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

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF M2Z NETWORKS, INC.

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April 3, 2007

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EXECUTIVE SUMMARY

One wonders, upon reading the various oppositions to M2Z's Forbearance Petition, whether those who would erect barriers to this important new service took the time to read that Petition. In several cases, Opponents have not even bothered to respond directly to the arguments in M2Z's Forbearance Petition or the record evidence in this proceeding, but instead have focused on their own self-interested objections to M2Z's proposed National Broadband Radio Service ("NBRS"). Those objections have been more than answered by M2Z in other related pleadings.

In other cases, Opponents have somehow missed the near ten pages of discussion in the Forbearance Petition and the record evidence in this proceeding, constituting an extensive Section 10 public interest showing, in which M2Z detailed how forbearance would result in numerous consumer benefits, including, new entry in the broadband market, enhanced competition, and enormous social and economic gains from the deployment of NBRS. Or, as AT&T has, they have somehow missed the point that the forbearance test concerns whether enforcement of the Commission's rules is "necessary to protect consumers," not the welfare of would-be competitors.

Still other Opponents erroneously suggest that M2Z is seeking to use Section 10 forbearance to avoid a full and fair public debate about the merits of its pending Application. On the contrary, as M2Z noted quite explicitly in the Petition, "in seeking forbearance …, M2Z is not asking the Commission to abdicate one of its primary responsibilities to determine whether the public interest, convenience, and necessity will be served by accepting and granting M2Z's

Application. Rather, … [t]his Petition provides the means to undertake that review and to encourage public debate on M2Z's proposal."[1]

Among those arguments that do go to the substance of M2Z's Forbearance Petition, all miss the mark badly. For example, several Opponents have suggested that, merely because other applications for the 2155-2175 MHz band have been filed, M2Z's Forbearance Petition has been rendered moot. But the mere act of filing alternative applications has no substantive or procedural impact under Section 309. More importantly, a primary thrust of the Petition concerns the merits of forbearing from some of the rules relating to the processing of other applications. It would be odd, indeed, if that which the forbearance petition was expressly meant to address could somehow render it moot.

Likewise, two parties that generally support grant of M2Z's application and Forbearance Petition, have sought clarification regarding the specific construction benchmarks that will apply to NBRS. Those benchmarks, however, have been outlined in the M2Z's Application. No more clarification is possible or appropriate at this time. The same might be said of those who have questioned M2Z's willingness and ability to: (i) protect against harmful interference to other lawful spectrum users, (ii) provide free service to the public safety community; or (iii) provide a service of tremendous value to the American people. These issues have been fully addressed in M2Z's Application, its forbearance Petition, and the record in these proceedings.

Other than raising simplistic and generally unsupported objections to the Forbearance Petition, the Opponents fail to demonstrate how forbearance from any provision of the Act or element of the Commission's rules is *not* in the public interest. Conversely, M2Z has made a substantial public interest showing which includes hundreds of supportive filings by interested

[1] M2Z Forbearance Petition at 18-19 (internal quotations omitted).

parties in two related dockets. M2Z also has met every prong of the Section 10 standard. Therefore, the Commission should forbear, as necessary, from any statutory provisions, Commission rules, or policies that may impede the grant of M2Z's pending license Application.

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To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF M2Z NETWORKS, INC.

Pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act") and Section 1.415(c) of the rules of the Federal Communications Commission ("FCC" or "Commission"),[2] M2Z Networks, Inc. ("M2Z") respectfully submits these Reply Comments in response to the following filings that oppose M2Z's Petition for Forbearance Under 47 U.S.C.

[2] *See* 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.415(c). Several parties have filed comments in opposition to the M2Z Forbearance Petition and the M2Z Application. The disposition of the M2Z Forbearance Petition is inextricably linked to the disposition of the M2Z Application, and vice versa. For that reason, M2Z files these Reply Comments in both of the above-captioned proceedings and responds to the comments in opposition pursuant to Section 309(d) of the Act, which is the statutory authority under which the M2Z Application was accepted for filing. *See* "Wireless Telecommunications Bureau Announces that M2Z Networks, Inc.'s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band Is Accepted for Filing," Public Notice, WT Docket No. 07-16, DA 07-492 (rel. Jan. 31, 2007) ("M2Z Application Public Notice").

§ 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission's Rules and Other Regulatory and Statutory Provisions (the "Forbearance Petition"):[3]

(1) CTIA—The Wireless Association Opposition ("CTIA" and the "CTIA Opposition");[4]

(2) Opposition to Petition for Forbearance of The Wireless Communications Association International, Inc. ("WCA" and the "WCA Opposition");[5]

(3) Comments in Opposition of AT&T Inc. ("AT&T" and the "AT&T Opposition");[6]

(4) Comments of NetfreeUS, LLC on Petition for Forbearance of M2Z Networks, Inc. ("NetfreeUS" and the "NetfreeUS Opposition");[7]

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[3] *See* Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission's Rules and Other Regulatory and Statutory Provisions, WT Docket No. 07-30 (filed Sept. 1, 2006) (the "M2Z Forbearance Petition"). The M2Z Forbearance Petition has been incorporated by reference into the M2Z Application. *See* Application of M2Z Networks, Inc. for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (originally filed May 5, 2006; amended Sept. 1, 2006) (the "M2Z Application"). On January 31, 2007, the Commission accepted the M2Z Application for filing and indicated that, to the extent the M2Z Forbearance Petition seeks forbearance from Section 1.945(b) of the Commission's rules, which is the rule used to accept applications for filing, such request had been rendered moot. *See* M2Z Application Public Notice. As discussed herein, the Commission's action in this regard does not render moot the remainder of the M2Z Forbearance Petition. Moreover, Section 1.945(b) only requires the Commission not to grant applications before the 31st day following the issuance of a public notice of the acceptance of an application for filing of such application "or of any substantial amendment thereto." To the extent that forbearance from 1.945(b) would be required for the Commission to act upon the Application expeditiously in the future, M2Z reiterates its request for forbearance from this section.

[4] *See* CTIA—The Wireless Association Opposition, WT Docket No. 07-30 (filed Mar. 19, 2007) ("CTIA Opposition").

[5] *See* Opposition to Petition for Forbearance of The Wireless Communications Association International, Inc., WT Docket No. 07-30 (filed Mar. 19, 2007) ("WCA Opposition").

[6] *See* Comments in Opposition of AT&T Inc., WT Docket No. 07-30 (filed Mar. 19, 2007) ("AT&T Opposition").

[7] *See* Comments of NetfreeUS, LLC on Petition for Forbearance of M2Z Networks, Inc., WT Docket Nos. 07-16 & 07-30 (filed Mar. 19, 2007) ("NetfreeUS Opposition"). In its opposition, NetfreeUS concurs with M2Z that the Commission should exercise its forbearance authority to facilitate licensing of the 2155-2175 MHz band, but asserts that the Commission also should consider other applications filed for the band. *See* NetfreeUS Opposition at 2. M2Z previously has made a complete and thorough showing as to why the acceptance of the NetfreeUS' and the other Alternative Proposals for the band is not in the public interest. *See* Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007) ("M2Z Consolidated Motion to Dismiss"). M2Z incorporates by reference into these Reply Comments its previous arguments made in response to the NetfreeUS proposal for the 2155-2175 MHz band.

(5) Consolidated Petition to Deny and Comments of TowerStream Corporation ("TowerStream" and the "TowerStream Opposition");[8] and

(6) Consolidated Petition to Deny and Comments of The Rural Broadband Group ("RBG" and the "RBG Opposition")[9]

(collectively, the "Opponents" and the "Oppositions").

In addition, the National Association of Telecommunications Officers and Advisors ("NATOA") and the National Association of State Utility Consumer Advocates ("NASUCA") filed comments in support of the M2Z Forbearance Petition but seeking clarification of certain aspects of the M2Z Application.[10] M2Z also responds to the issues raised by NATOA and NASUCA in these Reply Comments.

In their Oppositions, the Opponents do not limit their arguments to the merits of M2Z's Forbearance Petition. Instead, the Opponents repeat arguments previously made in their Petitions to Deny filed against M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (the "Application"). M2Z has thoroughly rebutted these arguments in its Consolidated Opposition to Petitions to Deny and Consolidated

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[8] *See* Consolidated Petition to Deny and Comments of TowerStream Corporation, WT Docket Nos. 07-16 & 07-30 (filed Mar. 15, 2007) ("TowerStream Opposition"). The TowerStream Opposition contains arguments made largely against the M2Z Application, rather than addressing the merits of the M2Z Forbearance Petition. M2Z has rebutted TowerStream's arguments in these respects in previous filings made in these proceedings. *See* Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007) ("M2Z Consolidated Opposition to Petitions to Deny"); *see also* M2Z Consolidated Motion to Dismiss. M2Z incorporates by reference into these Reply Comments its previous arguments made in response to the TowerStream Opposition.

[9] *See* Consolidated Petition to Deny and Comments of The Rural Broadband Group, WT Docket Nos. 07-16 & 07-30 (filed Mar. 16, 2007) ("RBG Opposition"). The RBG Opposition contains arguments made largely against the M2Z Application, rather than addressing the merits of the M2Z Forbearance Petition. M2Z has rebutted the RBG's arguments in these respects in a previous filing made in these proceedings. *See* M2Z Consolidated Opposition to Petitions to Deny. M2Z incorporates by reference into these Reply Comments its previous arguments made in response to the RBG Opposition.

