situated companies have invested millions of dollars of scarce capital to pursue the rapid 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 the Commission.

The commitment of BizTel and other pioneers like BizTel to bring innovative 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. In fact, failure to resolve incumbent issues prior to auctions would specifically contravene the Commission's auction authority.[15] For all of these reasons, no auctions should be commenced in the 37 GHz or 39 GHz bands until incumbent application and license issues are fully resolved consistent with the recommendations provided herein.

E. Steps Should To Taken To Preclude Anti-Competitive Abuses That Could Occur

The Commission proposes open eligibility for all parties interested in bidding for 37 GHz or 39 GHz spectrum.[16] BizTel endorses this proposal, provided that certain safeguards are put

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[15] See 47 U.S.C. § 309(j)(6)(G).

[16] NPRM, at ¶ 97.

in place to prevent anti-competitive abuses. A fundamental common thread to virtually all of the innovative services that are being implemented or have been proposed for implementation in the 37 GHz and 39 GHz bands is that they represent a viable competitive alternative to the entrenched local exchange service provider. For this reason, it would clearly be anti-competitive and contrary to the public interest to allow any local exchange service provider with monopoly power to obtain a 37 GHz or 39 GHz license covering any portion of its home operating territory.

Allowing a local telephone company with monopoly power to participate in the bidding process would clearly frustrate one of the most viable alternatives available today for the deployment of competitive local telecommunications services. Given the fact that the Telecommunications Act of 1996 removes government sanctions of the monopoly power of local exchange carriers, there appear to be serious antitrust issues arising from the possibility that a local exchange carrier could utilize its market power, and financial resources obtained therefrom, to block competition through the purchase of outlets for alternative service providers.[12] Absent properly administered Commission

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[12] This appears to be a case of first impression in this regard. This is the first time since the passage of the Telecommunications Act of 1996 and the consequent removal of government sanctioning of the maintenance of local exchange service monopolies, that the Commission has been faced with a issue of potential anti-competitive abuse by local exchange service providers. The Commission must apply antitrust principles to the facts in the Rulemaking and should exercise caution in this regard.

controls on auction participation by local exchange carriers with monopoly power, it appears quite likely that important new competitive services could be unfairly blocked or seriously impeded in the marketplace.

At a minimum, any local exchange carrier with dominant market power or monopoly power in a given BTA should be required to certify full compliance with the "Competitive Checklist" set forth at Section 271 c)(2)(B) of the Telecommunications Act of 1996 as a prior condition to its participation in an auction for any 37 GHz or 39 GHz license covering any portion of its home territory. If a local exchange carrier *is* permitted to obtain a 37 GHz or 39 GHz license covering any portion of its home territory through an auction, it should *also* be required to comply with *at least* the *same* construction threshold imposed by the Commission on *any* other 37 GHz or 39 GHz licensees authorized in its home territory.[18] These recommended procedures appear to be the only way that the Commission and the public can be adequately assured that local exchange carriers will not use their substantial financial resources to purchase 37 GHz or 39 GHz spectrum, or drive up its bid price to keep it out of the hands of legitimate competitors.

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[18] See, infra, at IV(A).

IV. LICENSING & SERVICE RULES MUST BE UNIFORMLY APPLIED

It is quite apparent from even a cursory review of the NPRM that there is a vast disparity between the proposed treatment of incumbent 39 GHz applicants and licensees and the treatment of entities that might obtain 37 GHz or 39 GHz licenses through an auction process. The Commission bases this discriminatory and punitive approach on a nebulous blanket concept that can be characterized by the following: "all applicants and licensees are equal, *but* parties who pay for spectrum are [somehow] *more equal*" (i.e., entitled to a different, preferred licensing and service rule structure).

