
Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Wireless Telecommunications Bureau

**CONSOLIDATED REPLY TO OPPOSITION TO PETITIONS TO DENY
AND REPLY COMMENTS REGARDING FORBEARANCE PETITION**

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AT&T Inc., on behalf of its affiliate, AT&T Mobility LLC (f/k/a Cingular Wireless LLC) ("AT&T"), hereby submits this consolidated reply in the above-captioned dockets concerning the application of M2Z Networks, Inc. ("M2Z") for an exclusive 20 MHz nationwide license at 2155-2175 MHz,¹ and a companion petition for forbearance.² As discussed below, the Commission should proceed to award the spectrum by auction (following a rulemaking to

¹ See Application [of M2Z Networks, Inc.] for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band (filed May 5, 2006) ("M2Z App."); *Public Notice*, "Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.'s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band Is Accepted for Filing," DA 07-492 (rel. Jan. 31, 2007) ("*Acceptance PN*"); *Public Notice*, "Wireless Telecommunications Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to be licensed in the 2155-2175 MHz Band," DA 07-987 (rel. Mar. 9, 2007).

² See Petition of M2Z Networks, Inc. for Forbearance under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission's Rules and Other Regulatory and Statutory Provisions, WT Docket No. 07-30 (filed Sept. 1, 2006) ("M2Z Pet."); *Public Notice*, "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 Services in the 2155-2175 MHz Band," DA 07-736 (rel. Feb. 16, 2007).

establish service and licensing rules, as it had intended) now that many parties have expressed competing interest in the spectrum. Nothing supplied in M2Z's opposition makes the M2Z application any more grantable. There remain substantial and material questions of fact and insufficient information for the Commission to make a public interest finding. Finally, the petition for forbearance is meritless because it attempts to withdraw the Commission's tools for reviewing whether the application is in the public interest. In any event, it would not provide M2Z with the relief it seeks – a grant of its application.

BACKGROUND AND SUMMARY

When the Commission reallocated 2155-2175 MHz to AWS in 2005, it stated that the decision of how to assign the spectrum would be made “in a separate service rules proceeding” and “[t]he ultimate use of the band will be determined . . . by market forces operating within the framework of such rules.”³ Rather than wait to submit its proposal in that rulemaking, or file a petition to commence such a rulemaking, M2Z filed its application in May 2006 seeking the grant of a 20 MHz nationwide license without an auction. The Wireless Telecommunications Bureau (“Bureau”) accepted that application for filing in January 2007 with an important caveat: “this action does not imply any judgment or view about the merits of the Application, *nor does it preclude a subsequent dismissal* of the Application as defective under existing rules or *under future rules that the Commission may promulgate by notice and comment rulemaking.*”⁴ Thus, consistent with its decision to reallocate the spectrum to AWS, the Commission has made clear that it would have a rulemaking to determine the licensing and service rules for the spectrum.

³ *New Advanced Wireless Services, Eighth Report and Order*, 20 FCC Rcd 15866, 15872, 15900-01 (2005).

⁴ *Acceptance PN* at 1 (emphasis added).

In conditionally accepting the application for filing and asking for comment, the Commission also indicated that interested parties may file “additional applications for spectrum in this band . . . while the M2Z application is pending.”⁵ In response, six applications were submitted proposing competing uses of the spectrum sought by M2Z.⁶ In addition, petitions to deny were filed by others indicating an interest in using the spectrum.⁷ Proposed uses include: (i) paid wireless broadband and VoIP services to rural areas with free access to schools and hospitals and priority access to public safety;⁸ (ii) paid basic and premium wireless broadband services with free access by public safety and possible voice services;⁹ (iii) broadband services on a nationwide, shared basis;¹⁰ (iv) free wireless broadband services on a “public commons” basis, with public safety override capability and a 5% contribution based on advertising revenue;¹¹ (v) three levels of paid wireless broadband services with priority access to public

⁵ *Acceptance PN* at 2.

⁶ *See* Commnet Wireless, LLC, Application, WT Docket 07-16 (Mar. 2, 2007) (“Commnet App.”); McElroy Electronics Corporation, Application, WT Docket No. 07-16 (Mar. 2, 2007) (“McElroy App.”); NetfreeUS, LLC, Application, WT Docket No. 07-16 (Mar. 2, 2007) (“NetfreeUS App.”); NextWave Broadband Inc., Application, WT Docket No. 07-16 (Mar. 2, 2007) (“NextWave App.”); Open Range Communications, Inc., Application, WT Docket 07-16 (Mar. 1, 2007) (“Open Range App.”); TowerStream Corporation, Application, WT Docket No. 07-16 (Mar. 15, 2007) (“TowerStream App.”).

⁷ *See* AT&T Inc., Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“AT&T Pet.”); CTIA - The Wireless Association, Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“CTIA Pet.”); Motorola, Inc., Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“Motorola Pet.”); NextWave Broadband Inc., Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“NextWave Pet.”); Rural Broadband Group, Petition to Deny, WT Docket 07-16 (Mar. 16, 2007) (“Rural Pet.”); TowerStream Corporation, Petition to Deny, WT Docket 07-16 (Mar. 15, 2007) (“TowerStream Pet.”); T-Mobile USA, Inc., Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“T-Mobile Pet.”); Wireless Communications Association International, Inc., Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“WCA Pet.”); Verizon Wireless, Petition to Deny, WT Docket 07-16 (Mar. 2, 2007) (“Verizon Pet.”).

⁸ *See generally* Open Range App.

⁹ *See generally* Commnet App.

¹⁰ *See generally* NextWave App.

¹¹ *See generally* NetfreeUS App.

safety;¹² (vi) service similar to that proposed by M2Z, but provided pursuant to a license acquired and paid for at auction;¹³ (vii) TDD-compatible services;¹⁴ and (viii) commercial wireless services.¹⁵

In light of the proposed competing uses, the Commission should stay the course and proceed by auction (following a rulemaking to establish service and licensing rules) to allow the market to determine the highest and best use of the spectrum. Such a course is consistent with Congress's expectation that auctions are normally the best determinant of the highest use of the spectrum and principles of fundamental fairness to the parties. At a minimum, the Commission must conduct a proceeding to consider all proposed uses and to determine if there is a single highest public use of the spectrum. What the Commission cannot do at this juncture is simply disregard the petitions and competing proposals and award M2Z an exclusive license based on unproven promises and a proposal that has not been shown – and cannot be shown in a proceeding limited to consideration of only M2Z's application – to be the highest public use of the spectrum. Such action would be arbitrary and capricious and violate the Communications Act.

