

**U.S House of Representatives
Subcommittee on Telecommunications and the Internet
Hearing on
“Digital Future of the United States: Part 3 –
Spectrum Opportunities and the Future of Wireless”**

**Testimony of John B. Muleta
CEO, M2Z Networks, Inc.**

April 19, 2007

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Section 1

Summary of Testimony

Summary of Testimony: John Muleta, CEO, M2Z Networks, Inc.

Before the Subcommittee on Telecommunications and the Internet's Hearing:
"Digital Future of the United States: Part 3 – Spectrum Opportunities and the Future of Wireless"
April 19, 2007

M2Z Networks is a Silicon Valley company founded by Milo Medin and John Muleta in 2005. Backed by three prominent venture capital firms that have supported a long list of innovative technology and Internet companies, M2Z is prepared to take decisive action to solve two of the major telecommunications problems confronting this country today:

How to provide broadband access to the over 100 million American adults, and their children, that continue to be stranded on the wrong side of the global educational and economic divide.

How to make use of fallow spectrum so that it benefits consumers, public safety, rural communities and small businesses.

In this regard, the key to equitable and effective FCC spectrum assignment is a transparent process driven by a well defined public interest objective such as solving the broadband divide. At no time, therefore, should spectrum assignment by auctions be used as the short hand for determining the public interest.

M2Z proposes to use 20 MHz of underutilized, fallow and unpaired spectrum in order to give the public the following benefits: access to 384 kbps of always on free broadband connectivity for 95% of the U.S. population within 10 years; filtering of our free service at the network level so it is family friendly and accessible to children; provision of a free secondary interoperable broadband data network for public safety officials and first responders; payments to the Federal Treasury of 5% of gross annual revenues from our premium service. Most importantly, M2Z is using private sector funding to build an alternative nationwide broadband network to cable and DSL with no Universal Service Fund support.

Today, the broadband market in the United States is a duopoly limiting consumer choice. Similarly, FCC reports on the status of broadband Internet access show that incumbent local exchange carriers ("LECs") and cable operators dominate the residential broadband market. For new nationwide entrants to create vibrant competition that will close the broadband divide, a prompt and transparent process is all important.

Consistent with the reality that assignment and productive use of spectrum better achieves the public interest than lengthy regulatory processes, Congress has empowered the Federal Communications Commission with numerous statutory tools to facilitate the goal of providing universal and affordable broadband access to the American public. The FCC can use Section 7, Section 10, Section 309 and Section 706 to immediately act on a complete FCC record that overwhelmingly supports the licensing of M2Z to operate in the underutilized 2155-2175 MHz spectrum band under its public interest commitment.

The FCC record on the M2Z License Application that was filed on May 5, 2006 is now complete. Because of the transparent and overwhelming support for M2Z, the Commission can now act in the public interest and immediately grant M2Z's license.

Section 2

CV of John Muleta

**CV of JOHN MULETA
M2Z Networks, Inc.
2000 N. 14th Street, Arlington VA 20001**

M2Z Networks, Inc.

December 2005 – Present

Co-Founder, Chief Executive Officer, and Member of the Board of Directors

M2Z's mission is to provide fast, free, family-friendly wireless broadband access to 95% of the US population. In addition to the free service, M2Z will provide wholesale open IP connectivity to partners who will bundle wireless Internet access with a variety of consumer devices, applications and services.

FiberTower, Inc.

June 2005 – Present

Member of the Board of Directors

FiberTower is a new nationwide backhaul services provider to the leading wireless carriers in major U.S. markets. FiberTower's networks are designed using nationwide LMDS spectrum and fiber technologies and offer carrier-grade performance, point-to-point and point-to-multipoint capabilities, and TDM to Ethernet service platforms.

HRsmart, Inc.

June 1996 – Present

Member of the Board of Directors

HRsmart is a leading provider of world-class talent management solutions that help companies attract and retain top talent to remain competitive in today's market. HRsmart's state-of-the-art technology and proven human capital management practices provide customers with solid performance at attractive prices.

Venable LLP

March 2005 – April 2006

Partner & Co-Chair Communications Group

Practice area is the convergence of telecommunications and mass media with a specific focus on the impact of wireless and broadband services and applications. Additional practice areas include cell phone number portability, enhanced 911 and other public safety and homeland security initiatives, copyrights, and consumer marketing issues.

Federal Communications Commission

February 2003 – April 2005

*Wireless Telecommunications Bureau
Bureau Chief*

Responsibility for the Wireless Telecommunications Bureau, one of the Agency's largest operating units with over 320 staff members comprised of attorneys, engineers, economists, information technologists and administrative personnel.

Tellus Technology, Inc.

June 2001- December 2002

Chairman of the Board of Directors and Chief Executive Officer

Appointed head of a privately held and venture capital backed OEM wireless modem designer based out of Pleasanton, CA. The company designed a CDMA OEM module that can be used as an embedded or external wireless modem for laptops, PDAs, and other mobile computing devices. The company also has a profitable line of CDPD based OEM modules that use several proprietary and patented software for wireless network management and transaction processing. In restructuring the business, overhead was significantly reduced and new business was secured despite the general slowdown in the technology sector.

Navisite, Inc.

January 2001 – August 2001

Executive Vice President

Responsible for the Strategy, M&A, Business Development, International, and Marketing functions as well as the company's successful Streaming Media Group based in San Diego, CA. As an officer of the company who reported to the CEO, helped the company meet Wall Street guidance for two quarters. He increased the Streaming Media Division's sales 30% quarter-over-quarter, while managing to dramatically lower costs in the face of a steep and rapid decline experienced by the company's managed hosting business as well as the general IT services market in that time period.

PSINet, Inc.

February 1998 – January 2001

Senior Vice President (Parent Company)

October 1999 – January 2001

President of PSINet Ventures, Ltd.

May 2000 – December 2000

Managed the Company's \$100 million venture fund with a staff of 8 investment analysts. PSINet Ventures was chartered with making strategic equity investments in early and mid-stage communications, content and Application Service Provider ventures that enhanced PSINet's financial and competitive positions. PSINet invested from \$250,000 to \$5 million, in the form of cash and/or Internet services, in 130 companies.

President of PSINet Global Facilities Division

October 1999 -- September 2000

Executive Officer responsible for the planning, capital budgeting, regulatory licensing and delivery of the company's IP optimized fiber optic global backbone. This included building one of the most advanced global Dense Wave Division Multiplexing based fiber networks. The build-out of this advanced fiber-optic network was a cornerstone of PSINet's strategy to become the leading Internet Super Carrier.

President of India, Middle East and Africa Inc.

October 1999 – September 2000

Executive Officer of PSINet responsible for the expansion of PSINet IP Optimized Network and related services such as Managed Hosting Centers into India, the Middle East and Africa with particular emphasis on India and South Africa.

Vice President, Capacity Planning and Service Delivery

August 1998 – October 1999

Executive Officer of PSINet responsible for planning, capital budgeting, regulatory licensing and delivery of the company's IP optimized global backbone network. Also responsible for developing and executing the bandwidth integration and related gross margin and EBITDA improvement for the **75** ISPs and other telecommunications carriers in 28 international markets starting in January 1998.

Vice President, PSINet, Inc.

February 1998 – August 1998

Part of the strategy and business development team formed by PSINet's to consolidate ISPs on a global basis. Responsible for identifying network related cost and revenue synergies of acquisition targets and executing network related integration activities. This team eventually acquired 75 Internet Services Providers and other telecommunications carriers in a 36-month period.

Federal Communications Commission

December 1994 – January 1998

FCC Common Carrier Bureau

Deputy Bureau Chief

September 1997 – January 1998

The Common Carrier Bureau is responsible for implementing the Communications Act and the Commission rules and regulations as they apply to landline telephone (POTS) carriers. Specific duties as Deputy Bureau Chief included oversight of the Bureau's Enforcement, Network Services, and Industry Analysis divisions, leading various administrative rulemaking and enforcement proceedings relating to Title II of the Act, developing with the Bureau Chief and the other deputies the strategic and operating plans of the Bureau, establishing/maintaining contacts with the public, other regulatory agencies, and the press. Also responsible for regularly briefing and advocating staff positions to the Chairman and the other Commissioners on pending Bureau matters.

Chief, Enforcement Division

July 1995 - August 1997

The Enforcement Division's responsibilities included conducting the Commission's enforcement and compliance initiatives; adjudicating formal complaints against Title II common carriers; developing and implementing the Commission's consumer protection programs for traditional landline telephone service; and reviewing, as required, mergers and acquisitions among Title II carriers. The Division had 30 attorneys and 50 administrative and investigative personnel.

FCC Office of Plans and Policy
Attorney-Advisor

December 1994 – July 1995

Staff work on long-term issues facing the Commission including determining the appropriate "X" factor for Price Cap common carriers and forecasting the financial and market valuation consequences of television broadcasters' adopting Advanced Television ("ATV") transmission standards.