To distinguish between those that might purchase a license at auction and incumbent applicants and licensees by imposing punitive provisions on the latter group and favoring the former clearly lacks any rational basis, particularly given the potential antitrust issues discussed supra, at Section III(E). These arbitrary, punitive provisions include: (i) proposal of an unduly onerous minimum construction threshold that, in reality, constitutes a thinly veiled attempt to confiscate licenses for subsequent resale at auction; (ii) retroactive removal of incumbent applicant amendment rights; (iii) retroactive imposition of unjustified processing restrictions relating to pending applications and amendments thereto; and (iv) severe limitation of an incumbent licensee's ability to modify its

authorization to meet evolving public demand. Such punitive treatment of incumbent pioneering applicants and licensees is defended by the Commission with references to the "objectives of the proceeding"[19] (i.e., to sell spectrum licenses at auction to derive as much revenue as possible for the U.S. Treasury). These extraordinary measures clearly contravene Sections 309(j)(6)(E)&(G) & 309(j)(7)(A)&(B) of the Communications Act. Accordingly, as set forth in more detail below, the Commission must modify certain of the NPRM proposals to remove punitive measures directed at incumbent applicants and licensees, and to facilitate a reasonably uniform application of new 37 GHz and 39 GHz licensing and service rules.

A. A Single Minimum Construction Threshold Standard Based On Realistic Service Deployment Objectives Must Be Adopted

Equity and concerns over possible anti-competitive behavior mandate a single uniform approach to ensuring that *any* spectrum licensed in the 37 GHz or 39 GHz is put to reasonable use and that services to the public are made available in a timely fashion, given reasonable consideration of actual marketplace conditions.[20] Despite this fact, the NPRM contemplates

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[19] See, e.g., NPRM, at ¶ 123.

[20] The consideration of actual marketplace conditions is particularly applicable to virtually all of the services that (continued...)

Commission adoption of drastically different construction threshold standards for incumbent licensees, as opposed to licensees that obtain licenses through auctions.[21]

There is absolutely no legitimate basis to conclude that licensees that obtain authorizations at auction should be subject to different construction threshold standards than licensees that obtain authorizations under licensing policies that pre-date the use of auctions.

Contrary to rather specific inferences in the NPRM and the accompanying separate statements of the two dissenting Commissioners, there is no credible evidence that incumbent licensees are intentionally delaying service deployment or warehousing spectrum.[22] The vast majority of incumbent licenses were issued beginning in late February 1995, and most incumbent licenses were issued well after that date, due to the pace of application processing. None of these licenses are past

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[20] (...continued)
BizTel and other incumbent licensees are seeking to provide. Unlike wide-area coverage public service systems such as cellular or PCS, where operators construct cell sites and other infrastructure with a reasonable anticipation that mobile users will use the system, virtually all 37 GHz and 39 GHz services (with the possible exception of non-common carrier backhaul applications) contemplate the **deployment on demand of specific links to service specific customers.** Thus, as recognized by the Commission, construction threshold criteria such as geographic area or percentage of population covered traditionally applied to wide area coverage mobile systems are inapplicable to 37 GHz and 39 GHz systems. See NPRM, at ¶ 98.

[21] Compare NPRM, at ¶¶ 105-108 with NPRM, at ¶ 98.

[22] See, e.g., NPRM, at ¶ 7.

the initial eighteen month construction deadline mandated by Section 21.43(a)(1) of the Commission's Rules.

Furthermore, contrary to wholly unsupported conclusions contained in the NPRM, the fact that the government receives payment in exchange for issuing a license provides no assurance whatsoever that the licensee will indeed deploy facilities or address public demand for services in a timely fashion.[23] Congress was well aware of this fact when it established the Commission's competitive bidding authority. Section 309(j)(4)(B) of the Communications Act unambiguously requires that the Commission impose conditions on licenses obtained through competitive bidding that set forth explicit specific performance requirements and penalties for performance failures to preclude, among other things, warehousing of spectrum by auction winners.

These requirements are absolute, and are <u>not</u> negated by the fact that a payment is received by the government. Given the real possibility, as discussed <u>supra</u> at Section III(E), that well-financed local exchange carriers with monopoly power could purchase 37 GHz or 39 GHz spectrum rights at auction principally for the purpose of keeping the subject spectrum out of the hands of competitors, it is quite clear that *all* 37 GHz and 39 GHz

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[23] NPRM, at ¶¶ 28 & 97.

licensees should be subject to a single adequate and reasonable construction threshold standard.[24]

B. The Proposed Incumbent Licensee Construction Threshold Standards Are Unduly Onerous And Unsupported By Market Data

The NPRM contains a series of proposals for construction threshold standards in connection with the discussion of its proposed treatment of incumbent licensees.[25] As discussed supra, these proposals are patently unacceptable, due to the fact that they clearly fail to take adequate account of the character or scope of the market for 37 GHz and 39 GHz services, and simply appear to amount to punitive treatment of the incumbents in an oblique effort to confiscate licenses for subsequent sale at auction.

