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18 September 2008

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: ***Ex Parte Presentation***
WT Docket No. 06-150; PS Docket No. 06-229

Dear Ms. Dortch:

Alcatel-Lucent remains steadfast in support of nationwide, interoperable broadband public safety communications, but it respectfully asks the FCC to act now and enable public safety entities to deploy 700 MHz broadband systems in jurisdictions that have identified public safety broadband as a current priority and have available resources to build out. Despite the Commission's significant efforts, the timeline for 700 MHz public-private broadband network deployment remains uncertain and, in any event, several years away; meanwhile, some jurisdictions are ready to put this spectrum to use and deploy public safety broadband systems that would later be integrated into any public-private broadband solution. The Commission should take this opportunity to enable such early deployments.

Last year the Commission recognized the need to balance two important goals as it crafted the 700 MHz public safety broadband policy: (1) foster a public-private partnership to develop nationwide interoperable public safety broadband communications; and (2) enable jurisdictions to deploy public safety broadband systems on an accelerated basis or in markets where the public-private partnership does not plan to deploy.¹ Alcatel-Lucent continues to support both missions. However, the Commission should modify its early deployment policy in light of the reality that deployment of a public-private solution is several years away.²

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Report and Order, 22 FCC Rcd 15289 (2007) ("*Second R&O*").

² See Comments of Alcatel-Lucent, WT Docket No. 06-150 *et al.*, at 10 (filed June 20, 2008).

Today, the National Capital Region (“NCR”) system in the Washington, DC area – the first-ever 700 MHz interoperable public safety broadband network – demonstrates that, where broadband needs and resources align, public safety can use this valuable spectrum in advance of a public-private partnership deployment timeline. ALU believes first responders across the nation should be afforded the opportunity to achieve similar benefits in their local areas now.

A proposed set of revised rules is attached hereto. Specifically, a public safety entity could enter a spectrum lease agreement with the Public Safety Broadband Licensee and, at its own expense, build out a 700 MHz broadband network in any area where the public-private broadband system has not yet been built. If the Upper 700 MHz D Block licensee were to seek to build out and operate the public-private network in the same area, it would be required to compensate the public safety entity, based upon commercially reasonable terms, for the value of the network to be integrated into the public-private network.

The Commission can both enable jurisdictions to seize the broadband mantle *and* pursue nationwide interoperable broadband public safety communications because the two objectives necessary to ensure success today and in the future – network integration and reasonable compensation – are readily achievable.

First, a local broadband network deployed today can be integrated into a regional or national system built two, five, or ten years hence. Network integration and technological evolution are commonplace in commercial mobile networks today, and there is no technological impediment to integration – regardless of technologies. Indeed, the Commission recognized as much in its discussion last year of the NCR broadband network. The Commission made clear that NCR operations could continue with the advent of the public-private partnership “until such time as the NCR network is integrated into the nationwide, interoperable broadband network in accordance with the build-out plan set forth in the NSA.”³ The Commission recognized this appropriate transition and future integration even though the technology for the nationwide network had not been selected.

Second, the Commission should specify that, in a market where a public safety entity builds out a broadband solution and the D Block licensee chooses to deploy, the D Block licensee is required to provide reasonable compensation and integrate the local network into the Shared Wireless Broadband Network. Jurisdictions may be hard pressed to invest in a public safety broadband system if, within a few years, the D Block licensee were to exercise its spectrum rights without any reimbursement for the network investment. Reasonable compensation will depend on the level of correlation between the local network and the Shared Wireless Broadband Network. At a minimum, local networks would offer certain value to any network (*e.g.*, siting infrastructure, backhaul).

³ *Second R&O*, 22 FCC Rcd at ¶ 476.

Further, the local network may be engineered to transition to the next generation technology that the D Block licensee intends to deploy. Under this scenario, the D Block licensee would receive full ownership rights of the network as well as an established public safety user base in exchange for reasonably compensating the public safety entity for the broadband network.

Alcatel-Lucent urges the Commission to act now to ensure that the 700 MHz spectrum can be put to use where local needs and resources are available today.

Respectfully Submitted,

/s/

Michael T. McMenamin

Attachment

cc: Erika Olsen
Bruce Gottlieb
Renée Crittendon
Wayne Leighton
Angela Giancarlo
Derek Poarch
David Furth
Jeff Cohen

APPENDIX

**PROPOSED REVISIONS TO
THE 700 MHz PUBLIC SAFETY EARLY DEPLOYMENT RULES**

PART 27 - MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Subpart N - 700 MHz Public/Private Partnership

§27.1330 Local public safety build-out and operation.

(a) The Upper 700 MHz D Block licensee and the Operating Company through its lease arrangements shall, except in the ~~two~~ limited circumstances set forth herein, have the exclusive right to build and operate the Shared Wireless Broadband Network.

(b) Rights to build out and operate. In any area where the Shared Wireless Broadband Network has not been constructed, a public safety entity may, at its own expense, build out and operate a separate, exclusive network in the 700 MHz public safety broadband spectrum at any time, provided the public safety entity has received the written approval of the Public Safety Broadband Licensee and operates its independent network pursuant to a spectrum leasing arrangement entered into with the Public Safety Broadband Licensee.

