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February 5, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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OUR FILE NO.
25065.75182

BY MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 91-142

Dear Ms. Salas:

This firm represents Thomas Domencich and the Committee for a Fair Lottery ("CFL"), parties to the above-referenced proceeding. On behalf of Mr. Domencich, CFL, and other parties of record in CC Docket No. 91-142 — Applicants Against Lottery Abuse, Cellular Applicants' Coalition, Miller Communications, Inc., Skywave Partners, Inc., Buckhead Cellular Communications Partnership, ZDT Partnership, Alabama Wireless, Inc., A-1 Cellular of Texas, L.P., A-1 Cellular Communications, L.L.C., Bay Cellular of Florida, Bravo Cellular, L.L.C., Cel-Tel Communications of Ohio, Ltd., Centaur Partnership, Cranford Cellular Communications, L.L.C., EJM Cellular, L.L.C., Florida Cellular, Pinellas Communications, South Carolina Cellular Corporation, Ohio Wireless, L.L.C., Jaybar Communications, L.L.C., Alee Cellular Communications, Data Cellular Systems, Cellular Pacific, and North American Cellular — we submit herewith an original and fourteen (14) copies of a Joint Notice of Settlement Agreements and Request for Rulings in CC Docket No. 91-142 executed on behalf of each of the above-named parties.

No. of Copies rec'd 0+14
List A B C D E

Should there be any questions concerning this submission, please contact the undersigned.

Very truly yours,

E. Ashton Johnston
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures

WDC-107757v4

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Applications of	)	CC DOCKET NO. 91-142
	)	
ALGREG CELLULAR ENGINEERING	)	File Nos. 10607-CL-P-307-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 307, Alabama 1-Franklin	)	
	)	
CRANFORD CELLULAR COMMUNICATIONS	)	File No. 10611-CL-P-311-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 311, Alabama 5-Cleburne	)	
	)	
BAY CELLULAR OF FLORIDA	)	File No. 10754-CL-P-497-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 497, Mississippi 5-Washington	)	
	)	
FLORIDA CELLULAR	)	File No. 10445-CL-P-505-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 505, Missouri 2-Harrison	)	
	)	
A-1 CELLULAR COMMUNICATIONS	)	File No. 10454-CL-P-514-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 514, Missouri 11-Moniteau	)	
	)	
BRAVO CELLULAR	)	File No. 10673-CL-P-579-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 579, North Carolina 15-Cabarrus	)	

ALPHA CELLULAR	)	File No. 10909-CL-P-586-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 586, Ohio 2 - Sandusky	)	
	)	
CEL-TEL COMMUNICATIONS	)	File No. 10912-CL-P-589-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 589, Ohio 5-Hancock	)	
	)	
EJM CELLULAR PARTNERS	)	File No. 10567-CL-P-596-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 596, Oklahoma 1-Cimarron	)	
	)	
PINELLAS COMMUNICATIONS	)	File No. 10808-CL-P-613-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 613, Pennsylvania 2-McKean	)	
	)	
CENTAUR PARTNERSHIP	)	File No. 10720-CL-P-631-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 631, South Carolina 7-Calhoun	)	
	)	
SIGNAL CELLULAR COMMUNICATIONS	)	File No. 10721-CL-P-632-A89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 632, South Carolina 8-Hampton	)	
	)	
A-1 CELLULAR COMMUNICATIONS	)	File No. 10409-CL-P-661-A-89
	)	
For facilities in the Domestic Public Cellular	)	
Telecommunications Radio Service on Frequency	)	
Block A, in Market 661, Texas 10-Navarro	)	
	)	

EJM CELLULAR PARTNERS	)	File No. 10116-CL-P-721-A-89
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 721, Wyoming 4-Niobrara	)	
	)	
JAYBAR COMMUNICATIONS	)	File No. 10042-CL-P-323-A-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 323, Arizona 6-Graham	)	
	)	
DATA CELLULAR SYSTEMS	)	File No. 10029-CL-P-345-A-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 345, California 10 - Sierra	)	
	)	
CELLULAR PACIFIC	)	File No. 10031-CL-P-346-A-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 346, California 11 - El Dorado	)	
	)	
NORTH AMERICAN CELLULAR	)	File No. 10066-CL-P-388-A-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 388, Idaho 1 - Boundary	)	
	)	
ALEE CELLULAR COMMUNICATIONS	)	File No. 10074-CL-P-555-A-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block A, in Market 555, New Mexico 3 - Catron	)	

