

Speedus's LMDS license was renewed in 1996 for a new ten year term that expired on February 1, 2006. The Commission later granted a second renewal term for a ten-year period expiring on February 1, 2016. The Commission had to coddle Speedus into making its required substantial service showing by conditioning its approval of the license renewal on the filing of a showing of substantial service by no later than March 27, 2007. The substantial service notification was filed recently and remains pending.<sup>272</sup>

Speedus's substantial service filing identifies four primary service offerings that were provided during the 1996-2006 license term: (i) a subscription television service, which was available to 52% of the market from 1996-1998; (ii) transmission of Bloomberg Information Programming to financial institutions from 1996-2000; (iii) a high-speed broadband Internet access trial from 1996-2003; and (iv) a testing program involving its affiliate, XO Communications, Inc., commencing in 2004.<sup>273</sup> The report does not specify what services were offered—or even tested—during the period from 2004 to the present. Speedus contends that it has met the substantial service safe harbor for service to niche markets and populations outside of areas served by other licensees because no other LMDS licensee was offering any service in the same area during the license period.

The filing is entirely unpersuasive, even as measured against the low bar set by the substantial service standard, and is inconsistent with the Commission's rules as well as the

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interest has been to raise funds through assignments of portions of the license, rather than to provide service to the public.

<sup>272</sup> See SpeedUSNY.com, L.P., Local Multipoint Distribution Service, WLT379, Section 101.1011(a) Report and Demonstration of "Substantial Service," FCC File No. 0002939453 (filed Mar. 7, 2007).

<sup>273</sup> See SpeedUSNY.com, L.P., Local Multipoint Distribution Service, WLT379, Section 101.1011(a) Report and Demonstration of "Substantial Service," FCC File No. 0002939453 (filed Mar. 7, 2007).

statutory and public policy objectives of buildout requirements outlined above. Speedus's use of its LMDS license has dwindled over the course of its license term, rather than growing, expanding, and becoming more stable. There certainly are benefits to be realized by the public *where a Commission licensee demonstrates flexibility and a willingness to change over time to meet the needs of those within its service area.* Speedus, however, has gone from providing video service to half of its market at the start of its license term, to providing programming content from a single source to a collection of financial institutions, to an unspecified Internet access "trial," and then another testing program involving an affiliated company. This pattern suggests that Speedus's use of the license is not maturing and evolving—it is declining and devolving. Indeed, other public statements by Speedus suggest that it has no plans to deploy service unless and until marketplace conditions change.<sup>274</sup> The Commission should not take the risk that NetfreeUS will follow the lead of its parent company, starting its license term with lofty service goals but winding up using the spectrum as little more than an asset to be sold when financial challenges arise, or as an occasional testing ground for its affiliates' business plans.

**2. NetfreeUS/Speedus has an unstable business model.**

As evidenced by the substantial service filing described above, Netfree's parent Speedus is facing considerable challenges in making its service offerings a reality. Some of the barriers are technical; others are economic. Speedus already has its hands full trying to implement an

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<sup>274</sup> In its most recent annual report, Speedus states that it "will not commence a full marketing effort using [its] LMDS technology until new LMDS equipment becomes commercially available with cost and performance that allow implementation of an economically viable business model." In addition, Speedus "cannot determine when this will occur and this equipment may never be available to [it] on this basis." Speedus Corp., Securities and Exchange Commission Form 10-K, Annual Report for the fiscal year ended December 31, 2005 at 4 & 20 ("Speedus 2005 Annual Report").

LMDS strategy in a single market.<sup>275</sup> It should not now become a candidate for execution of a nationwide broadband strategy.

