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

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In the Matter of:)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
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)	
)	

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO BUREAU MOTION
TO COMPEL PRODUCTION OF DOCUMENTS

Comes now Alee Cellular Communications ("Alee"), by its undersigned attorneys, as provided for in §1.294 of the Commission's Rules and submits this its Opposition to the Bureau's May 13, 2002 Motion to Compel Alee to Produce Documents.

In support the following is respectfully shown:

Motion to Compel Procedurally Deficient

As provided for in §1.325(a)(2) of the Commission's Rules, Alee served the Bureau on May 6, 2002 its Objections to the Bureau's April 25 Request for Production of Documents. The undersigned counsel for Alee and counsel for the Bureau, as directed by the Presiding Judge, were unable after good faith efforts to address each other's concerns. The Bureau accordingly filed its Motion to Compel on May 13, 2002. However, the

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Motion to Compel did not include a copy of the Bureau's original document request nor a copy Alee's objections. Section 1.325(a)(2) provides that copies of the original document requests and the responding party's objections must accompany the Motion to Compel. The requirement is absolute and having failed to meet this essential provision, the Motion to Compel is deficient and must be dismissed.

**Requested Documents Not Relevant to Specified Issues,
Cumulative, Available From Other Sources
and Unreasonably Burdensome**

Document Request No. 1:

Provide all documents related to any ownership interest, direct or indirect, including the percentage of ownership held, in Alee Cellular communications by its current or former partners, principals, shareholders, directors, officers or others.

The inquiry into Alee's character is narrow in scope. The February 22, 2002 Order specified that the application had been designated for a hearing "for the limited purpose of determining whether the applicant is currently qualified to hold the Texas 21 authorization in light of its disqualification for the New Mexico or NM3 cellular authorization." Order at ¶1.

The Texas 21 application was filed with the Commission some fourteen years ago and has been under active review since 1992 when it was picked in a relottery as the tentative selectee. It must be assumed that the Texas 21 RSA application is but for the limited character issue in all other respects in order. Thus, there is no issue concerning the identity of Alee's partners, their ownership interests or control of the partnership.

While we agree with the Bureau that the Commission is entitled to know the identity of its licensees and those that control its licenses, this basic information has been disclosed as part of the application process. In addition, Alee, in response to the Bureau's

Interrogatories, has identified the current partners and given their current ownership percentages.

The Bureau also argues that these requested documents may be a source of possible witnesses regarding the operation of the partnership and to show bias if any of those parties is called as a witness by Alee. The Bureau already knows the identity of Alee's partners. That information is available from the application itself and in response to Bureau Interrogatories.

Since Alee Cellular Communications is a general partnership, the inclusion of "principals, shareholders, directors, officers or others" with respect to the scope of the documents is confusing. No such documents, by definition, exists.

The Bureau has not demonstrated, as required by §§1.325 and 1.311(b) that all documents related to partnership ownership interests constitute or even contain evidence relevant to the hearing issues. The Bureau, likewise, has failed to show that such documents are reasonably calculated to lead to the discovery of admissible evidence. Merely saying so is not sufficient.

Document Request No. 2:

All documents which identify or list Alee's partners, shareholders, directors, officers or others who may or did exercise management control of Alee Cellular Communications from January 1, 1988 to the present.

Request Number 2 is a subset of the documents encompassed by Request No. 1. To the extent that documents related to the ownership interests identify or list its partners, they would also be within the ambit of Request No. 2. As argued above, the Commission has already been provided with a list of Alee's partners as part of the application process and the Bureau has also been provided a list of the current partners in response to Bureau Interrogatories. To the extent that the list of the partners is a source of possible witnesses

regarding the operations of the partnership and to show bias if any of those parties is called as a witness by Alee, the list has been disclosed.

There is no specific issues concerning the operations of the partnership. To the extent Alee relies on any of its partners as witnesses, those witnesses will be identified and any documentary evidence to be introduced in connection with such witnesses will be exchanged on June 7 providing the Bureau opportunity to prepare for cross-examination and to determine any potential bias with respect to any such witnesses.

The universe of possible documents that identify or list Alee's partners includes the thousands of pages of the Algreg transcript and the voluminous pleadings and documents filed in that proceeding. In light of the fact that the identity of the partners has been disclosed, to require Alee to produce all documents that list or identifies these partners is unreasonably burdensome.

