DOCKET FILE COPY ORIGINAL COPY

Before the
**Federal Communications Commission**
Washington, D.C. 20554

RECEIVED
MAY 15 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico | ) | WT Docket No. 97-112 |
| | ) | |
| Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules | ) | CC Docket No. 90-6 |

To: The Commission

**FURTHER COMMENTS OF ALLTEL CORPORATION**

**ALLTEL CORPORATION**

Glenn S. Rabin
Assistant Vice President
Federal Regulatory Affairs
601 Pennsylvania Ave., N.W. Suite 720
Washington, DC 20004
(202) 783-3976

*Its Attorney*

May 15, 2000

## TABLE OF CONTENTS


Page

SUMMARY . . . . . ii

I. HISTORY/BACKGROUND OF CELLULAR PROBLEMS IN THE GULF . . . . . 2

- *Primary Commission Objective in Cellular Licensing: Ubiquitous Deployment of Reliable Land-Based Service* . . . . . 2
- *The Reality -- Ubiquitous, Reliable Land-Based Service Is Not Feasible Under the Current Rules* . . . . . 4

II. THE COMMISSION'S PROPOSED RULES WILL NOT RESOLVE THE ONGOING SERVICE DEGRADATION PROBLEMS AFFECTING LAND-BASED CUSTOMERS . . . . . 6

III. ALLTEL'S PROPOSAL -- A "NEUTRAL" COASTAL ZONE . . . . . 9

IV. ALLTEL'S PROPOSAL WOULD SERVE THE PUBLIC INTEREST . . . . . 10

A. ALLTEL's Approach Allows for Deployment of Ubiquitous and Reliable Service to Land-Based Customers in Coastal Areas and Into the Coastal Zone . . . . . 11

B. The ALLTEL Proposal Promotes Essential Public Safety Objectives . . . . . 12

C. ALLTEL's Proposal Addresses the Court's Concerns by Giving Gulf-Based Carriers Added Flexibility in Their Provision of Service to the Gulf . . . . 14

D. RF Propagation Characteristics Do Not Undermine Coexistence Between Land- and Gulf-Based Carriers in the Coastal Zone . . . . . 15

E. The Coastal Zone Should Not Be Subject to Competitive Bidding and ALLTEL's Proposal Avoids Mutually Exclusive Applications . . . . . 16

F. The Proposed "Neutral" Coastal Zone Would Be Simple to Administer . . . . . 16

V. THE COMMISSION HAS FULL AUTHORITY TO AMEND ITS CELLULAR RF INTERFERENCE REQUIREMENTS IN THE MANNER REQUESTED . . . . . 17

CONCLUSION . . . . . 19

## SUMMARY

A primary objective underlying the Commission's cellular licensing and service rules and policies is the nationwide deployment of ubiquitous, reliable land-based service. The decision to separately license Gulf areas up to the shoreline, however, has resulted in service and licensing disputes. Under the Commission's current rules (and in light of the Court remand in *Petroleum Communications., Inc.*), ubiquitous, reliable land-based service in coastal areas is not feasible and Gulf-based carriers have the leverage to preclude land-based carriers from providing reliable service to their own land-based customers. Further, the Commission's proposed Phase II unserved area licensing proposal will not promote service reliability and public safety in coastal areas, but will instead perpetuate the service and interference disputes that have plagued Gulf cellular licensing.

The Commission should instead adopt ALLTEL's proposal (discussed herein) for a "neutral" coastal zone whereby both land- and Gulf-based carriers could freely extend and overlap their respective contours into the Coastal Zone, subject to mandatory frequency coordination, but without interference protection. Under this proposal, the Coastal Zone would *not* be a separately licensed service area for any carrier but rather a "buffer zone" between Gulf and land-based systems. ALLTEL's approach will allow for deployment of ubiquitous and reliable service to land-based customers in coastal areas and will promote essential public safety objectives in coastal areas.

ALLTEL's proposal addresses the Court remand by affording Gulf-based carriers additional flexibility in their provision of service to the Gulf. Gulf carriers will have greater flexibility in moving cell sites, thus addressing Gulf carriers' unique service circumstances. Furthermore, ALLTEL's approach accounts for the RF propagation characteristics that have plagued coastal service to date. Also, there is no need to open the Coastal Zone to competing applications and auction. Cellular service in and around the Gulf is sufficiently mature that the Commission's licensing proposal will not facilitate the deployment of service to that area but instead would perpetuate current problems. Finally, the proposed neutral Coastal Zone will be simple to administer.

The Commission has full authority to amend its cellular RF interference requirements and service rules as ALLTEL proposes under Sections 303(f) and 303(r) of the Act. Also, the Commission's authority to amend its service rules in a generally-applicable manner that affects all licensees is well-established. Finally, ALLTEL's proposal is consistent with the statutory mandate of Section 309(j)(6)(E) to avoid mutual exclusivity to further the public interest. The statutory objectives of Section 309(j)(3) are served by ALLTEL's proposal rather than competitive bidding.

