

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

In the Matter of)	
)	
Alcatel USA, Inc.)	File No. NSD-L-99-81
)	
Petition for Waiver of the Signal Power)	
Limitations Contained in)	
Section 68.308(e)(1) of the)	
Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 2000

Released: February 28, 2000

By the Chief, Network Services Division, Common Carrier Bureau:

I. INTRODUCTION

1. On October 18, 1999, Alcatel USA, Inc. (Alcatel) filed with the Chief, Network Services Division (NSD), Common Carrier Bureau (Bureau), a Petition for waiver of the out-of-band metallic signal power limitations contained in 47 C.F.R. section 68.308(e)(1) of the Commission's rules, so that it may register under Part 68 its Model 1000 Asynchronous Digital Subscriber Line (ADSL) modem.¹ Alcatel's modem provides high bit-rate digital transmission concurrent with analog voice transmission over a single telephone line.² In response to Alcatel's Petition, NSD issued a Public Notice that requested public comment regarding the merits of Alcatel's claims, and whether or not a waiver should be granted.³ We grant the Petition, subject to conditions, and establish a streamlined process for future ADSL waiver requests.

2. All terminal equipment sold in the United States and connected to the public switched telephone network (PSTN) must be registered under Part 68 of the Commission's rules.⁴ The Part 68 registration process requires testing of the device to demonstrate that it

¹ Alcatel USA, Inc., Petition for Waiver of Section 68.308(e)(1), NSD L-99-81 (filed October 18, 1999) (*Petition*). Although Alcatel does not define the acronym "ADSL" in its Petition explicitly, it is clear for the purposes of this order that Alcatel intends it to represent the commonly accepted abbreviation for Asymmetrical Digital Subscriber Line.

² *Petition* at footnote 2.

³ Common Carrier Bureau Seeks Comment on a Petition Filed By Alcatel USA for Waiver of 47 C.F.R. § 68.308(e)(1), *Public Notice*, File Number NSD-L-99-81 (rel. Oct. 22, 1999) (*Public Notice*).

⁴ 47 C.F.R. § 68.2.

conforms to Part 68 requirements, so as to prevent harm to the PSTN.⁵ Once the equipment tests show that the applicant's device meets the Part 68 requirements, a registration number is issued, and the device may be sold and connected to the PSTN in the United States.

3. Section 68.308 contains limitations on metallic and longitudinal signal power to protect the network from crosstalk.⁶ Excessive metallic signal power in the 100 Hz to 4 kHz range is limited by 47 C.F.R. section 68.308(b). Section 68.308(e)(1) limits the power level of metallic signals in the 4 kHz to 6 MHz range.⁷ These limits are represented by a maximum value of root mean square (rms) voltage across the terminals of the equipment when terminated in networks shown in figure in 47 C.F.R., section 68.308, *Figure 68.308(a)*. While section 68.308(e) provides two limitations to prevent crosstalk in telephone company transmission systems or services,⁸ petitioner seeks waiver of the first limitation, the limitation on excessive metallic signal power in the 4 kHz to 6 MHz range. In its *Petition*, Alcatel claims that its modem complies with all other sections of Part 68, except for section 68.308(e)(1).⁹

II. BACKGROUND

4. *Waiver Standard*. In analyzing Alcatel's *Petition*, we consider established legal standards for waiver of the Commission's rules. The Commission will adhere strictly to its

⁵ See FCC Form 730, Applications Guide, Revision C – 273 (March 1997)

⁶ Crosstalk was initially used to designate the presence in a telephone receiver of unwanted speech sounds from another telephone conversation. The term has been extended in its application to designate interference in one communication channel or circuit caused by signals present in other communication channels. Consideration is limited here to the interference of one signal by another of the same general type - e.g., speech interfering with speech, video with video, digital with digital, etc. Telecommunications Transmission Engineering, Volume I - Principles, Second Edition, at 425 (AT&T, 1977)