Speedus reports a spotty financial history and concedes that it may *never* be profitable.<sup>276</sup>

*Specifically, Speedus has “recorded operating losses and negative operating cash flows in all reporting periods since inception.”*<sup>277</sup> As of December 31, 2005, Speedus had an accumulated deficit of approximately \$63.9 million.<sup>278</sup> Speedus predicts that its financial situation is unlikely to improve “until such time as [it] substantially increase[s] its customer base and/or form[s] a strategic alliance for use of [its] capabilities in the future.”<sup>279</sup>

Speedus also faces “ongoing technical difficulties” that it may be unable to resolve.<sup>280</sup> At the time of its initial public offering, Speedus was primarily a subscription television service. Speedus terminated this service in November 1998 and began a limited pilot program for the delivery of high-speed Internet access.<sup>281</sup> It encountered technical difficulties in this pilot program and “reoriented [its] business on wireless data and other services” but has not yet generated any significant revenue from these businesses.<sup>282</sup> The reason for this is that Speedus continues to face technical challenges in its new business lines, lacking necessary equipment

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<sup>275</sup> See SpeedUSNY.com, L.P., Local Multipoint Distribution Service, WLT379, Section 101.1011(a) Report and Demonstration of “Substantial Service,” FCC File No. 0002939453 (filed Mar. 7, 2007).

<sup>276</sup> Speedus 2005 Annual Report at 5.

<sup>277</sup> Speedus 2005 Annual Report at 6.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.* Indeed, it is unclear that the provision of communications services is consistent with the company’s overall business strategy because Speedus invests in such wide-ranging business lines, including broadband patents, cafés, and medical diagnostics. *Id.* at 3-4.

<sup>280</sup> *Id.* at 6.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

with the features and pricing that would allow it to provide a technically and economically viable service. Given the low level of detail and the technical flaws in the NetfreeUS Proposal, it appears that Speedus is seeking to repeat its past performance using different spectrum: the 2155-2175 MHz band. *NetfreeUS has failed to provide sufficient technical data to meet the standard that would make its application acceptable for filing. Accordingly, its application should be dismissed.*

**E. The McElroy and TowerStream “Copy-Cat” Applications Are Not *Bona Fide* Proposals.**

Both McElroy and TowerStream essentially have filed “copy-cat” applications in an attempt to mimic the M2Z Application, except that both the McElroy Proposal and the TowerStream Proposal are insubstantial in comparison, speculative, and, as discussed above, fail to incorporate many of the specific and enforceable public interest obligations M2Z has proposed. The Commission has long recognized the potential for the use and abuse of “copy-cat” or “me too” applications by spectrum speculators.<sup>283</sup> The McElroy Proposal and TowerStream Proposal have every appearance of being precisely that type of filing. Although the McElroy Proposal and the TowerStream Proposal attempt to track the M2Z Application on a superficial level, the proposals fall short on substance and fail to demonstrate that either McElroy or TowerStream is prepared to deliver the same level of service or to make the other public interest commitments that M2Z has proposed.

On the surface, the McElroy Proposal looks much like the M2Z Application. Indeed, McElroy concedes as much.<sup>284</sup> For virtually every showing or commitment made by M2Z, a

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<sup>283</sup> See, e.g., *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (adopting filing windows for NCE stations to prevent “speculation and abuse” by those using “cop-cat” or “me too” applications).

<sup>284</sup> See McElroy Proposal at 3.

purportedly analogous one appears in the McElroy Proposal. In some respects, the representations from McElroy are so similar that they almost could have been cut from the M2Z Application and pasted into the McElroy Proposal. For example, the echo of M2Z's commitment to filter indecent and/or obscene material rings so distinctly in the McElroy Proposal as to be unmistakable mimicry. The TowerStream Proposal also makes a weak attempt to mimic M2Z's family-friendly service by giving users the option of filtering content. Nevertheless, there is simply no suggestion from McElroy and TowerStream that any original thinking went into their proposals, and no evidence that McElroy or TowerStream ever had any intention or plan to build a nationwide wireless broadband network prior to seeing their opportunity to imitate the M2Z Application.

