. No. 200532170004, FCC 05-60 (rel. Mar. 11, 2005) (adopting a \$4 million Consent Decree to resolve a slamming investigation).

³³⁵ 554 F.2d 1094 (D.C. Cir. 1976).

³³⁶ See *id.* at 1096-97.

hypothetical auction value represents the only acceptable license value – particularly where, as here, the Applicant has made public service commitments far beyond those traditionally offered *by auction bidders*.

2. M2Z’s Proposal Does Not Violate the Anti-Deficiency Act or the Miscellaneous Receipts Act

Verizon Wireless devotes a considerable amount of space in its Petition to Deny to arguments that grant of the Application would violate the Miscellaneous Receipts Act (“MRA”) and the Anti-Deficiency Act (“ADA”).³³⁷ Both of these claims have been considered and rejected by the Commission in other contexts, and also by the Government Accountability Office (“GAO”),³³⁸ and neither statutory argument fares better here.

The MRA does not bar the Commission from granting M2Z its requested license based on the conditions proposed in the Application. Verizon Wireless is the only petitioner to raise this argument, claiming that the Application violates the MRA by “inducing the Commission to trade the value of spectrum – value that should be realized for the Treasury via auction – for promises by M2Z to perform certain acts and services that the Commission will retain the discretion to enforce.”³³⁹ The MRA requires government officers or agents “receiving money for the Government . . . [to] deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.”³⁴⁰ Characterizing the public interest commitments made by M2Z as akin to “constructive” payments of monies to the Commission made in lieu of auction

³³⁷ See Verizon Wireless Petition to Deny at 22–28.

³³⁸ See “Whether the Federal Communications Commission’s Order on Improving Public Safety Communications in the 800 MHz Band Violates the Antideficiency Act or the Miscellaneous Receipts Statute,” No. B-303413 (Nov. 8, 2004) (the “GAO Ruling”).

³³⁹ Verizon Wireless Petition to Deny at 25.

³⁴⁰ 31 U.S.C. § 302(b).

payments, Verizon Wireless argues that the Commission is prohibited by the MRA from “purchas[ing] . . . public interest promises with the value of the spectrum license.”³⁴¹

Verizon Wireless’s argument that the MRA prohibits grant of the Application is based on the false premise that the Commission has no discretion to assign the license requested by M2Z without competitive bidding.³⁴² As discussed in detail in Part II, however, Section 309(j)(6)(E) of the Act expressly affords the Commission such discretion by authorizing it to avoid mutual exclusivity in accepting and granting initial spectrum license applications.³⁴³ Therefore, grant of the Application would not violate the MRA because the Commission is not obligated under Section 309(j) or any other provision of the Act to assign licenses only via competitive bidding.

The Commission rejected a similar argument made by Verizon Wireless in the context of the 800 MHz re-banding. In that proceeding, Verizon Wireless argued that the MRA prohibited the Commission from granting Nextel’s proposal that it be assigned a nationwide license to operate on the 1.9 GHz band in exchange for 800 MHz spectrum that it would relinquish in order to eliminate interference to public safety.³⁴⁴ In discussing Verizon Wireless’s argument, the Commission stated that “[t]he MRA does not nullify the discretion that Congress gave to the Commission and preserved in Section 309(j).” The GAO confirmed the Commission’s interpretation of an agency’s responsibility under the MRA, and likewise rejected Verizon Wireless’s arguments.³⁴⁵ The Commission should similarly reject Verizon Wireless’s attempt to resurrect its failed MRA argument here.

³⁴¹ Verizon Wireless Petition to Deny at 27.

³⁴² See *id.* at 28 n.103; see also *id.* at 2–5.

³⁴³ See *800 MHz Re-banding Order*, ¶ 85.

³⁴⁴ See *id.*

³⁴⁵ See GAO Ruling at 22–23 (“[W]e defer to the Commission’s judgment that . . . modification authority is available to the Commission. . . . Accordingly, we do not believe that the Commission has circumvented the

The Commission also must reject Verizon Wireless's argument that the Commission is barred by the Anti-Deficiency Act ("ADA") from granting M2Z its requested license. The ADA prohibits an officer or employee of the United States from involving the "government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."³⁴⁶ Verizon Wireless argues that the ADA governs contracts or agreements relating to the transfer of value, as well as agreements relating to the payment of money.³⁴⁷ In essence, Verizon Wireless argues that if the Commission grants M2Z's license request on the condition that M2Z perform the public interest obligations proposed in the Application, the Commission would be entering into a contract or transaction with M2Z to transfer value in the form of the requested license in exchange for the performance of M2Z's commitments.³⁴⁸ Verizon Wireless argues that such a contract or transaction is prohibited under the ADA because Congress has not authorized such an agreement and has expressly required that spectrum licenses such as the license sought by M2Z be assigned via auction.³⁴⁹

Verizon Wireless's claims of an ADA violation fail on at least two counts. First, as the federal government agency with plenary authority over the regulation of spectrum resources, the Commission is authorized to grant spectrum licenses to qualified applicants based on its determination of the public interest.³⁵⁰ Such license grants, which are often subject to conditions, do not constitute contracts or agreements under the ADA, but are instead

requirements of the miscellaneous receipts statute by not auctioning the spectrum in the 1.9 GHz band and obtaining and depositing the proceeds into the Treasury.").