[10] *See* Comments of the National Association of Telecommunications Officers and Advisors, WT Docket Nos. 07-16 & 07-30 (filed Mar. 19, 2007) ("NATOA Comments"); Comments of the National Association of State Utility Consumer Advocates, WT Docket Nos. 07-16 & 07-30 (filed Mar. 19, 2007) ("NASUCA Comments").

Motion to Dismiss Alternative Proposals.[11] M2Z will not repeat its rebuttal arguments in detail here but nevertheless will address the Opponents' arguments made against the M2Z Application to the extent necessary in these Reply Comments.[12]

I. THE M2Z FORBEARANCE PETITION IS SUPPORTED BY AN EXTENSIVE PUBLIC INTEREST SHOWING AND HAS OTHERWISE NOT BEEN RENDERED MOOT BY THE MERE FILING OF ALTERNATIVE PROPOSALS.

A. Section 10 of the Act Requires the Commission to Forbear from Any Provision of the Act or Its Rules Based on M2Z's Showing.

Section 10 of the Act requires the Commission to forbear from applying its regulations or any provision of the Act upon a showing that enforcement of such rules or statutory provisions is not necessary to protect consumers or to ensure that rates are just, reasonable, and non-discriminatory, and that forbearance otherwise is consistent with the public interest.[13] The showing M2Z made in its Forbearance Petition meets this standard as applied to the statutory provisions regarding license assignment as well as the rules and policies created to implement these various provisions of the Act— in particular, Section 1.945(c) of the Commission's rules and the underlying statutory bases for those rules.[14] In fact, M2Z has demonstrated that its forbearance petition meets the test for any other rule, provision of the Act, or Commission policy

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[11] *See* M2Z Consolidated Opposition to Petitions to Deny; M2Z Consolidated Motion to Dismiss.

[12] In this regard, M2Z hereby incorporates by reference into these Reply Comments its previously filed Consolidated Opposition to Petitions to Deny and Consolidated Motion to Dismiss.

[13] 47 U.S.C. § 160(a). By the explicit terms of the statute, Section 10 relief is available to: (i) carriers (or classes of carriers) or (ii) services (or class of services). *See id.* M2Z is both a carrier and among a class of carriers entitled to Section 10 relief. *See* M2Z Forbearance Petition at n.3; *see also* File No. ITC-214-20060711-00338 (granted Aug. 18, 2006). Moreover, although Section 10 of the Act contains no requirement that a telecommunications carrier or a member of a class of telecommunications carriers must be providing telecommunications service as a condition precedent to seeking forbearance relief, M2Z's eligibility for forbearance relief is further demonstrated by the fact that it is engaged in the provision of toll resale services and recently filed its annual Form 499-A (Telecommunications Reporting Worksheet).

[14] Section 1.945(c) is the rule implementing various provisions of the Act, including Sections 303 (general powers of the Commission to grant radio licenses), 307 (allocation of licensed facilities), 308 (applications for licenses), and 309 (action upon license applications).

that would impede the expeditious grant of the Application. As such, the Commission *must* forbear from applying any such rules, statutes, or policies and grant M2Z's Application.

1. M2Z has amply demonstrated why forbearance from certain sections of the Act and Section 1.945(c) is in the public interest.

The Opponents mistakenly contend that M2Z's Forbearance Petition fails to make the required public interest showing under Section 10 and that by granting the Forbearance Petition the Commission would be abdicating its core responsibility to evaluate whether grant of M2Z's Application is in the public interest.[15] Contrary to these erroneous assertions, M2Z's Forbearance Petition and the record in these proceedings contains an extensive public interest showing demonstrating how forbearance from both the applicable statutory provisions and Section 1.945(c) would result in numerous benefits for consumers, including, among others: (1) new competitive entry in the broadband market; (2) service, price, and equipment competition; and (3) a multitude of consumer welfare and economic gains that will result from the deployment of NBRS.[16] These and other benefits also are extensively documented in the record of this proceeding in filings made in support of M2Z's Application and Forbearance Petition. Indeed, had the Opponents performed even a cursory review of M2Z's Forbearance Petition, they would have seen the numerous pages and in-depth analysis M2Z provided regarding the public interest prong of the forbearance standard. Instead, the Opponents completely ignore, and fail to rebut, the public interest showing M2Z made in the Forbearance Petition. Other than raising conclusory objections to the Forbearance Petition, the Opponents fail to demonstrate how forbearance from any provision of the Act or element of the Commission's rules is *not* in the public interest.

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[15] *See* CTIA Opposition at 3; WCA Opposition at 5; AT&T Opposition at 2-4.

[16] *See* M2Z Forbearance Petition at 24-33.

Far from seeking to "silence all debate" on the M2Z Application, as some Opponents mistakenly contend,[17] the M2Z Forbearance Petition proposes the exact opposite and makes it explicitly clear that:

> [I]n seeking forbearance from [Section 1.945(c)], M2Z is not asking the Commission to abdicate one of its primary responsibilities to determine whether the public interest, convenience, and necessity will be served by accepting and granting M2Z's Application. Rather, the forbearance process itself provides a specific public interest standard of review for this Petition and, by reference, M2Z's Application. This Petition provides the means to undertake that review and to encourage public debate on M2Z's proposal on a timely basis as Congress intended.[18]

M2Z's motivations in these respects could not be clearer. M2Z has sought and has engaged in a transparent and robust debate on its Application. M2Z wants prompt action on its Application, and the forbearance petition is a statutorily mandated means to achieve that objective. Finally, M2Z wants the Commission to evaluate the public interest benefits of the M2Z Application, in the context of the forbearance process if necessary. All of these goals are clearly articulated in the Forbearance Petition, and M2Z's opponents present no evidence that would support their efforts to recast M2Z's purpose or motivations.[19]

Finally, the Opponents' argument that M2Z is using the forbearance process to serve its own interests, rather than the public interest, is disingenuous.[20] Indeed, many of the Opponents themselves have used the forbearance mechanism as a means to remove regulatory burdens, resulting in less specific and far-reaching public interest benefits than those M2Z has

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[17] AT&T Opposition at 4; *see also* WCA Opposition at 5 (arguing that "the Commission has already concluded that the public interest is better served by encouraging public participation and developing a complete record on M2Z's proposal").

[18] M2Z Forbearance Petition at 18-19 (internal quotations omitted).

[19] *See* WCA Opposition at 2-3.

[20] *See* CTIA Opposition at 3.

demonstrated. For example, CTIA and its members benefited from a multi-year reprieve of the Commission's local number portability ("LNP") requirements by seeking forbearance relief by demonstrating that LNP implementation would divert resources from their other endeavors such as expanding their own networks.[21] Clearly, in forbearing from the LNP compliance deadline, the Commission permitted CTIA's members to pursue these endeavors for the benefit of not only the public but also their own interests. Indeed, it is in the nature of any form of regulatory relief, not just forbearance, that the petitioner will receive some form of direct or indirect benefit which undeniably serves its own interests.[22] The test under Section 10 is not whether regulatory relief will benefit a carrier or class of carriers. Rather, the test is whether the public interest will be served by the relief requested. The Commission should therefore disregard this red herring that CTIA and the other Opponents have raised in order to divert attention from the concrete public interest benefits M2Z's Application will deliver if granted.

2. Enforcement of Section 309(j)(1) of the Act and Section 1.945(c) of the Commission's rules is not necessary to protect consumers or to ensure reasonable rates.

AT&T argues that enforcement of Section 1.945(c) and its statutory underpinnings is necessary to protect consumers because grant of the Application would afford M2Z an

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[21] *See Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, Memorandum Opinion and Order, 14 FCC Rcd 3092, ¶ 12 (1999).

[22] *See* Comments of Cellular Telecommunications & Internet Association in WT Docket No. 01-14, 2000 Biennial Review at 5 (filed Apr. 13, 2001) (urging the Commission to eliminate the spectrum cap and contending that a finding of meaningful economic competition is not a necessary precondition for eliminating a particular regulation); CTIA Petition for Expedited Rulemaking or, Alternatively, a Waiver (July 8, 2004) (requesting that the Commission eliminate the entrepreneur eligibility requirements completely or, alternatively, in the context of Auction No. 58); Joint Petition of PCIA and CTIA for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102 (filed June 30, 2005) (requesting that the Commission suspend the requirement that carriers employing a handset-based E911 Phase II location technology must have achieved 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005).

anticompetitive windfall and treat similarly situated entities dissimilarly.[23] Although AT&T's argument is premised on an inaccurate assumption,[24] the line of reasoning also fails because it ignores the language of the forbearance test which concerns whether enforcement of the Commission's rules are "necessary to protect consumers." AT&T's argument has nothing to do with protecting consumers and everything to do with protecting its competitive position. Moreover, it is settled law that rules are regarded as being necessary for the protection of consumers only if they were adopted specifically for some consumer protection purpose or there is a strong connection between the rule and an identifiable consumer protection objective.[25] There are no elements of Section 1.945(c) or its statutory bases that were adopted specifically for such purposes.[26] Rather, as was thoroughly discussed in the Forbearance Petition, new entry by

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[23] *See* AT&T Opposition at 4-5.