Coopers & Lybrand Consulting, LLC

September 1993 – December 1994

Senior Associate in the Telecommunications and Media Practice Group

Advised large telecommunications carriers on entry strategies for both domestic and foreign markets. Specialized in two distinct areas---M&A and business process reengineering--where operational know-how, financial analysis skills, and team leadership are of critical importance. Notable achievements at C&L include: a) conducting (as the lead) financial and operational due diligence on the local telephone operations (\$4 billion in annual revenues) of a large US telecommunications carrier on behalf of two foreign carriers purchasing a 20% interest in the parent; b) structuring a merger between two cellular companies in the largest US metropolitan market; and c) reengineering the customer contact points of a large RBOC (including I&M, customer service, network planning, and network engineering) to improve service and reduce provisioning delays.

GTE Corporation

June 1986 – June 1989

Manager (various units in Florida)

Responsible for structuring acquisitions and divestitures to meet the company's goal of acquiring \$100 million in new assets related to providing information services. Last position as a Manager in the Business Development Group of GTE Information Services.

Prior work assignments at GTE included stints at GTE Florida (local telephone operations) and as the Marketing Manager of GTE Florida Teleguide (an interactive videotex service). Specific tours of duty at GTE Florida included assignments to outside plant engineering, marketing, and strategic planning.

EDUCATION

University of Virginia Joint Degree Program

May 1993

MBA, Shermet Award Winner for Outstanding Scholarship

Juris Doctor, School of Law

May 1993

UVA School of Engineering and Applied Sciences

Bachelor of Science in Systems Engineering

May 1986

PROFESSIONAL MEMBERSHIPS

Virginia Bar
District of Columbia Bar
Federal Communications Bar Association

HONORS

Federal Senior Executive Service Member	April 2004
FCC Chairman's Special Achievement Award	September 1996
Shermet Award for Academic Excellence from Darden School Faculty	September 1990
GTE BEST Award from the President of GTE Florida	March 1987

PAPERS, PRESENTATIONS AND SPEECHES

Available electronically upon request

Section 3

Written Testimony of John Muleta

**U.S House of Representatives
Subcommittee on Telecommunications and the Internet
Hearing on
“Digital Future of the United States: Part 3 –
Spectrum Opportunities and the Future of Wireless**

**Written Testimony of John B. Muleta
CEO, M2Z Networks, Inc.**

April 19, 2007

Background

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify today. My name is John Muleta, and I am the co-founder and CEO of M2Z Networks, Inc. My business partner, Milo Medin, and I founded M2Z Networks in 2005 with the support of three prominent venture capital firms that have backed a long list of innovative technology companies of the digital age such as Netscape, Google, Tivo, MySpace and Amazon. Milo previously founded @Home Networks, and was one of the key innovators in the cable broadband industry. It is in large part due to Milo’s leadership that the cable broadband industry grew from zero subscribers only a few short years ago to more than 40 million today.

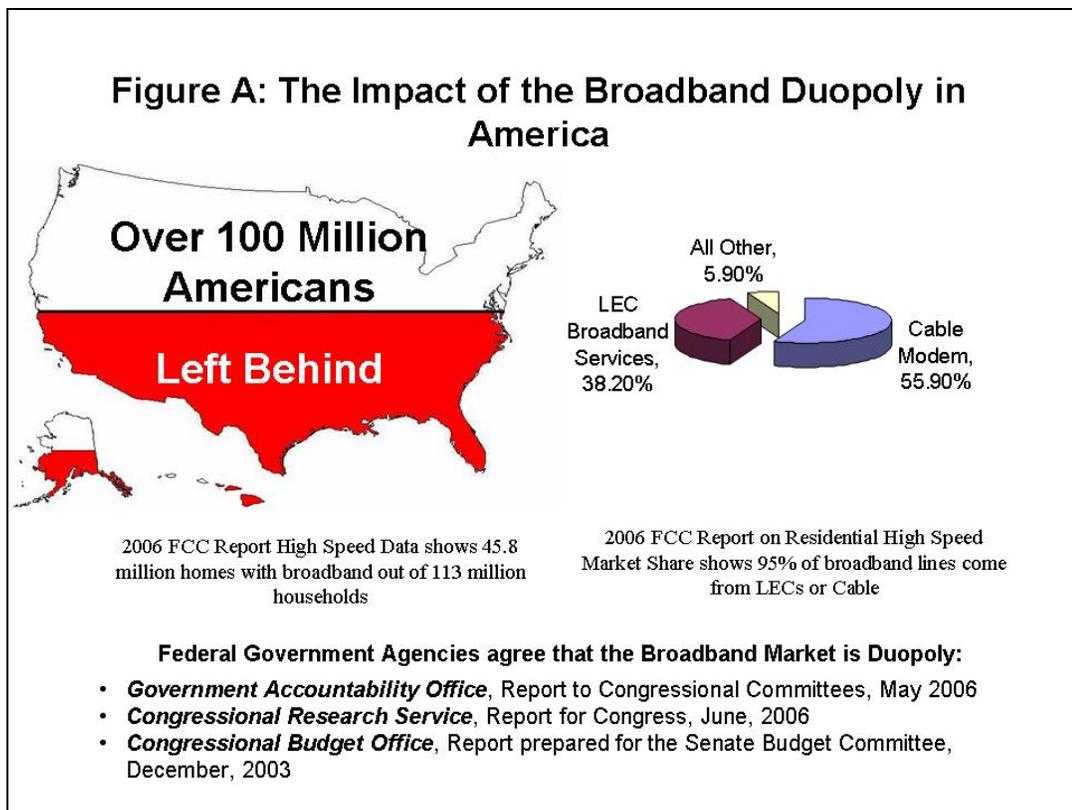
As for myself, I have more than 22 years of experience in the wireless and wireline telecommunications industries. As a businessman and entrepreneur, I

have worked with companies that helped to pioneer the Internet, including GTE and PSINet, Inc. At PSINet, I headed up efforts to build fiber and IP networks in 28 countries, and worked to open up developing markets through competition from IP-enabled services. I also served as the Chief of the Wireless Telecommunications Bureau at the Federal Communications Commission (FCC or Commission) between 2003 and 2005, and was Deputy Bureau Chief and Chief of the Enforcement Division of the FCC's Common Carrier Bureau during the implementation of the 1996 Telecommunications Act.

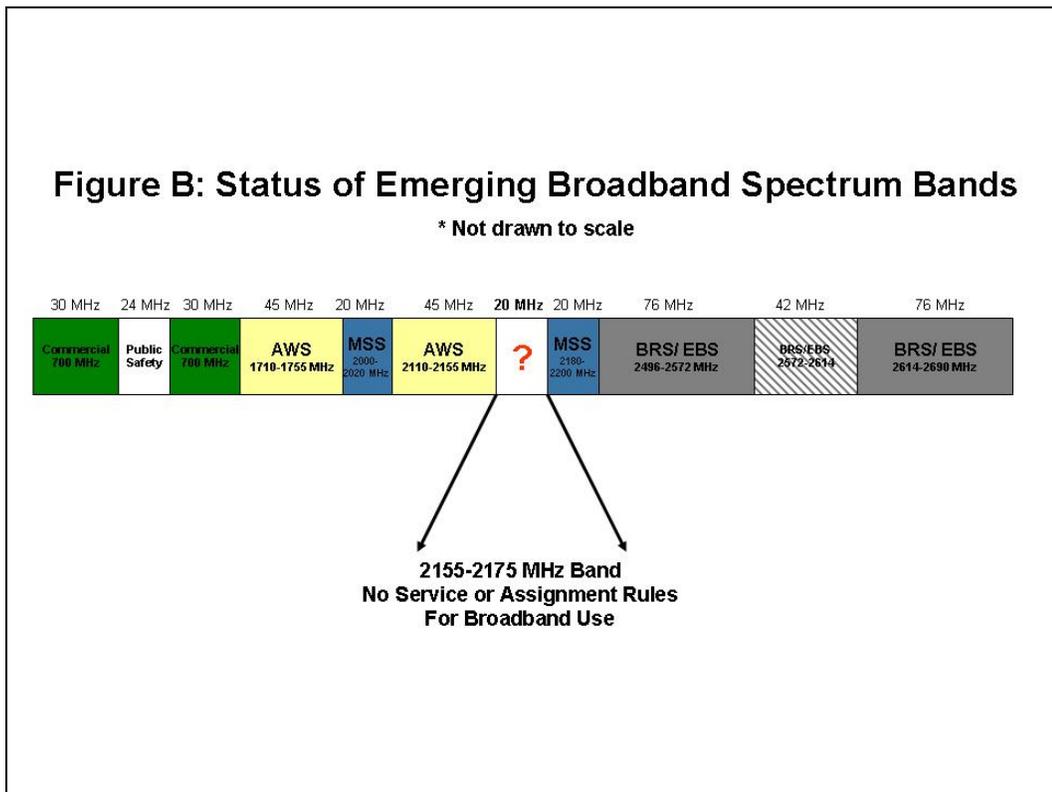
The Subcommittee was kind enough to ask me here to speak about spectrum management and how it affects our country's digital future. Today, spectrum management must place particular focus on the need for additional consumer broadband access across the country because of the educational and economic impact it will have on our country's global competitiveness in the future. Broadband availability for all U.S. citizens has been identified as a top priority by leaders in both parties, including President Bush, Speaker Pelosi, FCC Chairman Martin, and many of the distinguished members of this Subcommittee. I am happy to report that M2Z has identified a path to reach this paramount goal by utilizing 20 MHz of unpaired, historically underutilized, and largely fallow spectrum at 2155-2175 MHz for which it has sought an FCC license.

