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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 Parts 2.106 and 25.202 of the Commission's Rules to Allocate the 37.5 - 38.6 GHz Band to the Fixed-Satellite Service and to Establish Rules for the 37.5 - 38.6 GHz Band	)	RM-8811

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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

PARTIAL OPPOSITION OF BIZTEL, INC.

Pursuant to Section 1.405 of the Commission's Rules, BizTel, Inc. ("BizTel"), through its undersigned counsel, hereby submits the following partial opposition to the above-captioned petition for rulemaking of Motorola Satellite Communications, Inc. ("Motorola").[1/] As set forth below, no licensing of Fixed

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1/ See Petition for Rulemaking of Motorola Satellite Communications, Inc., Public Notice Report No. 2132 (released May 21, 1996)(the "Motorola petition."). See, also, Notice of Proposed Rulemaking and Order, ET Docket No. 95-183, RM-8553, PP Docket No. 93-253, FCC 95-500, adopted December 15, 1995 (the "37/39 GHz NPRM"). BizTel is concurrently filing a Motion To Consolidate the Motorola petition into the ongoing rulemaking proceeding in ET Docket No. 95-183 (the "37/39 GHz Rulemaking"). BizTel respectfully requests that the views set forth herein be considered in connection with the 37/39 GHz NPRM, and has captioned this submission accordingly.

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Satellite Service ("FSS") systems should be permitted in the 38.6 - 40.0 GHz band (the "39 GHz band"). In addition, the feasibility of accommodating FSS operations in the 37.5 - 38.6 GHz portion of the 37.0 - 38.6 GHz band (the "37 GHz band") on a shared co-primary basis with currently proposed wide-area licensed Fixed Service systems should be carefully considered within the context of the 37/39 GHz Rulemaking.[2/]

The Motorola petition seeks amendment of the table of allocations set forth in Section 2.106 of the Commission's Rules to facilitate domestic adoption of a primary international space-to-Earth FSS allocation in the 37.5 - 38.6 GHz band. The Motorola petition also seeks the adoption of new rules to facilitate domestic FSS licensing in the 37.5 - 40.0 GHz band. Purportedly, Motorola's proposed rules will facilitate co-channel co-primary between the downlink operations of as yet undefined future broadband FSS systems and currently operational and planned Fixed Service systems.

[2/] BizTel, an avid participant in the 37/39 GHz Rulemaking, is a pioneer and industry leader in the development and deployment of innovative 39 GHz millimeter-wave wireless systems. BizTel is the holder of 39 GHz Fixed Service authorizations in more than 155 cities, and is aggressively pursuing system deployments in all of its authorized service areas. The uncertainties created by unsettled questions relating to the possibility of the future FSS spectrum requirements alluded to in the Motorola petition have a dramatic impact on BizTel's business planning efforts. Accordingly, BizTel has a direct interest in the outcome of the proposals set forth in the Motorola petition. As demonstrated in BizTel's concurrently filed Motion To Consolidate, BizTel firmly believes that a rapid and coherent resolution of these issues will be best accomplished through a unified 37/39 GHz rulemaking proceeding dealing with all relevant Fixed Service and FSS issues.

With the exception of only cursory references to the temporary international power flux density limits that are generically applied in the International Radio Regulations to FSS systems in a wide range of frequency bands, the Motorola petition presents no analysis whatsoever indicating that FSS/Fixed Service sharing is feasible in the subject frequency bands.[3/] Moreover, it is difficult at this time for BizTel or anyone else to conduct a complete technical analysis of the feasibility of FSS/Fixed Service sharing in the subject frequency bands because there are no 37 GHz or 39 GHz FSS system proposals from which to draw actual technical parameters. However, preliminary analysis that assumes system characteristics similar to those proposed for Ka-band FSS systems and current wide-area authorized 39 GHz Fixed Service systems indicates that unacceptable interference will occur if Motorola's proposal for shared co-channel FSS and Fixed Service operations is adopted as proposed. Of particular concern to BizTel are the interference cases that would result from emissions into Fixed Service receivers from low or medium-elevation spacecraft transmitters, as well as from Fixed Service transmitting station emissions into FSS earth station receivers.

