

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
M2Z Networks, Inc. )  
) WT Docket No. 07-16  
Application for License and Authority to )  
Provide a National Broadband Radio )  
Service in the 2155-2175 MHz Band. )

In the Matter of )  
)  
Petition of M2Z Networks, Inc. for )  
Forbearance under 47 U.S.C. § 160(c) ) WT Docket No. 07-30  
Concerning Applications of Sections )  
1.945(b) and (c) of the Commission’s )  
Rules and Other Regulatory and Statutory )  
Provisions. )

---

**SUPPLEMENTAL COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES  
ON PETITIONS TO DENY**

---

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> submits these comments on certain of the Petitions to Deny filed in these proceedings. On March 19, 2007, NASUCA had filed combined comments on M2Z Networks Inc.’s (“M2Z’s”) application for use of spectrum in WT Docket No. 07-17 and petition for

---

<sup>1</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

forbearance in WT Docket No. 07-30. Those comments addressed petitions to deny the application in WT Docket No. 07-17 that were filed prior to March 16, 2007.<sup>2</sup> On March 9, 2007, the Federal Communications Commission (“FCC” or “Commission”) had issued a Public Notice allowing petitions to deny to be filed until March 16, 2007.<sup>3</sup> It appears that there were two additional petitions to deny filed, beyond those originally commented on by NASUCA: one by Towerstream Corporation (“Towerstream”)<sup>4</sup> and an almost identical petition by the Rural Broadband Group (“RBG”).

In addition, CTIA and the Information Technology Industry Council (“ITTA”) filed ex parte letters opposing M2Z’s application. These are not petitions to deny, but they raise no issues not previously raised by the earlier submissions in these proceedings, including CTIA’s own petition.

Indeed, none of the new opposition pleadings raises new issues beyond those raised -- unpersuasively -- in the earlier petitions. For example, RBG brings up the

---

<sup>2</sup> Petitions to Deny had been filed by AT&T Inc. (“AT&T”); CTIA - The Wireless Association® (“CTIA”); Commnet Wireless, LLC (“Commnet”); NextWave; Motorola, Inc. (“Motorola”); T-Mobile USA, Inc. (“T-Mobile”); Verizon Wireless (“VZW”); and the Wireless Communications Association International, Inc. (“WCA”).

<sup>3</sup> On January 31, 2007, a Public Notice was issued in WT Docket 07-16, “Wireless Telecommunications Bureau Announces That M2z Networks, Inc.’s Application For Licensee And Authority To Provide A National Broadband Radio Service In The 2155-2175 Mhz Band Is Accepted For Filing” DA 07-492 (rel. January 31, 2007) (“Spectrum Public Notice”). On March 9, 2007, a Public Notice was issued in that docket setting a pleading cycle, with Petitions to Deny due March 16, 2007, oppositions to Petitions due March 26, 2007, and replies due April 3, 2007. DA 07-987 (rel. March 9, 2007). In WT Docket 07-30 a Public Notice, “Pleading Cycle Established for Comments on Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160 (c) to Permit Acceptance and Grant of its Application for a License to Provide Radio Service in the 2155-2175 MHZ Band,” DA 07-736 (rel. February 16, 2007) (“Forbearance Public Notice”) set comments on the petition for forbearance as due March 19, 2007, with reply comments due April 3, 2007. M2Z has requested that the applications be considered in tandem.

<sup>4</sup> Towerstream also filed an application for spectrum. The application is discussed here, despite concerns that the Towerstream application cannot be treated as a competing application because it was filed more than thirty days after the initial Public Notice on M2Z’s application. Like MEC before it, Towerstream’s proposal assumes that an auction is necessary Towerstream Application, Exhibit A, p. 2; MEC Application, Exhibit 3, p. 3. Unlike MEC, however, Towerstream makes no public interest commitments.

“pioneer preference” precedent,<sup>5</sup> but like the others, fails to recognize that allocating spectrum in the public interest is a very different animal from the pioneer’s preference.

Likewise, RBG argues that the Commission is legally compelled to auction off this spectrum.<sup>6</sup> NASUCA disagrees. RBG’s position overlooks the public interest benefits that allow the Commission to forbear from a statutory auction directive.

RBG questions those public interest benefits, asserting that “[t]he speed of M2Z’s proposed free service, 384 kpbs, is not particularly beneficial.”<sup>7</sup> None of the other applicants has proposed a faster free service; and M2Z’s does qualify as an advanced service under the FCC’s low standard. NASUCA agrees that M2Z’s free service would be more in the public interest if it were faster.

RBG also “question[s] the viability of M2Z’s planned construction of a network to cover 95% of the population within ten years.”<sup>8</sup> RBG says that M2Z’s proposal “is probably premised on M2Z’s expectation that it will be able to re-negotiate its commitment obligations....”<sup>9</sup> NASUCA had raised concerns about M2Z’s benchmarks not including appropriate sanctions.<sup>10</sup> The same concerns are raised by the possibility of renegotiation. The FCC should not allow such changes in the public interest commitments which are the basis for M2Z’s application.

---

<sup>5</sup> RBG Petition at 3.

<sup>6</sup> Id. at 5.

<sup>7</sup> Id. at 7.

<sup>8</sup> Id.; see also Commnet Application at 2.

<sup>9</sup> RBG Petition at 7.

<sup>10</sup> NASUCA Comments at 6.

As NASUCA stated:

M2Z's commitment for free ubiquitous broadband service appears to be superior to the competing petitions that were filed by other parties. And the bases of the various petitions to deny do not appear to be impediments to granting M2Z's Petitions, in the furtherance of the public interest.<sup>11</sup>

Nothing in the various petitions to deny or in the other filed applications has changed that view.

Respectfully submitted,

Charles A. Acquard, Executive Director  
NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

March 26, 2007

---

<sup>11</sup> Id. at 2 (footnotes omitted).