

**Background on M2Z's Free & Family Friendly Nationwide Broadband Service Proposal,
The Recent Comments from Family Values Advocates In Support of M2Z, and the Public
Interest Spectrum Coalition Raising Constitutional Concerns**

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It is increasingly difficult to protect children from indecent material, especially given the pervasive nature of harmful sexual and violent content on modern communications media. In an era of media convergence that blurs the line between broadcast television, radio, broadband Internet, and traditional telecommunications like cellular, it has become nearly impossible for parents concerned about exposure of their children to indecent or unlawful material to find tools that allow them to easily and reliably monitor and avoid such content.

Further, it is not clear that the tools developed for each of these mediums when they were unrelated (such as the V-Chip for television and computer based content filtering based tools for the Internet) can be effective when all content is being automatically repurposed across different mediums. In other words, how do parents using the V-Chip to block inappropriate television ensure that their children don't go to the Internet and access the very same content their parents deemed inappropriate?

In light of this growing challenge that media convergence is bringing to the market, parents, state and federal legislators and regulators like the Federal Communications Commission (FCC) have been vexed by the fact that legislative and regulatory fixes are often no more than temporary measures because, in the final analysis, they have not comported with the federal judiciary's understanding of the Constitution. The Communications Decency Act was famously overturned 10 years ago and more recent efforts to find tailored solutions have also failed. Just this year, several well-intentioned state and federal government initiatives to protect children from indecency have also been rejected by the federal courts. With so much legal uncertainty surrounding government action in this area, a more durable solution is needed.

For companies subject to the jurisdiction of the FCC, a simple solution that passes constitutional muster is for the companies to work with the FCC to identify and implement voluntary means for protecting children from indecent materials on the various converged media platforms. This is the type of solution that M2Z's license application proposes and reflects the type of innovative approach that the cable industry adopted in the spring of 2007.

M2Z's License Application to Provide Free and Family Friendly Nationwide Broadband

America's broadband Internet deployment goals are going unmet and America's international rankings in broadband continue to fall rapidly. Many families, schools and libraries, in both rural and urban America, cannot access or afford broadband.

Once online, many families are also concerned about the growing threat to children of easily accessible indecent and pornographic material. In May 2006, M2Z applied for a license with the FCC to use fallow, unpaired spectrum to provide free and family-friendly wireless broadband Internet connectivity to at least 95% of the US population.

As there are significant Constitutional concerns regarding the blocking of indecent content on the Internet, M2Z has creatively sought to solve this problem by voluntarily imposing on itself the obligation to provide a family friendly network for its *free broadband service* using network based filtering technologies that are readily available and used by many corporations and institutions. M2Z also offers a "premium" subscription service that operates at a higher speed and allows adults the ability to remove the network based filter. Providing consumer choice addresses Constitutional concerns that could be implicated by a government mandated application of such a tool. M2Z believes that its *voluntary and market based* solution allows all Americans to access

broadband equitably and represents a reasonable and sound market based solution to what is a recurring challenge for American parents and consumers.

Recent Developments:

Prominent Family Values Organizations File in Support of M2Z

On August 22, 2007, The Family Research Council (FRC) joined hundreds of family organizations, federal, state and local elected officials who already support M2Z's family friendly broadband service. The FRC filed a letter to the FCC Commissioners urging Chairman Martin to immediately approve M2Z's application. Tony Perkins, FRC President said, "Congress granted the Commission broad powers to act in the public interest. M2Z will offer porn-free wireless access to the Internet... This could be a revolutionary product, and as the record shows, the reception to the M2Z concept has been overwhelmingly favorable." For more details on this letter, please go to: <http://www.m2znetworks.com/letters>

Public Interest Spectrum Coalition Ex-Parte Filing at the FCC

On August 28, 2007, the Public Interest Spectrum Coalition (PISC) consisting of Free Press, Media Access Project and Consumers Union and others, filed comments into M2Z's public record at the FCC opposing M2Z's voluntary content filtering on its free broadband service. PISC added that, "granting the license subject to a filtering condition... raises serious First Amendment concerns as well as statutory concerns." For more details on the PISC Filing, please go to: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519708118

