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ML
myers lazrus technology law group
1990 M Street, NW, Suite 200
Washington, DC 20036
(202) 296-0626
Fax: (202) 296-1680
www.myerslazrus.com

Richard S. Myers

Jay N. Lazrus
Also admitted to Maryland

James J. Keller
Consulting Engineer

Writer's e-mail:
myers@myerslazrus.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 27, 2001

VIA HAND DELIVERY
Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: **PETROLEUM COMMUNICATIONS, INC.**
Ex Parte Presentation
Gulf of Mexico Cellular Rule Making Proceeding
WT Docket 97-112; CC Docket 90-6

Dear Ms. Salas:

On behalf of our client, Petroleum Communications, Inc. ("PetroCom"), we are submitting this letter in response to the 210-page written ex parte presentation filed by Alltel Corporation ("Alltel") on February 27, 2001 in the referenced proceeding.[1]

To reach the best decision, it is essential that the Commission be clear on the proper issues to address in this proceeding. There are only two such issues: (1) whether reliable, seamless cellular coverage exists along the Gulf coastline; and (2) whether unauthorized subscriber capture is occurring. These issues present factual questions that turn on the record evidence. The answers to these questions, based on the record, should be determinative of what, if any, rule changes the Commission should adopt.

A topic not properly addressed in this proceeding is the structure of Gulf carriers' rates.[2] The rates of a licensee in the Commercial Mobile Radio Service ("CMRS") are not subject to the rule making process as

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[1]An original and four copies of this letter (two copies for each referenced docket) are being submitted. References to Alltel's presentation herein will cite "Alltel" followed by page numbers. On April 9, 2001, Alltel filed a letter with the Commission reporting that an oral ex parte presentation was made in this proceeding to the Commission's staff on April 6. Alltel's letter did not include a memorandum summarizing the presentation as required by the ex parte rules. PetroCom has requested Alltel to supply that memorandum.

[2]*See, e.g.*, Alltel, p. 6.

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a matter of law.[3] Gulf carriers have no burden in a rule making to justify their charges as Alltel suggests.[4] This is not a rate prescription proceeding, nor is it a comparative proceeding to pick the "best" carrier as Alltel suggests.[5] Rather, the focus of this proceeding is on two issues – whether there is reliable, seamless coverage and whether there is a problem with unauthorized subscriber capture. As shown below, Alltel has grossly exaggerated the "conflict" between the Gulf and land carriers in order to create problems where none exists.

Reliable, seamless coverage exists. Reliable, seamless coverage exists under the current rules on the Western side of the Gulf, a fact the land carriers have failed to disprove with real world evidence.[6] Alltel acknowledges that this coverage is the result of co-location agreements PetroCom has achieved under the current rules.[7] As Alltel even admits, the only exceptions are Florida, and Mobile Bay on Western side where the B-side carriers (Alltel and Bachow/Coastel) cannot get along.[8]

Alltel fails to produce any evidence that, *in reality*, the land carriers' signals are too weak to serve customers on shore. To begin with, most of the Gulf coastline is sparsely populated, a fact Alltel ignores.[9] Alltel asserts that the change from a 39 dBu to a 32 dBu signal contour has reduced land carriers' signal strengths such that service to hand-held mobiles on land "has been compromised and reliable service in *many*

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[3]*See*, Communications Act of 1934, as amended, 47 U.S.C. §151 *et seq.* A rule making cannot be used for rate regulation, including rules intended to reduce the area in which a particular carriers' rates would apply through adoption of a "zone" for that purpose. Section 303 of the Act does not give Commission the rate regulation authority Alltel claims. *See* Alltel at n. 8.

[4]Alltel, p. 6. Nonetheless, PetroCom has shown the high costs of operating a cellular system in 86,000 square miles of water that translate into rates that are higher than those for land-based systems. *See* PetroCom's Letter To Magalie Roman Salas (March 1, 2001), at p. 3. Given that this rule making is not (and cannot be) a CMRS rate prescription proceeding, roaming rates charged to boat traffic are non-determinative in this proceeding. *See* Alltel, p. 7.

[5]*Id.*, p. 1.

[6]*See* PetroCom's January 8, 2001 ex parte presentation at Attachment 1 (summary of record evidence). Alltel's February 27 presentation did not challenge the accuracy of this summary.

[7]Alltel, p. 12.

[8]*Id.*, p. 10.