[24] *See* M2Z Consolidated Opposition to Petitions to Deny at n.238 (citing *See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Sixth Report and Order and Order on Reconsideration, 15 FCC Rcd 16266, ¶ 60 and n.174 (2000) and stating that "AT&T currently operates on 25 MHz blocks of valuable 800 MHz spectrum that the Commission assigned to its predecessors without auction . . . If grant of M2Z's Application would constitute a "windfall," then certainly AT&T and its predecessors received a windfall from grant of CMRS licenses as well, but there is no windfall in any case when the Commission determines the highest and best use of spectrum and assigns licenses in fulfillment of its public interest duties.")

[25] *See, e.g., Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, Order, 19 FCC Rcd 20179, ¶ 26 (2004) ("[A]pplication of the growth caps and new market rule is not 'necessary for the protection of consumers.' These rules are directly related to intercarrier compensation, and were not implemented specifically for the protection of consumers."); *Cellular Telecommunications & Internet Assoc. v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003) ("[I]t is reasonable to construe 'necessary' as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation.").

[26] As discussed in the Forbearance Petition, Section 1.945(c) operates as a spectrum management tool that the Commission uses to establish threshold qualifications for and to grant wireless licenses to private applicants. *See* M2Z Forbearance Petition at 23. The rule dates back decades and was implemented specifically to address "the adequacy of the supply of microwave frequencies and the terms and extent to which radio station authorizations may be made to private users." *Id.*, citing *Amendment of the Commission's Rules to Establish a Private Operational-Fixed Microwave Radio Service*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 43 F.C.C.2d 1199, ¶ 2 (1974). Even assuming

M2Z into the broadband market will promote competition and enhance consumer choice, and limit neither.[27] Likewise, M2Z's fundamental commitment to providing free service, its other public interest obligations, and market forces will more than adequately protect against any potential consumer harms.[28] Far from simply "avoiding a harm," M2Z will promote the needs of consumers and thus serve the public interest.[29]

AT&T also argues that enforcement of Section 1.945(c) and, presumably its statutory underpinnings, is necessary to ensure that M2Z's Premium Service is offered at reasonable rates in rural areas where M2Z may not face as much competition as it would elsewhere in the country.[30] It is hard to imagine an argument more fanciful. AT&T assumes that M2Z, as a new entrant, with no market share, will be in a position to charge its Premium subscribers in rural

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arguendo that Section 1.945(c) today has taken on new consumer protection purposes, M2Z has demonstrated in detail that it satisfied all of the elements of the rule. *See* M2Z Forbearance Petition at 38-50.

[27] *See* M2Z Forbearance Petition at 24-31. *See also* Simon Wilkie, PhD., *"Spectrum Auctions Are Not a Panacea: Theory And Evidence Of Anti-Competitive and Rentseeking Behavior in FCC Rulemakings and Auction Designs,"* WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007) ("Wilkie Auction Process Study"); Kostas Liopiros, "The Value of Public Interest Commitments and the Cost of Delay to American Consumers," WT Docket No. 07-16 (filed Mar. 19, 2007) ("Liopiros Study"); Simon Wilkie, "The Consumer Welfare Impact of M2Z Networks Inc.'s Wireless Broadband Proposal," WT Docket Nos. 07-16 & 07-30 (filed Mar. 2, 2007) ("Wilkie Consumer Welfare Study").

[28] *See, e.g., Petitions for Forbearance Pursuant to 47 U.S.C. § 160(c),* Memorandum Opinion and Order, 19 FCC Rcd 21496, n.84 (2004) (market forces mitigate concerns regarding potential consumer harms); *Petitions for Forbearance from Section 272 Requirements in Connection with Directory Assistance Services*, Memorandum Opinion and Order, 19 FCC Rcd 5211, ¶ 20 (2004) (new entry into the market will increase competition and protect against consumer harms).

[29] *See, e.g.,* Comments of The Latino Coalition in WT Docket Nos. 07-16 and 07-30 at 1 (grant of M2Z's Application will prevent low income Americans from having to "choose between the lesser of two evils: insufficient dial-up access or no access at all"); Comments of Beam Pharmacies, Inc. in WT Docket Nos. 07-16 and 07-30 (if the M2Z Application is approved, "any business," particularly small businesses, could connect to the Internet via broadband and engage in online marketing, sales, or networking with other businesses); Comments of Leah Osborne in WT Docket Nos. 07-16 and 07-30 (the Commission should approve M2Z's Application in order to "open the Internet to even more Americans, especially those who cannot otherwise afford reliable, affordable broadband").

[30] *See* AT&T Opposition at 5.

areas a higher rate than the rate charged to Premium subscribers in urban areas, which is an extremely unlikely scenario.[31] The truth is that as a new entrant facing considerable competition from incumbents across the country, M2Z will lack market power to charge unjust or unreasonable rates or otherwise engage in discriminatory conduct.[32] In any event, enforcement of Section 1.945(c) in particular is not necessary to ensure this outcome, because the rule and the underlying statutory bases have no bearing whatsoever on service rates, charges, or classifications. AT&T's arguments also conveniently disregard the fact that M2Z's petition does not seek forbearance from the FCC's plenary authority to ensure consumer protection, nor from Title II Sections of the Act such as 201, 202, or 208 that would apply to commercial mobile radio service ("CMRS") carriers.[33]

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[31] Indeed, AT&T has often contended that, regardless of its high market share, it lacked market power. *See, e.g.,* Petition of AT&T for Forbearance under 47 U.S.C. § 160 (c) With Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services at 7-9 (asserting that AT&T's in-region long distance market share is not dispositive of its market power); Reply Comments of AT&T in WC Docket No. 06-120 (filed Aug. 8, 2006) (noting that AT&T's market share was 60% when it previously obtained treatment as a non-dominant carrier in 1995 and citing *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* 11 FCC Rcd 3271 ¶ 68 (1995)).

[32] *See Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, Memorandum Opinion and Order, 14 FCC Rcd 21484, ¶ 14 (1999) (finding for the purposes of Section 10 that a carrier was "a relatively new entrant" to a particular market); *Regionet Wireless License, LLC, Petition for Forbearance From Enforcement of Section 80.102 of the Commission's Rules*, 15 FCC Rcd 16119, ¶ 5 (2000).

[33] M2Z Forbearance Petition at 18-19 (internal quotations omitted).

3. Forbearance will result in the grant of M2Z's Application.

The Opponents erroneously assert that Section 10 of the Act does not permit the Commission to forbear from the rules that give the Commission the authority to grant M2Z's Application.[34] However, Section 10 is unambiguously and broadly worded to not only authorize, but to require, the Commission to "forbear from applying *any* regulation or *any* provision of [the] Act" if the three-part forbearance test is satisfied.[35]

A careful review of the Communications Act reveals that the act of granting a license is not discretionary under Sections 307 and 309 of the Act once the public interest test is met. Section 307 states "[t]he Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, *shall* grant to any applicant therefor a station license provided for by this Act."[36] Similarly, Section 309 explains that "the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it *shall* grant such application."[37]

The mandates of Sections 307 and 309 are embodied in Section 1.945(c) of the Commission's rules. Just like the statute itself, this provision requires that the Commission grant

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[34] *See* CTIA Opposition at 4; WCA Opposition at 4; AT&T Opposition at 3-5.

[35] 47 U.S.C. § 160(a) (emphasis added). Moreover, Section 10 of the Act also is clear on its face in stating that a telecommunications carrier, like M2Z, may seek forbearance relief for "*any* service" it provides. 47 U.S.C. § 160(c) (emphasis added)

[36] *See* 47 U.S.C. § 307 (emphasis added).

[37] *See* 47 U.S.C. § 309 (emphasis added).

M2Z's license following a public interest determination. As discussed above, M2Z has demonstrated that forbearance from the elements of Section 1.945(c) satisfies Section 10's three-prong test. Thus, the remaining operative language of the rule, which does not impede the grant of M2Z's Application, results in a self-executing grant of M2Z's Application.[38] That is, once the forbearance standard is met, or if the Commission fails to act on M2Z's Forbearance Petition by the statutory deadline, there are no remaining impediments to granting M2Z's Application, and the Commission "will grant" the Application.[39] Thus, M2Z has not sought forbearance from Section 1.945(c) of the rules (or its underlying statutory basis) in its entirety as AT&T intimates.[40] Rather, M2Z has requested forbearance from this rule, and its statutory bases, only "to the extent such rules, statutory provisions, or policies impede the . . . grant of the Application."[41] Thus, whether under Sections 307 and 309 of the Communications Act or Section 1.945(c) of the Commission's rules, the application of Section 10 operates to effectuate an immediate grant of M2Z's license application.

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[38] *See* 47 C.F.R. § 1.945(c).

[39] *Id.*

[40] *See* AT&T Opposition at 5.