⁷ The limits are: maximum rms values, averaged over 100 milliseconds, at the telephone connections, in all of the indicated 8 kHz bands within the indicated frequency ranges, of $-(6 + 12.6 \log f)$ dBV for center frequencies of 8 to 12 kHz with a terminating impedance of 300 ohms; $(23 - 40 \log f)$ dBV for center frequencies of 12 to 90 kHz with a terminating impedance of 135 ohms; -55 dBV for center frequencies of 90 kHz to 266 kHz with a terminating impedance of 135 ohms, and maximum rms values of -15dBV, averaged over 2 microseconds, at the telephone connections, in all of the 8 kHz bands within the frequency range of 270 kHz to 6 MHz, with a terminating impedance of 135 ohms. Sometimes, as in the first sentence of the *Petition*, these limits are called the out-of-band signal power limitations, because the range 4kHz to 6 MHz is outside the voice-band range of 200 Hz to 3995 Hz. For purposes of Part 68, voice-band is defined in 47 C.F.R. § 68.3.

⁸ These limitations were originally intended to limit crosstalk in multichannel analog carrier systems. Multichannel analog carrier systems use frequency division multiplexing to concentrate multiple subscribers' signals onto a single wire pair. Each direction of transmission for each subscriber uses either 4 kHz (single sideband) or 8 kHz (double sideband) of frequency spectrum. Generally, the carrier systems most susceptible to crosstalk are those that use double sideband modulation methods, 8 kHz of spectrum for each direction of transmission per channel. Telecommunications Industry Association, EIA/TIA TR-41 Telecommunications Systems Bulletin, Part 68 Rationale and Measurement Guidelines, TSB31-B (1998), at section 8.17.1.

⁹ *Petition*, at paragraph 8.

rules unless a party can demonstrate that "in the public interest the rule should be waived."¹⁰ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."¹¹ The Commission must take a "hard look" at applications for waiver¹² and must consider all relevant factors when determining if good cause exists.¹³ The party petitioning the Commission for a waiver bears the heavy burden of showing good cause: "[a]n applicant [for a waiver] faces a high hurdle even at the starting gate."¹⁴ In addition, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."¹⁵ Finally, a waiver of one or more portions of the Commission's rules does not excuse an applicant from compliance with the Commission's other requirements.¹⁶

5. On March 29, 1999, NSD released an *Order* granting waiver of section 68.308(e) of the Commission's rules to permit Paradyne Corporation to register its Hotwire[®] MVL modem, a device that complied with the ANSI T1.601 standard.¹⁷ On July 30, 1999, NSD released an *Order* granting waiver of section 68.308(e)(1) of the Commission's rules to permit Northern Telecom Inc. ("Nortel") to register its 1-Meg Modem, a device that complied with the ANSI T1.413 standard.¹⁸ In the former proceeding, we formulated and applied, and in the latter elaborated on and applied, a two-part test to determine the merits of a request for waiver of Section 68.308(e)(1) to permit registration of non-conforming Customer Premises Equipment (CPE) (*Nortel Test*).¹⁹ The first prong of the test is an evaluation of the CPE's benefit to the public interest, with an emphasis on the potential gain in consumer choice and value.²⁰ The second prong of the test is an evaluation of the CPE's

¹⁰ *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

¹¹ 47 C.F.R. §1.3.

¹² *Id.*

¹³ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁵ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ See 47 C.F.R. § 1.3; *Alameda Order* at 12139.

¹⁷ Paradyne Corporation Petition of the Signal Power Limitations Contained in Section 68.308(e) of the Commission's Rules, Order, 14 FCC Rcd 4496 (1999) ("Paradyne Order").

¹⁸ Northern Telecom Inc. Petition of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules, NSD-L-98-135, DA 99-1350 (rel. July 30, 1999) ("*Nortel Order*").

¹⁹ *Paradyne Order*, 14 FCC Rcd at paragraph 7.

²⁰ *Id.*

potential for causing network harm.²¹ The issues raised by Alcatel's *Petition* are substantially similar to those raised in the Paradyne and Nortel proceedings. Accordingly, we will apply the same two-part test to the merits of Alcatel's *Petition* that we applied in the two earlier proceedings.