Summary of Key FCC Statements on Indecency and the Internet

Chairman Martin – "I continue to believe that the most important thing we should be doing in these areas is giving parents more control over content, and I think that you can do that most easily by letting them pick and choose which channels they want to buy. That is the single most important thing we could end up doing to give additional tools for parents to try to control content they are concerned about." Broadcasting & Cable, 4/9/2007

Commissioner Tate – "With one in five children being confronted by child predators online, we should all be concerned about protecting our children in cyberspace. I am pleased to see industry stepping up to provide more tools for parents." Press Statement by FCC Commissioner Deborah Taylor Tate on the National Cable and Telecommunications Association and the Creative Coalition Announcement of their Voluntary Internet Safety Initiatives. June 2007.

Commissioner Copps – "The FCC has a duty to find a way to breathe life into the laws that protect our kids. ...Enforcing the laws against indecency, profanity and obscenity must remain a Commission priority — America's families and children expect and deserve no less." Commissioner Copps Disappointed In Court Decision On Indecency Complaints. Press Release, June 4, 2007.

Background on Legal and Constitutional Issues Raised by M2Z's Voluntary Commitment to Provide Free and Family Friendly Nationwide Broadband

MARCH 2007 – STATE INDECENCY LEGISLATION OVERTURNED --- Earlier this year, the Utah legislature passed a bill that repeals portions of the state's adult content law, *Pornographic and Harmful Materials and Performances*, that requires Internet service providers in the State of Utah to block sites the Utah Attorney General deems to be harmful to minors. The Bill was in response to a November 2006 decision of the U.S. District Court for the District of Utah that

prohibited the enforcement of certain sections of the legislation establishing an adult content registry and requiring ISPs to (1) identify material "harmful to minors" and (2) block registered content to customers upon request as these provisions were deemed unconstitutional.

MARCH 2007 – FEDERAL INDECENCY LEGISLATION OVERTURNED---In March 2007 a federal court ruled that the Child Online Protection Act, a bi-partisan federal statute, violates First and Fifth Amendment rights. The 1998 law included both civil and criminal penalties for those who make sexually explicit materials freely available on the Web. The court ruled that COPA is too "impermissibly vague and overbroad" to be constitutional, and that there are other less-restrictive means available for protecting children from content deemed inappropriate. The Judge rendering the decision noted that the law *mandated* his ruling and added his "personal regret at having to set aside yet another attempt to protect our children from harmful material."

JUNE 2007 – TWO FCC INDECENCY ORDERS VACATED---An appeals court determined that the FCC can't find broadcasts indecent if they include a single curse word. The court complained that the agency changed enforcement policy without giving sufficient reason for doing so or analyzing the change. In making its ruling, the U.S. Appeals Court, N.Y., remanded the whole "fleeting expletive" policy to the FCC, vacating 2 orders finding Fox's *Billboard 2002* and 2003 shows indecent. The ruling was limited to Administrative Procedures Act considerations, but the court said the fleeting expletive policy may not be Constitutional. Observers believe it is very unlikely that: (i) an appeal would be granted and (ii) the FCC could win.

SUMMARY

VOLUNTARY EFFORTS ARE EFFECTIVE AND IMMEDIATE---Unlike generalized government mandates, meaningful voluntary corporate efforts do not involve government action and do not transgress either the Bill of Rights or the Administrative Procedures Act. Thus, such commitments can be implemented without delay and are likely not to be subject to significant judicial uncertainty. This is critical because parents cannot afford to wait months or years to protect their children from the challenges presented by today's converged media environment. Moreover, the promotion of voluntary measures is, in fact, a fulfillment of the Constitutional directive that the government must explore "less-restrictive means" for protecting children from the harms of indecent material. The FCC should take every opportunity to promote and support voluntary industry efforts on indecency in order to protect America's children. If the FCC encourages more competition and a vibrant culture of "voluntary protection," consumers will demand that all service providers find ways to innovatively address these types of challenges in order to distinguish themselves in the marketplace.