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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 Parts 2, 21, and 94 of the Commission's Rules to Accommodate Private Microwave Systems in the 1.71-1.85 GHz Band and in Bands Above 3 GHz	)	RM-7981

To: The Commission

REPLY STATEMENT

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REPLY STATEMENT

Pursuant to Section 1.405 of the Commission's Rules, Alcatel Network Systems, Inc. ("ANS"), by its attorney, hereby submits its Reply Statement on the above-captioned Petition for Rule Making ("Petition") by the Utilities Telecommunications Council ("UTC").

In a Notice of Proposed Rule Making, 7 FCC Rcd 1542 (ET Docket No. 92-9)(1992) ("NPRM"), the Commission proposes reallocating the 2 GHz band for emerging technologies and migrating incumbent and prospective common carrier and private op-fixed users from the 2 GHz band to bands above 3 GHz. Inexplicably, however, the Commission fails to propose rules governing how the displaced 2 GHz users would operate on the bands above 3 GHz once they are moved.

UTC, in its Petition, requests that the Commission defer taking action on its proposals in the NPRM. Instead, UTC urges that the Commission first consider, in specific rulemaking proceedings, all alternatives for accommodating emerging technologies and 2 GHz users, including proposing specific operating and technical rules if such users are migrated to the bands above 3 GHz.

I. SUMMARY

Not surprisingly, the Commission's proposal in the NPRM has generated profound uncertainty within the microwave community. Indeed, one party is "deeply concerned" that adoption of the proposals in the NPRM "will have a significant, deleterious impact on facilities essential to the provision" of necessary telecommunications services.[1]

To provide a positive approach for eliminating this uncertainty, ANS, in a Petition for Rule Making, filed May 22, 1992 ("ANS Petition"), proposes rules for how the displaced microwave users would operate.[2] Such rules include provision for co-primary use of all available bands by common carriers and by private op-fixed users, eligibility, band channelization to accommodate low capacity systems, modulation efficiency standards and minimum channel loading requirements, minimum path length requirements, frequency coordination criteria, and antenna standards.

A clarion call has been sounded. The message sent by the parties to this proceeding is clear. UTC and ANS are correct. The Commission is neglecting the needs of proven 2 GHz common carriers and private op-fixed microwave users in favor of unproven new technologies.

A solution to this problem is identified by all parties to this proceeding. Action on the NPRM must be deferred. Careful and comprehensive consideration of the alternatives available for designating spectrum to accommodate emerging technologies and to accommodate any displaced users must take place first. A complementary rule making proceeding, based upon the petitions filed by ANS and UTC and based upon the requests

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[1] Comments of Centel Corporation ("Centel") at 4.

[2] The ANS Petition was placed on Public Notice for comment as RM-8004 (DA 92-705, released June 2, 1992).

made by other parties for consideration of alternative spectrum allocation,[3] needs to be instituted by the Commission.

As API recommends:

> [T]he Commission [must] take the opportunity presented by the numerous requests for further action in the ET Docket 92-9 NPRM to step back from that proceeding and to issue a Further Notice of Proposed Rule Making which (a) examines other reasonable alternative spectrum homes available for new or emerging technologies; (b) more fully and carefully explains the new technologies that would be eligible to obtain access to this spectrum and more carefully weighs the public interest benefits attributable to these new technologies; (c) more fully delineates the replacement spectrum that would be available for any displaced users (whether they be 2 GHz private microwave users or other spectrum users); and (d) more rationally explains the deliberative process involved in reaching its conclusions. The ET Docket No. 92-9 NPRM is woefully deficient in all of these areas. The Commission is attempting to make a momentous decision which will impose significant costs on the American public. It cannot fulfill obligations under the Administrative Procedure Act, the Communications Act of 1934 and its own rules without more carefully examining the options before it.[4]

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[3] Petition to Suspend Proceeding, jointly filed April 10, 1992, by the Association of American Railroads ("AAR"), Large Public Power Council ("LPPC"), and the American Petroleum Institute ("API"); Petition for Issuance of Further Notice of Proposed Rulemaking, filed May 1, 1992, by UTC. There is substantial support in the record for Commission pursuit of these initiatives, especially the potential government release of spectrum for non-government use. See Comments of Motorola Inc. ("Motorola") at 8; Comments of OCOM Corporation ("OCOM") at 2; AT&T Comments at 3 ("AT&T"); Comments of Centerior Energy Corporation at 2-3; Comments on UTC Petition for Rulemaking by AAR and LPPC at 2; Statement in Support by API at 9; Comments of the Cellular Telecommunications Industry Association ("CTIA") at 2; Comments of Time Warner Telecommunications Inc. ("TWT") at 3, 6. ANS concurs with these comments.

