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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of	)	
	)	
Cellular Service and Other Commercial	)	WT Docket No. 97-112
Mobile Radio Services in the	)	
Gulf of Mexico	)	
	)	
Amendment of Part 22 of the Commission's	)	CC Docket No. 90-6
Rules to Provide for Filing and Processing	)	
of Applications for Unserved Areas in the	)	
Cellular Service and to Modify Other	)	
Cellular Rules	)	

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**CONSOLIDATED REPLY TO OPPOSITIONS AND COMMENTS**

Petroleum Communications, Inc. ("PetroCom"), by its attorneys, hereby replies to oppositions and comments filed on May 23, 2002 by various parties in the captioned matter with respect to the *Gulf Cellular R&O* released on January 15, 2002.<sup>1</sup>

In its petition for partial reconsideration, PetroCom showed that the *Gulf Cellular R&O* did not provide a satisfactory explanation, supported by an examination of the technical evidence in the record, for adopting rules that permit land carriers to use one formula (the 32 dbu "land" formula of Section 22.911(a)(1)) for calculating contours extending over water, while Gulf carriers are required to use another formula (the 28 dbu "water" formula Section 22.911(a)(2)), resulting in unauthorized capture of Gulf carrier traffic.<sup>2</sup>

Alltel Communications, Inc. ("Alltel") opposed the *Petition*, taking issue with PetroCom's showing that the rules allowed Gulf carriers to engineer sites using the 39 dbu

<sup>1</sup> Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico; Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, Report and Order, 67 Fed. Reg. 9596 (March 4, 2002) [hereinafter "*Gulf Cellular R&O*"].

<sup>2</sup> See, *Petition For Partial Reconsideration*, filed by PetroCom on April 3, 2002 ("*Petition*"), pp. 1-20.

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contour formula, the one in place prior to the D.C. Circuit court's remand of the *Third Report and Order* in CC Docket No. 90-6.<sup>3</sup> This issue has been fully addressed in the proceeding.<sup>4</sup> There is no need to repeat the arguments in complete detail here. It suffices to observe that Alltel continues to ignore that: (1) the appeals court vacated the *Third Report and Order* in its entirety, including the 28 dbu formula; (2) the first sentence to the "Note" to Section 22.911 acknowledges that fact; and (3) the law in effect during the court's remand does not depend on what any party might have "assumed" it to be.

In any event, the more important issue is what the formula should be going forward, and whether land and Gulf carriers should be using the same one for calculating over water contours. On this key issue, Alltel's *Opposition* asserts that "[t]hat the Commission addressed the multiple and conflicting technical showings, as well as changed circumstances during the course of the proceeding," citing paragraphs 21 through 34 of the *Gulf Cellular R&O*.<sup>5</sup> That entire section makes but a brief and passing reference to the subscriber capture issue, addressing none of the technical showings in any detail. Most importantly, it does not examine, analyze and resolve the central factual dispute concerning which carrier is capturing the other's traffic and, based on that resolution, what should be done about it. As Alltel observes, parties made substantial technical showings on the issues of subscriber capture and contour formulas.<sup>6</sup> The problem, however, is

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<sup>3</sup> Alltel Communications, Inc.'s Opposition To Petition For Reconsideration, filed May 23, 2002 ("*Alltel Opposition*"), pp. 2-4.

<sup>4</sup> See, e.g., PetroCom ex parte letter to FCC Secretary, October 26, 2001; Alltel ex parte letter to FCC Secretary, December 7, 2001; PetroCom ex parte letter to FCC Secretary, December 14, 2001.

<sup>5</sup> *Opposition*, p. 5. Contrary to Alltel's belief, it is precisely correct to observe that the *Second Further Notice* acknowledged that the two-formula approach did not adequately account for signal propagation over water. The *Second Further Notice* acknowledged the Gulf carriers' concerns "that it is inaccurate to measure a contour that extends over water by the land-based formula" because "to do so, underestimates the actual size of the extension, because signals are attenuated less over water." *Petition*, p. 2. It then tentatively concluded that the same formula should apply to all contours within the "Coastal Zone" that was being proposed at that time, because that area would be "capable of receiving service from either a land-based or water-based carrier." *Id.*, p. 3. There would be no reason for the Commission to reach such a conclusion in the *Second Further Notice* if there was no problem with the "two formula" approach.

