

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

In the Matter of:	)	
	)	
Application of	)	
ALEE CELLULAR COMMUNICATIONS	)	WT Docket No. 02-28
	)	
For Authorization to Construct	)	File No. 11025-CL-P-672-A-89
Nonwireline Cellular System in	)	
Texas RSA 21 Market 672A	)	
	)	

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To: The Honorable Arthur I. Steinberg  
Administrative Law Judge

APR 29 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION TO  
PETITION TO ENLARGE ISSUES**

Alee Cellular Communications ("Alee") by its attorneys, as provided for in §1.294(c)(1), submits this its Opposition to the Petition to Enlarge Issues ("Petition") by Ranger Cellular ("Ranger") and Miller Communications, Inc. ("Miller") dated April 16, 2002.

In support, the following is respectfully shown:

**Petition Procedurally Defective**

Ranger and Miller seek the addition of what their counsel characterizes as a "purely legal issue" requiring interpretation of the Balanced Budget Act of 1997. It is not an issue stemming from the character qualifications of Alee which arguably might relate to the issues specified in the Designation Order.<sup>1</sup> It is not a matter upon which Alee or anyone else can adduce evidence.

<sup>1</sup> Memorandum Opinion and Order, Hearing Designation Order and Notice of Opportunity for Hearing, FCC 02-36, released February 22, 2002.

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Ranger and Miller in essence are seeking reconsideration of the Memorandum Opinion and Order (“Order”), released February 22, 2002, in which the Commission granted in part, Alee’s March 16, 2002 Petition for Reconsideration seeking reversal of the Wireless Bureau’s dismissal of its Texas RSA 21 application.<sup>2</sup> The February 22, 2002 Order reinstated the Alee application and by the Designation Order, set it for a hearing to determine whether Alee possesses the requisite character qualifications to hold a Commission licensee.

Any petitions for reconsideration of the February 22 Order, to be timely as required by §1.106 of the Commission’s Rules, had to be filed by March 25, 2002, within thirty days of February 22, the release date of the Order. Further, such petition would be acted upon by the Commission, not the Presiding Judge.

Section 1.106(a)(1) of the Commission’s Rules permits reconsideration of an order designating a matter for hearing only to the extent that it relates to an adverse ruling with respect to participation in the proceeding which is not the case here.

Thus, the Petition to Enlarge Issues is procedurally defective and should be summarily dismissed.

**The Balanced Budget Act of 1997  
Does Not Preclude Grant of Alee Application**

Ranger and Miller argue that the Balanced Budget Act of 1997 unequivocally prohibits the Commission from issuing any license or permit after July 1, 1997 if such license or permit was the result of a lottery or random selection procedure.<sup>3</sup> Ranger and Miller provide no citation to any Commission or court case interpreting the Balanced

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<sup>2</sup> Id.

<sup>3</sup> Balanced Budget Act of 1997, Pub.L.No. 105-33, §3002(a), 111 Stat. 251 (1997), Codified at 47 U.S.C. §309(b)(5).

Budget Act of 1997 accordingly. We are left only with Miller and Ranger's distorted statutory interpretation.

As the Supreme Court has observed, the starting point in cases involving statutory construction is "the language employed by Congress."<sup>4</sup> Section 309(i)(5), provides that "[t]he Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997." The meaning is clear. It speaks to prohibiting the use of lotteries to grant licenses. In other words, lotteries cannot be used after July 1, 1997, for the issuance of licenses. It is simply not logical to read §309(i)(5) to prohibit the issuance of a license after July 1, 1997 that may have resulted from the selection of an applicant in a lottery that occurred prior to July 1, 1997.

Indeed, both the Commission and Congress have taken actions consistent with this interpretation. In the Algreg case in which Mr. Evans and Miller participated, the Commission granted at least four of the applications subject to the proceeding after July 1, 1997. In particular, the applications of EJM Cellular Partners for Market 721A and 596A, File Numbers 10116-CL-P-1-89 and 10567-CL-P-1-89 were granted on October 21, 1997. The application of Bravo Cellular for Market 576A, File Number 10673-CL-P-1-89, was granted November 6, 1997 and the application of Centaur Partnership, Market Number 631A, File Number 10720-CL-P-1-89, was granted January 7, 1998.<sup>5</sup>

Further, Congress itself in the District of Columbia Appropriations Act of Fiscal Year 2001, required the Commission to reinstate three RSA lottery winners and proceed

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<sup>4</sup> CBS, Inc. v. FCC, 453 U.S. 367, 377 (1981), quoting Reiter v. Sonotone Corporation, 442 U.S. 330, 337 (1979).

<sup>5</sup> Miller did not object to these grants. Indeed, after being paid off, Miller withdrew all objections and agreed to forebear from interfering in any way with the disposition by the Commission of the applications. See Order In Re Applications of Bravo Cellular, et al., DA-99-1227, released June 24, 1999, Footnote 23.

with processing the applications for authority to operate.<sup>6</sup> These three applications were in fact granted by Public Notice, released March 16, 2001.<sup>7</sup> Thus, Congress certainly was not concerned that the reinstated applications which had been selected by lottery would be granted after July 1, 1997.

### Conclusion

Ranger and Miller premised their claim of standing, and therefore their right to intervene in the above proceeding, on the fact that each has filed an application for the Texas 21 market. Even though those applications had been dismissed, they argued that they maintained their mutually exclusive status. Yet, in the Petition to Enlarge Issues, Ranger and Miller concede that in no event will their previously filed Texas 21 applications entitle them to participate in any future lottery in connection with the Texas 21 market.<sup>8</sup>

Ranger and Miller can participate in future auctions conditioned only upon making the required payments. In fact, there is no impediment to Ranger and Miller's participation in the open Cellular RSA auction scheduled to commence May 29, 2002. Ranger and Miller however want a closed auction, as they are advocating in their reconsideration petitions referenced in their Petition to Intervene. Ranger and Miller are therefore using the Alee Texas 21 hearing to bootstrap their position, or lack thereof, in another proceeding. Such conduct should not be tolerated.

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<sup>6</sup> District of Columbia Applications Act of FY 2001, Pub.L.No. 106-553, 114 Stat. 2762, Title X §1007, Launching Our Communities Access to Local Television Act of 2000 (2000). See Notice of Proposed Rulemaking in re Implementation of Competitive Bidding to License Certain Rural Service Areas, WT Docket No. 01-32, FCC 01-36, released February 12, 2001, Footnote 1.

<sup>7</sup> Wireless Telecommunications Bureau Grants Rural Cellular Licenses, DA 01-697, released March 16, 2001.

<sup>8</sup> Petition at Footnote 2.

Thus, for all the foregoing reasons, the so-called Petition to Enlarge Issues should be dismissed and/or denied without further delay.

Respectfully submitted,

**ALEE CELLULAR COMMUNICATIONS**

  
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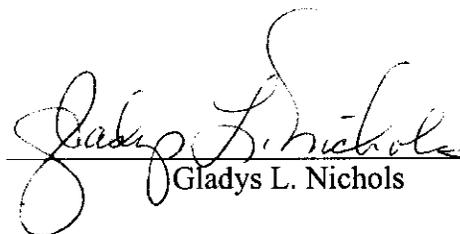
**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 29<sup>th</sup> day of April, 2002, a true and correct copy of the above and foregoing **OPPOSITION TO PETITION TO ENLARGE ISSUES** was sent by U.S. Mail, with proper postage thereon fully paid, to:

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\* **Via Facsimile**