As discussed above, the McElroy Proposal and TowerStream Proposals fall far short of the public interest bar M2Z has set for NBRIS in several material respects. Most significantly, McElroy has omitted from its proposal specific construction commitments and hard timetables and footprints for service commencement, and TowerStream flatly states that it will not provide any form of free service. In addition, unlike M2Z, McElroy and TowerStream offer no specifics as to their USF obligations, public safety commitment, or the myriad other public interest and consumer welfare benefits that M2Z's proposal will yield. These failures on McElroy's and TowerStream's part underscore the speculative and "copy-cat" nature of their proposals. Although the McElroy Proposal and TowerStream Proposals were quick to parrot the M2Z Application in a very general sense, McElroy and TowerStream would not, and in fact did not, commit to actually providing a service remotely similar to M2Z's in any meaningful way.<sup>285</sup> In short, the McElroy Proposal and the TowerStream Proposal are an insubstantial shadow of the

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<sup>285</sup> In this sense, the service M2Z proposes should not be held hostage by a party that proves nothing other than they have a \$245 check and a word processor.

M2Z Application and raise serious questions and concerns regarding McElroy's and TowerStream's *bona fide* commitment to their proposed services.<sup>286</sup>

**IV. BASED ON THE RECORD BEFORE THE COMMISSION, THERE IS NO POTENTIAL FOR MUTUAL EXCLUSIVITY.**

**A. Section 309(j)(6)(E) of the Act Requires the Commission to Avoid Mutual Exclusivity Where the Public Interest So Demands.**

Even in expanding the Commission's authority to award licenses by competitive bidding, Congress never intended to reduce or change the Commission's obligations under Section 309(j)(6)(E).<sup>287</sup> Section 309(j)(6)(E) figures prominently in the statute, appearing at the very outset of the Act's recitation of the Commission's auction authority. Section 309(j) grants the Commission authority to accept mutually exclusive applications, and thereafter to use competitive bidding processes to resolve such mutual exclusivity, when the Commission's

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<sup>286</sup> McElroy's copy-cat proposal is hardly surprising or atypical. In fact, McElroy previously has profited from filing applications to construct facilities it never built. Only weeks ago, McElroy entered into a settlement agreement to withdraw its mutually exclusive cellular applications in New Mexico, and related application for review, in exchange for monetary compensation. See *Settlement Agreement and Request for Waiver of Section 1.935 of the Commission's Rules WWC License L.L.C.; Alltel Communications of the Southwest Limited Partnership; Commnet Wireless, LLC; McElroy Electronics Corporation; McElroy Electronics Corporation; Smith Bagley, Inc.; Phase II Unserved Area Applications For New Mexico 3 RSA (Catron) Market No. 555, Block A and WWC License L.L.C. Phase II Unserved Area Applications For New Mexico 6 RSA (Lincoln) Market No. 558, Block A*, Order, DA 07-899 (rel. Feb. 28, 2007). In so doing McElroy also sought a waiver of the Commission's rule limiting the consideration McElroy may receive for entering into a settlement to its "legitimate and prudent expenses" incurred in prosecuting its application, which the Bureau granted. 47 C.F.R. § 1.935(a)(1). As a result, McElroy ultimately was able to profit merely from filing an application and seeking review of the Bureau order dismissing its application.

<sup>287</sup> See H.R. Conf. Rep. No. 105-217, at 572 (1997). ("[T]he conferees emphasize that, notwithstanding its expanded auction authority, the Commission must still ensure that its determinations regarding mutual exclusivity are consistent with the Commission's obligations under 309(j)(6)(E). The conferees are particularly concerned that Commission might interpret its expanded competitive bidding authority in a manner that minimizes its obligations under 309(j)(6)(E), thus overlooking engineering solutions, negotiations, or other tools that avoid mutual exclusivity.")

acceptance of mutually exclusive applications is “consistent with the obligations described in paragraph (6)(E)” of Section 309(j).