The lead proposal entails the construction and operation within eighteen months from the adoption of a Report & Order in the Rulemaking of an average of one link per ten square miles per authorized channel pair. Alternatively, the NPRM proposes construction and operation within the same timeframe of a fixed

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[24] Depending on the outcome of the Commission's antitrust analysis with regard to participation in 37 GHz or 39 GHz auctions by local exchange carriers with monopoly power in the subject license area(s), it *may* be advisable to require a more stringent construction standard in the case of licenses issued at auction to such companies.

[25] NPRM, at ¶ 105-108.

minimum number of links per service area, or a fixed number of links per service area with an accommodation for market size. Under any of these scenarios, each installed link would have to be operated with a minimum modulation efficiency of 1 bps/Hz over the entire authorized bandwidth.[26] While the third proposal contemplating a sliding scale depending on market size may form one possible basis for a reasonable requirement (assuming that it entails a reasonable number of links *and* a reasonable period in which to place the subject facilities in operation), none of these proposed threshold standards are rationally related to marketplace demand, and would be virtually impossible to meet within the proposed time period.

Even the most optimistic analysis of possible deployment prospects would not result in a level of installations coming anywhere close to the proposed construction thresholds within the proposed milestone deadline. While BizTel anticipates a substantial demand for its services, after allowing for a reasonable period of time (i.e., 4 - 5 years) to achieve market acceptance and name recognition, the proposed scenarios would force BizTel to construct facilities without necessarily having

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[26] The NPRM also proposes provisions for rescinding the blanket deployment authority of a licensee and then separately licensing individual links in the event that the construction threshold standard ultimately adopted is not complied with. BizTel does not object to this proposal at this time, except that the period for non-operation of a "grandfathered" link should be increased to 180 days from 30 days. BizTel strenuously objects, however, to the alternative proposal to "repack" licensed operations. See NPRM, at ¶ 109.

specific customers to serve on the resulting point-to-point transmission paths. This would be completely contrary to BizTel's (and most other incumbent licensee's) deployment plan (i.e. to build links pursuant to customer orders), which is rationally calculated to provide cost-competitive services, *and* which is based on a sound system design approach that is well understood and accepted by the Commission.[27] In the case of the lead proposal (i.e., one link per 10 square miles), the extent of such construction would be virtually impossible within the timeframe allotted, and there is absolutely no relation to any assessment of actual demand for services, nor any attempt by the Commission to set forth such an analysis. For this reason, the lead proposal is clearly arbitrary, and the underlying motivation for the proposal is, thus, inherently suspect.

According to a recent study conducted by Connecticut Research, a firm with substantial expertise in analyzing the business activities of competitive access providers ("CAPS"), the *entire* CAP industry connected a total of 2400 new buildings to their networks in 1995.[28] Research conducted by BizTel indicates that the reported total number of new connections could over-represent the total market in the CAP sector for the types of services proposed by BizTel. In this regard, as many as half

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[27] See FN 20, supra.

[28] Local Telecommunications Competition, 1995-1996, Connecticut Research, Glastonbury, CT (1995).

of these 2400 reported network connections appear to involve circuit bandwidths that are too small to economically serve using currently available 39 GHz equipment. Additionally, the buildings connected by the CAP industry appear to be located predominantly in just a few large cities. For this reason the distribution of customers across multiple service areas is, at best, questionable. Finally, it cannot be assumed that BizTel, or any other fixed wireless service provider could hope to garner more than a small portion of the total CAP business within the timeframe envisioned for the proposed construction threshold.[29/]

Even assuming *arguendo* that other much larger market opportunities exist today, or will materialize in the marketplace within eighteen months of the adoption of a Report & Order in the Rulemaking (an assumption that BizTel does not necessarily dispute), BizTel and other 39 GHz operators are *still* faced with achieving market acceptance, name recognition, and with attempting to capture market share along with other 39 GHz operators (and, possibly, other wireless service providers). Clearly, BizTel and other 39 GHz companies can only expect to

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[29/] In this regard, it should be noted that the market share available to any single incumbent 39 GHz licensee will be substantially diluted by other factors. Among other things, there could be as many as fourteen licensed 39 GHz operators (as well as up to sixteen licensed 37 GHz operators) in any given metropolitan area vying for the same limited customer base within the proposed timeframe for accomplishing the buildout proposed for incumbent 39 GHz licensees.

capture a limited market share of any such business for at least several years.