M2Z's mission is to provide Americans, of all means and all demographics,

the opportunity to access a free, fast, and family friendly nationwide wireless broadband data network. This network will finally bring broadband Internet access to over 100 million adult Americans – in addition to their millions of children who need fast, reliable Internet access to augment their education – who currently have no Internet access or who use outdated dial-up connections. For others, M2Z will provide a welcome choice to the current broadband duopoly.



In order to provide this valuable free service, M2Z has applied to the FCC for a license to construct its network at 2155-2175 MHz as depicted in Figure B below.



This particular block of spectrum is largely unused and underutilized; it is also unpaired and thereby unattractive to incumbent wireless operators who cannot use it in conjunction with their existing mobile voice networks that rely on paired spectrum assignments. Yet, as a technical matter, virtually all experts agree that unpaired spectrum technologies are the most efficient and effective means of transporting wireless broadband data.

M2Z has thus responded to the national imperative for more broadband with a solution that uses spectrum that currently is lying fallow¹ and which is a poor fit

¹ Although there is a long circuitous twelve year path to how this band ended up in its current situation, it is where it is and there is no need to review the sordid history. What is clear is that

for existing mobile technologies. There simply is no public policy reason not to allow M2Z to proceed with deployment of its network. Indeed, the only opposition that M2Z has encountered comes from incumbent operators, their representatives, and other would be competitors that fail to meet or rebut the high public interest standard set by M2Z's free broadband initiative.

Spectrum Management And The Problems of the Digital Age

Today, one of the greatest impediments to the realization of the promise of the digital age is the fact that the broadband market is a duopoly that limits consumer choice and provides little incentive for existing competitors to drive prices down. This should come as a surprise to no one. The Government Accountability Office (“GAO”)², the Congressional Budget Office (CBO)³ and the Congressional Research Service (“CRS”)⁴ have reached the same conclusion. Similarly, FCC reports on the status of broadband Internet access show that incumbent local exchange carriers (“LECs”) and cable operators dominate the residential broadband market, with LECs serving 38.2% of the market, and cable

the spectrum band has no service rules in place to define its new use and no geographic blocks for assignment.

² Broadband Deployment is Extensive throughout the United States, but It’s Difficult to Assess the Extent of Deployment Gaps in Rural Areas, United States Government Accountability Office, GAO-06-426, May 2006

³ “Does the Residential Broadband Market Need Fixing?” Congressional Budget Office, 2003.

⁴ “Access to Broadband Networks,” Congressional Research Service Report for Congress, June 28, 2006.

operators serving 55.9% of residential broadband subscribers.⁵ Only 5.9% of all residential broadband subscribers use other technologies.⁶ Finally, and most disappointing, well over half of all U.S. adults do not have access at all to broadband at home.⁷

As these data demonstrate, the broadband Internet access market would benefit greatly from the entry of a new, nationwide, facilities-based competitor,⁸ and the most likely source of such facilities-based competition is a wireless

⁵ See FCC, *High-Speed Services for Internet Access: Status as of December 31, 2006*, at 3, Table 3, See Chart 4. According to the 2006 Report, of the 50.4 million lines which were faster than 200 kbps in *both* directions, 55.9% were cable modem, 36.3% were ADSL, 1.9% were SDSL or traditional wireline, 1.4% were fiber to the end user premises, and 4.5% used other technologies.

⁶ Unfortunately, DSL service is proving to be little or no constraint on cable modem prices. Last year, two LECs announced that they would not reduce the price of DSL service to reflect the Commission's elimination of certain USF contribution fees. Instead of passing the savings from these fees on to consumers, BellSouth and Verizon reported that prices would remain the same. See, e.g., Amy Schatz, *Verizon and BellSouth DSL Users Won't See Lower Bills as Fee Ends*, WALL STREET JOURNAL, Aug. 22, 2006, at A2. Commission reaction to protect consumers was swift; reports of the Commission's commencement of enforcement proceedings were widespread. See, e.g., Amy Schatz, *FCC Questions DSL Customer Fees*, WALL STREET JOURNAL, Aug. 25, 2006, at A4. Within a few days, the carriers eliminated the fees. See *Statement of FCC Chairman Kevin Martin on Verizon And BellSouth Eliminating Recently Imposed DSL Fees* (rel. Aug. 30, 2006) ("Consumers should receive the benefits of the Commission's action last summer to remove regulations imposed on DSL service.").

⁷ There are 45.8 million residential broadband lines in the U.S. See FCC, *High-Speed Services for Internet Access: Status as of December 31, 2006*. According to the Census Bureau, there were 113 million households in the United States in 2005. See U.S. Census Bureau, "Households by Type, 1940 to the Present," May 25, 2006 (available at <http://www.census.gov/population/socdemo/hh-fam/hh1.pdf>). The percentage of households with broadband access is therefore approximately 38%.

⁸ The principal barriers to widespread broadband use are the retail cost of service and the fact that broadband infrastructure is not universally deployed. Accordingly, the Commission has identified greater broadband access as a strategic goal, stating that "[a]ll Americans should have affordable access to robust and reliable broadband products and services." Federal Communications Commission, *Strategic Plan 2006-2011* at 5 (2006).

platform.⁹ But don't look for that competition to come from the large incumbent providers,¹⁰ which have little incentive to deploy a broadband wireless service that will compete with their current offerings.¹¹ If policy makers want robust broadband competition from a wireless provider, they must turn their attention to nurturing new entrants that are unaffiliated with existing cable modem, DSL, or incumbent wireless carriers.

M2Z is one such potential new entrant whose proposal, in my opinion, is superior because it is complete, transparent and replete with the technical and

⁹ See, e.g., *Martin Tells Reporters He Sees Progress on Broadband, Video, '911'*, TR DAILY (Mar. 17, 2006) (wireless broadband will be an “important component” of high-speed service and regulatory relief should be offered to new investors in the broadband marketplace); Remarks of Commissioner Jonathan Adelstein at the Wireless Communications Association Annual Convention (June 27, 2006) (“If we are going to see real broadband competition, it probably has to come from wireless.”).

¹⁰ Incumbent broadband providers that offer cable modem or DSL service have little incentive to deploy a broadband wireless service that will compete with their own wireline offerings. See, e.g., Tiernan Ray, *Comcast Sending Strong Buy-Cell Signals*, BARRON'S, Aug. 29, 2006 (observing that Comcast is not likely to construct a wireless network until such service will complement, rather than compete with, its existing network); Karen Brown, *BellSouth Expands Broadband Wireless Plans*, MULTICHANNEL NEWS, July 10, 2006 (BellSouth's director of product development explains that BellSouth will use its wireless communications service (WCS) spectrum to supplement its wireline network, stating that: “Even in metro areas, we have spaces where we don't have DSL coverage. And then when we get out to rural areas where we have DSL, but it goes so far out and the economics don't carry it farther . . . So what you are seeing is our plan using wireless broadband to push broadband farther out.”).

¹¹ The Commission recently granted all WCS licensees (in the 2.3 GHz band), including entities such as AT&T, BellSouth, NextWave, and Verizon Wireless, an additional three years until July 2010 to satisfy their applicable construction build out requirements. See *In the Matter of Consolidated Request of the WCS Coalition For Limited Waiver of Construction Deadline for 132 WCS Licenses*, Order, 21 FCC Rcd 14134, ¶ 13 (2006). The WCS waiver order limited the breadth of the original request because it lacked certainty and “could act as a disincentive for WCS licensees to expeditiously develop technological solutions for the band and construct systems” and “undermine one of the purposes of the construction requirement to prevent spectrum warehousing.”

business foundations to succeed in the marketplace. M2Z was founded to offer an alternative to the broadband duopoly by using spectrum that has been abandoned by the marketplace and which is all but unused. The 2155-2175 MHz band that M2Z seeks access to in order to compete in the marketplace has no identified future use, no specific time or date for assignment, and no incumbent users that have not already been ordered to transition out of the band.¹² M2Z has proposed a solution to use this spectrum and directly address the three most vexing problems in growing the U.S. broadband market: affordability, availability, and accessibility.

As explained in detail in its license Application, filed now almost a year ago on May 5, 2006, M2Z proposes to make available free, broadband Internet access to nearly every consumer, business, non-profit and public safety entity in the United States. To make this service possible, M2Z filed an application for an exclusive, nationwide authorization, with a 15-year license term, to operate in 20

¹² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 14165, ¶¶ 37-38 (2004) (“BRS R&O”) (ordering the relocation of users from the 2150-2156 MHz and 2156-2160 MHz bands to 2496-2502 MHz and 2618-2624 MHz respectively); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order, 20 FCC Rcd. 15866, ¶ 6 (2005) (“AWS 8th R&O”) (ordering the relocation of users of the Fixed and Mobile Service allocations in the 2155-2160 MHz band and designating the 2155-2175 MHz band for AWS use). See also *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, Ninth Report and Order, FCC 06-45 (rel. Apr. 21, 2006) (“AWS 9th R&O”) (establishing procedures for relocation of incumbents).

