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

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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To: The Commission

COMMENTS OF SINTRA CAPITAL CORPORATION

Sintra Capital Corporation ("Sintra"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits limited comments in response to the Commission's *Notice of Proposed Rulemaking and Order*, adopted December 15, 1995 in the above-captioned proceeding (hereinafter "*NPRM*").[1]

I. INTRODUCTION

Sintra is a corporation, organized pursuant to the laws of the State of Delaware, which seeks to apply for authorizations in the 38.6 - 40 GHz ("39" GHz) band in order to provide wireless fiber or "last mile" services to customers on a nationwide basis. Thus far, Sintra has obtained approximately 37 licenses, and it continues to prosecute many more applications for

[1] By *Order*, released February 9, 1996, DA 96-144, the Commission extended the date for filing comments to March 4, 1996.

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authority to establish new facilities necessary to develop its nationwide network. Accordingly, the outcome of this proceeding, especially the Commission's tentative conclusions concerning processing of 39 GHz applications and 39 GHz construction requirements, is critical to Sintra.

II. DISCUSSION

A. Processing of Pending 39 GHz Applications

For the reasons detailed in Sintra's Petition for Reconsideration and Emergency Request for Stay, Sintra submits that the Commission must continue processing 39 GHz applications that are pending and mutually exclusive. Moreover, applicants should be afforded a period of time in which to resolve mutual exclusivity. Affording pending applicants the ability to resolve mutual exclusivity is consistent with the Commission's rules, as well as Congress' mandates set forth in Section 309(j)(6)(E) of the Communications Act of 1934, as amended (the "Act"). Any attempt to inhibit such voluntary conflict resolution efforts would be patently inconsistent with the requirements of Sections 309(j)(6)(E) and 309(j)(7)(B) of the Act.

B. Construction/Build-Out Requirements for 39 GHz Licensees

The Commission seeks comment on whether it should adopt build-out and construction requirements for existing 39 GHz licensees. *NPRM* at ¶98. In particular, in order to accommodate incumbent 39 GHz operations, the Commission is proposing to adopt "transition" rules whereby licensees of rectangular service areas would be given 18 months from the adoption of a Report and Order in this proceeding to file with the Commission a certification that they have constructed a minimum average of four permanently installed and operating links per

hundred square kilometers of their licensed service area for each licensed channel block. *NPRM* at ¶105.

Sintra strongly opposes adoption of this "transition" regime. This "transition" proposal is unsupported by analysis, and its unreasonableness is underscored by the fact that the Commission did not specify any build-out requirement in connection with the 37 GHz band, or for 39 GHz licensees that receive their spectrum at auction. *NPRM* at ¶98. Sintra opposes adoption of this "transition" regime because it will force 39 GHz operators to build out their systems to compete with artificially imposed benchmarks rather than actual evolving demand at specific locations.

The Commission's proposal will require an incumbent 39 GHz licensee to undertake the same degree of construction, in every market, regardless of population density, market demand, or the type of service the carrier intended to provide, simply to preserve its license. Due to the short distance within which this frequency band can operate in a reliable fashion, an incumbent licensee would have to build these links in a manner that would provide "backbone" capability in order to be ready and available to support "potential" traffic of prospective customers where ever they may be located within the licensed area. Sintra expects that its potential customers will be:

1. Entities requiring high capacity short-haul links.
2. Competitive Access Providers requiring "wireless" augmentation to their networks.
3. Campuses requiring interconnection of buildings.
4. Cellular operators requiring interconnection of microcells.
5. PCS operators requiring interconnection of their cells sites.

Each of these applications are built on an "as needed" basis and the interconnectivity requirements of these applications follow suit. Competition for these potential customers will be from other 37-39 GHz licensees, existing wireless service providers seeking incremental revenue opportunities, existing competitive access providers, and future competitive access providers that will be introduced into this marketplace as a result of the new telecommunications legislation. In order to compete for these market segments, 39 GHz licensees must be afforded flexibility to design and build-out their systems on an "as needed" basis. If the Commission's proposed build-out rules are adopted, 39 GHz licensees (and certainly those subject to the proposed transition rules) will be removed from the marketplace as viable competitors.

Furthermore, adoption of the Commission's proposal will have the effect of placing incumbent 39 GHz licensees at a competitive disadvantage to those 37 and 39 GHz licensees that receive spectrum at auction. If the Commission adopts its proposed build-out rules, it will be defining the manner in which 39 GHz networks are to be built-out, before the uses for this spectrum, and the specifications for equipment, have been fully developed. Therefore, while incumbent 39 GHz systems will be required to operate in an artificially restricted manner now, those that receive spectrum at auction will have the flexibility to design and build systems using this spectrum in any number of unique and innovative ways.

Rather than adopting its proposed build-out rules, Sintra urges the Commission to adopt a more reasonable approach. In particular, Sintra supports a universal standard whereby licensees would be required to make a showing of "substantial" service in their licensed service area upon renewal. Pursuant to this standard, any licensee who has constructed and has available for service, a number of links which appear reasonably related to the demographic and

economic character of the specific market would be deemed to have provided substantial service to the public in its service area. This approach will ensure that carriers are building-out their markets, and that actual customer demand is being met, thereby creating stability in this marketplace.

III. CONCLUSION

For the reasons discussed above, Sintra urges the Commission to adopt rules in this proceeding that will allow the continuing growth and development of services in the 37 and 39 GHz frequency bands.

Respectfully submitted,

SINTRA CAPITAL CORPORATION

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