[41] M2Z Forbearance Petition at 1. The Commission may not refuse to hear the merits of M2Z's Forbearance Petition solely on the ground that the petition is conditional or seeks forbearance from uncertain or hypothetical regulatory obligations. *See AT&T v. FCC*, 452 F.3d 830 (D.C. Cir. 2006). Rather, the Commission must "fully consider" M2Z's Forbearance Petition within the statutory one-year period irrespective of whether the Commission has yet to determine whether the regulatory obligations from which the petitioner seeks forbearance apply to the petitioner. *Id*. at 836 (quoting *AT&T v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001)) ("Section 10(a)(3) . . . gives the Commission authority to decide only whether 'forbearance . . . is consistent with the public interest,' not to decide whether *deciding* whether to forbear is in the public interest.") (emphasis in original). Similarly, where a petition seeks forbearance from a broad assortment of regulatory requirements, the Commission may not deny the petition merely on the ground that it is insufficiently specific, particularly when the Commission has addressed equally broad requests in the past. *See id.*; *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).

Because forbearance is a means to obtain the grant of M2Z's license and M2Z's NBRS is a new service which uses new technology, Section 7 of the Act requires those seeking to oppose this avenue of granting M2Z the license to bear the burden of proof and demonstrate that granting the application pursuant to Section 10 is inconsistent with the public interest.[42] As explained herein, M2Z's opponents have failed to make such a showing. Rather, M2Z has made a considerable public interest showing which supports the immediate grant of its license under Section 10.

B. M2Z's Forbearance Petition Is Not Rendered Moot by the Existence of Alternative Proposals.

Several Opponents mistakenly suggest that M2Z's Forbearance Petition has been rendered moot because certain parties now have submitted applications proposing alternative uses for the 2155-2175 MHz band (the "Alternative Proposals").[43] Most notably, CTIA erroneously concludes that, because the Alternative Proposals in the 2155-2175 MHz band have been filed and are "pending," Section 309(j)(1) of the Act "commands the Commission to assign

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[42] *See* 47 U.S.C. § 157(a).

[43] *See* CTIA Opposition at 5; WCA Opposition at 3; AT&T Opposition at 3. To date, alternative proposals to use the 2155-2175 MHz band have been filed by the following parties: (1) NextWave Broadband, Inc. ("NextWave"); (2) NetfreeUS, LLC ("NetfreeUS"); (3) Commnet Wireless, LLC ("Commnet"); (4) McElroy Electronics Corporation ("McElroy"); (5) TowerStream Corporation ("TowerStream"); and (6) Open Range Communications, Inc. ("Open Range") (collectively, the "Applicants"). *See* Application of NextWave Broadband Inc. for License and Authority to Provide Nationwide Broadband Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("NextWave Proposal"); Application of NetfreeUS, LLC for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("NetfreeUS Proposal"); Application of Commnet Wireless, LLC for License and Authority to Construct and Operate a System to Provide Nationwide Broadband Radio Service in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("Commnet Proposal"); Application of McElroy Electronics Corporation for a Nationwide 2155-2175 MHz Band Authorization, WT Docket No. 07-16 (filed Mar. 2, 2007) ("McElroy Proposal"); Application of TowerStream Corporation for a Nationwide 2155-2175 MHz Band Authorization, WT Docket No. 07-16 (filed Mar. 15, 2007) ("TowerStream Proposal"); and Application of Open Range Communications, Inc. for License to Construct and Operate Facilities for the Provision of Rural Broadband Radio Services in the 2155-2175 MHz Band, WT Docket No. 07-16 (filed Mar. 2, 2007) ("Open Range Proposal") (collectively, the "Alternative Proposals").

[the] spectrum through competitive bidding."[44] CTIA and the other Opponents misinterpret the competitive bidding trigger in Section 309(j)(1).

Section 309(j)(1) provides that "*[i]f*, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are *accepted* for any initial license or construction permit, then . . . the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding . . . ."[45] This statutory language makes it explicitly clear that competitive bidding becomes necessary only if mutually exclusive applications are accepted for filing. The proper reading of this section requires that the Commission first determine whether it would be in the public interest to use "engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."[46] The Alternative Proposals should not be accepted once the test outlined in Section 309 (j)(6)(E) is conducted as NBRS has significant built in threshold qualifications and service regulations which adequately distinguish it from any other proposal on the record, as explained below. For that reason, it makes imminent sense that the Commission has not accepted any other proposal for filing, as it has made

[44] CTIA Opposition at 5.

[45] 47 U.S.C. § 309(j)(1) (emphasis added). Likewise, Commission decisions discussing mutual exclusivity tie it to applications that are "accepted for filing." *See, e.g.,* "Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007," Public Notice (rel. Nov. 2, 2006) (when two or more short-form applications specifying the same FM allotment are accepted for filing, mutual exclusivity exists for auction purposes); "Closed Auction of 400 MHz Air-Ground Radiotelephone Service Licenses Scheduled for August 23, 2006," Public Notice, DA 06-388 (rel. Mar. 3, 2006) (if only one short-form application is accepted for filing for a particular license, that license will be removed from the auction; if more than one short-form application for a license is accepted for filing, mutual exclusivity for auction purposes will have been established, even if only one applicant submits an upfront payment).

[46] 47 U.S.C. § 309(j)(6)(E).

explicitly clear.[47] Thus, under both the Act and Commission precedent, neither the filing of additional applications for licenses in the 2155-2175 MHz band nor the "pending" status of such applications is sufficient to trigger Section 309(j)(1).[48] Only the Commission, and not the applicants that have submitted Alternative Proposals, may determine the existence of mutual exclusivity by accepting additional applications in the 2155-2175 MHz band, and the Commission may only do so after exhausting the means of avoiding mutual exclusivity outlined in Section 309(j)(6)(E). To date, the Commission has not made a 309(j)(6)(E) determination. It also has not accepted the Alternative Proposals for filing, and, as explained in M2Z's Consolidated Motion to Dismiss Alternative Proposals, the Commission should not do so.[49] Indeed, none of the Alternative Proposals even come close to meeting the high public interest bar M2Z has established for service in the 2155-2175 MHz band.[50]

Even assuming *arguendo* that Alternative Proposals survive the prerequisites for acceptance under Section 309(j)(6)(E) of the Act,[51] which they do not, M2Z has fully

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[47] *See* "Wireless Telecommunication Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to be Licensed in the 2155-2175 MHz Band," Public Notice, WT Docket No. 07-16, DA 07-987 (rel. Mar. 9, 2007) (the "M2Z March Public Notice") ("We note that additional applications for a license in the 2155-2175 MHz band were filed on March 2, 2007, by several applicants. This Public Notice neither constitutes public notice of the acceptance for filing of those applications nor establishes a pleading cycle for them.") (internal citations omitted). Indeed, it is not clear that all of the Alternative Proposals even remain on file for the Commission to consider for acceptance. *See* Petition for Reconsideration of McElroy Electronics Corporation (filed Mar. 30, 2007) (seeking reconsideration of the return of its application to operate in the 2155-2175 MHz band).

[48] *See* M2Z Consolidated Opposition to Petitions to Deny at 31-74.

[49] *See* M2Z Consolidated Motion to Dismiss at vi-vii ("none of the Alternate Proposals come close to offering the panoply of public interest benefits that M2Z has committed to provide," rather, "each of the parties proposing alternatives appear to have objective weaknesses in their business plans, financing, or prior relationship with the Commission, among other things, that calls the proposals into question.")

[50] *See id* at 18-52.

[51] The Commission's auction authority is expressly conditioned upon meeting its "obligation in the public interest to continue to use engineering solutions, negotiations, threshold qualifications, service

demonstrated that forbearance from the competitive bidding requirement in Section 309(j)(1) of the Act is in the public interest. As discussed above, the competitive bidding requirement is not triggered until mutually exclusive applications have been accepted for filing. However, forbearance from accepting mutually exclusive applications, consistent with the public interest, goes to the heart of M2Z's Forbearance Petition and is discussed at length throughout the petition.[52] Thus, as specified in the Forbearance Petition,[53] forbearance from Section 309(j)(1) of the Act is in the public interest for the very same reasons that forbearance from Section 1.945(c)(4) of the Commission's rules is in the public interest. That rule section runs parallel to the statutory provision and provides that a license application will be granted if such grant "would not preclude the grant of any mutually exclusive application."[54] Moreover, Section 309(j)(6)(E) of the Act requires that the Commission use "engineering solutions, negotiation, threshold qualifications, service regulations, *and other means* in order to avoid mutual exclusivity in application and licensing proceedings."[55] Forbearance from Section 309(j)(1) is simply one of the "other means" that the Commission may use to avoid mutual exclusivity under 309(j)(6)(E).

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regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." 47 U.S.C. § 309(j)(6)(E).

[52] *See, e.g.*, M2Z Forbearance Petition at 3-13, 41-49.

[53] *See id*. at 33-34 ("In this regard, to the extent necessary, M2Z requests forbearance from any of the statutory provisions that form the bases for Sections 1.945(b) and (c), on the same grounds described above. Likewise, to the extent necessary, M2Z asks for forbearance from Section 309(j)(1) of the Act, which requires the Commission to grant mutually exclusive applications through a system of competitive bidding. As discussed in detail below, the Commission has the authority to avoid mutual exclusivity and has done so in the past when the public interest so demands. M2Z's proposed service will yield concrete and immediate public interest benefits which merit a similar result.")

[54] 47 C.F.R. § 1.945(c)(4).

[55] *See* 47 U.S.C. § 309(j)(6)(E) (emphasis added).

II. BASED ON THE SUBSTANTIAL RECORD IN THESE PROCEEDINGS, THE COMMISSION SHOULD MOVE QUICKLY TO GRANT THE M2Z APPLICATION USING EVERY DEREGULATORY TOOL AVAILABLE TO IT.

