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May 17, 2007

**VIA ECFS**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re: WT Docket Nos. 07-16 and 07-30**

Dear Ms. Dortch:

On May 16, 2007, M2Z Networks, Inc. ("M2Z") filed the attached comments in response to the Commission's "Section 706" Notice of Inquiry in GN Docket No. 07-45. Because the comments discuss issues relevant to the above-referenced pending proceedings, we also are filing the comments in each of these proceedings.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,

/s/

Erin L. Dozier, Esq.  
*Counsel for M2Z Networks, Inc.*

Enclosure

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

In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications Capability to )  
All Americans in a Reasonable and Timely ) GN Docket No. 07-45  
Fashion, and Possible Steps to Accelerate )  
Such Deployment Pursuant to Section 706 of )  
the Telecommunications Act of 1996 )

To: The Commission

**COMMENTS OF M2Z NETWORKS, INC.**

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May 16, 2007

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## **Executive Summary**

Got broadband? For too many Americans today, the answer is, “no.” Too many live in neighborhoods that broadband networks have yet to reach. Too many lack the financial resources to keep up with the high cost of recurring monthly charges that are unrestrained by true competition. Too many have been promised broadband access for too long, only to have those promises unfulfilled. Section 706 of the 1996 Act demands of the Commission that it ask “all Americans” the question, “got broadband”? And unless the response is a resounding, “yes,” the Commission is obliged to take immediate action to accelerate broadband deployment “by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”

The time has come, therefore, to take action. No one with even passing familiarity with the United States broadband market would gainsay that there are two high hurdles to the realization of the goals in Section 706: accessibility and affordability. Moreover, whatever is to be done on these accounts must be done quickly. The U.S. cannot afford to run back of the field in the race to connect all Americans to the broadband Internet.

Fortunately, a solution is nigh. M2Z has applied for a license to deploy and operate a free, nationwide wireless broadband network, and to complete construction of that network on an accelerated buildout schedule. M2Z’s application provides the Commission with an opportunity for immediate action that would both encourage broadband investment and promote competition. The Commission can, as a result, with a stroke of its pen, establish a broadband baseline for the U.S. upon which to build the advanced networks of the future. The M2Z baseline will ensure that broadband services

will be available and affordable for all Americans so that, when the Commission completes its Section 706 inquiry in coming years, the report submitted to Congress will reflect a broadband market characterized by widespread deployment, competition, innovation, high quality services, reasonable prices, and therefore, high rates of adoption.

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

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All Americans in a Reasonable and Timely ) GN Docket No. 07-45  
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To: The Commission

**COMMENTS OF M2Z NETWORKS, INC.**

M2Z Networks, Inc. (“M2Z”), by its attorneys, respectfully submits these comments in response to the Notice of Inquiry (“NOI”) released by the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the current status of the deployment of advanced telecommunications capability in the United States and ways that the Commission can accelerate such deployment.<sup>1</sup> M2Z is an applicant for a license to provide a free, nationwide broadband Internet access service, known as the National Broadband Radio Service (“NBRSS”).<sup>2</sup> M2Z

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, FCC 07-21 (rel. Apr. 16, 2007) (“NOI”).

<sup>2</sup> *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) (“M2Z Application”). *See also Petition of M2Z Networks, Inc. for Forbearance* in Docket 07-30 at 25-27 (filed Sept. 1, 2006) (“*Forbearance Petition*”). Both the Application and Forbearance Petition have been placed on public notice, and a full record has developed in each proceeding. *See Wireless Telecommunication 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 (Wireless Telecom. Bur. rel. Jan. 31, 2007); *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* (footnote continued)

considers the NOI an important fact-gathering step as the Commission assesses the status of its obligation to ensure deployment of advanced telecommunications capability to “all Americans” in a “reasonable and timely fashion.”<sup>3</sup> That this proceeding was initiated in tandem with a Notice of Inquiry regarding broadband industry practices<sup>4</sup> and a Notice of Proposed Rulemaking concerning broadband data collection,<sup>5</sup> demonstrates the strong commitment of the Commission to assessing the status of virtually all aspects of the broadband market and evaluating what it can do to promote broadband Internet access for all Americans.<sup>6</sup> The concurrent consideration of these issues provides the Commission with an unprecedented opportunity to identify barriers to deployment and take corrective measures as appropriate.

