COPY

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

In re Applications of	)	File Numbers:
	)	
Alltel Communications of the Southwest	)	0000959430
	)	
Comment Capital, LLC	)	0000922001
	)	
McElroy Electronics Corporation	)	0000913369
	)	
McElroy Electronics Corporation	)	0000959846
	)	
Smith Bagley, Inc.	)	0000960815
	)	
WWC License L.L.C.	)	0000959496
	)	
WWC License L.L.C.	)	0000959387
	)	
For Authority to Operate A Cellular System in New Mexico 3 RSA, Market 555A	)	

To: The Commission

REQUEST FOR STAY

1. Alee Cellular Communications ("Alee"), by its attorneys, hereby submits this Request for Stay of further processing of the above-captioned applications filed in response to a Public Notice announcing the opportunity for interested parties to file cellular radiotelephone applications for New Mexico 3 RSA, Market 555A ("Applications").[1] Alee held a valid authorization for New Mexico RSA 3 ("NM3") under call sign KNKN271, until the Wireless Telecommunications Bureau purported to revoke Alee's authorization by letter dated May 30, 2002 ("Letter"). On July 1, 2002, Alee timely filed an Application for Review of the Letter. In

[1] See Wireless Telecommunications Bureau Implements Revocation of Cellular Call Sign KNKN271 (NM3 RSA); Phase II Unserved Area Application Rules to Be Applied, Public Notice, DA 02-1294 (rel. May 31, 2002).

EB Exh 27

Federal Communications Commission

Docket No. WT02-28 Exhibit No. EB-27

Presented by DeJesus

Disposition
- Identified ✓
- Received ✓
- Rejected

Reporter Hazzard

Date 10/23/02

its Application for Review, Alee asked the Commission to acknowledge that Alee holds a valid authorization for NM3, and that if the Commission seeks to modify or revoke this valid authorization, it must provide Alee with appropriate notice and an opportunity to respond. Alee filed a supplement to its Application for Review on July 11, 2002. Copies of Alee's Application for Review and Supplement are attached hereto.

Until the Commission acts on Alee's Application for Review, the Commission should not process the Applications.[2]

Background.

Alee was one of several participants in a lottery for certain cellular RSA markets, pursuant to which it won NM3.[3] The Commission revoked Alee's initial license for KNKN271 in 1997 due to a lack of candor finding, but Alee continued to operate the facility pending the outcome of appeals.[4] In September 2000, during the appeal process, the Bureau granted a license renewal application that Alee submitted (File No. 0000216499). In December 2000, the Bureau granted the renewal without condition and the grant became final 40 days later.[5] On May 30, 2002, more than seven months after completion of the appeals, the Bureau sent Alee the Letter, purporting to revoke Alee's authorization, while also granting Alee special temporary authority ("STA") to continue operating its cellular facilities in NM3 (for the lesser of 180 days or 60 days

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[2] Alee intends that this Request for Stay include all applications filed for New Mexico RSA 3 in response to the Bureau's May 31, 2002, *Public Notice*, and has included in the above caption all such applications of which Alee is aware. However, if there are any which are not included in the above caption, Alee hereby requests that they be included as well within the scope of this Request for Stay.

[3] A more full recitation of the background facts can be found in Alee's Application for Review.

[4] See Algreg Cellular Engineering, *Memorandum Opinion and Order*, 12 FCC Rcd 8148 (1997) ("*Algreg I*"), *pet. for recon. denied*, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524 (1999), *aff'd*, Alee Cellular Communications v. FCC, No. 99-1460 (D.C. Cir. Jan. 30, 2001), *pet. for rehearing denied* (D.C. Cir. Apr. 5, 2001), *cert. denied*, 122 S. Ct. 344 (Oct. 9, 2001) (collectively "Algreg Proceeding").

[5] The Public Notice announcing the grant of Alee's renewal authorization was included with Alee's Application for Review as Attachment C. Alee's renewal authorization issued by the Bureau was included in the Supplement to the Application for Review as an attachment. Both are attached hereto.

following receipt of written notification that a new licensee is authorized to provide service in part of NM3). The Bureau never mentioned in its Letter that it had renewed Alee's license for NM3 for a new term ending on October 1, 2010. By failing to acknowledge its renewal of KNKN271, the Bureau is violating Alee's due process rights and the Commission's rules and precedents.

Discussion.