³⁴⁶ 31 U.S.C. § 1341(a)(1)(B).

³⁴⁷ Verizon Wireless Petition to Deny at 23.

³⁴⁸ *Id.* at 24-25.

³⁴⁹ *Id.* at 25.

³⁵⁰ *See* 47 U.S.C. § 309(d).

authorizations granted by the Commission pursuant to its regulatory powers.³⁵¹ Just as the thousands of conditioned spectrum license grants made by the Commission annually do not constitute contracts or agreements subject to the ADA, neither would the license grant to M2Z. As the Commission stated in the *800 MHz Re-banding Order* when it rejected a similar argument, “[r]adio spectrum is not appropriated by Congress and it cannot be obligated, expended, or deposited in the Treasury . . . [it] is a public resource of the United States that Congress has authorized and directed the Commission to manage in the public interest.”³⁵²

Second, like Verizon Wireless’s flawed MRA argument, its argument that grant of the Application is barred by the ADA is based on the false premise that the Commission has no discretion in how it must assign the license requested by M2Z. As discussed in detail in Section II, Congress has granted the Commission broad authority under Section 309(j)(6)(E) to avoid the mutual exclusivity in spectrum license applications that gives rise to the auction requirement.³⁵³

3. Despite Petitioners’ Fanciful Claims to the Contrary, M2Z’s Proposal Does Not Amount to a Request for Free Spectrum, Subsidies, or the Commission’s Financial Backing

CTIA and other Petitioners unjustifiably criticize the Application for seeking free or subsidized spectrum.³⁵⁴ These Petitioners seem to have conveniently forgotten that members of

³⁵¹ The GAO readily concluded that assignment of a license does not obligate or commit the government to pay any funds in violation of the ADA.

The express language of 31 U.S.C. § 1341(a)(1)(B) prohibits involving the U.S. government in a contract or obligation for the payment of money before an appropriation is made unless Congress by law authorizes such action. *The Report and Order does not obligate the government, by contract or otherwise, to pay any money from government funds that Congress has not appropriated.* Further, even if one were to accept the statements offered by critics of the Report and Order, *clearly this case does not commit the Commission to make, or the Congress to fund, any payments, the very evil that Congress addressed when enacting [the ADA].*

See GAO Ruling at 9–10 (emphases added).

³⁵² See *800 MHz Re-banding Order*, ¶ 81.

³⁵³ See *id.*, ¶ 85.

³⁵⁴ See CTIA Petition to Deny at 3; T-Mobile Petition to Deny at 1; Verizon Wireless Petition to Deny at 1.

the CMRS industry, including many of the providers that now oppose the M2Z Application, secured their initial spectrum authorizations without directly compensating U.S. taxpayers by making auction payments to the U.S. Treasury. It is true that grant of M2Z's Application – like the initial grants of valuable cellular licenses – would assign M2Z a license not subject to competitive bidding. Yet, as explained in Parts I and II above, the Commission has the authority to determine that the NBRS is the highest and best use of the 2155-2175 MHz band and thereafter to assign the requested license to M2Z in the public interest. In doing so, the Commission could be certain of the public interest benefits that would result from granting M2Z's license because of M2Z's voluntary payment of usage fees, its extensive public interest commitments, and the unprecedented level of network buildout proposed in the Application. These commitments far outweigh the commitments that were made by the cellular licensees when they received their initial licenses without auction.

In light of the Commission's history of assigning CMRS licenses to cellular providers at no cost, CTIA's charge that M2Z's proposal seeks the Commission's financial backing³⁵⁵ is disingenuous at best. M2Z has no more asked the Commission to finance its business than did the cellular licensees to which the Commission assigned so many licenses without competitive bidding. As noted above, the Commission grants thousands of spectrum licenses without competitive bidding each year.³⁵⁶ Many of these licenses are used in the provision of

³⁵⁵ See CTIA Petition to Deny at 8. CTIA also contends that the five percent voluntary usage fee to be paid under M2Z's proposal would make the Commission an "equity investor" in M2Z's business, and that the prospects receiving such payments would "pose an obvious conflict for the FCC in its role as a neutral government regulator because the U.S. Treasury's and the FCC's funds would be directly tied to M2Z's success." *Id.*; see also T-Mobile Petition to Deny at 12. Apart from insulting the Commission's decisionmaking processes and impartiality, the novel logic advanced by CTIA also would make the Commission an equity investor in every private company from which the United States collects a revenues-based USF contribution, every commercial and noncommercial broadcaster from which the Commission collects a five percent fee on revenues derived from ancillary services, and every cable operator from which the Commission collects a regulatory fee based on the number of subscribers that a cable system serves. See 47 C.F.R. § 1.1155.