As M2Z discusses below, many of the issues raised in the NOI also have been addressed by commenters in the companion FCC proceedings evaluating M2Z’s Application and Forbearance Petition. The record in these proceedings demonstrates that broadband deployment is falling short of the statutory standard in terms of availability, affordability, and the timeliness of deployment, triggering the Commission’s obligation to accelerate deployment of affordable

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2155-2175 MHz Band, Public Notice, WT Docket No. 07-30, DA 07-736, (Wireless Telecom. Bur. rel. Feb. 16, 2007).

<sup>3</sup> See § 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”), 47 U.S.C. § 157.

<sup>4</sup> *Broadband Industry Practices*, WC Docket No. 07-52, FCC 07-31 (rel. Apr. 16, 2007).

<sup>5</sup> *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, FCC 07-17 (rel. Apr. 16, 2007) (“*Broadband Data NPRM*”). M2Z also intends to file comments identifying ways that the Commission can improve data collection in response to this NPRM.

<sup>6</sup> See *NOI, Broadband Data NPRM*, Separate Statement of Chairman Kevin J. Martin (“Encouraging the deployment of affordable broadband services to all Americans is a top priority of mine and of the Commission . . . the items we adopt today will provide additional important progress towards our goal of universal affordable broadband access for Americans.”) See also Federal Communications Commission, *Strategic Plan 2006-2011* at 5-6 (2006) (among other objectives, the Commission stated that it “shall promote the availability of broadband to all Americans” and that it “shall encourage and facilitate an environment that stimulates investment and innovation in broadband technologies and services.”)

broadband services. One of the means by which the Commission can swiftly establish a national baseline for broadband Internet access in the United States is by granting M2Z's application to provide the National Broadband Radio Service (the "M2Z Application" or "Application"). Introduction of this free broadband Internet access service on a nationwide basis will, by removing barriers to entry into the broadband marketplace for a new entrant and by promoting competition in the broadband marketplace, dramatically accelerate deployment of affordable broadband service to all Americans.

### **I. The Section 706 Analysis Is Not a Mere Academic Inquiry**

Section 706 of the 1996 Act provides that: "The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability *to all Americans* (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."<sup>7</sup> The statute requires, therefore, not simply a passive review by the Commission of the state of U.S. broadband deployment, but positive action by the Commission to foster rapid and universal deployment of advanced services. Indeed, Congress displayed its concern that advanced capability be available to every segment of our society by using the broadest phrases and most sweeping language in Section 706. Thus, to the extent that there are ethnic groups,<sup>8</sup> geographic

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<sup>7</sup> See 1996 Act § 706(a).

<sup>8</sup> See, e.g., *Comments of the Latino Coalition* in Docket Nos. 07-16 & 07-30 at 1 (filed Mar. 22, 2007) ("*Latino Coalition Comments*") ("The National Center for Education Statistics report that only 44% of Hispanic children use the Internet at school, compared to 59% of all students... Moreover, statistics that (footnote continued)

areas,<sup>9</sup> or income classes<sup>10</sup> for which and to whom deployment is not reasonable and timely, the Commission must, consistent with Section 706(b), “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>11</sup>

## **II. The Current State of U.S. Broadband Deployment Is Unacceptable**

In the Notice of Inquiry, the Commission can provide only a brief adumbration of the many benefits that flow from the use and availability of advanced services.<sup>12</sup> The actual nature of the impact of broadband services on the American economy and the American people is far broader and deeper than that which can be captured in a few pages of text. The point need not be belabored here. Suffice it to say that the growth of broadband services, as halting and sporadic as it has been, has already played a vital role in our nation’s economy. Companies, large and small, depend on advanced services to run various facets of their businesses more efficiently than ever before possible. New jobs and wholly new lines of business have been created as part of the broadband revolution, employees have discovered new, more flexible ways of working, students can access with a few key strokes more information than the most diligent could have found in the world’s greatest libraries a generation ago, and every aspect of our daily lives has acquired a

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are extremely disconcerting to The Latino Coalition show that less than 15% of Latino owned businesses have an Internet presence at all, and less than 5% offer actual online e-commerce.”).

