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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Competitive Bidding Rules to License Certain Rural Service Areas	)	**WT Docket No. 01-32**
	)	**RM-8897**

COMMENTS

Comes now Alee Cellular Communications ("Alee") and submits this its Comments in the above matter pursuant to the Notice of Proposed Rule Making ("NPRM"), released February 12, 2001.

In support, the following is respectfully shown:

Introduction

1. Alee Cellular Communications ("Alee") was picked as the tentative selectee in a lottery conducted in 1992 with respect to the Texas 21 market identified in the NPRM as one of the four (4) markets that remains unlicensed. After selection, Alee, pursuant to the then existing rules perfected its application by submission of the required information. The application, as amended, remained pending until dismissal by the Commission by Order, DA 99-814 (rel. April 29, 1999). The Commission subsequently reinstated the Alee application recognizing that Alee had been named the tentative selectee in the 1992 RSA Lottery. See Order on Reconsideration, DA 99-1426 (rel. July

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21, 1999). The Alee Texas 21 application was again dismissed by Order, DA 00-276, (rel. February 15, 2000), wherein the Wireless Telecommunications Bureau argued that Alee was unfit to be a licensee in the Texas 21 market because of the disposition with respect to Alee's authorization for New Mexico RSA 3. See Algreg Cellular Engineering, 14 FCC Rcd. 18524 (1999). Alee filed a Petition for Reconsideration of the February 15, 2000 dismissal on March 16, 2000. That Petition remains pending.

Texas 21 Should Be Deleted From Auction

2. It is Alee's position that inclusion of the Texas 21 market in any auction that may be conducted is premature. As argued in its Petition for Reconsideration, the Texas 21 application must be evaluated independently of the ultimate disposition of the New Mexico RSA 3 proceeding. Alee is entitled to a hearing on the merits in the Texas 21 matter if the staff cannot make a determination based upon the facts before it in the application now pending that grant of that application is in the public interest. The allegations with respect to the New Mexico authorization do not necessarily pre-determine the disposition of the Texas 21 application.

3. As the Commission has recognized, the Texas 21 matter remains pending. There has been no final determination with respect to the rights and claims of Alee in connection with its Texas 21 application. Therefore, the Texas 21 market should not be included in the auction proposed in the NPRM pending final disposition of Alee's claims now pending before the Commission. To do so, adds complexity to an already complex situation. [1/]

[1/] As recognized in the Notice of Proposed Rule Making, there is an interim operation in the Texas 21 market. The public is therefore being served.

4. In the alternative, if the Commission is not willing to delete the Texas 21 market from any auction at this time, it should be made clear in future notices concerning the auction that the Texas 21 market is subject to pending legal proceedings. Any award pursuant to any auction is subject to the final disposition of the Alee claims by the Commission and ultimately the courts. The high bidder with respect to the Texas 21 market will take that market subject to the disposition of Alee's claims. Should Alee be vindicated either at the Commission or in the courts, its rights to the Texas 21 market must be recognized. The auction winner's claim by necessity must be conditioned upon the outcome of the Texas 21 proceeding.

Conclusion

In conclusion, Alee urges the Commission to delete the Texas 21 market from any future auction pending final disposition of its legal claims. In the alternative, the Commission must make it clear that the auction win with respect to Texas 21 is conditioned upon and subject to the final outcome of Alee's legal proceedings before both the Commission and the courts.

Respectfully submitted,

ALEE CELLULAR COMMUNICATIONS

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Dated: March 19, 2001
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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 19th day of March 2001, the foregoing **COMMENTS** were served on the following person **By Hand**:

Katherine M. Harris
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Gladys L. Nichols

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