[9]Alltel claims there is a substantial aggregation of subscribers at the Gulf market boundary where beachfront "in many areas" serve as resort locations. Alltel, p. 4. The Western side of the Gulf, in fact, is sparsely populated in most areas. *See* PetroCom's March 1 letter at p. 3. The demographics submitted by Alltel were limited to Gulf Shores and Orange Beach, Alabama, communities with a combined number of households of only about 4,300, and a combined number of hotel and motel rooms and condominium units of about 11,000. *See* Alltel at Attachment 2.

coastal areas cannot be provided [...][Emphasis added]"[10] Alltel never describes where these "many" areas actually are. The drive test conducted in the Dennis Study, discussed *infra*, shows that land carriers have a stronger signal than the Gulf carriers along the coastline. In contrast, no real evidence supports Alltel's claims. The Commission therefore should reject them.[11]

Alltel produces no evidence of subscriber capture. Alltel supplies no evidence that Gulf carriers are even capturing land carrier traffic, let alone that they are trying to "leverage rates" as far onto land as possible for that purpose. Other than referring to its back-and-forth battle with Coastel, Alltel cites no facts to support its claim of the Gulf Carriers' "overt attempts to capture land-based traffic" or demands for "excessive compensation for consent to contour overlaps."[12] PetroCom certainly does not attempt to "leverage rates" as Alltel claims. The Dennis Study, the only real world study submitted in this proceeding outside Mobile Bay, shows that such unauthorized capture is not occurring.

The Dennis Study. Conducted in 1998, the Dennis Study showed that the land carriers have the stronger signal along nearly 70 miles of drive-tested coastline in the Galveston area.[13] Alltel ignores what gave rise to the Dennis Study in the first place: GTE's November 18, 1997 ex parte presentation included a theoretical study claiming that the Gulf Carriers' signals capture the land carriers' traffic. GTE used the Galveston coastline as its example. The Gulf carriers tested GTE's claim in the real world by measuring signal strengths in and around Galveston. The Dennis Study's conclusions – never challenged until now – were that: (1) there was no indication that Bachow/Coastel could ever capture any cellular customers operating either mobiles or portables along the beach; and (2) the only place where PetroCom appeared to be the best server was an area operated under a negotiated contract with the land carrier.[14]

Alltel waited three years to address the Dennis Study, and then only quibbles about it. The 1991 data and that obtained from the (1992) Flagship Hotel test were described in the "Background Information" section of the Dennis Study. The 1991 and 1992 data are not the core of the study. Contrary to Alltel's assertion, the Dennis Study did indicate what the 1991 and 1992 data demonstrate: "that GTE is the 'best server', i.e. the carrier with the greatest signal strength, for as much as 20 kilometers off the Texas shoreline and presently averages about 15 kilometers offshore."[15] The study further stated that this conclusion was even shown *in a*

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[10] *Id.*, p. 5.

[11] *See Aircell, Inc.*, 15 FCC Rcd 9622 (2000)(rejecting carriers' assertions that lack foundation in credible evidence).

[12] *Id.*, p. 7.

[13] A copy of the Dennis Study was submitted as Attachment 3 to PetroCom's January 8 ex parte presentation.

[14] *Id.* ("Summary").

[15] *Id.*, (first page "Background Information").

coverage plot prepared by GTE, a copy of which included as Exhibit II to the Dennis Study. Remarkably, Alltel does not even attempt to challenge that conclusion based on GTE's own exhibit. Instead, it nitpicks. It claims that the Exhibit I plot of the Flagship Hotel data shows Bachow/Coastel as having the stronger signal "within the first two miles."[16] Actually, the exhibit shows that this distance is closer to the first mile, not two miles. But the purpose of the Flagship Hotel test was just that – a test of a land site for a Gulf carrier. This 1992 test corroborates the 1998 test drive data showing that land carriers have the stronger signal along the coastline. If Alltel believes that "the test and data are simply stale" then it and the other land carriers can take and submit their own real world measurements. They have not done so out of fear of obtaining the same results of the Dennis Study that disproves any coverage or capture problem exists.

Alltel criticizes the Dennis Study for not accounting for "every situation...along the entire market border," without challenging that study's basic conclusion that land carriers have the stronger signal.[17] It quibbles about one small line of the plotted B-side data of Coastel's signal at Exhibit IV that the study clearly explains represents re-use of a control channel by a land station. Alltel fails to explain how this data renders the study or its conclusions "generally suspect." Alltel raises no challenge to the equipment or methodology used in the study, only that "the data has never been fully reduced and submitted to the Commission."[18] Of course, aside from not even addressing the Dennis Study for the past three years since its initial submission, Alltel has not conducted and submitted its own real world study anywhere except for Mobile Bay.

Alltel claims that the tested drive route "is largely (except for Galveston) along a highway and not the beachfront" and that "[f]or much of the route, there are contiguous buildings between the road and the beach that effectively shields [sic] the test equipment from Gulf originated signals."[19] Alltel is not specific about how much of the drive test route it claims would have be shielded, but it certainly was not all of the route. Alltel acknowledges that Galveston would be excepted from the shielding effect. For this high population center, *the test route was adjacent to the beach.* The test route also included the ferry crossing to Galveston Island. The Dennis Study concluded for these areas, where Alltel agrees no shielding of the Gulf carriers' signals exists, that the land carriers' signals were dominant, like all other areas of the test drive except where an agreement was in place. This conclusion, based on real world measurements, rebuts GTE's earlier claim (based on theory) that the Gulf carriers are capturing land-based traffic.

Alltel fails to explain why, even assuming that Gulf carrier signals are stronger (which they're not), antenna system designs (e.g., downtilt antennas) and microcells could not be implemented as a solution, just

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[16]Alltel, p. 11.