<sup>9</sup> See, e.g., Pew Internet & American Life Project, *Home Broadband Adoption 2006* at 8 (May 2006) (rural areas are most likely to have only one choice of broadband provider); Kostos Liopiros, *M2Z Networks, Inc.: The Value of Public Interest Commitments and the Cost of Delay to American Consumers* in WT Docket Nos. 07-16 & 07-30 at 5 (filed Mar. 19, 2007) (“*Liopiros Study*”) (“In many rural areas only a single broadband provider is available . . .”).

<sup>10</sup> See, e.g., Pew Internet & American Life Project, *Home Broadband Adoption 2006* at 11 (May 2006) (households with annual incomes of less than \$30,000 are significantly less likely to have broadband Internet access than households with annual incomes of over \$75,000).

<sup>11</sup> See 1996 Act § 706(b).

<sup>12</sup> *NOI* ¶¶ 2-5.

new shade of meaning as a result of advanced services.<sup>13</sup> Many have observed that consumers who have broadband Internet access at home use the Internet for a greater quantity and variety of tasks and pursuits as compared to those who have only dial-up access or those with nothing more than sporadic access at schools and libraries. Those who enjoy broadband access at home are more likely to become creators and managers of online content, to use the Internet for a broader range of information queries, and to engage in multiple Internet activities on a daily basis. This highly personalized, more varied, and more extensive Internet usage by those with broadband has significant ramifications for our nation's economy and global competitiveness.

Access to broadband services is, in point of fact, no longer a luxury, but a necessity. An America that will maintain its global economic strength, and live up to its high ideals of equality and opportunity for all, must be an America in which all people, in all geographic areas and no matter their economic or social status, have access to affordable broadband services. Yet, today, realization of that objective seems a distant dream. However, the Commission can take decisive action to close the gap between vision and reality.

In the substantial record compiled in companion proceedings relating to M2Z's license application, it is evident that there are great disparities in broadband deployment and access.<sup>14</sup> In

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<sup>13</sup> See *Amicus Curiae Comments of the Minority Media and Telecommunications Council*, WT Docket Nos. 07-16 & 07-30 (filed Mar. 1, 2007) ("MMTC Comments") (relates the necessity of readily available broadband access for small and independent businesses to remain successful in an increasingly electronic world); *Comments of the National PTA* in 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* in 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); *Educause Comments* (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.").

<sup>14</sup> See U.S. Department of Education, Institute of Educational Sciences, *Computer and Internet Use by Students in 2003: Statistical Analysis Report* at 15 (Nov. 2006) (78% of White households use computers (footnote continued)

some areas, notably wealthy, urban, and suburban centers, great strides have been made by commercial carriers to provide high-speed, advanced services to customers willing and able to afford non-trivial recurring monthly charges. In other areas of the country, and for certain economically challenged demographic groups, broadband services are less available. To remedy this inequity, three facets of the problem must be addressed: scope of buildout (accessibility), price of service (affordability), and speed of deployment (alacrity).

#### **A. Broadband Is Not Sufficiently Accessible to All Americans**

In the NOI, the Commission has asked whether common ownership of wireline broadband facilities and wireless networks is hindering the development of the broadband market.<sup>15</sup> There can be little doubt but that it is. Today, broadband services in most markets are dominated by two operators – the large incumbent wireline communications carrier and the entrenched franchised cable company.<sup>16</sup> Even this is a “best-case” description, because many

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at home, compared to 48% of Blacks, 46% of Hispanics, and 43% of American Indians); *see also* Pew Internet & American Life Project, *Home Broadband Adoption 2006* at 11 (May 2006) (Of those households making under \$30,000 a year, only 21% have broadband access. Fully 68% of those making over \$75,000 a year have broadband. Urban and suburban communities subscribe to broadband Internet at rates of 44% and 46%, respectively. On the other hand, in rural areas subscribership rates total only 25%.); *Id.* at 8 (“Rural areas are the places with the highest incidence of having one high-speed service available to them.”).

<sup>15</sup> *See* NOI ¶ 12 (“Has development of the wireless broadband marketplace been affected by ownership of wireless companies by companies with substantial wireline broadband and public switched telephone network (PSTN) facilities? Do these cross-owned wireless companies offer different services or service bundles than wireless companies not controlled by or affiliated with a wireline carrier?”).