<sup>6</sup> *Id.*, pp. 5-6. Alltel is incorrect to suggest that Coastel opposed an equal signal strength rule. Though Coastel opposed the type of a "hybrid" formula that averaged the parameters of the land and water formulas, it supported

that the *Gulf Cellular R&O* did not examine these showings. Alltel's position that the non-adoption of a Coastal Zone for the Western Gulf made it unnecessary to adopt a "hybrid [Service Area Boundary] formula" makes no sense.<sup>7</sup> The issue is whether land carriers, by rule, should have stronger signal strengths than Gulf carriers for over water contours, regardless of where those contours extend into the Gulf. Alltel simply sidesteps this issue.

In its comments, AT&T Wireless Services, Inc. ("AT&T") refers to earlier comments submitted by seven land carriers providing "evidence" on the signal strength issue.<sup>8</sup> The *Petition* analyzed each of those comments in detail, showing none of them rebut the conclusion supported by the Gulf carriers' studies that the land formula allows land carriers to capture Gulf carrier traffic.<sup>9</sup> AT&T's filing did not challenge PetroCom's analysis of these comments, except to claim that a technical report by James E. Calkins explains "vast and fundamental differences" between cellular networks and subscriber equipment used on land and in the Gulf.<sup>10</sup> AT&T's comments, however, concede that customers in the Gulf on boats have been using handset receivers more and more as compared with cellular phones using mast-mounted antennas, that the water formula and the data supporting it, first presented in 1992, are stale, and that the technology has changed.<sup>11</sup> AT&T also failed to rebut the expert finding that, because of the characteristics of the terrain bordering the Gulf, the 14 dB terrain factor used in the land formula to account for signal blockage and attenuation by trees and buildings is not appropriate in

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requiring land carriers to use the water formula for over water contours. See Reply Comments of Bachow/Coastel, L.L.C., August 4, 1997, pp. 19, 32-34. It later supported PetroCom's proposal to permit both land and carriers to use the land formula. See Bachow/Coastel, L.L.C. ex parte letter to FCC Secretary, October 9, 2001 (referencing PetroCom ex parte letter to FCC Secretary, September 24, 2001).

<sup>7</sup> *Id.*, p. 6.

<sup>8</sup> AT&T Comments, pp. 4-5.

<sup>9</sup> *Petition*, pp. 5-10.

<sup>10</sup> AT&T Comments, p. 5.

<sup>11</sup> *Petition*, p. 19. PetroCom thoroughly rebutted Alltel's submission and the Calkins Study contained therein, describing its deficiencies. PetroCom ex parte letter to FCC Secretary, filed April 27, 2001. PetroCom's analysis of the Calkins Study went unrebutted, and Alltel ultimately dropped the "neutral zone" proposal that the Calkins Study supported.

calculating Service Area Boundaries of cell sites with coverage over the Gulf.<sup>12</sup> AT&T simply repeats the other rationale proffered by the *Gulf Cellular R&O* for using two formulas (“to maintain the existing relationship between land and Gulf carriers”), completely ignoring the arguments against that rationale made in the *Petition*.<sup>13</sup> In sum, AT&T, like the *Gulf Order R&O*, provides no valid reason for not adopting the *Second Further Notice*’s conclusion that the same formula for over water contours should apply to land and Gulf carriers.