Before the
**Federal Communications Commission**
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico | ) | WT Docket No. 97-112 |
| | ) | |
| Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules | ) | CC Docket No. 90-6 |

To: The Commission

**FURTHER COMMENTS OF ALLTEL CORPORATION**

ALLTEL Corporation ("ALLTEL"), by counsel, hereby files comments on the Commission's *Second Further Notice of Proposed Rulemaking* in the above-referenced proceeding.[1] As discussed herein, by this filing, ALLTEL proposes revisions to the Commission's cellular service and RF interference rules for the Gulf of Mexico which will: promote the public interest and improve service reliability and costs; address Gulf carriers' particular service circumstances, as required by the judiciary; preserve and enhance land- and Gulf-based carriers' respective legitimate service rights; recognize the realities of RF propagation in the Gulf; and obviate any need to license the Coastal Zone via competitive bidding.

---

[1] *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, *Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, CC Docket No. 90-6, *Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 4516 (1997), *pleading cycle reopened*, DA 00-687 (rel. Mar. 27, 2000), 65 Fed. Reg. 24168 (April 25, 2000) ("*Second FNPRM*").

In light of developments since the close of the initial public comment cycle, and the record already submitted in this proceeding, the Commission must amend its rules in order promote efficient, nationwide ubiquitous deployment of cellular service and to prevent the further compromise of public safety to land-based customers. While ALLTEL continues to support the establishment of Coastal and Exclusive Zones, the Commission should *not* separately license the Coastal Zone as a discrete service area, as proposed in the *Second FNPRM*. The Commission should instead adopt ALLTEL's proposal (discussed herein) and allow both land-based and Gulf-based cellular carriers to freely extend and overlap their respective service contours into the Coastal Zone, subject to frequency coordination and without interference protection as currently defined in the rules.

ALLTEL's proposal recognizes that RF energy does not stop at a particular geographic point and that a degree of contour overlap between adjoining markets is required to ensure adequate signal strength and ubiquitous service. Importantly, the ALLTEL proposal will allow land-based carriers to provide reliable service to their land-based customers and, at the same time, provide Gulf-based cellular carriers necessary flexibility to move among various oil platforms in the Gulf to serve their offshore customers, thereby facilitating co-existence between land and Gulf-based licensees operating in the Coastal Zone.

## I. HISTORY/BACKGROUND OF CELLULAR PROBLEMS IN THE GULF

- ***Primary Commission Objective in Cellular Licensing: Ubiquitous Deployment of Reliable Land-Based Service***

Since the creation of cellular service and the onset of licensing, a primary Commission objective has been to promote the nationwide, ubiquitous deployment of reliable land-based

cellular service.[2] The subsequent initiation of separate cellular licensing in Gulf waters, which began in response to a developmental application filed by PetroCom in 1983, was made subject to the limitation that the deployment of reliable cellular service to land-based customers -- by land-based licensees -- would not be undermined by offshore Gulf cellular operations.[3] Thus, the Commission conditioned the Gulf carriers' licenses "on noninterference with land-based cellular systems" such that "[a]ny offshore cellular system in the Gulf must therefore be designed to avoid significant service contour overlap with land-based systems." To this end, the Commission also recognized that this land-based service primacy might "require that no transmitters are placed onshore or that only carefully placed directional antennas are used."[4]

The Commission later determined that Gulf carriers' "land-based transmitters will unavoidably result in more than *de minimis* incursions into land areas" due to propagation characteristics over water and wetland areas, and thus "in order to remain consistent with our existing regulations and policy *concerning the protection of adjoining licensees' service areas*, all Gulf licensees' transmitters must be offshore."[5] The Commission later affirmed these findings, stating that the primary objective of the non-interference policy was "protection of

---

[2] *See An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 FCC 2d 469, ¶ 76 (1981) ("nationwide availability of service is a primary goal"), *recon.*, 89 FCC 2d 58, ¶ 82 (1982) ("[t]his is a new service which we desire to make available in all localities, irrespective of what other mobile services are currently offered or able to be offered, in order to achieve nationwide compatibility").

[3] *See Petroleum Communications, Inc.*, 54 Rad. Reg. (P&F) 1020, 1025-26 ¶¶ 18-24 (1983).

[4] *Id.* at 1025 ¶ 20.

[5] *Petroleum Communications, Inc., Order on Reconsideration*, 1 FCC Rcd. 511, 513 ¶¶ 19-20 (1986) (emphasis added).

future service areas of potential licensees, and confining adjacent licensees, in this case Gulf operators, to their own service areas."[6]

- ***The Reality -- Ubiquitous, Reliable Land-Based Service Is Not Feasible Under the Current Rules***

Despite the Commission's intentions, its determination to separately license Gulf areas up to the shoreline has, in fact, led to interference with land-based systems and service degradation problems throughout the Gulf Coast.[7] Service disputes between Gulf and land-based carriers have been legion and Commission's effort to remedy the situation via unserved area licensing was remanded by the United States Court of Appeals for the District of Columbia Circuit in 1994 on the basis that the Commission did not adequately consider Gulf carriers' particular service circumstances.[8] As a result of the court's decision, the Commission reinstated Gulf carriers' CGSA up to the shoreline, but retained the new contour-based CGSA for land-based carriers. This has resulted in a situation where adjacent Gulf and land-based carriers' CGSAs are based on incompatible definitions -- one based on service contour and the other based on a geographically defined market -- without regard to RF characteristics or service operations.[9]

The Commission has itself noted the negative effect on service provision in Gulf coastal areas:

---

6 *Petroleum Communications, Inc. and Gulf Cellular Associates, Order on Reconsideration*, 2 FCC Rcd. 3695, 3696 ¶ 14 (1997).