<sup>16</sup> *Forbearance Petition* at 25-27 (filed Sept. 1, 2006) (while the market for broadband access remains limited, other telecommunications markets are burgeoning.); *The Consumer Welfare Impact of M2Z Network Inc.’s Wireless Broadband Proposal of Simon Wilkie* in WT Docket Nos. 07-16 & 07-30 at 9 (filed Mar. 2, 2007) (“*Wilkie Consumer Welfare Study*”) (states that 94 percent of broadband providers in the U.S. are cable and telephone companies.); Simon Wilkie, *Spectrum Auctions are not a Panacea: Theory and Evidence of Anti-Competitive and Rent-Seeking Behavior in FCC Rulemakings and Auction Design* in WT Docket Nos. 07-16 & 07-30 at iv, 15-18, 48 (filed Mar. 26, 2007) (“*Wilkie Spectrum Auctions Study*”) (“The residential broadband access market is effectively a duopoly where cable operators compete with incumbent LECs. As such, competitive market forces are stymied resulting in higher prices, less investment and less innovation to bring consumers better and more affordable services.”); *Latino Coalition Comments* at 1; *Comments of Director Ron Jones of the Tennessee* (footnote continued)

rural areas have only a single broadband provider and nearly one-tenth of all households lack access to wired broadband services.<sup>17</sup> Not surprisingly, therefore, many of the market failures characteristic of duopoly markets are found in the U.S. broadband market, including limited innovation, restrained pricing competition, and inordinate focus on high-profit, low-risk customers.<sup>18</sup> That is, a duopoly market is, by its very structure, not well suited to meeting the goals articulated in Section 706.<sup>19</sup>

The addition of wireless broadband carriers to the market has the potential to break the duopoly and foster more vibrant competition. In addition, and most importantly perhaps, because wireless networks are not constrained by the same physical limitations of wireline and

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*Regulatory Authority* in WT Docket No. 07-16 at 2-3 (filed Mar. 1, 2007) (“*TRA Comments*”) (“the benefits of the expansion of broadband service access and broadband service competition, particularly in monopoly and duopoly markets, cannot be overstated”); *Liopiros Study* at 5-8 (“*Liopiros Study*”).

<sup>17</sup> Cable modem service is available to about 89% of all U.S. households. *See Liopiros Study* at 5 (citing data collected from cable operators on FCC Form 325). The overall availability of DSL services is considerably less, even though telephone service is available to over 95% of the households in the U.S. The Organisation for Economic Co-operation and Development (“OECD”) estimates that 84% percent of U.S. telephone lines are DSL-*capable*—actual availability varies depending on technical characteristics. *Id.* (citing OECD Communications Outlook 2005, Organisation for Economic Co-operation and Development). OECD provides a setting where member countries that accept the principles of representative democracy can compare policy experiences, seek answers to common problems, identify good practice, and coordinate domestic and international policies. The mandate of the OECD is very broad, as it covers all economic, environmental, and social issues.

<sup>18</sup> *See, e.g.,* Hannibal Travis, “Wi-Fi Everywhere: Universal Broadband Access as Antitrust and Telecommunications Policy,” 55 *Am. U.L. Rev.* 1697, 1720-25 (discussing the cable-phone duopoly in the broadband market).

<sup>19</sup> *See MMTTC Comments* at 11 (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.”); *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); *TRA Comments* at 2-3 (“traditional broadband service providers, which dominate the residential broadband market today, have not been able to fully serve their legacy service areas” and fall far short of serving the 95% of the U.S. population that would be served by M2Z’s NBRS.)

cable systems, they hold great promise for reaching geographic areas and isolated regions that so far have been out of reach for landline broadband operators.

Unfortunately, however, the market reality is that, so long as the wireless networks are being built and operated by the same companies that control the wireline broadband facilities, it is unlikely that the full promise of these new technologies will be realized. As has been well-documented in the companion M2Z proceedings, dominant wireline carriers lack the incentive to construct wireless networks that might cannibalize their own customer base.<sup>20</sup> There is similarly little incentive for dominant incumbent operators to innovate in their wireless technologies or to expand service into underserved areas.