[4] API at 5-6 (footnote omitted). See also AT&T at 4; Motorola at 3; Comments of GTE Service Corporation ("GTE") at 2-3; Centel at 1-2; OCOM at 1-2; TWT at 4; Comments of Southwestern Bell Corporation ("SBC") at 2-3; Comments of McCaw Cellular Communications, Inc. ("McCaw Cellular") at 1-2, 4; Comments of Telocator ("Telocator") at 3; Comments of the Public Safety Microwave Committee at 4; Comments of Harris Corporation Farinon Division ("Harris-Farinon") at 1, 4; CTIA at 2.

Pursuant to its statutory public interest mandate, and based upon the unanimous record in this proceeding, the Commission can do no less.[5]

II. A RULEMAKING TO PROTECT 2 GHZ USERS MUST BE ADOPTED

In the NPRM, the Commission does not tend to the specific needs of the potentially displaced 2 GHz users by evaluating whether the eligibility, channelization, frequency coordination, and other provisions for operating in the bands above 3 GHz would be suitable or would require modification. Instead, the Commission proposes a "blanket" waiver of eligibility.[6] Assuming that displaced microwave users could operate under these circumstances demonstrates the Commission's insensitivity to their needs and misunderstanding of the band architecture above 3 GHz.

As ANS points out in its Statement, this approach will not work.[7] All the parties to this proceeding agree.

A. Adoption of the NPRM Must be Deferred.

In its Petition, UTC seeks deferral of action on the NPRM because the Commission fails to address critical technical and operational issues relating to the potentially displaced 2 GHz users.[8] Strong support for deferral is found in the record.

For example, AT&T states that "the technical and coordination rules . . . are in large part dependent on whether and how a spectrum reserve is established in the Emerging

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[5] ANS supports making spectrum available for personal communications services ("PCS") and other new technologies. ANS Petition at 4. Allocation of spectrum for these services and preservation of proven valuable microwave services are not inconsistent objectives. Proponents of PCS agree that the Commission must address the needs of the 2 GHz users, but they are concerned that such action might delay authorization of spectrum for PCS. TWT at 4; Statement of American Personal Communications ("APC") at 1-2. Completion of a rulemaking to meet the needs of incumbent 2 GHz users would expedite, rather than delay, introduction of PCS because such action would ensure a graceful introduction of new technologies.

[6] NPRM, 7 FCC Rcd at 1545.

[7] ANS Statement at 2.

[8] UTC Petition at 12-13.

Technologies Proceeding."[9] Harris-Farinon "agrees with UTC's proposal that the Commission should defer further action in ET Docket 92-9 until the Commission reconfigures the 'higher' bands and adopts suitable technical standards."[10] McCaw Cellular admonishes the Commission to delay proceeding with the NPRM:

> The need affirmatively to accommodate the displaced 2 GHz users is apparent. Failure to take appropriate steps is likely to frustrate the Commission's goal of creating spectrum opportunities for new service providers while minimizing disruption to valuable existing services. Accordingly, the Commission should not require any relocation out of the 2 GHz band unless and until technical rules for the other microwave bands are revised.[11]

B. The Bands Above 3 GHz Must Be Adapted For Displaced 2 GHz Users.

If the record developed in the NPRM and its progeny support reallocation of the 2 GHz band to make room for emerging technologies, then the Commission must adapt the bands above 3 GHz accordingly. The unique channelization, path length, propagation and customer requirements of 2 GHz common carrier and private-op fixed users affirmatively must be integrated into the rules for operation in the bands above 3 GHz. The Commission's passive approach to accommodating the evicted 2 GHz users, which is its "blanket" waiver proposal, is inappropriate and unsupported by the record. Instead, the Commission must be mindful of and responsive to Centel's warning that it

> cannot force the 2 GHz licensees to employ different microwave frequencies without changing the applicable rules. Otherwise, the Commission may leave the displaced 2 GHz operators without any feasible alternative and members of the public with disrupted services.[12]

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[9] AT&T at 4-5. Moreover, there is no consideration by the Commission in the NPRM as to how PCS and other emerging technology providers would access the 2 GHz band.

