

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

In the Matter of  
Petition of M2Z Networks, Inc. for )  
Forbearance Under 47 U.S.C. § 160(c) ) WT Docket No. 07-30  
Concerning Application of Sections 1.945(b) and )  
(c) and Other Regulatory and Statutory Provisions )

M2Z Networks Inc. )  
Application for License and Authority to Provide ) WT Docket No. 07-16  
A National Broadband Radio Service in the )  
2155-2175 MHz Band )

and )

NetfreeUS, LLC )  
Application for License and Authority to ) File No. \_\_\_\_\_  
Provide Wireless Public Broadband Service in )  
The 2155-2175 MHz Band )

and )

NextWave Broadband Inc. )  
Application for License and Authority to ) File No. \_\_\_\_\_  
Provide Nationwide Broadband Service )  
In the 2155-2175 MHz Band )

and )

Open Range Communications, Inc. )  
Application for License to Construct and Operate ) File No. \_\_\_\_\_  
Facilities for the Provision of Rural )  
Broadband Radio Services in the )  
2155-2175 MHz Band )

and )  
 )  
 Commnet Wireless, LLC )  
 )  
 Application for License and Authority to ) File No. \_\_\_\_\_  
 Construct and Operate a System to Provide )  
 Nationwide Broadband Service in the )  
 2155-2175 MHz Band )  
 )  
 and )  
 )  
 McElroy Electronics Corporation )  
 )  
 Application for a Nationwide 2155-2175 MHz ) File No. \_\_\_\_\_  
 Band Authorization )  
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 and )  
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 TowerStream Corporation )  
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 Application for a Nationwide 2155-2175 MHz ) File No. \_\_\_\_\_  
 Band Authorization )

To: the Commission  
 Chief, Wireless Telecommunications Bureau

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

NetfreeUS, LLC (“NetfreeUS”), applicant for a new nationwide wireless broadband service authorization in the 2155-2175 MHz band,<sup>1</sup> hereby opposes the above-referenced Consolidated Motion<sup>2</sup> filed by M2Z Networks, Inc. (“M2Z”) on March 26, 2007. NetfreeUS requests that the Commission strike and dismiss with prejudice the Consolidated Motion as

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<sup>1</sup> See NetfreeUS Application for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band, WT Dockets 07-16 and 07-30 (filed Mar. 2, 2007) (“NetfreeUS Application”).

<sup>2</sup> See Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals, WT Docket Nos. 07-16 and 07-30 (filed Mar. 26, 2007) (“Consolidated Motion”).

applied to NetfreeUS. The Consolidated Motion lacks legal foundation, impermissibly seeks to re-cast the NetfreeUS Application as a Petition to Deny and raises irrelevant objections to deter Commission consideration of valid competing proposals. As shown below, the Consolidated Motion, as applied to NetfreeUS, is wholly without merit.

### Discussion

#### **THE COMMISSION MUST REJECT M2Z'S EFFORTS TO RECHARACTERIZE THE NETFREEUS APPLICATION, WHICH IS COMPLETE AND ACCEPTABLE FOR FILING.**

The NetfreeUS Application proposes a nationwide broadband service operating in the 2155-2175 MHz band. It seeks the same frequencies in the same geographic area as M2Z requested in the M2Z Application,<sup>3</sup> and was filed on FCC Form 601, as required for initial authorizations for wireless services.<sup>4</sup> NetfreeUS specified the same "BR" Radio Service Code as M2Z, paid the required filing fees (the same filing fees that M2Z paid for the M2Z Application) and submitted the required signatures. Manifestly, NetfreeUS did not file a petition to deny and has not asked the Commission to eliminate the M2Z Application from consideration. Instead, NetfreeUS filed its own application to be considered in the same proceeding under processing procedures described in NetfreeUS's Petition for Forbearance.<sup>5</sup>

Nevertheless, M2Z falsely asserts that the NetfreeUS Application is a petition to deny because it seeks "denial" of the M2Z Application and "should be dismissed" for failure to comply with the procedural requirements applicable to petitions to deny. Although transparency

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<sup>3</sup> See M2Z Networks Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (amended Sept. 1, 2006) (the "M2Z Application"). See also *Public Notice*, "Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.'s Application for Licensee and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band is Accepted for Filing," DA 07-492 (rel. Jan. 31, 2007).

<sup>4</sup> See 47 C.F.R. §. 1.913(a)(1).