Section 309(j)(1), therefore, prohibits the Commission from accepting mutually exclusive applications if doing so would not be consistent with Section 309(j)(6)(E). *In other words, the Commission should avoid mutual exclusivity if there is a way to use, for example, a threshold qualification to avoid it. As Section 309(j)(6)(E) itself makes clear: “Nothing in this subsection, or in the use of competitive bidding, shall . . . be construed to relieve the Commission of the obligation in the public interest . . . to avoid mutual exclusivity in application and licensing proceedings.”* Section 309(j)(6)(E) further states that the Commission must “continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity” in the licensing process, if it determines that such an approach would better serve its public interest mandate. Courts have interpreted this section of the Act to require the Commission to avoid mutual exclusivity by using the spectrum management tools prescribed in Section 309(j)(6)(E) when the public interest so demands.<sup>288</sup>

M2Z has established a baseline threshold qualification for the 2155-2175 MHz band in its Application and Petition. Indeed, the public interest benefits M2Z’s service will generate exceed those the Commission identified when it previously has applied Section 309(j)(6)(E). The Commission not infrequently has exercised its authority to promote the public interest by

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<sup>288</sup> See, e.g., *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, ¶ 11 (1999) (“The Commission has previously construed Section 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3).”); see also *DirecTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997) (“Nothing in § 309(j)(6)(E) requires the FCC to adhere to a policy that it deems outmoded ‘to avoid mutual exclusivity in . . . licensing proceedings’; rather that provision instructs the agency, in order to avoid mutual exclusivity, to take certain steps, such as the use of an engineering solution, within the framework of existing policies.”).

declining to accept competing applications. As examples, M2Z has previously identified such cases as the 800 MHz re-banding proceeding, where the Commission granted to Nextel Communications, Inc. (“Nextel”) wholly new, exclusive, and nationwide spectrum rights in the 1.9 GHz band without subjecting Nextel to competing applications or the auction process based on the growing interference to public safety operations arising from Nextel’s service and other CMRS operations in the 800 MHz band.<sup>289</sup> There, the Commission noted its “authority—and obligation—to impose threshold qualifications that preclude the filing of such mutually exclusive applications if we determine that the public interest requires such an approach.”<sup>290</sup> M2Z also has noted that the Commission authorized Mobile Satellite Service (“MSS”) providers to integrate ancillary terrestrial component (“ATC”) frequencies into their networks without accepting competing applications.<sup>291</sup> In so doing, the Commission concluded that restricting eligibility for ATC frequencies to existing MSS licensees was consistent with the public interest because it would promote, among other benefits, “the development and rapid deployment of new technologies, products, and services for the benefit of the public.”<sup>292</sup> The same policy rationales underlying the Nextel and MSS-ATC decisions apply in the this case, as public safety entities will benefit from the interoperable M2Z network, and the public will receive new services.

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<sup>289</sup> M2Z Forbearance Petition at 43-44 (citing *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶¶ 69-74 (2004)). The Commission concluded that it has both the statutory authority and the obligation to preclude the filing of mutually exclusive applications when “higher public interest uses of spectrum” are present. *Id.* ¶ 73.

<sup>290</sup> *Id.* at n.236.

<sup>291</sup> See *Flexibility for Delivery of Communications by Mobile Satellite Providers in the 2 GHz Band, the L-Band, and 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, ¶ 219 (2003) (subsequent history omitted) (“We find that our decision to permit MSS operators to acquire ATC authority does not establish the requisite conditions for assigning terrestrial licenses in the MSS bands through competitive bidding, pursuant to section 309(j) of the Communications Act.”).

<sup>292</sup> *Id.* ¶ 227 (quoting 47 U.S.C. § 309(j)(3)) (subsequent history omitted).

**B. Accepting Any of the Alternative Proposals to Use the 2155-2175 MHz Band for Filing, at this Time, Would Impermissibly Rule on the Merits of M2Z's Forbearance Petition.**

On September 1, 2006, M2Z filed a Petition for Forbearance ("Forbearance Petition") pursuant to Section 10(c) of the Act.<sup>293</sup> The M2Z Application was incorporated by reference into its Forbearance Petition because the Application contains supporting background information which is germane to the Commission's review of the Forbearance Petition, and vice versa.<sup>294</sup> M2Z's Forbearance Petition requests that the Commission forbear from enforcement of Section 1.945(b) and (c) of its rules and any other rule, provision of the Act, or Commission policy, to the extent such rules, statutory provisions, or policies impede the acceptance and grant of M2Z's Application.<sup>295</sup> While the central issue raised in the Forbearance Petition is establishing a date certain answer for M2Z, another key issue is the Commission's ability to avoid mutual exclusivity through use of its forbearance authority in the grant of M2Z's Application.