Some Opponents assert that the public interest demands that the 2155-2175 MHz band be put to the highest and best use.[56] M2Z agrees, and the records of these proceedings indisputably demonstrate that NBRS is the highest and best use of the band.[57] As such, the Commission now should act promptly to grant M2Z's Application and Forbearance Petition or use any other deregulatory tool it has available to do so.

A. M2Z Has Successfully Made its Showing under 1.945(c) and Has Also Made a Showing that NBRS is the Highest and Best Use for the 2155-2175 MHz Band.

As required under Section 1.945(c), M2Z has demonstrated that (1) there are no substantial and material questions of fact;[58] (2) it is legally, technically, financially, and otherwise qualified;[59] (3) grant of its application would not involve modification, revocation, or non-renewal of any other existing license;[60] (4) grant of the application would not preclude the

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[56] *See, e.g.*, CTIA Opposition at 6; WCA Opposition at 6.

[57] Indeed, the Commission has previously sought comment on potential uses of the band. *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order, 18 FCC Rcd 2223, 2255 ¶ 70 (2003) ("We seek comment on potential uses of the 2020-2025 MHz and 2155-2180 MHz bands. Comments should identify specific band plans and frequency pairings and describe how such proposals will result in spectrum efficiencies. Commenters should discuss any technical limitations that would be necessary to protect existing adjacent band operators, including MSS/ATC operations in the 2000-2020 MHz and 2180-2200 MHz bands.") M2Z has presented an answer to this longstanding question.

[58] *See* M2Z Forbearance Petition at 50.

[59] *See id*. at 38-40.

[60] *See id*. at 41.

grant of any mutually exclusive application;[61] and (5) grant of the application would serve the public interest, convenience, and necessity.[62]

Of these five elements, the one that other parties primarily argue against is the presence of mutual exclusivity. As explained in M2Z's other filings, these arguments are largely based on a misreading on the statute.[63] At the time of the filing of M2Z's application, there were no other applications for the 2155-2175 MHz band, nor were there any service rules for that band of spectrum. In its application, M2Z provided service rules that include specific threshold qualifications, and service regulations for parties wishing to operate in the band.

Specifically, nearly one year ago, M2Z proposed in its Application to make available free broadband Internet access to nearly every consumer, business, non-profit, school, library, and public safety entity in the United States.[64] To make this service possible, M2Z committed to a series of service regulations and threshold requirements:

1) A commitment to provide free broadband service on a nationwide basis, at speeds of at least 384 kbps down/128 kbps up;[65]

2) A commitment to meet buildout milestones at the three-year (33%), five-year (66%), and 10-year (95%) marks;[66]

3) A commitment to not seek Universal Service Funds ("USF") to build and operate its network;[67]

4) A commitment to provide filtering of pornographic, indecent, and obscene content on the free service;[68]

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[61] *See id*. at 41-45.

[62] *See id*. at 49. In fact, the bulk of the record in this proceeding demonstrates this point.

[63] *See* M2Z Consolidated Motion to Dismiss at 4-5.

[64] *See* M2Z Application at 22-32.

[65] *See id*. at 11 and Appendix 2, p. 2.

[66] *See id*. at 23, n.60, and Appendix 2, p. 2.

[67] *See id*. at 5, 11, 22.

5) A commitment to provide public safety entities with free, interoperable broadband service;[69]

6) A commitment to make ongoing spectrum usage payments;[70]

7) The promise of new competition in the broadband market (*i.e.*, the applicant is not an incumbent provider of broadband wireline or wireless service);[71]

8) The promise of stimulating the economy and other public welfare benefits;[72]

9) A commitment to meet Part 27 interference protection standards and incumbent relocation obligations comparable to those specified for other AWS spectrum;[73]

10) A commitment to advance the Commission's goal of spectral efficiency;[74]

11) Evidence of the ready availability of at least 400 million dollars to construct a network and commence operations;[75] and

12) A commitment to comply with obligations placed upon Commercial Mobile Radio Service ("CMRS") carriers.[76]

The benefits of NBRS have been noted and lauded by hundreds of public commenters, many in advance of official public notice of M2Z's Application and Forbearance Petition. In particular, these parties have identified wide-ranging public interest benefits that the M2Z Application, when granted, will generate including: 1) bolstering the competitiveness of small and independent businesses;[77] (2) creating a more competitive broadband marketplace,[78] (3)

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[68] *See id*. at 4, 12, 22, 24, 34, and Appendices 2 and 3.

[69] *See id*. at 12, 16, 24-26, 34, and Appendices 2 and 4.

[70] *See id*. at 12, 26, 34, and Appendix 2.

[71] *See id*. at 28-29 and Appendix 5 at pp. 11-13.

[72] *See id*. at Appendix 5*; see also,* Wilkie Consumer Welfare Study; Liopiros Study; Wilkie Auction Process Study.

[73] *See* M2Z Application at 13, 19-21, 42 and Appendix 2.

[74] *See id*. at 13-19.

[75] *See id*. at 8.

[76] *See id*. at 32 n. 101 and Appendix 2.

[77] *See* Comments of the California Association of Local Economic Development, WT Docket Nos. 07-16 & 07-30 (filed Feb. 14, 2007) (widespread governmental interest in deploying broadband stems from

increasing diversity in management and ownership of communications outlets;[79] (4) enhancing educational opportunities,[80] (5) bridging the digital divide,[81] (6) supplementing and enhancing

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recognition that broadband access fosters economic development; M2Z's innovative proposal will help the government expand broadband access using private funds); Amicus Curiae Comments of the Minority Media and Telecommunications Council, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) (positing that Internet is crucial to the success of all small and independent businesses, which account for over 99% of all companies, and asserting that "a free, nationwide broadband Internet access service would extend the potential of e-commerce to all businesses.")

[78] *See* Comments of the Electronic Retailing Association, WT Docket Nos. 07-16 & 07-30 (filed Feb. 6, 2007 & Feb. 27, 2007) (states that only 35% of small businesses currently have websites and only 57% use the Internet for business related activities. "This further exemplifies the need for affordable, reliable solutions to the significant, and often times insurmountable, cost of broadband connectivity."); Amicus Curiae Comments of the Minority Media and Telecommunications Council, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) (relates the necessity of readily available broadband access for small and independent businesses to remain successful in an increasingly electronic world); Comments of Center for the Digital Future, WT Docket No. 07-16 (filed Feb. 27, 2007) (with increased competition and subsequent lower prices for broadband, more people chose broadband internet over dial-up.).

[79] *See* Amicus Curiae Comments of the Minority Media and Telecommunications Council, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) ("[w]ith one of the most diverse ownership and management teams of any communications business," M2Z is "a model of diversity for other communications businesses to follow").

[80] *See* Comments of the National PTA, WT Docket No. 07-16 (filed Mar. 1, 2007) (M2Z's proposal is an "innovative and equitable way to ensure that broadband is an educational resource available to all Americans – parents, children and educators."); Comments of the Higher Education Wireless Access Consortium, WT Docket Nos. 07-16 & 07-30 (filed Feb. 28, 2007) (supports M2Z's proposal stating that it will help bridge the gap of wireless connectivity in the classrooms of those schools with fewer resources); Comments of the League for Innovation in the Community College, WT Docket Nos. 07-16 & 07-30 (filed Feb. 28, 2007) (while computer and Internet access has increased, there still remains a substantial information divide. "[T]here are still communities that do not have adequate access to the Internet and technology-based training, resources, and services."); Comments of the College Parents of America, WT Docket Nos. 07-16 & 07-30 (filed Feb. 28, 2007) (with the cost of colleges rising faster than "income, consumer prices, or even health insurance," a free broadband service would provide great financial relief to struggling parents. It would also allow for more students to participate in distance learning programs.); Comments of Educause, WT Docket No. 07-16 (filed Feb. 28, 2007) (a free nationwide Internet service would be beneficial to students, as well as all Americans. "In particular, the widespread availability of affordable broadband communications would make both campus-based and distance learning more accessible and effective.").

[81] *See* Comments of the Association of Community Organizations for Reform Now, WT Docket Nos. 07-16 & 07-30 (filed Feb. 6, 2007 & Feb. 27, 2007) (current Internet providers are more interested in the bottom line through service to wealthier Americans with high monthly subscription rates. M2Z's proposal would not only fix the problem of availability with the digital divide, it would fix the affordability component.); Comments of One Economy Corporation, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) ("[w]e believe that this type of market innovation will further One Economy's mission, benefit an underserved portion of our country, and serve the public interest."); Comments of

interoperable public safety communications,[82] (7) promoting spectral efficiency,[83] and (8) protecting children from objectionable materials online.[84] Moreover, a broad range of public economic benefits will flow from M2Z's new offering, including: reduced universal service spending,[85] reduced spending on network services by public safety entities,[86] more competitive markets for broadband services,[87] and the stimulation of billions of dollars in economic growth by the U.S. economy.[88]

To date, the Wireless Telecommunications Bureau (the "Bureau") has released three public notices on M2Z's Application and related Forbearance Petition, each giving the public the opportunity to comment on M2Z's proposal. On January 31, 2007, the Bureau released a Public Notice announcing that M2Z's Application was accepted for filing (the "M2Z Application Public

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Center for the Digital Future, WT Docket No. 07-16 (filed Feb. 27, 2007) ("The granting of M2Z's application will so much to end the great broadband divide . . . .").

