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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

REPLY COMMENTS OF CAMBRIDGE PARTNERS, INC.

Cambridge Partners Inc. ("Cambridge") hereby submits reply comments in the above-captioned rulemaking proceeding.[1/] As discussed more fully below, Cambridge is particularly troubled by proposals and policy decisions in the NPRM that attempt to impose punitive and inequitable treatment of incumbent 38.6 - 40.0 GHz band ("39 GHz") Point-to-Point Microwave Radio Service operators. Cambridge also addresses unsupported assertions made by one commentor in the proceeding relating to the supposed feasibility of co-primary sharing between Fixed Satellite Service ("FSS") and Fixed Service systems. Based on the totality of the circumstances and the record established to date in this proceeding, Cambridge urges the Commission to adopt a uniform regulatory regime that treats all Fixed Service licensees in a equal and reasonable fashion, and promotes open and fair competitive conditions for the delivery

[1/] See Notice of Proposed Rulemaking & Order, ET Docket No. 95-183 & RM 8553, PP Docket No. 93-253, FCC 95-500 (December 15, 1995) (the "NPRM").

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of important new Fixed Services to the public without the impediment of shared co-channel FSS operations.

I. BACKGROUND

Cambridge is an Ohio-based corporation that has been engaged since 1995 in pioneering the development of innovative 39 GHz point-to-point local broadband distribution services. Since March of 1995, Cambridge has filed a total of sixty-seven (67) applications to construct and operate 39 GHz Point-to-Point Microwave Radio Service systems. Twelve (12) of these applications have resulted in the grant of licenses. Of the remaining fifty-five (55) applications, one of the applications was voluntarily dismissed by Cambridge pursuant to a conflict resolution negotiation with other applicants, a second application was dismissed by the Commission pursuant to the filing freeze on new applications (discussed below). Fifty-three (53) currently pending Cambridge 39 GHz applications are being held in abeyance by the Commission pursuant to the interim processing policy set forth at paragraphs 121 - 124 of the NPRM. Despite the substantial and unjustified negative impact on Cambridge's business plan caused by the interim 39 GHz processing policies set forth in the NPRM, Cambridge remains fully committed to developing its 39 GHz business in all its authorized service areas.

II. THE PROPOSED IMBALANCE IN BUILDOUT REQUIREMENT FOR INCUMBENT LICENSEES AND AUCTION WINNERS IS CONTRARY TO THE PUBLIC INTEREST

The NPRM proposes an inordinately strict buildout requirement for incumbent 39 GHz licensees, while contemplating a lenient requirement for licensees that may obtain authorizations through auctions.[2] Cambridge joins the vast majority of commentors in opposing the unnecessary and unachievable construction proposal for incumbent licensees, which appears to be designed solely as a punitive measure intended to recapture previously licensed spectrum for auction.[3] This proposal is completely arbitrary and bears no rational relationship to market data regarding current demand for 39 GHz services.[4] Even if demand sufficient to justify the proposed buildout existed, the cost of meeting the requirement would be astronomical.[5] Moreover, it appears that the number of radios needed to meet the proposed buildout would far exceed the production capacity of domestic equipment manufacturers.[6]

The record in this proceeding confirms the fact that payment for a spectrum authorization at auction in no way guarantees that the licensee will initiate system construction.[7] Serious

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

[3] See, e.g., Comments of Milliwave Limited Partnership, at 20 - 23 (filed March 4, 1996); Comments of Commco, L.L.C., at 4, 5 - 7 (filed March 4, 1996); Comments of BizTel, Inc., at 27 - 30 (filed March 4, 1996); Comments of GHz Equipment Co., Inc., at 4 (filed March 4, 1996).

[4] See Comments of BizTel, Inc., at 27 - 29.

[5] See Comments of Commco, L.L.C., at 6 - 7.

[6] See Comments of Advanced Radio Telecom Corp., at 13 (filed March 4, 1996).

[7] See, e.g., Comments of BizTel, Inc., at 26.

concerns over possible anti-competitive behavior by well-financed local exchange service providers with monopoly power demand that a reasonable uniform minimum construction standard be applied to all licensees, regardless of how 37.0 - 38.6 GHz ("37 GHz") or 39 GHz licenses are obtained.[8] A uniform construction standard will prevent local exchange service providers with monopoly power from buying up spectrum at auction for the purpose of withholding it from potential competitors.[9] A carefully crafted single uniform approach will also ensure that all spectrum licensed in the 37 GHz or 39 GHz band is put to productive use and that services to the public are made available in a timely fashion, given reasonable consideration of actual marketplace conditions.

As indicated by many of the commentors in this proceeding, a showing of "substantial service", such as that adopted for "C Block" PCS licensees, would constitute a reasonable and workable buildout standard.[10] This standard should be uniformly applied to all licensees and the compliance showing deadline should be set at least five years from date of license grant to allow licensees a reasonable period of time to develop market presence. An alternative showing demonstrating construction of a reasonable fixed number of links, taking account of market size, within the same five-year time frame would allow licensees greater flexibility to demonstrate

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[8] Id., at 26 - 27.