³⁵⁶ See *supra* note 240.

commercial services and most of the recipients of such licenses do not pay an annual usage fee for such licenses. No one could reasonably assert, however, that the Commission has been financing or subsidizing the businesses of such licensees merely because the licensees were not required to secure their licenses through a process of competitive bidding.

C. There Are No Remaining Substantial and Material Questions of Fact Concerning the Application, the Public Interest Benefits of M2Z's Proposed Service, or M2Z's Financial Qualifications

The M2Z Application on its face provides sufficient information regarding the public interest benefits that would result from granting the Application to authorize the NBRIS and grant M2Z's requested license, and regarding M2Z's financial qualifications to construct its proposed network. No further proceedings are necessary to confirm this information. In its Petition to Deny, AT&T repeatedly asserts that "substantial and material" questions of fact remain unanswered and that the Commission is without sufficient information to grant the Application, but its conclusory statements fail to raise factual issues.³⁵⁷ Under Section 309(d) of the Act, petitions to deny must set forth "specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with [the public interest]. Second, the petition must present a 'substantial and material question of fact.'³⁵⁸ AT&T's Petition fails both prongs of this test.

To satisfy the first prong of the test, a petitioning party must set forth allegations, *supported by affidavit*, that constitute "specific evidentiary facts," not conclusory facts or general

³⁵⁷ See, e.g., AT&T Petition to Deny at 6.

³⁵⁸ *Application of GTE and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, ¶ 434 (2000) ("GTE Order"). The GTE Order cites 47 U.S.C. § 309(d)(1) – (2) itself for this proposition, as well as the D.C. Circuits decisions in *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) and *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1562 (D.C. Cir. 1988).

allegations.³⁵⁹ AT&T has included no affidavit whatsoever with its petition. It submitted with its Petition to Deny a Declaration regarding interference issues, but, as shown in Part III of this Opposition, there are no factual issues that remain regarding interference.³⁶⁰ In addition to lacking an affidavit, AT&T's Petition provides no "specific evidentiary facts."

AT&T and the other Petitioners have also failed to present "substantial and material questions of fact." Although its Petition to Deny disputes some of the public interest benefits offered by M2Z's Application, the D.C. Circuit and the Commission have repeatedly stated that such concerns "manifestly do not" raise substantial and material questions of fact.³⁶¹ To be sure, the concerns that AT&T voices relate to questions that the Commission is well-suited to answer.³⁶² Finally, the "voluminous record" developed in this proceeding provides further evidence that no questions of fact remain that would require either a hearing or a denial of M2Z's Application.³⁶³

AT&T and other Petitioners also question the financial wherewithal of M2Z to construct its proposed network, arguing that the Application did not establish M2Z's solubility or capacity to raise the funds necessary to buildout and operate its service.³⁶⁴ As demonstrated in the Application, however, M2Z has the requisite finances in place to commence construction of its

³⁵⁹ See, e.g., *GTE Order*, ¶ 434; *United States v. FCC*, 652 F.2d 72, 89 (D.C. Cir.1980) (*en banc*) (quoting *Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320, 323-24 (D.C. Cir. 1974)).

³⁶⁰ AT&T overlooks the fact that M2Z committed to operate under the same Part 27 service rules that apply to other AWS services. In fact, the Declaration itself notes that the declarant's position is based on the "absence of specific service rules" being applied to M2Z. See AT&T Petition, Attachment A at 29. As discussed in more detail in Part III, M2Z offers the same commitment to protect against interference that other users in the band have made.

³⁶¹ See, e.g., *GTE Order*, ¶ 436-37; *SBC Communications, Inc. v. FCC*, 56 F.3d at 1496-97 (D.C. Cir. 1995).

³⁶² Even if AT&T raised substantial and material questions of fact, the appropriate step for the Commission would be to hold a hearing, not to deny the Application. See 47 U.S.C. § 309(d), (e).

³⁶³ See, e.g., *GTE Order*, ¶ 438.