A request for stay must meet the four-part test set forth in *Virginia Petroleum Jobbers Association v. FPC*,[6] as modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours*.[7] Under this test, the petitioner must demonstrate: (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay.[8] The Commission balances the four elements of the test "in order to fashion an administrative response on a case-by-case basis."[9] However, if there is a particularly strong showing on one factor, the Commission will grant a stay "notwithstanding the absence of another one of the factors."[10]

1. Likelihood of Success on the Merits.

Alee is likely to succeed on the merits of its Application for Review, and therefore it is in best interest of the Commission to forgo taking action on the Applications and maintain the status quo. Because the Bureau granted a valid, unconditional renewal authorization that was

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[6] 259 F.2d 921 (D.C. Cir. 1958).

[7] 559 F.2d 841 (D.C. Cir. 1977).

[8] *Id.* at 843; *Virginia Petroleum Jobbers*, 259 F.2d at 925.

[9] Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order*, 14 FCC Rcd 9305, 9307 (1999).

[10] *Id.*

independent of Alee's initial license and the revocation thereof, the Commission must – at the very least – follow proper procedures and begin an entirely new revocation process.[11] The Commission cannot revoke this valid authorization without following proper procedures. Although a petitioner for a stay is not required to establish with absolute certainty that it will succeed on the merits, the Commission here is likely at the very least to afford Alee a new revocation proceeding because not to do so would violate the hallmark principles of the Act and the APA that require notice and opportunity to be heard before a license can be revoked.[12]

2. *Irreparable Harm.*

Alee also can demonstrate that it will be irreparably harmed if the stay is not granted. If the Commission acts on the Applications for NM3, there will be even greater uncertainty over the future of Alee's operations in NM3, thus impeding Alee from maintaining the necessary financial backing to keep its business operating. Furthermore, continued action on the Applications evidently will lead to expiration of Alee's STA for KNKN271 (the STA will expire 60 days from written notice from the new licensee). If Alee's STA expires it will have to cease operations. A permanent loss of business is irreparable harm in the eyes of the courts.[13]

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[11] The Administrative Procedure Act ("APA") states that "the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings thereof, the licensee has been given – (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements." 5 U.S.C. § 558(c)(1)-(2). Section 312(c) of the Communications Act states that "[b]efore revoking a license or permit ... the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation ... should not be issued." 47 U.S.C. § 312(c). By not giving Alee the proper notice and an opportunity to respond to the revocation of its renewal license, the Bureau is violating Section 312 of the Act and Section 558(c) of the APA.

[12] *See Population Inst. v. McPhereson*, 797 F.2d 1062, 1078 (D.C. Cir. 1986) (noting that petitioners are not required to show with certainty that they will succeed on the merits). The Commission does not have to admit that the Bureau's Letter revoking the licenses was in error in order to grant this stay. *Holiday Tours*, 559 F.2d at 844-45 (stating that an agency considering a request to stay its own order need not confess error to grant the requested relief, and rather can admit this is a difficult legal question and "the equities of the case suggest that the status quo should be maintained").

[13] *See Iowa Utilities Board v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996) (possible loss of business and consumer goodwill qualifies as irreparable harm); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1055 (4th Cir. 1985) (when failure to grant preliminary relief creates the possibility of permanent loss, irreparable injury is established).

3. *Injury to Third Parties.*

As for the third prong, the other interested parties will not be harmed if the stay is granted. Waiting for further action on the Applications until the Commission acts on Alee's Application for Review will not harm the applicants. In fact, it will benefit the ultimate winner of the auction among the applicants, who will not have to worry that its bidding deposit and post-auction payments will be held by the government while Alee continues to litigate over its license for the same facilities.

4. *Public Interest.*

Finally, it is in the public interest to grant this Request for Stay. Following proper procedures before taking away a licensee's rights is a hallmark principle of both the APA and the Act. The Wireless Telecommunications Bureau has attempted to revoke Alee's valid renewal authorization without following these procedures; the Commission should not further this wrong by taking action on the pending Applications. Therefore, it is in the public interest and fair both to Alee and the applicants to grant this Request for Stay until the Commission acts on Alee's Application for Review.

Furthermore, the notorious NextWave proceeding should provide a lesson for the Commission not to conduct an auction among the applicants here while Alee is still appealing the revocation of its authorization. In the NextWave case, the Commission found that NextWave's licenses had automatically canceled after NextWave failed to make timely installment payments. The Commission then re-auctioned NextWave's licenses while appeals were still pending on the cancellation of the licenses. *See NextWave Personal Communications, Inc. and NextWave Power Partners Inc., Order on Reconsideration*, 15 FCC Rcd 17500 (2000). On August 30, 2001, the U.S. Court of Appeals for the D.C. Circuit held that the Commission should not have cancelled NextWave's authorizations. *NextWave Personal Comms. Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001). The successful bidders in the reauction paid more than $3 billion

to the Commission as down payments for the licenses. In response to a request for a refund, the Commission returned 85 percent of the down payments. Requests for Refunds of Down Payments Made in Auction No. 35, FCC No. 02-99 (rel. Mar. 27, 2002).[14] The Commission stated that it wants to hold on to the remaining deposits until the appeal of the D.C. Circuit decision requiring re-instatement of the NextWave licenses is complete. The United States Supreme Court granted certiorari this year on the D.C. Circuit decision and has scheduled oral argument for October 8, 2002.

