

Writer's Direct Line: 202-772-5312  
edozier@sheppardmullin.com

July 16, 2007

**VIA ECFS**

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

**Re: Freedom of Information Act Request of AT&T Inc.,  
FOIA Control No. 2007-414; WT Docket Nos. 07-16 and 07-30**

Dear Ms. Dortch:

On behalf of M2Z Networks, Inc. and in response to a letter dated July 9, 2007 from Jennifer Tomchin, Deputy Chief, Broadband Division,<sup>1</sup> this letter addresses the limited request for inspection of records pursuant to the Freedom of Information Act ("FOIA") and Section 0.461 of the Commission's rules filed on June 20, 2007 by AT&T Inc. ("AT&T" and the "FOIA Request").<sup>2</sup> AT&T seeks access to two privileged and confidential letters filed by M2Z concerning the above-referenced proceedings pursuant to a protective order. The letters at issue are dated March 26, 2007 (the "March 26th Letter") and June 4, 2007 (the "June 4th Letter") and were submitted by M2Z under separate requests for confidential treatment in support of M2Z's Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band (the "M2Z Application") and related forbearance petition. As set forth in M2Z's requests for confidential treatment, the letters contain highly sensitive financial information, including the identity of M2Z's sources of funding, and the terms thereof, which the Commission routinely withholds from public inspection.<sup>3</sup> For the reasons discussed below, AT&T's FOIA Request should be dismissed as moot as to the March 26th Letter and should be denied as to the June 4th Letter.

<sup>1</sup> See Letter to W. Kenneth Ferree, Erin L. Dozier, and Christopher G. Tygh, Sheppard, Mullin, Richter & Hampton, LLP from Jennifer Tomchin, Deputy Chief, Broadband Division, FCC Wireless Telecommunications Bureau (July 9, 2007).

<sup>2</sup> See Freedom of Information Act Request, Letter from L. Andrew Tollin, Counsel to AT&T, Inc., to Anthony Dale, Managing Director, FCC (filed June 20, 2007) ("FOIA Request").

<sup>3</sup> See Request for Confidential Treatment of M2Z Networks, WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007); Request for Confidential Treatment of M2Z Networks, WT Docket Nos. 07-16 & 07-30 (filed June 4, 2007).

AT&T's FOIA Request concerning the March 26th Letter has been rendered moot by a recent decision by the Wireless Telecommunications Bureau ("Bureau") adjudicating the merits of a similar FOIA request filed by NetfreeUS, LLC.<sup>4</sup> On May 23, 2007, the Bureau, by letter decision ("FOIA Decision"), granted in part and denied in part M2Z's request for confidential treatment of the March 26th Letter in response to NetfreeUS's FOIA request.<sup>5</sup> In the FOIA Decision, the Bureau held that the March 26th Letter should be withheld from routine public inspection under Exemption 4 of the FOIA because "parts of it contain commercial or financial data that M2Z has not made public."<sup>6</sup> Consequently, the Bureau determined that it will not make available for public inspection "those parts of the [March 26th] Letter that identify the source of [M2Z's] potential funding including indirect, identifying information, as well as specific funding terms."<sup>7</sup> Neither M2Z nor NetfreeUS has sought review of this decision.<sup>8</sup> Consequently, the FOIA Decision has become final as to the March 26th Letter and serves as binding precedent for adjudicating the merits of AT&T's FOIA Request. For this reason, AT&T's request for inspection of the March 26th Letter should be dismissed as moot.

AT&T's request for inspection of the June 4th Letter should be denied. To obtain access to the June 4th Letter, AT&T bears the burden of making "[a] persuasive showing as to the reasons for inspection."<sup>9</sup> AT&T fails to meet this burden. AT&T states that inspection of the June 4th Letter is necessary to allow AT&T to "comment on whether M2Z has the financial ability . . . to timely construct and build a proposed nationwide network." As AT&T readily admits, however, it already has commented thoroughly and repeatedly on these issues.<sup>10</sup> The pleading cycles in these proceedings have now closed, and the matter is now before the Bureau to decide. Obtaining access to the particular terms and conditions of M2Z's access to funds at this time will not enhance AT&T's arguments in this regard, but such disclosure could result in substantial competitive harm to M2Z. As explained in M2Z's request for confidential treatment,

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<sup>4</sup> See Freedom of Information Act Request of NetfreeUS, LLC, WT Docket No. 07-16 (filed Apr. 10, 2007).

<sup>5</sup> See Letter from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Stephen E. Coran, Counsel to NetfreeUS, LLC, and Erin L. Dozier, Counsel to M2Z Networks, Inc., FOIA Control No. 2007-258 (dated May 23, 2007) ("FOIA Decision").

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> See 47 C.F.R. § 0.461(i).

<sup>9</sup> 47 C.F.R. § 0.461(i); see also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, ¶ 19 (1998) ("*Confidential Information Policy Order*").

<sup>10</sup> See Response of AT&T Inc. to Request for Confidential Treatment, WT Docket Nos. 07-16 & 07-30 (filed June 20, 2007) ("[T]hese issues [concerning M2Z's financial qualifications and ability to construct and operate its proposed nationwide network] were squarely raised by AT&T in its petition to deny [M2Z's] application . . ."); see also Petition to Deny of AT&T Inc., WT Docket No. 07-16, at 6-7 & n.19 (filed Mar. 2, 2007); Consolidated Reply to Opposition to Petitions to Deny and Reply Comments of AT&T Inc., WT Docket Nos. 07-16 & 07-30, at 11-12 (filed Apr. 3, 2007).

Ms. Marlene H. Dortch  
July 16, 2007  
Page 3

such disclosure would prejudice M2Z's negotiations with other funding sources and would alert other communications providers of a potential source of funds.<sup>11</sup>

AT&T's other rationales for obtaining access to the June 4th Letter are similarly without merit. AT&T claims that fairness to the parties to these proceedings and the need to establish a complete record that will withstand judicial scrutiny require disclosure of the letters.<sup>12</sup> As the Bureau recently held in its FOIA Decision, however, Title III applicants such as M2Z "should not necessarily be required to forgo confidential information as a condition of obtaining a license."<sup>13</sup> The June 4th Letter contains substantially similar financial information, terms, and conditions to the March 26th Letter. Although the Bureau's previous FOIA Decision does not concern the June 4th Letter, the Bureau did determine that such financial information "constitute[s] the type of business information that may be properly withheld under FOIA."<sup>14</sup>

For these reasons, AT&T's request for inspection of the March 26th Letter and June 4th Letter under a protective order should be denied. If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,

/s/

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

cc: Mr. Fred Campbell  
Mr. Anthony Dale  
Ms. Cathy Massey  
Mr. Joel Taubenblatt  
Mr. Peter Daronco  
Ms. Jennifer Tomchin

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<sup>11</sup> Request for Confidential Treatment of M2Z Networks, WT Docket Nos. 07-16 & 07-30, at 3 (filed June 4, 2007).

<sup>12</sup> See FOIA Request at 4.

<sup>13</sup> FOIA Decision at 5, citing *Confidential Information Policy Order* at ¶ 34.

<sup>14</sup> FOIA Decision at 4.

**CERTIFICATE OF SERVICE**

I, Erin L. Dozier, an attorney in the law office of Sheppard Mullin Richter & Hampton, LLP, hereby certify that I have on this 16th day of July 2007 caused a copy of the foregoing letter response to the Freedom of Information Act Request of AT&T Inc. to be delivered by first-class mail to the following:

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

L. Andrew Tollin  
Craig E. Gilmore  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW  
Washington, DC 20037  
*Counsel to AT&T*

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/s/

Erin L. Dozier