

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

Under consideration are a Motion to Compel Production of Documents, filed on May 13, 2002, by the Enforcement Bureau ("Bureau"), and an Opposition to Bureau Motion to Compel Production of Documents, filed on May 17, 2002, by Alee Cellular Communications ("Alee").

The Bureau seeks an order compelling Alee to produce documents responsive to document request numbers 1-3, 5, 7, 10-11, and 14 set forth in the Bureau's April 25, 2002, Request for Production of Documents. Alee opposes the motion, contending that the Bureau's requests are irrelevant, overly broad, and unnecessarily burdensome.¹ For the reasons that follow, the Bureau's motion will be granted in part and denied in part.

Background. By *Memorandum Opinion and Order, Hearing Designation Order and Notice of Opportunity for Hearing*, FCC 02-36, released February 22, 2002 ("*HDO*"), this proceeding was designated for hearing. The following issues were specified:

- (a) To determine, based on previously adjudicated lack of candor on the part of Alee in *Algreg I*, whether Alee is qualified to be a Commission licensee in Texas RSA 21 – Market 672A.
- (b) To determine, in light of the foregoing, whether Alee's pending application for an authorization to construct a nonwireline cellular system in Texas RSA 21 – Market 672A should be granted.

HDO at para. 12 (footnote omitted; underlining added). In specifying these issues, the Commission stated:

This hearing will be limited to determining whether the finding of disqualifying lack of candor on the part of Alee in the *Algreg* proceeding also disqualifies Alee from being granted the Texas 21 authorization, or whether there has been subsequent and sufficient rehabilitation on the part of Alee in

¹ Alee also argues that the Motion to Compel should be dismissed because the Bureau failed to attach thereto copies of the Bureau's original document request and Alee's objections. This request must be denied. Such a severe penalty would not be appropriate for this relatively minor and non-prejudicial transgression.

the interim to support grant of its Texas 21 application. We underscore that this hearing shall not be used by Alee to relitigate the Commission's findings in *Algreg* concerning Alee's lack of candor, since those findings are fully binding on Alee at this time.

Id. at para. 9 (underlining added).

Preliminary Ruling. Throughout its motion, the Bureau argues that it is "entitled to review all documents that might reasonably disclose evidence of Alee's character." Motion to Compel at 2, 3, 4, 5, 6, 7. This contention must be rejected. As is evident from the text of the issues and the discussion in the *HDO*, quoted above, the issues in this proceeding are strictly limited (1) to the effect on Alee's qualifications of its "previously adjudicated lack of candor," and (2) to Alee's alleged rehabilitation. Thus, questions relating to Alee's overall, general character qualifications to be a Commission licensee are beyond the scope of the existing issues.

Document Requests 1 and 2. Alee's objections are overruled. The requested documents "appear[] reasonably calculated to lead to the discovery of admissible evidence," Section 1.311(b) of the Commission's Rules, inasmuch as they may disclose the identities of individuals with relevant knowledge concerning Alee's alleged rehabilitation. Such documents may also serve to show possible bias on the part of prospective Alee witnesses. However, since Alee is a general partnership, documents relating to "shareholders, directors [or] officers" are irrelevant and need not be produced. In addition, Alee will not be required to produce the transcript, pleadings, documents, or exhibits filed in the *Algreg* proceeding.

Document Request 3. Alee's objection is sustained to the extent that the requested documents need not be produced if the information contained therein is the same as that contained in the documents produced in response to Document Requests 1 and 2. If the information differs, the document(s) must be produced.

Document Request 5. Alee's objection will be sustained. The Bureau has not established, nor does it appear, that the requested documents are "reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Rules. In any event, the Bureau should be able to retrieve the documents requested from the Commission's own files and records.

Document Request 7. Alee's objection is overruled. The requested documents "appear[] reasonably calculated to lead to the discovery of admissible evidence," Section 1.311(b) of the Rules, inasmuch as they may contain information relating to Alee's alleged rehabilitation. However, the Bureau is instructed to take all necessary precautions to ensure that any confidential financial and business information that it may receive from Alee is not disseminated beyond counsel for the Bureau in this case, their immediate supervisors, and potential expert witnesses. In addition, the use of any such material shall be restricted to this proceeding.

Document Request 10. Alee's objection is overruled. Suffice it to say, Alee concedes that its operation of the New Mexico RSA 3 station is relevant to this proceeding. Consequently, the requested documents "appear[] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Rules.

Document Request 11. Alee's objection is sustained to the extent that it need not produce the requested documents. However, Alee must disclose to the Bureau, as a supplement to Alee's interrogatory answers, the identity of all persons responsible for maintaining its business and

personnel records. Such information “appears reasonably calculated to lead to the discovery of admissible evidence.” Section 1.311(b) of the Rules.

Document Request 14. Alee states that it will comply with this request. Its objection is, therefore, moot.

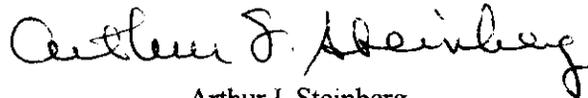
Accordingly, IT IS ORDERED that the Motion to Compel Production of Documents, filed by the Bureau on May 13, 2002, IS GRANTED to the extent discussed above, and IS DENIED in all other respects.

IT IS FURTHER ORDERED that Alee SHALL PRODUCE the documents requested by the Bureau within 10 days of the release of this order or within such other period of time as the parties may mutually agree.

IT IS FURTHER ORDERED, on the Presiding Judge’s own motion, that the date previously established for the Completion of All Discovery² IS EXTENDED to and including July 15, 2002, and that the remaining procedural dates, including the June 25, 2002, hearing date, ARE CANCELLED.

IT IS FURTHER ORDERED that counsel for the parties ARE DIRECTED to confer for the purpose of reaching an agreement with respect to an alternative procedural schedule, including a new hearing date. A joint letter informing the Presiding Judge of the agreed-upon schedule SHALL BE FILED on or before June 7, 2002.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

² See Order, FCC 02M-24, released April 4, 2002.