

FHH Telecom Law September, 2007

No-Cost National Net Nixed

*By Ron Whitworth
whitworth@fhhlaw.com
703-812-0478*

The FCC took the air out of a proposal that had been gaining steam for nearly 16 months on August 31, issuing an *Order* dismissing M2Z's applications to provide free, nationwide wireless service and denying its petitions for forbearance associated with two of the applications. The Commission simultaneously rejected a similar proposal from NetFreeUS.

M2Z, a startup fronted by former Wireless Bureau Chief John Muleta, boasted \$500 million in financial commitments to build a nationwide wireless "free, family-friendly" broadband network in the 2155-2175 MHz band. The company sought an exclusive 15-year license to construct its network outside the parameters of the Commission's regular rulemaking process. In exchange, M2Z would deposit a portion of its revenues into the U.S. Treasury.

The proposed network was to include a reception device that would filter out material deemed to be pornographic, obscene or indecent. The baseline speed for service would be three megabits per second.

The M2Z plan would give users the capability to upgrade to a premium service which would allow users to dispense with the otherwise mandatory content filters, and would support faster speeds (the proposal did not indicate how much these plans would cost).

The Commission dismissed M2Z's applications, stating that they were not in the public interest. While a nationwide, free wireless network would be a tremendous benefit to the country, the Commission did not feel it was appropriate to grant forbearance from the Commission's competitive bidding requirements. The Commission also expressed reservations about the slow speed that M2Z proposed to offer in its free service, and construction benchmarks which the Commission deemed not "particularly aggressive."

Accordingly, the Commission announced plans to issue a Notice of Proposed Rulemaking in the near future, "rather than through forbearance petitions seeking exclusive use for a single entity filed by M2Z and Net FreeUS," said Chairman Kevin Martin in a separate statement. Martin indicated that similar proposals for the use of the spectrum should be considered, as should offering the spectrum in a traditional auction, or opening up the band to unlicensed use.

"Each of these proposals has merit, and consideration of either would be inappropriately foreclosed by granting forbearance in this instance," Martin said.

At press time, the NPRM had not been issued, but it was expected to be issued imminently. In the meantime, M2Z has appealed the rejection of its proposal to the U.S. Court of Appeals for the D.C. Circuit.