[17]*Id.*

[18]*Id.*, p. 12.

[19]*Id.*

as other land carriers do in adjacent land markets using extension agreements when necessary.[20] Alltel oddly seems to fear that the B-side land carrier in Galveston "had (and may continue to have)" SAB overlaps into the Gulf while acknowledging that these overlaps "have either been agreed to on a reciprocal basis or otherwise been the recipient of the Block B Gulf licensee's acquiescence."[21] In essence, Alltel concedes that the Dennis Study shows there is seamless coverage along the Texas coastline. It is hard to see how this situation adds up to a case for changing the status quo in any major way.

Contrary to Alltel's assertions, there is no evidence that existing SAB overlaps would be threatened under the current rules. First, Alltel relies on simple generalities with no reference to any specific overlap that it claims the Enforcement Bureau's decision puts in danger. Second, PetroCom's agreements with land carriers that permit such extensions is proof that the current rules work. Alltel's logic for changing those rules just doesn't make sense. Why change rules that have created the very thing Alltel desires? The answer is that Alltel desires much, much more than what all other adjacent cellular carriers receive under the rules. Alltel wants rules that will allow it to simply grab 10 miles of service area from the adjacent carrier in the guise of a "neutral zone."

With the sole possible exception of Mobile Bay, nothing backs up Alltel's fear of the current rules. Alltel submits no facts showing that SAB extensions even exist that Gulf carriers could force to be pulled back.[22] Alltel's criticism of Coastel's negotiating tactics when it comes to extension and roaming agreements simply shows how these parties again have dragged their isolated Mobile Bay dispute into this rule making.[23] Likewise, nothing backs Alltel's assertions about a "flood of litigation" that will be created if current rules are kept.[24] The only flood of litigation is the one created by Alltel and Coastel. Its dire prediction of "massive litigation" if the current rules are kept is mere hyperbole.[25] The current rules have been in place for years. If such "massive litigation" ever were going to happen, it would have happened already. But it hasn't happened, except in one case, Mobile Bay.

Alltel fails to show that land customers actually suffer from any problem due to the weak signal strength it alleges. It provides no real world evidence of any coverage problem except in Mobile Bay. Alltel's own

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[20]Alltel claims that, even with a doubling of power of land sites, signal strength at the coastline would only be slightly higher and not high enough to provide sufficient signal strength to a hand-held mobile. Alltel provides no analysis to support that conclusion. Alltel, p. 13.

[21]Alltel, p. 11.

[22]*Id.*, p. 8. PetroCom, even if it had leverage to "force" pullbacks of contour extensions, does not take such an approach in dealing with its neighbors.

[23]*Id.*, p. 12.

[24]*Id.*, p. 8.

[25]*Id.*, p 15.

words prove that the issue it raises is isolated to "areas of the Gulf such as Mobile and the Florida Coast."[26] Alltel's claims about "the accuracy of Coastel's representation" concerning coverage of its VK-124 site merely reflects the further bickering between these two carriers over Mobile Bay. The Mobile Bay dispute is not enough to justify a radical overhaul of the rules covering all carriers in the entire Gulf.

Alltel cites a $700 roaming bill received by a Texas B-side customer.[27] That bill lacks detail to be useful evidence. There is no indication where that customer was when it received those charges. Nothing supports Alltel's conclusion that the bill is evidence of "Gulf-based capture on land" since it is unknown whether the customer was on shore or in Gulf waters. Alltel argues that the bill is a "reminder that, even where reached, agreements between Gulf-based and land-based licensees...can still be a bad deal for the customer." This argument appears disingenuous because it was a B-side customer that received the bill while the co-location agreements in place, to the best of PetroCom's knowledge, are A-side agreements. Other than the one customer Alltel picks out, there has been no specific showing of customer complaints other than in Mobile Bay and Florida.[28]

Despite having nearly four years to put real world evidence of a problem into the record, the land carriers keep recycling the same three items that represent the totality of the coverage and capture "problem" on the Western side of the Gulf: (1) Mobile Bay (a dispute limited to Alltel and Coastel, both of whom appear to leverage their failure to reach an agreement in a way that compromises a commitment to serve the public); (2) a test at one point on Galveston Island at the market boundary where three "practice" land-based E-911 calls set up on the B-side Gulf carrier's system, and (3) a single customer who generated a single large roaming bill (though the record is murky as to whether this even shows a capture issue).[29]

These "problems" fall far short of demonstrating that the current rules do not work to provide reliable service in the Gulf. There is no evidence in the record, for example, that the public in Mobile Bay is unable to find service with the another cellular, PCS or ESMR carrier. There is no evidence of someone making an actual emergency call on land and being captured by a Gulf licensee. There is no evidence as to whether roaming customer was captured by the Gulf system on land, how the matter was resolved, or whether the problem reoccurred. The land carriers simply are using this rule making to conjure up claims unsupported by facts in an effort to grab service area away from the Gulf carriers.

It astounds us that Alltel attempts to seriously claim that the A-side data of the Dennis Study "is generally immaterial inasmuch as Petrocom has successfully negotiated a limited number agreements governing

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[26] *Id.*, p. 5.