For these reasons, as a holder of more than 155 wide-area Fixed Service authorizations in the 39 GHz band, BizTel strongly

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[3/] See Radio Regulations, Art. 28 § 4(6), RR 2578, 2582, 2583 & 2584.

opposes the adoption of any 39 GHz band FSS licensing rules.[4/] BizTel and a number of other 39 GHz Fixed Service licensees have invested *millions* of dollars to deploy systems that are currently in operation (or soon will be) that were licensed under a long-established 39 GHz Fixed Service rule structure. Given the real potential for destructive interservice interference, there is absolutely no basis to retroactively impose a requirement for co-primary FSS sharing on these already authorized Fixed Service operations. This is particularly true, given the fact that there is ample currently unused spectrum in the 37.5 - 38.6 GHz band, at least a portion of which could be used for FSS operations, if a legitimate need for the spectrum is conclusively demonstrated by satellite proponents. If the record does ultimately demonstrate a legitimate need for the FSS spectrum requirements described in the Motorola petition, then an appropriate FSS/Fixed Service band sharing plan should be developed in the 37.5 - 38.6 GHz band in the context of the ongoing 37/39 GHz Rulemaking, and

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[4/] The existence of an allocation does not confer any absolute rights to establishment of licensing or service rules, particularly when other incumbent primary service operations are not compatible with those for which service rules have yet to be adopted. By analogy, as evidenced by the protracted deliberations in CC Docket No. 92-297 relating to the establishment of the Local Multipoint Distribution Service in the 27.5 - 29.5 GHz band on a co-primary basis with FSS operations, absent drastic system design modifications to facilitate interservice co-channel sharing, it is simply not feasible to accommodate wide-area authorized Fixed Service and FSS earth station operations in the same spectrum.

with the full participation of all interest terrestrial and satellite parties.[5/]

In this regard, to facilitate development of a complete record on these issues, the Commission should require that Motorola, and any other interested satellite parties, provide specifications for contemplated FSS systems that are adequate for the purposes of Fixed Service/FSS compatibility analyses. All interested parties must then be allowed sufficient opportunity to analyze any specifications provided by satellite proponents and to make submissions on the record as to whether and under what circumstances accommodation of FSS requirements may be feasible in the 37.5 - 38.6 GHz band.

As set forth in BizTel's concurrently filed Motion To Consolidate, assuming that FSS spectrum requirements are sufficiently substantiated in the record, the Commission should take action through a supplement to the 37/39 GHz NPRM or a Further Notice of Proposed Rulemaking in the 37/39 GHz Rulemaking to meet notice and comment requirements for any new Commission rulemaking proposals that may arise from the Motorola petition. As set forth in BizTel's concurrently filed Motion To Consolidate, unless these critical issues are dealt with within the context of the 37 GHz and 39 GHz rulemaking, the deployment plans and ongoing financing efforts of BizTel, and the many other similarly situated existing 39 GHz band Fixed Service licensees,

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[5/] See Motion To Consolidate, concurrently filed by BizTel.

will be unduly affected. Furthermore, unless these issues are resolved prior to the contemplated Fixed Service spectrum auctions, bidders will be unable to determine whether the spectrum they plan to bid for will be encumbered at some point in the future by shared FSS operations. These results would clearly be contrary to the public interest and can be easily avoided by the Commission, if it takes action consistent with the instant Partial Opposition and BizTel's concurrently filed Motion To Consolidate.

For the above-stated reasons, the Commission should not permit the licensing of FSS systems in the 38.6 - 40.0 GHz band. The Commission should also act expeditiously to require Motorola and other interested parties to develop a complete record in the ongoing rulemaking proceeding in ET Docket No. 95-183 with respect to the feasibility of accommodating FSS operations in the 37.5 - 38.6 GHz band on a shared co-primary basis with currently proposed wide-area licensed Fixed Service systems.

Respectfully submitted,

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June 20, 1996

CERTIFICATE OF SERVICE

I, Kevin J. Walsh, an employee in the offices of Walter Sonnenfeldt & Associates, hereby certify that on the 20th day of June, 1996, a true copy of the foregoing "PARTIAL OPPOSITION OF BIZTEL, INC." was mailed, first-class postage prepaid, to the following:

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