ORIGINAL

RECEIVED

OCT 17 1996

Federal Communications Commission
Office of Secretary

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

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

DOCKET FILE COPY ORIGINAL

MOTION TO ACCEPT SUPPLEMENTAL COMMENTS & REQUEST FOR EXPEDITED ACTION

Pursuant to Section 1.415(d) of the Commission's Rules, BizTel, Inc. ("BizTel"), through its undersigned counsel, hereby respectfully moves for leave to file supplemental comments (the "BizTel Supplemental Comments") for acceptance in the formal record of the above-captioned rulemaking proceeding (the "Rulemaking").[1/] BizTel also requests expedited review of the BizTel Supplemental Comments and prompt Commission action on the long-pending reconsideration of the policies adopted in the

---

1/ See Notice of Proposed Rulemaking & Order, ET Docket No. 95-183, 11 FCC Rcd 4930 (1996) (the "NPRM"). The Order component of the NPRM set forth at ¶¶ 121 - 124 is hereinafter referred to as the "Processing Order".

No. of Copies rec'd 0+9
List ABCDE

Processing Order (the "Processing Order reconsideration").[2] As shown below, good cause exists for the submission of the BizTel Supplemental Comments, and grant of the instant motion will serve the public interest, convenience, and necessity.

The BizTel Supplemental Comments should be entered in the formal record of this proceeding because they respond to specific requests from Commission staff for further more detailed elaboration of previous BizTel submissions in the Rulemaking relating to the Commission's disposition of the Processing Order reconsideration.[3] Acceptance of the BizTel Supplemental Comments as a formal submission to the record of this proceeding is also appropriate in light of the analysis therein incorporating citations from a recent ruling of the Court of Appeals in McElroy Electronics Corp. v. FCC, 86 F.3d 248 (D.C.

---

[2] See Joint Petition of Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation; Petition of DCT Communications, Inc., ET Docket No. 95-183 (filed January 16, 1996), Public Notice Report No. 2120 (released February 9, 1996), 61 Fed Reg 5773 (February 14, 1996); Joint Emergency Request for Stay of Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation, ET Docket No. 95-183 (filed January 16, 1996). BizTel has supported the Commco & DCT Petitions and the Commco Emergency Request For Stay in several submissions to the record of the Rulemaking. See, e.g., Comments of BizTel, Inc., ET Docket No. 95-183 (filed March 4, 1996) (the "BizTel Comments"), at 36-30 & FN 2; Reply Comments of BizTel, Inc., ET Docket No. 95-183 (filed April 1, 1996) (the "BizTel Reply Comments"), at 13-16; BizTel Ex Parte Presentation to the Wireless Telecommunications Bureau, ET Docket No. 95-183 (filed August 15, 1996).

[3] 47 C.F.R. 1.415(d). See, also, e.g., Comments of BizTel in Support of Emergency Motion for Stay, ET Docket No. 95-183 (filed February 1, 1996); Comments of BizTel, Inc., ET Docket No. 95-183 (filed March 4, 1996), at 36 - 40; Reply Comments of BizTel, Inc., ET Docket No. 95-183 (filed April 1, 1996), at 13 - 16.

Cir. 1996), which was decided several months after the close of the formal comment cycle in the Rulemaking.

Grant of the instant motion will not result in prejudice to any party. The BizTel Supplemental Comments simply elaborate positions already advanced by BizTel in its previous submissions in the Rulemaking, and are in all respects fully consistent with those previously stated positions. Thus, BizTel is not advancing entirely new arguments that interested parties did not have an opportunity to consider or respond to during the formal comment cycle in the Rulemaking. Furthermore, the Processing Order reconsideration has been pending for ten months without Commission action, and expedited action is in the public interest.

Absent grant of this motion and inclusion of the BizTel Supplemental Comments in the formal record of the Rulemaking, the Commission would not have the opportunity to fully consider all relevant requested input in resolving the Processing Order reconsideration. Moreover, acceptance of the BizTel Supplemental Comments will facilitate the analysis of decisionally significant issues within the framework formed by the conjunction of previous well-settled case law and the recent decision in McElroy.

For all of the above-stated reasons, the public interest will be well-served by inclusion of the BizTel Supplemental Comments in the formal record of the Rulemaking, by expedited Commission review of the BizTel Supplemental Comments, and by

prompt action on the long-pending Processing Order reconsideration.

Respectfully submitted,

BIZTEL, INC.

By: _____
Walter H. Sonnenfeldt

Walter Sonnenfeldt & Associates
4904 Ertter Drive
Rockville, Maryland 20852
(301) 770-3299

Its Attorney

October 17, 1996

CERTIFICATE OF SERVICE

I, Kevin J. Walsh, hereby certify that on the 17th day of October, 1996, a true copy of the foregoing "MOTION TO ACCEPT SUPPLEMENTAL COMMENTS & REQUEST FOR EXPEDITED ACTION" of BizTel, Inc. was mailed, first-class postage prepaid, to the following:

Louis Gurman
Andrea S. Miano
Gurman, Blask & Freedman, Chartered
1400 16th Street, N.W., Suite 500
Washington, D.C. 20036

Counsel for Commco, L.L.C., Plaincom, Inc., & Sintra Capital Corporation

Thomas J. Dougherty, Jr.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Counsel for DCT Communications, Inc.

Kevin J. Walsh