

Remarks of John B. Muleta, Co-Founder and CEO, M2Z Networks, Inc.
WiMax World September 25
As prepared for delivery

FCC FIDDLES AS BROADBAND STALLS

By: John Muleta, Co-founder and CEO of M2Z Networks

Good Afternoon. My name is John Muleta and I am the CEO of M2Z Networks, a Silicon Valley-backed startup that is seeking an FCC license to use 20 MHz of fallow, unpaired spectrum to build a nationwide WiMAX powered broadband network. My experiences with M2Z and as a 20 year veteran of the telecommunications industry who has worked as an attorney, regulator and entrepreneur has given me an interesting perspective from which to evaluate and comment on the regulatory and spectrum issues facing wide scale deployment of the WiMAX standard in North America today. So I thank WiMAX World for the opportunity to take part in this discussion today.

Over the past decade, there has been an increasingly heated debated about the status of our country's broadband infrastructure. The fact is that over 100 million adults and their children do not have broadband connections. The debate inside the Beltway about whether this means that the U.S. is ranked 24th in the world behind Estonia or ranked in the top ten completely misses the point. The Seattle Times recently ran an Editorial under the headline "Failures of the American Airwaves" drawing attention to what happens when we fail to exercise determined leadership on issues such as these. We must agree that ensuring our citizens' access to the best Internet infrastructure available is critical to maintaining our economic leadership position in the world and we must work as one nation to achieve that goal.

Yet today, broadband services in this country are delivered by, at best, a duopoly of incumbent cable and telephone companies. This has led to high prices and low adoption rates. This trend is evidenced by the fact that consumer prices for high speed broadband have stayed in the \$40 to \$50 per month range for the past decade while the price of computing power has dropped by over 90 percent. Thus, broadband adoption has stalled at below 50 percent while the disparity in broadband adoption based on income and ethnicity grows. In America today, poor, rural and black families have broadband service at half the rate of their rich, suburban and white counterparts.

Many in the industry had great hopes that Municipal Wi-Fi systems could provide affordable broadband – a public private partnership between big city government and private sector innovators. Unfortunately, Muni Wi-Fi has recently gone into intensive care as San Francisco, Chicago, Silicon Valley, Boston, St. Louis and Los Angeles, among many other cities and towns, giving up on this approach because these systems are neither technically nor financially feasible. Even well-heeled private sector advocates of Wi-Fi such as Earthlink and Google are giving up as demonstrated by their recent decisions to pull out of Muni Wi-Fi

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initiatives. At the end of the day, the promise of unlicensed approaches like Muni Wi-Fi have gone unfulfilled because they suffer from chronic problems like limited power, interference and the fact that they still require costly Internet connections and will never constitute the third nationwide pipe that is essential to real price and facilities based competition in the broadband marketplace.

Against the backdrop of such pressing needs and the failure of incumbents, Wi-Fi and unlicensed efforts to deliver on the promise of universal and affordable broadband, one wonders why a group of innovators from Silicon Valley haven't found the right answer? Why aren't hundreds of other ideas to provide a scalable third pipe being financed? Why isn't the broadband industry bursting with new entrants and services? The answer is simple. The federal government is getting in the way! Even the long awaited 700 MHz auction will not likely result in new entry or increased competition because the incumbents can still block entry by bidding up the cost of the spectrum.

The path to new national broadband competition is through new wireless networks that are scalable and offer innovative and price disruptive technologies and services compared to the incumbents' offerings. Of course, these networks require licenses from the FCC to use the public airwaves. Contrary to conventional wisdom, the problem is not that spectrum is a scarce resource. On the contrary, less than 6 percent of spectrum suitable for commercial services is actually being used to deploy consumer services today. Most of the American people's spectrum is sitting unused in the "warehouses" of incumbent providers and players with little or no incentive to actually build consumer networks. Thus, the real problem is that the traditional process for assigning spectrum is managed by FCC bureaucrats who prefer processes that are long, open-ended, and unsuited to innovative ventures and entrepreneurship. Long deliberation on market entry and technology usually results in the incumbent telcos winning and consumers losing. The auction last year of so called "advanced wireless spectrum" is surely the best example of this anticompetitive behavior. FCC data shows that, after seven years of bureaucratic wrangling, 96 percent of the auctioned spectrum went to broadband incumbents. Surely this not the quick paced innovation based approach that will keep us ahead in the global broadband race.

