

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

In the Matter of	)	
	)	
Petition of M2Z Networks, Inc. for	)	
Forbearance Under 47 U.S.C. § 160(c)	)	WT Docket No. 07-30
Concerning Application of Sections 1.945(b) and	)	
(c) and Other Regulatory and Statutory Provisions	)	
	)	
M2Z Networks Inc.	)	
Application for License and Authority to Provide	)	WT Docket No. 07-16
A National Broadband Radio Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	
NetfreeUS, LLC	)	
	)	
Application for License and Authority to	)	File No. _____
Provide Wireless Public Broadband Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	
NextWave Broadband Inc.	)	
	)	
Application for License and Authority to	)	File No. _____
Provide Nationwide Broadband Service	)	
In the 2155-2175 MHz Band	)	
	)	
and	)	
	)	
Open Range Communications, Inc.	)	
	)	
Application for License to Construct and Operate	)	File No. _____
Facilities for the Provision of Rural	)	
Broadband Radio Services in the	)	
2155-2175 MHz Band	)	
	)	

and	)	
	)	
C o m e t Wireless, LLC	)	
	)	
Application for License and Authority to	)	File No. _____
Construct and Operate a System to Provide	)	
Nationwide Broadband Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	
McElroy Electronics Corporation	)	
	)	
Application for a Nationwide 2155-2175 MHz	)	File No. _____
Band Authorization	)	
	)	
and	)	
	)	
TowerStream Corporation	)	
	)	
Application for a Nationwide 2155-2175 MHz	)	File No. _____
Band Authorization	)	

To: The Commission  
Chief, Wireless Telecommunications Bureau

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

**NETFREEUS, LLC**

Stephen E. Coran  
Jonathan E. Allen  
Rini Coran, PC  
1615 L Street, NW, Suite 1325  
Washington, D.C. 20036  
(202) 296-2007  
*Counsel to NetfreeUS, LLC*

April 10, 2007

## Table of Contents

	Page
<u>Summary</u>	1
<u>Discussion</u>	3
I. M2Z’s CONSOLIDATED MOTION SHOULD BE REJECTED IN LIGHT OF THE PUBLIC INTEREST BENEFITS THAT WOULD RESULT FROM GRANT OF THE NETFREEUS APPLICATION .....	5
A. The Commission Must Reject M2Z’s Request to Dismiss NetfreeUS’s Application for an Entirely Free Wireless Public Broadband Service, Especially Where M2Z Proposes an Inferior Two-Class System. ....	6
B. NetfreeUS’s Secondary Market Approach Promotes Competition by ‘New Entrant’ Local Operators. ....	8
C. The NetfreeUS Application Provides Sufficient Information Concerning the Ability of Existing Devices to Operate in the 2155-2175 MHz Band. ....	
D. NetfreeUS’s Support of an Uncensored Internet is not an Appropriate Basis for Dismissal of the NetfreeUS Application. ....	
II. M2Z’s CLAIMS THAT NETFREEUS IS NOT FINANCIALLY QUALIFIED LACK MERIT AND PALE IN COMPARISON TO THE SERIOUS QUESTIONS ABOUT M2Z’S OWN FINANCIAL “COMMITMENTS.” .....	13
III. M2Z’S OBJECTIONS TO NETFREEUS’S BUILD-OUT COMMITMENTS ARE WITHOUT MERIT. ....	14
<u>Conclusion</u>	17

## Summary

NetfreeUS, LLC (“NetfreeUS”), applicant for a new nationwide wireless broadband service authorization in the 2155-2175 MHz band, hereby opposes the above-referenced Consolidated Motion filed by M2Z Networks, Inc. (“M2Z”) on March 26, 2007. NetfreeUS requests that the Commission dismiss with prejudice the Consolidated Motion as applied to NetfreeUS. The Consolidated Motion contrives a series of artificial standards that, in M2Z’s view, competing applications such as the NetfreeUS Application must satisfy to avoid immediate dismissal by the Commission. The Commission, however, has yet to determine whether any of M2Z’s purported “public interest benefits” are in fact so. Nevertheless, M2Z seeks to foreclose true consideration of competing applications through the dismissal of the NetfreeUS Application. As shown below, M2Z’s flimsy efforts must fail.

The Consolidated Motion should be dismissed for the following reasons:

- M2Z wrongly suggests that the Commission should dismiss the NetfreeUS Application for lack of commitment to free broadband service. While M2Z seeks Commission approval to provide a “Premium” high-speed Internet service, coupled with the provision of a vaguely defined “free” service, NetfreeUS seeks Commission approval of a wireless broadband service that would be provided *with no subscription fees for all end users*.
- While M2Z suggests that the NetfreeUS Application would not promote new competitive entry, the opposite is true. NetfreeUS’s secondary markets approach enables and encourages thousands of “new entrants” in the communications marketplace nationwide. By contrast, the M2Z Application serves only one “new entrant” -- M2Z.
- The NetfreeUS Application contains sufficient technical information regarding the ability of certain CPE devices to operate in the band.
- M2Z incorrectly argues that NetfreeUS’s proposed “no censorship” approach is a valid basis for dismissal of the NetfreeUS Application, even while M2Z’s proposed “always on” content filtering is unworkable and legally suspect.
- While M2Z erroneously complains that NetfreeUS has not demonstrated sufficient financial qualifications for grant of the NetfreeUS Application. While NetfreeUS is subject to significant disclosure pursuant to federal securities laws, M2Z’s efforts to shield certain financial data from public disclosure raise serious questions about M2Z’s own financial “commitments.”
- M2Z’s objections to NetfreeUS’s buildout commitments lack merit.