On the other hand, the deployment and operation of wireless networks by new entrants can have a dramatically positive effect on the functioning of the market. As the Commission itself has recognized, markets with three vibrant competitors function more efficiently and are better able to respond to consumer needs and desires than markets with only two players.<sup>21</sup> The Commission's focus should be, therefore, on facilitating the introduction into the broadband markets of a wireless broadband provider unaffiliated with either the large cable system operators or the entrenched incumbent wireline communications companies. Only then will the Commission see aggressive competition for customers who heretofore have been relegated to the role of spectator to the broadband revolution.

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<sup>20</sup> See *Forbearance Petition* at n.87 (“Incumbent broadband providers that offer cable modem or DSL service have little incentive to deploy a broadband wireless service that will compete with their own wireline offerings.”); *Wilkie Consumer Welfare Study* at 7; *Liopiros Study* at 7; *Wilkie Spectrum Auctions Study* at 20–21 (citing *In the Matter of Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134, ¶ 13 (2006)).

<sup>21</sup> *Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations); (Transferors) and EchoStar Communications Corporation (a Delaware Corporation); (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, ¶¶ 99-100 (2002).

## **B. Insufficient Competition in the Broadband Marketplace Makes Broadband Unaffordable for Many Americans**

Likewise, given the current duopoly in the broadband markets, there has been little evidence of vigorous price competition between the dominant players.<sup>22</sup> Consequently, the cost of advanced services remains an important barrier for many families and individuals, and it is the source of a growing “digital divide” between those who can afford the tools of economic success and those who cannot.<sup>23</sup> Pricing of broadband services is therefore relevant both to the ubiquity of access to advanced services and the reasonableness of that access.<sup>24</sup> Indeed, even those consumers who have discretionary resources may elect to forego broadband services in favor of other goods or services. In a truly competitive market, a broad range of products or services is available so that virtually every consumer need and desire is met. For example, there are 111.4 million television households in the U.S.—a nearly universal adoption rate.<sup>25</sup> This adoption is fueled by competition and consumer choice in the consumer electronics and video programming delivery markets. Available television receivers range from small, black-and-white analog sets

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<sup>22</sup> See *Forbearance Petition* at 25-26 (stating that “not only is DSL service proving to be little or no constraint on cable modem prices, as evidenced by recent events, [local exchange carriers] have little incentive to lower DSL prices” and discussing announcements by local exchange carriers that would not reduce the price of DSL service to reflect the Commission’s elimination of certain universal service contribution requirements).

<sup>23</sup> Federal Communications Commission, *Strategic Plan 2006-2011* at 6-7 (2006) (citing the retail price of broadband service as a factor that is impacting consumer decisions to adopt broadband service and affecting the Commission’s ability to achieve its objectives for broadband). See also *Latino Coalition Comments* at 1 (the cost of broadband Internet access remains high, which “forces low income Americans and small business owners to choose between the lesser of two evils: insufficient dial-up access or no connectivity at all. That is not a choice that any American should have to make, especially when there is a market-driven solution presented to the FCC that will provide broadband to all Americans.”)

<sup>24</sup> Indeed, the establishment of reasonable charges for services is at the core of the Commission’s very purpose. Congress charged the Commission with the obligation to regulate “commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at *reasonable charges*.” 47 U.S.C. ¶ 151 (emphasis added).

<sup>25</sup> Nielsen Media Research, *Nielsen Reports 1.1% increase in U.S. Television Households for the 2006-2007 Season* (Aug. 23, 2006).

that cost less than \$50.00 to large-screen, high-definition sets capable of receiving digital signals, which can cost several thousand dollars. The range of television services available is equally diverse. Consumers can watch a few channels via free over-the-air television or subscribe to a variety of packages containing literally hundreds of channels from multichannel video programming distributors (“MVPDs”).<sup>26</sup> Video programming is available for everyone—including those who can or will make only a one-time investment of \$50 or less, and those willing and able to pay recurring subscription fees and thousands of dollars for a set with the newest technology.

As scores of parties supporting M2Z’s license application have noted, M2Z’s proposed service will be free of recurring monthly charges and, therefore, universally affordable.<sup>27</sup> Not only will a free service allow even the most economically disadvantaged members of our society to reap the benefits of broadband access, it will make the broadband option essentially risk-free for those who would rather devote their discretionary resources to other goods and services.