6. *The Petition.* In its *Petition*, Alcatel claims that a grant of this petition would increase opportunities for business and residential users to access the Internet at high speeds and at a reasonable cost and would stimulate significantly competition for provision of ADSL services to a larger potential customer base.²² Furthermore, Alcatel claims that the availability of its Model 1000 ADSL modem would introduce innovative equipment, increase consumer choice and enhance consumer value, while supporting the goal of providing broadband services to all Americans.²³

7. Alcatel further claims that the Model 1000 ADSL modem will not cause harm to the network because the Model 1000 ADSL modem complies with all Part 68 requirements other than section 68.308(e)(1)²⁴ and satisfies sections 7.14 and 7.15 of ANSI T1.413-1998, which is a widely accepted industry standard.²⁵ Alcatel notes that more than 100,000 of these modems have been deployed in the PSTN by BellSouth, Ameritech, Bell Atlantic and Southwestern Bell in the provision of ADSL offerings,²⁶ and that the same technical characteristics of those modems will safeguard the network when they are marketed as customer premises equipment.²⁷ More specifically, Alcatel claims that the modem's performance meets the transmitter spectral response power spectral density mask for the transmitted signal, as required in Section 7.14 of T1.413-1998, and operates within an aggregate transmission power over the 25.875 to 138 kHz band of less than 12.5 dBm.²⁸ In support of the claims that this modem meets the requirements of Section 7.14 of T1.413-1998, Alcatel provides test data for the modem in an Appendix attached to its

²¹ *Id.*

²² *Petition*, at paragraph 3.

²³ *Petition*, at paragraph 2.

²⁴ *Petition*, at paragraph 8.

²⁵ ANSI T1, "Draft Proposed Revision of ANSI T1.413-1998 - Network and Customer Installation Interfaces - Asymmetrical Digital Subscriber Line (ADSL) Metallic Interface," as approved by Committee T1E1 and forwarded to the American National Standards Institute (ANSI) for publication. This specification contains the power spectral density (PSD) masks for spectral compatibility of ADSL equipment with other services in the local loop. This document is available on the Internet at <<ftp://ftp.t1.org/pub/t1e1/e1.4/dir98/8e140075.pdf>>.

²⁶ *Petition*, at paragraph 4.

²⁷ *Petition*, at paragraph 10.

²⁸ *Petition*, at paragraph 9.

petition.

8. *Position of the Parties.* In addition to Alcatel, there were only two parties that participated in the instant proceeding. Bell Atlantic filed comments supporting a conditional grant of the Petition.²⁹ Lucent filed comments supporting grant of the Petition, without conditions, but recommended that a streamlined waiver process be instituted for future waiver petitions. Lucent and Alcatel filed reply comments that reiterated their earlier positions. No parties opposed Alcatel's *Petition*.

9. Bell Atlantic urged the Commission to grant the waiver requested by Alcatel, but subject to the following conditions:³⁰

- a. Meeting the transmitter PSD mask and aggregate power limits for the ATU-R steady-state signal specified in ANSI standard T1.413.³¹
- b. Providing a minimum of 35 dB of transverse balance across the entire upstream and downstream ADSL frequency bands.³²
- c. Limiting deployment of Alcatel's Model 1000 ATU-R modem to local loops in binder groups that the exchange carrier identifies as qualified for ADSL.³³

10. Bell Atlantic also stated that the transmission into the network of longitudinal signals exceeding Part 68 limits could cause cross-talk.³⁴ Based upon Alcatel's assertion, however, that the Model 1000 meets all the requirements of Part 68 except section 68.301(e)(1),³⁵ thus meeting the longitudinal signal limits of section 68.308(d) and section 68.308(e)(2), Bell Atlantic concluded that the public network is adequately protected from

²⁹ See Bell Atlantic Comments at paragraph 2, and discussion in this *Order, Infra*.

³⁰ Bell Atlantic Comments at paragraphs 15 and 3.

³¹ Bell Atlantic Comments at paragraph 7.

³² Bell Atlantic Comments at paragraph 11.

³³ Bell Atlantic Comments at paragraph 14.

³⁴ Bell Atlantic Comments at paragraph 6.