The FCC's recent action in the case of M2Z Networks is particularly galling.

M2Z, a new, innovative Silicon Valley company, filed an application with the FCC over 16 months ago to deliver both a free consumer wireless broadband service nationwide that would make dial-up obsolete and compete with low-end DSL products, and a premium wholesale service designed to compete with higher speed cable services. M2Z also promised to aggressively build out its WiMAX based network and provide coverage to 95 percent of the US population within 10 years with interim benchmarks of 33 percent and 66 percent in three and five

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years respectively.

M2Z has proposed to lease spectrum from the U.S. government that has been lying fallow and un-used for over eight years. During this 16 month process, M2Z and its supporters have built a robust and complete public record of thousands of comments showing overwhelming support for M2Z's proposal and demonstrating that it is clearly in the public interest – the standard for the FCC's decisions. The only opposition to this plan has come from incumbent telecommunications companies such as AT&T and Verizon who, in pursuit of their own self-interest, are pushing for a delay of the process in order to prevent M2Z's price disruptive proposal from ever seeing the light of day.

In keeping with its Silicon Valley roots, M2Z also asked the FCC to make a timely decision instead of engaging in its usually prolonged and open-ended proceedings. M2Z also took the initiative in proposing a new and specific use for the spectrum (free and family-friendly nationwide broadband) with highly detailed service rules and gave the FCC the opportunity to use its broad statutory discretion to create an expedited assignment mechanism. M2Z made two simple requests of the FCC: First, to determine whether or not M2Z's proposal to provide free and family-friendly broadband services nationwide represents the highest and best use of the spectrum. And, second, to make a quick decision on how to assign the spectrum.

By law, M2Z deserved a fair and considered judgment from the FCC this past May. Despite missing this deadline, the FCC used the quiet of the Labor Day holiday to sneak in a *decision not to decide on M2Z's license application*. This past Thursday, the Commission finally came out with a notice of proposed rulemaking once again asking for comment on what the highest and best use of the fallow spectrum M2Z had identified should be. Interestingly, the FCC now commits to finish the rulemaking within nine months – this would be some five years after this spectrum became fallow and nearly two years after M2Z first filed its innovative application. Think of the innovation of the last five years – Google's adsense took over advertising, YouTube became a household word and Paypal changed the way we shop online. Five years is an eternity in the telecommunications world – the American people deserve better from their government than perpetual delays in services that have such clear benefits to the public interest.

So what do we know about the FCC decision making process and how it impacts broadband deployment? First, it prefers not to decide on innovative proposals – in M2Z's case it was 16 long months of waiting to decide not to decide. For those that are not in the know of FCC lore, no new innovative idea has ever come to fruition with the FCC without either Congress intervening with legislation or the innovator suing the FCC. Second, as in the case M2Z's license application, the FCC seems to believe that the views of AT&T and Verizon

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constitute the whole sum of the public interest – this is borne by the observation that the FCC completely ignored the views of thousands of Americans and hundreds of state, local and federal officials in making its Labor Day indecision.

Open ended governmental processes and arbitrary decisions benefit incumbents at the expense of American consumers. So, while the FCC continues to fiddle, over a hundred million Americans and their children go without broadband Internet access.

If America wants to encourage competition and new entrants who have viable business plans and the capital to build out their networks, then Americans need to hold the FCC accountable to transparent, reliable and timely processes and decisions made in full view of the public and rooted in the public interest. M2Z has gone to the courts to hold the FCC accountable but ultimately the FCC reports to Congress so its time for Congress to step in and also hold the FCC accountable for delaying the benefits of free broadband to Americans.