

OCT 10 2007

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

M2Z Networks, Inc., Appellant

v.

Federal Communications  
Commission, Appellee

Case No. 07-1360

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### NOTICE OF INTENTION TO INTERVENE

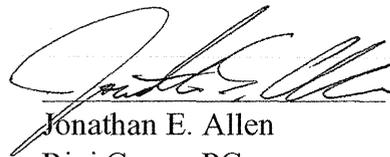
Pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348, Federal Rule of Appellate Procedure 15(d), and D.C. Cir. Rule 15(b), NetfreeUS, LLC ("NetfreeUS") hereby gives notice of its intention to intervene as a matter of right in the above-captioned proceeding. M2Z Networks, Inc. ("M2Z") seeks review of the decision and order issued by the Federal Communications Commission ("Commission" or "FCC") on August 31, 2007 styled *In the Matter of Applications for License and Authority to Operate in the 2155-2175 MHz Band, Petitions for Forbearance Under 47 U.S.C. § 160*, WT Docket Nos. 07-16 & 07-30, Order, FCC 07-161 ("Order"). In the *Order*, the Commission dismissed without prejudice applications filed by NetfreeUS, M2Z and others to provide service in the 2155-2175 MHz frequency band, which the Commission has allocated for fixed and mobile services. The Commission also denied petitions for forbearance filed by M2Z and NetfreeUS in connection with their respective applications. NetfreeUS has timely sought reconsideration of the *Order* by the Commission.

NetfreeUS is a wholly owned unit of Speedus Corp., which is a publicly traded communications company. For more than 15 years, Speedus and its predecessors-in-interest have been innovators in providing new services, new spectrum allocations and new telecommunications technology. NetfreeUS would be aggrieved and adversely affected by this

Court's grant of the relief requested in M2Z's notice of appeal. In its appeal in Case No. 07-1360, M2Z alleges that the FCC's dismissal of M2Z's application and denial of M2Z's petition for forbearance violate provisions of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*, the Administrative Procedure Act, 5 U.S.C. § 706, and the Fifth Amendment's Due Process Clause. M2Z requests that the Court direct the FCC to grant M2Z a nationwide license to operate a wireless broadband network using the 2155-2175 MHz band. The NetfreeUS application also requested grant of a nationwide license for operations using the same spectrum, *Order* at ¶22, so a grant of M2Z's requested relief would adversely affect and aggrieve NetfreeUS. Thus, NetfreeUS is entitled to intervene in this proceeding as a matter of right.

Furthermore, NetfreeUS has Article III standing to intervene in this appeal. Standing contains three elements: (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As the administrative record confirms, grant of M2Z's requested relief would cause injury to NetfreeUS by barring grant of the NetfreeUS application, thus precluding NetfreeUS from obtaining spectrum to provide wireless broadband service at 2155-2175 MHz. A judgment of this Court affirming the Commission's *Order*, insofar as the *Order* applies to the dismissal of M2Z's application and the denial of M2Z's petition for forbearance, would redress this harm. For these reasons, the record demonstrates Article III standing.

Respectfully submitted,



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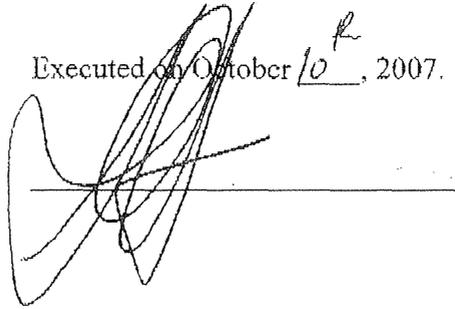
October 10, 2007

**Declaration of Shant S. Hovnanian**

I, Shant S. Hovnanian, declare as follows:

1. I am Chairman and CEO of Speedus Corp., a Delaware corporation that is the sole and controlling member of NetfreeUS, LLC.
2. I have reviewed the foregoing Notice of Intention to Intervene of NetfreeUS, LLC which, among other things, sets forth NetfreeUS' interest in the proceedings associated with the appeal filed by M2Z Networks, Inc. in Case No. 07-1360. The facts stated therein are true and correct to the best of my knowledge, information and belief.
3. I declare and verify under penalty of perjury that the foregoing is true and correct.

Executed on October <sup>R</sup>10, 2007.



## Certificate of Service

I, Jonathan E. Allen, hereby certify that on this 10<sup>th</sup> day of October, 2007, pursuant to F.R.A.P. 25(d), I caused a copy of the foregoing Notice of Intention to Intervene to be delivered by First-Class United States mail to the following, unless otherwise noted:

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

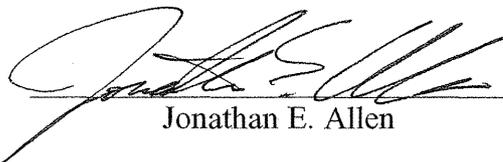
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\* A courtesy copy of this filing is being submitted via electronic filing to the Federal Communications Commission in WT Docket Nos. 07-16 and 07-30.