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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 )  
)  
Rulemaking to Amend Parts 1, 2, 21 )  
and 25 of the Commission's Rules to )  
Redesignate the 27.5-29.5 GHz Frequency ) CC Docket No. 92-297  
Band, to Reallocate the 29.5-30.0 GHz )  
Band, to Establish Rules and Policies )  
for Local Multipoint Distribution )  
Service and for Fixed Satellite Services )

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To: The Commission

COMMENTS ON THIRD NOTICE OF PROPOSED RULEMAKING

Pursuant to Section 1.415 of the Commission's Rules,<sup>1</sup> Alcatel Network Systems, Inc. ("ANS"),<sup>2</sup> by its attorney, hereby comments on the above-captioned Third Notice of Proposed Rulemaking ("Third NPRM").<sup>3</sup> As demonstrated below, the Commission's proposal to exclude fixed point-to-point microwave service ("FS") users effectively from the 28 GHz band is unjustified and must not be adopted.

<sup>1</sup>47 C.F.R. Section 1.415 (1995).

<sup>2</sup>ANS is a wholly-owned subsidiary of Alcatel Alsthom ("Alcatel"), one of the world's largest corporations (with annual sales in excess of \$30 billion) and the world's largest manufacturer and supplier of telecommunications equipment. In particular, Alcatel is the world's largest independent manufacturer and supplier of microwave radios. Formerly Collins Radio and Rockwell International, ANS, with over \$750 million in annual sales, is a world leader in manufacturing microwave and light wave transmission systems. ANS' equipment is used for a wide range of services, including short, medium and long-haul voice, video and data transmission. Its microwave customers include all the Bell Operating Companies, most major independent telephone companies, cellular operators, power and other utility companies, oil companies, railroads, industrial companies, and state and local government agencies.

<sup>3</sup>Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Notice of Proposed Rulemaking, CC Dkt. No. 92-297 (FCC 95-287, released July 28, 1995). The Commission extended the deadline for filing comments on the Third NPRM until September 7, 1995. Order, DA 95-1866 (Chief, Int. Bur., released Aug. 25, 1995).

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In the Third NPRM, the Commission proposes segmenting the 28 GHz band to provide spectrum for the Local Multipoint Distribution Service ("LMDS"), Fixed Satellite Service ("FSS") systems, and Mobile-Satellite Service ("MSS") systems.<sup>4</sup> The 28 GHz band currently is allocated for FS users on a co-primary basis.

Unfortunately, the Commission now proposes excluding these critical FS users from the 28 GHz band by forcing them to rely on LMDS licensees for their "spectrum scraps." Specifically, the Commission proposes that:

[e]ntities interested in providing point-to-point services may apply for LMDS spectrum themselves, they may seek geographic partitioning and/or spectrum disaggregation opportunities to the extent that these options are adopted in final LMDS rules, or they may lease spectrum from LMDS operators, to the extent permitted by our rules.<sup>5</sup>

ANS strenuously opposes the Commission's proposal. Essential telecommunications services are provided by FS users. Public health and safety users depend on reliable and available FS frequencies for delivery of their services to the public. Local exchange carriers, cellular telephone companies, utilities, railroads, petroleum companies, financial institutions, and federal, state and local governments all use FS to support their network operations. Emerging wireless telecommunications, especially PCS, will rely on FS users for spectrum to provide their services and will rely on FS facilities in other bands to support their operations. If the Commission's proposal is adopted, it would "rob" the well-established, proven FS of much needed spectrum to "pay" an unproven LMDS.

Only the Commission's unfortunate continued insensitivity to the FS industry could explain its naive assumption that the newly allocated LMDS spectrum would accommodate their needs in the 28 GHz band. Indeed, the Commission somehow manages to justify its proposal by perpetuating the fiction that

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<sup>4</sup>Third NPRM at para. 45.

<sup>5</sup>Third NPRM at para. 53.

FS users "have . . . sufficient . . . spectrum available for support of wired and wireless telecommunications systems for the present."<sup>6</sup> Nothing could be further from the truth. The Commission's conclusion, that FS users have "sufficient" available spectrum, is based upon a now anachronistic 1991 decision,<sup>7</sup> which pre-dates its evacuation of the 2 GHz band to clear PCS spectrum.<sup>8</sup> Regrettably, the Commission subsequently has not stopped assaulting the FS bands. as a troublesome pattern of actions, that take spectrum away from FS users without replacing it. is emerging.<sup>9</sup>

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<sup>6</sup>Third NPRM at para. 53.

