



August 27, 2007

Via Electronic Filing

Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Resolution of Proceedings Concerning M2Z Networks, Inc.
(Written Ex Parte Presentation in WT Docket Nos. 07-16 & 07-30)**

Dear Commissioner Tate:

As you know, M2Z Networks has been seeking a decision on its application to provide a new service using new technology, National Broadband Service (“NBRIS”), employing fallow spectrum in the 2155-2175 MHz band. Our application has been pending since May 5, 2006. Throughout the past 15 months, we have reminded the Commission that the anniversary date of our application, May 5, 2007 was important because of the one year deadline in Section 7 of the Act, which requires a public interest determination on an application for new services or new technologies within one year of filing.

I write to commit to you that the company will forbear for a reasonable interval from exercising its legal option to sue the Commission for a writ of mandamus in order to provide adequate time for productive deliberation concerning our application. I make this commitment based on several factors, but principally based upon the hope that it will provide a useful path forward to bring the benefits of our proposed new service to the millions of Americans who are waiting for free, family-friendly broadband.

First, I recognize that you and your colleagues only recently received a proposed order to review and deliberate upon, even though Section 7 was designed to give the *full Commission* a year to resolve this matter. As such, we understand that neither you nor the other Commissioners were in a position to comply with the strict statutory deadline imposed by Section 7. We further understand that none of the Commissioners’ offices has been afforded sufficient time or support to analyze the detailed record, now containing over 2100 filings, in order to ensure that any actions related to these proceedings are consistent with the law and in the public interest. Accordingly, M2Z recognizes that more time maybe required for reviewing the record underpinning M2Z’s license application and its related petition for forbearance.

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Second, I recognize that Section 7 decisions rarely have been sought from the Commission. This dearth of precedent may understandably necessitate additional review and reflection. We have tried to be helpful to the Commission on this front. In previous filings, M2Z has demonstrated that “M2Z’s Application is, in fact, subject to the express terms of Section 7 of the Act, 47 U.S.C. § 157, including the presumption in favor of new technology and services set forth in Section 7(a) and the one-year deadline for Commission action set forth in Section 7(b).”¹ Section 7 is applicable to “any new technology or service proposed in a petition or application.”² While M2Z has established that its proposed service qualifies under Section 7 under both the “new service” and “new technology” prongs,³ we further note that the legislative history that underpins the unqualified language in Section 7 calls for a broad construction of “new service” and “new technology” rather than an overly restrictive interpretation. This is because the goal of Section 7 is not to inhibit the introduction of these services. Instead, the provision was enacted specifically to: (1) encourage the availability of new technology and services to the public”; (2) prevent the Commission from “hamper[ing] the development of new services”; and (3) “allow the forces of competition and technological growth [to] bring many new services to consumers.”⁴

Thus, the Commission’s task here is aided by the absence of any argument that Section 7 does not apply to our application. This has been conceded, in fact, by one of the chief opponents to M2Z’s service: “M2Z is plainly seeking an entirely new license for an entirely new service. . . .”⁵ Indeed, well before May 5, 2007, M2Z explained that if the twelve month deadline were not met it may have to seek “a writ of mandamus [or] an APA claim,”⁶ this is significant because a writ of mandamus or some other judicial action are the only remedies an applicant has when the Commission misses a Section 7 deadline, because the statute specifies none other.

Third, we make our offer to forbear from legal recourse for the present because we believe that it is in the public interest to do so. We believe that an orderly process that comprehensively examines the record here will necessarily conclude that M2Z’s National Broadband Radio Service is in the public interest. This is particularly so because Section 7 requires opponents of our application to carry the burden of proof that our application is *not* in the public interest. The record is devoid of such proof. While many parties have argued against the grant to M2Z’s license application, they have not claimed, much less proven, that a nationwide free, family-friendly broadband wireless service built under strict timelines as defined by M2Z’s proposed NBRS rules *is not* in the public interest. Rather, there is near unanimity in the record concerning the variety of public interest benefits of NBRS. Some of the

¹ M2Z Networks, Inc Ex Parte Response to Replies and Oppositions, WT Dockets 07-16 & 07-30 at 18 (Apr. 21, 2007) (Ex Parte Response).

² See 47 U.S.C. § 157 (emphasis added).

³ See M2Z Opposition to Petitions to Deny, WT Dockets 07-16 & 07-30 at 23-27 (Mar. 26, 2007) (“M2Z Opposition”); Ex Parte Response at 18-23.

⁴ Extended Remarks of Hon. John R. Dingell on Amendments to H.R. 2755, 130 Cong. Rec. E74 (Jan. 24, 1984).

⁵ See Verizon Wireless Petition to Deny, WT Docket 07-16 at 10 (Mar. 2, 2007).

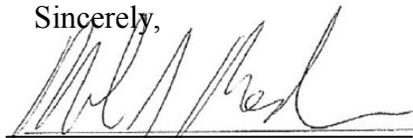
⁶ Ex Parte Response at 21.

benefits of NBRS that have been detailed on the record include: bolstering the competitiveness of small and independent businesses; creating a more competitive broadband marketplace, enhancing educational opportunities, bridging the digital divide, supplementing and enhancing public safety communications, promoting spectral efficiency, and protecting children from objectionable online materials.⁷ In addition, as explained in papers submitted in this docket by the Commission's former Chief Economist, Dr. Simon Wilkie on March 1, 2007, and by Dr. Kostas Liopiros on March 19, 2007, the introduction of NBRS will by conservative estimates generate for U.S. consumers a net present value ranging from more than \$18 billion to more than \$32.4 billion.⁸

Fourth, permitting the full Commission to work to resolve this matter is consistent with recent experience in the 700 MHz proceeding where the FCC determined that moving quickly to meet a statutory deadline should not be done at the expense of the actual substance of its decision. In that case, the Commission required additional time from the initial deadline proposed by the Chairman in order to make a reasoned decision. To address the need for more deliberation and the requirement that it take action consistent with the statute, the Agency established an expedited proceeding so that neither the process nor the substance suffered.

I welcome a commitment from you and your colleagues that there will be due process for the M2Z application, and I, in turn, will abide by my commitment on behalf of M2Z to forbear for a reasonable interval from pursuing a writ of mandamus. M2Z welcomes the opportunity and is eager to work with you and your colleagues to ensure that the Commission's decision in this matter is reasoned, defensible under the law and, above all, consistent with the public interest.

Sincerely,



Milo Medin
Chairman, M2Z Networks, Inc.

⁷ See, e.g., M2Z Opposition at 3-5.

⁸ See Simon Wilkie, "The Consumer Welfare Impact of M2Z Networks Inc's Wireless Broadband Proposal," WT Docket No. 07-16, at 3, 8 (submitted Mar. 2, 2007); Kostas Liopiros, "The Value of Public Interest Commitments and the Cost of Delay to American Consumers," WT Docket No. 07-16, at i, ii (submitted Mar. 19, 2007).