Among the rules from which M2Z requested forbearance is the requirement in Section 1.945(c)(4) of the Commission's rules that the grant of M2Z's Application "not preclude the grant of any mutually exclusive application."<sup>296</sup> In this regard, M2Z demonstrated that,

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<sup>293</sup> See 47 U.S.C. § 160(c).

<sup>294</sup> See M2Z Forbearance Petition at n.2. M2Z's Application also was amended to incorporate the Forbearance Petition by reference for the same reasons. See M2Z Application at n.1.

<sup>295</sup> See M2Z Forbearance Petition at 1. The Bureau subsequently accepted M2Z's Application 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). As a result of the Bureau's acceptance of M2Z's Application, the Bureau later determined that the portion of M2Z's Forbearance Petition requesting forbearance to accept the Application has been rendered moot. See "Pleading Cycle Established for Comments on Petition of M2Z Networks, Inc. for Forbearance under 47 U.S.C. § 160(c) to Permit Acceptance and Grant of Its Application for a License to Provide Radio Service in the 2155-2175 MHz Band," WT Docket No. 07-30, DA 07-736 (rel. Feb. 16, 2007) ("Forbearance Public Notice").

<sup>296</sup> 47 C.F.R. § 1.945(c)(4); see also M2Z Forbearance Petition at 20.

consistent with the Act's forbearance standard,<sup>297</sup> enforcement of this requirement, to the extent it applies to M2Z's Application, is not necessary to protect consumers or to ensure that M2Z's charges, practices, classifications, and regulations are just and reasonable and are not unjustly or unreasonably discriminatory.<sup>298</sup> M2Z further demonstrated that forbearance from Section 1.945(c)(4) satisfies the Act's public interest standard for forbearance because a license grant will allow new entry by M2Z and increase the level of competition in the broadband and telecommunications marketplace.<sup>299</sup> More broadly, M2Z requested in its Forbearance Petition that the Commission forbear from applying any procedural or substantive rule, provision of the Act, or policy that would prevent, prohibit, or impede the acceptance and grant of M2Z's Application or the deployment of its nationwide wireless broadband service.<sup>300</sup>

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<sup>297</sup> See 47 U.S.C. § 160(a).

<sup>298</sup> See M2Z Forbearance Petition at 21-24.

<sup>299</sup> See *id.* at 24-32. M2Z also demonstrated that the existence of mutual exclusivity should not preclude the grant of its Application because: (1) the Commission has the statutory authority and the obligation to avoid mutual exclusivity when the public interest so demands; (2) the Commission previously has avoided accepting mutually exclusive applications; (3) the public interest benefits of M2Z's proposed service outweigh the need to accept mutually exclusive applications; and (4) grant of the Application will establish a generous revenue stream for the U.S. Treasury in the form of voluntary five percent spectrum usage payments derived from M2Z's premium service offerings. See *id.* at 41-49.

<sup>300</sup> See *id.* at 33-35. As explained in the Forbearance Petition, the Commission may not deny a request for forbearance based on the level of specificity, particularly when the Commission has addressed equally broad requests in the past. See *id.* at 35-36, citing *AT&T v. FCC*, No. 05-1186, slip op. at 15 (D.C. Cir. June 27, 2006); see also *Idaho Power Co. v. FERC*, 312 F.3d 454, 464 (D.C. Cir. 2002) (vacating agency action because, among other things, the challenged orders were inconsistent with both prior and subsequent agency actions). Thus, because M2Z's Forbearance Petition is no less cognizable, nor more broadly phrased, than other forbearance petitions that have been filed and granted before, the Commission is obliged to address this Petition on the merits. See Forbearance Petition at 35-36, citing *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (FCC preempted an order of the Minnesota Public Utilities Commission applying its traditional "telephone company" regulations to Vonage's DigitalVoice service).