To: The Commission

JOINT NOTICE OF SETTLEMENT AGREEMENTS
AND REQUEST FOR RULINGS

Alabama Wireless, Inc. (formerly Algreg Cellular Engineering) ("Algreg"), A-1 Cellular of Texas, L.P. (formerly A-1 Cellular Communications) ("A-1"), A-1 Cellular Communications,

L.L.C. (formerly A-1 Cellular Communications) ("A-1"), Bay Cellular of Florida ("Bay"), Bravo Cellular, L.L.C. (formerly Bravo Cellular) ("Bravo"), Cel-Tel Communications of Ohio, Ltd. (formerly Cel-Tel Communications) ("Cel-Tel"), Centaur Partnership ("Centaur"), Cranford Cellular Communications, L.L.C. (formerly Cranford Cellular Communications) ("Cranford"), EJM Cellular, L.L.C. (formerly EJM Cellular Partners) ("EJM"), Florida Cellular ("Florida"), Pinellas Communications ("Pinellas"), South Carolina Cellular Corporation (formerly Signal Cellular Communications) ("Signal"), Ohio Wireless, L.L.C. (formerly Alpha Cellular) ("Alpha"), Jaybar Communications, L.L.C. (formerly Jaybar Communications) ("Jaybar"), Alee Cellular Communications ("Alee"), Data Cellular Systems ("Data"), Cellular Pacific, North American Cellular ("North American"), Thomas Domencich ("Domencich"), the Committee for a Fair Lottery ("CFL"), Applicants Against Lottery Abuse ("AALA"), Miller Communications, Inc. ("Miller"), Skywave Partners, Inc. ("Skywave"), Buckhead Cellular Communications Partnership ("Buckhead"), Cellular Applicants' Coalition ("CAC"), and ZDT Partnership ("ZDT"), by their respective attorneys, hereby jointly submit this Notice of Settlement Agreements and Request for Rulings (the "Joint Notice"). Algreg, Alpha, A-1, Bay, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida, Pinellas, and Signal are referred to herein collectively as the "Grantees". Jaybar, Data, Cellular Pacific, and North American are referred to herein collectively as the "Licensees". Domencich, CFL, AALA, Miller, Skywave, Buckhead, CAC, and ZDT are referred to herein collectively as the "Petitioners". Petitioners, Grantees, Licensees, and Alee hereby jointly notify the Commission that the parties to the above-captioned proceeding (the "Consolidated Proceeding") have resolved all litigation among and between them and

respectfully request the issuance of rulings with respect to certain of these settlements.[1/]

I. Background

On June 3, 1997, the Commission released a *Memorandum Opinion and Order* in the Consolidated Proceeding[2/] which, *inter alia*, (1) granted the above-captioned applications of Grantees Algreg, A-1, Bay, Cel-Tel, Cranford, Florida, Pinellas, and Signal;[3/] (2) remanded for further ministerial consideration by the Wireless Telecommunications Bureau the applications of Grantees Bravo, Centaur, and EJM for grant upon submission of a clarifying amendment by Bravo and of certifications by Centaur and EJM;[4/] (3) terminated the revocation portion of the Consolidated Proceeding with respect to Licensees Cellular Pacific, Data, Jaybar, and North American, and as to Satellite Cellular Systems ("Satellite"), Crystal Communications Systems ("Crystal"), and Alpha Cellular ("Alpha"),[5/] each of which had been granted a license prior to the release of the *Hearing Designation Order*; (4) conditionally granted the application of Grantee Alpha for the Ohio 2 RSA and conditionally reinstated Alpha's license for the Indiana 8 RSA,

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1/ Licensees Data Cellular Systems, Cellular Pacific and North American Cellular have entered into agreements providing for, among other things, the dismissal of pending petitions for reconsideration and related pleadings, and participate in this filing solely for the purpose of joining in Sections II and IV and the relief requested in Section V(i), below.

2/ *Algreg Cellular Engineering*, CC Docket No. 91-142, 12 FCC Rcd 8148 (1997) ("Commission *MO&O*").

3/ *Id.* at para. 99.

4/ *Id.* at para. 100. These applications subsequently were granted.

