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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 5, 1995

BY MESSENGER

The Hon. Reed E. Hundt, Chairman
The Hon. James H. Quello, Andrew C. Barrett,
Susan Ness and Rachelle B. Chong, Commissioners
Federal Communications Commission
1919 M Street, N.W., Eighth Floor
Washington, D.C. 20054

Re: ***38.6-40.0 GHz Notice of Proposed Rule Making, RM-8553***

Dear Chairman Hundt and Commissioners:

We are among the independent companies that are preparing to launch innovative, competitive telecommunications services in the 38.6-40.0 GHz band across the United States. We have created and capitalized a broadband wireless business and now are in the process of planning the construction of systems across the country. We have funded technology research and are preparing to fund substantial research and development into new technologies for this band. We have invested hundreds of thousands of dollars and thousands of man-hours of effort in developing this business, which is on the verge of becoming available. We have made all these efforts in reliance on an established set of rules that now are workably permitting us to obtain the spectrum we need to make these services a reality.

These services will energize local telecommunications markets by providing important alternatives to services offered by monopoly telephone companies. We will provide innovative "last-mile" data transmission services, wireless interconnection services, private lines, wireless Internet access, local access for interexchange carriers, telemedicine, distance learning and a myriad of other services. We will provide these services faster, better and more flexibly than entrenched telecommunications companies – and we will do it using spectrum that was, until recently, lying fallow.

All our efforts will be endangered, however, by any Commission action that stops the processing of pending applications in the 38.6-40.0 GHz band. We urge the Commission to permit the normal processing and granting of pending applications, without new and untested conditions, during the pendency of the upcoming Notice of Proposed Rule Making in this proceeding. Unless applications that were filed under current rules can be processed and granted unconditionally under current rules, our business will be threatened and we will be unable to compete on an even playing field

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with other licensees that, by coincidence, have obtained grants under the current rules. There are three points that should be clarified:

1. ***We do not oppose auctions, so long as they are administered fairly.*** We do not disagree with the concept of issuing licenses by auction, particularly if the Commission focuses its efforts on the virgin 1,600 MHz available for auction in the 37.0-38.6 GHz band that is the subject of the above-captioned petition for rule making and if only applications filed after new rules are adopted are subjected to the new procedures. But if pending, properly filed applications are subjected to auctions, our business will be "frozen" during the completion of a contentious rule making proceeding while at least certain of our competitors will move ahead. The competitive imbalances that would result from freezing grants and changing the rules for pending applications would put us at an unfair disadvantage for years and could even make this business uneconomic for us. The public would not have the benefit of a fully competitive service if processing rules are unfairly altered in mid-stream.

2. ***We, and the vast majority of applicants in this band, are not "speculators."*** Columbia Capital Corporation is a longstanding member of the communications industry. We were among the pioneers of the cellular and ESMR services, we have worked to find productive services for the MAS and 220 MHz services, and we have founded ground-breaking PCS, wireless local loop, satellite and microwave relocation companies. Columbia Capital will, in fact, implement a business using the licenses we have obtained, and expect to obtain, in the 38.6-40.0 GHz band. We also intend to provide research and development funding for efforts that can move the entire industry forward (provided that our business is not now undermined by late-breaking regulatory changes). The extension of our business into a nationwide, broadband wireless telecommunications service will permit us to bring our entrepreneurial efforts to bear on a market that is sorely in need of the nimble and effective competition we can provide. We will create dozens, if not hundreds, of jobs. The vast majority of applicants in this band do not seek to profiteer in spectrum; rather, these companies have gone to the substantial effort and risk required to obtain licenses in this band in hopes of beginning effective new businesses.

3. ***The current "blanket" licensing policy should not be altered during the pendency of this rule making.*** There are essentially two factors that have made the 38.6-40.0 GHz band attractive for a broadband wireless service: first, the improvement of technology that has made the use of this spectrum possible and cost-effective; and second, the flexibility inherent in the current "blanket licensing" policy. Under this policy, licensees can react quickly and dynamically to marketplace demands – if a company needs emergency links to replace T-1 lines that could not be timely provided by a monopoly telephone carrier, for example, we could quickly provide that service. If a medical company adds a new remote location, either permanently or to respond to a crisis, we could provide high-capacity links immediately. Without this capacity, we would not have the capacity to compete with the flexibility wired carriers have to offer service across our entire licensed area. This policy should continue to be utilized in granting applications in this band.

And if auctions are overlaid onto the granted licenses in this service, it is crucial that current licensing areas be protected in their entirety. For example, if frequencies on a particular channel in a BTA are made available to auction, bidders for that channel should be able to acquire only the portions of that BTA that are not currently served by existing licensees. The "swiss cheese" auction approach should protect entire licensed services areas, not just the paths that are implemented at the time of the auction. The entire premise of our business -- that we can respond flexibly across our service area -- would be vitiated if we cannot depend upon our current licensing areas.

We understand that the 38 GHz Coalition also is sending a letter to the Commission, and we agree with that group's goals. We urge the Commission to continue its current licensing process during its consideration of new rules for the 38.6-40.0 GHz band as well as the currently unused 37.0-38.6 GHz band. This course of action will permit a competitive new service just on the verge of success to be inaugurated in fairness to those who have relied upon the Commission's Rules and for the benefit of the public.

Respectfully submitted,

Neil P. Byrne
Vice President

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