Until the matters M2Z raises in its Forbearance Petition are decided on the merits, the Bureau should not accept for filing the Alternative Proposals or any additional license applications in the 2155-2175 MHz band. The public debate on M2Z's proposal is only just beginning,<sup>301</sup> and the Commission has yet to rule the merits of M2Z's Forbearance Petition and related M2Z Application. However, if the Bureau now accepts the Alternative Proposals for filing, it would in effect be rendering a substantive decision on a central issue raised in M2Z's Forbearance Petition—whether the public interest benefits of M2Z's proposal outweigh the need to accept mutually exclusive applications. Indeed, if the Bureau were to accept the Alternative Proposals for filing, it would be creating the very mutual exclusivity that M2Z asks the Commission to avoid through its forbearance process.

The Bureau is without authority to effectively deny M2Z's Forbearance Petition in this manner. Section 10(c) of the Act requires the Commission to rule on the merits of a forbearance petition and to explain its decision in writing within one year after receipt of the petition.<sup>302</sup> By accepting mutually exclusive applications for filing through the issuance of a Public Notice the Bureau would fail to satisfy this standard. Such a Public Notice would be an impermissible substitute for a written decision "on the merits" from the Commission, particularly in the forbearance context. A mere Public Notice would offer no reasoned or substantive analysis of the M2Z Forbearance Petition and would not establish the record necessary for a court to review. Moreover, by issuing a Public Notice accepting mutually exclusive applications for filing, the Bureau would be substituting its judgment with that of the full Commission on a forbearance petition that remains pending before the Commission. Decisions on the merits of forbearance

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<sup>301</sup> Comments on M2Z's Application were filed on March 2, 2007. Comments on M2Z's Forbearance Petition were filed on March 19, 2007, and reply comments are due on April 3, 2007. See Forbearance Public Notice at 1.

<sup>302</sup> See 47 U.S.C. § 160(c).

petitions are the exclusive domain of the full Commission. Given the importance of M2Z's proposal to the nation, a decision on M2Z's Forbearance Petition and related M2Z Application likewise must be made by the full Commission in a written decision.<sup>303</sup>

*Accordingly, until the full Commission rules on the merits of M2Z's Forbearance Petition and related M2Z Application, the Bureau should dismiss the Alternative Proposals and decline to accept additional applications for licenses in the 2155-2175 MHz band.*

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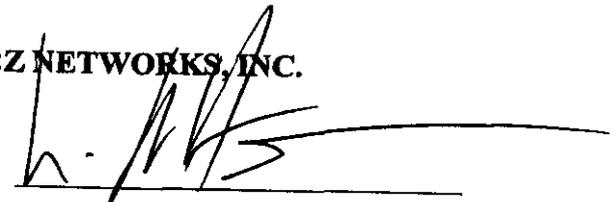
<sup>303</sup> *See id.* In particular, the Commission must “fully consider” a petition for forbearance within the statutory one-year period and provide a “fully considered analysis” of the petition. *AT&T v. FCC*, 452 F.3d 830, 836 (D.C. Cir. 2006) (“[U]nder the Commission's view, nothing would stop it from finding that the statutory deadline permits ‘fully considered analysis’ of only narrow petitions, and thus adopting a rule that any petition seeking forbearance from more than one regulation is contrary to the public interest. This cannot be correct. Nothing in section 10(a)(3) allows the Commission to avoid ruling on the merits of a forbearance petition whenever it finds the statutory deadline inconvenient. Quite to the contrary, section 10(a)(3)'s very purpose is to force the Commission to act within the statutory deadline.”).