As it pertains to the NetfreeUS Application, the Commission must dismiss or deny the Consolidated Motion. Instead, the Commission should afford due consideration to the relative merits of the NetfreeUS Application, should issue a Public Notice announcing the acceptance for filing of the NetfreeUS Application and should reject M2Z’s efforts to seek dismissal of NetfreeUS’s meritorious proposal.

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

In the Matter of	)	
	)	
Petition of M2Z Networks, Inc. for	)	
Forbearance Under 47 U.S.C. § 160(c)	)	WT Docket No. 07-30
Concerning Application of Sections 1.945(b) and	)	
(c) and Other Regulatory and Statutory Provisions	)	
	)	
M2Z Networks Inc.	)	
Application for License and Authority to Provide	)	WT Docket No. 07-16
A National Broadband Radio Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	
NetfreeUS, LLC	)	
	)	
Application for License and Authority to	)	File No. _____
Provide Wireless Public Broadband Service in the	)	
2155-2175 MHz Band	)	
	)	
and	)	
	)	
NextWave Broadband Inc.	)	
	)	
Application for License and Authority to	)	File No. _____
Provide Nationwide Broadband Service	)	
In the 2155-2175 MHz Band	)	
	)	
and	)	
	)	
Open Range Communications, Inc.	)	
	)	
Application for License to Construct and Operate	)	File No. _____
Facilities for the Provision of Rural	)	
Broadband Radio Services in the	)	
2155-2175 MHz Band	)	
	)	

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

To: The Commission  
 Chief, Wireless Telecommunications Bureau

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

NetfreeUS, LLC (“NetfreeUS”), applicant for a new nationwide wireless broadband service authorization in the 2155-2175 MHz band,’ by counsel and pursuant to Section 1.41 of the Commission’s Rules, hereby opposes the above-referenced Consolidated Motion filed by M2Z Networks, Inc. (“M2Z”) on March 26,2007.<sup>2</sup> NetfreeUS requests that the Commission

---

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

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

dismiss with prejudice the Consolidated Motion as applied to NetfreeUS.<sup>3</sup> The Consolidated Motion contrives a series of artificial standards that, in M2Z's biased and self-serving view, competing applications such as the NetfreeUS Application must satisfy to avoid immediate dismissal by the Commission. The Commission, however, has yet to determine whether any of M2Z's purported "public interest benefits" are in fact so. Nevertheless, behind its army of straw men, M2Z seeks to cajole the Commission into foreclosing true consideration of competing applications by dismissing the NetfreeUS Application. As shown below, M2Z's flimsy efforts must fail, and the Consolidated Motion, as applied to NetfreeUS, must be dismissed. Furthermore, NetfreeUS respectfully requests that the Bureau issue a Public Notice announcing that the NetfreeUS Application is accepted for filing.

### **Discussion**

The NetfreeUS Application proposes a free, nationwide broadband service ("Wireless Public Broadband," or "WPB" service) using the 2155-2175 MHz band.<sup>4</sup> NetfreeUS seeks the same frequencies in the same nationwide geographic area as M2Z requested in the M2Z Application.<sup>5</sup> NetfreeUS has identified numerous public interest benefits to its proposal,

---

<sup>3</sup> Because no pleading cycle has been established for the NetfreeUS Application, this Opposition treats the Consolidated Motion as an informal objection pursuant to Section 1.41. If the Commission establishes a pleading cycle for the NetfreeUS Application, NetfreeUS reserves all rights to participate in that proceeding.

<sup>4</sup> The NetfreeUS Application proposes a unique secondary market licensing system to enable new entrants, entrepreneurs and municipalities to expeditiously provide free, wireless broadband radio services on a "public commons" basis, with limited Commission involvement. NetfreeUS's approach to providing free, nationwide broadband service has additional benefits over the M2Z approach by adding new, viable competitors to the broadband marketplace, by fostering localism, by facilitating ubiquitous coverage to the country (including rural areas), by enabling new opportunities for entrepreneurs, and by providing the federal government with an ongoing revenue stream.

<sup>5</sup> *See* M2Z Networks, Inc. Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (amended Sept. 1, 2006) (the "M2Z Application"). *See also Public Notice*, "Wireless Telecommunications Bureau Announces that M2Z Networks,

including promotion of widespread broadband deployment, introduction of new competition in the provision of broadband services, public safety interoperability, participation by municipalities and entrepreneurs and a revenue stream for the U.S. Government.<sup>6</sup>

Despite claiming that it welcomes a public debate on the merits of its proposal,<sup>7</sup> M2Z's Consolidated Motion clearly prefers immediate foreclosure of such debate by requesting that the Commission dismiss competing approaches before they have been fully considered by the Commission. While the Consolidated Motion is a marvel of pejorative rhetoric,<sup>8</sup> self-aggrandizement' and facile analysis," the Consolidated Motion fails to provide any basis for the Commission to dismiss the NetfreeUS Application. As shown below, the NetfreeUS Application in fact proposes a superior service with more public interest benefits than those proposed by M2Z. Accordingly, the NetfreeUS Application should not be dismissed, but should be accepted for filing.