MHz of spectrum.¹³ In return, M2Z is willing to assume specific and enforceable public interest obligations, including, among others:

- (1) provision of a free wireless broadband service throughout M2Z's national footprint;
- (2) rapidly build out its network to 95% of Americans in 10 years, with interim benchmarks of 33% of the population in 3 years and 66% in five years;
- (3) finance the build-out without using the Universal Service Funds (USF);
- (4) filter pornography and other obscene and indecent material on the free network in order to make broadband access safe for children and their parents;
- (5) provide access to an interoperable wireless broadband platform free of charge for public safety organizations; and
- (6) voluntarily pay to the U.S. Treasury a five percent spectrum usage fee based on subscription revenue.

One might reasonably ask, then, when M2Z will be licensed so it can begin deploying its network? It turns out the answer has to do with the potential of incumbent licensees and speculators to manipulate the FCC 's spectrum assignment process as a way of delaying competitive entry or otherwise thwarting innovation that is in the public interest.

The Fundamental Goal Of Spectrum Management: Serve The Public Interest

Let me now turn to the purpose of spectrum management and the FCC's spectrum assignment process. Congress directed the Commission, quite simply, to

¹³ See Application of M2Z Networks, Inc. for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band (filed May 5, 2006) (“*Application*”).

put spectrum to its highest and best use *in the public interest*. In terms of spectrum assignment, Congress afforded the FCC a number of tools to achieve that end. These tools range from direct assignment using threshold licensee qualifications to spectrum sharing as well as competitive bidding as warranted by the public interest in each particular circumstance.¹⁴

In empowering the FCC, Congress has also rightly provided the FCC the discretion to select the best method that fits the public interest objective at hand. Thus, contrary to what entrenched players in the industry and their speculative brethren might argue, there is no shorthand process for making assignment decisions; Congress did not direct the Commission to thoughtlessly jump to competitive bidding at every instance.

For example, the FCC's timely decision to accept and seek comment on M2Z's license application has helped develop a record that fully illuminates the public interest considerations relevant to the use and assignment of the 2155-2175 MHz band. That record makes it plain that, first, the band should be allocated for the development of a national broadband radio service, as suggested by M2Z's application, and second, that licensing the spectrum by using threshold qualifications and technical parameters, based on a well established record, would

¹⁴ See 47 U.S.C. §§ 301, 303, 308 and 309

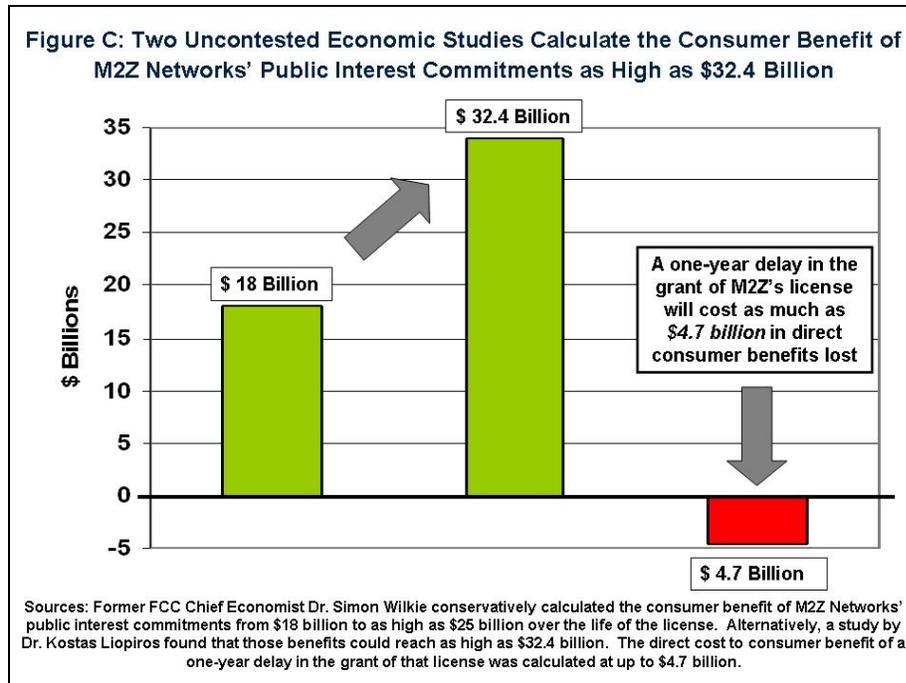
be more effective than resorting to time consuming, counter-productive, and redundant rulemakings.

That is a strong statement, but the record supports it. Nearly 1,000 comments have been filed urging the FCC to grant M2Z's license application.¹⁵ By M2Z's last count, these supportive comments come from people and organizations representing the interests of over 26 million Americans.¹⁶ Moreover, the record contains two authoritative and uncontested economic studies, one submitted by a former FCC Chief Economist and the other by a respected technical consultant, Dr. Kostas Liopiros that estimate that deployment of M2Z's network will generate up to 32.4 billion dollars in direct consumer welfare benefits.¹⁷

¹⁵ The Commission's Strategic Plan notes that "[t]he Commission shall seek to understand consumer demand for broadband and to encourage deployment across multiple platforms to ensure that access is not a barrier to adoption of affordable broadband technologies *as they become available*." FCC Strategic Plan at 5 (emphasis added).

¹⁶ See WT Docket Nos. 07-16 and 07-30 available at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

¹⁷ See Simon Wilkie, "The Consumer Welfare Impact of M2Z Networks Inc.'s Wireless Broadband Proposal," WT Docket Nos. 07-16 & 07-30 (submitted Mar. 2, 2007); Kostas Liopiros, "The Value of Public Interest Commitments and the Cost of Delay to American Consumers," WT Docket Nos. 07-16 & 07-30 (submitted Mar. 19, 2007).



Indeed, Dr. Liopiros' study finds that the consumer welfare benefit of M2Z's network will decrease significantly (by as much as 4.7 billion dollars) for each year of delay in granting the license application.

But economic papers and demands by the public for better and cheaper broadband service are not necessary to understand the public interest benefits of a free, nationwide wireless broadband platform. The benefits of M2Z's proposal are immediately obvious. Indeed, the FCC has recently suggested that even incremental additional broadband deployment and competition, though it may pale in comparison to the promise of M2Z's new network, would serve the public interest.

In its decision to allow the \$86 billion merger between AT&T and

BellSouth, the FCC gave one view of what constitutes the public interest. In a transaction the scale and scope of which with regard to consolidation has no parallel in the telecommunications industry, BellSouth reluctantly (and at the last minute) agreed to a set of merger conditions that the Commission found to be in the public interest. BellSouth agreed to provide unbundled access to DSL, and guaranteed to offer, for 3 years, a "low-cost" DSL service (\$10 per month) throughout its service territory covering 9 million people. BellSouth also offered to build out several trial markets using its unused 2.3 GHz spectrum covering the same population, but without any description of the specific services that consumers will receive. And again, its commitment to construct trial markets using its 2.3 GHz spectrum is limited to 3 years. Finally, it agreed to divest itself of spectrum held in the 2.5 GHz band, which it had obtained some 10 years ago and which, by all appearances, it has merely been warehousing in the interim.

Figure D below contrasts these public interest conditions with the binding commitments offered by M2Z.

Figure D: M2Z's Public Interest Commitments Exceed even the AT&T/BellSouth Merger Requirements

<u>M2Z Application</u>		<u>AT&T BellSouth Merger Conditions</u>
M2Z will deliver Free, Fast, Family Friendly consumer wireless Broadband to a minimum of 95% of the US Population for the 15 year license		Combined AT&T/BellSouth has been required to provide broadband service to their service territory for 3 years
<ul style="list-style-type: none">» Free Service at minimum 384 kbps with no contract or long term commitment» Family Friendly service with filtering in the network for the Free Service» Build-out commitments as a condition of the license: 95% of the US Population in 10 years with intermediate milestones of 33% in 3 years, 66% in 5 years» Public Safety – free use of the network with traffic prioritization and pre-emption in emergencies» Will not take from USF; will pay into USF» Pay 5% of premium services for use the spectrum		<ul style="list-style-type: none">» \$10 unbundled DSL service to new customers» Free modems to customers that upgrade from dial-up <u>with</u> a 12-month contract» Report in 12 months on efforts to provide high quality service to customers with disabilities» Divestiture of 2.5 GHz Spectrum to new broadband entrant (Clearwire)» Mandated interim build out of 2.3 GHz holdings

M2Z is offering a free broadband service with a network that will reach, at a minimum, 95% of the population. M2Z has extended its offer to include those that protect and serve our homeland by offering free access to every public safety officer. M2Z's offer is neither limited nor temporary. It is not an offer made in light of public and private pressure in the context of a merger review, but was instead made willingly and eagerly, and with the vigor of a new entrant.

Process Should Not Defeat Progress

Not surprisingly, several competitors or would-be competitors to M2Z have opposed M2Z's license application, and are now seeking to use the regulatory

process as an anticompetitive weapon. Many of them conveniently presuppose that spectrum assignment by competitive bidding is an absolute requirement of the Communications Act. They also argue that this process requires lengthy and tedious further rulemakings and fact findings to ensure efficiency and fairness. Their positions are both legally erroneous and factually flawed.