**V. CONCLUSION**

In accepting the M2Z Application for filing, the Commission took the first step toward bringing the multitude of public interest benefits NBRS will provide to the nation. There is no need to consider lesser alternatives that do not meet the high public interest bar M2Z has established for NBRS. Instead, the Commission has discretion to avoid mutual exclusivity consistent with its past practices and its statutory obligations to promote competition, new services, and the public interest.

Respectfully submitted,

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March 26, 2007

**LIST OF EXHIBITS**

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

**EXHIBIT B:** Chart Comparing M2Z Proposal with Alternative Proposals

**EXHIBIT C:** Analysis of Population Density of Cities in Open Range Annex A



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

To: Chief, Wireless Telecommunications Bureau

**AFFIDAVIT OF UZOMA C. ONYEIJE  
IN SUPPORT OF CONSOLIDATED MOTION OF M2Z NETWORKS, INC.  
TO DISMISS 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. I have read the alternative proposals in the above-captioned proceedings filed by the following applicants: (1) Open Range Communications, Inc.; (2) NextWave Broadband, Inc.; (3) NetfreeUS, LLC; (4) Commnet Wireless, LLC; (5) McElroy Electronics Corporation; and (6) TowerStream Corporation (collectively, the "Applicants" and the "Alternative Proposals").
3. M2Z has an interest in the disposition of the alternative proposals filed in this proceeding because it has an Application, which has been accepted for filing, for a license to operate in the 2155-2175 MHz band on a nationwide exclusive basis. The Applicants seek to use the same spectrum band for which M2Z previously has applied.
4. I have read the foregoing Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, and any facts stated therein, of which the Federal

Communications Commission may not take official notice, are true and correct to the best of my knowledge, information, and belief.

Signature: *U. C. Onyeije*  
Uzoma C. Onyeije  
Vice President, Regulatory Affairs  
M2Z Networks, Inc.  
12000 North 14<sup>th</sup> 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. J. My. Baggett*  
My Commission expires: April 14, 2008  
Residing at: District of Columbia

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**B**

**Exhibit B**

**COMPARISON OF M2Z PROPOSAL  
WITH ALTERNATIVE PROPOSALS**

	<b>M2Z</b>	<b>OPEN RANGE</b>	<b>NEXTWAVE</b>	<b>COMMNET</b>	<b>NETFREEUS</b>	<b>MCELROY</b>	<b>TOWERSTREAM</b>
<b>Licensing Regime</b>	Nationwide exclusive license, single operator	Exclusive license for rural areas	Nationwide non-exclusive licenses, multiple licensees and operators	Nationwide exclusive license, single operator	Will operate a secondary market to re-lease spectrum to operators	Nationwide exclusive license, single operator	Nationwide exclusive license in top 200 MSAs
<b>Free Service</b>	Free consumer broadband service at 384 kbps	No free service	No free service	No free service	Lessees are responsible for delivering free service	"Substantially similar to M2Z"	No free service
<b>Buildout Commitments</b>	95% of US w/intermediate milestones condition of license	No commitment - estimates coverage of 6.2M rural pop. network forecasted to serve 428,000 subs after 5 years	No buildout commitments	Commits to serve up to 2/3 of U.S. population as license condition; expects to serve 90% within 10 yrs.; slower intermediate milestones	"Substantial service" to 50% of markets in 4 years, 75% in 6 years, and 95% in 10 years; BUT vague and limiting safe harbors	"Substantially similar to M2Z"	50% of MSA population in licensed service area in 5 years, 75% in 10 years, and 90% of RSAs in 10 years
<b>Net Benefit to USF</b>	Will not take from USF and will pay into USF; reduces USF funding requirements	No, partial benefit to USF through free services to K-12 education and medical facilities	Not addressed	Not addressed	Not addressed	No, will not take from USF	Not addressed
<b>Family Friendly</b>	Content filtered in network; safe for children	Not addressed	No	No	No	"Substantially similar to M2Z"	Optional filtering
<b>Public Safety</b>	Free as primary or secondary network, prioritized traffic, pre-emption in emergencies	Only 'Priority' for first responders in emergencies	None	Basic service will be free for PS. No prioritization or pre-emption	Yes, No prioritized traffic, but will do pre-emption in emergencies	"Substantially similar to M2Z"	Only "priority" for public safety entities