In its comments, Verizon Wireless (“Verizon”) argues that the *Petition* is based on erroneous conclusions about the record evidence.<sup>14</sup> As a general matter, PetroCom stands by its analysis of the record and the conclusions it draws from that analysis, and will not repeat them all here. It never stated there was “widespread support” for any proposal. Rather, it stated that at least as many parties supported some type of “hybrid approach” than opposed it. In other words, there was more than just a “little support” for it than what the *Gulf Cellular R&O* suggests. Notwithstanding Verizon’s protests, GTE Service Corporation (its predecessor-in-interest) clearly did support using the same water formula for land and Gulf carriers serving the Coastal Zone.<sup>15</sup> Verizon does not explain why the equal signal strength approach it supported should disappear just because the Coastal Zone was limited to the Florida Gulf. As for the Dennis Study, the record already contains PetroCom’s disposal of the challenges made to it, including the land carriers’ so-called “real world evidence.”<sup>16</sup> Verizon’s assertions that the record demonstrates that Gulf carriers capture land carrier traffic are, as before, vacuous.<sup>17</sup> The main issue raised by the *Petition*, that the *Gulf Cellular R&O* failed to examine the evidence in reaching the conclusion to use two formulas, is one Verizon does not even address. Verizon

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<sup>12</sup>*Petition*, p. 5.

<sup>13</sup> See *Petition*, at pp. 18-19.

<sup>14</sup> Comments of Verizon Wireless, filed May 23, 2002, pp. 2-5.

<sup>15</sup> Comments of GTE Service Corporation, filed July 2, 1997, pp. 12-13.

<sup>16</sup> See, e.g., PetroCom ex parte letter to FCC Secretary, filed April 27, 2001.

<sup>17</sup> Comments of Verizon Wireless, filed May 23, 2002, p. 6.

provides no reason why the Gulf of Mexico should be the only cellular market in the country where one adjacent carrier, by rule, is allowed to extend a stronger signal over the market boundary.

Verizon also argues that land-based PCS licensees adjacent to the Gulf should be permitted to provide service in the Gulf beyond county lines.<sup>18</sup> Comments filed by Sprint elaborate on this point, arguing that establishment of separate Gulf PCS licensees would be unlawful, would constitute a breach of contract and is contrary to the public interest.<sup>19</sup> Sprint argues that PCS licensees adjacent to the Gulf based bidding strategies on the assumption that the Commission would never establish separate PCS licenses in the Gulf, and that the PCS licenses along the Gulf included the right to serve Gulf waters. It notes that, when the PCS service was established, service areas were created for Guam, the Virgin Islands and American Samoa, but not for the Gulf.<sup>20</sup> The leap in logic that this licensing plan supports Sprint's position is simply not reasonable. The Commission's decision not to initially establish Gulf PCS licenses did not foreordain that it would never do so. The land-based licensees knew that, under the rules, their licensed territories were limited by county boundaries. Given that knowledge, Sprint's threat to sue the Commission for breach of contract and damages is meritless.

Sprint further claims that its argument is supported by the rule that limits PCS technical emissions on the borders of PCS service areas unless the parties agree to higher field strength. In its view, this rule buttresses the claim that they bid for licenses with the expectation that they would never have to protect any seaward licensees.<sup>21</sup> To the extent that Sprint, or any other land-based PCS licensee, held this expectation, it was not reasonable. At most, all a land-based PCS licensee could *reasonably* expect, is that it would not have to limit emissions seaward until Gulf

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<sup>18</sup>Verizon Comments, p. 6.

<sup>19</sup>Sprint Corporation Comments, filed May 23, 2002.

<sup>20</sup>*Id.* at 3.

<sup>21</sup>*Id.* at 3-4.

PCS licenses were established (although if a land PCS licensee's technical emissions were to interfere with the operations of a Gulf microwave licensee, it is doubtful that the FCC would side with the land-based licensee).

Sprint also revives the well-worn argument used by land-based PCS licensees to the effect that a footnote in a Bureau decision stating "entities eligible to serve the Gulf of Mexico are the licensees of BTAs bordering the Gulf."<sup>22</sup> Despite the number of times that it has been cited, this sentence still fails to support a claim by land-based PCS licensees to Gulf water beyond county boundaries. A footnote to a staff decision did not and indeed, cannot, give primary licensing authority to serve the Gulf. The establishment of primary PCS licenses in the Gulf can only be accomplished in a manner that is consistent with the FCC's auction statute. To give this spectrum away for free would be unfair to other carriers that have to pay to acquire additional spectrum.