---

Inc.'s Application for Licensee and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band is Accepted for Filing," DA 07-492 (rel. Jan. 31,2007).

<sup>6</sup> See NetfreeUS Application at 18-23.

<sup>7</sup> See, e.g., 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. 2,2006) at 19.

<sup>8</sup> See Consolidated Motion at 12 ("Like James Marshal's discovery of gold at Sutter's Mill, however, M2Z's proposal has spawned follow-on prospectors and speculators who, with wild-eyed dreams of the mother-lode, can offer nothing at present but fool's gold").

<sup>9</sup> See *id.* at 9 (stating that other applications for use of the 2155-2175 MHz band "merely seek to piggyback on M2Z's groundbreaking proposal").

<sup>10</sup> See, e.g., *id.* at 14 (arguing that "[n]o application to offer services at 2155-2175 MHz should be seriously entertained unless it meets *all* of the public interest standards set by the M2Z Application," even though the Commission has yet to determine that M2Z's self-proclaimed "standards" apply to consideration of the applications or meet the public interest) (emphasis added).

**I. M2Z’s CONSOLIDATED MOTION SHOULD BE REJECTED IN LIGHT OF THE PUBLIC INTEREST BENEFITS THAT WOULD RESULT FROM GRANT OF THE NETFREEUS APPLICATION.**

M2Z states that its proposal “provided an opportunity for those with comparable or potentially superior proposals to come forth and have their approach tested against the M2Z benchmark,”<sup>11</sup> but argues that “[n]o application to offer services at 2155-2175 MHz should be seriously entertained unless it meets all of the public interest standards set by the M2Z Application.”<sup>12</sup> The fallacy in this argument is the presumption that the M2Z Application sets the standard for the obligation to determine whether competing applications may be granted consistent with the “public interest, convenience and necessity.”<sup>13</sup> As NetfreeUS has demonstrated elsewhere,<sup>14</sup> NetfreeUS’s obligation is *not* to show that M2Z’s Application is *inconsistent* with the public interest but merely to show that the public interest favors NetfreeUS’s proposal over M2Z’s proposal.<sup>15</sup> M2Z’s superficial “checklist” approach

---

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> See 47 U.S.C. §309(a) (stating generally that the Commission “shall determine, in the case of each application filed with it to which section 308 applies [regarding license requirements], 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.”)

<sup>14</sup> See generally Reply of NetfreeUS to Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 and 07-30 (filed April 3, 2007) (“Reply to Consolidated Opposition”).

<sup>15</sup> M2Z argues that Section 7 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. §157, requires parties “who oppose a new technology or service” to “demonstrate that such proposal is inconsistent with the Public Interest.” See Consolidated Motion at 15. As NetfreeUS has argued, see Reply to Consolidated Opposition at 2-4, and other commenters have agreed, see, e.g., Reply of T-Mobile USA, Inc. to Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny and Opposition to Consolidated Motion of M2Z Networks, Inc. to Strike and Dismiss Petitions to Deny and Alternative Proposals, WT Docket Nos. 07-16 and 07-30 (filed Apr. 3, 2007) at 5; Consolidated Reply to Opposition to Petitions to Deny and Reply Comments Regarding Forbearance Petition of AT&T Inc., WT Docket Nos. 07-16 and 07-30

notwithstanding, the Commission need only compare the proposals and thereafter reach a determination regarding which proposal, on balance, would better serve the public interest, convenience and necessity. As shown below, such a comparison favors the NetfreeUS Application over the M2Z Application, and M2Z's efforts to seek dismissal of the NetfreeUS Application must be rejected.

**A. The Commission Must Reject M2Z's Request to Dismiss NetfreeUS's Application for an Entirely Free Wireless Public Broadband Service, Especially Where M2Z Proposes an Inferior Two-Class System.**

NetfreeUS's commitment to provide free nationwide broadband service is superior to M2Z's two-tiered service proposal. M2Z seeks Commission approval of an application to provide a "Premium" high-speed Internet service, coupled with the provision of a vaguely defined "free" service.<sup>16</sup> Essentially all that M2Z has chosen to disclose about its "free" class of service are minimum data rates of 384 kbps downstream/128 kbps upstream.<sup>17</sup> It has provided even less information about its so-called "Premium" wireless broadband service. Left unanswered are the obvious questions of who will be eligible for the "Premium" service, how much of the 20 MHz of spectrum will be allocated to the "free" service and how much for the "Premium" level, and how will the speed, use limitations, features and special content of "Premium" service be differentiated from the "free" service. Absent any explanation, M2Z leaves the clear impression that the "free" tier will be incidental to the "Premium" service and that the "Premium" service will be reserved for a special class of Internet users who will have access to features not available to others.

---

(filed Apr. 3, 2007) at 19-23; the M22 Application proposes neither a new technology nor service and the standard articulated in Section 7 does not apply.