5/ Commission *MO&O* at para. 101. Satellite, Crystal, and Alpha (with respect to the Indiana 8 RSA) also are referred to herein as "Licensees".

both on a condition which Alpha subsequently met;[6] and (6) revoked the license of Alee.[7]

Currently pending before the Commission are separate petitions for reconsideration of the Commission *MO&O* filed on July 3, 1997 by the Petitioners, by Licensees Cellular Pacific, Data, and North American, and by Alee. Oppositions to the Petitioners' Petition for Reconsideration were filed by Cellular Pacific, Data, and North American, by Florida, and by A-1, Cel-Tel, Cranford, EJM, Jaybar, and Alee. The Petitioners filed Oppositions to Alee's Petition for Partial Reconsideration (the "Alee Petition") and to the Petition for Partial Reconsideration filed by Cellular Pacific, Data, and North American. These parties also filed reply pleadings.[8]

As the Commission is aware, a series of settlement agreements previously has been entered into which resolve portions of the Consolidated Proceeding between certain parties thereto. Prior to the release of the *MO&O,* the Commission was advised of separate settlements entered into between Petitioners, on the one hand, and Licensees Alpha and Crystal on the other. In the *MO&O*, the Commission ruled that these two settlements required no prior approval to the extent that they involved licensee markets.[9] On July 3, 1997, the Commission was notified of further settlements between Petitioners and Grantees A-1 (Texas 10 RSA), Algreg, Bay, Bravo, Centaur, Pinellas, and Signal, and Licensee Satellite. On August 8, 1997, the Commission was

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6/ *Id.* at para. 103.

7/ *Id.* at para. 104.

8/ Pursuant to the settlements reported herein, all of the referenced pleadings are being dismissed with prejudice, except the Alee Petition and Alee's Reply, in part.

9/ *Id.* at para. 89. The agreement between Petitioners and Alpha also settled litigation involving Alpha's pending application for the Ohio 2 RSA; the Commission stated that it would hold that settlement in abeyance pending the submission of additional materials by the Petitioners. *Id.* at para. 94.

notified that settlements had been reached between Petitioners and Grantees A-1 (Missouri 11 RSA), Cel-Tel, Cranford, and EJM, and Licensee Jaybar.

II. Global Settlement

In the period since August 8, 1997, Petitioners and the remaining Grantees and Licensees have been seeking to resolve their differences in an effort to reach a global settlement among and between the designated parties to the case. **That objective has now been achieved.** Petitioners have entered into settlement agreements with Grantee Florida, with Licensees Cellular Pacific, Data, and North American, and with Alee.[10/] The Petitioners have agreed not to further oppose, object to, protest, petition against or otherwise comment adversely upon or seek reconsideration or review of, or appeal the grant of any license in the subject markets, or the termination of any revocation proceeding with respect to the parties to the Consolidated Proceeding, thus allowing the Commission's decision with respect to the licensing issues to stand without further objection on their part. In exchange, the Petitioners are to receive certain settlement payments, subject to Commission approval or a ruling that no such approval is required. The settling parties (with the exception of Alee) further have agreed to dismiss all

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10/ True and complete copies of each settlement agreement between the Petitioners and each Grantee have been submitted under separate cover as attachments to a "Joint Motion for Rulings on Settlement Agreements or, Alternatively, for Approval and Partial Waiver" (the "Joint Motion") filed today with the Commission by the Petitioners. Commission approval of settlement agreements entered into between the Petitioners and Licensees Cellular Pacific, Data Cellular, North American, Jaybar, and Satellite, and between Petitioners and Alee, is not required; however, copies of these agreements also are being submitted with the Joint Motion for informational purposes. As the Commission noted in its *MO&O*, "Commission approval is not required for agreements to withdraw or dismiss pleadings filed against a licensee." Commission *MO&O*, para. 89. This ruling was made expressly with respect to settlement agreements between the Petitioners and Licensees Alpha and Crystal which were submitted to the Commission prior to release of the Commission *MO&O*.

pending petitions for reconsideration and related filings they have submitted in this proceeding. Consequently, all outstanding litigation among and between the parties to the settlements, and all foreseeable litigation among and between these parties before the Commission and any reviewing court arising out of the Consolidated Proceeding, will be resolved by the settlements and, as to the Licensees, has been resolved.[11/]

III. The Public Interest Is Served by the Settlements

Settlement of the litigation by the parties to the Consolidated Proceeding serves the public interest and is consistent with longstanding Commission policy favoring settlements.[12/] The Consolidated Proceeding now has lasted more than nine years. In that period, the parties and the Commission have been required to devote substantial time, energy and financial resources to the litigation. Absent a settlement, the litigation between these parties could continue indefinitely and thereby require the continued commitment of resources that can be devoted to other public interest endeavors.

