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

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

To: Chief, Wireless Telecommunications Bureau
Office of the Managing Director

OPPOSITION TO PETITION FOR RECONSIDERATION

By its attorneys and pursuant to Section 1.106(g) of the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] M2Z Networks, Inc. ("M2Z") respectfully submits this Opposition to the Petition for Reconsideration filed by McElroy

[1] 47 C.F.R. § 1.106(g).

Electronics Corporation ("McElroy").[2] For the reasons set forth below, McElroy's Petition should be denied.

In its Petition, McElroy states that on March 2, 2007, it filed an application on FCC Form 601 for a Nationwide 2155-2175 MHz Band Authorization.[3] McElroy states that on March 6, 2007, its Proposal was returned as defective due to its failure to use an appropriate radio service code.[4] McElroy's asserted grounds for reconsideration of this action are that it relied upon staff advice in determining what service code to use and that it should be treated in a manner similar to M2Z.

ARGUMENT

M2Z concurs with the Commission's decision not to entertain the McElroy Proposal.[5] In fact, M2Z identified other flaws in the McElroy Proposal that justify its dismissal.[6] McElroy contends that under the Melody Music doctrine, its Proposal should have been accepted for filing because it is similarly situated with M2Z.[7] For many reasons already discussed in M2Z's Consolidated Motion to Dismiss, McElroy is not "similarly situated" to M2Z in any way.[8] With respect to McElroy's use of the radio service code "BR," in particular, there is another clear distinction between McElroy and M2Z, because M2Z explicitly sought and provided an

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[2] *See* Petition for Reconsideration of McElroy Electronics Corporation (filed Mar. 30, 2007) (the "Petition").

[3] *See* Application of McElroy Electronics Corporation for a Nationwide 2155-2175 MHz Band Authorization, WT Docket No. 07-16 (filed Mar. 2, 2007) ("McElroy Proposal").

[4] Petition at 2-3.

[5] The letter decision referenced in the Petition is not available in the FCC's public reference room.

[6] *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").

[7] McElroy Petition at 4 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730 (DC Cir. 1987)).

[8] M2Z Consolidated Motion to Dismiss at 20-52, 70-72.

extensive justification for a waiver in connection with its use of the radio service code "BR."[9] McElroy, on the other hand, requested no such waiver. It did not check the waiver box on the front of its FCC Form 601, and did not seek waiver in the narrative portion of its Proposal.[10] Instead, McElroy asserts that its Proposal "needs no rule waivers."[11] The fact that it has applied to use the same band of spectrum does not make McElroy "similarly situated" to M2Z, and its failure to seek waiver has appropriately resulted in return or dismissal of its proposal.[12] The Petition presents no basis for a reversal of this action.

McElroy's decision not to request a waiver cannot be cured by its alleged reliance upon staff advice in preparing its Proposal.[13] There is no way to determine exactly what advice was informally provided by FCC staff to McElroy, and, in any event it was McElroy's responsibility to determine the appropriate course of action. It is well-settled that "regulatees are responsible for compliance with the Commission's rules and that they should not rely on informal opinions from Commission staff."[14] Whatever advice may have been provided by the staff is not binding upon the Wireless Telecommunications Bureau or the Office of the Managing Director.

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[9] *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") at 43-47.

[10] McElroy Proposal, FCC Form 601, Page 1 and Exhibit 1.

[11] McElroy Proposal at Exhibit 1, p.2 n.1.

[12] *See* 47 C.F.R. § 1.934(d)(2) ("The Commission may dismiss without prejudice an application that it finds to be defective. An application is defective if … it requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for waiver of these rule(s)…").

[13] Petition at 2.

[14] *See Ramco Distributors, Inc., File No. EB-06-SE-124,* Notice of Apparent Liability, FCC No. 07-49 ¶ 17 (rel. Mar. 30, 2007) (citing *Texas Media Group, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852 (1990), *aff'd sub nom., Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991) ("It is the obligation of interested parties to ascertain facts from official Commission records and files and not (footnote continued)

CONCLUSION

In accepting the M2Z Application for filing, the Commission took the first step toward bringing the multitude of public interest benefits NBRS will provide to the nation. As M2Z has explained in other pleadings filed in this proceeding, there is no need to consider lesser alternatives that do not meet the high public interest bar M2Z has established for NBRS. McElroy's Petition presents no valid basis for reconsideration of the return or dismissal of its Proposal, and the Petition should be denied.

Respectfully submitted,

M2Z NETWORKS, INC.

By: _____/s/_____

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rely on statements or informal opinions by the staff."); *Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637 (1995) ("The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.")).

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 9th 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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