³⁵ *Petition*, at paragraph 2, footnote 4 and at paragraph 8.

the transmission by the Model 1000 of excessive longitudinal signals up to 6 MHz.³⁶

11. Alcatel accepted the conditions proposed by Bell Atlantic.³⁷ Lucent, however, characterized the Bell Atlantic conditions as “unnecessary and contrary to the public interest.”³⁸ Regarding Bell Atlantic’s first condition, Lucent claimed that the Commission’s past decisions “have found that compliance with the ANSI T1.413 standard is an acceptable basis for grant of waiver of section 68.308(e)(1)” so that “further conditioning the waiver to require compliance would be meaningless.”³⁹ Lucent stated that the second condition is unnecessary, and notes that “the Commission did not impose a similar restriction in the Nortel case.”⁴⁰ With respect to the third condition, Lucent points out that “in the Nortel decision, the Commission explicitly rejected Bell Atlantic’s request to limit the Nortel’s DSL device to qualified loops,” observing that “such an onerous condition would create substantial and needless delays in the implementation of DSL technology.”⁴¹

12. *Streamlining of ADSL Waiver Process.* In its comments, Lucent requested the creation of a streamlined procedure for future ADSL-related waiver requests of Part 68 as an interim procedure, until the proceeding to streamline or eliminate Part 68 requirements is completed.⁴² In particular, Lucent suggests that the Commission should dispense with the public notice and comment waiver process for ADSL waiver requests if the petitioner reasonably demonstrates that its modem complies with well-established criteria found to be acceptable in the past by the Commission.⁴³ Lucent stated that the Commission should grant waivers based upon the petitioner’s representations, as it currently does for stutter dial tone waiver petitions, and be allowed to provide notice of its actions after the fact.⁴⁴ No other party submitted comments or reply comments on the issue of streamlining the ADSL waiver process.

III. DISCUSSION

13. Based upon the record and its application to current law, regulations and

³⁶ Bell Atlantic Comments at paragraph 8.

³⁷ Alcatel Reply Comments at paragraph 4, including footnote 8.

³⁸ Lucent Reply Comments at page 2.

³⁹ Lucent Reply Comments at page 3.

⁴⁰ *Id.*

⁴¹ Lucent Reply Comments at page 2.

⁴² Lucent Comments at page 3, paragraph B.

⁴³ Lucent Comments at page 4, paragraph ii.

⁴⁴ *Id.*

precedent, we grant Alcatel's *Petition*, subject to the limitations listed below. We also accept Lucent's recommendation and provide a streamlined ADSL waiver petition process for use by future manufacturers who wish to register ADSL equipment for sale in the United States.

14. *The first prong of the Nortel Test: Public Interest - New Products and Innovation.* As we described in paragraph 5, *supra*, NSD will apply the two-prong *Nortel Test* that it applied in previous ADSL petitions for waiver. The first prong of the test considers whether granting Alcatel's *Petition* will serve the public interest by providing greater consumer choice and value. In its *Petition*, Alcatel claims that granting this waiver would increase opportunities for business and residential users to access the Internet at high speeds and at a reasonable cost, and stimulate competition for provision of these services to a larger potential customer base.⁴⁵ Alcatel points out the particular benefits to competitive local exchange carriers.⁴⁶

15. No party submitted comments or reply comments suggesting that granting the *Petition* would not enhance consumer choice and value and be in the public's interest. Bell Atlantic and Lucent agree with Alcatel that grant of the *Petition* will serve the public interest. Specifically, Bell Atlantic agrees that NSD approval of an expanded array of ADSL CPE will help increase the availability of ADSL services and help foster competition for ADSL CPE.⁴⁷ Lucent supports Alcatel's claims with regard to benefits by restating Alcatel's claims.⁴⁸ We agree with Bell Atlantic, Lucent and Alcatel that granting this waiver will serve the public interest. Accordingly, we find that Alcatel's *Petition* meets the first prong of the *Nortel Test*.

16. *Public Interest - Harm to the Network.* The second prong of the *Nortel Test* considers whether the connection and use of the Model 1000 ADSL Modem would harm the PSTN. Alcatel claims that grant of the waiver will not result in any interference or other harm to the PSTN.⁴⁹ Alcatel further claims that its Model 1000 ADSL Modem complies with

⁴⁵ *Petition*, at paragraph 3.