[27] Alltel, p. 12.

[28] *Id.*, p. 15.

[29] See, GTE Supplement Reply Comments, May 30, 2000, at pp. 3-12; Ex. A-B.

contour overlap."[30] The whole point of this rule making is to determine whether the existing rules should be changed. Alltel admits that PetroCom and A-side land carriers have successfully made the existing rules work. It is indeed puzzling how Alltel can think that such facts are immaterial.

PetroCom has dealt reasonably with its neighbors, consenting to necessary, reasonable extensions required by land carriers to serve their subscribers, including in areas where PetroCom has no operations. The fact that PetroCom may have no platforms east of Mobile Bay certainly does not mean that the coastline there is "unserved" as Alltel asserts.[31] No evidence is provided that cell phone users cannot receive service in the coastal area east of Mobile Bay. There is no evidence that the A-side land carrier serving that area has even requested PetroCom's consent to an extension for that purpose.

The Calkins Study. Alltel does not support its argument with real world evidence of a problem, but only submits the theoretical Calkins Study.[32] If there truly was any kind of serious coverage or capture problem, the land carriers would have been complaining about that long before this rule making ever began. They would not have relied on theory, but on real world evidence that their customers were not being served and/or were being captured by adjacent carriers..

The Calkins Study relies on a set of calculations to support the conclusion that land carriers require up to an *additional -34.6 dB* of signal strength in the Gulf over and beyond what is generated by the 32 dbu Carey formula to generate a signal strong enough to provide service to customers at the coastline boundary.[33] Calkins accomplishes this by stacking his study with assumptions (described below) designed to provide reliable service in a worst case scenario, without even quantifying how often that scenario would occur. One of the Calkins assumptions, derived by Bell Labs in 1979, is an 18 dB margin for acceptable audio, almost *double* that which is assumed for a Carey 32 dBu service contour based on 12 dB SINAD.[34] For reliable mobile and portable coverage, Calkins adds another 5 dB of local clutter loss "to represent the general case of a mixed open/suburban environment," another departure from Carey.[35] No particular reason is given for choosing 5 dB rather than a different figure. For calculating reliable signal strength for portable in-building overage,

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[30] *Id.*, p. 12.

[31] *Id.*, p. 9.

[32] *Id.*, Attachment 1 (Calkins Study).

[33] Calkins Study, p. 17 (Alltel Attachment 1).

[34] *Id.*, p. 14, 17. The Calkins calculations add this 18 dB margin for acceptable audio based on the assumption that "a margin for ambient noise was intentionally omitted," presumably by the Commission in the Second Report and Order in CC Docket 90-6, "to represent a rural environment, in keeping with the Carey procedure and the focus of the Unserved Area proceeding on Rural Service Areas." *Id.*, p. 13. No reference to the Second Report and Order supports that assumption.

[35] *Id.*, p. 14-15, 17.

Calkins assumes 13 dB as "typical" for building loss, citing a 1996 study.[36] The problem with such assumptions is that Calkins makes no effort to corroborate them with the actual experience of Alltel or any of the other land carriers claiming that their signals are too weak. No discussion is given to the use of in-building cell extenders, for example, that can correct such signal loss. Instead, merely by using different assumptions favorable to land carriers, Calkins Study is able to claim, in theory, that land carriers need signals that are between *-21.6 dB and -34.6 db stronger* than those provided by the Carey rules in order to serve hand-held portable phones.

The Calkins formula for defining service contours should apply everywhere if it applies at all. Yet Calkins makes no attempt to show that there have been any serious problems *anywhere* over the past decade using the 32 dBu Carey formula. Calkins and Alltel fail to meet the initial threshold requirement of showing that there is an actual, real world need to change the current formula in any way, let alone to overhaul it completely. The Gulf rule making is not the place for the Commission to overhaul the Carey formula, and certainly not on the basis of the record in this docket. The Calkins Study acknowledges that "[r]adio propagation over land is an extremely complicated subject on which great effort has been made to reduce complicated probabilistic variables to a few simple fade margins...."[37] This is even more reason why field test data should be used to verify the purely theoretical conclusions it reaches.

The Calkins Study attempts to buttress its conclusions by asserting that land carriers need a stronger signal in the Gulf because of differences with equipment and environment.[38] Such differences are not unique. Adjacent land markets can be separated by valleys, rivers, trees, buildings, highways and populations, creating different kinds of customer equipment profiles (e.g., mobile car phones versus portable hand-helds) and differences in the attenuation of signal at the market boundary. In such situations, adjacent licensees negotiate SAB extensions or dual licensing arrangements in order to serve their respective customers in differing environments. The default values in the land formula can result in extensions into adjacent land based systems even with the use of microcells and downtilt antennas. But such extensions are routinely dealt with by adjacent market licensees through negotiated agreements. Neither Alltel nor the Calkins Study provide any basis for treating licensees in the Gulf any differently. The fact that PetroCom has reached numerous extension and co-location agreements is conclusive proof that the existing rules work effectively in the Gulf.