7 *See Second FNPRM* ¶ 26.

8 *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994).

9 As discussed *infra* at Section III, ALLTEL's proposal addresses the court remand by addressing Gulf carriers' particular circumstances and providing additional Gulf service flexibility.

> [M]ost applications to serve the areas have been placed on hold or dismissed as the combined result of our existing policies and the court's directive. Consequently, the public is not receiving reliable service in some coastal areas.[10]

The impact on the provision of reliable land-based service has in fact been significant. Previously, land-based carriers attempted to better provide service to Gulf coast areas via *de minimis* extension requests (many of which, as the Commission notes, Coastel has challenged).[11] Even this option, however, is not currently available to land-based carriers, because Gulf-based carriers now have virtual veto power over *de minimis* extension requests of co-channel adjacent land-based carriers. As a result, Gulf-based carriers now have the leverage to preclude *land-based* carriers from providing reliable service to their own *land-based* service areas.

Further, alternative arrangements between land- and Gulf-based carriers do not appear feasible under the Commission's current rules because of the essential characteristics of RF propagation over water. In this regard, land- and Gulf-based carriers' economic interests -- and circumstances -- are too divergent to reconcile under the existing framework. Gulf carriers actively seek shoreline traffic, but price their services very differently (typically much higher) than a customer's land-based carrier. The adverse impact on the land-based carrier and its

---

[10] *Second FNPRM* ¶ 26.

[11] *Id.* ¶ 36 n.69.

subscribers is untenable and contrary to the public interest.[12] The Commission must act to resolve the negative impact of the current regime on customers.

## II. THE COMMISSION'S PROPOSED RULES WILL NOT RESOLVE THE ONGOING SERVICE DEGRADATION PROBLEMS AFFECTING LAND-BASED CUSTOMERS

ALLTEL's experience with service degradation along the Gulf coast, and that of other carriers as reflected by the record in this long-pending proceeding, indicate that the Commission's licensing proposal for the *Second FNPRM* will not serve the public interest. In its initial comments and reply in this proceeding, ALLTEL originally generally concurred with the Commission's proposal to adopt a twelve mile Coastal Zone to accommodate "continuous and reliable service . . . along the coastline."[13] At that time, ALLTEL advised the Commission of the company's "difficulty in extending service, including critical emergency 911 services to coastal areas due to its inability to freely place even de minimis contour extensions in to the Gulf under the current, and uncertain regulatory regimen."[14]

---

[12] Gulf carriers' pricing is generally considerably higher than terrestrial carriers. If a Gulf-based carrier captures a land-based customer's call, the latter's land-based carrier may pass the higher charge through to the customer, but often must instead absorb the charges for customer retention purposes. *See* GTE Comments at 3, n.4 (discussing higher charges); Bachow/Coastel Comments at 37 (same). PCS licensees are not so burdened with the need to coordinate co-channel frequency use with adjacent Gulf licensees and may operate freely in Gulf coast areas; thus there is an obvious competitive disparity which is unwarranted. In addition, as numerous parties have discussed in this proceeding, broadband PCS license service areas extend a significant distance into the Gulf; again, land-based cellular carriers should not be competitively disadvantaged in this fashion. *See* ALLTEL Comments at 5; PrimeCo Comments at 4-15; BellSouth Comments at 5-6; Sprint Comments at 2.

[13] ALLTEL Comments at 2.

[14] *Id.* at 2. Further, ALLTEL emphasized the need for the Commission to continue to protect the service rights and service areas of land-based carriers in the rulemaking proceeding. *Id.* at 3. At the time, ALLTEL had only a few markets bordering the Gulf. As discussed herein,

(continued...)

ALLTEL and other carriers have previously advised the Commission of the service degradation problems affecting Gulf service, and these problems are a matter of record in this proceeding.[15] Over two and one-half years have elapsed since the close of the initial public comment period and ALLTEL's view of the Gulf matter has now evolved. For its part, ALLTEL's contiguous wireless holdings in the Florida and Alabama Gulf coast have expanded significantly, as has its experience in deploying service to those areas.[16] During this time, the Commission has continued to freeze processing of all applications for land-based carriers whose contours extend beyond the coastline into the Gulf of Mexico. In turn, the continuing inability of ALLTEL and other carriers to provide ubiquitous service to land-based customers in coastal areas has reached crisis levels.

As a recent example of the ongoing problems affecting land-based coastal service provision, ALLTEL requested, and was granted, an extension of Special Temporary Authority ("STA") to operate cellular facilities at 13 sites in various Florida coastal markets.[17] As the Commission determined, "at present, cellular coverage is either unreliable or not available along

---

[14] (...continued)
the company now has more significant interests in the Gulf region and this greater "stake" in the proceeding has caused the company to revisit its position and submit the instant proposal.