(1) Such spectrum leasing arrangement shall not require the approval or consent of the Upper 700 MHz D Block licensee if already licensed; however, the Public Safety Broadband Licensee must provide the Upper 700 MHz D Block licensee with notice of the public safety entity's request for approval to construct and operate a network in that area within 30 days of receipt of that request. Such notice shall include the public safety entity's anticipated build-out date(s).

(2) Such spectrum leasing arrangement must take the form of a spectrum manager leasing arrangement under the rules specified in §1.9020 of this chapter, and incorporate the following conditions:

(i) The network must provide broadband operations;

(ii) The network must be available for use by any public safety entity in the area;

(iii) The network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee; and

(iv) The public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the spectrum leasing arrangement pursuant to §1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of §90.629 of this chapter.

(3) Except as set forth herein, the separate network is not required to meet the other specifications of the Shared Wireless Broadband Network. Absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the Upper 700 MHz D Block licensee, the separate network may not operate using any spectrum associated with the Upper 700 MHz D Block license.

(4) The Public Safety Broadband Licensee must file with the Commission any spectrum manager leasing arrangement as specified in §1.9020(e) of this chapter; such filing shall identify the public safety entity leasing the spectrum, the particular areas of spectrum leased as part of this build-out option, and the specific network infrastructure and equipment deployed on such leased spectrum.

(5) The public safety entity may operate the independent network until the Upper 700 MHz D Block licensee seeks to operate the Shared Wireless Broadband Network in the same area. The Upper 700 MHz D Block licensee shall compensate the public safety entity, based upon commercially reasonable standards, for the value of the separate network as a component to be integrated into the Shared Wireless Broadband Network. The Upper 700 MHz D Block licensee shall provide such compensation and the full ownership rights to the network will be transferred the Upper 700 MHz D Block licensee.

(c) Rights to early build-out in areas with a build-out commitment. In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

(1) Options for early build-out in areas with a build-out commitment. In order to obtain authorization to construct a broadband network as set forth in paragraph (c**b**) of this section, the requesting public safety entity must agree to one of the following:

(i) To, on its own, or through the Public Safety Broadband Licensee acting on its behalf, construct the network at its own expense, and upon completion of construction transfer the network to the Upper 700 MHz D Block licensee, which shall then integrate that network into the Shared Wireless Broadband Network constructed pursuant to the NSA; or

(ii) To, in agreement with the Upper 700 MHz D Block licensee, provide all funds necessary for the Upper 700 MHz D Block licensee to complete the early construction of the network, including any and all additional resource and personnel costs, allowing the Upper 700 MHz D Block licensee at all times to own, operate, and manage the network as an integrated part of the Shared Wireless Broadband Network.

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(2) Negotiation of amendment to NSA. Under either early build out option set forth in paragraph (c)(1) of this section, the Public Safety Broadband Licensee, the Upper 700 MHz D Block licensee, and the public safety entity must, prior to any construction, negotiate an amendment to the NSA regarding this part of the network, specifying ownership rights, fees, and other terms, which may be distinct from the analogous terms governing the Shared Wireless Broadband Network, and such amendment must be approved by the Commission.

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(i) Such amendment must provide the terms under which the Upper 700 MHz D Block licensee shall receive full ownership rights and shall compensate the public safety entity (or the Public Safety Broadband Licensee, where appropriate) for the construction of the network; and shall, absent agreement to the contrary, provide for such transfer and compensation to occur prior to the scheduled build out date for such network in the NSA.

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(ii) Any right to compensation from the Upper 700 MHz D Block licensee related to such early build-out shall be limited to the cost that would have been incurred had the Upper 700 MHz D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA, as reasonably determined by the parties and negotiated as part of the NSA amendment required in paragraph (c)(2) of this section. Such costs shall not include costs attributable solely to advancing the date of construction or otherwise expediting the construction process.

(3) Operations. The public safety entity may not commence operations on the network until ownership of the network has been transferred to the Upper 700 MHz D Block licensee. Further, no operations shall be allowed except those authorized and conducted pursuant to the authority of the Public Safety Broadband Licensee.

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(4) Attribution of early build-out to national benchmarks. Upon completion of construction, transfer of ownership to the Upper 700 MHz D Block licensee, and compensation as required herein, if applicable, the Upper 700 MHz D Block licensee may include the network constructed pursuant to the early build-out provisions herein for purposes of determining whether it has met its national build-out benchmarks and the build-out requirements of the NSA.

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~~(d)~~(5) Rights to build out and operate in areas without a build-out commitment. In areas for which the NSA does not require the Upper 700 MHz D Block licensee to build out the Shared Wireless Broadband Network, a public safety entity may build out and operate a separate, exclusive network in the 700 MHz public safety broadband spectrum at any time, provided the public safety entity has received the written approval of the Public Safety Broadband Licensee and operates its independent network pursuant to a spectrum leasing arrangement into which the public safety entity has entered with the Public Safety Broadband Licensee.