<sup>5</sup> See Petition for Forbearance of NetfreeUS, LLC, WT Docket Nos. 07-16 & 07-30 (filed Mar. 2, 2007).

is not M2Z's strong suit,<sup>6</sup> here M2Z would have the Commission believe that the NetfreeUS Application is something that it is not so that it can then be subject to dismissal for noncompliance with procedural rules that do not apply to applications.<sup>7</sup> Every objection to the NetfreeUS Application raised in the Consolidated Motion depends on the premise that the M2Z Application is a petition to deny; accordingly, the Consolidated Motion must be rejected.<sup>8</sup>

Commission rules define applications and specify their required content. Section 1.907 of the Commission's Rules defines an "application," in relevant part, as "[a] request on a standard form for a station license as defined in § 3(b) of the Communications Act, signed in accordance with [Section] 1.917 of this part, or a similar request to amend a pending application or to modify or renew an authorization." The NetfreeUS Application requests a nationwide authorization to provide broadband wireless service (a "station license"), the request is made on a standard form (FCC Form 601, the same form used in the M2Z Application) and is signed by an officer in accordance with Section 1.917. The NetfreeUS Application is an "application" as

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<sup>6</sup> For example, according to the Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals and the Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, M2Z apparently has requested confidential treatment of a submission to the Commission regarding M2Z's financial qualifications to operate its proposed network. *See* Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007), at 45, n.177; Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007), at 113, n.365. To date, no copy of this filing, redacted or otherwise, has been made available in ECFS or has been served upon NetfreeUS.

<sup>7</sup> The procedural requirements at issue are set forth in Section 1.939(d), which provides that "[a] petition to deny must contain specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof." *See* 47 C.F.R. §1.939(d).

<sup>8</sup> NetfreeUS takes no position on the petitions to deny filed by other participants in these proceedings or on M2Z's response thereto in the Consolidated Motion.

defined in Section 1.907, and M2Z's efforts to rename the NetfreeUS Application as a "Proposal" or a "Petition to Deny" are unavailing.

The procedural "defects" alleged by M2Z simply do not apply to applications. Section 1.923 ("Content of Applications") lists certain minimum requirements that applications must contain. It does not require an applicant to demonstrate standing to file the application and does not require an applicant to supply the affidavit required by Section 309(d) for petitions to deny. Section 1.923 also does not require an applicant to make a prima facie showing that grant of a *competing* application is inconsistent with the public interest, convenience and necessity. By contrast, petitions to deny are governed by Section 309(d) of the Act and Section 1.939 of the Commission's Rules, which permit interested parties to file "petitions to deny" (not "applications") against certain specified applications for instruments of authorization.

Despite the clear distinctions between applications and petitions to deny described in Commission rules, M2Z nevertheless asserts that "[i]n prior cases, the Commission has recharacterized *pleadings* that request the denial of an application as petitions to deny regardless of how such pleadings were titled and styled."<sup>9</sup> Yet M2Z has not shown, nor can it show, that NetfreeUS has requested the denial of the M2Z application. Moreover, the cases cited by M2Z are inapposite because none of them involves the Commission recharacterizing an *application* for a new service (as opposed to a pleading) as a petition to deny another application.<sup>10</sup> Under M2Z's strained interpretation, applicants would be prohibited from comparing the relative merits

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<sup>9</sup> Consolidated Motion at p. 6 (emphasis added).

<sup>10</sup> See Consolidated Motion at n.22 (noting that the Commission treated as petitions to deny various parties' petitions and letters, but not applications).

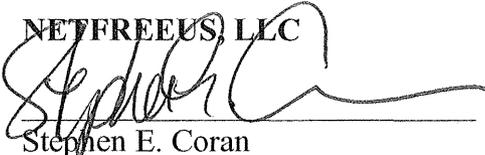
of their applications in the face of competing proposals. For these reasons, M2Z's efforts must fail and the Consolidated Motion must be dismissed.<sup>11</sup>

### Conclusion

As it pertains to the NetfreeUS Application, the Commission must dismiss or deny the Consolidated Motion. M2Z's procedural objections apply only to petitions to deny, not to applications. The Commission should not reward M2Z's efforts to contrive nonexistent procedural objections in an effort to obtain dismissal of the NetfreeUS Application.

Respectfully submitted,

By:

  
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April 3, 2007

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<sup>11</sup> In the alternative and unlikely event that the NetfreeUS Application somehow could be recharacterized as a petition to deny, the Commission has ample authority to accept the NetfreeUS Application as an informal objection. It is well settled that the Commission may consider a defective petition to deny as an informal objection, even if the petition in question is untimely, lacks the required claim of standing or lacks the required affidavit of a person with knowledge. *See, e.g., Calvary Chapel of Brandon, Inc., et al.*, Memorandum Opinion and Order, 20 FCC Rcd 10208 (2005) (treating an untimely petition to deny as an informal objection); *Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 14863, 14880 (2006) (noting Commission's authority to treat Petition to Deny as informal objection where petitioner lacked standing); *Multicultural Radio*, Memorandum Opinion and Order and Notice of Apparent Liability, 15 FCC Rcd 20630 (2000) (holding that petitioner's failure to provide a supporting affidavit rendered the pleading procedurally defective as a petition to deny, and the pleading was treated as an informal objection).

## Certificate of Service

I, Kenneth B. Wolin, a legal assistant with the law office of Rini Coran, PC, hereby certify that on this 3rd day of April, 2007, I caused a copy of the foregoing Opposition of NetfreeUS, LLC to Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternate Proposals to be delivered by First-Class United States mail to the following, unless otherwise noted:

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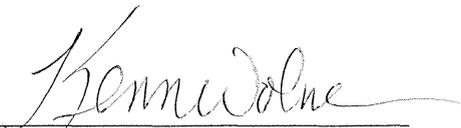
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