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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	)	

MEMORANDUM OPINION AND ORDER

Issued: May 22, 2002 ; Released: May 24, 2002

1. Under consideration are: (a) a Petition to Enlarge Issues, filed on April 16, 2002, by Ranger Cellular and Miller Communications, Inc. ("Petitioners"); (b) an Opposition to Petition to Enlarge Issues, filed on April 29, 2002, by Alee Cellular Communications ("Alee"); (c) the Enforcement Bureau's Opposition to Petition to Enlarge Issues, filed on April 29, 2002, by the Enforcement Bureau ("Bureau"); (d) a Consolidated Reply to Oppositions, filed on May 6, 2002, by Petitioners; and (e) a Motion for Leave to File Supplement to Petition to Enlarge Issues and Supplement to Opposition to Petition to Enlarge Issues, filed on May 10, 2002, by Alee.[1]

2. Petitioners seek the addition of the following issue to this proceeding:

> [To determine w]hether the passage of the Balanced Budget Act of 1997 precludes the Commission from granting Alee's application as a result of its selection in a lottery.

In support, Petitioners argue that the Balanced Budget Act of 1997 ("BBA")[2] precludes the issuance of a license to Alee because Alee was selected in a lottery. Specifically, Petitioners claim that Section 309(i)(5) of the Communications Act, 47 U.S.C. §309(i)(5), one of the provisions which implemented the BBA, provides that "the Commission shall not issue any license or permit using a system of random selection . . . after July 1, 1997." Although Alee's application was selected in a lottery that occurred in April 1992, Petitioners maintain that no license or permit has as yet been issued to Alee. Therefore, Petitioners allege, the Commission currently lacks the jurisdictional authority either to process Alee's application or to award the license in question to Alee.

3. Alee and the Bureau oppose enlargement of the issues. Both contend that Petitioners are, in essence, seeking reconsideration of the order designating this case for hearing, *Memorandum Opinion and Order, Hearing Designation Order and Notice of Opportunity for Hearing*, FCC 02-36, released February 22, 2002. In addition, the Bureau argues that motions to enlarge issues must be based on specific allegations of fact and that proposed hearing issues inquiring into questions of law or policy are improper. Further, Alee asserts that the Commission has, in fact, issued licenses after July 1, 1997, to entities that were selected by lotteries that were held prior to that date.

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[1] The Motion for Leave to File Supplement is unopposed and will be granted.
[2] Pub.L.No. 105-33, Title III, §§3002(a)(1) to (3), 3003, 111 Stat. 258, 260 (1997).

4. The Petition to Enlarge Issues will be denied. Suffice it to say, the Commission has recently ruled on the precise question presented by Petitioners here. Thus, *In the Matter of Certain Cellular Rural Service Area Applications*, FCC 02-129, released May 9, 2002, at para. 8, the Commission rejected an identical argument, stating:

> Ranger/Miller argue that the award of the license to Zephyr violates Section 309(i)(5) of the Act, which prohibits the use of lotteries to award licenses after July 1, 1997. This misconstrues the effect of the statute on the Commission's licensing authority: Section 309(i)(5) only prevents the Commission from conducting new lotteries after July 1, 1997 (with limited exceptions not applicable here), it does not prohibit the Commission from processing an application based on the results of a lottery that occurred prior to that date. 33/
>
> 33/ Ranger/Miller's argument is equally inapposite with respect to RSA No. 672A, although the application of the tentative selectee in that case, Alee Communications, was not granted and is currently designated for hearing. [Reference to another footnote omitted.]

Given this ruling by the Commission and, particularly, the reference in footnote 33 to Market 672A (the market at issue in this proceeding), the enlargement of the issues as requested by Petitioners is not warranted.

Accordingly, IT IS ORDERED that the Motion for Leave to File Supplement to Petition to Enlarge Issues and Supplement to Opposition to Petition to Enlarge Issues, filed by Alee on May 10, 2002, IS GRANTED and that Alee's supplement IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition to Enlarge Issues, filed by Petitioners on April 16, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge