

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

M2Z NETWORKS, INC.)	
Application for License and Authority)	WT Docket No. 07-16
To Provide National Broadband Radio)	
Service in the 2155-2175 MHz Band)	
)	
Petition of M2Z Networks, Inc.)	
For Forbearance Under 47 U.S.C. § 160(c))	
To Permit Acceptance and Grant of Its)	WT Docket No. 07-30
Application for a License to Provide)	
Radio Service in the 2155-2175 MHz Band)	
)	
and)	
)	
Application of Towerstream Corporation)	WT Docket No. 07-16
for Authority to Construct and Operate a)	
Broadband Wireless Network)	File No. _____
in the 2155-2175 MHz band)	

To the: Wireless Telecommunications Bureau

Towerstream Corporation Opposition to Consolidated Motion to Dismiss

Towerstream Corporation (“TowerStream”), by its attorneys, and pursuant to Section 1.45(b) of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”) hereby opposes the Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals (“Motion”) filed March 26, 2007. In the Motion, M2Z Networks, Inc. (“M2Z”) requests that the Commission dismiss and not accept for filing various competing applications—including the application of TowerStream—for authority to construct and operate a broadband network in the 2155-2175 MHz Band (the “2.1GHz” band).

M2Z basically uses the Motion as yet another vehicle to hawk its business plan and to attempt to thwart competition in the broadband spectrum marketplace. Towerstream will not expend its resources, and the limited resources of the Commission, other competing applicants,

and the public, fighting over the comparative merits of the various competing proposals in the context of an opposition to an informal request for action. This is not the appropriate vehicle or procedural posture to litigate the comparative merits of the competing proposals.

As Towerstream and numerous other parties have stated in this proceeding, the Commission should license the 2.1 GHz spectrum through competitive bidding between competing applicants after completion of a rulemaking proceeding. This approach will serve the public interest and ensure that the 2.1 GHz band is allocated to its highest and best use. If for some reason the Commission elects not to resolve the matter through competitive bidding, however, then it must resolve the matter through a hearing pursuant to Rule Section 1.945(f). At that time, the various competing applicants will have an opportunity to submit affirmative cases and counter cases in an established procedural context.

M2Z has proffered no legal basis for the Commission to dismiss Towerstream's application other than that Towerstream's application is similar to M2Z's (i.e. a "copy-cat"). To dismiss Towerstream's application without consideration, however, while accepting and processing M2Z's application, would be to treat similarly situated applicants differently, a action that would be arbitrary and capricious.

Towerstream is a *bona fide* applicant with an established track record of providing service to the public. Towerstream is willing, ready, and able to provide service using the 2.1 GHz band, and its application is substantially similar to M2Z's. Accordingly, the Commission should either accept Towerstream's application for filing and processing, or dismiss *all* of the applications (including the M2Z application) for the 2.1 GHz band as premature.

For the reasons stated herein, TowerStream respectfully requests that the Commission deny the Motion.

Respectfully Submitted,

TowerStream Corporation

By: 

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April 5, 2007

Certificate of Service

I, Linda L. Braboy, with the firm of Bennet & Bennet, PLLC, hereby certify that I have on this 5th day of April 2007 caused a copy of the foregoing Towerstream Corporation Opposition to Consolidated Motion to Dismiss to be delivered by first-class mail to the following:

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In addition, courtesy copies of the foregoing Towerstream Corporation Opposition to Consolidated Motion to Dismiss were delivered by hand upon the following:

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