As to the legal requirements guiding the FCC's determination, a reading of the relevant statutes and FCC precedent reveals that auctions are not required by the Communications Act where they are not needed or appropriate. Rather, Congress recognized that auctions are just one of among the panoply of methods for assigning spectrum in accordance with the public interest.

Again, at the risk of reciting Congress' own handiwork, let me be more specific about the statutory basis of the FCC's spectrum assignment processes. The clear and plain meaning of Section 309 of the Communications Act, as interpreted by the FCC and the courts of jurisdiction, is that Congress requires assignment by competitive bidding only when other alternatives fail. Specifically, Sections 309(j)(1) and 309(j)(6)(E), when read together, direct the FCC to use a variety of means, including "threshold qualifications, engineering solutions and other means" in order to avoid mutual exclusivity, which is the necessary precondition for licensing by competitive bidding.

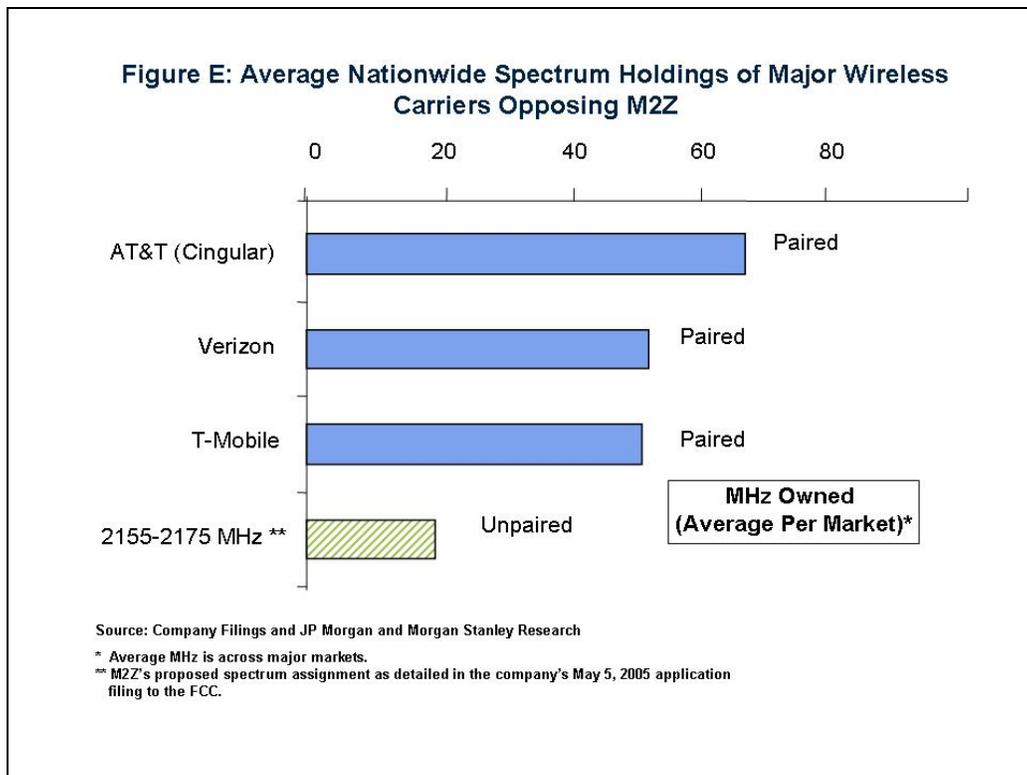
Further, despite what the proponents of competitive bidding might argue, it

is not clear that license auctions actually result in the greatest recovery to the public for the use of its spectrum. Assigning licenses through competitive bidding provides the U.S. Treasury with a one-time payment that represents a potential licensee's best estimate of the value of that particular license at the time of bidding. If spectrum is undervalued by auction participants, the public has no recourse; a licensee that earns billions using a spectrum license that cost a fraction of one year's annual revenue doesn't share that windfall with the public that owns the spectrum. For example, Personal Communications Services ("PCS") spectrum garnered a total of \$17 billion in winning bids at auction over a course of 12 years. Today, the PCS industry enjoys annual revenue of \$100 billion using this spectrum. If the PCS industry were paying a five percent share of its revenues to the U.S. Treasury, as contemplated by M2Z in its pending license application, the public would be benefiting by \$5 billion for 2006 alone, with similarly large annual contributions in perpetuity.¹⁸ Thus, the amounts collected through spectrum auctions do not necessarily reflect the true value of this public asset.

With regard to the claims of efficiency and effectiveness of auctions, empirical studies confirm that some past FCC auctions used to assign spectrum

¹⁸ The Office of Management and Budget has said that "[u]ser fees will help to ensure that spectrum is put to its highest and best use, by internalizing the value of spectrum to the license holders." available at <http://www.whitehouse.gov/omb/budget/fy2007/other.html> See also "Major Savings and Reforms in the President's 2007 Budget, Executive Office of the President, February 2006

may not only have been inefficient but also competitively unfair. Dr. Simon J. Wilkie, former FCC Chief Economist, recently completed a report, which is included in M2Z's dockets at the FCC and which M2Z is submitting into the record of this hearing, comparing the theoretical underpinnings of past auctions with the empirical results.¹⁹ Dr. Wilkie's paper clearly demonstrates that incumbent competitors have the financial incentives and, in most cases, the means to prevent competitive entry by warehousing spectrum rather than allow it to fall into the hands of new entrants.



Wilkie's analysis found that it is only when there is active *ex-ante* intervention by

¹⁹ See Simon Wilkie, PhD., "Spectrum Auctions Are Not a Panacea: Theory And Evidence Of Anti-Competitive and Rentseeking Behavior in FCC Rulemakings and Auction Designs," WT Docket Nos. 07-16 & 07-30 (filed Mar. 26, 2007)

the FCC – such as by imposing spectrum caps for incumbents or other means – is it likely that incumbents will be prevented from stifling new competitive entry through unproductive spectrum warehousing. Of course, one need not be an expert economist to comprehend the weakness of the unbounded use of auctions as a spectrum assignment tool. According to a scientific and bipartisan national survey conducted in February that M2Z is today submitting into the record of this Hearing, over sixty-percent of those surveyed supported issuing a spectrum license for the provision of a free high-speed Internet service based on the public interest instead of simply granting it to the entity that promises to pay the most.²⁰

Nonetheless, several of the parties who have opposed M2Z continue to pound the table with their figurative shoes calling for an auction. The obvious attraction, of course, is that an auction provides an opportunity, at least, for an incumbent operator to freeze out new entry. More insidious still, however, is the use of the auction process strategically to run out the clock on entrepreneurial plans to provide new services. Those who would smother an infant service in its crib have a near perfect murder weapon in the auction process, which by its nature allows parties to add layer upon layer of procedural hurdles before any would-be

²⁰ Voter Consumer Research and Lake Research Partners collaborated to conduct a nationwide survey of 1,003 registered voters. The margin of error for this poll was +/- 3.1%. See Memorandum of Dr. Jan van Lohuizen, "Public Support for New Model of Wireless Licensing," Voter Consumer Research, February 28, 2007 and Memorandum of David Mermin, "Public Support for Licensing Wireless Broadband Service," Lake Research Partners, February 28, 2007, to be submitted for the record.

new entrant.

An oft-quoted study by Dr. Thomas Hazlett concluded that the median length of time from commencement of spectrum allocation proceedings to completion of an auction was 6.7 years.²¹ As Dr. Hazlett convincingly argues, a regulatory snail's pace in Washington is not keeping up with the demands of our digital future and rapid technological advances. More to the point, process is not a substitute for policy.

This Commission, however, does not appear likely to delay an effort to expand broadband access. Chairman Martin has emphasized the importance of wireless offerings to the rapid deployment of broadband service, and has stated that grant of regulatory relief to new investors in this sector would spur further deployment.²² Elsewhere, the Chairman and Commissioner Tate have acknowledged that forbearance is among the available means by which the Commission can “establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers.”²³ Having long advocated competitive entry into the broadband

²¹ See Thomas W. Hazlett, *The Wireless Craze, the Unlimited Bandwidth Myth, the Spectrum Auction Faux Pas, and the Punch Line to Ronald Coase's Big Joke: An Essay on Airwave Allocation Policy*, 14 HARVARD L.J. 335, 481, Table 8 (2001).

²² See *Martin Tells Reporters He Sees Progress on Broadband*, Video, '911', TR DAILY (Mar. 17, 2006).

²³ See *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

marketplace, Commissioner Copps has indicated that wireless technology holds promise as a potential entrant.²⁴ Likewise, Commissioner McDowell has lauded not only the benefits of broadband, but the public interest benefits of new competition in the broadband marketplace.²⁵ Having concluded that “the public interest means securing access to communications for everyone,” Commissioner Adelstein “look[s] for opportunities for new entrants . . . who are seeking to compete in spectrum-based services.”²⁶

Congress Provided Safeguards Against Regulatory Delay

Even with the vigilance of individual FCC Commissioners to safeguard the public interest, Congress has also provided the whole Commission with the power and authority to overcome any unforeseen challenges that would delay its licensing process. It is crucial that the FCC use that authority to prevent incumbents from

04-440 (rel. Mar. 20, 2006).