[82] *See* Comments of the National Troopers Coalition, WT Docket Nos. 07-16 & 07-30 (filed Feb. 6, 2007 & Feb. 27, 2007) ("M2Z's proposed network will provide another layer of redundancy to bolster existing and planned public safety-operated networks and help law enforcement stay operational in disasters.").

[83] *See* Comments of Alion Science & Technology, WT Docket Nos. 07-16 and 07-30, at 2 (submitted Mar. 2, 2007) ("Alion Science & Technology Comments") (concluding, after review of M2Z's proposal, that "M2Z's proposed network will use the most spectrally efficient technologies that are currently available for commercial radio systems").

[84] *See* Comments of Internet Keep Safe Coalition, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) (expresses approval of M2Z's network-level filtering of indecent and pornographic material); Comments of Enough is Enough, WT Docket Nos. 07-16 & 07-30 (filed Mar. 13, 2007) (M2Z has developed "an innovative balance" between rapid deployment of broadband internet and "protecting children and families from on line pornography and sexual predators"); Comments of Most Reverend Paul S. Loverde, Bishop of Arlington, WT Docket Nos. 07-16 & 07-30 (filed Mar. 2, 2007) (filtering at the network level will help families protect themselves from indecent online material. "Furthermore, this service will offer the great educational benefits of the Internet to families in a much safer way than is currently available.").

[85] *See* M2Z Application at Exhibit 5; Wilkie Consumer Welfare Study at 13-19 and Appendix 1, Tables A3-A4.

[86] *See* Liopiros Study at 20-25.

[87] *See* Wilkie Consumer Welfare Study at 9-13.

[88] *See generally*, Wilkie Consumer Welfare Study; Liopiros Study; Wilkie Auction Process Study.

Notice").[89] Shortly thereafter, on February 16, 2007, the Bureau established a pleading cycle for M2Z's Forbearance Petition (the "M2Z Forbearance Petition Public Notice").[90] Then, on March 9, 2007, the Bureau issued a third Public Notice establishing a pleading cycle which extended the date for petitions to deny, and other filings pertaining to the Application.[91] In response to the M2Z Application Public Notice and the March Public Notice, only six applicants filed Alternative proposals for the 2155-2175 MHz band, and all of them fall far short of M2Z's groundbreaking proposal.[92] Similarly, several petitions to deny opposing grant of the Application were filed,[93] all of which utterly fail to raise substantial objections to M2Z's

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[89] *See* M2Z Application Public Notice.

[90] *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," Public Notice, DA 07-736 (rel. Feb. 16, 2007) (the "M2Z Forbearance Petition Public Notice").

[91] *See* M2Z March Public Notice.

[92] *See* M2Z Consolidated Motion to Dismiss at 17-50 (describing the public interest benefits to be created by M2Z's proposed service and demonstrating that the alternative proposals are mere shadows of the concrete and comprehensive proposal described in M2Z's Application and in other filings in this docket).

[93] *See* AT&T Inc., Petition to Deny, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("AT&T Petition to Deny"); CTIA – The Wireless Association, Petition to Deny, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("CTIA Petition to Deny"); Petition to Deny of Motorola, Inc., WT Docket No. 07-16 (submitted Mar. 2, 2007) ("Motorola Petition to Deny"); NextWave Broadband Inc., Petition to Deny, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("NextWave Petition to Deny"); Petition to Deny of T-Mobile USA, Inc., WT Docket No. 07-16 (submitted Mar. 2, 2007) ("T-Mobile Petition to Deny"); Petition to Deny of Verizon Wireless, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("Verizon Wireless Petition to Deny"); Wireless Communications Association International, Inc., Petition to Deny, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("WCA Petition to Deny"); Comments of the Consumer Electronics Association, WT Docket No. 07-16 (submitted Mar. 2, 2007) ("CEA Comments"); Comments of Leap Wireless International, Inc., WT Docket No. 07-16 (submitted Mar. 2, 2007) ("Leap Wireless Comments"); Opposition of EchoStar Satellite L.L.C., WT Docket No. 07-16 (submitted Mar. 2, 2007) ("EchoStar Opposition"); Consolidated Petition to Deny and Comments of TowerStream Corporation, WT Docket No. 07-16 (submitted Mar. 15, 2007) ("TowerStream Petition to Deny"); Consolidated Petition to Deny and Comments of the Rural Broadband Group, WT Docket No. 07-16 (submitted Mar. 16, 2007) ("Rural Broadband Group Petition to Deny"); Comments of the Information Technology Industry Council, WT Docket No. 07-16 (submitted Mar. 16, 2007) ("ITI Comments").

Application.[94] Finally, in response to the M2Z Forbearance Petition Public Notice, only six parties, most of whom also filed petitions to deny against the M2Z Application, filed comments in opposition to M2Z's Forbearance Petition. As discussed in these Reply Comments, these parties' objections are without merit.

Thus, nearly a year after the application was submitted, no party has suggested a higher or better use of the 2155-2175 MHz band, or obtained any level of support in the public record.[95] As such, NBRS is the highest and best use of the spectrum band. Furthermore, no party, other than M2Z, has committed to comply with NBRS and the qualifications and service regulations therein. Thus, the Commission should conclude, consistent with the public interest, that NBRS is the highest and best use of the band, and grant M2Z's license application as the only qualified entity that meets the 309(j)(6)(E) obligation.

B. The Opponents to M2Z's Forbearance Petition Fail to Rebut M2Z's Public Interest Showing.

Several Opponents claim that substantial and material questions of fact concerning the merits of M2Z's Application remain and that the Commission cannot, therefore, grant the Application in the public interest.[96] Contrary to these claims, M2Z has thoroughly demonstrated, both in its Application and in subsequent filings in these proceedings, that it satisfies all of the

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[94] As discussed in M2Z's Consolidated Opposition to Petitions to Deny, the petitioners' arguments against M2Z's Application are inapposite or unpersuasive as several of these arguments have been rejected by the Commission in other contexts, others have no basis in law, while still others are based on flawed readings of the Application. *See, e.g.,* M2Z Consolidated Opposition to Petitions to Deny at 106-09 (grant of M2Z's Application would not violate the Anti-Deficiency Act or Miscellaneous Receipts Act); *id*. at 104-06 (the assertion that the Commission has no authority to accept M2Z's proposal to make an annual spectrum usage fee payment is baseless); *id*. at 75-84 (claims that the Commission must complete a lengthy and unnecessary service rules proceeding, and do so before issuing a 2155-2175 MHz license, have no basis in the Commission's decisions or rules); *id*. at 69-72 (M2Z's Application does not seek to resurrect the pioneer's preference program).

[95] *See supra* note 57.

[96] *See, e.g.,* AT&T Opposition at 3.

prerequisites for obtaining a Commission license. Indeed, M2Z's showings in this respect far exceed the ordinary level of detail most applicants provide in seeking a Commission license. Nevertheless, because the Opponents attack certain components of M2Z's Application, and other commenting parties have requested clarification of certain aspects of NBRS, provided below is a response to these issues.

1. The Cost of M2Z-certified CPE will be nominal in light of value of nationwide free broadband service.

Certain Opponents criticize M2Z's proposal to provide service free of airtime charges by noting that consumer equipment necessary to receive the service could initially cost $250, considerably more than what consumers typically pay for Wi-Fi access.[97] This argument is unpersuasive for many reasons. First, it is simply irrelevant because every service requires the purchase of end user equipment. Second, M2Z's estimate of equipment cost is a conservative one and M2Z's Application makes clear that, although M2Z anticipates that the equipment initially will cost less than $250, that cost will decline over time.[98] Third, even a $250 initial investment amortized over just a single year of service would amount to a charge of little more than $20/month, with that effective monthly rate declining over time as the term of service increases. Finally, the comparison between NBRS and Wi-Fi service is inapposite. Unlike WiFi, which is a local area network and requires a connection to the Internet through a

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[97] *See, e.g.*, WCA Opposition at 7-8.

[98] *See* M2Z Application at 21-22 (stating that "M2Z does not plan nor does it intend to be in the business of selling customer premises equipment ('CPE') necessary to connect to its network. Instead, M2Z's limited, albeit critical, role will be to confirm that such devices are certified to properly operate on its network and meet the operational requirements of its license. M2Z plans to work with a wide number of technology partners including chip makers, modem and radio manufacturers and personal computer manufacturers to develop a set of affordable end-user devices in large volumes"). Because M2Z will only establish standards for CPE interoperability with its network, and will not sell proprietary CPE, M2Z anticipates that a healthy, competitive retail market for such devices will develop. Market forces will ensure that such devices are reasonably priced.

broadband service like DSL, cable, T-1, or fiber access. NBRS provides complete access to the Internet.

2. M2Z construction benchmarks are realistic and enforceable.

NATOA and NASUCA, while largely supporting the grant of M2Z's Application and Forbearance Petition, question the extent to which the Commission will be able to enforce M2Z's construction benchmarks. To clarify, M2Z's license in the 2155-2175 MHz band will be expressly conditioned upon meeting the construction benchmarks proposed in the Application. As such, the Commission would have the authority to rescind the license if the construction benchmarks are not satisfied.