On the merits, the M2Z application is not grantable because there remain substantial and material questions of fact and insufficient information for the Commission to make a public interest finding. Notwithstanding submission of an opposition well in excess of 100 pages and several economic papers prepared on its behalf,¹⁶ M2Z has yet to provide any meaningful

¹² See generally TowerStream App.

¹³ See generally McElroy App.

¹⁴ See, e.g., NextWave Pet. at 1-2.

¹⁵ See, e.g., Verizon Pet. at 1 n.2.

¹⁶ See M2Z Networks, Inc., Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007) ("M2Z Opp."); Simon Wilkie, The Consumer Welfare Impact of M2Z Network, Inc.'s Wireless Broadband Proposal, WT Docket

(footnote continued)

information about the viability of its proposed service, funding to *complete* and operate a proposed nationwide network, and technical details about its system sufficient for parties to determine whether its claims of non-interference are justified. As a result, there is insufficient information upon which to grant the application and substantial and material questions remain as to whether a grant of the application is in the public interest.

What little technical analysis M2Z has submitted is flawed. Nothing in M2Z's opposition or its consultant's declaration calls into question the conclusion of the 2006 report by the United Kingdom's Office of Communications ("Ofcom") that adjacent-channel operation of FDD and TDD systems (*i.e.*, without any guard band) is not feasible. M2Z's protestations to the contrary are simply a diversion.

Nor has M2Z presented any expert analysis of the value of the *specific* 2155-2175 MHz spectrum band it seeks, without which its proposed fee cannot be shown to bear any reasonable relationship to the value of the license. The omission of any spectrum valuation also makes it impossible to ensure that M2Z will not receive a windfall and be unjustly enriched by its proposal.

Furthermore, the petition for forbearance is unjustified, as it would require the Commission to dispense with its public interest obligations and ignore the many substantial and material questions of fact that remain and competing uses of the spectrum that have been proposed. In any event, forbearance under Section 10 of the Act would not provide M2Z with the relief it seeks. Grant of the petition (by affirmative grant or inaction) would mean

(footnote continued)

No. 07-17, at 19-20 (Mar. 1, 2007) ("Wilkie Consumer Paper"); Dr. Kostas Liopiros, M2Z Networks, Inc., The Value of Public Interest Commitments and the Cost to Delay to American Consumers, WT Docket No. 07-16 (Mar. 19, 2007) ("Liopiros Paper"); Simon Wilkie, Spectrum Auction Are Not a Panacea: Theory and Evidence of Anti-Competitive and Rent-Seeking Behavior in FCC Rulemakings and Auction Design, WT Docket No. 07-16 (Mar. 26, 2007) ("Wilkie Auction Paper").

forbearance from the very rule and statutory provisions that allow the FCC to grant the application in the first instance, and would not effectuate a grant of the application.

M2Z's invocation of Section 7 of the Act to compel premature action fares no better. As an initial matter, there is a substantial question whether that section even applies to M2Z's proposed spectrum use. Even if it does, the FCC's threshold obligations to resolve serious questions and to act in the public interest remain. Finally, the Section 7 timeline is merely "directory" and not mandatory.

I. NOW THAT THERE IS CLEARLY COMPETING INTEREST IN THE SPECTRUM, THE FCC MUST PROCEED BY AUCTION OR CONDUCT A PROCEEDING TO DETERMINE THE BEST USE

There is serious interest in this spectrum among parties who would put it to different uses. M2Z acknowledges that "[t]he Commission's first responsibility . . . is to determine the highest and best use of the 2155-2175 MHz band."¹⁷

Given present circumstances, however, there are only two reasonable choices: (i) establish service and licensing rules, open a filing window, and hold an auction, allowing the market to determine the highest and best use of the spectrum,¹⁸ or (ii) commence a fact-finding proceeding to determine the universe of competing uses and whether there is a single highest public use that can justify the avoidance of mutually exclusivity under the public interest standard.¹⁹ A grant of M2Z's proposal in the face of competing applications and no rational comparative study of the highest and best use would violate the 309(j) requirement that auctions

¹⁷ M2Z Opp. at vii.

¹⁸ See *infra* note 23 and accompanying text.

¹⁹ See 47 U.S.C. § 309(j)(6)(E).

be utilized unless the FCC makes a well-grounded public interest finding justifying an exception²⁰ and would otherwise be arbitrary and capricious²¹ and fundamentally unfair.²²

The first route – establish service and licensing rules by rulemaking, open a filing window, and hold an auction – is the familiar one and is the most prudent means of deciding among proposed competing spectrum uses, consistent with Section 309(j). Section 309(j) includes a presumption that licenses should be assigned to those who place the highest value on the use of the spectrum, and that auctions will achieve this result.²³ The Commission has recognized that Section 309(j) requires it “to grant licenses through the use of competitive bidding when mutually exclusive applications for initial licenses are filed,”²⁴ unless certain limited exemptions apply.²⁵ This is clearly the best course. As the Commission has explained in an analogous proceeding:

When a party or the Commission proposes such a [new terrestrial wireless] service, we generally initiate rule making proceedings

²⁰ See 47 U.S.C. § 309(j)(1), (6)(E).

²¹ See 5 U.S.C. § 706(2)(A).

²² See *Melody Music Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965).

²³ See H.R. Conf. Rep. No. 105-217, 143 Cong. Rec. H6173 (daily ed. July 29, 1997) (Congress added this provision “to ensure that scarce spectrum is put to its highest and best use”); see also *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, Second Report and Order*, 11 FCC Rcd 624, 634-44 (1995) (“[T]he system of competitive bidding . . . will lead to the issuance of licenses to those parties who value the licenses most highly and who thus can be expected to make efficient and intensive use of the spectrum . . .”).