<sup>7</sup>Hye Crest Management, Inc., 6 FCC Rcd 332 (1991) cited in Third NPRM at para. 53.

<sup>8</sup>To accommodate PCS, FS users have been required to clear the 2 GHz band and to relocate in bands above 3 GHz. Redevelopment of Spectrum to Encourage Innovation In the Use of New Telecommunications Technologies, Second Report and Order, ET Docket No. 92-9, 8 FCC Rcd 6495, 6519-20 (1993), modified, Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994).

<sup>9</sup>The bands designated for the relocating 2 GHz FS users, primarily the 6 and 11 GHz bands, already are very congested. This problem will be made worse if the Commission's recommendation to reallocate the upper 6, 11, and 18 GHz bands for non-geostationary MSS feeder links is adopted at WRC-95. Preparation for International Telecommunication Union World Radiocommunication Conferences, Report, IC Docket No. 94-31 (FCC 95-256, released June 15, 1995) at para. 49. Similarly, conditions for FS users will deteriorate further if the Commission's proposal to reallocate portions of the 2 GHz band for MSS service links are adopted, because further relocations of the FS incumbents would be required. Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, Notice of Proposed Rule Making, 10 FCC Rcd 3230, 3232 (1995). Unfortunately, needed relief from this spectrum congestion is not provided in other recent Commission allocation decisions. Newly available spectrum in the 4 GHz band from the federal government will not be allocated so that this band is feasible as a substitute for the FS users being migrated off the 2 GHz band. Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rule Making, 77 Rad. Reg. (P&F) 2d 314 (1995) and Second Report and Order (FCC 95-319, released Aug. 2, 1995). Availability of the 18 GHz band could be diminished as the result of the recent reallocation resulting in it being shared with government users. Memorandum Opinion and Order (FCC 95-316, released July 31, 1995). The 38 GHz band, which is allocated for FS, already is saturated with PCS applicants needing backhaul support. Proposals are pending to reallocate the 37 GHz band and the bands above 40 GHz for FS, but there is great uncertainty whether such allocations ever will be made. Amendments of Parts 21 and 94 of the Commission's Rules to Establish a Channel Plan and Technical Rules for the 37.0-38.6 GHz Band, RM-8553, filed September 9, 1994, by the Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association ("TIA"); Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, Notice of Proposed Rule Making, 9 FCC Rcd 7078 (1994).

The proposed "sharing" with the LMDS band simply will not work. It would not yield any meaningful spectrum in the 28 GHz band for FS users. No microwave licensing procedures for this band are proposed by the Commission in the Third NPRM. Unlike LMDS links, FS links are exempt from auctions. Provisions for sharing bands between LMDS and FS are missing from the Third NPRM. Absent these elements, the Commission's proposed reallocation of the 28 GHz band is unjustified, arbitrary and capricious and thus is contrary to the public interest.

Instead of persisting in its seeming unending efforts to erode FS spectrum, the Commission should reverse its position so that FS users remain co-primary on the 28 GHz band. In particular, the Commission must adopt the proposal submitted concurrently herewith by TIA: (i) which would allocate 500 MHz of the 28 GHz band (28.35-28.6 and 29.25-29.5 GHz bands) for FS on a shared, co-primary basis with FSS and MSS users; and (ii) which would allocate 300 MHz (28.2-28.35 GHz and 29.1-29.25 GHz bands) of the 1,000 MHz in the 28 GHz band proposed to be allocated for LMDS, specifically for LMDS Backbone Link Service and FS on a shared, co-primary basis.

As detailed in TIA's Comments, adoption of its proposed reallocation is in the public interest. Essential backbone services and intermediate links for PCS and other emerging wireless technologies could be accommodated. Existing FS users, which already are threatened by the 2 GHz band clearance for PCS and by the proposed further clearances for MSS, could avail themselves of this band. Competition for local access would be enhanced, as 28 GHz FS facilities could provide a viable alternative for such services. Investment in FS would be stimulated. Efficient spectrum use would be increased.

All FS users want is fair treatment. As detailed in TIA's Comments, FS users only seek co-primary status. They always have supported developing LMDS, FSS and MSS technologies under these terms. If the Commission truly wants PCS to succeed and if it wants services essential to public safety to continue, it must adopt TIA's proposal.

Respectfully submitted,

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September 6, 1995

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