In making its case that establishing separate PCS licenses for the Gulf of Mexico is contrary to the public interest, Sprint argues that there is no evidence of a need for additional spectrum in the Gulf.<sup>23</sup> PetroCom agrees with this point (although PetroCom disagrees that it supports giving the Gulf to land-based PCS licensees), and notes further that in arguing the lack of a need for additional spectrum in the Gulf, Sprint contradicts its earlier argument that there is a need to give it primary PCS authority for the entire Gulf to land-based PCS licensees.

Although Sprint's arguments regarding the potential for interference between land-based and Gulf-based PCs systems may have merit, these arguments are simply not relevant to Sprint's contention that Gulf PCS licenses should not be established.<sup>24</sup> At most, the issues identified by Sprint are ones that must be resolved at the time the Commission establishes a PCS licensing

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<sup>22</sup>*Id.* at 4, citing language in *Mobile Oil Telecom*, 11 FCC Rcd 4115, 4116 n. 10 (1996) ("*Mobil Oil Order*").

<sup>23</sup>*Id.*

<sup>24</sup>*Id.* At 5-6.

plan for the Gulf. These issues are ones encountered and successfully resolved by the FCC each time it creates a new service or licensed territory via a rulemaking. If land-based PCS licensees are concerned about interference, they can protect themselves by purchasing the adjacent Gulf PCS license at the auction.

The last argument advanced by Sprint is that PCS boundaries should be based on federal law, rather than on state law.<sup>25</sup> This argument is meritless. Sprint points out that state law boundaries can change over time. While this is true, the point applies equally well to boundaries established by federal law. Further, the argument passes over the central issue: once a territory is established, how should it be licensed? Sprint argues that the territory should be given to land-based PCS licenses. PetroCom submits that the normal FCC licensing process should be followed. Indeed, despite Sprint's statements to the contrary, it is the proposal to give the Gulf PCS territory to the land-based licensees, not the idea to separately license such territory that would impugn the integrity of the auction process.

AT&T Wireless Services, Inc. makes many of the same points in its comments. Like Sprint, AT&T argues that land-based PCS licensees assumed that PCS licenses bordering the Gulf had the right to serve the Gulf, relying on the absence of a separately licensed Gulf PCS area at the time of the auction and on the *Mobil Oil Order*.<sup>26</sup> As discussed above, these points suffer from fatal flaws. In addition, AT&T argues that land-based PCS licensees have invested significant amounts of money to relocate Gulf-based microwave systems that were using PCS spectrum.<sup>27</sup> To the extent that licensees made such investments on the assumption that they had the right to serve the Gulf beyond county boundaries, the FCC should not save those licensees from poor business decisions.

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<sup>25</sup>*Id.*, p. 7.

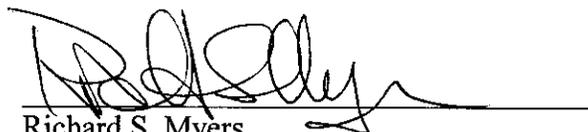
<sup>26</sup>AT&T Comments, p 3.

<sup>27</sup>*Id.*

AT&T also argues, like Sprint, that land-based PCS licensees should be given the right to serve the Gulf based on potential interference from Gulf PCS licensees. As described above, the interference issues are issues to be resolved by FCC rulemaking, not by an FCC fiat granting new licenses for new territory gratis to land-based PCS licensees.<sup>28</sup>

Respectfully submitted,  
PETROLEUM COMMUNICATIONS, INC.

By:

A handwritten signature in black ink, appearing to read 'Richard S. Myers', is written over a horizontal line.

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June 3, 2002

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<sup>28</sup> PetroCom notes that none of the parties challenged any of the other grounds for reconsideration or clarification set forth in the *Petition*, including that the Commission should adopt a grandfathering rule for operations in the Gulf.

## CERTIFICATE OF SERVICE

I, Richard S. Myers, hereby certify that, on this 3<sup>rd</sup> day of June 2002, I caused a copy of the foregoing "Consolidated Reply To Oppositions and Comments" to be sent, by First Class U.S. mail, postage pre-paid, to the following:

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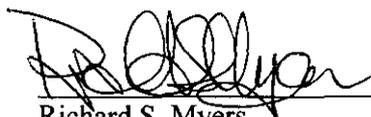
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