Calkins merely brushes aside microcells as "not a solution."[39] The rules do not allow microcells only "in the context of unserved area filings" as Calkins seems to suggest.[40] Calkins claims that "[e]ven assuming the rules were changed to better reflect microcell performance, the cost of implementing microcells over a long

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[36] *Id.*, p. 15, 17.

[37] *Id.*, p. 12.

[38] *Id.*, p. 1.

[39] *Id.*, p. 9.

[40] *Id.*

coastline would be exorbitant."[41] That claim, too, is unfounded. A lot of the coastline on the Western side is swamp. Obviously, land carriers would not be placing microcells there. Instead, they would place microcells where they actually may need them, for example, in a resort area. The price would not be "exorbitant" as Calkins claims. Such exaggeration is merely a cover for the land carrier's ambition to take 10 miles of service area away from Gulf carriers.

Calkins attempts a "rebuttal" of Centennial's letter that endorsed co-location agreements between land and Gulf carriers. Calkins claims that the area of Centennial's operations does not "fit a general case for the Gulf Coast" because it is "swamp with few inhabitants or recreational areas."[42] Calkins claims "[i]n other areas of the Gulf, the coastline frequently has a high aggregation of residential and recreational population, resulting in the likelihood of a large degree of capture by the Gulf carrier."[43] This is another exaggeration. If anything, the Centennial market is the norm on the Western side of the Gulf, not the exception. PetroCom's co-location agreements with other carriers in Texas prove that. There is no "large degree of capture by the Gulf carrier" of land carrier customers, or even a "likelihood" of it. The Dennis Study proves that. If such capture was occurring, the land carriers would have complained about it a long time ago. Now, instead, they conjure up problems they solve by grabbing service area from other carriers.

The Calkins Study's criticism of the PetroCom/U.S. Cellular proposal is also flawed. Calkins claims that the proposal will add "routine subscriber capture by Gulf carriers to the existing problem of inadequate signal strength."[44] Aside from the record evidence conclusion that land carrier signal strength is not inadequate to begin with, it is hard to understand how there could be "routine" capture by one carrier of another carrier's customers if their signal strengths are equalized. Calkins asserts that using the same land SAB formula at the shoreline would result in "guaranteed subscriber capture by the Gulf carrier in the Land carrier's 'protected market.'"[45] This assertion simply ignores the key concept of the PetroCom/U.S. Cellular proposal that allows for equalizing signal strength at the boundary no matter what the formula may show. In fact, a key benefit of the PetroCom/U.S. Cellular proposal is that it eliminates even the possibility of "routine" subscriber capture.

The Calkins Study ends up contradicting itself. One the one hand, it claims that the concept of equalizing signal strengths cannot be implemented in the Gulf.[46] On the other hand, it creates its own theory for creating a "best server" line that separates the protected markets "to ensure that the proper carrier will

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[41] *Id.*, p. 10.

[42] *Id.*, p. 8.

[43] *Id.*

[44] *Id.*, p. 6.

[45] *Id.*, p. 7. Calkins' criticism of the use of the land SAB formula for land and Gulf carriers glaringly ignores the equal signal strength aspect of the PetroCom/U.S. Cellular proposal.

[46] *Id.*, p.7.

typically be the best server in their own market."[47] The bottom line of the Calkins Study, that only the Alltel proposal will solve the coverage and capture issues claimed by the land carriers, is flat wrong. Indeed, as shown below, adopting Alltel's proposed neutral zone based on the Calkins Study is the Commission's worst option.

The goals of this rule making proceeding. The goals of this proceeding are:

1. Achieve reliable, seamless coverage along the coastal waters of the Gulf;

2. Achieve reliable, seamless coverage along the land area adjacent to Gulf coastal waters;

3. Minimize unauthorized subscriber capture;

4. Encourage competition to promote competitive rates;

5. Satisfy the Court remand; and

6. Satisfy the Regulatory Flexibility Act.

Four options. The record has developed to the point where four options are now before the Commission: (1) the status quo rules; (2) the PetroCom/U.S. Cellular proposal; (3) the Commission's "Coastal Zone" proposal; or (4) the Alltel "neutral zone" proposal. Given the complexity of this proceeding, PetroCom believes it is important to clearly articulate the criteria for selecting the best option.

Three criteria for selecting the best option. First, the best option should satisfy the above-stated goals in this proceeding. Second, it should maintain consistency with the Commission's philosophy of licensing cellular systems, long accepted in wireless industry to: (a) encourage licensees to work together to equalize signal strength at their boundaries; (b) help allow licensees to serve their subscribers at market boundaries; (c) promote competition without price regulation; and (d) promote the reduction of conflicts. Third, the best option should be the one best supported by the record evidence.

Option I: maintain status quo rules. Evaluated under the above criteria, the first option – maintaining the status quo rules – is the best one. The current rules generally work to satisfy the Commission's goals, because the record evidence shows they have resulted in reliable, seamless service along the coastal waters of the Gulf, and almost reliable, seamless service along the land area adjacent to the coastal waters.[48] Where such coverage does not exist on the Western side, it is due to a single, isolated business dispute between

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[47] *Id.*, pp. 5-6, and Appendix B, Plots 4 and 6.