WCA questions M2Z's commitment and ability to meet its buildout schedule.[99] It is difficult to discern the specific rationale for WCA arguing that M2Z's aggressive buildout deadline is not sufficient. M2Z has demonstrated that it is both financially and technically qualified to meet these construction milestones, consistent with its well-developed business plan.[100] M2Z seeks a maximum of 24 months to commence service in order to complete the required ecosystem based on the Commission's ultimate specifications for NBRS. Once deployment begins, M2Z will have a three year milestone to reach 33% of the U.S. population. By any measure, this is better than the stagnant situation at 2.3 GHz. Thus, it is with limited credibility that WCA and its members criticize M2Z's aggressive buildout plans when many of these companies were incapable of satisfying even the minimal "substantial service" milestone a decade after receiving their licenses.[101] In light of the Commission's initial high hopes for the

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[99] *See* WCA Opposition at 7.

[100] *See* M2Z Consolidated Opposition to Petitions to Deny at 113-14.

2.3 and 2.5 MHz bands,[102] it is WCA's own efforts that have proven to be less than "meets the eye."[103]

3. As required by law, the Commission will "recover a portion of the value of the public spectrum" through M2Z's spectrum lease fee.

The Opponents contend that the Commission must auction licenses in the 2155-2175 MHz band to the highest bidder to ensure rapid deployment of service and to recoup the value of the spectrum.[104] M2Z has thoroughly refuted these arguments in previous filings in these proceedings and will not repeat in detail its rebuttal arguments here.[105] M2Z notes, however, that these parties fundamentally misread the Section 309(j)(3)(C) mandate that requires the Commission to "recover a portion of the value of the public spectrum."[106] While these parties seek to inappropriately limit Commission discretion, there are several means to Section 309(j)(3)(C)'s end.

In particular, M2Z has proposed to make voluntary, direct payments to the U.S. Treasury of a usage fee equal to five percent of gross revenues from M2Z's Premium Service.[107] These

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[101] *See Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses; Request of WCS Wireless, LLC for Limited Waiver of Construction Deadline for 16 WCS License*s, Order, 21 FCC Rcd 14134 (2006) (extending construction deadlines by three years, until 2010); *see also* M2Z Consolidated Opposition to Petitions to Deny at 50-52 (discussing underutilization of the 2.3 and 2.5 GHz bands); Wilkie Auction Process Study at 20-27 (discussing underutilization of the 2.3 and 2.5 GHz bands).

[102] *See Amendment Of The Commission's Rules To Establish Part 27, The Wireless Communications Service*, Order, 12 FCC Rcd. 10785 ¶ 26 (rel. Feb 19, 1997) ("Permitting a broad range of services to be provided on this spectrum will permit the development and deployment of new telecommunications services and products to consumers. Moreover, WCS licensees will not be constrained to a single use of this spectrum and, therefore, may offer a mix of services and technologies to their customers.")

[103] *See* WCA Opposition at 6-7.

[104] *See id*. at 6.

[105] *See* M2Z Consolidated Opposition to Petitions to Deny at 54-69, 103-11.

[106] 47 U.S.C. § 309(j)(3)(C).

[107] *See* M2Z Application at 26.

voluntary payments are tied to the value of the spectrum and will grow as M2Z's Premium Service subscriber base increases. Thus, as M2Z derives additional revenue from its Premium Service, so will the U.S. Treasury. Moreover, unrebutted economic studies entered into the record in these proceedings demonstrate the benefits derived from M2Z's annual usage based contribution.[108] In any event, as discussed above, the Commission is not required to auction licenses in the 2155-2175 MHz band, and in the absence of such a requirement it is inappropriate to assume that a hypothetical auction value represents the only acceptable license value—particularly where, as here, M2Z has made public service commitments far beyond those traditionally achieved from auction participants.

4. M2Z will protect incumbent and adjacent channel licensees.

WCA asserts that M2Z has failed to propose conditions on its license that would avoid destructive interference to Broadband Radio Service ("BRS") licensees still in the 2150-2162 MHz band.[109] As M2Z now has explained on numerous occasions,[110] to the extent that any incumbent licensees operate in or adjacent to the 2155-2175 MHz band,[111] M2Z is committed to protecting them from harmful interference and will accept fulfillment of this obligation as a condition of its license. In order to avoid harmful interference, M2Z will work diligently, both

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[108] *See* Wilkie Consumer Welfare Study at 19-20 (filed Mar. 2, 2007); Wilkie Auction Process Study at 51-54.

[109] *See* WCA Opposition at 8-9.

[110] *See, e.g.*, M2Z Consolidated Opposition to Petitions to Deny at 87-88. For example, BRS licensees only occupy 4, 6, or up to 10 MHz spectral bands (BRS Channels 1, 2, and/or 2A) and FS licensees are limited in the 2160-2180 MHz band to use of 3.5 MHz. Thus, M2Z could appropriately select from the vacant spectrum in the limited locations where BRS or FS licensees exist. FS systems in 2160-2180 MHz must deploy using beamwidths of less than 5 degrees (8 degrees in Standard B regions), which enables interference avoidance using smart antenna technology. *See* M2Z Application at 20; M2Z Consolidated Opposition to Petitions to Deny at Attachment A (illustrating the existing BRS licensees subject to potential relocation) and Attachment B (illustrating existing FS licensees subject to potential relocation).

[111] BRS operations currently exist in the 2150-2160/62 MHz band and Fixed Microwave Service ("FS") operations currently exist in the 2110-2150 MHz and 2160-2200 MHz bands.

during the construction phase and the operational phase of its network, to prevent harmful co-channel interference to incumbents currently operating in the 2155-2175 MHz band. These incumbent systems operate in fixed frequency bands at fixed geographic locations, and several proven successful engineering techniques can be used to avoid interference.

In the Application, M2Z proposes to address potential co-channel interference through "judicious selection" of base station locations and spectral sub-bands of operation, and with the use of smart antenna technology.[112] Taking such steps would provide the same level of protection afforded by the current BRS/EBS emission rules utilizing the applicable out-of-band emission ("OOBE") standard.[113] These actions would also protect Fixed Microwave Service ("FS") licensees based on the interference criteria contained in Parts 24 and 101 of the Commission's rules, and the general operational guidelines for 99.99 percent microwave communication reliability.[114] Therefore, the Opponents' concerns regarding the potential for M2Z's service to cause harmful interference to incumbent BRS and FS operations have already been addressed. M2Z's meticulously planned construction buildout schedule and carefully coordinated interference planning will prevent any such interference from occurring. In addition, M2Z's status as an AWS band occupant (M2Z has proposed that its NBRS be provided over spectrum allocated to AWS) will ensure that the protections and relocation procedures already established for FS and BRS incumbents also apply to M2Z.

M2Z also commits to operating in conformity with the Commission's pronouncements in the *AWS Ninth Report and Order*, which requires users of the 2155-2175 MHz band to relocate

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[112] *See* M2Z Application at 20; M2Z Consolidated Opposition to Petitions to Deny at 88.

[113] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶ 92 (2003) ("*AWS 1st Report and Order*").

[114] *See* 47 C.F.R. §§ 24.237, 101.105, 101.107; *see also* Telecommunications Industry Ass'n TIA/EIA Telecommunications Systems Bulletin 10-F, *Interference Criteria for Microwave Systems* (June 1994).

line-of-sight incumbent BRS systems and incompatible FS operations according to definite timetables.[115] Deployment of M2Z's proposed NBRS will depend, in part, on the speedy relocation of FS and BRS operations, giving M2Z every incentive to ensure that these transitions take place quickly and smoothly. M2Z is committed to a successful and fully-funded relocation of FS and BRS incumbents–and as indicated previously and above, will accept fulfillment of this commitment as a condition of its license.

5. Public safety entities will benefit from access to M2Z's network.

Certain Opponents allege that public safety entities would not be assured of uninterrupted service on M2Z's network.[116] Left out of this discussion is the fact that M2Z pledges in its Application to provide any and all federal, state, county, or municipal public safety organization(s) access to its free, nationwide service without limit as to the number of devices that may use the network.[117] Once fully constructed, M2Z's network will support full interoperability in geographic areas encompassing at least 95 percent of the U.S. population. Further, the equipment that public safety officers would use to communicate via M2Z's wide area network would also be capable of operating over local area networks.[118] Thus, the broadband capabilities provided by the M2Z network would allow public safety agencies across the country to take advantage of a wide range of bandwidth intensive applications (including data transmission and retrieval, data analysis, and some video applications) that are not ubiquitously

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[115] *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Ninth Report and Order, 21 FCC Rcd 4473, ¶¶ 16–54 (2006) (BRS interference and relocation standards); *Id*., ¶¶ 55–63 (FS relocation rules).

[116] *See, e.g.*, WCA Opposition at 7.

[117] *See* M2Z Application at 24-26.