<sup>16</sup> *See, e.g.*, M2Z Application at 12.

<sup>17</sup> *Id.*

By contrast, as the NetfreeUS Application demonstrates, NetfreeUS believes that establishing two classes of high-speed Internet service is antithetical to the open, democratic nature of the Internet and to the public interest therein. NetfreeUS believes that “free means free” and that high-speed Internet service provided via WPB should be offered without a subscription fee to all end users. NetfreeUS clarifies that it will commit, as a license condition, to only offer WPB as a service with no monthly subscription fee, and spectrum lessees will be required, as a condition of their leases, to do the same. As in the over-the-air broadcast model, WPB would be advertiser-supported, meaning that consumers would pay nothing.

In addition, NetfreeUS’s proposal is responsive to local market conditions. While M2Z believes that “it is unclear how or when [NetfreeUS’s] free WPB service will become widely available,”<sup>18</sup> this objection merely reflects the nature of local market conditions. The fact remains that NetfreeUS’s proposal is more market-centric, and market-responsive, than M2Z’s. Localism and the demand for local service will drive WPB, as opposed to M2Z’s single-provider, “top-down” approach to deployment.” NetfreeUS’s deployment plans comport with the Commission’s stated preference for market-oriented solutions to expedite the introduction of service, particularly in underserved areas.<sup>20</sup> Even so, NetfreeUS has proposed rigorous

---

<sup>18</sup> See Consolidated Motion at 20.

<sup>19</sup> M2Z proposes deployment benchmarks to cover certain specified percentages of the U.S. Population, but this milestone approach offers no insight into which local markets will receive build-out priority. See Consolidated Motion at 24.

<sup>20</sup> See, e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604,20607 (2003) (“[Secondary markets] policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resource to the ultimate benefit of consumers throughout the country. Facilitating the development of these secondary markets enhances and complements several of the Commission’s major policy initiatives and public interest objectives, including our efforts to encourage the development of broadband services for all Americans, promote increased facilities-based

“substantial service” obligations to ensure rapid nationwide build-out, a point that M2Z chooses to disregard.<sup>21</sup> For these reasons, NetfreeUS’s proposal for free service provides, on balance, greater public-interest benefits than M2Z’s empty, two-tiered approach.

**B. NetfreeUS’s Secondary Market Approach Promotes Competition by “New Entrant” Local Operators.**

Curiously, M22 suggests that NetfreeUS’s approach does not promote competitive entry into the market for broadband and wireless services because stakeholders and affiliates of NetfreeUS have ownership interests in other Commission licenses.<sup>22</sup> M22 apparently would prefer that the Commission grant a nationwide broadband license to a single service provider, call that grant “new entry” based on the mere happenstance that none of M2Z’s disclosed stakeholders currently has attributable interests in other Commission licenses, and ignore NetfreeUS’s proposal to use the Commission’s established secondary market mechanisms to lease spectrum to municipalities, entrepreneurs and other “new entrants” that would provide their own locally-based competitive service. NetfreeUS proposes limiting its direct network operations to 50 Wireless Access Points (“WAPs”), thus opening the door for new entrants, as lessees, to offer locally provided broadband access in rural, suburban and urban communities across the country. NetfreeUS believes that the public interest supports diversity, not hegemony, in the provision of broadband services in the 2155-2175 MHz band and that the public interest would benefit from a large number of service providers that can respond to local demand. In

---

competition among service providers, enhance economic opportunities and access for the provision of communications services by designated entities, and enable development of additional and innovative services in rural areas.”).

<sup>21</sup> See NetfreeUS Application at 12; see Consolidated Motion at 24.

<sup>22</sup> See Consolidated Motion at 34 (“Although NetfreeUS itself has no licenses, its parent company, one of its principals, and an investor all have ownership interests in entities that hold FCC licenses. Accordingly, NetfreeUS does not promote new entry into the wireless and broadband markets as would M2Z.”)

addition, NetfreeUS proposes an enhanced role for local interests, similar to the important role of localism in the broadcasting service.<sup>23</sup>

The NetfreeUS Application blends the best elements of nationwide interference coordination and advertising with locally-operated businesses that can serve the needs of local communities. With this design, NetfreeUS enables and encourages thousands of “new entrants” in the communications market place throughout the nation. By contrast, the M2Z Application serves only one “new entrant,” M2Z itself. The public interest favors the approach urged by the NetfreeUS Application.

**C. The NetfreeUS Application Provides Sufficient Information Concerning the Ability of Existing Devices to Operate in the 2155-2175 MHz Band.**

M2Z asserts “significant additional information” is needed to “gauge the spectral efficiency” of the NetfreeUS Application and to determine how NetfreeUS will “technically and lawfully retune or retool existing Wi-Fi stations and handsets for use with its service.”<sup>24</sup> Yet a comparison of the proposals confirms that with respect to end-user equipment requirements, M2Z’s proposal is clearly inferior to NetfreeUS’s. As a condition of using M2Z’s “free” service, end users would be required to buy “M2Z-certified” equipment at a cost of as much as \$249.99.<sup>25</sup> M2Z’s “free” service, limited as it is, would merely shift a portion of the end user’s broadband costs from subscription fees to CPE costs. Such equipment would introduce a bottleneck into the

---

<sup>23</sup> See NetfreeUS Application at 14 (“The ‘public commons’ approach also would serve localism. Neither NetfreeUS nor its Lessees would have control over content and would have no power of censorship. WPB would facilitate local business development by allowing NetfreeUS and WPB to sell highly targeted advertising to promote local business. Service would be flexible and market-responsive, and targeted to the interests of the local community.”)