All of the settlement agreements reported here help to carry out the public interest dispositions the Commission has made in this case. No settlement calls for a resolution of a

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11/ The sole exception is the Alee Petition will remain pending before the Commission. William J. Franklin, who was not a party to the Consolidated Proceeding, filed a limited opposition to the Alee Petition. A timely filed Petition for Reconsideration of the Commission *MO&O* filed by another non-party to the Consolidated Proceeding which also seeks limited relief also remains pending. *See* Petition for Reconsideration filed by A. Thomas Carroccio, Esq., July 3, 1997 (the "Carroccio Petition"). The Carroccio Petition raises no issues with respect to any Licensee market. A document bearing portions of the caption of the Consolidated Proceeding and the title "Statement for the Record" was submitted to the Commission on June 29, 1998 by Harry F. Cole, Esq. (the "Cole Statement").

12/ *See, e.g., RKO General, Inc.*, 3 FCC Rcd 5057, 5059 (1988).

licensing issue in a manner different from the disposition by the Commission in the *MO&O*. Most of the settlement agreements were entered into after the Commission released that decision, and had the purpose of bringing an end to litigation among the parties to the Consolidated Proceeding. That clearly is in the public interest.

Settlement also is in the public interest due to significant changes in circumstances that have occurred since the applications at issue in the Consolidated Proceeding were filed and the proceeding was initiated. As the Commission is aware, in the decade since the licensing of cellular RSAs began, significant changes have taken place in the cellular industry that affect both the Petitioners and the Grantees/Licensees. For example, stand-alone RSA operations have to a large extent given way to consolidated wide-area systems which enjoy greater economies of scale and scope. However, the Grantees and Licensees have been largely unable to participate in these market changes due to the cloud that the Consolidated Proceeding has placed over their licenses. In view of these significant changed circumstances in the cellular marketplace, a settlement which will narrow the issues in the Consolidated Proceeding and thereby foster a prompter final resolution is in the public interest.

The passage of time also has seen significant changes in the manner in which wireless authorizations are issued, with lottery selection procedures giving way to auction processes by statutory mandate. This means that the extended effort of the Petitioners to cause a relottery of the applications in the RSA cellular markets under consideration in the Consolidated Proceeding has been undermined in some respects by statutory changes. Under these circumstances, a settlement which allows Petitioners to withdraw from the proceeding on mutually agreeable terms is in the public interest.

Each of the settling parties has committed a substantial amount of time, money, and other resources to the prosecution of its respective positions in the Consolidated Proceeding. Each party has pursued the case vigorously, and the fact that parties on both sides of the dispute have prevailed on the merits at different stages of the proceeding evidences that the adjudicated issues are ones on which reasonable persons, acting in good faith, can differ. Now, as a result of the settlements among and between the Petitioners, the Grantees, the Licensees, and Alee, all parties to the Consolidated Proceeding have resolved their disputes, and the public interest will be served by the Commission giving effect to these settlements.

In the interest of administrative convenience, rather than burdening the Commission with multiple filings in connection with the numerous settlements, which have been entered into over the course of more than one year, the parties to the settlement agreements have cooperated to compile a single coordinated set of submissions containing the agreements and related materials. These filings include: (1) this Joint Notice; (2) a Joint Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver, filed separately today by the Petitioners, which includes (a) copies of the settlement agreement between Petitioners and each Grantee and Licensee and (b) associated Declarations of the Petitioners, Grantees, and Licensees respecting the exact nature and amount of any and all consideration promised and/or received by the parties to the settlement agreements; (3) dismissal by the Petitioners of their Petition for Reconsideration of the Commission *MO&O* and of their related filings (including oppositions to petitions for reconsideration filed by any Grantee or Licensee); (4) dismissal by Cellular Pacific, Data, and North American of their Petition for Partial Reconsideration, Opposition to the Petitioners' Petition for Reconsideration, and related filings; and (5) dismissal by certain

Grantees of pleadings adverse to Petitioners.[13/]