[9] See, e.g., Comments of Columbia Millimeter Communications, L.P., at 18 (filed March 4, 1996); Comments of BizTel, Inc., at 20 - 22.

[10] See 47 C.F.R. 24.303(b). See, also, e.g., Comments of Milliwave Limited Partnership, at 17; Comments of BizTel, Inc., at 32 - 34; Comments of Bachow and Associates, Inc., at 14 (filed March 4, 1996); Comments of GHz Equipment Co., at 4 (filed March 4, 1996); Comments of Commco, L.L.C., at 8.

reasonable spectrum utilization and take account of the diverse character of services that may be offered by Fixed Service operators in the 37 GHz and 39 GHz bands.[11/]

III. THE COMMISSION SHOULD MODIFY THE INTERIM LICENSING POLICY

Two petitions for reconsideration and one emergency motion for stay relating to the order provisions set forth in the NPRM are pending before the Commission.[12/] Cambridge respectfully requests that its related views set forth herein be taken account of in the Commission's disposition of the above-mentioned petitions and motion.

The retroactively adopted interim licensing policy arbitrarily excludes from processing thirty-four (34) Cambridge applications that are free of mutual exclusivity conflicts and otherwise subject to grant. Moreover, the interim licensing policy improperly preserves mutual exclusivity conflicts affecting at least nineteen (19) other Cambridge applications that would otherwise be readily subject to grant through the processing of conflict resolving amendments. As is clear from the record, Cambridge is not the only applicant illegitimately adversely affected by the interim 39 GHz processing policies. Both of these results do not serve the public interest, are

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[11/] A reasonable five year requirement might entail 7 - 10 links in the largest ten U.S. markets by population, with a graduated decreasing requirement for smaller markets.

[12/] See NPRM, at ¶¶ 121 - 124, see, also, Joint Petition of Commco, L.L.C., Plaincom, Inc., and Sintra Capital Corporation (filed January 16, 1996) & Petition of DCT Communications, Inc. (filed January 16, 1996), Public Notice Report No. 2120 (released February 9, 1996); Joint Emergency Request For Stay of Commco L.L.C., Plaincom, Inc., and Sintra Capital Corporation (filed January 16, 1996).

contrary to the Communications Act of 1934, as amended (the "Communications Act"), and must be reversed.[13]

In addition, the Commission should adopt the effective date of the initial application filing freeze order (the "Freeze Order")[14] as the operative cut-off date for any applications filed less than 60 days prior to the Freeze Order. It is well-settled law that cut-offs are for administrative convenience only and vest no rights in a putative competing applicant.[15]

Cambridge also has an application that was dismissed on January 25, 1996 by the Commission, ostensibly pursuant to the Freeze Order adopted on November 13, 1995 by the then-Acting Chief of the Wireless Telecommunications Bureau.[16] The text of the Freeze Order listed a release date of November 13, 1995 (the day that the Cambridge Partners West Chester application was filed). However, there is serious question as to whether there was effective public release of the Freeze Order on that date. If it is ultimately determined that the Freeze Order was not effective with regard to applications filed on November 13, 1995, the Cambridge Partners West Chester application should be reinstated nunc pro tunc.

In sum, the Commission must modify the interim processing policy to bring it into compliance with the Communications Act by: (1) vacating the retroactive freeze on the

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[13] See 47 U.S.C § 309(j)(7)(a); 47 U.S.C. § 309(j)(6)(e); See, also, Comments of BizTel, Inc., at 37.

[14] See Order, RM-8553, DA 95-2341, 61 Fed Reg 8062 (adopted November 13, 1995).

[15] See, e.g., Ranger v. FCC, 294 F 2d 240, 244; see, also, Petition of DCT Communications, Inc., at 6 - 7; Comments of BizTel, Inc., at 37.

[16] See Application of Cambridge Partners, Inc. West Chester, PA, File No. 9601596, Public Notice Report No. 1173 (released February 7, 1996) (the "Cambridge Partners West Chester application").

processing of amendments to pending applications; (2) setting the effective date of the initial freeze on the filing of applications for new 39 GHz systems as the operative cut-off date for applications filed less than 60 days prior to the effective date of the Freeze Order; and (3) processing all pending 39 GHz applications and amendments thereto. These revised interim policy provisions will serve the public interest, convenience, and necessity by facilitating 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 and related representations by Commission officials.

