

May 9, 2007

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: ***M2Z Networks, Inc.***  
***WT Docket Nos. 07-16 and 07-30***  
***Written Ex Parte Presentation***

Dear Ms. Dortch:

NetfreeUS, LLC (“NetfreeUS”), applicant for a new nationwide wireless broadband service authorization in the 2155-2175 MHz band,<sup>1</sup> hereby comments on an two recent *ex parte* presentation filed by M2Z Networks, Inc. (“M2Z”) in the above-referenced proceedings.<sup>2</sup>

As a first point of contention, M2Z reiterates its presumption that that any competing application that does not meet or exceed each specific “benefit” cited by M2Z is necessarily inferior.<sup>3</sup> As NetfreeUS stated elsewhere in opposing M2Z’s request to dismiss the NetfreeUS Application:

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.<sup>4</sup>

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<sup>1</sup> See NetfreeUS Application for License and Authority to Provide Wireless Public Broadband Service in the 2155-2175 MHz Band, WT Dockets 07-16 and 07-30, filed March 2, 2007 (“NetfreeUS Application”). No file number has been assigned to the NetfreeUS Application.

<sup>2</sup> See Notification of Written *Ex Parte* Presentation, WT Docket Nos. 07-16 and 07-30, dated April 19, 2007 (“Ex Parte Notice”). See also M2Z Networks, Inc. *Ex Parte* Response to Replies and Oppositions, WT Docket Nos. 07-16 and 07-30, dated April 16, 2007 (“Ex Parte Response”).

<sup>3</sup> *Id.* at 31 (claiming that M2Z’s application “is clearly superior in terms of its public interest and consumer welfare benefits when compared to the other proposals”).

<sup>4</sup> Opposition of NetfreeUS, LLC to Consolidated Motion of M2Z Networks, Inc. to Dismiss Alternative Proposals, WT Docket Nos. 07-16 and 07-30, filed April 10, 2007 (“NetfreeUS Opposition”), at 2.

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Without any such determination by the Commission, any comparison of the competing applications is at best premature and maybe even irrelevant. Notwithstanding, M2Z undertakes a self-serving, cursory review of the competing applications,<sup>5</sup> dismissing the competing applications as “copy-cat proposals”<sup>6</sup> yet arguing that they do not favorably compare to M2Z’s application.<sup>7</sup>

If and when appropriate, NetfreeUS will discuss the relative merits of the competing applications. However, for now, NetfreeUS simply desires to correct the inaccuracies and sweeping generalities in M2Z’s *ex parte* presentation, which ignore or mischaracterize the public interest benefits contained in the NetfreeUS Application.

*Free Service* – M2Z acknowledges that NetfreeUS proposes to provide free broadband service, but implies that NetfreeUS’s reliance on lessees to construct and operate local systems is somehow discrediting.<sup>8</sup> To the contrary, the “secondary market” plan NetfreeUS proposed will facilitate expeditious build-out, promote localism and enable new entry.<sup>9</sup> Further, M2Z has provided no details on the extent to which its proposed service would be truly “free” in light of its desire to also provide a second class of undefined “premium” service to an unspecified number of persons.”

*Build-out Commitments* – M2Z describes NetfreeUS’s build-out proposal as “more modest” than M2Z’s.<sup>11</sup> NetfreeUS’s proposal to provide “substantial service” to 95 percent of the Cellular Market Areas (“CMAs”) is designed to allow the local operators to be responsive to demand in each CMA, rather than having a national carrier such as M2Z simply transmit a signal that covers areas where it may choose not to offer service.

*Universal Service Fund* – M2Z alleges that NetfreeUS has not matched M2Z’s commitment to not rely on universal service funding for system construction and operation. M2Z’s promise is empty given its own acknowledgement that no existing statute or rule allows broadband providers to access USF money.<sup>12</sup>

*Public Safety Commitments* – M2Z qualifies its commitment to make its network available to public safety entities for free in stating that it will do so “at no *recurring*

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<sup>5</sup> See Ex Parte Notice at 5-10.

<sup>6</sup> Ex Parte Response at 10.

<sup>7</sup> See Ex Parte Notice at 6; Ex Parte Response at 16.

<sup>8</sup> See Ex Parte Notice at 6.