<sup>24</sup> See Consolidated Motion at 44.

<sup>25</sup> See M2Z Application at n.6. (“We anticipate that the equipment, even initially, will cost less than \$250.00, and that the cost will decline with increasing consumer adoption and manufacturing scale.”)

end-user's access. M2Z has not disclosed whether any of its stakeholders or investors hold investment interests in companies that produce such equipment and thus whether M2Z's proposed broadband dominance would profit M2Z through equipment sales in addition to "Premium" service fees.<sup>26</sup>

By contrast, NetfreeUS proposes that WPB would be provided using existing, off-the-shelf and nonproprietary equipment. Much existing equipment – for instance, laptops with dynamic range covering the 2155-2175 MHz band – can provide service over the 2155-2175 MHz frequencies with software modifications, subject to vendor approval and compliance with all applicable Commission regulations. NetfreeUS believes that the manufacturing community would welcome the opportunity to implement technology to make their equipment more marketable. In addition, NetfreeUS neither manufactures equipment nor holds an ownership interest in companies that do. Rather than lock subscribers into using specific equipment, the NetfreeUS would generally allow end users to choose the equipment with characteristics and prices that suit them best. The public interest supports equipment interoperability (the NetfreeUS approach) over proprietary bottleneck access and closed network architectures administered by a single national provider (the M2Z approach).

---

<sup>26</sup> M2Z states 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," M22 Application at 21, and that "M2Z does not have a stake in equipment sales," Consolidated Opposition to Petitions to Deny of M2Z Networks, Inc, WT Docket Nos. 07-16 and 07-30 (filed March 26, 2007). Yet M2Z does not disclose whether any M22 stakeholders, directly or indirectly, would share in profits generated by equipment sales or would have direct or indirect ownership interests in any of M2Z's technology partners or vendors. Given that M2Z's stakeholders include private equity firms that are not subject to the detailed financial disclosure requirements of public companies, the financial ties between M2Z and its technology partners or vendors remain murky at best.

#### **D. NetfreeUS's Support of an Uncensored Internet is not an Appropriate Basis for Dismissal of the NetfreeUS Application,**

M2Z argues that its proposed mandatory “always on” filtering of “pornographic, obscene, or indecent material” is preferred over NetfreeUS’s approach, which relies on the free flow of Internet content.<sup>27</sup> Once again, M2Z’s claim is premised on the brazen assumption that all other applications must meet or exceed the standards that M2Z has self-proclaimed, regardless of whether the Commission determines that M2Z’s criteria best serve the public interest.

Contrary to M2Z’s assertion, M2Z’s proposed gatekeeper function is inconsistent with the Internet’s open, democratic nature and with end users’ rights to access lawful material. M2Z provides no detail on how its “content filtering” would make the highly contextual determinations necessary to avoid over-broad and legally questionable filtering of lawful content.<sup>28</sup> Instead, M2Z suggests that a proxy server model “similar to firewalls used by large

---

<sup>27</sup> See Consolidated Motion at 28. (“Filtering functions would apply enterprise class filtering to the free component of the [M2Z Service] to restrict unauthorized access to websites purveying pornographic, obscene, or indecent material. [NetfreeUS and others] offer no such filtering proposal.”)(footnotes omitted).

<sup>28</sup> In applying broadcast indecency regulations, the Commission has repeatedly emphasized the highly contextual analysis required to implement federal law (18 U.S.C. § 1464 and the First Amendment. Federal law prohibits “any obscene, indecent or profane language by means of radio communication.” 47 U.S.C. § 1464. The Commission has emphasized that “in determining whether material is patently offensive [a prerequisite for an indecency finding], the *full context* in which the material appeared is critically important. It is not sufficient, for example, to know that explicit sexual terms or descriptions were used, just as it is not sufficient to know only that no such terms or descriptions were used. Explicit language in the context of a *bona fide* newscast might not be patently offensive, while sexual innuendo that persists and is sufficiently clear to make the sexual meaning inescapable might be. Moreover, contextual determinations are necessarily highly fact-specific, making it difficult to catalog comprehensively all of the possible contextual factors that might exacerbate or mitigate the patent offensiveness of particular material.” See Industry Guidance On the Commission’s Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency, Policy Statement, 16 FCC Rcd 7999, 8002-03 (2001)(footnotes omitted, emphasis in original). In addition, the First Amendment and Section 326 of the Act prohibit the Commission from censoring broadcast program material. See 47 U.S.C. § 326 (“Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by

scale enterprises” would be implemented that would compares requested URLs “with a list of sites that contain pornography or other forms of indecent content.”<sup>29</sup> M2Z provides no detail regarding how lists will be maintained or how material will be evaluated for determinations of “indecency”, and M2Z acknowledges that with respect to its efforts, “it is unlikely they will be 100% effective.”<sup>30</sup> Moreover, the U.S. Supreme Court has held that even “indecent” speech is entitled to a degree of First Amendment protection.<sup>31</sup> In sum, M2Z makes no assurances that its “always on” approach would not excise Constitutionally protected speech.