²⁴ *Licensing of Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, 17 FCC Rcd 9980, 9995 (2002) (citing 47 U.S.C. § 309(j)(1), (2)); see also *Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, 17 FCC Rcd 12182, 12224 (2002) (“Congress has mandated that we auction spectrum in order to resolve mutual exclusivity.”); *Sections 309(j) and 337 of the Communications Act*, 17 FCC Rcd 7553, 7555 (2002) (explaining that “mutual exclusivity is established when competing applications for a license are filed”).

²⁵ None of the exceptions in Section 309(j)(2) – applicable to applications for public safety radio service provided by “not-for-profit” organizations and “not made commercially available to the public;” digital television service; and noncommercial educational and public broadcast service – apply to M2Z’s proposed for-profit, commercial spectrum offering. The FCC’s ability to avoid mutual exclusivity in the public interest is discussed below.

both to allocate spectrum for the new service and establish service rules before we accept any applications for licenses. In the context of these proceedings, we establish rules governing the application and licensing process for the new service. After the completion of such proceedings, parties are provided an opportunity to submit applications in accordance with the adopted service rules. If mutually exclusive applications are accepted, licenses must be assigned by auction, with few exceptions.²⁶

The Commission should follow the same approach in this case and conduct a rulemaking to determine service and licensing rules, particularly where, as here, matters of spectrum policy are implicated.²⁷ Thereafter, once service rules are adopted, applications should be accepted and competing applications resolved by auction. In the meantime, the Commission should dismiss the pending applications of M2Z and others without prejudice to refiling once service rules are adopted and a filing window opened for all interested parties, consistent with precedent.²⁸

²⁶ See, e.g., *Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 16 FCC Rcd 4096, 4218-19 (2001). In that proceeding, competing applications were filed to provide a new terrestrial service in the 12.2-12.7 GHz bands previously used for satellite services before service rules had been adopted. The Commission conducted a rulemaking to determine sharing criteria and service and licensing rules, and to seek comment on the applications.

²⁷ See, e.g., *e.g. id.* at 4220 & n.668 (noting the preference for proceeding by rulemaking when implementing a new, industry-wide policy); *Redesignation of the 27.5-29.5 GHz Frequency Band, Reallocation of the 29.5-30.0 GHz Frequency Band, and Establishment of Rules and Policies for LMDS and FSS*, 12 FCC Rcd 12545 (1997) (“*LMDS Order*”) (opting to proceed by rulemaking rather than adjudication where proposals raised policy questions involving the best use of spectrum); *Amendment of Section 22.501(a) to Allow the 35 MHz Frequency Band to be used for One-way Signaling on an Exclusive Basis*, 78 FCC2d 438 (1980) (determining that a change of policy concerning use of certain frequencies should take place within the context of a rulemaking rather than a series of adjudications); *Nextel Communications, Inc.*, 14 FCC Rcd 11678, 11691-92 (WTB 1999) (declining to proceed through adjudication where spectrum policies of general applicability were at issue); see also *Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range*, 17 FCC Rcd 9614, 9698-99 (2002) (“*MVDDS Order*”).

²⁸ See *MVDDS Order*, 17 FCC Rcd at 9618-22, 9695-9706 (dismissing all applications for terrestrial use without prejudice to reapplying under the newly adopted licensing rules), *aff'd*, *Northpoint Technology, Ltd. v. FCC*, 414 F.3d 61 (D.C. Cir. 2005).

Alternatively, the Commission can conduct a full and fair comparative proceeding to determine whether any one proposal represents the highest public use of the spectrum and whether there are substantial public interest reasons to avoid mutually exclusivity (*e.g.*, because one broadband proposal is far superior to another).²⁹ As a general matter, the alternative of comparative consideration is far less desirable, as Congress gave the FCC lottery and ultimately auction authority to avoid the need to conduct comparative proceedings in the first instance³⁰ and to promote efficient spectrum use by using auctions.³¹ Nevertheless, if such a proceeding is conducted and the record compels a finding of limited eligibility, that does not necessarily limit eligibility to a class of one if there are competing proposals to achieve the defined objective. Limiting eligibility to a class of one requires extraordinary circumstances not present here.³²

²⁹ See 47 U.S.C. § 309(j)(6)(E) (providing that the FCC may avoid mutually exclusivity through “engineering solutions, negotiation, threshold qualifications, service regulations, and other means” when it is “in the public interest” to do so). This section does not direct the Commission to avoid mutual exclusivity, only to do what best serves the public interest. See *Benkelman Telephone Co. v. FCC*, 220 F.3d 601, 605-606 (D.C. Cir. 2000) (Section 309(j)(6)(E)). It does not require that the Commission to “search and negotiate until the bitter end” for a consensus. See *Northpoint Technology, Ltd. v. FCC*, 414 F.3d 61, 74 (D.C. Cir. 2005).

³⁰ See, *e.g.*, *Space Station Licensing Rules and Policies*, 17 FCC Rcd 3847, 3870 (2002) (“Congress’s dissatisfaction with comparative hearings was prominently evidenced . . . in its decision in 1993 to give the Commission permissive authority to resolve mutually exclusive license applications by auctioning spectrum licenses in certain radio services, as well as in its expansion in 1997 of the Commission’s auction authority. In 1997, Congress amended Section 309(j) by requiring that all mutually exclusive applications for initial licenses . . . ‘shall’ be auctioned except in certain cases not relevant here.”) (footnotes omitted); see also H.R. Rep. 111, 103rd Cong., 1st Sess. 248 (1993) (“The Committee finds that in many respects the FCC’s current licensing methods for assigning spectrum have not served the public interest. Comparative hearings frequently have been time consuming, causing technological progress and the delivery of services to suffer.”).

³¹ *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, Second Report and Order*, 11 FCC Rcd 624, 634-44 (1995) (“[T]he system of competitive bidding . . . will lead to the issuance of licenses to those parties who value the licenses most highly and who thus can be expected to make efficient and intensive use of the spectrum . . .”).

