

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
M2Z NETWORKS, INC.)	
)	
Application for License and Authority to)	WT Docket No. 07-16
Provide National Broadband Radio Service In)	
the 2155-2175 MHz Band)	
)	
Petition for Forbearance Under)	WT Docket No. 07-30
47 U.S.C. § 160(c) Concerning Application of)	
Sections 1.945(b) and (c))	
of the Commission's Rules and Other)	
Regulatory and Statutory Provisions)	
)	

COMMENTS OF M2Z NETWORKS, INC.

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EXECUTIVE SUMMARY

It has been nearly one year since M2Z submitted an application (the “Application”) to construct and operate a revolutionary free, nationwide broadband wireless network. In association with the Application, M2Z filed a petition (the “Forbearance Petition”) requesting that the Commission forbear from any and all statutory provisions, rules, and/or policies that may impede or impair grant of M2Z’s Application. Both the Application and the Forbearance Petition have been placed on Public Notice. Based on the record developed, the Commission should act quickly to grant M2Z’s Application, either directly or through the exercise of its forbearance authority.

This matter pits the Commission’s consideration of the public interest benefits of M2Z’s Application against the machinations of a handful of companies seeking to eliminate a perceived competitive threat. These opposing parties seek to use the regulatory process to delay or otherwise inhibit the benefits that M2Z would bring to consumers by connecting more Americans to broadband. However, it is fundamental that the regulatory process should never present a roadblock to implementing a proposal that will advance the public interest. In fact, this is a Congressional mandate. In its wisdom, Congress enacted Section 7 of the Communications Act, which limits to one year Commission deliberations on applications proposing new services or technologies. Further, Section 7 makes it clear that any party opposing such a proposal has the burden of demonstrating that the proposed new service or technology would not serve the public interest.

Similarly, Section 10 of the Act requires the Commission to forbear from applying any rule or any provision of the Act that is neither necessary to protect consumers nor to ensure that rates are just, reasonable, and non-discriminatory, provided that forbearance otherwise is consistent with the public interest. Congress anticipated that the Commission would use its

forbearance authority to end unnecessary regulation and reduce the regulatory burdens on new entrants. And again, to expedite action on forbearance requests, Congress expressly limited the length of Commission deliberations on Section 10 petitions.

In other contexts, Congress has expressed its distaste of regulation for regulation's sake. For example, Section 11 of the Act instructs the Commission to review, every other year, all rules and regulations that apply to telecommunications service providers, and to repeal or modify those that no longer serve the public interest. Even absent a specific statutory directive, the Commission has granted waivers, issued special temporary authorizations, and engaged in regulatory streamlining where enforcement of seemingly applicable rules or policies would be contrary to the public interest. These actions prove that the regulatory process is simply a means to an end: promoting the public interest. While other parties seek delay, it is clear that such delays have quantifiable costs. What the Commission must determine, in light of the pro-competitive, deregulatory tools at its disposal, is whether additional delay in bringing advanced services to the 2155-2175 MHz band forwards the public interest.

The record in this proceeding shows that further delay is not the answer. To the contrary, public comment demonstrates that speedy action is warranted. The public has cited numerous examples of the overwhelming public interest benefits that will result from the deployment of M2Z's network, including: (1) bolstering the competitiveness of small businesses; (2) enhancing broadband competition; (3) increasing diversity in management and ownership of communications outlets; (4) enhancing educational opportunities; (5) bridging the digital divide; (6) enhancing public safety communications; (7) protecting children from objectionable online materials; and (8) stimulating billions of dollars worth of economic growth.

Delayed action on the Application and Forbearance Petition would only serve to advance the interests of those who oppose new competition in the markets for broadband Internet access and wireless services. Accordingly, the Commission should grant M2Z's Application, either directly or through forbearance, well ahead of the applicable statutory deadlines.

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COMMENTS OF M2Z NETWORKS, INC.