NetfreeUS believes M2Z’s approach is inherently unworkable and raises myriad First Amendment implications to the extent that M2Z’s approach is sanctioned by the Commission. By contrast, NetfreeUS believes that end users, not service providers, should determine what lawful content they can access and that Internet service providers are ill-suited to serve this function. No doubt the Internet contains substantial content that is inappropriate for certain audiences, but the role is best fulfilled by parents and individual users, not by a national service provider such as M2Z. Parents using NetfreeUS’s WPB would be permitted to use any commercially available software or other methods to limit access to improper content.

---

any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.)

<sup>29</sup> See M2Z Application at Appendix 3, 1-2.

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844, 874 (1997) (“In evaluating the free speech rights of adults, we have made it perfectly clear that ‘sexual expression which is indecent but not obscene is protected by the First Amendment’”) (footnotes and citation omitted).

**11. M2Z's CLAIMS THAT NETFREEUS IS NOT FINANCIALLY QUALIFIED LACK MERIT AND PALE IN COMPARISON TO THE SERIOUS QUESTIONS ABOUT M2Z's OWN FINANCIAL "COMMITMENTS."**

Despite M2Z's grandiose claims of "reasonable assurances from various committed sources that it will be able to obtain in excess of \$400 million to help construct and operate its network,"<sup>32</sup> M2Z apparently intends to shield these claims from meaningful public scrutiny. On March 26, 2007, M2Z apparently filed a "Request for Confidential Treatment" to provide "proof of such assurances" to the Commission. The request has not yet been made publicly available for interested parties to review, even in redacted form. NetfreeUS and others have had no opportunity to review the request to determine whether the request is filed properly and on proper grounds.<sup>33</sup> As a result, there remains significant doubt regarding M2Z's financial commitment and wherewithal to construct M2Z's "grand undertaking." NetfreeUS believes that the prospect of awarding a nationwide broadband license to an applicant requires full disclosure of the applicant's financial condition and funding sources.<sup>34</sup>

Given the questions about M2Z's own financial standing and its apparent attempt to blindfold participants in this proceeding, it is hypocritical for M2Z to challenge NetfreeUS's financial qualifications.<sup>35</sup> NetfreeUS's business plan is predicated on developing a network of networks by entering into leases with qualifying local providers (including municipalities, entrepreneurs and other local interests) to help spread the network capital expenditures and the associated risks among many lessees. NetfreeUS does not intend to itself build and deploy a

---

<sup>32</sup> See Consolidated Motion at 45.

<sup>33</sup> Section 0.459 of the Commission's Rules specifies minimum requirements for showings offered in support of a request for confidential treatment of materials submitted to the Commission. See 47 C.F.R. §0.459.

<sup>34</sup> To this end, concurrently with the instant Opposition, NetfreeUS is filing a Freedom of Information Act Request requesting an opportunity to review and comment on the Request for Confidential Treatment.

<sup>35</sup> See Consolidated Motion at 48.

nationwide network but rather to facilitate new entry among the many who wish to provide service and to arrange for advertising revenue opportunities that would be shared with local operators. Thus, NetfreeUS does not itself require the large up-front capital expenditure required of a single-provider network service like M2Z proposes.

Moreover, unlike M2Z's cloak of confidentiality for its financial stakeholders and funding sources, NetfreeUS is subject to myriad disclosure obligations for the company's financial condition. NetfreeUS's parent, Speedus Corp. ("Speedus"), is a publicly traded company subject to the same disclosure requirements and federal securities laws as any other publicly traded company. NetfreeUS's financials are available for public scrutiny at any time.

### **III. M2Z'S OBJECTIONS TO NETFREEUS'S BUILD-OUT COMMITMENTS ARE WITHOUT MERIT.**

While NetfreeUS proposes building out its WPB service based on well-established Commission "substantial service" rules,<sup>36</sup> M2Z dismisses as "vague" and "subjective" NetfreeUS's proposed safe harbors for demonstrating "substantial service."<sup>37</sup> In so doing, M2Z apparently attempts to convince the Commission that its long-standing construction rules for EBS, BRS, WCS, Local Multipoint Distribution Service ("LMDS") and other wireless services<sup>38</sup>

---

<sup>36</sup> In the NetfreeUS Application, NetfreeUS has agreed to a license condition that would require the provision of substantial service to at least 50 percent of the nation's 734 Cellular Market Areas (CMAs) within four years of initial license grant, to 75 percent of the nation's CMAs within six years of license grant and 95 percent of the nation's CMAs within 10 years of license grant. "Substantial service" could be demonstrated by these deadlines through certain safe harbors. NetfreeUS will commit to a license condition that would require NetfreeUS to maintain a database of WAPs to identify areas where service is available. The database would be uploaded on a weekly basis as new WAPs are deployed. *See* NetfreeUS Application at 12.

<sup>37</sup> *See* Consolidated Motion at 24.