³² See *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, 15081 (2004) (“We recognize that the granting of valuable spectrum rights to Nextel – or to any

(footnote continued)

Indeed, given the similarity of many of the proposals, it would be nearly impossible to find one so extraordinary that it alone should be granted.³³

Even M2Z seems to recognize that the basic minimum step of comparison of the proposals is necessary to ensure fundamental fairness:

[B]efore the Commission actually assigns a license to operate in the 2155-2175 MHz band, it must first identify and prescribe those uses of the band that would best serve the public interest. In making that determination, it must *compare the public interest and consumer welfare benefits* what would be generated by M2Z's proposal . . . *against the public interest and consumer welfare benefits that would be generated by the alternative uses.*³⁴

M2Z also admits that consistent with the Administrative Procedure Act (“APA”) and fundamental fairness, the Commission “must provide interested parties with notice and a reasonable opportunity to comment on [its] Application.”³⁵ Yet, inexplicably, M2Z takes the position that the FCC should decline to give interested parties notice and the opportunity to comment on the alternative proposals submitted and simply grant its application.³⁶ Such advocacy takes the FCC perilously close to the situation years ago when the Supreme Court

(footnote continued)

party – without recourse to the competitive bidding process is highly unusual. However, given the extraordinary circumstances present in this proceeding, including issues involving the safety of life and property – and absent harm to other interests of the public – we are convinced that our decision in this regard is consistent with the public interest. In reaching this decision, we are mindful that Congress has expressed a strong statutory preference in the vast majority of circumstances for use of auctions to assign spectrum rights.”) (subsequent history omitted).

³³ See *supra* notes 8-13 and accompanying text.

³⁴ M2Z Opp. at 10 (emphasis added).

³⁵ M2Z Opp. at 12.

³⁶ See M2Z Opp. at 2 (“[A]lternative proposals that were accepted after acceptance for filing of the M2Z Application . . . should be promptly dismissed as defective and insufficient, and not accepted for filing.”).

struck down under Section 309 the FCC's authority to grant one of two mutually exclusive applications without joint consideration.³⁷

Under no scenario can it be in the public interest to award M2Z an exclusive license without an auction or the minimum of a proceeding to evaluate, in M2Z's words, the benefits of its proposal "against the public interest and consumer welfare benefits that would be generated by the alternative uses."³⁸ Any such award would be contrary to Section 309, the APA, and principles of fundamental fairness.

II. THERE REMAIN SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT AND INSUFFICIENT INFORMATION TO GRANT THE APPLICATION

Even assuming *arguendo* competing applications had not been filed, the application still cannot be granted because there remain substantial and material questions of fact and insufficient information for the Commission to make a public interest finding. Although M2Z has submitted an opposition well in excess of 100 pages, M2Z devotes barely four pages to the issues which are critical to a public interest determination under the statute.³⁹ Nothing of substance is offered.

Core matters which remain in controversy after the filing of the opposition include:

- Whether the proposed service is viable. M2Z has provided no economic support for its business model to demonstrate that an advertiser-based free basic broadband service is economically viable. Nor is network architecture information provided. Because the promised benefits of the M2Z service are predicated upon a successful business and network offering, an assessment of viability is critical here.⁴⁰
- Whether M2Z has adequate financial backing. M2Z has failed to demonstrate that has the financial wherewithal to build and operate a nationwide network on the scale proposed in its application. M2Z "notes" that its financial resources "are far greater than the \$400 million" mentioned in its application, but this is far from a demonstration of sufficient resources to complete a nationwide network. While M2Z references a

³⁷ See *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

³⁸ M2Z Opp. at 10.

³⁹ See M2Z Opp. at 111-14.

⁴⁰ See, e.g., AT&T Pet. at 5-6; Verizon Pet. at 2, 13.

submission concerning the \$400 million under seal,⁴¹ petitioners cannot assess how real this is and certainly cannot determine whether it is enough based on the meager financial and cost information provided to date. Where an applicant seeks licensing outside the financial checks inherent in the competitive bidding process, detailed support demonstrating financial qualifications is needed.⁴²

- Whether M2Z has adequate site assurances. M2Z provides no substantiated information to determine whether it has adequate site assurances to either build a new network from scratch or rely on the networks of others. This is necessary to determine whether the proposed coverage claims are reasonably achievable.⁴³
- Whether proposed service to rural areas is overstated. M2Z does not dispute that the proposed coverage will leave significant rural areas uncovered. Indeed, as many as ten states would not be required to have broadband service under M2Z's proposal. Given the presence of incumbents in the band and technology cost factors, the proposed 95% buildout schedule may not even be achievable. M2Z also admits that its service would be limited to areas where there is backhaul, essentially serving only those areas where competition likely already exists. Finally, M2Z's proposal could discourage the provision of advanced broadband competition if basic service is made available for free as a result of a subsidized spectrum grant.⁴⁴ M2Z's response to concerns about its proposed buildout consists of an attack on the buildout efforts of others in different bands.⁴⁵ This clearly does not resolve the question about whether the benefits of its service are overstated.
- Whether proposed "free" broadband service is overstated. Even if M2Z's estimated \$250 customer equipment cost estimate is accurate, it is "prohibitive" for many consumers, and the required purchase of CPE at this price point undermines the claims of "free" service. Moreover, the proposed basic broadband service speeds are currently available in many areas (with more to come, as AWS, BRS, 3.65 GHz and 700 MHz spectrum is made

⁴¹ See M2Z Opp. at n.365.

⁴² See, e.g., AT&T Pet. at 6-7 & n.19; T-Mobile Pet. at 7-8; Verizon Pet. at 1, 10-13; see also National Association of Telecommunications Officers and Advisors, Comments, WT Docket No. 07-30, at 6 (Mar. 19, 2007) ("NATOA Comments") (M2Z's system may be challenge to build cost effectively).

⁴³ See, e.g., AT&T Pet. at 6 & n.15.