In response to the Public Notice released by the Wireless Telecommunications Bureau (the “Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings, M2Z submits these comments.¹ On May 5, 2006, M2Z Networks, Inc. (“M2Z”) submitted a license application to construct and operate a nationwide broadband wireless network.² The Application proposes to revolutionize the state of broadband Internet access by deploying a free, nationwide broadband Internet access service throughout the United

¹ *Pleading Cycle Established for Comments on Petition of M2Z Networks, Inc. For Forbearance Under 47 U.S.C. Section 160(c) to Permit Acceptance and Grant of Its Application For A License To Provide Radio Service in the 2155-2175 MHZ Band*, WT Docket No. 07-30, Public Notice, DA 07-736, (rel. Feb. 16, 2007) (“*Forbearance Public Notice*”).

² *See Application of M2Z Networks, Inc. for License and Authority to Provide a National Broadband Radio Service (“NBR”) in the 2155-2175 MHz Band* (filed May 5, 2006) (the “Application”). The M2Z Application was amended on September 6, 2006, to incorporate by reference M2Z’s subsequently filed petition for forbearance. *See Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission’s Rules and Other Regulatory and Statutory Provisions*, WT Docket No. 07-30 (filed Sept. 1, 2006) (“*Forbearance Petition*”).

States. Achievement of this goal is consistent with the desires of the President,³ Congress,⁴ the Commission,⁵ and the American people.⁶ As explained below, the Commission should take this opportunity to exercise its forbearance authority, or any other deregulatory, pro-competitive tools available to it, in order to grant M2Z's Application and achieve this highly sought-after result—a widely available and eminently affordable broadband network.

Several months after the Application was filed, M2Z filed a petition requesting that the Commission forbear from application of any and all statutory provisions, rules, and policies that

³ Three years ago this month, President Bush set a national goal for broadband, stating that “We ought to have a universal, affordable access for broadband technology by the year 2007.” The President has emphasized the importance of consumer choice in broadband, stating that, “. . . we ought to make sure as soon as possible thereafter, consumers have got plenty of choices . . . the more choices there are, the more the price will go down. And the more the price goes down, the more users there will be. And the more users there will be, the more likely it is America will stay on the competitive edge of world trade.” See White House, *President Bush Meets with First-Time Homebuyers in NM and AZ*, Press Release, March 26, 2004, available at <http://www.whitehouse.gov/news/releases/2004/03/20040326-9.html>. See also, President George W. Bush, “A New Generation of American Innovation,” April 2004, available at http://www.whitehouse.gov/infocus/technology/economic_policy200404/chap4.html.

⁴ As discussed in the Application and Forbearance Petition, more than a dozen bills introduced during the 109th Congress were aimed at expanding broadband deployment, spurring facilities investment, or strengthening public safety communications. See Application at 9-10; Forbearance Petition at 14-15 (citing numerous bills introduced in the 109th Congress). Many more such bills have been introduced during the 110th Congress. See *Serving Everyone with Reliable, Vital Internet, Communications, and Education Act of 2007*, H.R.42, 110th Cong. 1st Sess. (2007) (requires a report to Congress on the benefits of the Lifeline Assistance Program and the Link Up Program, which would increase broadband usage and deployment in low income areas); *Telecommunications Ownership Diversification Act of 2007*, H.R.600, 110th Cong. 1st Sess. (2007); *Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2007*, H.R.694, 110th Cong. 1st Sess. (2007) (proposing to amend the Stevenson-Wydler Technology Innovation Act of 1980 to spur digital and wireless deployment at minority and underserved learning institutions); *Universal Service for Americans Act*, S.101, 110th Cong. 1st Sess. (2007); *Rural Opportunities Act of 2007*, S.541, 110th Cong. 1st Sess. (2007) (requires broadband providers to report to the FCC, who in turn will report to Congress, concerning demographic information in rural areas); *Universal Service for the 21st Century Act*, S.711, 110th Cong. 1st Sess. (2007).