²⁴ See *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Power Line Systems, Carrier Current Systems, Including Broadband over Power Line Systems*, Statement of Commissioner Michael J. Copps, FCC 06-113 (rel. Aug. 7, 2006) (“Along with *wireless technologies*, Broadband over Power Line is a credible candidate for a ‘third pipe’ that could bring meaningful competition to this market” (emphasis added)).

²⁵ See *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Power Line Systems, Carrier Current Systems, Including Broadband over Power Line Systems*, Statement of Commissioner Robert M. McDowell, FCC 06-113 (rel. Aug. 7, 2006) (expressing optimism about broadband over power lines because new entry into broadband market would “help drive down consumer prices and foster innovative technologies”).

²⁶ Remarks of Commissioner Jonathan S. Adelstein, “Accessing the Public Interest: Keeping America Well-Connected,” 21st Annual Institute on Telecommunications Policy & Regulation, Washington, DC, December 4, 2003, at 1, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241881A1.doc.

abusing regulatory processes to disadvantage new entrants that want to promote new and better service to the American people.

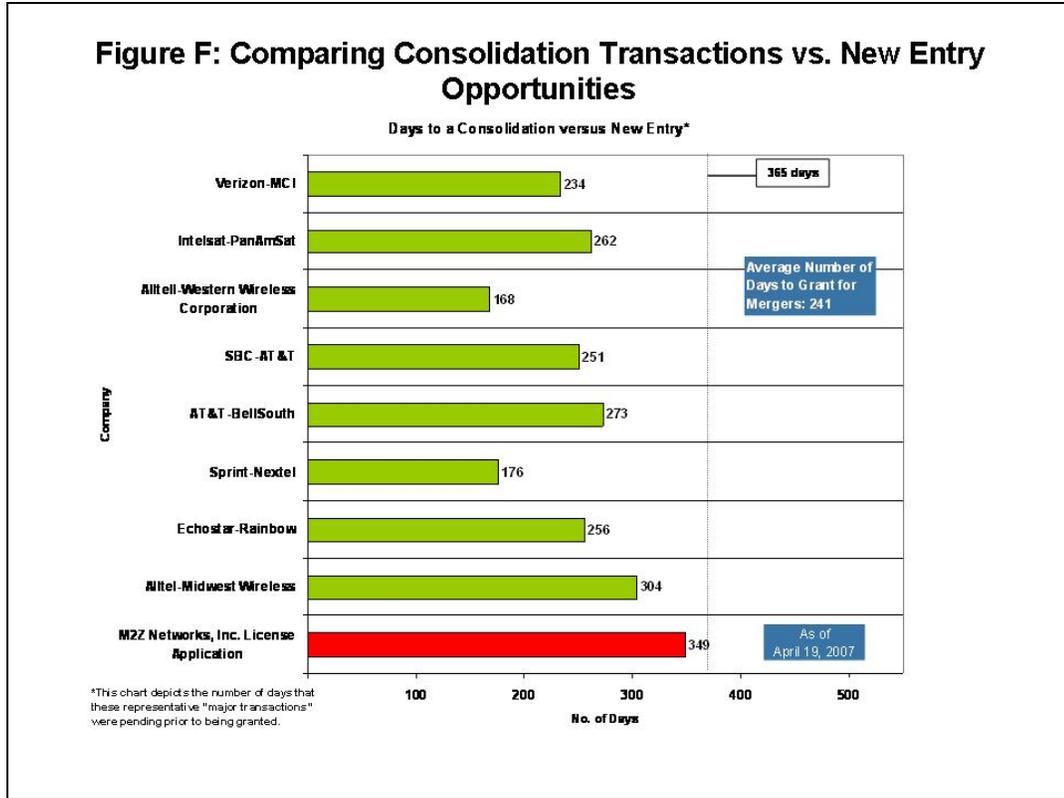
Notably, Section 7 of the Act, 47 U.S.C. § 157, provides that the Commission “shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.” This statutory provision was enacted to: (1) “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.”²⁷ As Congress recognized when it enacted the statutory provision, delays in authorizing new services often result from opposition from incumbents seeking to limit competition and thus placed the burden of proving that such new services and applications are not in the public interest on those that oppose it.²⁸ The key to promoting the public interest is to have spectrum licensing procedures that promote market entry.²⁹ In light of the Commission’s self-imposed policy of providing expeditious review of mergers and license transfer transactions that lead

²⁷ 47 U.S.C. § 160(a).

²⁸ See Extended Remarks of Hon. John R. Dingell on Amendments to H.R. 2755, 130 Cong. Rec. E74 (Jan. 24, 1984).

²⁹ The goal of Section 7 to expedite market entry was repeated in the 1996 Act with the passage of Section 271. That section permitted entry into new markets by large local exchange carriers based on a 90 day time clock. These statutory provisions reiterate the importance of Commission processes that promote timely market entry.

to market concentration, the Section 7 one year statutory timeframe approving new licenses and new services is more than appropriate.



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. M2Z has sought

forbearance under Section 10 for any and all regulatory or statutory provisions that might impede or impair the full and rapid deployment of its network.

M2Z's Application provides an ideal case for the Commission to utilize the myriad of tools at its disposal to further the foundational Congressional goal of bringing new competitive and affordable services and technologies to the public on an expedited basis.³⁰ No auction is required, no new rulemaking proceedings are needed, no further fact finding studies or other regulatory machinations are necessary or appropriate. Swift action to grant M2Z's application, based on the authority conferred to the FCC in Section 309(j)(6)(E) and consistent with Section 7 and Section 10 of the Communications Act, will help to promote facilities-based competition in the provision of broadband commercial mobile radio service, increase broadband penetration, and make more efficient use of a national spectrum resource currently underutilized.

Conclusion

No one has ever heard of an “analog divide” because it does not exist. One can buy an inexpensive TV or radio, plug it in and never have to pay a recurring fee. M2Z seeks to accomplish the same thing for broadband access. M2Z's Application proposes the licensing and deployment of an innovative nationwide

³⁰ 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.” 47 U.S.C. § 151.

wireless broadband system. The public interest benefits of the system are substantial and well documented. The record before the FCC is complete and, in light of previously enacted legislation, no additional Congressional action is needed. M2Z has the technology, the energy, the vision, the funding, the public support and we have made explicit and transparent commitments that will significantly advance the public interest. The only question remaining is whether the Commission's rules, procedures, and policies can be manipulated by those seeking to protect their current market position to create a barrier to the rapid deployment of M2Z's new and innovative competitive broadband service.

* * *

APPENDIX 1

OF

Testimony of John B. Muleta
CEO, M2Z Networks, Inc.

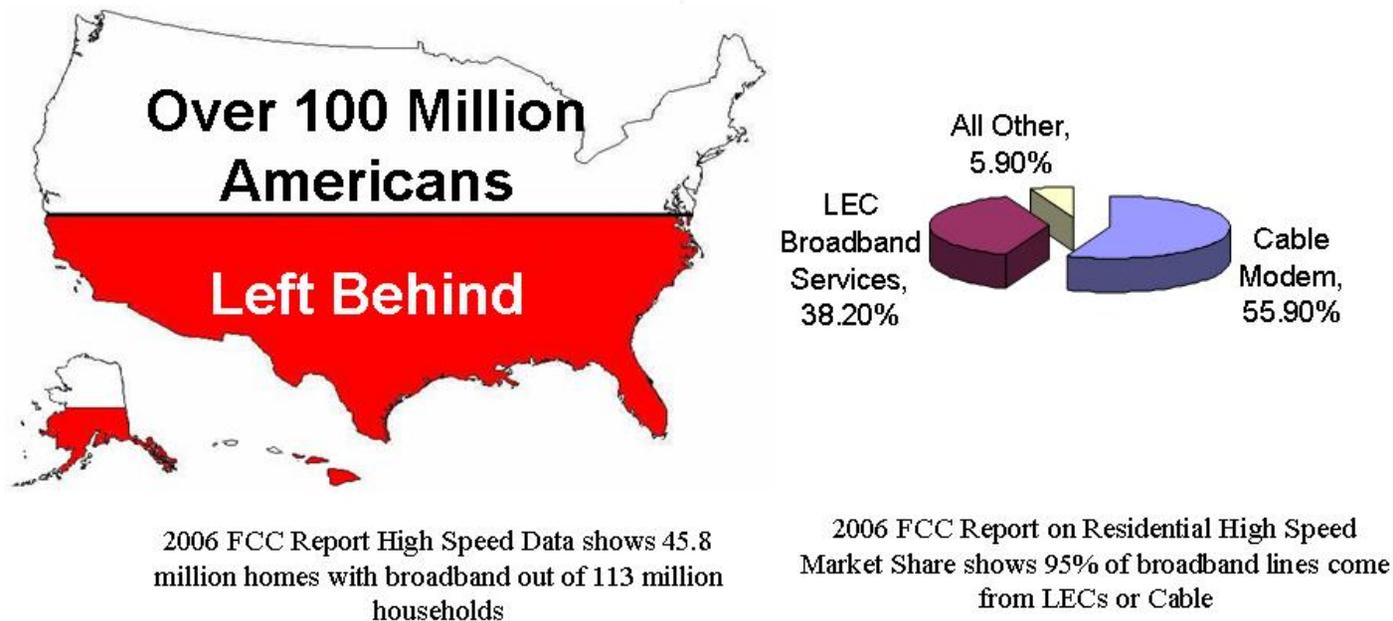
(Graphical Illustrations)