~~(1)~~(4) Such leasing arrangement shall not require the approval or consent of the Upper 700 MHz D Block licensee; however, the Public Safety Broadband Licensee must

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provide the Upper 700 MHz D Block licensee with notice of the public safety entity's intent to construct in that area within 30 days of receipt of a request from a public safety entity seeking to exercise this option, and shall inform the Upper 700 MHz D Block licensee of the public safety entity's anticipated build-out date(s).

~~(2)(ii)~~ Should the Upper 700 MHz D Block licensee, within 30 calendar days from receipt of notice of the public safety entity's intent to construct in that area, certify in writing to the Public Safety Broadband Licensee that it will build out the shared network in the area within a reasonable time of the anticipated build-out date(s), as determined by the Public Safety Broadband Licensee, the Public Safety Broadband Licensee shall not allow the public safety entity to build and operate its own separate exclusive network in that area, provided that the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee execute an amendment to the NSA indicating the Upper 700 MHz D Block licensee's commitment to build the network in that area. Such commitment shall become enforceable against the Upper 700 MHz D Block licensee as part of its overall build-out requirements.

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~~(3)(iii)~~ If the Upper 700 MHz D Block licensee does not exercise its option to commit to build out the network in the requested area within 30 calendar days of receipt of notice of the public safety entity's intent to construct in such area, the Public Safety Broadband Licensee and the public safety entity may proceed with a spectrum leasing arrangement, which must be filed with the Commission prior to the public safety entity commencing any operations. The spectrum leasing arrangement must take the form of a spectrum manager leasing arrangement under the rules specified in §1.9020 of this chapter, and incorporate the following conditions:

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- ~~(i)(A)~~ The network must provide broadband operations;
- ~~(ii)(B)~~ The network must be fully interoperable with the Shared Wireless Broadband Network;
- ~~(iii)(C)~~ The network must be available for use by any public safety entity in the area;
- ~~(iv)(D)~~ The network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee; and
- ~~(v)(E)~~ The public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the spectrum leasing arrangement pursuant to §1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of §90.629 of this chapter.

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~~(4)(6)~~ Except as set forth herein, the separate network is not required to meet the other specifications of the Shared Wireless Broadband Network. Absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the Upper 700 MHz D Block licensee, the separate network may not operate using any spectrum associated with the Upper 700 MHz D Block license.

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(57) The Public Safety Broadband Licensee must file with the Commission any spectrum manager leasing arrangement as specified in §1.9020(e) of this chapter; such filing shall identify the public safety entity leasing the spectrum, the particular areas of spectrum leased as part of this build-out option, and the specific network infrastructure and equipment deployed on such leased spectrum.

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PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

Subpart AA - 700 ~~MHz~~MHz Public/Private Partnership

§90.1430 Local public safety build-out and operation.

(a) The Upper 700 MHz D Block licensee and the Operating Company through its lease arrangements shall, except in the two limited circumstances set forth herein, have the exclusive right to build and operate the Shared Wireless Broadband Network.

(b) Rights to build out and operate. In any area where the Shared Wireless Broadband Network has not been constructed, a public safety entity may, at its own expense, build out and operate a separate, exclusive network in the 700 MHz public safety broadband spectrum at any time, provided the public safety entity has received the written approval of the Public Safety Broadband Licensee and operates its independent network pursuant to a spectrum leasing arrangement entered into with the Public Safety Broadband Licensee.

(1) Such spectrum leasing arrangement shall not require the approval or consent of the Upper 700 MHz D Block licensee if already licensed; however, the Public Safety Broadband Licensee must provide the Upper 700 MHz D Block licensee with notice of the public safety entity's request for approval to construct and operate a network in that area within 30 days of receipt of that request. Such notice shall include the public safety entity's anticipated build-out date(s).

(2) Such spectrum leasing arrangement must take the form of a spectrum manager leasing arrangement under the rules specified in §1.9020 of this chapter, and incorporate the following conditions:

(i) The network must provide broadband operations;

(ii) The network must be available for use by any public safety entity in the area;

(iii) The network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee; and

(iv) The public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the

spectrum leasing arrangement pursuant to §1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of §90.629 of this chapter.

(3) Except as set forth herein, the separate network is not required to meet the other specifications of the Shared Wireless Broadband Network. Absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the Upper 700 MHz D Block licensee, the separate network may not operate using any spectrum associated with the Upper 700 MHz D Block license.

(4) The Public Safety Broadband Licensee must file with the Commission any spectrum manager leasing arrangement as specified in §1.9020(e) of this chapter; such filing shall identify the public safety entity leasing the spectrum, the particular areas of spectrum leased as part of this build-out option, and the specific network infrastructure and equipment deployed on such leased spectrum.

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(c) Rights to early build-out in areas with a build-out commitment. In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

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(ii) To, in agreement with the Upper 700 MHz D Block licensee, provide all funds necessary for the Upper 700 MHz D Block licensee to complete the early construction of the network, including any and all additional resource and personnel costs, allowing the Upper 700 MHz D Block licensee at all times to

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own, operate, and manage the network as an integrated part of the Shared Wireless Broadband Network.

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- ~~(v)~~~~E~~ The public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the spectrum leasing arrangement pursuant to §1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of §90.629 of this chapter.

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