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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE 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

MOTION FOR LEAVE TO JOIN PETITION FOR RECONSIDERATION & REQUEST FOR EXPEDITED ACTION

Stevan A. Birnbaum, William R. Lonergan, and Cornelius T. Ryan ("Movants"), jointly through their undersigned counsel, hereby respectfully move for leave to join as petitioners in the March 9, 1998 "Joint Petition For Reconsideration" filed in the above-captioned proceeding (the "Joint Petition"), the substance of which is incorporated herein by reference.[1/] Movants also request expedited Commission action on the Joint Petition to avoid further harm to Movants, other similarly situated parties,

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[1/] See Joint Petition For Reconsideration of AA&T Wireless Services, Cambridge Partners, Inc., Linda Chester, HiCap Networks, Inc., Paul R. Likins, PIW Development Corporation, SMC Associates, Southfield Communications LLC, and Wireless Telco, ET Docket No. 95-183, RM-8553, PP Docket No. 93-253 (filed March 9, 1998), FCC Public Notice Report No. 2263 (March 16, 1998).

and to the users of public telecommunications networks. As shown below, good cause exists for the joinder sought by Movants, and grant of the instant motion will serve the public interest, convenience, and necessity.

Like the other parties to the Joint Petition, Movants are applicants and licensees in the 38.6-40.0 GHz Point-to-Point Microwave Radio Service. Movants, the original parties to the Joint Petition, and other similarly situated entities have suffered substantial harm as a result of the "incumbent" application processing policies promulgated by the Commission in the above-captioned rulemaking and in the related adjudicatory proceedings.[2/] Having retained undersigned counsel following the submission of the Joint Petition, Movants now seek to be recognized on the record as parties to the Joint Petition. Movants also urge the Commission to expedite action on the Joint Petition and to grant the relief requested therein. Although Movants incorporate the Joint Petition herein by reference, Movants wish to re-emphasize the following:

(1) The commission *has not* completed the processing of "eligible" applications in accordance with the policies adopted in the above-captioned rulemaking.

(2) The Commission erred in ordering the as yet to be conducted dismissal of all pending 39 GHz applications, and such mass dismissal would clearly *not* be "without prejudice".

[2/] As a result of these policies sixteen (16) of Movants applications have been needlessly withheld from processing by the Commission.

(3) All 39 GHz applications pending as of November 13, 1995 have achieved cut-off status and are "ripe" for processing.

(4) A reasonable time period must be allowed upon issuance of an Order on Reconsideration for the filing of amendments or voluntary dismissals to remove mutual exclusivity; at a minimum, submissions resolving mutual exclusivity conflicts that were filed prior to the release of the Report & Order must be processed.

(5) Licenses must be issued to all non-mutually exclusive applicants that filed prior to the effective date of the November 13, 1995 filing freeze and otherwise possess the necessary threshold legal qualifications under the pre-existing rule structure.

(6) The portions of the Report & Order and the rule provisions appended thereto relating to license terms, facilities build-out, and the protection of "incumbent" operations with respect to licenses that may be issued under the new competitive bidding regime should be modified, such that all 39 GHz licensees are afforded the same ten-year license term in which to meet substantial service requirements, and to make clear that "incumbent" service areas, *not just individual links* will be protected from the operations of licensees that may obtain their licenses through the contemplated competitive bidding process.

Grant of the instant motion will not result in prejudice to any party. Movants are not advancing any new arguments. Instead, Movants are seeking to enter as parties to the Joint Petition to signal their full endorsement of the arguments presented therein and to preserve their procedural rights. Because the period for oppositions to the Joint Petition has yet to run, any party that may seek to file an opposition would be unaffected by grant of the instant motion.

For the above-stated reasons, the public interest will be well-served by Commission grant of the instant motion.

Respectfully submitted,

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March 26, 1998