For the foregoing reasons, Alee hereby requests that the Commission stay any further action on the Applications until such time as the Commission has acted on the Alee's pending Application for Review.

Respectfully submitted,

ALEE CELLULAR COMMUNICATIONS

By: Howard M. Liberman

Philip J. Mause
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Its Attorneys

August 6, 2002

[14] On April 8, 2002, Verizon Wireless filed suit challenging the Commission's refusal to refund the full amount of the down payment. *Verizon Wireless v. FCC*, Nos. 02-1110, 02-1111 (D.C. Cir. filed Apr. 8, 2002). *See also Verizon Wireless v. United States*, No. 2-280C (Ct. Fed. Cl. filed Apr. 4, 2002) (seeking damages).

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ATTACHMENT

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

STAMP & RETURN

In the Matter of	)	
	)	
Alee Cellular Communications	)	File No. _____
	)	
Cellular Radiotelephone Station KNKN271	)	
	)	

RECEIVED

JUL - 1 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

APPLICATION FOR REVIEW

Alee Cellular Communications ("Alee"), by its attorneys, pursuant to Section 1.115 of the Commission's rules, hereby submits this Application for Review of the May 30, 2002, letter of the Wireless Telecommunications Bureau ("Letter") concerning the cellular radiotelephone license held by Alee for New Mexico 3 RSA, Market 555A, call sign KNKN271. A copy of the Letter and the Bureau's May 31, 2002 public notice of this action are attached hereto (Attachment A).

The Commission revoked Alee's initial license for KNKN271 in 1997, but Alee has continued to operate the facility pending the outcome of appeals.[1] In 2000, during the appeal process, the Wireless Telecommunications Bureau granted a license renewal application which Alee submitted. The Bureau granted the renewal without condition and the grant became final

[1] Algreg Cellular Engineering, *Memorandum Opinion and Order*, 12 FCC Rcd 8148 (1997) ("*Algreg I*"), *pet. for recon. denied*, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524 (1999), *aff'd*, Alee Cellular Communications v. FCC, No. 99-1460 (D.C. Cir. Jan. 30, 2001), *pet. for rehearing denied* (D.C. Cir. Apr. 5, 2001), *cert. denied*, 122 S. Ct. 344 (Oct. 9, 2001) (collectively "Algreg Proceeding").

40 days later. The Bureau now is attempting to revoke this valid renewal authorization without following the procedures set forth clearly in the Communications Act and the Commission's rules. Alee hereby requests that the Commission review the Bureau's action, acknowledge that the Bureau has granted Alee's renewal application for KNKN271, and either reinstate Alee's renewal authorization or, if the Commission seeks to modify or revoke Alee's renewal authorization, provide Alee with appropriate notice, an opportunity to respond, and a right to a hearing if necessary.

Background

Alee was one of several participants in a lottery for certain cellular RSA markets, pursuant to which it won New Mexico RSA-3 (hereinafter "NM3"). Prior to the lottery, Alee had entered into a mutual contingent risk-sharing agreement which allowed signatories the right to receive income and sales proceeds from any party to the agreement whose RSA application was granted. The Common Carrier Bureau subsequently found that these agreements violated the Commission's rules, including the rule that prohibited partial settlements among nonwireline RSA applicants. In 1991, the Bureau designated for hearing all of the applications and licenses, including Alee's license, of those who had participated in the risk-sharing agreement at the time applications were filed.[2] In addition, the Bureau ordered Alee to show cause why its license should not be revoked for alien ownership and lack-of-candor allegations.