[48] Even in Florida, land carriers routinely operate facilities serving coastal areas pursuant to special temporary authority.

the B-side carriers. The record evidence also shows that there is no problem with unauthorized subscriber capture. The record also shows that rates in the Gulf are higher due to the rural nature of the market and higher costs of doing business. In any event, they are not determinative in this proceeding. Morever, there has been no compromise in service to customers, even in the single area where the B-side carriers have a business dispute, because competing carriers are available to provide substitute service.[49]

Maintaining the status quo would satisfy the other goals of this proceeding. As Mobile Bay demonstrates, customers can switch to competing carriers under the current rules if other carriers cannot work together to serve the public. Coastel's proposed pricing to Alltel for co-location reflects rates that are competitive with PetroCom's.[50] Moreover, the land carriers have failed to meet the burden of showing a need to change in the status quo. Leaving the current regulatory structure unchanged thus satisfies the court remand that has maintained that structure.[51] Since maintaining the status quo creates no new adverse impact on small businesses like the Gulf carriers, that option also best satisfies the Regulatory Flexibility Act.[52]

The land carriers have not shown that the current rules are unfair. They have not shown, for example, that the rules result in the unauthorized capture of their customers. Nor do land carriers face more competition than Gulf carriers. Gulf carriers compete with each other and a host of other service providers, including satellite and microwave services. The amount of competition land carriers face is irrelevant to whether reliable, seamless cellular service is being provided under the current rules.

Alltel produces no evidence supporting its claim that the existing rules create adverse consequences to land carriers' incomes.[53] If anything, Alltel's presentations demonstrate that its neutral zone proposal is designed to shift revenue from small businesses to large businesses and to alleviate the burden of large businesses to deploy additional infrastructure, i.e., microcells. In any event, the alleged impact of current rules on the incomes of these Fortune 500 companies is no reason to change them, especially when the change proposed by Alltel would have an adverse impact on small businesses like the Gulf carriers, an impact the

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[49]Alltel has submitted evidence showing that B-side customers caught up in its Mobile Bay dispute with Coastel have simply switched to the A-side carrier. *See*, *e.g.*, Alltel at Attachment 4, page 2B.

[50]*See* Coastel's March 14, 2001 ex parte submission (revisions to Alltel co-location proposal).

[51]When the court remand occurred in 1994, there was no hue and cry by the land carriers for a change in the status quo. Only when the Commission requested comments in 1997 did they start making up problems in order to take service area from the Gulf carriers.

[52]The importance of the Regulatory Flexibility Act should not be underestimated, especially since Congress created a right of judicial review concerning agency violations of that statute. *See*, Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104-121 (March 29, 1996).

[53]Alltel, p. 7.

Commission is mandated by the Regulatory Flexibility Act to avoid. Alltel's real motivation is proposing is neutral zone is to obtain additional spectrum rights in a larger service area without paying for it.

In sum, the problem is not with the current rules, but with the current behavior of Alltel and Coastel in Mobile Bay. An isolated problem between two carriers does not justify changing the status quo based on the docket record. Maintaining the status quo therefore is the best option for the Commission in this proceeding.

Option II: the PetroCom/U.S. Cellular proposal. This option essentially gives land carriers the benefit of the doubt that a problem with the current rules even exists that requires fixing. Alltel misunderstands and distorts this proposal as it attempts to drive a wedge between carriers who have peacefully co-existed in the Gulf.[54] This proposal essentially codifies the equal signal strength principle, thus resolving disputes like Mobile Bay.

The PetroCom/U.S. Cellular proposal satisfies the goals of the rule making. Assuming there are actual problems with coverage or subscriber capture, it resolves them in a fair and appropriate manner by accounting for the differences between the Western side where Gulf carriers use moving platforms as transmitter sites, and the Florida side where there are no such platforms. This tailored approach, which provides Gulf carriers with *limited* reclamation rights that cannot impair a land carrier's service to customers onshore, thus satisfies the court's remand. The proposal also best minimizes any adverse impact of new rules on small businesses, thus satisfying the Regulatory Flexibility Act. It reduces conflict by permitting carriers to make adjustments necessary to equalize signal strength on a notification basis, rather than by agreement (for example in a case where two sides have become so polarized that they are unable to agree on anything).

Alltel criticizes the PetroCom/U.S. Cellular proposal for doing "nothing to equalize roaming rates for those on land captured by the Gulf-based system."[55] "Equalizing roaming rates" is not a subject the

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[54]For example, Alltel states that the PetroCom/U.S. Cellular proposal "fails to acknowledge any effect on coverage resulting from moving platforms." Alltel, p. 9. It escapes us how Alltel can make such a statement given that point 6 of the proposal provides that a land carrier *without consent* may serve areas beyond the coastline not being served by a Gulf carrier. It also *limits* a Gulf carrier's reclamation right in a manner that *guarantees* that the land carrier can *continue* to serve customers on shore with adequate signal strength. Another example of Alltel's distortions is the statement that the proposal "uses line-of-sight methodology not taking into account terrain obstructions." Alltel, p. 12. Such a distortion shows a lack of understanding of the PetroCom/U.S. Cellular proposal. Point 2 of the proposal permits a carrier to take measurements of signal strengths (that by definition takes into account terrain obstructions) at the boundary. Based on those measurements, a carrier can then equalize its signal strength on a notification basis not requiring an agreement with the other carrier.

