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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 95-183
Regarding the 37.0-38.6 GHz and	)	RM-8553
38.6-40.0 GHz Bands	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act - Competitive	)	
Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

BizTel, Inc. ("BizTel"), pursuant to Section 1.429 of the Commission's Rules, hereby opposes the Petition for Reconsideration ("Petition") filed by TRW, Inc. ("TRW") of the Commission's 39 GHz Order in the above-captioned proceeding.<sup>1</sup>

TRW argues that the Commission should amend its 39 GHz Order by restricting terrestrial wireless authorizations in the 38.6-40.0 GHz band to frequencies below 39.5 GHz, and reserving the 39.5-40.0 GHz segment of the band for fixed-satellite service operations. In addition, TRW requests that the Commission adopt technical regulations to facilitate sharing between satellite and terrestrial operators in the 39 GHz band.

1. See Report and Order and Second Notice of Proposed Rulemaking, 12 FCC Rcd 18600 (1997) ("39 GHz Order").

The Commission should reject TRW's challenge to its comprehensive plans to develop the 36-51.4 GHz spectrum and its decision to allocate the 39 GHz band for terrestrial wireless operations.<sup>2</sup> In its Allocation NPRM, the Commission considered the requirements of both existing terrestrial and satellite licensees, expressions of interest in the use of that spectrum and the interests of international organizations and administrations. The Commission attempted to balance its goal of encouraging seamless communications with its goal of affording service providers flexibility in meeting their customers' needs. It therefore proposed to allocate the 38.6-40.0 GHz band for terrestrial wireless services, noting that it would be considering a detailed plan for that spectrum in the instant proceeding.<sup>3</sup>

In its 39 GHz Order, the Commission observed that, "[a]lthough our current international and domestic allocations for this band include satellite operations, 47 C.F.R. § 2.106, we did not propose such use in the 39 GHz band in the *NPRM and Order*."<sup>4</sup> The Commission adhered to this decision and thus allocated the 39 GHz band for terrestrial wireless operations.

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2. See Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency band, Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz Band and 40.0-40.5 GHz for Government Operations, Notice of Proposed Rulemaking, IB Docket No. 97-95, 12 FCC Rcd 10130 (1997) ("Allocation NPRM").

3. Id. at 10134-36.

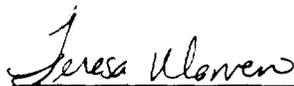
4. 39 GHz Order at n.57.

TRW does not deny that the Commission's 39 GHz channelization and licensing plan will serve the public's interest in robust, flexible terrestrial communications services. Rather, it argues that the Commission should have made a different policy decision and reserved a portion of that spectrum for satellite operations. However, TRW crucially fails to demonstrate that the Commission's policy choice and allocation plan are irrational or arbitrary and capricious given its policy objectives and goals. In fact, of course, the policy choice the Commission made is entirely reasonable and well-founded, and it is immaterial that TRW would have preferred that the Commission had chosen a different policy. Similarly without merit is TRW's suggestion that the Commission adopt new rules to facilitate sharing between satellite and terrestrial users of the 39 GHz band. The forthcoming WRC-99 will be considering sharing arrangements between satellite and terrestrial users in the 39 GHz band, and it would be inappropriate for the Commission to adopt technical rules regarding sharing before that international process is completed and it reviews those results.

For the reasons stated above, the Commission should deny TRW's Petition.

Respectfully submitted,

BIZTEL, INC.

A handwritten signature in cursive script that reads "Teresa Marrero".

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Its Attorney

Dated: April 6, 1998

## CERTIFICATE OF SERVICE

I, Charlene A. Reed, do hereby certify that on this 6th day of April, 1998, I have caused a copy of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION via U.S. mail, postage prepaid, upon the persons listed below:

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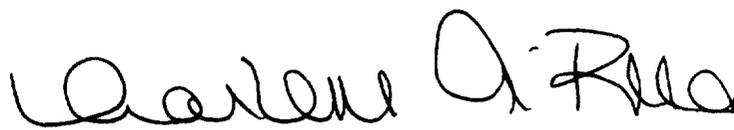
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