⁴⁴ See, e.g., AT&T Pet. at 7-8, 18-19; CTIA Pet. at 10; NATOA Comments at 6-9, 11; NextWave Pet. at 11; Rural Pet. at 4, 7-8; T-Mobile Pet. at 9-10; TowerStream Pet. at 7-8; WCA Pet. at 5; see also National Association of State Utility Consumer Advocates, Comments, WT Docket No. 07-30, at 6 (Mar. 19, 2007) ("NASUCA Comments") (application lacks meaningful sanctions for not achieving construction benchmarks).

⁴⁵ See M2Z Opp. at 101-02.

available and deployed), and M2Z would be under no obligation to upgrade the basic service speeds as technology and market advances warrant.⁴⁶

- Whether the fee, if ever collected, will recover the value of the license. M2Z has not submitted any expert valuation of the license it seeks, and thus there is no basis for comparison with the revenue to be generated by the spectrum usage fee (assuming premium services are ever offered, the fee is paid and the service is viable).⁴⁷ Whether the value of the license will ever be recovered for the benefit of the public is thus entirely speculative.⁴⁸
- Whether the fee is legal. Because the value of the spectrum M2Z seeks is not quantified and rationalized in comparison to the net value of the proposed fee, the fee is in the nature of a tax which the FCC has no authority to levy.⁴⁹ Thus, the fee offering may be unenforceable.
- Whether public safety benefits are real or necessary. The proposed availability of the network for public safety is on a secondary, rather than priority, basis, so uninterrupted service is not assured.⁵⁰ Moreover, there are a number of ongoing developments in the

⁴⁶ See, e.g., Verizon Pet. at 2, 13; NextWave Pet. at 8-11 & nn.21-22, 18; Rural Pet. at 7; NATOA Comments at 4-5; NASUCA Comments at 7; T-Mobile Pet. at 8-9; TowerStream Pet. at 7; WCA Pet. at 6.

⁴⁷ For example, NextWave indicates that the value of comparable spectrum covering the United States sold for \$4.1 billion in the recent AWS auction for F Block spectrum immediately adjacent to 2155-2175 MHz. NextWave Pet. at 17 & n.51. By contrast, a recent economic submission sponsored by M2Z has placed a range of values on the proposed fee from \$35 million to over \$500 million. See, e.g., Wilkie Consumer Paper at 19-20. The resulting discrepancy is significant under any measure.

⁴⁸ See, e.g., AT&T Pet. at 8-9, 15; NextWave Pet. at 18; T-Mobile Pet. at 12; WCA Pet. at 6; see also CTIA Pet. at 8-9; *infra* Section IV. M2Z did not amend its proposed license conditions appended as Appendix 2 to its application. Thus, the opposition did nothing to change the discretionary nature of the fee condition. See M2Z App., Appendix 2 at 4 (“[M2Z] may make available ‘Premium Services’ on a subscription basis, *in which event* it shall pay to the U.S. Treasury . . . a voluntary usage fee of 5% of the gross revenues derived from such Premium Service.”) (emphasis added); AT&T Pet. at 8.

⁴⁹ See *infra* Section IV.

⁵⁰ See, e.g., AT&T Pet. at 16-18; NextWave Pet. at 24-25; WCA Pet. at 6. AT&T takes exception to M2Z’s assertion that it “callously” attempts to minimize public safety benefits and that it is “the height of hypocrisy” to oppose M2Z on the grounds that there are other proceedings to address interoperability given AT&T’s stance in some of those proceedings. M2Z Opp. at 17-18, 43. In fact, the incidental benefits of secondary access by public safety to the M2Z network does not equate to the direct benefits to the public safety resulting from the 800 MHz rebanding proceeding, which is the comparison AT&T was drawing. Furthermore, the point regarding the other interoperability proceedings is that the FCC cannot consider the M2Z proposal in a vacuum; given the potential outcomes of those other pending proceedings, M2Z’s

(footnote continued)

700 MHz band where the Commission has proposed a single, nationwide broadband network and Congress has set aside significant funds for public safety interoperability, which calls into question the need for a secondary public safety network.

- Whether the proposal is the best use. Absent a proceeding in which the FCC can seek full notice and comment on the M2Z proposal *and* all other possible uses, a comparative determination cannot be made to determine the best use of the spectrum. This is of particular concern where the FCC has previously found that reallocation of 2155-2175 MHz to AWS would create valuable congruous spectrum with AWS I and make additional spectrum available for small businesses – two benefits which would be undercut by the M2Z proposal.⁵¹
- Whether the proposal is anticompetitive. Grant of the proposed application will afford M2Z an anticompetitive windfall and treat similarly-situated entities dissimilarly, to the detriment of competition and the market. As a result, it will adversely impact wireless broadband competition, as the competitive landscape will not be level.⁵²
- Whether the proposal will avoid harmful interference. The record demonstrates that operation of a TDD system as proposed by M2Z in close proximity to FDD systems may cause harmful interference. M2Z offers only generalizations about working to avoid interference; no specific technical demonstrations showing how its proposed system will actually work let alone mitigate and avoid harmful interference are provided, nor are likely guard bands addressed. M2Z’s technical plan also contains “a number of ambiguities” that remain unanswered.⁵³

The continued existence of these substantial questions, and lack of basic information needed to make a public interest finding, renders the M2Z application not grantable.

None of the various economic studies submitted by M2Z proponents alters this fundamental conclusion. Two purport to show the benefits of expanded broadband availability and enhanced competition, as well as incidental public safety benefits and savings with respect to

(footnote continued)

proposal may not be the highest and best use of the spectrum. Moreover, AT&T has supported the FCC’s 12 MHz interoperability proposal. *See* AT&T Pet. at 17-18.

⁵¹ *See, e.g.*, AT&T Pet. at 4, 15-16, 25-28; WCA Pet. at 7.

⁵² *See, e.g.*, AT&T Pet. at 14-15; Motorola Pet. at 2-3; Rural Pet. at 6-7; TowerStream Pet. at 7-8; NextWave Pet. at 15-17; *see also infra* Section IV.