[15] *See* ALLTEL Comments at 2; GTE Comments at 4; 360 Communications Comments at 4, 8-9.

[16] *See* attached map.

[17] As the Wireless Telecommunications Bureau recognized, ALLTEL has received "numerous requests for cellular service from individuals, businesses, and local government agencies responsible for providing emergency services in the affected markets" which "attest to the adverse impact on delivery of such emergency services caused by lack of cellular coverage along the coast." Public Notice, *Wireless Telecommunications Bureau Grants Special Temporary Authority to ALLTEL Corporation Allowing Improvements in Cellular Coverage in Coastal Florida*, DA 99-2073 (rel. Oct. 4, 1999). ALLTEL notes that its inability to extend service in coastal areas has also been the subject of congressional inquiries.

the coast and on numerous barrier islands located within [ALLTEL's Florida Gulf Coast] markets."[18]

The situation with Gulf licensing continues to pose significant service problems to other carriers, as well. In this regard, GTE has recently advised the Commission of service disruption to land-based customers in the Mobile, Alabama MSA -- a market which ALLTEL hopes to acquire shortly.[19] The Commission's application of Section 22.911(d) to GTE's service in that market, and the determination that the waters between Sand Island and Dauphin Island do not fall within the land-based MSA service area, severely restricts the land-based carrier's ability to provide service to the coastline areas of the Mobile market.[20]

In sum, the Commission has placed land-based carriers and subscribers in markets adjoining the Gulf in an untenable position. Gulf-based carriers have virtual veto power over an adjoining land-based carrier's ability to provide reliable service in coastal areas. Land-based carriers' Commission-imposed inability to serve this area, in turn, provides Gulf-based carriers the opportunity to unfairly capture land-based traffic for themselves.[21]

---

[18] *Id.* at 1. Despite the serious service issues presented, Coastel has challenged ALLTEL's effort to provide reliable service to this coastal/land-based area.

[19] GTE Service Corporation, *Ex Parte* Presentation in WT Docket No. 97-112, filed May 2, 2000, at 1-2.

[20] *Bachow Coastel, LLC v. GTE Wireless of the South, Order*, DA 00-420, ¶¶ 8-12 (rel. Feb. 29, 2000). The Commission's current rigid application of the cellular overlap rule has adversely affected service to land-based customers in the mobile market. As discussed in its Commission presentation, GTE has received service-related complaints from customers deprived of any service by the FCC-required pull-back of GTE service contours. GTE *Ex Parte* Presentation at 1.

[21] Gulf carriers' motivation in this regard is dramatically underscored by Bachow/Coastel's recently filed "unserved area" application to serve not only the GMSA market, but the town of Fort Morgan and Fort Gaines on Dauphin Island -- the very land-based area GTE was precluded

(continued...)

Under the circumstances, ALLTEL no longer believes that the Commission's proposed Phase II application process for the Coastal Zone will facilitate the deployment of reliable land-based service or otherwise serve the public interest. Unless the Commission takes action to preserve the integrity of land-based carriers' service areas, residents of coastal areas will remain caught in a regulatory "no man's land" which will adversely affect service provision and the public safety in those markets.

## III. ALLTEL'S PROPOSAL -- A "NEUTRAL" COASTAL ZONE

ALLTEL submits that the Commission should amend its rules to permit both land-based *and* Gulf-based carriers to freely extend contours into the Coastal Zone as their cell sites and the standards of good engineering practice require. Under this approach, which addresses the concerns of the D.C. Circuit, the Coastal Zone would *not* be a separate licensed service area for any carriers, but rather a "buffer zone" between Gulf and land-based systems. Gulf and land-based carriers would be subject to the following restrictions/obligations as to their services in the Coastal Zone:

- *neither* carrier would have interference protection in the Coastal Zone -- *i.e.,* neither carrier would have the right to prevent capture as defined in Section 22.911(d) of the rules;
- frequency coordination would be mandatory between land-based and Gulf-based carriers;
- the CGSA boundary, within which a carrier would continue to be afforded interference protection as defined in Section 22.911(d), would be as follows: for land-based carriers, the CGSA boundary would remain at the coastline, as redefined to include barrier islands; the CGSA for Gulf

---

[21] (...continued)
from serving effectively by virtue of the Commission's decision. Bachow/Coastel, LLC, File No. 0000113774, Public Notice of Amended Application as Accepted for Filing, Report No. 520, rel. May 4, 2000, at 20.

carriers would begin at the border of the "Exclusive Zone" as proposed by the Commission (*i.e.,* 12 miles from the coastline);

- Gulf-based carriers could initiate service, discontinue service or reinitiate service to particular platforms at any time in the Gulf, subject only to frequency coordination obligations in the Coastal Zone;

- operations in the Coastal Zone would be limited to Gulf-based carriers and land-based carriers with systems operating on the Gulf Coast, and unserved areas in the Gulf would not be licensed via competitive bidding.

ALLTEL submits that its proposal would effectively resolve the current problems facing Gulf and cellular carriers. As discussed below, important public interest benefits are served by this proposal.