[55]Alltel, p. 13.

Commission can address in this proceeding It is outside the scope of this, or any, rulemaking.[56] What the Commission should focus on instead is minimizing unauthorized subscriber capture if it believes capture problems even exist.

The PetroCom /U.S. Cellular proposal would extend land carrier boundaries 10-miles seaward on the Florida side of the Gulf while maintaining the status quo on the Western side of the Gulf. This proposal is based on the obvious fact that "[t]here are no oil rigs off the coast of the Florida Gulf..."[57]Assuming that there is an actual (versus "theoretical") problem, such a solution makes the most sense. That Coastel has not agreed to this solution is irrelevant. After the option of maintaining the status quo, the PetroCom/U.S. Cellular proposal is the best option.

Option III: the Coastal Zone. The Coastal Zone proposal would use the mechanism of auctions for dealing with potential unserved area for which new competitors could bid. All sides agree that this approach is problematic and likely to create more conflict and headaches for the Commission.[58] If the Commission's desire is to bring new competitors into the marketplace, PetroCom respectfully suggests addressing that subject in a separate proceeding that is not necessarily limited to the Gulf. More problematically, the proposal would not satisfy the court remand. The CGSAs of Gulf carriers in the Coastal Zone would be fixed by SAB contours that would be lost with platform movements, the court's central concern. Such a "move it you lose it rule" would have an unnecessary adverse impact on PetroCom as a small business when there are other ways to meet the goals of this proceeding. Implementation of the proposal will require a Section 316 proceeding and an evidentiary hearing since it would modify the Gulf carriers' licenses and diminish their existing interference protection rights. It is only the third best option after the options of maintaining the status quo and the PetroCom/U.S. Cellular proposal.

Option IV: Alltel's Neutral Zone. Alltel's neutral zone proposal, by far, is the worst option. Alltel distorts the consequences of its proposal by claiming that Gulf carriers would not be "frozen out" of the neutral zone[59] when extending land carriers' 32 dBu signal contours seaward 10 miles actually will obliterate Gulf

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[56]*See* n. 3, *supra*. Roaming rates are not equal around the country as Alltel's position would imply.

[57]Alltel, p. 5. Alltel misstates that PetroCom "is prepared to surrender the Florida Gulf." *Id.*, p. 6. The accurate statement of PetroCom's position is that it proposes to extend the coastline boundary 10-miles seaward on the Florida side of the Gulf as part of an 8-point proposal, supported by U.S. Cellular, that maintains the status quo on the Western side. Reflecting a compromise solution that appropriately deals with the issues based on the record evidence, the 8-point proposal is not severable. It thus avoids an outcome of an unlawful takings with respect to built-out infrastructure that PetroCom has already deployed in the Western side that has served customers for years without complaint.

[58]Alltel, p. 15.

[59]Alltel, p. 14.

carriers' coverage to their customers in this area. Alltel did not dispute PetroCom's claim made in Attachment 4 to its January 8, 2001 ex parte presentation that, with the adoption of a neutral zone:

> Contrary to appearances, the land carriers mostly will not rely on existing transmitters for beach coverage. Instead, with a "neutral" zone, they will install transmitters as close to the shoreline as possible, overpowering the Gulf carriers' transmissions, effectively taking the coastal zone for themselves – without compensating anyone. GTE (now Verizon), in its August, 1997 comments sums it up: "Using water propagation models, GTE believes that land-based transmitters can be configured to reliably cover a territory up to fifty miles from shoreline." A 10-mile "neutral" zone would give Verizon the green light to implement this plan.

If a land carrier could reliably cover 50 miles of water from the shoreline, there is no way a Gulf carrier could serve customers the same zone of water 10 miles out. The Gulf carrier will lose coverage and customers. Given the undisputed analysis of Verizon, a major proponent of the neutral zone proposal, Alltel claims about the benefits of that proposal to Gulf carriers are disingenuous.[60]

A neutral zone will eliminate the incentive for entering into co-location agreements. With the ability of transmitting high power signals into the Gulf beyond the coastline boundary without any agreement from a Gulf carrier, land carriers will have absolutely no incentive for entering into any kind of agreement with Gulf carriers. Alltel's vague reference to "grandfathering" existing agreements is no solace. These agreements, with limited durations, will not be renewed as land carriers capture the Gulf carrier's service area for themselves.

Alltel recently offered a co-location proposal to Coastel to resolve their dispute, contradicting the Calkins Study claim that co-location is not feasible under the current rules.[61] Alltel's actions belie its words that the current rules cannot and do not work. If that were true, why would Alltel offer co-location to Coastel?