⁵ See *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, FCC 06-180 (rel. Mar. 5, 2007) (adopting rules to facilitate and expedite entry of new cable competitors into the market for the delivery of video programming, and to accelerate broadband deployment); Federal Communications Commission, *Strategic Plan 2006-2011* at 6 (2006) (“*FCC 2006 Strategic Plan*”).

⁶ Individuals, municipalities, and organizations representing over 20 million Americans have filed comments in support of the grant of the Application and Forbearance Petition.

stand in the way of M2Z's provision of free, family-friendly, nationwide broadband Internet access.⁷ Five months after M2Z submitted its Forbearance Petition, the Application was placed on Public Notice.⁸ A few weeks later, M2Z's Forbearance Petition also was placed on Public Notice.⁹ Since the Commission opened the door to public comment, a robust record has developed in both proceedings.¹⁰ Unquestionably, the record reflects that the public interest would be best served by grant of M2Z's Application, whether directly or via the Commission's exercise of its forbearance authority.

I. THE PUBLIC INTEREST IS PARAMOUNT OVER UNNECESSARY REGULATION

Congress created the Commission “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹¹ In addition to this general guidance, Congress has established several other statutory provisions specifically designed to ensure that the Commission's regulatory process fosters these goals. These statutory provisions include: (i) the Commission's obligation, pursuant to Section 7 of the Communications Act of 1934, as amended (the “Act”), to act upon proposals for new

⁷ Forbearance Petition at 1.

⁸ See “Wireless Telecommunications Bureau Announces that M2Z Networks Inc.'s Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band Is Accepted for Filing,” Public Notice, WT Docket No. 07-16, DA 07-492 (rel. Jan. 31, 2007) (“M2Z Application Public Notice”).

⁹ *Forbearance Public Notice*.

¹⁰ Currently, there are over 350 submissions in each of the companion M2Z dockets, WT 07-16 and WT 07-30, and the number continues to grow.

¹¹ 47 U.S.C. § 151.

technologies or services within one year;¹² (ii) the Commission’s authority to forbear from application of statutes or rules where the public interest so warrants;¹³ and (iii) the Commission’s obligation to periodically examine each of its rules and determine whether those rules remain necessary in the public interest in light of competition in the marketplace.¹⁴ These regulatory relief provisions demonstrate that Congress does not intend for the Act, Commission regulations, or the regulatory process to impede the Commission’s achievement of its core purposes. The Commission itself has recognized as much through its implementation of these statutory provisions and through its adoption of other rules and policies.

Spurring Deployment of New Technologies and Services Through Section 7. Section 7 of the Act, 47 U.S.C. § 157, provides that the Commission “shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.”¹⁵ This statutory provision was enacted 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.”¹⁶

Section 7 accomplishes these goals by expressly providing that any party who opposes a new technology or service “shall have the burden to demonstrate that such proposal is

¹² 47 U.S.C. § 157.

¹³ 47 U.S.C. § 160.

¹⁴ 47 U.S.C. § 161.

¹⁵ 47 U.S.C. § 157(b).

¹⁶ See Extended Remarks of Hon. John R. Dingell on Amendments to H.R. 2755, 130 Cong. Rec. E74 (Jan. 24, 1984); see also House Floor Debate on H.R. 2755, 129 Cong. Rec. 33347 (Nov. 17, 1983) (discussing a backlog of more than 10,000 applications for low power television service which were being processed at a rate of only 20 per month).

inconsistent with the public interest.”¹⁷ This burden-shifting mechanism “is intended to shift the balance of the process in favor of new services” and “allow the FCC, on an expedited time frame, to review [an] application” proposing a new service or technology.¹⁸ Thus, Section 7 creates “a presumption that new services are in the public interest.”¹⁹ Those opposing a new service or technology may not rebut the presumption simply by arguing that the Commission has other alternatives; rather they must demonstrate affirmatively that Section 7 proposals for new services or technologies are inconsistent with the public interest.

Regulatory Relief to Promote Competition and the Public Interest Under Section 10.