## IV. ALLTEL'S PROPOSAL WOULD SERVE THE PUBLIC INTEREST

The ALLTEL approach will facilitate the more expeditious and ubiquitous deployment of service coverage in coastal areas, through the extension of existing facilities from both adjacent land-based service areas and the Gulf Exclusive Zone. Importantly, the proposal addresses the concerns raised by the D.C. Circuit by affording Gulf-based carriers greater flexibility to deploy and provide service throughout the Gulf. Furthermore, land-based carriers will receive the flexibility to extend contours out into the Gulf up to the limit of the Coastal Zone, which will permit them to maintain necessary signal strength over land to provide reliable service, including 911 service, at the coastline.[22]

---

[22] The Commission has already adopted a similar approach for water areas other than the Gulf of Mexico, such as the Great Lakes. *See Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183, 7185 ¶ 12 (1992) (determining that, due to anti-trafficking considerations, "the public interest will be better served if we establish that cellular service in water areas other than the GMSA may be provided only by expansion of the adjacent land-based systems").

### A. ALLTEL's Approach Allows for Deployment of Ubiquitous and Reliable Service to Land-Based Customers in Coastal Areas and Into the Coastal Zone

The record in this proceeding clearly demonstrates that the vast differences in RF propagation characteristics and the economics of service provision between water and land-based cellular carriers *cannot* be rationally reconciled by establishing a Commission-defined border at the shoreline.[23] Further, the economics of Gulf-based service militate against maintaining the current rules which restrict land-based carriers' ability to serve their land-based customers in coastal regions, and which enable Gulf-based carriers to disrupt the expansion of land-based operations with impunity.[24] Land-based customers expect to receive reliable service in coastal areas at reasonable rates; this is not happening under the current regime. Clearly, the public interest is best served by enabling the licensees authorized to serve land-based customers the ability to provide such service.[25]

To confirm, the Commission has always intended that its cellular licensing scheme facilitate the deployment of terrestrial systems by land-based carriers and offshore services by the Gulf carriers.[26] However, the Commission is aware, there are numerous population centers and

---

[23] *See* AT&T Comments at 2, 7-9; GTE Comments at 3-5.

[24] *See* 360 Communications Comments at 3-5.

[25] The Commission expressed concern in the Calling Party Pays proceeding that a calling party be provided ample warning that the rates charged for a call may be significantly higher than reasonably expected. *See Calling Party Pays Service Offering in the Commercial Mobile Radio Services, Declaratory Ruling and Notice of Proposed Rulemaking*, 14 FCC Rcd. 10861, ¶¶ 40-43 (1999). This concern is even more acute with respect to the surprise a land-based cellular customer receives when billed for roaming charges for a call made near the shoreline that is inadvertently (or otherwise) captured by a Gulf licensee. *See* AT&T Wireless Comments at 8; GTE Wireless Comments at 6.

[26] *See Petroleum Communications, Inc. and Gulf Cellular Associates, Order on*

(continued...)

highways on and along the irregular Gulf shoreline, many of which use cellular service for their onshore *and* nearshore recreational activities. As the record in this proceeding also indicates, many boaters in the Coastal Zone share a community of interest with these land-based systems and already rely on land-based carriers for their communications needs.[27] Again, the ability of land-based carriers to provide ubiquitous reliable service to their land-based subscribers in coastal areas is simply not feasible under the Commission's current rules.

### B. The ALLTEL Proposal Promotes Essential Public Safety Objectives

Land-based carriers' inability to deploy reliable service to land-based subscribers undermines the availability and reliability of 911 service to those subscribers, contrary to public interest considerations and the Commission's objective of promoting the wide availability of such services.[28] The Commission has stated its "belie[f] that [it] should pursue whatever approach efficiently and effectively helps improve the ability of wireless phones to contribute to

---

[26] (...continued)
*Reconsideration*, 2 FCC Rcd. 3695, 3696 ¶ 12 (1997) ("our concern that land systems be free from Gulf system interference must include all land areas"); *id.;* Petroleum *Communications, Inc.*, 54 Rad. Reg. 2d (P&F) at 1025 ¶ 18; Not of Opportunity to Comment, report No. CL-5 (rel. Nov. 10, 1982) (considering issue of whether Gulf licensing scheme "would cause harmful co-channel electrical interference to land-based cellular systems and possibly preclude service to coastal areas," Commission found significant probability of such interference and required non-interference with land-based cellular systems).

[27] AT&T Wireless Comments at 4-5; BellSouth Comments at 8-9; GTE Comments at 5-6; Palmer Wireless Comments at 4.

[28] *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676, 18678 ¶ 1 (1996) (stating Commission objective "to foster major improvements in the *quality and reliability of 911 services* available to the customers of wireless telecommunications service providers" and that rules "reflect our longstanding and continuing commitment to *manage use of the electromagnetic spectrum in a manner that promotes the safety and welfare* of all Americans" (emphasis added)).

public safety"; ALLTEL respectfully submits that amending the rules as discussed herein will facilitate that objective.[29]

In this regard, it is the land-based carriers, not the Gulf-based carriers, who are making the investments needed to provide reliable 911 service and to deploy Enhanced 911 ("E-911") services to coastal areas. Land-based carriers are struggling to deploy ubiquitous cellular service in Gulf coastal areas and, in turn, 911 service, under the existing rules. Reliable 911 service is no less vital in coastal areas than inland; indeed, 911 services are critical for local authorities to respond to beach and offshore boat emergencies, and emergencies relating to natural disasters. In the hurricane-prone Gulf of Mexico, the availability of reliable services at the shoreline is particularly critical.[30] Without reliable land-based service in coastal areas, 911 services are inevitably compromised, contrary to the public interest.

