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

THIS DATE CANCELLED
FEB 1 1996
OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
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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

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COMMENTS IN SUPPORT OF EMERGENCY MOTION FOR STAY

Pursuant to Section 1.41 of the Commission's Rules, BizTel, Inc. ("BizTel"), through its attorney, hereby files comments in support of the Emergency Motion For Stay (the "Motion") filed in the above-captioned rulemaking proceeding on January 16, 1996, by Commco L.L.C., Plaincom, Inc., and Sintra Capital Corporation ("Movants"). By the Motion, Movants request an immediate stay of the Commission's December 15, 1995 order, as it relates to the cessation of processing of mutually exclusive 38.6 - 40.0 GHz ("39 GHz") Point-to-Point Microwave Radio Service applications (the "Processing Freeze").[1/] Given the totality of circumstances surrounding the Commission's adoption of the 39 GHz Processing Freeze, Movants request for stay is fully warranted and should be granted forthwith by the Commission.

1/ See Notice of Proposed Rulemaking and Order; ET Docket No. 95-183, RM-8554 & PP Docket No. 93-253; FCC 95-500 (adopted December 15, 1995) (the "Notice & Order"). Movants seek a stay of the Processing Freeze, pending Commission action on their concurrently filed petition for reconsideration. See Petition For Reconsideration of Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation; ET Docket No. 95-183, RM-8554 & PP Docket No. 93-253; FCC 95-500 (filed January 16, 1996) (the "Petition").

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I. INTRODUCTION

As one of the pioneers in the development and deployment 39 GHz wireless services, BizTel has interests that are directly affected by the Commission's recent actions in the above-captioned rulemaking proceeding. Of particular relevance to the issues addressed in the Motion and the Petition, and, in direct contravention of the Communications Act of 1934, as amended (the "Communications Act"), the Processing Freeze unlawfully precludes timely Commission action on properly filed amendments that remove mutual exclusivity conflicts with a substantial number of BizTel's pending 39 GHz applications. Accordingly, BizTel has standing to file these comments in support of the stay requested by Movants.[2/]

[2/] The effect of the Processing Freeze reaches well beyond its negative impact on the disposition of mutually exclusive 39 GHz applications by also adversely and unlawfully altering the status of non-mutually exclusive 39 GHz applications, as well as the rights of 39 GHz licensees seeking to deploy authorized facilities during the pendency of the above-captioned rulemaking. Similarly, there is serious doubt as to whether there was effective public notice on the purported release date of the order that imposed the initial freeze on the filing of new 39 GHz applications. See Order Re: Petition for Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands, DA 95-2341 (adopted November 13, 1995) (the "Initial Freeze Order"). BizTel reserves the rights afforded it pursuant to the Communications Act and the Commission's Rules to further address all of these issues within the applicable filing periods established by publication in the Federal Register of the Notice & Order and the Initial Freeze Order. See 47 U.S.C. § 405; see also, 47 C.F.R. §§ 1.429 & 1.4(b)(1).

II. THE MOTION FOR EMERGENCY STAY SHOULD BE GRANTED FORTHWITH

The Motion and the underlying Petition set forth in detail a factual basis, as well as the points and authorities that substantiate more than sufficient legal justification for Commission entry of the stay requested by Movants. It is unnecessary to reiterate each of the justifications for the requested relief set forth in the Motion. Nevertheless, it should be stressed that the injury that will result absent grant of the Motion will extend to all established 39 GHz companies. Collectively over the last several years, BizTel, Movants, and other similarly situated companies have invested millions of dollars of scarce capital to pursue the rapid nationwide implementation of 39 GHz systems. These high-risk pioneering efforts were undertaken with the encouragement of Commission officials, and in reliance on the Communications Act, the Commission's Rules, and equitable treatment by Commission. Moreover, the commitment of BizTel, Movants, and others to bring innovative new services to the public and the concomitant creation of new jobs are fully consistent with the Communications Act, the Commission's Rules and the clearly stated policy objectives of the Commission.

The Processing Freeze serves no legitimate purpose.[3/] To the contrary, the Processing Freeze introduces an unforeseeable and indeterminate roadblock to the deployment of 39 GHz facilities in certain markets that have heretofore constituted an integral part of long-planned nationwide 39 GHz systems; a result that is clearly in contravention of the public interest. By the express language of the Notice & Order, this unlawfully imposed impediment not only affects service areas covered by pending mutually exclusive applications, but also serves to immediately preclude the grant of certain non-mutually exclusive applications, as well as to limit the flexibility of facilities deployment in previously authorized service areas.[4/] The resulting uncertainty serves to retard the ability of 39 GHz operators to achieve long-planned nationwide coverage, thereby reducing the attractiveness of service offerings to the public.

Even assuming *arguendo* that the Processing Freeze were to be lifted at some point in the future, and that processing of affected 39 GHz applications were to resume at that time under the Commission's existing 39 GHz licensing rules, the effect of the resulting delays in system deployments would clearly not be

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[3/] See Notice & Order, at ¶123. The Commission offers no rational justification whatsoever for the Processing Freeze, making only nebulous references to the "objectives of the proceeding," and drawing illogical conclusions about the purported expenditure of Commission resources necessary to resolve mutually exclusive applications.

[4/] See Notice & Order, at ¶¶122-124.

helpful to the emerging 39 GHz industry, and, thus, would contravene the public interest.

III. CONCLUSION

For all of the above-stated reasons, the January 16, 1996 Emergency Motion For Stay filed by Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation in the above-captioned rulemaking should be granted forthwith by the Commission.

Respectfully submitted,

BIZTEL, INC.

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Its Attorney

February 1, 1996

CERTIFICATE OF SERVICE

I, Zita Michelle Holly, an administrative assistant in the offices of Walter Sonnenfeldt & Associates, hereby certify that on the 1st day of February, 1996, a true copy of the foregoing "COMMENTS IN SUPPORT OF EMERGENCY MOTION FOR STAY" of BizTel, Inc. was mailed, first-class postage prepaid, to the following:

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