Moreover, even if there were a logical basis to assume that there will be service demand sufficient to justify the lead proposal, there are serious questions as to the availability of sufficient supplies of equipment to meet this proposed threshold. In this regard, it does not appear that equipment manufacturers have anywhere near sufficient capacity to produce a number of 39 GHz transceivers that, even under *very* conservative estimates, would equal approximately *ten* times the total number of radios that have reportedly been built to date by all manufacturers currently offering such equipment for sale.[30/]

In sum, the imposition of unrealistic construction obligations clearly will serve no legitimate public interest purpose. Such action will only function to create a high level of uncertainty and doubt in the investment community, and frustrate sincere efforts on the part of BizTel and other companies to complete already complex ongoing negotiations to

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[30/] Conservatively assuming 400 incumbent single channel licenses with an average of a 5000 square mile service area each, and a requirement for one link per ten square miles, 200,000 x 2 radios would be required - almost ten times the number reportedly deployed throughout the world to date. The Commission has had recent experience with the undesirable consequences of the failure of a construction threshold that did not take proper account of marketplace conditions. This unfortunate circumstance should not be repeated in the instant proceeding. See Amendment of Part 95 of the Commission's Rules To Modify Construction Requirements For Interactive Video and Data Service (IVDS) Licenses, WT Docket No. 95-131, FCC 95-506 (released January 16, 1996) (the "IVDS Report & Order").

obtain financing for planned deployments, and to bring innovative competitive local fixed wireless services to customers in a timely fashion. These results would clearly be unacceptable for the Commission, the industry, and the public. Accordingly, the Commission must modify the construction threshold proposals contained at paragraphs 105 - 108 of the NPRM to avoid such an outcome.

C. A Showing Of Substantial Service Is The Appropriate Construction Threshold Standard For All 37 GHz and 39 GHz Licensees

BizTel submits that the showing of substantial service suggested in the NPRM as a possible alternative for 37 GHz licensees would be the most appropriate standard for a reasonable construction threshold for all 37 GHz and 39 GHz licensees.[31] Such an approach is consistent with marketplace conditions, and with the diverse character of the common carrier services proposed by BizTel and other companies. The Commission has adopted, or proposed to adopt such a standard in several other recent proceedings where similar contingencies relating to the need for flexible deployment to meet multiple service requirements have been present.[32] Just as in these other

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[31] NPRM, at ¶ 98; see, also, e.g., 47 C.F.R. 24.303(b).

[32] Id., see, also, Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging (continued...)

instances, good cause exists in the instant case for application of such an approach. BizTel believes this approach is equitable, and is the best way for the Commission to meet its statutory obligation to ensure a timely deployment of 37 GHz and 39 GHz facilities and services while, at the same time, satisfying the demands of the marketplace.

BizTel recommends that the milestone for such a showing should be at least five years from the date of license. This will allow a sufficient period of time for licensees to achieve the necessary market presence. If a second further demonstration of the scope of deployment is deemed necessary, ten years is appropriate for a second substantial service milestone.

If specific construction threshold requirements are reasonably deemed necessary as a result of the record developed in the proceeding (as opposed what appears to be a thinly-disguised effort to reclaim spectrum for auctions), licensees should be afforded the option to comply with square mileage or service area-wide fixed minimum installation benchmarks, taking account of population density or other applicable service density factors in a given market, such as the concentration of certain classes of business locations. Any such specific benchmarks, and the timing of the relevant showing deadlines, should be consistent with the nature of service provided by the subject

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[32] (...continued)
Systems, WT Docket No. 96-18, FCC 96-52 (released February 9, 1996), at ¶ 41 (the "Paging NPRM").

carrier (i.e., not just based on a backhaul model). Any shorter milestone period than the five-year period proposed herein would not allow a reasonable time for facilities deployment, and thus would contravene the public interest.

The Commission should carefully consider all submissions to the record in finalizing a reasonable construction threshold standard that is uniformly applicable to all 37 GHz and 39 GHz licensees. BizTel intends to conduct its own careful examination of such submissions, and anticipates providing further input on this critically important issue.