For their part, Gulf carriers are apparently not as concerned with the importance of reliable and widespread 911/E-911 service response and PSAP involvement. For example, in its comments, PetroCom stated that:

> PetroCom routes no-charge 911 calls from any coverage area in the Gulf to the Coast Guard United States Search and Rescue Operations in New Orleans, which screens the calls and acts as a Public Safety Answer Point (PSAP). PetroCom believes that its current service meets the requirements for E-911 service in the Gulf, and requests that the Commission to so declare.[31]

---

[29] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Report and Order*, 14 FCC Rcd 10954, ¶ 89 (1999).

[30] *See* Comments of Palmer Wireless at 10 & Attachments (discussing problems associated with pullback of Mexico Beach site and public safety reliance on the site).

[31] PetroCom Comments at 21-22. In reply, Bachow/Coastel apparently concurred in PetroCom's comments. *See* Bachow/Coastel Reply Comments at 34.

ALLTEL submits that, given the importance the Commission has attached to the provision of E-911 service via a local PSAP, the Commission should act to ensure that land-based carriers' have the ability to expand their cellular service coverage -- and 911/E-911 service -- along the coastline. Otherwise, emergency help available along portions of the Gulf Coast may be routed to a single Coast Guard PSAP center, again compromising public safety.

Land-based carriers already have a presence in their respective markets and have established the relationships with state and local government agencies necessary to deploy E-911 services. Authorizing Gulf-based carriers alone the right to operate within the Coastal Zone adjacent to land will clearly undermine the ubiquity and reliability of wireless 911 availability along the Gulf Coast.[32]

### C. ALLTEL's Proposal Addresses the Court's Concerns by Giving Gulf-Based Carriers Added Flexibility in Their Provision of Service to the Gulf

ALLTEL has attempted to be even-handed and consistent in its approach -- indeed, both land- and Gulf-based carriers gain and lose something under this proposal. While Gulf carriers are no longer afforded full RF interference protection in the limited Coastal Zone, they may nevertheless continue to provide service under flexible parameters without fear of losing territory, and cellular licensees would be required to coordinate frequency use. This, in turn, responds to the D.C. Circuit's mandate by addressing Gulf carriers' particular service

---

[32] This reluctance to participate (and contribute) apparently extends to other federal and state regulatory programs as well. PetroCom, for example, also states that Gulf carriers should be exempt from contributing to federal universal service programs, a position in which Bachow/Coastel concurred. Bachow/Coastel Reply Comments at 34. Service to land-based subscribers -- which Bachow/Coastel apparently seeks to provide -- is an entirely different matter. Bachow/Coastel in Alabama, for example, would be providing, in many instances, interstate *and* intrastate services in direct competition with other wireless telecommunications carriers. The Gulf carriers would presumably seek exemption from state universal service programs as well, inconsistent with the dual federal-state universal service requirements imposed on all other carriers.

circumstances. Under the proposal, Gulf carriers have more flexibility in moving service sites to meet business requirements in areas throughout the Gulf.

In addition, while land-based carriers would be able to extend contours out into the Coastal Zone as needed them to maintain necessary signal strength to provide reliable service at the coastline, these carriers have no interference protection in the Coastal Zone and again must coordinate frequency use with the Gulf licensee. The land-based carriers must also accommodate the service rights of Gulf carriers.

### D. RF Propagation Characteristics Do Not Undermine Coexistence Between Land- and Gulf-Based Carriers in the Coastal Zone

ALLTEL's approach acknowledges the essential characteristics of RF propagation over the Gulf's water areas and permits carriers' systems to coexist in the Coastal Zone of the Gulf to allow the provision of ubiquitous and reliable service consistent with customer demand. The Commission proposal to grant exclusive service rights to one carrier does not acknowledge the propagation characteristics which affect service in the Gulf and, indeed, will perpetuate the significant RF interference and service disputes that have plagued coastal service to date.

ALLTEL's approach avoids these shortcomings. Land-based subscribers would be served by terrestrial cellular carriers; Gulf (Exclusive Zone) subscribers would be served by Gulf licensees; subscribers when in the Coastal Zone would be served by the system best and most efficiently positioned at the time to serve the subscriber within the Coastal Zone. The ALLTEL approach accounts for differing RF propagation characteristics affecting Coastal service while maintaining the legitimate service rights of land- *and* Gulf-based carriers.

### E. The Coastal Zone Should Not Be Subject to Competitive Bidding and ALLTEL's Proposal Avoids Mutually Exclusive Applications

Under ALLTEL's proposal, there is no need to open the Coastal Zone up to new applicants and no need for auctions and the attendant delays in licensing. In fact, the chances for mutually exclusive applications under ALLTEL's proposal would be exceedingly slim; a land or Gulf-based carrier would generally seek to provide service to an area adjacent to where it already provides service (or, for a Gulf-based carrier, to an area where it recently provided service).