Section 10 of the Act requires the Commission to forbear from applying its regulations or any provision of the Act upon a showing that enforcement of such rules or statutory provisions is neither necessary to protect consumers nor ensure that rates are just, reasonable, and non-discriminatory, and that forbearance otherwise is consistent with the public interest.²⁰ Adopted as part of the Telecommunications Act of 1996 (“1996 Act”), Section 10 was intended to

¹⁷ 47 U.S.C. § 157(a).

¹⁸ Extended Remarks of Hon. John R. Dingell on Amendments to H.R. 2755, 130 Cong. Rec. E74 (Jan. 24, 1984). Along these lines, Congress also made it explicitly clear that “the intent of [Section 7 is] to preclude the Commission from considering the claim of adverse economic effect on an existing licensee when such claim is raised” against a petition or application proposing a new service or technology. *Id.*

¹⁹ *Petition for Reconsideration of Amendment of Parts 2 and 73 of the Commission’s Rules Concerning Use of Subsidiary Communications Authorization*, Memorandum Opinion and Order, 98 F.C.C.2d 792 ¶ 24 (1984) (“Congress has recently re-emphasized the importance of eliminating regulatory obstacles that hinder the development of new and additional uses of the spectrum. The Federal Communications Commission Authorization Act of 1983, Public Law 98-214, adds a new Section 7 to Title I of the Communications Act which . . . requires the FCC to encourage the development of new services and provides a presumption that new services are in the public interest. A similar provision was previously included in Senate Bill S. 66, Senate Report No. 98-67. In explaining the objectives of that previous provision, the Senate Report emphasized that ‘the development of new technologies and the efforts of competitors seeking to respond to consumer demands will bring more service to the public than will administrative regulations.’ In further elaboration, the Senate Report states that ‘a claim that the new or additional service will provide competition that will take revenue from another service, either existing or proposed, will not be a valid rebuttal.’ The regulatory process, the Report states, ‘should not act as a barrier to those who wish to provide new and additional services.’”).

²⁰ 47 U.S.C. § 160.

“promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”²¹ In keeping with its goal of “shift[ing] monopoly markets to competition as quickly as possible,”²² Congress anticipated that forbearance authority would “be a useful tool in ending unnecessary regulation”²³ and “reduc[ing] the regulatory burdens on new entrants.”²⁴ The forbearance standard itself states that a determination by the Commission that “forbearance will promote competition among providers of telecommunications services . . . may be the basis for a Commission finding that forbearance is in the public interest.”²⁵ Under the “pro-competitive, deregulatory policy framework”²⁶ set forth in the 1996 Act, the Commission *must* forbear from applying its regulations or any provision of the Act where it determines that the forbearance standard is met.²⁷ Indeed, Congress believed so strongly that forbearance would serve an effective role in promoting competition that it made forbearance self-effectuating: If the Commission fails to issue an order acting upon a Section 10 petition within one year of filing, the petition is deemed granted by operation of law.²⁸

²¹ Telecommunications Act of 1996, Pub. L. No. 104-104, pmbi., 110 Stat. 56 (1996); *see also* *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, ¶ 1 (1998) (subsequent history omitted) (“One of the fundamental goals of the Telecommunications Act of 1996 (1996 Act) is to promote innovation and investment by all participants in the telecommunications marketplace, both incumbents and new entrants, in order to stimulate competition for all services, including advanced services. Congress provided the blueprint in the 1996 Act for ensuring that all markets are open to competition, while encouraging the rapid deployment of new telecommunications technologies.”).

²² Report to Accompany H.R. 1555, House Rep. No. 104-204, 104th Cong., 1st Sess. (1995).

²³ *Id.*

²⁴ Report to Accompany S. 652, S. Rep. No. 104-23, 104th Cong., 1st Sess. (1995).

²⁵ 47 U.S.C. § 160(b).

²⁶ Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

²⁷ 47 U.S.C. § 160(a) (emphasis added).