IV. Request for Severance

For purposes of administrative efficiency, the Commission designated the applications and licenses of the Grantees and the Licensees for hearing in a consolidated proceeding to adjudicate common issues of fact and law. This consolidation has served its purpose now that the evidentiary phase of the proceeding has been concluded. In the meantime, significant differences in circumstances have arisen with respect to various markets that make the continued consolidation of the cases counterproductive. For example, now that Alee has been singled out by the Commission as the only licensee whose authorization is to be revoked, its position in the proceeding is significantly different from those of the Grantees and Licensees. And, because settlement agreements between Petitioners and Grantees may be subject to Commission approval while agreements between Petitioners and Licensees are not, different issues and procedural requirements can and will pertain with respect to these groups. Moreover, and perhaps most importantly, now that third persons who were not parties to the Consolidated Proceeding are belatedly seeking to intervene and challenge the Commission's actions with respect to some of the markets at issue in the Consolidated Proceeding,[14/] the continued treatment of all markets in a common proceeding could seriously and unfairly prejudice parties whose authorizations are not

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13/ The referenced dismissals of pleadings are being filed today under separate cover.

14/ For example, the Carroccio Petition raised issues with respect to the Grantee markets, but specifically excluded the Licensee markets, and the Cole Statement did not identify in its caption Alee and Licensees Crystal, Alpha, and Satellite. Thus, with the dismissal of Petitioners' Petition for Reconsideration, no timely filed pleadings remain with respect to Cellular Pacific, Data, North American, and Jaybar.

contested by anyone, notwithstanding a collateral attack on consolidated orders.[15/]

With these considerations in mind, the parties to this Joint Notice respectfully request that the Commission, in its next ruling, sever the proceeding and issue a separate order with respect to each Grantee and Licensee market that is involved.[16/]

V. Conclusion

For good cause shown, the parties hereto respectfully request that the Commission expeditiously issue a separate order with respect to each market (i) affirming the prior Commission action in each market in which an authorization has been granted or in which a revocation proceeding has been terminated, and (ii) consistent with the Joint Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver, submitted today under separate cover by the Petitioners, stating that Commission approval of the settlement agreement with respect to each Grantee market is not required, or approving the agreement.

WHEREFORE, the foregoing premises having been duly considered, the parties hereto respectfully request the issuance of rulings consistent with foregoing.

15/ Arguably, if a single adverse party appeals the grant of an authorization in one market, **all** of the grants in **all** markets could be prevented from becoming final if the Commission continues to include all markets in a single consolidated order.

16/ In some instances the separate orders may be substantially similar, consistent with past practice. *See, e.g., Time Warner Communications*, DA 98-2458, DA 98-2471, and DA 98-2480; *Time Warner Cable*, DA 98-2473 and DA 98-2474, all released December 4, 1998. Commission precedent also exists for severing proceedings with respect to granted or final portions thereof following hearings on applicants' qualifications. *See, e.g., Amendment of Section 73.202(b), Table of Allotments*, 5 FCC Rcd 7602 (MMB 1990); *Spanish International Communications Corp.*, 1 FCC Rcd 92 (Rev. Bd. 1986), *recon. denied*, 1 FCC Rcd 844 (Rev. Bd. 1986), *erratum*, 1 FCC Rcd 1036, *aff'd as modified*, 2 FCC Rcd 3336 (1987), *aff'd sub nom. Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 931 F. 2d 74 (D.C. Cir. 1991).

Respectfully submitted,

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Alee Cellular Communications
Bay Cellular of Florida
Cel-Tel Communications of Ohio, Ltd. (formerly Cel-Tel Communications)
Centaur Partnership
Cranford Cellular Communications, L.L.C. (formerly Cranford Cellular Communications
EJM Cellular, L.L.C. (formerly EJM Cellular Partners)
Jaybar Communications, L.L.C. (formerly Jaybar Communications)
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Their Attorney

February 5, 1999

WDC/105888.10

CERTIFICATE OF SERVICE

I, Shandila Collins, hereby certify that on this 5th day of February 1999, I caused true and correct copies of the foregoing "JOINT NOTICE OF SETTLEMENT AGREEMENTS AND REQUEST FOR RULINGS" to be delivered via U.S. first class mail, postage prepaid, addressed to the following parties of record in CC Docket No. 91-142:

Chairman William E. Kennard *
Federal Communications Commission
The Portals
445 12th Street, S.W., Eighth Floor
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth *
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* By hand.

Courtesy copies of the foregoing "Joint Notice of Settlement Agreements and Request for Rulings" also were sent via U.S. first class mail, postage prepaid, to A. Thomas Carroccio, Esq., Harry F. Cole, Esq. and William J. Franklin, Esq., who are not parties of record in CC Docket No. 91-142.

Shandila Collins

Shandila Collins