⁴⁶ *Petition*, at paragraph 5: "[n]ot only are ILECs incorporating the Model 1000 ADSL modem within their networks, CLECs increasingly are pursuing this market for their business and residential customers. However, unlike the ILECs, CLECs, instead of including the modem in their own network offerings, generally intend that their customers buy this equipment directly. This different approach is taken because financing the modem purchases would put an undue drain on the CLEC's capital. Making the Model 1000 ADSL modem readily available by grant of this waiver would enable CLECs to gain market share more effectively because they would be able to offer the xDSL platform to their customers at competitive prices."

⁴⁷ Bell Atlantic Comments at paragraph 1.

⁴⁸ Lucent Comments at paragraph II. A.

⁴⁹ *Petition*, at paragraph 9.

Sections 7.14 and 7.15 of T1.413-1998, and operates with an aggregate transmission power over the 25.875 to 138 kHz band of less than 12.5 dBm.⁵⁰ In addition to providing test data, Alcatel claims that several thousand of these modems have been installed in carrier networks without causing any harm, that no empirical evidence exists to suggest that interference would occur, and that the same technical characteristics resulting in such performance will safeguard the network when the modems are marketed as customer premises equipment.⁵¹

17. As we noted in paragraph 9, *supra*, Bell Atlantic recommended that we grant the waiver subject to three conditions, but Lucent opposed those conditions. With respect to Bell Atlantic's first condition, meeting the signal limits of ANSI T1.413, we believe that implementing Lucent's view would lead to less explicit language than is in the public interest. In the *Nortel Order*, the Commission required the condition "that the NORTEL 1 MEG MODEM continue to comply with the signal power limitations contained in the T1.413 standard, Issue 2."⁵² We require as a condition of waiver that the modem: (1) meets the transmitter spectral response requirements specified in Sections 7.14 and 7.15 of T1.413-1998, and (2) operates with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz.

18. With respect to Bell Atlantic's second condition, that a minimum of transverse balance be provided, we agree with Lucent, and note that the matter of transverse balance was not addressed in the *Nortel Order*.⁵³ We do not agree, as a matter of law, that the failure to address an issue in the past is, *per se*, reason never to address it.⁵⁴ Nevertheless, we decline to adopt an additional limit on transverse balance beyond the existing limits of 47 C.F.R. section 68.310, as a condition for granting Alcatel's *Petition*. Based upon the record, we find that the current limits of 47 C.F.R. section 68.310 and the general conditions for self-help afforded by 47 C.F.R. section 68.108, provide the PSTN with adequate protection.⁵⁵

19. With respect to Bell Atlantic's third condition, that deployment be limited to qualified loops, we also agree with Lucent that such limitation is not necessary, and decline to adopt it as a condition for waiver. In the *Nortel Order*, the Commission considered that condition and agreed with Petitioner Nortel that requiring an ILEC determination that the local loop is "qualified" before every installation would create substantial and needless delays.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Nortel Order* at paragraph 16.

⁵³ In returning to the record for the *Nortel Order*, we did not find transverse balance addressed in the comments of Bell Atlantic, BellSouth, or Ameritech, or in the reply comments of Bell South.

⁵⁴ *See, e.g., SEC v. Cheney Corp.*, 332 U.S.194 (1947).

⁵⁵ We will, in connection with Lucent's suggestion that the Commission dispense with the public comment process for ADSL waiver requests, take up the matter of transverse balance later in this order.

Given the general conditions for self-help that section 68.108 of our rules affords carriers and our actions in the *Nortel Order*,⁵⁶ and the absence of evidence that additional protection is needed, we find that Bell Atlantic's third condition is not necessary.

20. We noted in the *Nortel Order* that compliance with both the upstream and downstream power spectral limits specified by T1.413 satisfied our second criterion for waiver of Section 68.308(e)(1) for ADSL devices.⁵⁷ The Alcatel *Petition* requested waiver for the remote transmitting unit, the Model 1000 ADSL modem, which only generates the upstream signal.⁵⁸ Since Alcatel claims that its Model 1000 ADSL modem complies with the upstream spectral and aggregate power limits specified by T1.413-1998, we find that it complies with the second prong of the *Nortel Test*.