⁵³ *See, e.g.*, AT&T Pet. at 10-14; NATOA Comments at 10-11; T-Mobile Pet. at 6-7; Verizon Pet. at 2-3, 14-22; *see also* WCA Pet. at 8-10; *infra* Section III.

universal service.⁵⁴ A third examines whether the oft-cited public interest benefits of auctions are real.⁵⁵ None of these papers, however, goes to the core question of whether the proposed service – from which all the promised benefits flow – is viable. Nor do they address whether the M2Z has the financial backing to meet its commitments, access to sites to build its network or technical expertise to avoid interference, or the many other substantial questions identified above.

As AT&T and others have shown, M2Z effectively wants the FCC to simply give spectrum away and take it at its word that it will do what it has promised and, if not, its license would be surrendered. Without an auction to ensure the highest and best use and recovery of the value of the spectrum, M2Z can simply sit tight for up to five years before the FCC could even take its license.⁵⁶ During that time, it would be under no obligation to serve the public and, in turn, provide any compensation for the use of the license. If M2Z goes under in year five, the spectrum will have been taken away from others who, were the spectrum to have been awarded at auction, would have paid substantial sums incenting them to build and recoup their investment.⁵⁷ In addition, the value of the spectrum would have been recovered for the benefit of the public upfront at auction.

⁵⁴ See Wilkie Consumer Paper, *supra*; Liopiros Paper, *supra*.

⁵⁵ See Wilkie Auction Paper, *supra*.

⁵⁶ M2Z's construction benchmarks are keyed to its commencement of operations (two years after licensing), and thus its first benchmark (33%) does not kick in until five years after licensing and its last (95%) until twelve years after licensing.

⁵⁷ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2358 (1994) (finding that the auction process tends "to reinforce the desire of licensees to make efficient and intensive use of . . . spectrum. Auctions make explicit what others are willing to pay to use the spectrum, and the licensees' need to recoup the out-of-pocket expenditure for a license should provide additional motivation to get the most value out of the spectrum").

With respect to the auction paper in particular, questions about the public interest benefits of auctions are irrelevant to the viability of the service issues that have been raised. In any event, it is meaningless to debate the benefits of the auction process. This is a role for Congress, which has already found that where mutually exclusive applications are filed and none of the narrow exemptions apply, the Commission must proceed by auction.⁵⁸

III. M2Z'S RESPONSIVE TECHNICAL SHOWING IS FLAWED

M2Z attacks the engineering criticisms of its proposal as “dated,” because they focus simply on “radiating power levels.”⁵⁹ It argues that the 2002 Spectrum Policy Task Force’s “significant advancements in analyzing interference” leave no room for such traditional engineering analysis,⁶⁰ saying that “modern engineers” such as its consultant (who served on the Task Force) consider frequency, power, space, and time, instead.⁶¹ In particular, M2Z and its consultant criticize AT&T for reliance on portions of the 2006 Ofcom report, which reaffirmed the incompatibility of adjacent FDD and TDD operations and said that even with appropriate interference mitigation, “FDD/TDD co-existence at 5 MHz offset (*i.e.*, operation in an adjacent channel) is not feasible for macro cellular deployment.”⁶²

Nothing in M2Z’s Opposition or its consultant’s declaration calls into question the conclusion of the Ofcom report that adjacent-channel operation of FDD and TDD systems (*i.e.*

⁵⁸ See *supra* Section I.

⁵⁹ M2Z Opp. at 93.

⁶⁰ *Id.* (citing *Spectrum Policy Task Force Report*, Federal Communications Commission, Office of Engineering & Technology, ET Docket 02-135, at 4, (2002), available at <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-228542A1.pdf>).

⁶¹ *Id.* at 93-94 (citing the Affidavit of Michael J. Marcus, Att. C to the M2Z Opp.). It is worthy of note that the approach advocated by the task force was a controversial staff recommendation that has been found deeply flawed by commenters in numerous proceedings and has never been endorsed by the Commission to the exclusion of traditional engineering analysis.

⁶² AT&T Pet. at 13-14 (quoting Mason Communications Ltd, *2500-2690 MHz, 2010-2025 MHz, and 2290-2302 MHz Spectrum Awards – Engineering Study (Phase 2)* at 7 (Nov. 2006) (“Ofcom report”)).

without any guard band) is not feasible. M2Z attempts to divert attention from this fact by arguing that 75% of the Ofcom report actually addressed interference scenarios other than FDD/TDD.⁶³ In fact, the Ofcom report considered several different interference scenarios, one of which was FDD/TDD; the other parts of the report address other situations and are have no bearing on whether adjacent FDD/TDD operations are feasible. The relative number of pages devoted to the various analyses in the report does not affect the validity of the separate analyses. M2Z also criticizes the Ofcom report for engaging in a “‘worst case scenario’ analysis which fails to account for the time and space domains,”⁶⁴ but in fact the Ofcom report’s conclusion that TDD and FDD operations on adjacent channels were not feasible was based on analysis of time and space as well as frequency and power.⁶⁵

M2Z also attempts to deflect attention from the Ofcom conclusion by noting that the Ofcom report found only a small probability that mobile-to-mobile interference would occur based on probabilistic factors such as usage time and user proximity,⁶⁶ but it makes no attempt to show whether the assumptions underlying that part of the Ofcom report should be applied here – and this probabilistic approach merely estimates how often harmful interference will be encountered, while accepting that it will occur with certainty. M2Z also argues that the Ofcom report supports its position that TDD operations will not cause base-to-base interference to adjacent-channel FDD operations.⁶⁷ M2Z ignores, however, the fact that the Ofcom report shows that there would be harmful interference to TDD operations from adjacent-channel FDD

⁶³ M2Z Opp. at 94.

⁶⁴ M2Z Opp. at 94.

⁶⁵ See Ofcom report at 32-37, App. A at 2-18.

⁶⁶ M2Z Opp. at 94-95 (*citing* Ofcom report at 35 [stet; should be 37]).