Cellular service in and around the Gulf is sufficiently mature that licensing the Coastal Zone via competitive bidding will not facilitate the deployment of service to that area.[33] Indeed, separate licensing of the Coastal Zone, as proposed in the *Second FNPRM*, will perpetuate the significant RF interference conflicts discussed in the *Second FNPRM*. Avoiding this serious technical problem, to the extent feasible, is thus consistent with the public interest.

### F. The Proposed "Neutral" Coastal Zone Would Be Simple to Administer

ALLTEL's proposal is administratively easier to implement than the current regulatory regime and that of the *Second FNPRM*. Service would be expanded into the Coastal Zone through established and rational procedures. Unlike the current rules and the Commission's Phase II licensing proposal, whereby non-land based licensees would be authorized to serve up to the shoreline, the current proposal would allow land-based carriers the flexibility to serve land areas while permitting continued Gulf licensee service provision in the Coastal Zone. Any future disputes would generally be limited to frequency coordination disagreements in the Coastal Zone and such disputes would not impact the provision of service to land-based customers, unlike the current situation. Importantly, the ALLTEL proposal would remove the current economic

---

[33] *See infra* Section V.

motivation (and leverage) which has fostered intransigence on the part of some Gulf carriers with respect to coordination and service issues.

## V. THE COMMISSION HAS FULL AUTHORITY TO AMEND ITS CELLULAR RF INTERFERENCE REQUIREMENTS IN THE MANNER REQUESTED

The Commission has ample authority under Sections 303(f) and 303(r) of the Communications Act to adopt generally-applicable RF interference regulations that modify land- and Gulf-based cellular licensees' operations in the Gulf, consistent with the public interest. Section 303(f) authorizes the Commission to "[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act . . . ." In fact, Congress amended Section 303(f) in 1996 to authorize the Commission to mandate to make changes in the frequencies, authorized power, and the times of operation of any station without conducting a hearing.[34] Thus, the Commission has considerable discretion to address the problems of RF interference that have plagued the deployment of cellular services in the Gulf.

Furthermore, all licenses, including those granted to Gulf- and land-based licensees, are subject to the Commission's rules which, consistent with statutory and procedural safeguards, may be amended from time to time.[35] As the Commission has recently noted, notwithstanding the hearing provisions of Section 316, "[i]t is well established that licenses may be modified through rule making proceedings without affording parties an adjudicatory hearing, if the generic

---

[34] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[35] *See Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309 (D.C. Cir 1995); *Amendment of Section 97.1114 of the Amateur Radio Service Rules*, 59 Rad. Reg. 2d (P&F) 436, 437 (1985) (citing *Storer*).

rules otherwise are procedurally and substantively valid" and that the Commission need not hold a hearing "each time a licensee is directed to pull back authorized contour extensions."[36]

Finally, Section 309(j)(6)(E) provides that nothing in the Congress' grant of competitive bidding authority to the Commission is to "be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."[37] As the Commission has determined, Section 309(j)(6)(E) allows it "to determine the licensing approach that is most appropriate for the services being offered, taking into account the dominant use of the spectrum, administrative efficiency and other related licensing issues."[38]

ALLTEL submits that, given the maturity of cellular service in the Gulf and along the Gulf coast and the RF propagation characteristics affecting service in the Coastal Zone, a buyer of any separately allocated Coastal Zone cellular license would not acquire any meaningful Gulf service rights. Instead, the Commission would essentially create not only the attendant service

---

[36] *Amendment of Part 22 of the Commission's Rules to Provide For Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 12 FCC Rcd. 2109, 2127-28 ¶¶ 37, 38 (1997). As the Second Circuit determined in *WBEN v. United States*, with a rationale equally applicable to the situation before the Commission now:

> When, as here, a new policy is based upon the general characteristics of an industry, rational decision is not furthered by requiring an agency to lose itself in an excursion into detail that too often obscures fundamental issues rather than clarifies them.

396 F.2d 601, 618 (2d Cir.), *cert. denied*, 393 U.S. 914 (1968).

[37] 47 U.S.C. § 309(j)(6)(E).

[38] *Amendment of the Commission's Rules Regarding Multiple Address Systems, Report and Order*, WT Docket No. 97-81, FCC 99-415, ¶ 12 (rel. Jan. 19, 2000).

disputes and interference complaints, but risk creating a group of "nuisance" licensees with little incentive (or ability) to deploy service to the Coastal Zone and every incentive to disaggregate slivers of their spectrum to adjacent land and Gulf-based carriers seeking to avoid harmful interference effects. In turn, service by land- *and* Gulf-based carriers would suffer, to the detriment of consumers.

By contrast, the various statutory objectives of Section 309(j)(3) -- rapid deployment of service to rural and underserved areas, efficient and intensive use of the electromagnetic spectrum, and the need to avoid unjust enrichment -- are well served under ALLTEL's proposal.[39] These factors clearly militate against the original *Second FNPRM* proposal, wherein the Commission is forcing a competitive bidding situation in the Coastal Zone, contrary to the public interest.