²⁸ *See* 47 U.S.C. § 160(c). The Commission may extend the one-year deadline by 90 days. *See id.*

The underlying purposes of Section 10 and Section 7 are closely connected. Indeed, the note to Section 7 (commonly referred to as Section 706), enacted in 1996 contemporaneously with Section 10's forbearance provisions, instructs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, *regulatory forbearance*, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."²⁹ That is, Section 706 "directs the Commission to use the authority granted in other provisions, including the forbearance authority under section 10(a), to encourage the deployment of advanced services" and to "further Congress' objective of opening all telecommunications markets to competition."³⁰

Periodic Reviews to Eliminate Unnecessary Regulations Under Section 11. Section 11 of the Act instructs the Commission, in every even-numbered year beginning in 1998, to "review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."³¹ Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest."³²

²⁹ 47 U.S.C. § 157 note (emphasis added).

³⁰ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, ¶¶ 69, 76 (1998).

³¹ 47 U.S.C. § 161.

³² *Id.*

Using the regulatory reform authority of Section 11, the Commission has streamlined many regulatory requirements, including several affecting its most fundamental activities. For example, in 1998, the Commission streamlined its international carrier rules by authorizing most new carriers to provide international services on most international routes 14 days after public notice of an application.³³ More recently, the Commission modified and eliminated various rules for Commercial Mobile Radio Service providers where those rules had become outdated due to technological change and increased competition, were no longer necessary to achieve their purposes, and, to the contrary, imposed costs and impeded spectral efficiency.³⁴ These and other streamlining efforts are intended to relieve regulatory burdens that are no longer necessary, ease entry, and provide regulated entities greater flexibility to conduct their businesses.

Commission Waivers and Other Relief. The Commission itself has established several means by which it can place progress above regulation where applicable standards are met, including grant of waivers, special temporary authorizations, and regulatory streamlining. For example, it has adopted rules establishing both general³⁵ and specific waiver standards.³⁶ Generally, a waiver of the Commission's rules is permitted where the underlying purpose of the rule(s) at issue would not be served and a grant of the waiver would be in the public interest;³⁷ or where, in view of unique or unusual factual circumstances of a particular case, application of the

³³ *1998 Biennial Regulatory Review—Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1998).

³⁴ *Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, Second Report and Order, 17 FCC Rcd 18485 (2002).

³⁵ *See, e.g.*, 47 C.F.R. § 1.3; 47 C.F.R. § 1.925.

³⁶ *See, e.g.*, 73.3555(b) n.7 (permitting waivers of the local television ownership rule where one station in a proposed combination is failed, failing, or unbuilt if applicants meet a specific, multi-part test).

³⁷ 47 C.F.R. § 1.925(b)(3)(i).

rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.³⁸ Although an applicant for waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver,³⁹ the Commission has approved waivers of a broad range of rules and policies where its standards are met. Similarly, the Commission authorizes licensees to operate at variance from its rules or license terms where the licensee demonstrates that such operations are necessary under established standards for special temporary authorizations.⁴⁰ In addition, the Commission often takes steps, on its own motion, to streamline rules and regulations in order to advance policy goals such as facilitating market entry,⁴¹ encouraging broadband deployment,⁴² or simply to ease administrative burdens, such as those associated with filing requirements.⁴³

³⁸ 47 C.F.R. § 1.925(b)(3)(ii).

³⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁴⁰ *See, e.g.*, 47 C.F.R. §§ 1.931, 5.61, 23.28, 25.120, 73.1635.

⁴¹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, FCC 06-180 (rel. Mar. 5, 2007) (adopting rules to facilitate and expedite entry of new cable competitors into the market for the delivery of video programming, and accelerate broadband deployment).

⁴² *Id.* *See also, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915 (2005) (*Wireline Broadband Internet Access Services Order*), *petitions for review pending, Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005) (concluding that wireline broadband Internet access services are information services having a telecommunications transmission component, and that an offering of wireline broadband Internet access service does not include a separate “telecommunications service” offering and relieving Bell Operating Companies of all other *Computer Inquiry* requirements applicable to wireline broadband Internet access services).