Document Request No. 3:

The Federal income tax returns and schedules of Alee Cellular Communications, including Schedule K-1, and supporting documentation for 1988 to the present, to the extent that the information contained therein reflects Alee's business structure or identifies the principals, partners, officers, directors or shareholders of Alee. These documents may be redacted to exclude financial information.

As with documents requested pursuant to Request Nos. 1 and 2, the Bureau indicates that the Federal income tax returns for the past fourteen years "should identify each of the partners and others having an ownership interest in Alee and should indicate the percentage of the ownership interest held by each of those partners." Since financial information is to be redacted, it appears that the only interests the Bureau has in the Federal income tax returns is to verify the identity of the partners and their ownership interests. Such information has already been disclosed to the Commission as part of the

application process and has been provided in response to the Bureau's Interrogatories.

The Bureau is on a "fishing expedition" that should not be tolerated.

Document Request No. 5:

Copies of all applications, and related or supporting documents thereto, filed with the FCC on behalf of Alee Cellular Communications or any of its principals, partners, shareholders, directors or officers since January 1, 1988.

Other than stating its belief that copies of all applications, and related or supporting documents thereto filed by Alee and/or its partners since 1988, are relevant to the issues, the Bureau provides no other insight as to why this material is needed or how it is relevant to the issues. In any event, it must be assumed the Bureau has complete access to Commission files and records including applications filed with the Commission. The Bureau therefore should be able to retrieve copies of such applications from the Commission's own files and records. In response to the Interrogatories, Alee provided the Bureau with a list of all applications filed in connection with the New Mexico 3 facilities.

Alee filed 428 RSA applications in the 1988-1989 timeframe, including applications for the New Mexico 3 facility and the Texas 21 market. All of those applications, with the exception of New Mexico and Texas, have been dismissed without prejudice. Substantially all were dismissed pursuant to the lottery rules since Alee was not picked as a tentative selectee.

If Alee or its partners have had applications dismissed with prejudice as a result of any alleged irregularities, such applications might be relevant to the character qualifications of Alee. However, this is not what the Bureau asked for. It asked for **all** applications.

Document Request No. 7:

All documents relating to the contractual or other agreements regarding the ownership, construction, management and maintenance of any FCC licensed facility owned or managed by Alee Cellular Communications.

The Bureau has redefined Request No. 7 to include contractual agreements as well as related documents concerning the ownership, construction management and maintenance of any FCC licensed facility owned by Alee Cellular Communications. Alee's business practices per se are not relevant to the limited character issues specified. Alee's business practices are relevant only to the extent that they implicate non-FCC violations that reflect on character qualifications. Absent reference to specific adjudicated misconduct, this large universe of documents including confidential financial and business information is not relevant to the limited issues specified in this proceeding. To require the production of such documents covering some fourteen years is unreasonably burdensome.

Document Request No. 10:

The corporate minutes and related documents of Alee Cellular Communications since January 1, 1988.

Since Alee Cellular Communications is a partnership, it is assumed the Bureau seeks partnership minutes and related documents since January 1, 1988.

The Bureau indicates in its Motion to Compel that operation of the New Mexico RSA 3 station is relevant in this case. Alee does not disagree. To the extent that Alee can demonstrate operations consistent with the Rules, such evidence may be relevant to specified issues. However, Alee's difficulty is seeing how the production of all partnership minutes and related documents covering the past fourteen years necessarily will include evidence of such operations or is likely to lead to relevant evidence. Section

1.325(c)(1)(ii), for example, covering comparative broadcast standard document production limits meeting minutes to those relating to the application.

Alee has the burden of introduction of evidence and the burden of proof. Evidence of how Alee's partners align on business matters or on other issues pertaining to the business policies and practices of Alee without more is simply not relevant or likely to lead to the production of relevant evidence. Thus, to require the production of some fourteen years of partnership minutes and an unknown universe of related documents covering a multitude of topics with the hope that they may contain evidence on how partners vote is unreasonably burdensome.

Document Request No. 11:

All documents identifying the person(s) responsible for maintaining the business and personnel records of Alee Cellular Communications.

Request No. 11 calls for all documents identifying persons responsible for maintaining the business and personnel records of Alee Cellular Communications. Alee has no objection to providing the Bureau with the names of any and all persons responsible for maintaining business and personnel records of the partnership. However, to require Alee to produce all documents that identify any person responsible for the maintenance of such records is unnecessary.