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[60]Also questionable is Alltel's explanation of why it reduced its proposal to 10 miles. It states it did so because it agreed with the PetroCom/U.S. Cellular proposal for a 10-mile boundary extension on the Florida side. The reason for a 10-mile extension for Florida is that no platforms exist for Gulf carriers to use to serve coastal waters off Florida. That is not the case on the Western side of the Gulf where platforms and PetroCom's fully built infrastructure exists. There is no justification for a 10-mile neutral zone (or any size zone) on the Western side. The reasons stated for the land carriers reducing their proposal from 50 miles, to 12 miles, then to10 miles are set forth in Attachment 4 of PetroCom's January 8, 2001 presentation. It amounts to the land carriers reducing the size of the zone (all over water) to whatever they think they can hoodwink the Commission into giving them for free, an outcome where they can only gain something for nothing, and where they have absolutely nothing to lose.

[61]*Compare* Calkins Study, p. 6 ("Neither co-location, microcells, or 'signal balancing' when used with a shoreline market boundary will allow land carriers to adequately serve their markets.") *with* Coastel's March 14, 2001 ex parte submission (submitting co-location proposal received from Alltel, with revisions).

The current rules provide incentives for parties in the Gulf to reach agreements, just as they do for adjacent systems on land. If B-side carriers cannot agree, customers will simply switch to A-side cellular service or PCS. The current rules should be preserved, not destroyed, at the very least not on the basis of the record in this docket and the paucity of evidence supporting any need to change the status quo.

Calkins claims that the neutral zone will ensure that the proper carrier will typically be the best server in their own market.[62] First, despite the land carriers' *claims* to the contrary, currently the proper carrier typically *is* the best server in its market. Second, Calkins ignores what will happen in a "neutral zone": a war between carriers to capture traffic, with the winner at a given location being the carrier with the strongest signal. Despite attempts by Calkins and Alltel to gloss over this issue, land carriers will have the advantage in capturing neutral zone traffic. Calkins tries show how a Gulf carrier will be protected in its "Exclusive Zone" from "excessive" subscriber capture.[63] Apparently, while Alltel's proposal is vitally necessary to enable land carriers to avoid subscriber capture, it evidently doesn't matter that it will create significant subscriber capture of Gulf traffic in the "Neutral Zone" and merely avoid "excessive" subscriber capture in the "Exclusive Zone." If "routine" subscriber capture is a problem that requires a fix as Alltel claims, a fix that merely avoids "excessive" subscriber capture is no fix at all.

The differences between the PetroCom/U.S. Cellular proposal and the Alltel neutral zone proposal render their similarities insignificant. Alltel cites that both proposals use a 32 dBu contour formula.[64] The difference is that while the PetroCom/U.S. Cellular proposal fairly protects each carrier from subscriber capture interference by allowing them to equalize signal strengths at the boundary, the neutral zone ends up with land carriers simply grabbing service area away from Gulf carriers. The neutral zone proposal solves no problems and creates new ones. A new 10-mile seaward neutral zone boundary line would be drawn that a land carrier's 32 dBu contour could not cross. There will still be occasions for extensions over the new boundary (especially given the land carrier's capability of serving customers 50 miles seaward from shore sites), simply putting the parties back to where they started.

Nor does the proposal satisfy the court remand. It is a non-solution to the problem of accommodating platform movements, because it simply eliminates the Gulf carriers' ability to serve the 10-mile coastal waters in any meaningful way. There are better ways of achieving the goals in this proceeding that avoid the adverse impact of taking ten miles of service area along the entire coastline from two small Gulf carriers and handing it over to some of the biggest businesses on the planet. By creating a completely unnecessary adverse impact on small businesses when other alternatives better supported by the record are available, adoption of a neutral zone would raise serious issues of compliance with the Regulatory Flexibility Act.

The neutral zone would modify Gulf carriers' licenses and decrease the interference protection they now possess, thus requiring an evidentiary Section 316 proceeding. If ultimately sustained by the appeals court (a highly doubtful proposition), administering the neutral zone will create havoc as two carriers are permitted

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[62]Calkins Study, p. 5.

[63]*Id.*, p. 6.

[64]Alltel, pp. 14-15.

to offer service in a 10-mile wide service area on the same frequency block. The Commission should also carefully consider what kind of legal precedent a neutral zone would set. It would put the agency in the untenable position of intervening and adjusting its rules whenever a licensee claims that the current rules do not work and that it can provide service in another carrier's market at lower rates.

In conclusion, the neutral zone proposal satisfies none of the criteria for the best option for the Commission in this proceeding. Maintaining the status quo is the best option, and the PetroCom/U.S. Cellular proposal is the next best option. The Coastal Zone proposal is only the third best option after the PetroCom/U.S. Cellular proposal.

Respectfully submitted,

Richard S. Myers
Jay N. Lazrus
Attorneys for Petroleum Communications, Inc.

cc: David Furth
James D. Schlicting
Roger Noel
Lauren Kravetz