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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
	)	
Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands	)	ET Docket No. 95-183 RM-8553
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0 - 38.6 GHz and 38.6 - 40.0 GHz	)	PP Docket No. 93-253

MOTION FOR EXTENSION OF TIME

Pursuant to Section 1.46 of the Commission's Rules, BizTel, Inc. ("BizTel"), through its attorney, hereby moves for respective sixty day and forty-five day extensions of time for the filing of comments and reply comments relating to the Notice of Proposed Rulemaking in above-captioned rulemaking proceeding.[1/] As shown below, good cause exists for the

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[1/] See Notice of Proposed Rulemaking; ET Docket No. 95-183, RM-8554 & PP Docket No. 93-253; FCC 95-500 (adopted December 15, 1995) (the "NPRM"). It should be noted that, while the text of the NPRM carries a release date of December 15, 1995, it remains to be determined as to whether the purported public release of the text of the NPRM on December 15, 1995 constituted effective public notice pursuant to the applicable governing law. BizTel does not propose to deal with this issue here, but reserves the right to address this matter at a later time.

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extensions of time requested herein, and Commission grant of the instant motion is in the public interest.[2/]

The Commission's Rules mandate that a reasonable time period must be provided for the preparation of both comments and reply comments in any rulemaking proceeding.[3/] By the NPRM, the Commission sets forth an extensive series of proposals relating to new licensing and service rules for the 37.0 - 38.6 GHz band, as well as revised licensing and service rules for the 38.6 - 40.0 GHz band. The NPRM text and accompanying attachments span 88 pages and public comment is explicitly solicited on almost 100 distinct issues, ranging from competitive bidding procedures and qualification criteria, to modifications of technical rules and other operating criteria. In addition to the specific requests for comment contained in the NPRM, there are also a substantial number of other issues raised by the Commission that merit serious consideration and possible comment by BizTel and other interested parties.

[2/] Section 1.46(b) of the Commission's Rules states that a motion for extension of time in a rulemaking proceeding shall be filed at least seven (7) days prior to the relevant filing date for which an extension is sought. Because of the Federal government furlough and weather-related closings of the Commission, however, submission of the instant motion has not been possible since the date of Commission adoption of the NPRM on December 15, 1995. Accordingly, to the extent necessary, BizTel hereby requests a waiver of Section 1.46(b) with regard to the timeliness of the instant motion, and good cause exists for grant of the such a waiver.

[3/] See 47 C.F.R. 1.415(b)&(c).

As one of the pioneers in the development and deployment of millimeter wave broadband wireless systems and services in the subject frequency bands, BizTel is eminently qualified to provide input on the many proposals and related rule and policy questions set forth in the NPRM. However, for all of the reasons set forth below, additional time is necessary for BizTel and other concerned parties to analyze the numerous questions and issues raised by the Commission in the NPRM and prepare meaningful comments that will facilitate a productive outcome of the rulemaking proceeding that results therefrom. Likewise, because of the extensive scope of the NPRM, it is clear that the volume and substance of comments will be considerable. Thus, additional time is also merited for the preparation of reply comments.

The NPRM contains discussions on a myriad of licensing and service rule issues, many of which are complex, multi-faceted, and not definitively set forth as specific final rule proposals. A vast majority of these rule issues were ***not*** dealt with in the underlying Petition For Rulemaking filed by the Telecommunications Industry Association, or in the two comments filed relating to that petition.[4/] Thus, virtually all of the proposals forwarded in the NPRM are entirely new to the record and unfamiliar to many affected parties. For example, while the TIA Petition was entirely silent on the issue, the NPRM proposes

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[4/] See Petition of the Telecommunications Industry Association; RM-8553, Public Notice Report No. 2044 (released December 1, 1994); amended, May 4, 1995 (the "TIA Petition").

several alternative and quite novel system construction milestone concepts, some or all of which might be applied incongruently to existing licensees as compared to new licensees.[5/] The NPRM also raises various other major issues not dealt with in the TIA Petition relating to, among other things, auction procedures, spectrum caps, and technical rules such as power limits and frequency coordination. Leaving aside the many other matters of equal or greater importance that are dealt with in the NPRM, the issues surrounding potential inter-service area interference and associated interference protection alternatives, in and of themselves, entail sufficient complexity to merit the extensions of time requested herein.

Even from a cursory review of the substance of the NPRM, it is clear that the comment and reply comment periods provided for are not reasonable or adequate, and extraordinary extenuating circumstances created by the shut-down of the Federal government on December 16, 1995 only serve to exacerbate the situation. In this regard, the Commission has not been open until today since the NPRM was adopted on December 15, 1995. While some interested parties apparently have been able to obtain copies of the text of the NPRM, it is clear that many may have not. See Note 1 supra. This is particularly true, because prior to today, International Transcription Service, the Commission's official copy contractor, did not have a copy of the NPRM text available for purchase by

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[5/] See NPRM, at ¶¶ 98 & 105.

the public. Furthermore, the NPRM has yet to appear in the Federal Register. Accordingly, regardless of whether or not there was adequate public notice of the NPRM text, the extraordinary circumstances created by the Federal government shut-down have created substantial doubt that all affected parties have been afforded adequate time to review the NPRM and prepare comments.

In addition to the fact that the text of the NPRM has been unavailable to the public since its adoption last month, deliberations relating to the NPRM have also been frustrated to a substantial degree by the fact that Commission staff has also been unavailable for consultation on key related issues during this same time period.

In sum, all of the above-mentioned rule and policy issues, as well as a host of others raised in the NPRM, merit careful consideration by all affected parties. Even if there had not been a shut-down of the Federal government, the thirty-day period provided in the NPRM for the submission of comments, as well as the fifteen day period allowed for the preparation of reply comments, are clearly insufficient, given the broad scope and complexity of the issues dealt with in the proceeding. The fact that the Commission has only opened its doors today for the first time since the day it adopted the NPRM almost a month ago only serves to amplify the need for the extensions of time requested in the instant motion.

For all of the above-stated reasons, there is good cause for the extensions of time requested herein and grant of the instant motion will serve the public convenience and necessity. Accordingly, BizTel respectfully requests that the deadline for filing of comments on the NPRM in the above-captioned rulemaking proceeding be extended for sixty days to March 18, 1996. BizTel also respectfully requests that the deadline for the submission of reply comments be extended by forty-five days, in effect, to May 20, 1996, sixty days from the submission of comments.

Respectfully submitted,

BIZTEL, INC.

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January 11, 1996