IV. SHARING WITH FSS SYSTEMS SHOULD NOT BE IMPOSED IN ANY PORTION OF THE 39 GHz BAND

Comments and a petition for rulemaking filed by Motorola Satellite Communications, Inc. ("Motorola") raise the prospect of co-channel sharing between future FSS systems and Fixed Service systems in a portion of the spectrum that is the subject of this proceeding.[17] With the exception of Motorola's oblique references to generic temporary international power flux density standards for FSS systems in multiple frequency bands, there is absolutely no evidence in the record that co-channel sharing between FSS downlink operations and Fixed Service systems is feasible in the 37 GHz or 39 GHz bands. Furthermore, any attempt to conduct a detailed sharing analysis is frustrated by the fact that there are no 37 GHz or 39 GHz FSS system

[17] See Comments of Motorola Satellite Communications, Inc. (filed March 4, 1996); Petition for Rulemaking of Motorola Satellite Communications, Inc. (filed March 4, 1996). Because the issues raised in the Motorola petition are inextricably linked with licensing and service rule issues implicated by the NPRM, Cambridge urges the Commission to treat the Motorola petition as comments and consider the issues raised therein in this proceeding.

proposals on which to base a technical analysis.[18] Nonetheless, it appears obvious based on preliminary analysis that harmful interference will result from co-channel FSS and Fixed Service operations in the 37 GHz and 39 GHz bands, particularly in the cases of the potential interaction between Fixed Service transmitters and FSS earth station receivers, and between lower-elevation angle FSS spacecraft transmitters and Fixed Service receivers. For these reasons, Cambridge is opposed to the adoption of any licensing or service rules for FSS operations in the 39 GHz band. Assuming that a legitimate requirement can be established, Cambridge would not be opposed to allowing use of a portion of the 37.5 - 38.6 GHz band for FSS operations.

V. NO AUCTIONS SHOULD BE HELD UNTIL INTERIM PROCESSING, MINIMUM CONSTRUCTION & FSS SHARING ISSUES ARE RESOLVED

Cambridge is not opposed to spectrum auctions in the 37 GHz or 39 GHz bands to resolve mutual exclusivity between future Fixed Service applicants, so long as the status of incumbent licensees and pending applications in the 39 GHz band, construction threshold standards, and the FSS sharing issues raised by Motorola are fully resolved beforehand in the manner set forth in these reply comments.

Any attempt to auction the remaining available 39 GHz spectrum before the status of incumbent licensees and pending applications is resolved and reasonable threshold construction requirements are agreed upon will result in logistical complications that will likely reduce auction revenues or defeat auction objectives entirely. Faced with the unresolved status of pre-

[18] Indeed, there is a substantial question as to whether any new spectrum for FSS operations is warranted at this time.

existing applicants and licensees, bidders would be unable to determine the extent to which spectrum they may bid on might be encumbered. This uncertainty can only operate to depress or prevent bids on spectrum.[19]

Moreover, it would be patently unfair for any party to receive a license at auction in the 39 GHz or the 37 GHz band before the disposition of the incumbent 39 GHz applications and licenses is resolved. Cambridge and the other pioneer applicants and licensees filed their applications or received authorizations pursuant to a long-established licensing and service rule structure. These high-risk efforts were undertaken with the encouragement of Commission officials, and in fully justified reliance on the Communications Act, the Commission's Rules, and equitable treatment by the Commission.

The satellite sharing issues raised by Motorola clearly raise questions as to the scope of spectrum that might be available for use by future Fixed Service applicants. Accordingly, the Commission should fully assess the scope of legitimate FSS requirements in the 37.5 - 38.6 GHz portion of the 37 GHz band prior to conducting any auctions for Fixed Service licenses in the 37 GHz or 39 GHz bands.

In sum, the Commission must resolve incumbent applicant and licensee issues, develop a viable uniform construction threshold standard and resolve FSS spectrum requirements in the 37 GHz band before commencing any auctions in the 37 GHz or the 39 GHz bands.

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[19] See, e.g., Comments of BizTel, Inc., at 18-20.

Conclusion

As fully demonstrated in these reply comments and in the record developed to date in this proceeding, the Commission should adopt a uniform regulatory regime in this proceeding that treats all Fixed Service entities in an equal and reasonable fashion. In this regard, the Commission must act to adopt a reasonable uniform minimum construction threshold that ensures timely delivery of services to the public and precludes the prospect of anti – competitive behavior by local exchange service providers with monopoly power. The Commission should also modify the interim 39 GHz processing policy to facilitate the processing of all pending applications. The Commission should also preclude the use of the 39 GHz band for FSS operations. Assuming that all of these issues are properly dealt with beforehand, Cambridge does not oppose the use of a system of competitive bidding to issue licenses to future 37 GHz and 39 GHz applicants who seek authorizations on a mutually exclusive basis.

Respectfully submitted,

CAMBRIDGE PARTNERS, INC.

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April 1, 1996

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of April, 1996, a true copy of the foregoing "REPLY COMMENTS OF CAMBRIDGE PARTNERS INC." was sent via first-class mail, postage prepaid, to all parties of record in ET Docket No. 95-183 before the Federal Communications Commission.

William M. Custer