⁴³ *See, e.g., Local Telephone Competition and Broadband Reporting*, 19 FCC Rcd 22340 (2004) (permitting the filing of certification statements by email and facsimile and eliminating the requirement that filers provide redacted versions of their filings); *Revision of Automated Reporting Management Information System (ARMIS) Reports for Certain Class A and Tier 1 Telephone Companies*, 20 FCC Rcd 1048 (2004) (permitting electronic filing of SEC reports associated with Uniform System of Accounts reporting).

II. THE PUBLIC INTEREST WOULD BE BEST SERVED BY THE COMMISSION'S EXPEDITED GRANT OF THE M2Z APPLICATION USING ALL OF THE PRO-COMPETITIVE, DEREGULATORY TOOLS PROVIDED BY CONGRESS

Record evidence in support of the Application and Forbearance Petition demonstrates that overwhelming public interest benefits will result from the deployment of M2Z's NBRS. Parties have identified wide-ranging public interest benefits that the M2Z Application, when granted, will generate including: (1) bolstering the competitiveness of small and independent businesses;⁴⁴ (2) creating a more competitive broadband marketplace;⁴⁵ (3) increasing diversity in management and ownership of communications outlets;⁴⁶ (4) enhancing educational opportunities;⁴⁷ (5) bridging the digital divide;⁴⁸ (6) supplementing and enhancing public safety

⁴⁴ See *Comments of the California Association of Local Economic Development* in WT Docket Nos. 07-16 and 07-30 (filed Feb. 14, 2007) (widespread governmental interest in deploying broadband stems from recognition that broadband access fosters economic development; M2Z's innovative proposal will help government expand broadband access using private funds); *Amicus Curiae Comments of the Minority Media and Telecommunications Council* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007) (positing that Internet is crucial to the success of all small and independent businesses, which account for over 99% of all companies, and asserting that "a free, nationwide broadband Internet access service would extend the potential of e-commerce to all businesses.")

⁴⁵ See *Comments of the Electronic Retailing Association* in WT Docket Nos. 07-16 and 07-30 (filed Feb. 6, 2007) (only 35% of small businesses currently have websites and only 57% use the Internet for business related activities, which "further exemplifies the need for affordable, reliable solutions to the significant, and often times, insurmountable, cost of broadband connectivity."); *Amicus Curiae Comments of the Minority Media and Telecommunications Council* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007) (readily available broadband access is essential for small and independent businesses to remain successful in an increasingly electronic world).

⁴⁶ *Amicus Curiae Comments of the Minority Media and Telecommunications Council* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007) ("[w]ith one of the most diverse ownership and management teams of any communications business," M2Z is "a model of diversity for other communications businesses to follow").

⁴⁷ *Comments of the National PTA* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 1, 2007) (M2Z's proposal is as an "innovative and equitable way to ensure that broadband is an educational resource available to all Americans – parents, children and educators."); *Comments of the Higher Education Wireless Access Consortium* in WT Docket Nos. 07-16 and 07-30 (filed Feb. 28, 2007) (supports M2Z proposal stating that it will help bridge the gap of wireless connectivity in the classrooms of those schools with fewer resources.); *Comments of the League for Innovation in the Community College* in WT Docket Nos. 07-16 and 07-30 (filed Feb. 28, 2007) (while computer and Internet access has increased, there still remains a substantial information divide. "[T]here are still communities that do not have adequate access to the Internet and technology-based training, resources, and services."); *Comments of the College*

communications,⁴⁹ and (7) protecting children from objectionable online materials,⁵⁰ among many other benefits. Moreover, as demonstrated in a study authored by Simon Wilkie, PhD., M2Z's entry into the broadband marketplace will increase the consumer welfare by up to 25 billion dollars.⁵¹ A combination of individuals, municipalities, and organizations representing over 20 million Americans have filed comments in support of the grant of the Application and Forbearance Petition. It is the voices of these commenters, not those of a handful of well-heeled incumbents, than should guide the Commission's actions on the Application and Forbearance Petition. As the Commission has often observed, its role is "to ensure that the marketplace is conducive to investment, innovation, and *meeting the needs of consumers*."⁵² Indeed, the

Parents of America in WT Docket Nos. 07-16 and 07-30 (filed Feb. 28, 2007) (with the cost of college rising, free broadband service would provide great financial relief to struggling parents and would allow more students to participate in distance learning programs.)