[10] Harris-Farinon at 4.

[11] McCaw Cellular at 4.

[12] Centel at 8 (emphasis added). See SBC's statement that it "is imperative that such rules be in place prior to any spectrum relocation of existing users." SBC at 2 (emphasis added). See also Telocator at 3.

The current configuration of the bands above 3 GHz "will not support existing 2 GHz operations."[13] Moreover, "the technical and eligibility provisions for frequencies above 3 GHz present impediments to a seamless transfer from the lower to the higher bands."[14] Specifically, as ANS addresses in its Petition, the higher band technical rules and coordination procedures provide for incompatible channelization and unrealistic loading minimum levels not suitable for present 2 GHz operations.[15]

Implementing appropriate channelization for the displaced 2 GHz common carriers is critical:

> Under the Commission's Rules, the maximum permissible bandwidth for the 2110-2130 and 2160-2180 MHz common carrier frequencies is 3.5 MHz. Centel understands that, as applied by the industry, these frequency bands currently contain 6 pairs of 3.5 MHz channels, 6 pairs of 3.2 MHz channels, and 12 pairs of 1.6 MHz channels. At present, the 4 GHz band has channels only with a 20 MHz bandwidth; those in the lower portion of the 6 GHz band have a 30 MHz bandwidth. The upper portion of the 6 GHz band (which common carriers currently may not access) has a number of channels with 10 and 5 MHz bandwidths, and only 3 pairs of 1.6 MHz channels and 11 channels with 800 kHz bandwidth. Common carriers transferring 2 GHz operations either will not be able to use these bands or will use current channels in an inefficient manner.[16]

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[13] Centel at 4.

[14] McCaw Cellular at 2.

[15] See ANS Petition, Attachment 1. See also McCaw Cellular at 3; Centel at 5; AT&T at 3; Harris-Farinon at 2-4; Telocator at 4.

[16] Centel at 5-6 (footnotes omitted). See also Harris-Farinon at 2-4. These comments reflect an oft-articulated concern by common carriers that they would be abandoned in any relocation. Motorola at 5; GTE at 4; AT&T at 3; OCOM at 2-3; CTIA at 2. ANS shares these concerns and devised its proposed reallocation of the bands above 3 GHz to ameliorate them. ANS Petition at 4.

These channelization problems would apply equally to displaced private op-fixed users:

> [The] bands [above 3 GHz] have been designed to accommodate systems with much larger capacity than the capacity of private systems operating in the 1.8-1.9 GHz band. Therefore, unless those bands are reconfigured, they may not be suitable, or indeed available, to private 2 GHz licensees or to new private microwave applicants.[17]

Beyond this critical channelization issue, several other potential problems would be created by the Commission's "blanket" waiver approach. Loading, minimum path length, antenna, and modulation requirements in the higher bands are not consistent with the corresponding requirements in the 2 GHz band.[18] Exacerbating this problem are the differences in such requirements for common carriers and for private op-fixed users. Yet, the Commission ignores these issues, assumes that its current rules will suffice, and thus leaves the displaced 2 GHz users to fend for themselves while it caters to new technologies.

Opposition to such a one-sided approach is manifest throughout the pleadings filed in this proceeding. Demands are made by several parties, including ANS, that the Commission attend to the 2 GHz users by considering rule changes that would prescribe appropriate channelization, loading, path length, antenna, and modulation requirements for the bands above 3 GHz.[19]

C. A Rulemaking Is Needed To Adopt Rules For Operation Above 3 GHz.

Prudent spectrum management dictates that specific rules for displaced 2 GHz users must be adopted. Moving these users into the higher bands on a "blanket" waiver would be like trying to reach an agreement among politicians on how to erase the budget deficit. The chorus of support in this proceeding for adoption of a rulemaking thus must be heard.

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[17] Harris-Farinon at 3.

[18] ANS Petition at 14.

[19] ANS Statement at 2-4; Centel at 5; GTE at 2-3; AT&T at 4; OCOM at 1; API at 9; TWT at 3-4; McCaw Cellular at 3-7; Telocator at 4; Harris-Farinon at 2-4.