Thus, by facilitating market entry by M2Z and/or other carriers offering free broadband services to the public, the Commission could directly address its obligation under Section 706 to ensure that charges for advanced services are reasonable. Indeed, one would expect that the advent of competition from a network offering free broadband services would impose greater

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<sup>26</sup> Almost all consumers can choose from among three MVPDs—with choice expanding rapidly as companies that have traditionally provided telephony and broadband enter the market. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶ 5 (2006) (“*Twelfth Annual Video Competition Report*”).

<sup>27</sup> 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.”); 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.).

price discipline and price competition on the market. That result alone would greatly advance the goals of Section 706.

**C. Greater Alacrity Is Needed to Meet the Aggressive Goals of Section 706**

Finally, it should not need to be said in mid-2007, but speed must now be the Commission's watch-word: speed to facilitate entry by competitors unaffiliated with the existing providers of broadband services, speed of competing network deployment, and speed of service initiation. The U.S. broadband market is the largest in the world, boasting over 58.1 million subscribers.<sup>28</sup> Yet OECD data suggest also that, rather than closing the gap with the rest of the world on access to advanced services, the United States is continuing to lag and may even be losing ground.<sup>29</sup> Section 706 demands "timely" deployment. The economic reality for the United States is that time has run out—"timely" means now.

In the NOI, the Commission has asked whether consumers in rural and other hard-to-serve areas, low-income consumers, individuals living on tribal lands and in the U.S. territories, elementary and secondary schools and classrooms, and persons with disabilities are receiving reasonable and timely access to broadband services, and whether they enjoy similar choices of technologies, tiers of service, and rates as do other Americans.<sup>30</sup> Many of these Americans are,

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<sup>28</sup> See OECD Broadband Statistics to December 2006, available at: <http://www.oecd.org/sti/ict/broadband> (viewed May 14, 2007). See also NOI, Separate Statement of Chairman Kevin J. Martin at 1.

<sup>29</sup> The latest OECD data rank the United States 15<sup>th</sup> in broadband subscribership, based on data available through December 2006. See OECD Broadband Statistics to December 2006, available at: <http://www.oecd.org/sti/ict/broadband> (viewed May 14, 2007). The rankings for data through June 2006 placed the U.S. at 12<sup>th</sup> in broadband subscribership. See OECD Broadband Statistics to June 2006, available at: [http://www.oecd.org/document/9/0,2340,en\\_2649\\_37441\\_37529673\\_1\\_1\\_1\\_37441,00.html](http://www.oecd.org/document/9/0,2340,en_2649_37441_37529673_1_1_1_37441,00.html) (viewed May 14, 2007).

<sup>30</sup> See NOI ¶¶ 25-29.

unfortunately, on the wrong side of the broadband divide.<sup>31</sup> Bridging this divide would greatly enhance America's global competitiveness and generate billions of dollars in consumer welfare benefits.<sup>32</sup> But the window in which to realize these gains is quickly closing. The Commission, must, therefore, be even quicker. It should, with alacrity and expedition, move to facilitate new entry and competition in the broadband marketplace by providers that will commit to and abide by aggressive construction deadlines.

### **III. The Commission Should Promote the Deployment of Advanced Services by Establishing Baseline Broadband Capability in the United States**

If advanced telecommunications capability is not being deployed in a reasonable and timely manner, Congress requires the FCC to “take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition

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<sup>31</sup> See e.g. *Pew Internet Study* at 8, 11 (discussing disparities in broadband subscribership based on income and geography); Hearing Testimony of Joe Garcia, President, National Congress of American Indians before the Senate Committee on Commerce, Science, and Transportation, March 7, 2006 at 1-2 (broadband penetration on Indian lands is estimated at less than 10%); *U.S. Dept. of Education Report* at 9 (students with disabilities use the computers and the Internet about 10% less than those without); *Id* at 8 (digital divide exists at the secondary and elementary school levels); The Tomás Rivera Policy Institute, *Trends and Impact of Broadband on the Latino Community* at 1 (Oct. 2005) (“Several factors must be addressed in order to further deploy broadband services within the Hispanic community: lower prices, applications geared toward Hispanic youth and businesses, greater accessibility, more online content that is culturally relevant and language appropriate, and training and e-literacy programs to increase the value of computers and the Internet for those Hispanics who are not yet online.”).