⁶⁷ Marcus Affidavit at 4-5. In addition M2Z cites a proposal for FDD-TDD coexistence developed in connection with the H block of AWS spectrum, *see* M2Z Opp. at 96-97, but it ignores the fact that in the H-block scenario there was 10 MHz of uplink-downlink separation that would correspond to a guardband here.

operations, absent enforced spatial separation of at least 1 km.⁶⁸ M2Z does not indicate that it is willing to accept interference from FDD, or that it is willing to accept conditions restricting its base stations' locations to avoid such interference. AWS operators using the adjacent spectrum should not, however, be required to reconfigure their FDD operations to prevent interfering with M2Z's operations using an incompatible TDD technology.

IV. THE FEE HAS NOT BEEN SHOWN TO BE CONSISTENT WITH LAW

M2Z has yet to present any expert analysis of the value of the *specific* 2155-2175 MHz band spectrum it seeks. AT&T discussed at length the need for the proposed fee to bear a "reasonable relationship" to the value of the license, *i.e.*, that there be "value for value."⁶⁹ M2Z appears to admit as much.⁷⁰ Absent such a showing, the fee is nothing more than an illegal tax which is unenforceable.⁷¹ The omission of any specific spectrum valuation also makes it impossible to ensure that M2Z will not receive a windfall and be unjustly enriched by its proposal.⁷²

M2Z criticizes CTIA and others for pointing out that M2Z's own submission claimed that "20 MHz of unpaired spectrum would yield about \$5 billion in revenue" based on 2005 figures.⁷³ According to M2Z, this figure included qualifying language⁷⁴ and "stems from an academic

⁶⁸ See Ofcom report at 32-34.

⁶⁹ See AT&T Pet. at 19-25.

⁷⁰ See M2Z Opp. at 44 (claiming that its application "represents a value-for-value proposition"); *id.* at 105 (stating that it is not the case that "M2Z's payments are not tied to the value of the 2155-2175 MHz spectrum"; rather, the fee represents "the value the M2Z places on the 2155-2175 MHz band").

⁷¹ See AT&T Pet. at 24-25.

⁷² See AT&T Pet. at 8-9, 14-15.

⁷³ M2Z Opp. at 65 & n.202 (citing M2Z App., App. 5 at 24).

⁷⁴ See *id.* at 9 n.29. While it is true this figure excludes proposed discounts for unpaired spectrum, as M2Z points out, *see* M2Z Opp. at 68, this figure also *excludes potential premiums*

(footnote continued)

exercise never meant to be used as conjecture regarding the value of the 2155-2175 MHz spectrum at auction.”⁷⁵ But that is exactly the point: M2Z did not, and still has not, provided anything in the way of an expert evaluation of the fair market value of *this* spectrum.⁷⁶ Its opposition now cites to various dated auctions of unpaired spectrum, but acknowledges this information only “suggests” what the true value of the spectrum might be.⁷⁷ Significantly, M2Z offers no comparison to the recent Auction 66 results of spectrum immediately adjacent to the 2155-2175 MHz band. In the absence of any such expert valuation of the spectrum, M2Z’s conclusory statement that it “is incorrect that M2Z’s payments are not tied to the value of the 2155-2175 MHz spectrum” is unfounded.⁷⁸

V. NEITHER SECTION 10 NOR SECTION 7 OF THE ACT COMPEL THE RESULT SOUGHT BY M2Z

In its petition for forbearance, M2Z asked the FCC to forbear under Section 10 of the Act from applying Section 1.945 of the rules and Section 309 of the Act – which preclude the FCC from granting an application when there are substantial and material questions of fact, mutually exclusive applications or the public interest would not be served – to the extent they would “prevent the . . . grant of M2Z’s Application.”⁷⁹ These sections also establish authority for the

(footnote continued)

for a nationwide license, *see* M2Z App., App. 5 at 24, which M2Z now conveniently omits. *See* AT&T Pet. at 9 n.29.

⁷⁵ M2Z Opp. at 65.

⁷⁶ M2Z claims that AT&T used the \$5 billion figure “to arrive at the same wrong conclusion: namely, that the potential value of the spectrum compels the Commission to raise revenues by auctioning the spectrum.” M2Z Opp. at 65 n.202. In fact, AT&T noted the importance of “adequately determin[ing] the present value of the requested license” in order to “equate that value to the fee *to ensure that the value of the spectrum is recovered and unjust enrichment avoided.*” AT&T Pet. at 8-9 (emphasis added).

⁷⁷ *See* M2Z Opp. at 69.

⁷⁸ *See* M2Z Opp. at 105.

⁷⁹ M2Z Pet. at iii.

FCC to grant applications under the public interest standard. M2Z claims that its petition provides the FCC with the “means to . . . grant M2Z’s Application.”⁸⁰

AT&T, along with CTIA, WCA and the Rural Carriers, all opposed the petition, detailing the many reasons why it is unjustified and contrary to the public interest.⁸¹ Simply put, M2Z is using the public interest standard under Section 10 to get rid of the public interest standard under Section 309. This makes no sense. In so doing, M2Z would have the FCC disregard the petitions to deny that have been filed; turn a blind eye to the substantial questions and public interest concerns that have been raised; dismiss the other competing applications; accept no future applications; forgo a rulemaking to adopt service and licensing rules; and deny other interested parties the right to compete for the spectrum at auction – all of which is plainly contrary to Section 10’s requirement that forbearance be in the public interest.⁸² Those comments submitted in support of the petition offer no meaningful statutory analysis to support the requested relief.⁸³

In any event, forbearance, even if somehow justified, will not afford the relief M2Z seeks. Eliminating all of the criteria and authority of the FCC to grant applications will not result

⁸⁰ *Id.*

⁸¹ See AT&T Inc., Opposition, WT Docket 07-30 (Mar. 19, 2007) (“AT&T Opp.”); CTIA - The Wireless Association, Opposition, WT Docket 07-30 (Mar. 19, 2007) (“CTIA Opp.”); Rural Broadband Group, Opposition, WT Docket No. 07-30 (Mar. 16, 2007) (“Rural Carriers Opp.”); Wireless Communications Association International, Inc., Opposition, WT Docket 07-30 (Mar. 19, 2007) (“WCA Opp.”).

⁸² See WCA Opp. 4. As AT&T explained in its opposition, Section 10 of the Act only allows the FCC to exercise its forbearance authority when doing so serves the public interest. See AT&T Opp. at 3-4.

