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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

MOTION TO CONSOLIDATE

Pursuant to Sections 1.41 and 1.405 of the Commission's Rules, BizTel, Inc. ("BizTel"), through its undersigned counsel, hereby moves to consolidate the above-captioned petition for rulemaking of Motorola Satellite Communications, Inc. ("Motorola") into the above-captioned rulemaking relating to the 37.0 - 38.6 GHz ("37 GHz") and 38.6 - 40.0 GHz ("39 GHz") bands (the "37/39 GHz Rulemaking").[1/] The potential Fixed Satellite

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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, ET Docket No. 95-183, RM-8553, PP Docket No. 93-253, (continued...)

Service ("FSS") spectrum requirements and related issues raised by the Motorola petition are inextricably intertwined with the Fixed Service licensing and service rule questions under consideration in the 37/39 GHz Rulemaking. Clearly, the ultimate disposition of the proposals set forth in the Motorola petition could have a substantial impact on the outcome of the 37/39 GHz Rulemaking, as well as contemplated 37/39 GHz Fixed Service spectrum auctions.[2/] Accordingly, the public interest will be well-served by grant of the instant motion.

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 proposes adoption of new FSS service rules that will purportedly facilitate co-primary sharing in the 37.5 -

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[1/](...continued)
FCC 95-500, adopted December 15, 1995, (the "37/39 GHz NPRM"). BizTel is addressing its specific concerns relating to the merits of the specific proposals contained in the Motorola petition in a concurrently filed Partial Opposition.

[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. BizTel firmly believes that a rapid and coherent resolution of these issues will be best accomplished through the unified rulemaking proceeding requested in the instant motion.

40.0 GHz band between Fixed Service systems and the downlink operations of as yet undefined future broadband FSS systems contemplated by Motorola.[3/] Because of the real potential for inter-service interference, the issues raised by the Motorola petition unquestionably impact the consideration of the Fixed Service licensing and service rule proposals under consideration in the 37/39 GHz Rulemaking and clearly merit full consideration within the context of that ongoing proceeding.

In fact, in the 37/39 GHz NPRM, the Commission specifically noted potential FSS spectrum requirements, and solicited comment on the impact that such requirements may have on the Fixed Service rule modification proposals under consideration.[4/] Motorola, BizTel and other parties to the 37/39 GHz Rulemaking have readily acknowledged the inescapable linkage between the proposals under consideration in the 37/39 GHz Rulemaking and the FSS issues raised in the Motorola petition.[5/] Given these facts, BizTel is quite surprised that the Commission did not simply accept the Motorola petition as comments in the 37/39 GHz Rulemaking, and continue to develop a complete record within a single unified proceeding on the need for FSS spectrum in the

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[3/] See Motorola petition, at 3.

[4/] See 37/39 GHz NPRM, at ¶ 110.

[5/] See Comments of Motorola Satellite Communications, Inc., at 2 & FN 5, ET Docket No. 95-183 (filed March 4, 1996); Reply Comments of BizTel, Inc., at 16-18; see, also, e.g., Reply Comments of Winstar Communications, Inc., at 14; Reply Comments of Commco, LLC, at 7.

subject bands, and prospects for accommodating such spectrum requirements.[6]

Indeed, the development of a complete record with respect to the proper definition of FSS spectrum requirements and a full examination of prospects for accommodating such requirements is critical to the successful outcome of the 37/39 GHz Rulemaking. Without a complete record, the real potential for unacceptable interference between Fixed Service and FSS systems will loom as an unresolved issue.[7] As set forth in more detail in BizTel's concurrently filed Partial Opposition to the Motorola petition, all parties to the 37/39 GHz Rulemaking should be given an opportunity in the context of a unified proceeding to fully evaluate the FSS spectrum requirements described in the Motorola petition, and to determine under what circumstances any such requirements might be accommodated on a co-primary shared basis with Fixed Service operations. Assuming that FSS spectrum

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[6] In the 27.5 -29.5 GHz band Local Multipoint Distribution Service ("LMDS") rulemaking, the Commission correctly took quick action to consolidate the consideration of FSS spectrum requirements with the original focus on the development of an entirely new terrestrial service. The presence of a substantial number of operational terrestrial systems, combined with the projected pace of the ongoing deployment of currently authorized systems, only serves to make the need for the consolidation sought in the instant motion more compelling than the LMDS example.

[7] As discussed in BizTel's concurrently filed Partial Opposition, Motorola's cursory reference to temporary international power flux density limits as a basis for co-channel co-primary Fixed Service/FSS sharing in the 37 GHz and 39 GHz bands is not sufficient to demonstrate that co-channel sharing is feasible. Further study of this issue is clearly warranted.

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.

Absent the consolidation requested herein, the development of a complete record, and full resolution of all relevant open Fixed Service, FSS and inter Fixed Service/FSS compatibility issues within the context of the 37/39 GHz Rulemaking, there will be a dark cloud hanging over the future of all radio service operations in the subject bands. This cloud will cast a shadow on the future of BizTel's and other incumbent licensee operations. Moreover, uncertainty over the resolution of FSS spectrum requirements and related compatibility issues will have a profoundly negative impact on the terrestrial service spectrum auctions contemplated in the 37/39 GHz NPRM by drawing serious valuation questions for prospective bidders and, thus, frustrating the competitive bidding licensing process. Unless bidders know beforehand whether or not the Fixed Service licenses that they are planning to bid for will be encumbered by requirements for co-primary sharing with FSS operations, they will likely offer far less for licenses on the auction block or not bid at all. Under these circumstances, the American public is likely to be needlessly short-changed. Both of these outcomes

would clearly be contrary to the public interest, and can easily be avoided by prompt Commission grant of the instant motion.

For all of the above-stated reasons, the Commission should act expeditiously to grant the instant motion, and fully consider potential FSS spectrum requirements within the context of the ongoing rulemaking proceeding in ET Docket No. 95-183.

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 "MOTION TO CONSOLIDATE" of BizTel, Inc. was mailed, first-class postage prepaid, to the following:

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