³⁶⁴ See, e.g., AT&T Petition to Deny at 6-7; Verizon Wireless Petition to Deny at 10-14; CTIA Petition to Deny at 8; T-Mobile Petition to Deny at 7-8.

network and commencement of service after the Commission grants the Application.³⁶⁵ Moreover, many of the specific showings that Petitioners demand from M2Z³⁶⁶ are wholly without precedent and inappropriate in view of the already significant showing of financial and technical viability that M2Z has provided.³⁶⁷ Although M2Z's financial viability has been established by M2Z in this proceeding and even acknowledged in CTIA's Petition to Deny,³⁶⁸ in order to further establish M2Z's bona fides, M2Z notes that the financial resources it will be able to marshal to support its network buildout are far greater than the \$400 million mentioned in connection with M2Z's initial buildout phase in the Application.³⁶⁹

While M2Z has been very forthcoming in discussing its financial information and proposed service, it is worth noting that other wireless carriers – including some of the Petitioners – have recently reported financial struggles and losses on top of the vast amounts of money they spent to acquire spectrum licenses in the AWS auction and earlier.³⁷⁰ These facts

³⁶⁵ Application at 8. In fact, M2Z has assurances to receive funding at an amount significantly in excess of \$400 million and has provided the FCC with proof of such assurances under cover of confidentiality. *See* Request for Confidential Treatment of M2Z Networks, Inc., WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007). Moreover, M2Z's backers (Kleiner Perkins Caufield & Byers, Charles River Ventures, and Redpoint Ventures) are undoubtedly capable of seeing the network build out through to completion as they have generated over \$200 billion in value to shareholders, \$40 billion in annual revenues and 80 thousand jobs through just a select number of investments in companies that have been instrumental in the growth and use of the Internet.

³⁶⁶ Verizon Wireless suggests that M2Z should make the type of financial showing that the Commission required from pre-competitive bidding era cellular and private land mobile licensees, and also proclaims that "M2Z must provide detailed information as to how it expects to procure unique wireless equipment to operate in the 2155-2175 MHz" in order to justify estimates in the Application regarding the pricing point for customer equipment. *See* Verizon Wireless Petition to Deny at 11-12, 14. AT&T meanwhile would have M2Z provide further assurances against default akin to the steps required of Nextel in the 800 MHz transition. *See* AT&T Petition to Deny at 6-7. These parties fail to recognize that the burden of proof is on them, not M2Z. *See* Part I.C., *supra*. Claiming that M2Z must provide additional financial data does not meet that burden. Nevertheless, as explained elsewhere in this Opposition, M2Z is more than capable of financing the buildout of its network and will provide the Commission with additional information as requested.

³⁶⁷ *See, e.g.*, Application at 6-8.

³⁶⁸ CTIA notes in its Petition to Deny that M2Z has lined up capital venture backing in support of its proposal. *See* CTIA Petition to Deny at 3 n.6.

³⁶⁹ *See* Application at 8.

³⁷⁰ *See, e.g.*, Spencer Ante, "Verizon's Spin-off Offensive," Business Week Online (Jan. 18, 2007) (describing a series of transactions in which, "[o]ver the last five years, Verizon has spun off or sold a range of businesses worth

should bear on the seriousness with which the Commission treats questions regarding M2Z's financial viability raised by some Petitioners.

Finally, as noted in the Application,³⁷¹ M2Z has assembled a management team with extensive experience building out and operating wireless and IP-based networks. Attached hereto as Attachment C are affidavits that delineate the background and experiences of key members of this management team. This submission should lay to rest any supposed concerns³⁷² regarding M2Z's ability to satisfy its commitments to build out a nationwide wireless broadband network on the aggressive timetable set forth in the Application.

about a combined \$17 billion in cash and assumed debt," and noting that "investors are less sure Verizon will be able to produce a return on its massive fiber-to-the-home investment"); *see also* "Deutsche Telekom on the look-out for acquisition targets," Yahoo News (Mar. 1, 2007) (detailing T-Mobile parent Deutsche Telekom's recent \$1.2 billion fourth quarter loss).

³⁷¹ See Application at 6-8.

³⁷² See Verizon Wireless Petition to Deny at 20.

CONCLUSION

The M2Z Application presents a unique opportunity for the Commission to make *significant progress in facilitating real competition to the current national wireline broadband duopoly*. Despite some limited attempts by the Commission to foster such service, no serious national wireless provider of broadband services has emerged in the marketplace. The absence of such a provider has, unfortunately, retarded the deployment and take-up of broadband services, and left Americans with few real choices. If the Commission grants M2Z's Application as proposed in a timely manner, that action would unleash a valuable set of public interest and consumer welfare benefits that would have positive repercussions throughout the country. In view of the voluminous record developed in this proceeding, the unquestionable authority held by the Commission to grant M2Z's request, and the tremendous opportunity created by M2Z's proposal, M2Z urges the Commission to act swiftly to grant the Application within the one-year timeframe established by Section 7 of the Act using its forbearance authority, if needed.

Respectfully submitted,

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