⁸³ See, e.g., NASUCA Comments at 10; see generally NATOA Comments, *supra*. NetFreeUS supports forbearance, but only to expedite licensing of the 2155-2175 MHz band and not to award M2Z exclusive access to the spectrum. NetFreeUS favors consideration of the other competing applications following a to-be-established cut-off period; if a settlement cannot be reached thereafter, NetFreeUS would support an auction. NetfreeUS, LLC, Comments, WT Docket No. 07-30, at 2-3 (Mar. 19, 2007) (“NetfreeUS Comments”).

in a grant of M2Z's filing. Thus, were the FCC to forbear from applying these provisions, it would actually eliminate the FCC's authority to grant the application in the first instance.⁸⁴ Furthermore, M2Z apparently is seeking forbearance to prompt expedited action on its application, either by action or default, within one year of filing.⁸⁵ Forbearance, however, merely allows the FCC not to apply a particular rule or statute when the requisite standards have been met; again, it does not and cannot effectuate grant of an application.⁸⁶ Thus, grant of the petition would both rob the FCC of its tools and authority to review applications and fail to effectuate a grant. The petition is therefore meaningless and should be recognized for what it is: an ill-thought out attempt to coerce the FCC into premature action where none is required.⁸⁷

M2Z's invocation of Section 7 of the Act to similarly compel premature action fares no better. Section 7 encourages new technologies and services, requires opponents to show new technologies or services are inconsistent with the public interest, and directs the FCC to make a public interest finding on new proposals within one year.⁸⁸ As an initial matter, the proposed M2Z service "offers no new technical innovation or advancement of the art of telecommunications and does not offer to provide meaningful service to the places in the United States that need it most – truly unserved and rural areas."⁸⁹ It is therefore questionable whether Section 7 even applies here.

⁸⁴ See M2Z Pet. at 20 (acknowledging "Section 1.945(c) sets forth the standard for granting wireless license applications such as M2Z's").

⁸⁵ Section 10 provides that "[a]ny such petition shall be deemed granted if the Commission does not deny the petition . . . within one year after the Commission receives it, unless the one year period is extended by the Commission." 47 U.S.C. § 160(c).

⁸⁶ See, e.g., CTIA Opp. at 3, 4-5.

⁸⁷ See, e.g., WCA Opp. at 2-3.

⁸⁸ 47 U.S.C. § 157

⁸⁹ Rural Pet. at 4; see also TowerStream Pet at 4; Leap Wireless International, Inc., Comments, WT Docket No. 07-16, at 2 (Mar. 2, 2007); WCA Pet. at 7.

Assuming it does apply, the burden on petitioners is not novel. Section 309 already requires petitioners seeking to deny an application to demonstrate that there are substantial and material questions of fact and grant of the application is not in the public interest,⁹⁰ and petitioners have already met this burden.⁹¹ In any event, the burden shifting provision of Section 7 expressly does not apply to the Commission,⁹² meaning the FCC's obligation not to grant an application when there are substantial and material questions of fact and insufficient information remains unchanged.⁹³ Indeed, Section 7 has been characterized as a merely a broad policy statement reflecting congressional delegation on new service and technology policy matters to the Commission's discretion.⁹⁴ Moreover, Section 7's one year time frame is merely a "directory" guideline and not a mandate.⁹⁵ M2Z's invocation of Section 7 is therefore another flawed attempt to seek to artificially curtail full debate on the best use of the 2155-2175 MHz band.

⁹⁰ See 47 U.S.C. § 309(d)-(e).

⁹¹ See *supra* Section II.

⁹² See 47 U.S.C. § 157(a) (placing the burden of showing a new technology or service is inconsistent with the public interest on "[a]ny person or party (*other than the Commission*)") (emphasis added).

⁹³ See 47 U.S.C. § 309(a), (d), (e); 47 C.F.R. § 1.945(c).

⁹⁴ *Alenco Communications Inc. v. FCC*, 201 F.3d 608, 615 n.3 (5th Cir. 2000) (stating that the provisions of Section 7 of the Act are "merely a broad statement of policy conferring substantial discretion on the Commission to determine how best to provide for new technologies and services").

⁹⁵ See *Gottlieb v. Peña*, 41 F.3d 730, 733 (D.C. Cir. 1994) (a time limit is merely "directory," rather than mandatory, when the statute requires an agency to act within a specified time, but does not set the consequences for the agency's failure to act within that time); *Brock v. Pierce County*, 476 U.S. 253, 262-66 (1986); *Fort Worth National Corp. v. FSLIC*, 469 F.2d 47, 58 (5th Cir. 1972).

CONCLUSION

For the foregoing reasons, the application of M2Z cannot be granted and the petition for forbearance should be denied.

Respectfully submitted,

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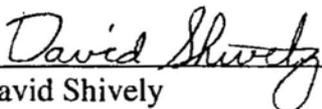
April 3, 2007

DECLARATION OF DAVID SHIVELY, PhD

I, David Shively, hereby declare and state as follows:

My qualifications are as stated in my declaration dated March 1, 2007, which was filed in support of the Petition to Deny of AT&T Inc. ("AT&T") in WT Docket No. 07-16.

I have reviewed the "Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny," dated March 26, 2007, and the supporting affidavit of Michael J. Marcus. I have also reviewed Section III of the foregoing "Consolidated Reply to Opposition to Petitions to Deny and Reply Comments Regarding Forbearance Petition" prepared on behalf of AT&T, and declare under penalty of perjury that the statements contained therein (except matters that are subject to official notice) are true and correct, upon information and belief.


David Shively

Executed April 3, 2007

CERTIFICATE OF SERVICE

I, Sarah Dahlia Gutschow, hereby certify that on this 3rd day of April 2007, copies of the foregoing Consolidated Reply to Opposition to Petitions to Deny and Reply Comments Regarding Forbearance Petition were served by first-class mail on the following:

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A handwritten signature in cursive script, reading "Sarah Dahlia Gutschow", is written over a horizontal line.

Sarah Dahlia Gutschow