Regardless of which approach is ultimately adopted, for the duration of the Rulemaking and for a period of at least two years thereafter, the Commission should maintain the requirement that licensees certify completion of initial construction and the commencement of commercial service within the currently required eighteen month period, as provided for in Section 21.43(a)(1) of the Commission's Rules. This will serve to ensure that incumbent licensees move expeditiously to commence deployment of their authorized facilities, and provide assurances that spectrum warehousing will not occur during pendency of the Rulemaking and during the transition to a revised licensing and service rule structure.[33]

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[33] It should also be noted in this regard, that licensee reports filed pursuant to requirement for the submission of a semi-annual report of operations set forth in Section 21.711 of the Commission's Rules will also serve to provide assurances to the (continued...)

Unless the Commission exercises extreme caution in developing an appropriate construction threshold standard taking full account of the specific deployment issues discussed herein, there could be an repeat of the recent unfortunate experience with IVDS, where the deployment of services has been delayed and the Commission has had to take subsequent remedial action to correct a construction requirement that was too onerous.[34] Absent prudent attention in the Rulemaking to these critical matters, concerted high-risk efforts by BizTel and other companies to introduce an important competitive wireless alternative to local wireline services could be needlessly delayed or completely frustrated by artificial government intervention.

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[33] (...continued)
Commission that deployments are indeed moving forward, and that the subject spectrum is being utilized in a reasonable fashion, consistent with marketplace conditions. These reports will also provide an excellent source from the which the Commission can gauge the *actual* demand for 37 GHz and 39 GHz services. Such information is extremely valuable for these purposes, and should be used to confirm the feasibility over time of any construction threshold standard adopted in the Rulemaking. For all of these reasons, regardless of the final determination as to a construction threshold standard, the current deployment reporting requirement set forth at Section 21.711 should also be preserved.

[34] See IVDS Report and Order, at ¶¶ 1 & 6-7.

D. Interim Processing Policies Should Not Be Punitive And Must Place Timely Provision Of Service As The Priority

As discussed above, the "Interim" 39 GHz licensing policies set forth in the NPRM are punitive in nature and entirely devoid of legitimate justification.[35] The Commission should act expeditiously on the pending petitions for reconsideration and emergency request for stay of the order component of the NPRM.[36] As set forth quite effectively in the pending petitions and the motion for stay, the interim processing policy is contrary to the Communications Act and could cause substantial harm to the emerging industry.

1. The Commission Should Modify the Interim Licensing Policy

For the above-stated reasons, and as discussed in further detail below, the Commission must modify the Interim processing policy as follows:[37]

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[35] NPRM, at ¶¶ 121 124.

[36] See FN 2, supra

[37] The decision to continue accepting and processing assignment and transfer of control applications during the pendency of the Rulemaking is appropriate and should not be modified. NPRM, at ¶ 121.

a. All pending 39 GHz applications, including any amendments thereto, should be processed;

b. The retroactive freeze on the filing of amendments to pending applications should be immediately vacated;

c. The effective date of the initial freeze on the filing of applications for new 39 GHz systems should be the operative cut-off date for any applications filed less than 60 days prior to the freeze;[38/]

d. The restriction on modification applications should be replaced with provisions allowing all modifications of existing authorizations that reasonably relate to the licensees ability to provide service to its customers within a 100 x 100 square mile service area, so long as any proposed modification does not result in mutual exclusivity with another

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[38/] It is well-settled in the applicable case law that cut-offs are for administrative convenience only. See, e.g., Ranger V. FCC, 294 F 2d 240, 244. The freeze on the filing of new applications clearly creates finality for processing purposes. See Order, DA 95-2341 (adopted November 13, 1995) 61 Fed Reg ____. Thus, there is a definite and clear date from which the Commission can determine for processing purposes whether applicants that filed prior to the freeze are mutually exclusive. Furthermore the only absolute requirement for grant of a Point-to-Point Microwave Radio Service application is that it appeared on public notice more than 30 days prior to grant. 47 C.F.R. § 21.27(c). There is no legitimate reason to penalize applicants that filed under existing rules, and it appears that the only motivation for not processing *all* pending applications filed prior to the freeze is to maximize proceeds of the auction, a result that is clearly in contravention of Section 309(j)(3)(A) of the Communications Act, and the underlying intent of Congress. Accordingly, the Commission must adopt the effective date of the initial application filing freeze order as the cut-off date for all applications that were not 60 days past public notice as of that date and process all pending 39 GHz applications accordingly.