⁴⁸ *Comments of the Association of Community Organizations for Reform Now* in WT Docket 07-16 (filed Feb. 2, 2007) (current Internet providers are more interested in the bottom line through service to wealthier Americans with high monthly subscription rates, while M2Z will solve the problems of broadband availability and affordability); *Comments of One Economy Corporation* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 1, 2007) ("this type of market innovation will further One Economy's mission, benefit an underserved portion of our country, and serve the public interest").

⁴⁹ *Comments of the National Troopers Coalition* in WT Docket 07-16 (filed Feb. 6, 2007) ("M2Z's proposed network will provide another layer of redundancy to bolster existing and planned public safety-operated networks and help law enforcement stay operational in disasters.").

⁵⁰ *Comments of Internet Keep Safe Coalition* in WT Docket Nos. 07-16 and 07-30 (filed Mar. 1, 2007) (expresses approval of M2Z's network-level filtering of indecent and pornographic material).

⁵¹ *Simon Wilkie, PhD., "The Consumer Welfare Impact of M2Z Network Inc.'s Wireless Broadband Proposal,"* WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007) (conservatively estimating the net present value of the consumer welfare benefits of M2Z's NBRS at \$18 - \$25 billion, including a reduction in broadband prices due to increased competition, greater access to free broadband service, and royalty payments to the U.S. Treasury from premium subscriber fees) (the "Wilkie Consumer Welfare Study").

⁵² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, ¶¶ 1-2 (1998) (subsequent history omitted) (emphasis added). See also *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 13620, 13641-42 ¶¶ 64-68 (2003) ("Media Ownership Biennial Review Order") (subsequent history omitted) (concluding that because the Commission's "duty as an agency runs to consumers, not advertisers," the Commission would rely, where possible, on measures other than advertising revenues in evaluating competition in media markets).

Commission's concern for and elevation of the needs of the public above those of any given industry segment runs throughout its history, and even can be found in the decisions of its predecessor agency, the Federal Radio Commission.⁵³

M2Z has presented to the Commission a plan that promises to transform the landscape of broadband Internet access in the United States. In light of the showings in M2Z's Application, Forbearance Petition, and now the record in the companion M2Z proceedings, the Commission should not hesitate to use any tool in its arsenal to grant the Application. Indeed, there is no better public interest justification for the exercise of such deregulatory tools as expedited action, forbearance, regulatory streamlining, or waiver than the provision of free broadband to the American public on a nationwide basis.

The public interest is best served when beneficial technologies are made available without undue delay. An essential feature of both Section 7 and Section 10 is the mandate to deploy new services and technologies to the public in a rapid manner. Thus, the Commission is at its best when it acts quickly and efficiently to improve the nation's telecommunications capabilities and provide consumers with useful technologies and services. Technology is fast-moving, and the Commission must remain nimble enough to ensure that the American people will receive the benefits of unique proposals that will better serve their needs.⁵⁴ When it comes

⁵³ See, e.g., Fed. Radio Comm'n, Second Ann. Rpt. 169-70 (1928) (quoted in *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 n.2 (1940) and *Media Ownership Biennial Review Order*, 18 FCC Rcd at 13641 ¶ 65) (“[t]he emphasis must be first and foremost on the interest, the convenience, and the necessity of the . . . public, and not on the interest, convenience, or necessity of the individual broadcaster, or the advertiser”).