<sup>38</sup> *See, e.g.*, 47 C.F.R. 527.14 (requiring BRS and EBS licensees to provide substantial service to licensed areas by May 1, 2011); 47 C.F.R. §27.13-27.14 (requiring WCS to provide substantial service to licensed areas within 10 years of initial license grant); 47 C.F.R. 5101.1011 (requiring

cannot be trusted in deployment of new broadband services. This effort merely continues M2Z's pattern of presumptively creating standards that only it can meet, ignoring the widespread adoption of "substantial service" standards for many wireless services. M2Z provides no compelling reason why the Commission should depart from its tried-and-true policies.

While M2Z states that NetfreeUS's proposed buildout timetable "will provide for a significantly slower rollout of broadband services than M2Z's" service,<sup>39</sup> this is not the case. As noted above, because WPB is predicated on market-opening principles and secondary-market mechanisms, NetfreeUS anticipates that the deployment will occur on a much faster scale than the minimum requirements proposed in the NetfreeUS Application.<sup>40</sup> NetfreeUS has proposed substantial service guidelines so that the Commission may use existing benchmarks and interpretations to analyze NetfreeUS's performance. These minima are proposed due to the transactions costs associated with entering into the leases required for deployment of WPB nationwide – transactions costs that M2Z does not propose to bear because it seeks to build out and control its nationwide network alone. Any such delays compared to the M2Z proposal are outweighed by the new competition created as a result of allowing entrepreneurs and local interests to enter the marketplace for broadband services.

Furthermore, while M2Z disparages the service history of NetfreeUS parent Speedus in an effort to conjure enough "operational challenges" to give the Commission pause in

---

LMDS licensees to provide substantial service to licensed areas within 10 years of initial license grant).

<sup>39</sup> See Consolidated Motion at 24.

<sup>40</sup> Accordingly, to the extent that M2Z characterizes NetfreeUS's public safety commitments as "comparatively limited in scale and scope given the significantly slower rollout proposed by NetfreeUS and the fact that most of the network needs to be constructed and deployed by third parties," *see* Consolidated Motion at 30, these arguments are misplaced. NetfreeUS's proposed "override code" would be available to public safety officials at all times, irrespective of whether the WAPs are owned by NetfreeUS or a third-party lessee. Moreover, any public-safety entity in need of such spectrum could enter into a lease with NetfreeUS to control their own WAPs.

considering the construction commitments in the NetfreeUS Application,<sup>41</sup> M2Z's transparent efforts ring hollow. Speedus affiliate SpeedUSNY.com, L.P. ("SpeedUSNY") recently demonstrated that it has met its requirements to provide "substantial service" during its license term for its pioneering LMDS license in the New York metropolitan area.<sup>42</sup> As demonstrated therein, SpeedUSNY complied with these standards and assumed enormous business and financial risks even though the lack of commercially viable broadband equipment from third parties hindered SpeedUSNY's ability to provide broadband service on the scale initially intended.

The lack of such LMDS equipment, however, plainly has no relevance to services proposed in the NetfreeUS Application. NetfreeUS is proposing deployment of nationwide WPB service based on equipment that is commercially available on a widespread and economically rational basis. WPB service would use different spectrum than LMDS, and would facilitate connectivity based on well-settled and widely adopted Wi-Fi standards that will encourage manufacturers to develop competitively priced CPE. Accordingly, any "operational challenges" faced by SpeedUSNY in taking on the risk of being a spectrum pioneer for a new LMDS simply are irrelevant here. To the contrary, SpeedUSNY's investment of \$70 million (in 1996 dollars, a mere fraction of the value of that investment today) to try and create a brand new service demonstrate a commitment to constructing facilities in a timely manner and adjusting service to meet consumer demand over time – precisely the qualities the Commission should favor. The Commission should reject M2Z's efforts for what they are – a disingenuous

---

<sup>41</sup> See Consolidated Motion at 64-70.

<sup>42</sup> See FCC Form 601 (Required Notification) of SpeedUSNY.com, L.P., FCC File No. 0002939453 (filed March 7, 2007).

campaign to discredit NetfreeUS and distract the Commission from the many public interest benefits proposed by NetfreeUS.

**Conclusion**

As it pertains to the NetfreeUS Application, the Commission must dismiss or deny the Consolidated Motion. While M2Z attempts to create its own yardstick for measuring other proposals, these efforts are misplaced, without merit and should be stricken. As described herein, the NetfreeUS Application offers many public interest benefits that are superior to M2Z's, and dismissal of the NetfreeUS Application is unwarranted. Instead, the Commission should afford due consideration to the relative merits of the NetfreeUS Application, should issue a Public Notice announcing the acceptance for filing of the NetfreeUS Application and should reject M2Z's efforts to seek dismissal of NetfreeUS's meritorious proposal.