<sup>32</sup> See *Educause Comments* at 1 (“Affordable broadband access for everyone will be an essential driver of America’s educational, economic and social development.”); *Wilkie Consumer Welfare Study* at 3 (conservatively estimating the net present value of the consumer welfare benefits of M2Z’s NBRS at \$18 - \$25 billion, including a reduction in broadband prices due to increased competition, greater access to free broadband service, and royalty payments to the U.S. Treasury from premium subscriber fees); *Comments of One Economy Corporation* in 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 Center for the Digital Future* in WT Docket No. 07-16 (filed Feb. 27, 2007) (“The granting of M2Z’s application will do so much to end the great broadband divide . . .”).

in the telecommunications market.”<sup>33</sup> One way to do this is to establish a broadband baseline for the United States.<sup>34</sup> Grant of M2Z’s Application could establish such a baseline.

**A. Grant of M2Z’s Pending Application Can Establish a Baseline for U.S. Broadband Capabilities**

M2Z’s Application proposes to make available to the public, without any recurring airtime fees, a new broadband Internet access service to be known as the National Broadband Radio Service (or “NBRS”), with downlink speeds of at least 384 kilobits per second (“kbps”) and uplink speeds of at least 128 kbps, and accessible to every consumer equipped with low-cost customer devices capable of receiving M2Z’s free service. As discussed above, the limitations on the affordability and availability of broadband today more than justify Commission action to remove barriers to investment in broadband services and promote competition in the market. Grant of the M2Z Application would remove a barrier to investment by placing into the market a band of spectrum that is presently underutilized and for which no permanent use has been identified.<sup>35</sup> Such grant would promote competition by introducing an entirely new entrant into the broadband marketplace. With a single action, the Commission could address multiple

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<sup>33</sup> See § 706(b) of the 1996 Act.

<sup>34</sup> Indeed, regardless of how the advanced services market is described, establishing such a baseline for U.S. broadband connectivity is consistent with the FCC’s obligation under Section 706(a) to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”

<sup>35</sup> See M2Z Application at 15-16; Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 at 84-87 (filed Mar. 26, 2007) (discussing underutilization of the band). In addition to requiring current users to relocate, the Commission sought comment on potential future uses of the band four years ago. 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.”). M2Z has presented an answer to this longstanding question.

roadblocks to nationwide broadband deployment and adoption. Grant of M2Z's Application will help close the gap for those who do not have an *available* broadband option, because it contains specific buildout obligations to ensure timely deployment.<sup>36</sup> Introduction of M2Z's service into the marketplace will dramatically expand opportunities for those who cannot *afford* broadband: the service itself will be available free of charge, and the introduction of a free service into the market will exert downward price pressure on other providers. Promoting competition in the broadband market will not only force down prices, it also will foster innovation and diversification.<sup>37</sup> Such innovation and diversification may target niche markets and bring broadband to segments of the population that would otherwise be underserved.

M2Z's NBRS also will result in a host of other public interest benefits described in detail in the Application and other pleadings in the M2Z companion dockets.<sup>38</sup> All of these benefits would be realized at no cost to the American taxpayer.<sup>39</sup> Indeed, in addition to all of the public

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<sup>36</sup> M2Z has proposed to meet the following buildout milestones as a condition of its license: (i) commence service within 24 months of being granted its license; and (ii) deploy its network such that 33 percent of the U.S. population is covered within three years of commencement of operations, 66 percent of the U.S. population is covered within five years of commencement of operations, and 95 percent of the U.S. population is covered within ten years of commencement of operations. M2Z Application at Appendix 2.

<sup>37</sup> See *Forbearance Petition* at 30-31.

<sup>38</sup> In addition to making NBRS service available to the public on a nationwide basis for free at specified speeds within a specified timeframe, M2Z also has proposed to meet a series of service regulations and threshold requirements. Specifically, M2Z will: (i) not seek Universal Service Fund ("USF") monies to build and operate its network; (ii) provide filtering of pornographic, indecent, and obscene content on the free service; (iii) provide public safety entities with free, interoperable broadband service; (iv) make ongoing spectrum usage payments; (v) meet interference protection standards and incumbent relocation obligations comparable to those specified for other AWS spectrum; (vi) advance the Commission's goal of spectral efficiency; (vii) comply with obligations placed upon Commercial Mobile Radio Service ("CMRS") carriers; and (viii) maintain ready availability of at least \$400 million in funding for construction of its network. See M2Z Application at 11-12 and Appendices 2-5.