<sup>9</sup> See NetfreeUS Application at 5, 13-15 & 22.

<sup>10</sup> See NetfreeUS Opposition at 6-7.

<sup>11</sup> Ex Parte Notice at 6.

<sup>12</sup> See M2Z’s Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band, filed May 5, 2006, as amended on September 1, 2006, at 29 (“M2Z Application”).

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charge.”<sup>13</sup> NetfreeUS will make its service available to governmental and public safety entities entirely for free and will allow pre-emption in emergencies.

*Spectrum Usage Fee* – M2Z agrees that NetfreeUS would pay five percent of its gross revenues to the U.S. Treasury, but argues that NetfreeUS “did not offer a clear business model.”<sup>14</sup> NetfreeUS observes that M2Z is offering to contribute 5 percent of only its subscription level service, presumably excluding any advertising revenues it generates. Moreover, M2Z has disclosed precious little about its business model, especially its so-called “premium” service,” and is in no position to criticize NetfreeUS’s advertiser-supported business model.

*New Entrant* – M2Z’s characterization of NetfreeUS as an “incumbent[] with substantial wireless holdings” is both untrue and misses the point. First, describing NetfreeUS as an “incumbent” because SpeedUSNY.com, L.P., NetfreeUS’s affiliate, holds an LMDS license is misleading. Second, characterizing the one LMDS license held by SpeedUSNY.com, L.P. as a “substantial wireless holding” is a gross misstatement. Third, NetfreeUS, unlike any other applicant, is relying on local municipalities, entrepreneurs and new entrants to provide broadband services, and is limiting itself to 50 wireless access points to the end user. Grant of the M2Z Application would create one new entrant – M2Z – whereas grant of the NetfreeUS Application would create a large number of new entrant opportunities.

*Spectrally Efficient Proposal* – M2Z proposes to “develop and deploy an innovative beam forming technology” with “carefully chosen technologies,” yet questions NetfreeUS’s ability to reprogram existing devices.<sup>15</sup> NetfreeUS believes that downloading software is much easier to accomplish than building an entire network from the ground up using new and untested technology.

*Financial Qualifications* – M2Z’s suggestion that other applicants may lack sufficient funding can be given no credibility in light of M2Z’s confidential submission of financial information filed 10 months after its application was filed.<sup>16</sup> NetfreeUS is confident that funds to construct its system will be available through the ability of its public company parent to access funds and the costs that its lessees will absorb.

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<sup>13</sup> Ex Parte Notice at 7 (emphasis added).

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

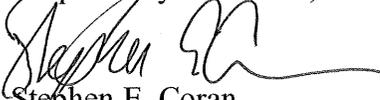
<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> Until the Commission intervened, M2Z did not even make public its *request* for confidential treatment of its amended financial showing, causing NetfreeUS to file a request for disclosure under the Freedom of Information Act. See Freedom of Information Act Request, filed April 10, 2007 (FOIA Control No. 2007-258); Letter dated May 3, 2007 from Joel D. Taubenblatt, Chief, Broadband Division, to W. Kenneth Ferree, *et al.*, dated May 3, 2007; Letter dated May 8, 2007 from Erin L. Dozier to Marlene H. Dortch, Secretary, and attachments thereto.

In sum, what may be true of other applications is not true of the NetfreeUS Application. NetfreeUS disagrees with M2Z's transparent efforts to unilaterally set the standards by which the competing applications will be considered. But if the Commission nevertheless accepts M2Z's argument that it should "make the common-sense decision to use M2Z's proposal as a benchmark against which the alternative proposals should be judged,"<sup>17</sup> then the Commission must not be persuaded by M2Z's mischaracterizations and disregard of the benefits proposed by NetfreeUS.

Pursuant to Section 1.1206(b) of the Commission's Rules, this letter is being submitted via the Commission's Electronic Comment Filing System for inclusion in the public record of this proceeding. Please contact the undersigned counsel if there are any questions concerning this notice.

Respectfully submitted,



Stephen E. Coran  
Counsel to NetfreeUS, LLC

cc: Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Fred Campbell  
Cathleen Massey  
Joel D. Taubenblatt  
Peter Daronco  
Jennifer Tomchin

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<sup>17</sup> Ex Parte Response at 31.