[118] *See id*. at Appendix 4, p. 4.

available to such agencies ubiquitously today. M2Z's commitment to serving the public safety community provides an independent and compelling basis for granting M2Z's request for forbearance. In any event, M2Z's network is an opt-in model and M2Z has committed to work with the public safety community to define use criteria and features like preemption in order to make its network a valuable component of an IP enabled "network of networks" for public safety.[119]

C. The Commission Should Now Act Promptly to Grant M2Z's Application and Forbearance Petition.

As discussed above, M2Z welcomes a transparent and robust debate on its Application and related Forbearance Petition. After three public notices and pleading cycles, that debate has occurred, and the records in these proceedings support the grant of M2Z's Application and Forbearance Petition. The Commission should act quickly to do so. Although Section 10 generally provides the Commission with a 12 to 15-month window to act on a forbearance petition,[120] M2Z's Forbearance Petition merits swifter action.[121] In the past, the Commission

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[119] *See* M2Z Networks, Inc., "Communicating Effectively When Disaster Strikes" (filed in EB Docket No. 06-119, Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, on August 7, 2006 and in WT Docket Nos. 07-16 and 07-30 on February 9, 2007).

[120] *See* 47 U.S.C. § 160(c). To satisfy Section 10, the Commission must act on a forbearance petition within the statutory time frame and "explain its decision in writing." *Id*. This language has been interpreted by the courts to require the Commission to "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."); *see also Core Communications*, 455 F.3d 267 (D.C. Cir. 2006) ("Waiting until the eleventh hour to vote on a forbearance petition, and then waiting until the thirteenth hour to issue the explanatory order, is hardly an ideal procedure for notifying a party of the disposition of a petition. And relying on an informal press release and a back-dating regulation to satisfy a statutory deadline could unnecessarily place Commission policies at risk of judicial invalidation.").

repeatedly has demonstrated its ability to conduct complex analyses very quickly, such as the Commission's entirely voluntary commitment to expeditiously review and act upon merger applications, which, by their nature, reduce competition.[122] The irrefutable public interest benefits derived from the additional competition that will result from M2Z's proposed service warrant similar expedited consideration and positive treatment by the Commission. Thus, now that the public debate on M2Z's proposal has occurred, the Commission should promptly address the merits of M2Z's Forbearance Petition, including a thorough Section 10 public interest analysis, and forbear to the extent necessary to allow the grant of M2Z's Application.

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[121] The record in this proceeding merits rapid resolution as dictated by another provision of the statute. *See* 47 U.S.C. § 157(b) (the Commission "shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.").

[122] *See* Exhibit A attached hereto (comparing timing of transaction reviews to timing of action on M2Z's application).

III. CONCLUSION

For the foregoing reasons, and those set forth in its Forbearance Petition, M2Z respectfully requests, pursuant to Section 10 of the Act, that the Commission forbear from applying Section 1.945(c), and any and all other provisions of the Act and the Commission's rules, to the extent such rules and provisions apply to M2Z's Application, which conflict with or are otherwise inconsistent with the grant of M2Z's Application.

Respectfully submitted,

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April 3, 2007

Exhibit A

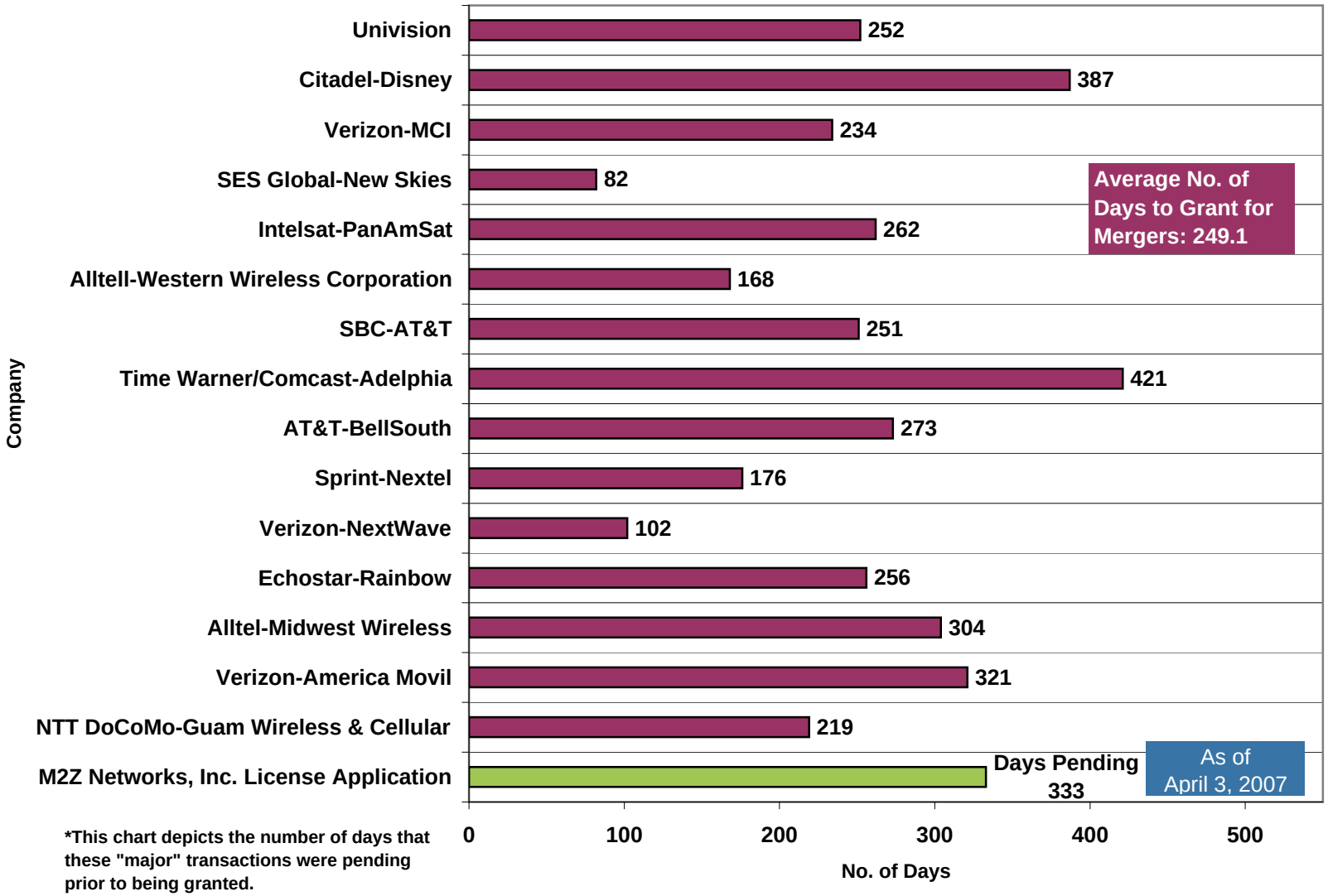
Comparison Table: Timing of Actions on Major Transactions with Action on M2Z Application

	Days Pending	Days to PN	Application Filed	PN Date	Still Pending On	Statutory Deadline
M2Z Networks, Inc. License Application	**333**	**271**	**5/5/2006**	**1/31/2007**	**4/3/2007**	**5/5/2007**
Transaction±	**Days to Grant†**	**Days to PN**	**Application Filed**	**PN Date**	**Approval Date***	**Statutory Deadline**
NTT DoCoMo-Guam Wireless & Cellular	219	36	4/4/2006	5/10/2006	11/9/2006	N/A
Verizon-America Movil	321	36	5/9/2006	6/14/2006	3/26/2007	N/A
Alltel-Midwest Wireless	304	28	12/2/2005	12/30/2005	10/2/2006	N/A
Echostar-Rainbow	256	28	1/28/2005	2/25/2005	10/11/2005	N/A
Verizon-NextWave	102	25	11/15/2004	12/10/2004	2/25/2005	N/A
Sprint-Nextel	176	20	2/8/2005	2/28/2005	8/3/2005	N/A
AT&T-BellSouth	273	19	3/31/2006	4/19/2006	12/29/2006	N/A
Time Warner/Comcast-Adelphia	421	15	5/18/2005	6/2/2005	7/13/2006	N/A
SBC-AT&T	251	17	2/22/2005	3/11/2005	10/31/2005	N/A
Alltell-Western Wireless Corporation	168	14	1/24/2005	2/7/2005	7/11/2005	N/A
Intelsat-PanAmSat	262	14	9/30/2005	10/14/2005	6/19/2006	N/A
SES Global-New Skies	82	14	1/6/2006	1/20/2006	3/29/2006	N/A
Verizon-MCI	234	13	3/11/2005	3/24/2005	10/31/2005	N/A
Citadel-Disney	387	7	2/28/2006	3/7/2006	3/22/2007	N/A
Univision	252	6	7/18/2006	7/24/2006	3/27/2007	N/A
Average	**249.1**	**23.8**				

† Refers to total days from application filing to Commission action approving transaction.
* Date of approval refers to date of adoption, not release.

± Includes assignments and transfers of licenses and or authorizations in a variety of services that were acted upon between January 2005 and March 2007 and that are characterized as "major" on the FCC's Transaction Team website, http://www.fcc.gov/transaction/. Thousands of other transactions not identified on the transaction team site have been approved during this time.

Days to a Consolidation versus New Entry*



*This chart depicts the number of days that these "major" transactions were pending prior to being granted.

CERTIFICATE OF SERVICE

I, Erin L. Dozier, an attorney in the law office of Sheppard Mullin Richter & Hampton, LLP, hereby certify that I have on this 3rd day of April 2007 caused a copy of the foregoing Reply Comments of M2Z Networks, Inc. to be delivered by first-class mail to the following:

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