Respectfully submitted,

**NETFREEUS, LLC**

By: 

Stephen E. Coran  
Jonathan E. Allen  
Rini Coran, PC  
1615 L Street, NW, Suite 1325  
Washington, D.C. 20036  
(202) 296-2007  
*Counsel to NetfreeUS, LLC*

April 10, 2007

## Certificate of Service

I, Kenneth B. Wolin, a legal assistant with the law office of Rini Coran, PC, hereby certify that on this 10th day of April, 2007, I caused a copy of the foregoing Opposition of NetfreeUS, LLC to Consolidated Motion of M22 Networks, Inc. to Dismiss Alternative Proposals to be delivered by First-class United States mail to the following, unless otherwise noted:

Chairman Kevin J. Martin"  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Michael J. Copps\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Deborah Taylor Tate\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Robert M. McDowell\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Daniel Gonzalez, Chief of Staff\*  
Office of Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Fred B. Campbell, Jr. \*  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Erika Olsen., Acting Legal Advisor"  
Office of Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Bruce Gottlieb, Legal Advisor"  
Office of Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Barry Ohlson, Legal Advisor"  
Office of Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Aaron Goldberger, Legal Advisor"  
Office of Commissioner Deborah Taylor Tate  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Angela Giancarlo, Legal Advisor"  
Office of Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Samuel Feder, General Counsel"  
Office of General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Joel Taubenblatt, Chief\*  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Catherine Bohigian, Chief\*  
Office of Strategic Policy and Planning Analysis  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Cathy Massey \*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Peter Daronco\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

David Hu\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Walter Strack\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Jennifer Tomchin\*  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

W. Kenneth Ferree  
Erin L. Dozier  
Christopher G. Tygh  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, N.W.  
11<sup>th</sup> Floor East  
Washington, D.C. 20005

Pantelis Michalopoulos  
Brendan Kasper  
Petra Vorwig  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Milo Medin, Chairman  
M2Z Networks, Inc.  
2800 Sand Hill Road  
Suite 150  
Menlo Park, CA 94025

Uzoma C. Onyeije  
Vice President, Regulatory Affairs  
M2Z Networks, Inc.  
2000 North 14<sup>th</sup> Street  
Suite 600  
Arlington, VA 22201

John T. Scott III  
Verizon Wireless  
1300 Eye Street, NW  
Suite 400 West  
Washington, DC 20005

Nancy J. Victory  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
*Counsel to Verizon Wireless*

George E. Kilguss  
Towerstream Corporation  
Tech 2 Plaza  
55 Hammarlund Way  
Middletown, RI 02842

Gregory Whiteaker  
Donald L. Herman, Jr.  
Bennet & Bennet, PLLC  
10 G Street, NE  
Suite 710  
Washington, DC 20002  
*Counsel to TowerStream Corporation and The Rural Broadband Group*

Stephen C. Liddel  
Open Range Communications, Inc.  
6465 South Greenwood Plaza Blvd.  
Centennial, CO 80111

Joe D. Edge  
Drinker, Biddle & Reath, LLP  
1500 K Street, NW  
Suite 1100  
Washington, DC 20005  
*Counsel to Open Range Communications, Inc.*

Julie M. Kearney  
Consumer Electronics Association  
2500 Wilson Boulevard  
Arlington, VA 22201

Linda Kinney  
Bradley Gillen  
EchoStar Satellite L.L.C.  
1233 20th Street, NW  
Washington, DC 20036-2396

Steve B. Sharkey  
Motorola, Inc.  
1455 Pennsylvania Ave., NW  
Suite 900  
Washington, DC 20004

Russell D. Lukas  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Boulevard  
Suite 1500  
McLean, VA 22102  
*Counsel to McElroy Electronic Corporation*

Thomas Sugrue  
Kathleen O'Brien Ham  
Sara Leibman  
T-Mobile USA, Inc.  
401 9th Street, NW  
Suite 550  
Washington, DC 20004

Andrew Kreig  
The Wireless Communications Association  
International, Inc.  
1333 H Street, NW  
Suite 700 West  
Washington, DC 20005

Paul K. Mancini  
Gary L. Phillips  
Michael P. Goggin  
David C. Jatlow  
AT&T Inc.  
1120 20th Street, NW  
Washington, DC 20036

Brian Peters  
Director, Government Relations  
Information Technology Industry Council  
1250 Eye Street, NW  
Suite 200  
Washington, DC 20005

David J. Kaufman  
Brown Nietert & Kaufman, Chartered  
1301 Connecticut Ave., NW  
Suite 450  
Washington, DC 20036  
*Counsel to Commnet Wireless, LLC*

\* denotes service by electronic mail

Louis Tomasetti  
Comet Wireless, LLC  
400 Northridge Road  
Suite 130  
Atlanta, GA 30350

Jennifer McCarthy  
Nextwave Broadband Inc.  
12670 High Bluff Drive  
San Diego, CA 92130

Robert J. Irving Jr.  
Leap Wireless International, Inc.  
10307 Pacific Center Court  
San Diego, CA 92121

James H. Barker  
Latham & Watkins, LLP  
555 11th Street, NW  
Suite 1000  
Washington, DC 20004  
*Counsel to Leap Wireless International, Inc.*

Michael F. Altschul  
Christopher Guttman-McCabe  
Paul W. Garnett  
Brian M. Josef  
CTIA- The Wireless Association  
1400 16<sup>th</sup> Street, NW Suite 600  
Washington, DC 20036

Best Copy & Printing, Inc. \*  
Portals II  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554

  
Kenn Wolin