⁵⁴ The Chairman and Commissioners have all recognized the value of regulatory speed and flexibility to promote the public interest. See, e.g., *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Joint Statement of Chairman Kevin J. Martin and Commissioner Deborah Taylor Tate, WC Docket 04-440 (rel. Mar. 20, 2006) (grant of Verizon's forbearance petition is consistent with the Commission's efforts to “establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers”); *Petition for*

to broadband deployment, time is of the essence. An economic study being submitted today in support of the Forbearance Petition demonstrates that M2Z's entry into the broadband marketplace will yield 34 billion dollars in consumer welfare benefits.⁵⁵ This study also finds that a one-year delay in M2Z's market entry will reduce these benefits by 4.5 billion dollars.⁵⁶

It is important that the Commission have the opportunity to fully consider the impact of proposals before it, consistent with its obligations under the Communications Act and the Administrative Procedure Act. These very statutes also require, however, that the Commission's proceedings not devolve into a "waiting game." The Commission's sole duty is to execute the directives of Congress.⁵⁷ The Commission is authorized to act upon applications before it in as

Forbearance of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunset, Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, WC 05-333, FCC 07-13 (rel. Mar. 9, 2007) (grant of forbearance relief in Qwest's case "take[s] into account the rapidly changing long distance market and the unique competitive position of the petitioner); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Separate Statement of Commissioner Deborah Taylor Tate, WC 05-281, FCC 06-188 (rel. Jan 30, 2007) (the Commission's action on the ACS petition "takes seriously the pro-competitive and deregulatory mandates in section 10 of the Act, and applies that statutory standard to the specific market facts to facilitate market-based solutions" and applauding the Commission's exercise of "regulatory humility"); Testimony of Robert McDowell, Commissioner, Federal Communications Commission, before the Committee on Energy and Commerce, U.S. House of Representatives (March 14, 2007) (espousing a regulatory philosophy of ensuring that "consumers . . . have the freedom to have their demands satisfied" and that "entrepreneurs . . . have the freedom to innovate and bring their products and services to market so they can satisfy those consumers' demands").

⁵⁵ Kostas Liopiros, PhD., "*M2Z Networks, Inc.—The Value of Public Interest Commitments and the Cost of Delay to American Consumers*" WT Docket Nos. 07-16 & 07-30 (filed March 19, 2007). Kostas Liopiros is principal and founder of the Sun Fire Group, an independent technology management consultancy based in Alexandria, VA. Dr. Liopiros has over 25 years of experience in consulting and senior management in the telecommunications, media, and electronics industries.

⁵⁶ *Id.*

⁵⁷ See Opening Remarks of Congressman John R. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (March 14, 2007) (observing that the Commission's "sole duty" is "to implement the laws as passed by Congress" and that when the Commission loses sight of that role "consumers suffer, as does the credibility of the FCC"). See also Testimony of Kevin J. Martin, Chairman, Federal Communications Commission, before the Committee on Energy and Commerce, U.S. House of Representatives (March 14, 2007) (stating that "The FCC is an independent agency and a creature of Congress. Our highest priority, therefore, is to implement the will of Congress.")

little as 31 days.⁵⁸ For applications that propose new technologies and services, Section 7 mandates a decision within one year. Section 10 mandates a decision on forbearance petitions, within, at most, 15 months. Further delay in consideration and action on the Application and Forbearance Petition only serves to advance the interests of those that oppose new competition in the markets for broadband Internet access and wireless services. The Commission should avoid further delay, and, using means afforded it by Congress, take swift action on the record before it.

⁵⁸ 47 U.S.C. § 309(a).

III. CONCLUSION

As outlined in the Forbearance Petition, M2Z satisfies every element of the forbearance standard. The record on the merits of M2Z's Application and Forbearance Petition further demonstrates the public interest benefits that will result from grant of the Forbearance Petition and Application. Accordingly, the Commission should take action on M2Z's Forbearance Petition and Application well ahead of the applicable Section 7 and Section 10 deadlines. Using any of the regulatory tools afforded it by Congress, the Commission should act upon the Application without further delay.

Respectfully submitted,

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