**COMPARISON OF M2Z PROPOSAL  
WITH ALTERNATIVE PROPOSALS**

	M2Z	OPEN RANGE	NEXTWAVE	COMMNET	NETFREEUS	MCELROY	TOWERSTREAM
<b>Licensing Regime</b>	Nationwide exclusive license, single operator	Exclusive license for rural areas	Nationwide non-exclusive licenses, multiple licensees and operators	Nationwide exclusive license, single operator	Will operate a secondary market to re-lease spectrum to operators	Nationwide exclusive license, single operator	Nationwide exclusive license in top 200 MSAs
<b>Free Service</b>	Free consumer broadband service at 384 kbps	No free service	No free service	No free service	Lessees are responsible for delivering free service	"Substantially similar to M2Z"	No free service
<b>Buildout Commitments</b>	95% of US w/intermediate milestones – condition of license	No commitment - estimates coverage of 6.2M rural pop., network forecasted to serve 4.28 M sub. after 5 years	No buildout commitments	Commits to serve up to 2/3 of U.S. population as license condition; expects to serve 90% within 10 yrs.; slower intermediate milestones	"Substantial service" to 50% of markets in 4 years, 75% in 6 years, and 95% in 10 years; BUT vague and limiting safe harbors	"Substantially similar to M2Z"	50% of MSA population in licensed service area in 5 years, 75% in 10 years, and 90% of RSAs in 10 years
<b>Net Benefit to USF</b>	Will not take from USF and will pay into USF; reduces USF funding requirements	No, partial benefit to USF through free services to K-12 education and medical facilities	Not addressed	Not addressed	Not addressed	No, will not take from USF	Not addressed
<b>Family Friendly</b>	Content filtered in network; safe for children	Not addressed	No	No	No	"Substantially similar to M2Z"	Optional filtering
<b>Public Safety</b>	Free as primary or secondary network, prioritized traffic, pre-emption in emergencies	Only "Priority" for first responders in emergencies	None	Basic service will be free for PS. No prioritization or pre-emption	Yes. No prioritized traffic, but will do pre-emption in emergencies	"Substantially similar to M2Z"	Only "priority" for public safety entities

	M2Z	OPEN RANGE	NEXTWAVE	COMMNET	NETFREEUS	MCELROY	TOWERSTREAM
<b>Spectrum Usage Fee</b>	5% of premium revenues	None	None	\$50M upon first renewal of license	5% of gross revenues, no clear business model	Will not make 5% payment	Will not make 5% payment
<b>New Entrant</b>	Yes	Yes	No	No	No	No	No
<b>Economic and Consumer Welfare Benefits</b>	\$18B-\$25B in consumer benefit over 15 year term of license	Not quantified	Not quantified	Not addressed	Not quantified	Not quantified	Not addressed
<b>Interference Protection and Other Specific Technical Service Rules</b>	Will protect incumbents under Part 27 rules	No specified technical and service rules	Will operate under 3.65 GHz service rules	No specified technical and service rules	Will protect incumbents under Parts 22, 27, and 101 rules	No specified technical and service rules	No specified technical and service rules
<b>Spectrally Efficient Technologies</b>	TDD, AAS, and OFDMA technologies	Not specified	Contention-based technology	OFDMA/WiMax	Reprogrammed Wi-Fi technology (not viable)	TDD, AAS, and OFDMA technologies	TDD and AAS
<b>Financial Qualifications</b>	\$400M in secured funding	No secured funding	No details on funding	No details on funding	No details on funding	No details on funding	No details on funding
<b>CMRS Obligations</b>	Regulated as CMRS provider	Not specified	Not specified	No, regulated as BRS provider	Regulated as CMRS provider	Not specified	Not specified

**COLOR KEY:**  = Substantially similar to M2Z Application

 = Somewhat similar to M2Z Application

 = No showing or substantially different from M2Z Application



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