**CONCLUSION**

For the reasons discussed herein, the Commission should license cellular service in the Gulf of Mexico Coastal Zone as described in ALLTEL's proposal. Absent changes in the current regulatory regime, cellular customers in the land areas adjoining the Gulf will continue to suffer unreliable service and resulting harm to public safety. The ALLTEL proposal protects legitimate

---

[39] 47 U.S.C. § 309(j)(3); *see Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 17556, 17587-88 ¶ 66 (1999) (Commission "has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3)," citing *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997)).

service rights of both Gulf and land-based carriers. The Commission has full authority to adopt ALLTEL's proposal, and doing so will serve the public interest.

Respectfully submitted,

**ALLTEL CORPORATION**

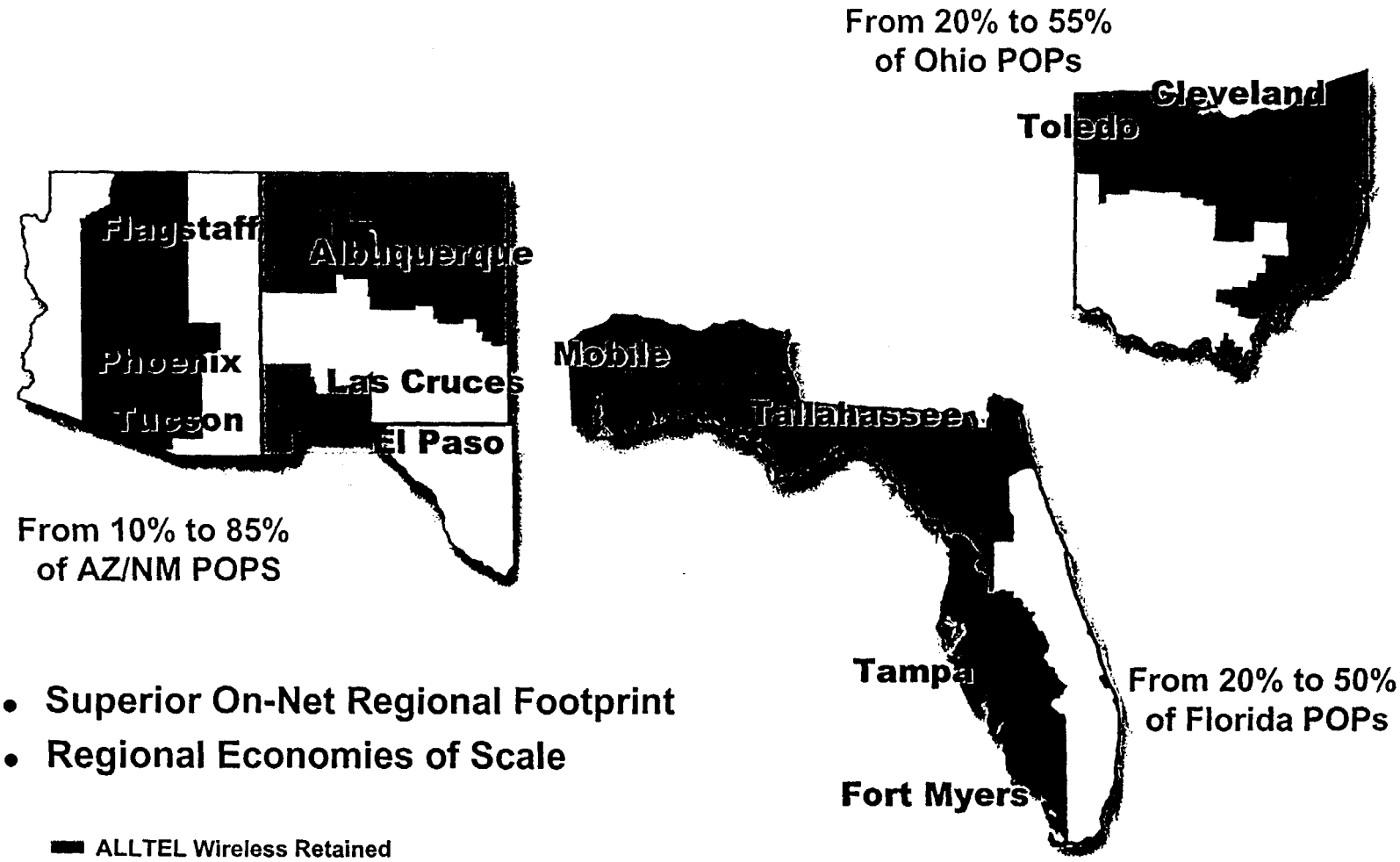
By: Glenn S. Rabin

Glenn S. Rabin
Assistant Vice President
Federal Regulatory Affairs
601 Pennsylvania Ave., N.W. Suite 720
Washington, DC 20004
(202) 783-3976

*Its Attorney*

May 15, 2000

# New Operating Clusters




- Superior On-Net Regional Footprint
- Regional Economies of Scale

ALLTEL Wireless Retained
ALLTEL Wireless Received