Contents:

- Figure A: The Impact of the Broadband Duopoly in American
- Figure B: Status of Emerging Broadband Spectrum Bands
- Figure C: Two Uncontested Economic Studies Calculate the Consumer Benefit of M2Z Networks' Public Interest Commitments as High as \$32.4 Billion
- Figure D: M2Z's Public Interest Commitments Exceed even the AT&T/BellSouth Merger Requirements
- Figure E: Average Nationwide Spectrum Holdings of Major Wireless Carriers Opposing M2Z
- Figure F: Comparing Consolidation Transactions vs. New Entry Opportunities

April 19, 2007

Figure A: The Impact of the Broadband Duopoly in America



Federal Government Agencies agree that the Broadband Market is Duopoly:

- **Government Accountability Office**, Report to Congressional Committees, May 2006
- **Congressional Research Service**, Report for Congress, June, 2006
- **Congressional Budget Office**, Report prepared for the Senate Budget Committee, December, 2003

Figure B: Status of Emerging Broadband Spectrum Bands

* Not drawn to scale

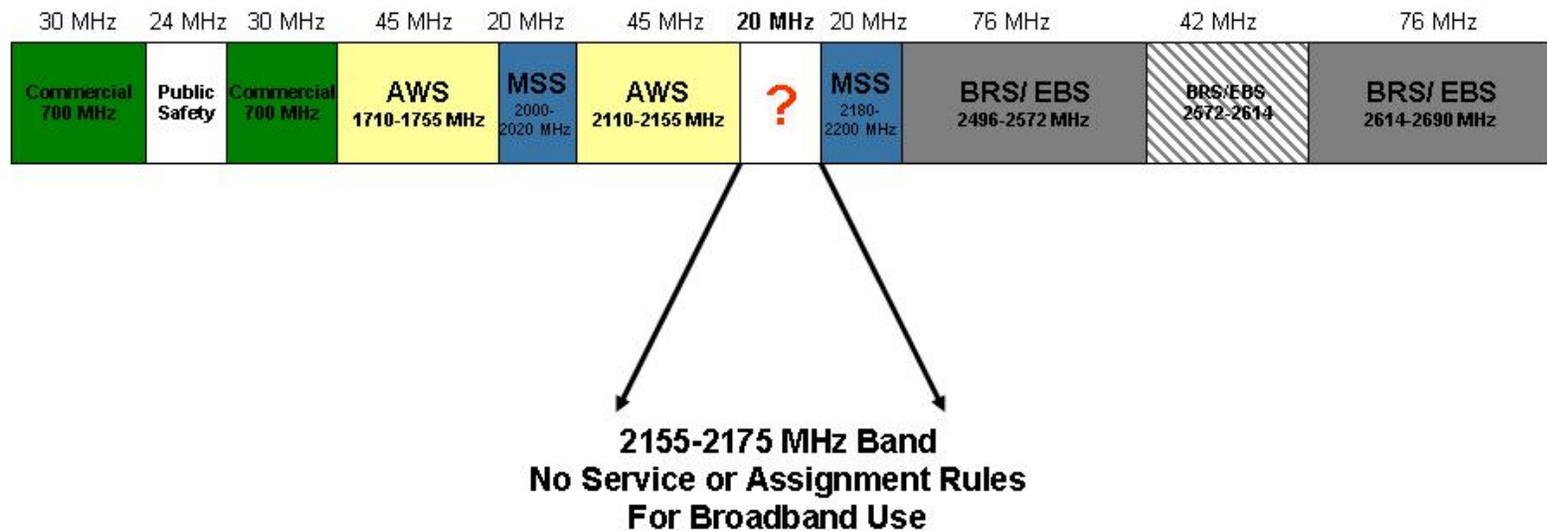
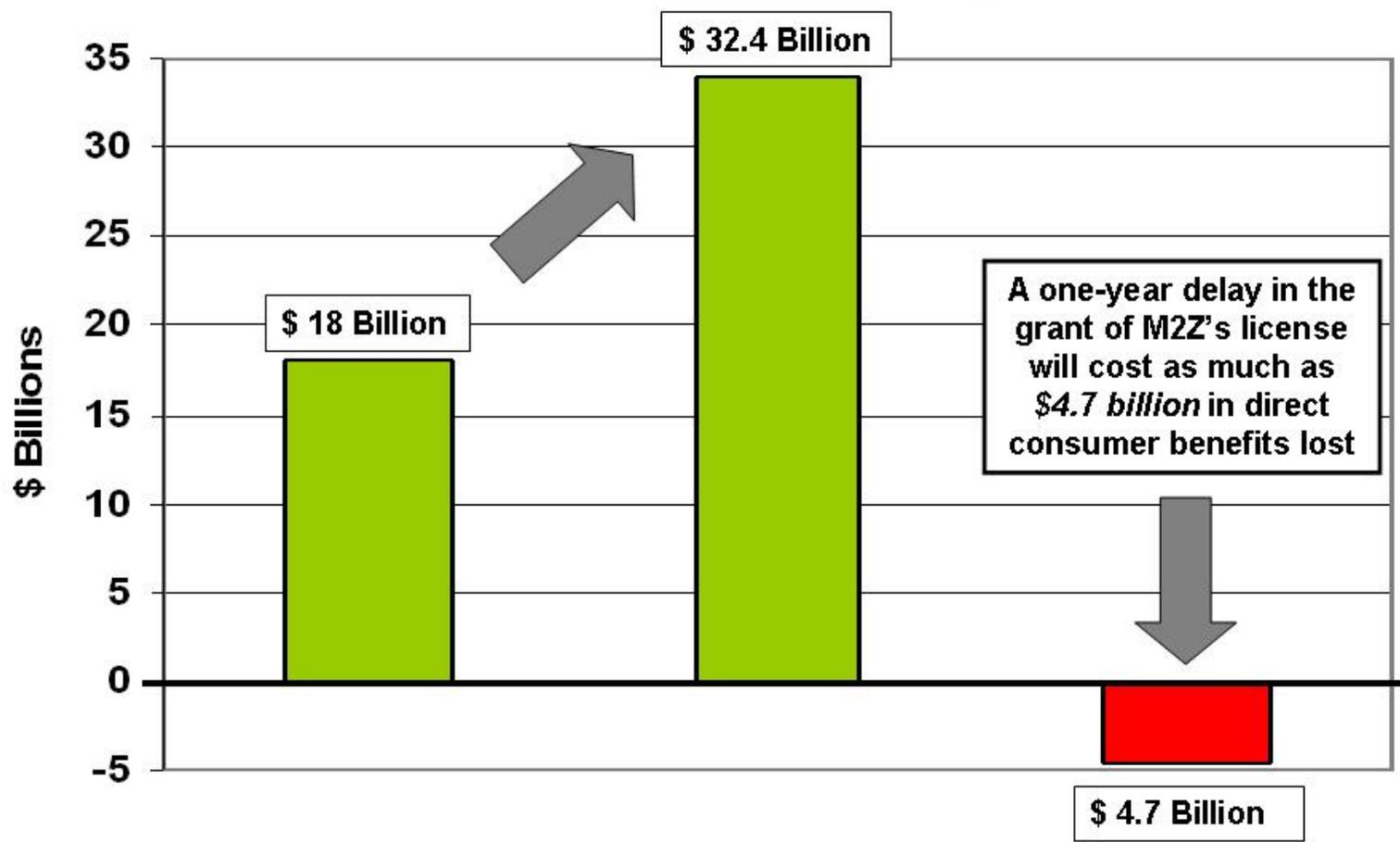


Figure C: Two Uncontested Economic Studies Calculate the Consumer Benefit of M2Z Networks' Public Interest Commitments as High as \$32.4 Billion



Sources: Former FCC Chief Economist Dr. Simon Wilkie conservatively calculated the consumer benefit of M2Z Networks' public interest commitments from \$18 billion to as high as \$25 billion over the life of the license. Alternatively, a study by Dr. Kostas Liopiros found that those benefits could reach as high as \$32.4 billion. The direct cost to consumer benefit of a one-year delay in the grant of that license was calculated at up to \$4.7 billion.