licensee or timely filed applicant;[39]

e. The expiration date of all existing 39 GHz licenses should be modified to ten years from the date of authorization.[40]

2. The Interim Licensing Policy Modifications Proposed Herein Are Consistent With the Law and In the Public Interest

The modifications to the interim 39 GHz processing policy proposed above are fully consistent with the Communications Act, the Commission's Rules, and applicable case law. These recommended changes clearly serve the public interest,

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[39] The policy set forth in the NPRM concerning applications to modify existing 39 GHz authorizations violates Section 309(j)(6)(G) of the Communications Act. See NPRM, at ¶ 124. Furthermore the 39 GHz modification application policy is much more onerous than a policy affecting an identical situation (i.e., the modification of incumbent licenses pending auction of similar licenses) adopted in the Paging NPRM. See Paging NPRM, FCC 96-52, at ¶ 140. The proper objective for a modification application policy is to promote the timely delivery of service to the public consistent with the rules in force at the time the license was granted and the public interest objectives of the Communications Act. There is absolutely no credible argument (including that presented in the NPRM) that processing 39 GHz modification applications could be inconsistent with the objectives of the rulemaking. Accordingly, all modifications that reasonably relate to licensee's legitimate effort to provide service, as set forth herein, must be accepted for filing and processed by the Commission.

[40] For some unexplained reason, it appears that all licenses issued to 39 GHz licensees since February of 1995 carry an expiration date of February 1, 2001. There is no apparent basis for this expiration date, particularly because Section 21.45 of the Commission's Rules provides for a ten-year license term. Equity demands that the Commission re-issue all 39 GHz authorizations issued since February of 1995 with revised expiration date that is ten years from the date of initial grant.

convenience and necessity. The revised interim policy provisions set forth above will serve to facilitate the licensing of applicants who applied pursuant to a well-settled licensing rule structure, and who invested substantial financial and in-kind resources in reliance on these rules. The commendable entrepreneurial actions of BizTel and other pioneers to introduce an exciting new wireless competitive alternative to entrenched local exchange service providers should be recognized and rewarded, not discredited and squashed for the illegal purpose of raising revenue through spectrum auctions. Based on the facts at hand, there is no absolutely no legitimate justification for the Commission not to conform its interim 39 GHz licensing policy to the above-stated recommendations. Moreover, these recommended policies are undeniably consistent with long-established principal policy objectives that are set forth in the Communications Act, and, until recently, were religiously adhered to by the Commission.

Rumors of speculation, warehousing, and other "abuses" that are purported to have occurred are wholly unsubstantiated and patently false. There is absolutely no concrete information in the record or anywhere else that any improprieties or illegal acts have been or are being committed by incumbent 37 GHz and 39 GHz applicants and licensees. BizTel is concerned in this regard that, in its zeal to promote the use of auctions, the Commission may be unduly inclined to rely on false rumors. As we all know,

if rumors are repeated often enough, they become "facts", even if the underlying information is obviously false. That appears to be exactly the case in this situation. The Commission should follow the recommendations of BizTel (and of senior members of Congress) and immediately put a halt to the misguided course of action that lead to the interim licensing provisions in the NPRM.[41]

V. TECHNICAL ISSUES

BizTel offers the following comments regarding the technical rule proposals and related requests for comment set forth in the NPRM.

A. Uniform Technical Standards Will Foster Rapid Deployment of Services and Help To Preclude Interference

The NPRM considers adoption of new or revised technical rules related to channelization, radiated power, modulation efficiency, frequency tolerance, antenna performance, and interference protection.[42] As a preliminary matter, BizTel believes that any technical requirements ultimately adopted

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[41] See Letter From Senators Larry Pressler and Thomas Daschle to FCC Chairman Reed Hundt (February 9, 1996).

[42] NPRM, at ¶¶ 113 - 119.

should, to the greatest extent possible, be applied uniformly in both the 37 GHz and 39 GHz bands. Universal technical standards will promote the flexible provision of service by rendering channel capacity in both the 37 GHz and 39 GHz bands fungible. Uniform technical standards will also operate as an incentive to equipment manufacturers to further pursue and develop equipment for this market.