<sup>39</sup> See *id.* (M2Z will not even accept monies from the USF to construct or operate its network).

interest benefits of M2Z's offering, M2Z also has proposed to pay a spectrum usage fee based on a specified percentage of revenues from certain services to the U.S. Treasury every year.<sup>40</sup>

**B. The M2Z Solution Will Adapt Based on Market Demands**

As explained above, the introduction of M2Z's service into the broadband marketplace will increase competition, which will in turn foster such public interest benefits as price reductions, innovation, and diversification of broadband services. As a participant in this market, M2Z will not only be a driver of change in the broadband market—it also must respond to market forces. As other broadband providers increase the quality of their services, develop more tiers of service, or add hyper-personalized features to their services, M2Z must adapt as would any other market participant in order to remain commercially viable.

The NBRS service that M2Z plans to provide will be an always-on, portable, free service at 384 kbps. The combined expertise of M2Z's founders and investors leads them to believe that, at this time, this unique combination of features will make the service a compelling marketplace alternative. Estimating the speed at which consumers will adopt a broadband service is, however, more of an art than a science, in part because of the many ways in which M2Z's proposed service differs from anything presently available in the marketplace. Two commenters offering their qualified support for grant of M2Z's Application have expressed

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<sup>40</sup> In addition to providing basic NBRS to the country free of recurring charges, M2Z also will offer a subscription-based service with such premium features as faster data rates and access to additional content and/or applications (the "Premium Service"). M2Z has voluntarily committed to pay an annual spectrum usage fee to the U.S. Treasury in the amount of five percent of the gross revenues derived from the Premium Service, and has proposed that this commitment be included among the terms and conditions of its license. M2Z Application at 12, 26, Appendix 2. One economist has estimated the value of these payments at \$32 million per year, or an aggregate of \$275 million over the course of M2Z's initial license term. *Liopiros Study* at iii, 27-28. Another economist posits that the payments may be as high as \$536 million per year if the Premium Service is widely adopted. See *Wilkie Consumer Welfare Study* at 20-21.

concern about the speed of the service.<sup>41</sup> M2Z wishes to reiterate that its proposed offering of a free broadband wireless Internet access service at speeds of 384 kbps uplink/128 kbps downlink represents a floor, not a ceiling, on the speed of its free service offering.<sup>42</sup> Like every other provider of broadband services in the market, M2Z will be subject to the forces of change and must respond to consumer demand in order to remain commercially viable.

M2Z's proposed free service does not represent a "loss leader," but a service that will be sustained by local text search ads and, as such, will require widespread consumer adoption in order to generate revenue. To the extent that the marketplace alternatives for broadband eventually increase their speed, decrease their prices, and/or begin offering portable services, M2Z will have to meet those challenges in order to remain a viable competitor and expand its user base in the marketplace. If consumers demand larger bandwidth due to new applications, it will be in M2Z's best interest to use all means available to it to increase the bandwidth in order to keep the NBRIS service competitively viable. Thus, the broadband "baseline" that M2Z will establish will meet both the current and future needs of Americans.

#### **IV. Conclusion**

Much of the record in the companion M2Z proceedings is responsive to the issues raised in the Commission's NOI. That record shows a lack of broadband availability on a reasonable and timely basis. Consistent with the directive of Congress in Section 706, the Commission must take swift steps to remove barriers to investment and promote competition in broadband. Grant of M2Z's Application will quickly get spectrum into the marketplace for private sector

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<sup>41</sup> See Joint Comments of Media Access Project and Public Knowledge in WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007).

<sup>42</sup> See Consolidated Opposition of M2Z Networks, Inc. to Petitions to Deny, WT Docket Nos. 07-16 & 07-30 at 99-100 (filed Mar. 26, 2007).

investment, promote competition by introducing an entirely new provider into the market, and will resolve the availability and affordability gaps in the current broadband marketplace. M2Z's service also will address an array of other public policy goals by offering family-friendly filtering and providing public safety entities with access to a broadband network for an unlimited number of connecting devices. Given the current state of the broadband marketplace, the

Commission should take immediate steps pursuant to Section 706 and grant the M2Z Application.

Respectfully submitted,

**M2Z NETWORKS, INC.**

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