21. *Streamlining Petitions for Waiver of 47 C.F.R. § 68.308(e)(1), for ADSL*: We agree with Lucent and find that the process for deciding ADSL petitions should be streamlined, in the same manner as the Bureau provided for stutter dial tone waiver petitions.⁵⁹ We believe that the records in this, and the *Paradyne* and *Nortel* proceedings, support such a finding. The waivers contemplated in the *Alameda Order* differ from those contemplated by the *Alcatel*, *Paradyne* and *Nortel Petitions* in one aspect, however. Petitioners to the *Alameda* proceeding did not enjoy the benefit of established industry standards to corroborate their claims and refute opposition to those claims. Instead, participants of the *Alameda* proceeding submitted their own data for and against the grant of a waiver to then-section 68.312(k) of the Commission's rules, to allow petitioners to apply for registration of the stutter dial tone detection devices. In addition, opponents supplied the Bureau with performance conditions that would lessen the negative impact that the stutter dial tone detection devices could introduce to the PSTN. Based upon this adversarial record, the Bureau granted waivers subject to eight performance criteria that were later modified.⁶⁰

22. In the *Alameda Order*, the Bureau invited any stutter dial tone equipment manufacturer to apply for a waiver, as long as that manufacturer was able to meet the eight performance conditions specified therein.⁶¹ Upon receipt of a petition containing the appropriate claims, the Bureau would issue an order granting the waiver. Thus, streamlined

⁵⁶ See *Nortel Order*, paragraph 14.

⁵⁷ *Nortel Order* at paragraph 12.

⁵⁸ That the Model 1000 ADSL modem is the remote terminating unit, and thus generates the upstream signal, is implicit in Footnote 2 of the petition, and in the presentation of only remote terminating data in the attachment to the petition.

⁵⁹ Part 68 Waiver Request of Alameda Engineering, Inc., *Order*, 10 FCC Rcd 12135 (Com.Car. Bur. 1995) (*Alameda Order*).

⁶⁰ Part 68 Waiver Request of Alameda Engineering, Inc., *Order on Reconsideration*, NSD-L-98-154, DA 99-1542 (rel. August 9, 1999) (*Alameda Recon. Order*).

⁶¹ *Alameda Order*, *supra*, 10 FCC Rcd 12135, 12141 at fn. 73.

waivers are granted if the petitioners certify conformance with the eight performance conditions exactly as they appear in *Alameda Recon. Order*, without a notice and comment rulemaking proceeding. The *Alameda Order* also encouraged parties to monitor stutter dial tone devices' load on carrier equipment and to gather information that might be relevant to potential impact on carriers' switches.⁶²

23. By contrast, the ADSL waivers rely on the manufacturers' conformance with established industry standards that may be changed at any time by the T1 Committee proceeding under the open forum/consensus process; changes to the industry standard are accomplished by the consensus process. As witnessed by the *Alameda Order* and its progeny, the Commission can only change its rules after conducting a notice and comment rulemaking process pursuant to Administrative Procedure Act requirements. Thus, the legal challenge presented by Lucent's request for a streamlined ADSL waiver process is reconciling these two rulemaking processes – one private, one public – so that manufacturers and carriers can enjoy the stability afforded by Part 68 rules, without the expense and delay associated with the rulemaking process.

24. In the *Paradyne and Nortel Orders*, we found that both ANSI T1.601 and ANSI T1.413 industry standards reflect a reasonable level of industry consensus on CPE output limitations intended to protect the viability of the PSTN as a transmission medium for currently deployed and nascent digital transmission technologies.⁶³ In the *Paradyne Order*, we found that the Paradyne modem's compliance with ANSI T1.601 indicated that the modem does not pose a threat of harm to the PSTN.⁶⁴ In the *Nortel Order*, we found that by meeting the T1.413 standard, Nortel would satisfy the second prong of our test, and therefore not pose a threat of harm to the PSTN.⁶⁵ Our confidence in these industry standards is based on ATIS Committee T1's use of an open, industry consensus-building process to develop network protection standards, and if a proposed standard introduces harm to the PSTN, some participant or group of participants is likely to spot it. Furthermore, we note that we have not received any complaints of harm to the PSTN arising from the performance of either the Paradyne or Nortel modems. Consistent with our findings in the *Nortel Order*, we find that modems meeting the ANSI T1.413 standard for protection of the PSTN will satisfy the second prong of the *Nortel Test*.