The Commission's proposals to revise and update technical standards are prudent. Such action will help to ensure that reasonable technical standards commensurate with the current industry state of the art are observed. However, prior to adopting any final decisions, the Commission should take full account of the input of the equipment manufacturing industry and other parties to the Rulemaking to ensure that any new standards that are adopted are practical, and can be met at reasonable cost, within any timeframes ultimately designated by the Commission.

Any resulting changes or additions to the current rules should contain provisions allowing equipment already installed as of the date of adoption of a Report and Order in this proceeding to remain in operation for a fixed transition period of five years, or for the duration of the useful life of the equipment, as set forth by the manufacturer's specifications, whichever is shorter. Following are further specific comments on the proposed revisions of technical rules.

B. The Technical Rule Proposals Are Generally Acceptable

BizTel generally supports the channelization plan proposed in the NPRM. With regard to the question of whether spectrum should be set aside for licensing paths on an individual basis, no showing submitted in the record to date appears to conclusively demonstrate a legitimate need for such a licensing scheme. Such a piecemeal approach to licensing could create an unnecessary burden on scarce Commission staff resources, and could lead to inefficient use of any channels licensed in this fashion. If it is ultimately deemed necessary to designate spectrum for this purpose, it should be drawn from the 37 GHz band, and should be limited to one channel pair.

BizTel supports the proposal for a maximum radiated power limit of +55 dBW. This standard allows licensees maximum flexibility in the provision of services, and is consistent with the EIRP limits set forth in the international Radio Regulations.

BizTel generally supports the proposed modulation efficiency of 1 bps/Hz, subject to the following conditions. The proposed 1 bps/Hz standard should be applied only with respect to the actual utilized signal bandwidth in a given link, and only if the record in the Rulemaking reasonably demonstrates that equipment manufacturers can readily produce equipment that can reliably meet this requirement within the timeframe specified and at a reasonable cost.

BizTel supports adoption of the proposed frequency tolerance standard of 0.001% for equipment operating in the 37 GHz and 39 GHz bands, subject to the transition procedure discussed above, and, again, assuming that the record in the Rulemaking ultimately supports this modification.

With regard to rules relating to the selection of antennas, BizTel believes that all 37 GHz and 39 GHz licensees should have maximum flexibility to employ cost-effective antenna systems. No public interest purpose will be served by imposing unduly rigid standards (e.g., requiring the use of Standard A antennas), or by mandating different antenna standards based on the method of licensing. The emphasis of any rule revisions that are ultimately adopted relating to antennas should be uniform capabilities for service flexibility, and interference protection. As discussed in more detail directly below, so long as unacceptable interference can be practically managed, BizTel believes that the Commission should allow 37 GHz and 39 GHz licensees as much latitude as possible with regard to standards for antenna gain and antenna sidelobe masks.

C. The Commission Should Allow Interested Industry Members To Determine Procedures For Precluding Interference

Maximizing the flexibility of operations with a priority to precluding unacceptable interference between licensees will

result in the greatest diversity of high quality services to the public. The NPRM recognizes that a methodology for precluding incidences of unacceptable interference to and from 37 GHz and 39 GHz operations must be developed.[43] The Commission should allow the industry to determine appropriate procedures for precluding unacceptable interference to and from adjacent licensee operations. Based on its current assessment of the situation, BizTel believes that there is a real potential for interference to and from adjacent 37 GHz and 39 GHz licensee operations. BizTel is confident, however, that adequate procedures to preclude incidences of unacceptable interference can be developed by industry with no need for any modification to the Commission's Rules.

The National Spectrum Managers Association ("NSMA") has already initiated this process and is the appropriate industry organization to spearhead these efforts and develop necessary technical recommendations.[44] Participation in the NSMA is open to all interested parties, and the Commission should encourage all companies with an interest in 37 GHz and 39 GHz interference protection issues to participate in the NSMA deliberations on these matters. Any such recommendations should be adopted by the Commission.

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[43] NPRM, at ¶ 118.

[44] See Comments of the National Spectrum Managers Association, ET Docket No. 95-183, (filed February 12, 1996).