Otherwise, spectral efficiency will be lost and services will be disrupted or eliminated. Like the paralysis caused by the ongoing political filibuster on the budget, the public interest will suffer because the valuable medical, safety, utility and commercial services provided by 2 GHz users will be mired in bureaucratic quicksand.

As several parties in this proceeding recognize, ANS provides an answer to this problem.[20] In its Petition, ANS proposes:

1. Reallocation of the 3.6-3.7 GHz band, currently allocated on a shared basis to government use (aeronautical radionavigation and radiolocation on a primary basis) and to non-government use (fixed satellite downlink on a primary basis and radiolocation on a secondary basis), so that fixed point-to-point non-government service could be provided by private op-fixed and common carriers on a co-primary basis.[21]

2. Reallocation of the point-to-multipoint section of the 10.55 to 10.68 GHz band to permit point-to-point applications by both private-op fixed and common carriers on a co-primary basis.

3. Reallocation of the following bands to permit use by both private op-fixed and common carriers on a co-primary basis:

- 4 GHz (3.7-4.2 GHz).[22]
- Lower 6 GHz (5.925-6.425 GHz).
- Upper 6 GHz (6.525-6.875 GHz).
- 11 GHz (10.7-11.7 GHz).

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[20] Motorola at 2, 5; Centel at 6; McCaw Cellular at 6-7; Harris-Farinon at 4; Comments of the Utilities Telecommunications Council ("UTC") at 2; API at 5; APC at note 2.

[21] Harris-Farinon, in its Comments at 4, supports consideration of this proposal.

[22] Concern about the impact that reallocation of the 4 GHz band would have on satellite carriers is expressed by certain parties. Motorola at 6; GTE at 4-8; TWT at note 4; APC at note 2; and Comments of Communications Satellite Corporation at 2-3. ANS is sensitive to these concerns and did not propose reallocation of the 4 GHz band without having considered the attendant impact on the satellite industry. ANS will address these concerns in reply comments on its Petition.

4. Specific rule changes to Parts 2, 21, 25 and 94, which would:

- effectuate such proposed reallocations;
- define eligibility;
- prescribe band channelization, minimum path lengths, minimum channel loading, and minimum capacity for bandwidth used;
- establish frequency coordination criteria; and
- establish antenna standards.

Endorsements for grant of the ANS Petition are made by several parties. Motorola describes ANS' proposals as "well thought out" and valuable in guiding the Commission to initiate necessary remedial proposals to meet the needs of 2 GHz users.[23] API characterizes the ANS Petition as a "detailed" proposal "to establish technical parameters for the use of replacement spectrum by private microwave licensees who may be displaced from the 2 GHz . . . band."[24] For these reasons, UTC supports full consideration of the ANS Petition:

> Alcatel, a major supplier of private and common carrier microwave equipment, has also recognized the complications posed by the Commission's proposal to reallocate the 2 GHz band. In its petition, Alcatel sets out specific channelization plans and proposed technical requirements for the microwave bands above 3 GHz. The development and adoption of such plans and proposed technical requirements is precisely what UTC has argued would be a necessary condition precedent to any reallocation of the 2 GHz band. Thus, UTC believes that full consideration of the Alcatel petition will aid in the resolution of the issues raised in the UTC rulemaking petition.[25]

Overwhelming record support for institution of a rulemaking to address the needs of relocated 2 GHz user operation on the higher bands, and substantial support for grant of the ANS Petition as the vehicle for this rulemaking, compel prompt and formal Commission action to institute such a proceeding.

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[23] Motorola at 2, 5.

[24] API at 5.

[25] UTC at 2. Harris-Farinon also recognizes the need to recommend detailed technical proposals to accommodate relocated 2 GHz users. Harris-Farinon at 4.

CONCLUSION

The record in this proceeding is merely a prelude to what issues will be addressed in the proceedings involving the NPRM and the ANS Petition. Based upon this record, there can be no mistake about what the Commission needs to do next.

The Commission must promptly initiate a rulemaking proceeding that provides a public forum for full evaluation of all the pieces still missing from the 2 GHz reallocation puzzle -- consideration of rules governing operation above 3 GHz and examination of alternative spectrum for emerging technologies and/or displaced microwave users. Absent such a rulemaking, any reallocation will be based upon a flawed foundation and all the affected services -- microwave, PCS, and other new technologies -- will tumble like a house of cards.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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