Figure D: M2Z's Public Interest Commitments Exceed even the AT&T/BellSouth Merger Requirements

M2Z Application

M2Z will deliver Free, Fast, Family Friendly consumer wireless Broadband to a minimum of 95% of the US Population for the 15 year license

- » Free Service at minimum 384 kbps with no contract or long term commitment
- » Family Friendly service with filtering in the network for the Free Service
- » Build-out commitments as a condition of the license: 95% of the US Population in 10 years with intermediate milestones of 33% in 3 years, 66% in 5 years
- » Public Safety – free use of the network with traffic prioritization and pre-emption in emergencies
- » Will not take from USF; will pay into USF
- » Pay 5% of premium services for use the spectrum

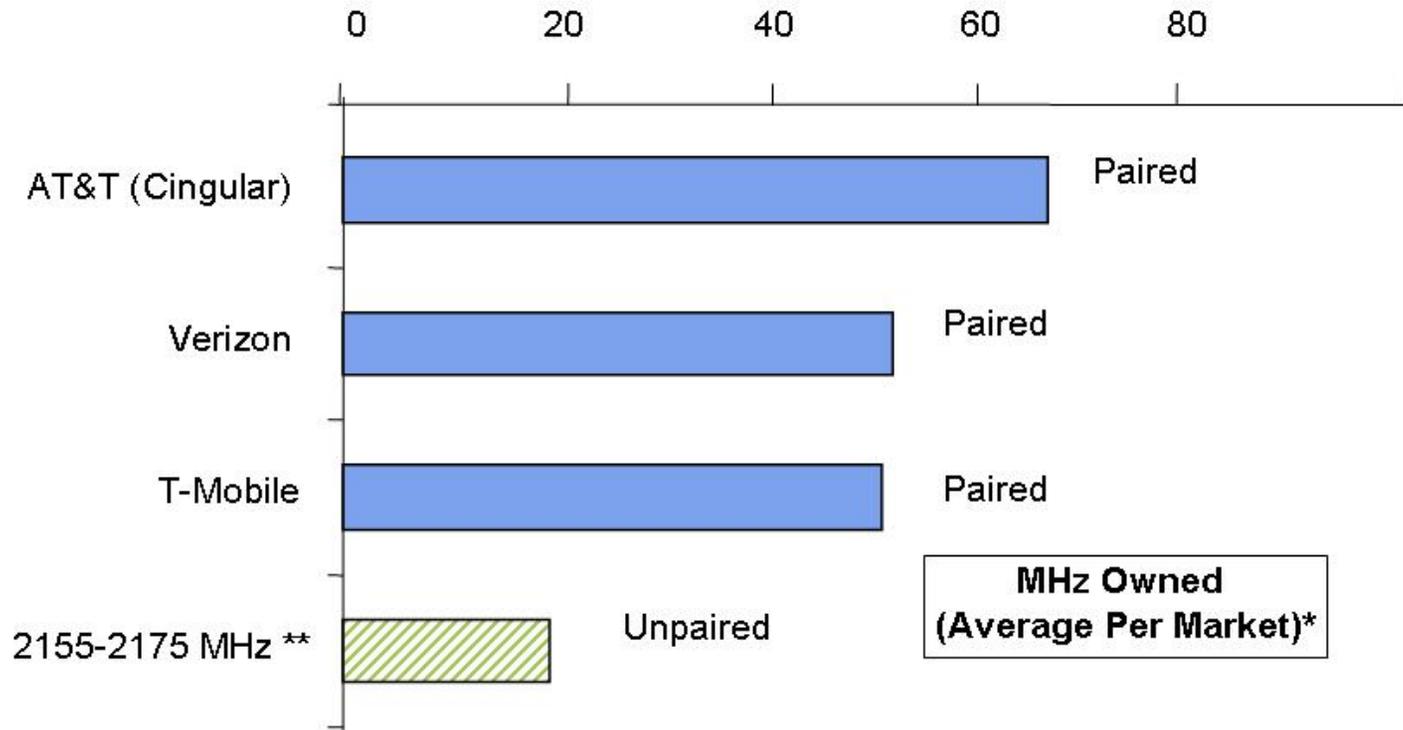

Greater
Than

AT&T BellSouth Merger Conditions

Combined AT&T/BellSouth has been required to provide broadband service to their service territory for 3 years

- » \$10 unbundled DSL service to new customers
- » Free modems to customers that upgrade from dial-up with a 12-month contract
- » Report in 12 months on efforts to provide high quality service to customers with disabilities
- » Divestiture of 2.5 GHz Spectrum to new broadband entrant (Clearwire)
- » Mandated interim build out of 2.3 GHz holdings

Figure E: Average Nationwide Spectrum Holdings of Major Wireless Carriers Opposing M2Z



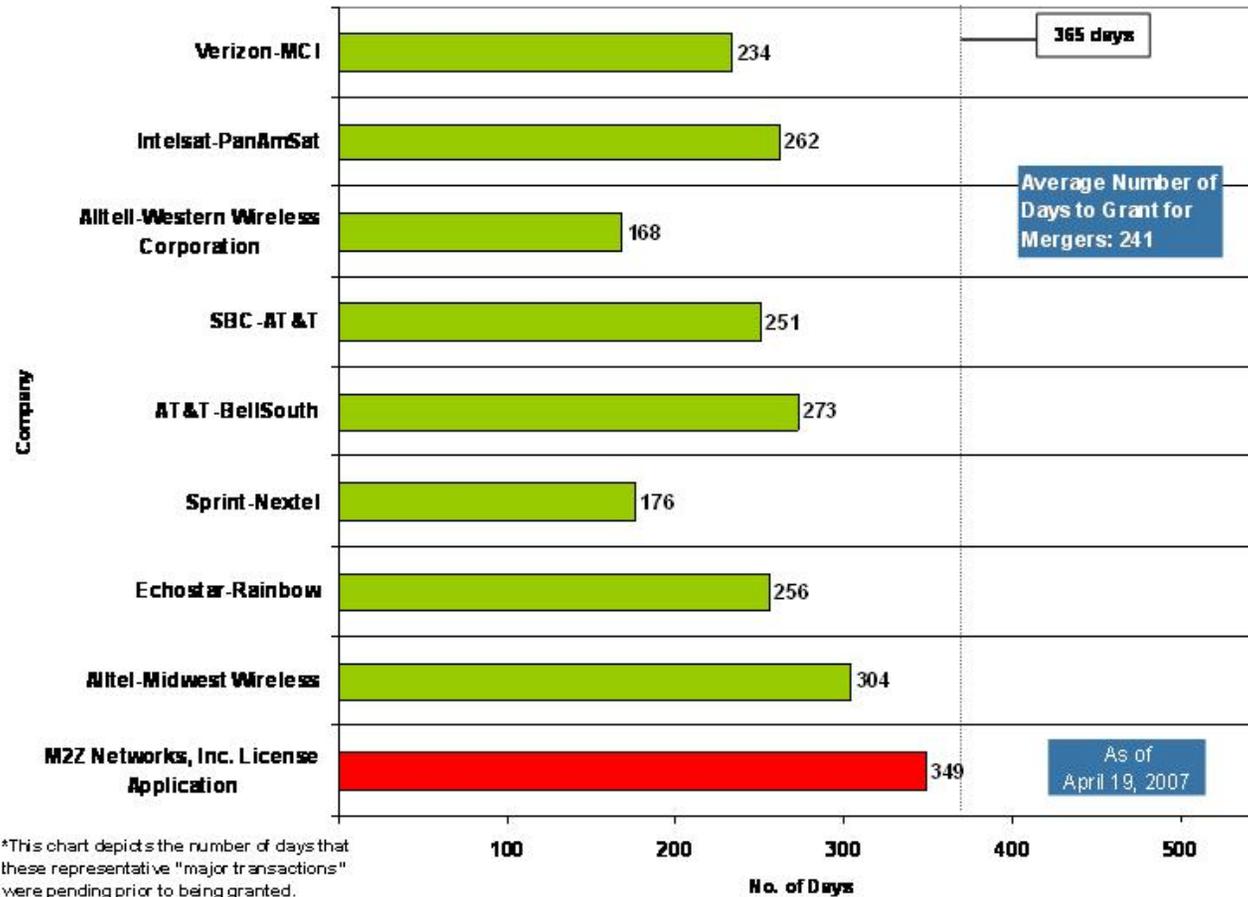
Source: Company Filings and JP Morgan and Morgan Stanley Research

* Average MHz is across major markets.

** M2Z's proposed spectrum assignment as detailed in the company's May 5, 2005 application filing to the FCC.

Figure F: Comparing Consolidation Transactions vs. New Entry Opportunities

Days to a Consolidation versus New Entry*



Section 4

Truth in Testimony Disclosure

Committee on Energy and Commerce

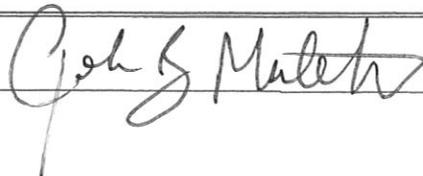
U.S. House of Representatives

Witness Disclosure Requirement - "Truth in Testimony"

Required by House Rule XI, Clause 2(g)

Your Name: John B. Muleta		
1. Are you testifying on behalf of a Federal, State, or local Government entity?	Yes	<input checked="" type="radio"/> No
2. Are you testifying on behalf of an entity that is not a Government entity?	<input checked="" type="radio"/> Yes	No
3. Please list any Federal grants or contracts (including subgrants or subcontracts) that you personally have received on or after October 1, 2004: I have not received any Federal grants in the time period specified above.		
4. Other than yourself, please list which entity or entities you are representing: I am representing M2Z Networks, Inc.		
5. If your answer to the question in item 2 in this form is 'yes,' please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in the question in item 4: I am Chief Executive Officer and cofounder of M2Z Networks, Inc. and am a member of the company's Board of Directors.		
6. If your answer to the question in item 2 is 'yes,' do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	<input checked="" type="radio"/> No
7. If the answer to the question in item 2 is 'yes,' please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2004, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed: None.		

Signature: _____



Date: April, 15, 2007