25. In addition, we find that further waivers of our Part 68 rules that facilitate the marketing of ADSL modems will provide more innovative equipment and choices for consumers, and are therefore in the public interest and satisfy the first part of the *Nortel Test*.

⁶² *Id.* at 12140.

⁶³ *Paradyne Order* at paragraph 18; *Nortel Order* at paragraph 11.

⁶⁴ *Paradyne Order* at paragraph 18.

⁶⁵ *Nortel Order* at paragraph 16.

For the second part of the test, parties able to meet these same specifications, conditions and limitations are invited to file petitions for waiver of section 68.308(e)(1) of the Commission's rules for their ADSL modems. Streamlined waivers will be granted without a notice and comment rulemaking proceeding if the petitioners certify conformance to the two performance conditions stated in paragraph 26. Petitions for waiver of section 68.308(e)(1) may be submitted concurrently with, or in advance of applications for registration, as is presently the practice for stutter dial tone devices.

26. *Conclusion.* We conclude that the Petitioner Alcatel has shown good cause for waiver of 47 C.F.R. section 68.308(e)(1), and that granting of this petition is in the public interest and will not result in harm to the PSTN. We grant Alcatel's *Petition* for waiver of 47 C.F.R. section 68.308(e)(1) of the Commission's rules for its the Model 1000 ADSL Modem, subject to the following conditions: (1) meets the transmitter spectral response requirements specified in Sections 7.14 and 7.15 of T1.413- Issue Two (1998), and (2) operates with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz. We further conclude that other parties seeking waiver of 47 C.F.R. § 68.308(e)(1) for the purpose of completing an application for registration of ADSL modems under Part 68 of the Commission's rules may utilize the streamlined procedure described above. Specifically, in the future, parties seeking waiver for ADSL modems may submit a letter to the Chief, Network Services Division, Common Carrier Bureau, certifying that the equipment for which waiver is requested complies with the two performance conditions listed above. The waiver request must be signed by a company representative or officer responsible for its truthfulness.

27. Our decision to grant a waiver only for ADSL equipment that meets the performance conditions described above is based upon the information in the record before us. In the event it becomes evident that the information is incomplete or inaccurate and harm to the PSTN becomes possible, we provide two additional safeguards to facilities-based telecommunications carriers to protect their networks. First, section 68.108 of the Commission's rules affords carriers certain self-help privileges, enabling them to take necessary actions to protect the PSTN. These actions include temporarily disconnecting or refusing to connect inside wiring or CPE that is likely to cause harm to the PSTN.⁶⁶ Pursuant to Section 68.108, carriers must notify the customer of their intended action, give the customer an opportunity to correct problems, and inform the customer of his right to complain to the Commission should the customer feel that the carrier has acted improperly.⁶⁷ Second, we encourage parties to monitor the performance of these ADSL modems and the

⁶⁶ Carriers reasonably determining that CPE (*i.e.*, plugs, jacks, and inside wire) will cause harm to the PSTN may discontinue service after notifying the customer, and if practicable, afford the customer the opportunity to correct the service-affecting condition. Carriers must also inform the customer of his or her right to file a complaint with the Commission. 47 C.F.R. § 68.108.

⁶⁷ *Id.*

networks that serve them, and to gather and share with us information that might be relevant to general harm to the PSTN or cross-talk problems.

IV. ORDERING CLAUSE

28. Accordingly, pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. sections 0.91, 0.291, and section 1.3 of the Commission's rules, 47 C.F.R. section 1.3, IT IS HEREBY ORDERED that the request for waiver of section 68.308(e)(1) of the Commission's rules 47 C.F.R. § 68.308(e)(1), by Alcatel USA, Inc., IS GRANTED to the extent discussed herein.

29. IT IS FURTHER ORDERED, that the petition for waiver is granted SUBJECT TO THE FOLLOWING CONDITIONS: that the equipment (1) meet the transmitter spectral response requirements specified in Sections 7.14 and 7.15 of T1.413- Issue Two (1998), and (2) operate with an aggregate power of less than 12.5 dBm over the range 25.875 to 138 kHz.

FEDERAL COMMUNICATIONS COMMISSION

L. Charles Keller
Chief, Network Services Division
Common Carrier Bureau