The Bureau claims that persons identified in Alee's records are potential witnesses regarding Alee's business and personnel practices." Request No. 11 calls for, however, only documents identifying persons responsible for maintaining the records. Further, as argued earlier, Alee's business practices per se are not relevant to the limited issues. Its personnel practices are likewise not relevant. Alee will provide Bureau counsel with the identity of persons responsible for maintaining business and personnel

records of Alee Cellular Communications informally or as a supplement to interrogatories. Therefore, to be forced to provide all documents as expansive as that term has been defined by the Bureau and covering some fourteen years merely identifying persons responsible for maintaining records is unreasonably burdensome.

Document Request No. 14:

All documents, not already provided to the undersigned Bureau counsel in the above-captioned matter, relied upon by Alee Cellular Communications in the preparation of its responses to the Enforcement Bureau's Interrogatories to Alee Cellular Communications filed by the Bureau in this case.

To the extent documents, not otherwise objected to and/or privileged were relied upon by Alee Cellular Communications in responding to the Bureau's Interrogatories, such documents will be produced.

Conclusion

The hearing is limited to determining whether the findings of disqualifying lack of candor on the part of Alee in the Algreg proceeding also disqualify Alee from being granted the Texas 21 authorization, or whether there has been sufficient rehabilitation on the part of Alee to demonstrate the requisite character qualifications. The Commission underscored that the proceeding was not to be used to relitigate the Algreg findings.

The Texas RSA 21 application has been pending for approximately 14 years. No other issues were raised concerning the application. It must be assumed therefore, that Alee is in all other respects qualified to be a Commission licensee and that the Texas RSA 21 application is otherwise in order for grant.

Notwithstanding the narrow scope of the issues, the Bureau seeks a broad range of very generally identified and cumulative documents. It appears as if the Bureau is on a

“fishing expedition” hoping to find some new wrongdoing on the part of Alee. The time for such an expedition has long passed.

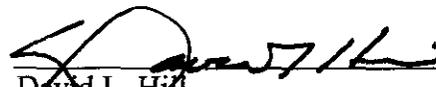
The items included within the definition of “documents” and the 14 year window, encompasses a significant universe, including the vast Algreg record. Yet, the Bureau did not initiate discovery until April 25, 2002, leaving only 29 days to complete the process. Alee documents are located in Pennsylvania (Terry Jones), New Jersey (Robert Bernstein) and South Carolina (Becky Jo Clark) and with its partners. In addition, counsel to Alee in connection with the Algreg proceeding, Drinker, Biddle and Reath, maintain documents in its Washington and Philadelphia offices. There also may be documents concerning the operations of the New Mexico RSA 3 facilities maintained in New Mexico. Thus, this material must be shipped to Washington, D.C. or Bureau counsel must travel to these various locations to review and copy the documents. Alee estimates that it would take at least 30 days to locate, classify, assemble and ship to Washington for review all the documents requested by the Bureau. If it is necessary to copy the originals before shipping, this will add time and costs.

The *Federal Rules of Civil Procedure* require federal courts to limit discovery if determined that: “the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case..., and the importance of the proposed discovery in resolving the issues.” FRCP, Rule 26(b)(2). The application of these principles to the Bureau’s Document Request supports the result urged by Alee.

Alee, contrary to the Bureau's suspicions, has nothing to hide. Therefore, without prejudice to the legal and procedural arguments made here, Alee will make every effort to address the Bureau's need for relevant documents. If the present procedural schedule is to be maintained, some compromise is required.

Respectfully submitted,

ALEE CELLULAR COMMUNICATIONS


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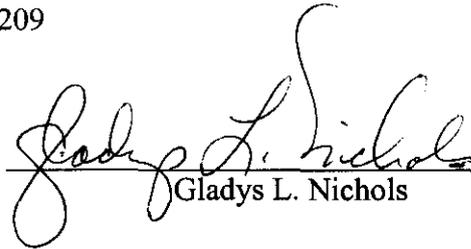
CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 17th day of May, 2002, a true and correct copy of the above and foregoing **OPPOSITION TO BUREAU MOTION TO COMPEL PRODUCTION OF DOCUMENTS** was sent by U.S. Mail, with proper postage thereon fully paid, to:

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