The Commission ultimately concluded that the risk sharing agreement was not a basis for denial of the Algreg Proceeding applications or for the revocation of licenses, including Alee's NM3 license. In addition, the Commission determined that Alee's violation of the alien

[2] Algreg Cellular Engineering, *Memorandum Opinion and Order and Order Designating Applications for Hearing and Order to Show Cause*, 6 FCC Rcd 2921 (1991).

ownership rules did not provide a basis for revoking Alee's license. However, the Commission determined that Alee's lack of candor with regard to the alien ownership issue warranted revocation of Alee's NM3 license.[3]

Alee appealed the Commission's decision to the U.S. Court of Appeals for the District of Columbia. On January 31, 2001, the Court of Appeals affirmed the Commission's decision to revoke Alee's license for lack of candor.[4] Alee petitioned for rehearing, but the court denied that petition in April 2001.[5] The United States Supreme Court denied Alee's petition for writ of certiorari on October 9, 2001.[6]

In the interim, on September 8, 2000, Alee filed an application for renewal of its license for station KNKN271 (File No. 0000216499). On October 12, 2000, Alee supplemented its renewal application to inform the Commission that it was a party to the Algreg Proceeding and that its case was pending for review at the U.S. Court of Appeals.[7] The Bureau granted the renewal application on December 4, 2000, without any conditions. This grant of renewal appeared on public notice on December 13, 2000 (copy attached hereto as Attachment C).

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[3] *Algreg I*, 12 FCC Rcd at 8170, ¶ 51.

[4] Alee Cellular Communications v. FCC, No. 99-1460 (D.C. Cir. Jan. 30, 2001) ("*Alee*").

[5] *Alee*, No. 99-1460 (D.C. Cir. Apr. 5, 2001).

[6] Alee Cellular Communications v. FCC, 122 S. Ct. 344 (2001).

[7] Letter from Drinker Biddle & Reath LLP, to Secretary, Federal Communications Commission, dated Oct. 12, 2000 (copy attached hereto as Attachment B). The application was submitted through the Commission's ULS system, which allows for only minimal responses and does not provide opportunity to attach exhibits.

Accordingly, the Bureau's action granting renewal of Alee's NM3 license without conditions became final on January 22, 2001.[8]

Now the Bureau, in its Letter under review here, is dealing with post-appeal procedural matters (inter alia, providing Alee with special temporary authority to operate for up to 180 days or until another licensee is in place), without any mention of the fact that the Bureau has renewed Alee's licensed for NM3 for a new term ending on October 1, 2010. The Bureau is ignoring its renewal of KNKN271, but in doing so is violating Alee's due process rights and the Commission's rules and precedents.

Discussion.

The renewal grant was a new Commission authorization. This new authorization is independent of Alee's initial license and the Commission's revocation thereof, because when the Bureau granted the renewal, it placed no conditions on its action. No Commission precedent suggests that an unconditional renewal authorization automatically is revoked if a prior revocation of an initial license, on appeal at the time of renewal, becomes "final" after the renewal grant. The Bureau cannot simply ignore an authorization that became final and was not subject to any conditions. The renewal effectively acts as a new license. In order to revoke that valid license, an entirely new revocation process must begin.

The very terms of the Act make it clear that a licensee is granted an authorization only for the term of that authorization and that any new grant, whether by renewal or otherwise, is a completely separate authorization. The Act provides in Section 301 that "no ... license shall be construed to create any right, beyond the terms, conditions, and periods of the license." Section

[8] After the Bureau's renewal, the Commission's ULS Database consistently stated that Alee's renewal application for KNKN271 was granted on December 4, 2000, for a term ending on October 1, 2010. *See* Attachment D.

309(h) provides that "[t]he station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof." The Supreme Court also has made clear that an initial license and a renewal are totally separate authorizations. In *FCC v. Sanders Bros. Radio Station*, the Court stated: "Licenses are limited to a maximum of three years' duration, may be revoked, and need not be renewed. Thus the channels presently occupied remain free for a new assignment to another licensee in the interest of the listening public." 309 U.S. 470, 475 (1940).

By ignoring its action renewing Alec's license, the Bureau is attempting to revoke a license without meeting its own procedures for license revocation and the procedures set forth in the Administrative Procedure Act ("APA"). The APA states that "the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings thereof, the licensee has been given – (1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements." 5 U.S.C. § 558(c)(1)-(2). Section 312(c) of the Communications Act states that "[b]efore revoking a license or permit ... the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation ... should not be issued."[9] By not giving Alec the proper notice and an opportunity to respond to the revocation of its renewal license, the Bureau is violating Section 312 of the Act and Section 558(c) of the APA.

The Commission has recognized the need to give a licensee proper notice and opportunity to respond when modifying a license, an action far less harsh than revocation. For example, the Wireless Telecommunications Bureau authorized Grand Trunk Western Railroad

[9] 47 U.S.C. § 312(c); *see also* 47 C.F.R. §§ 1.91, 1.92.

Communications Department ("Grand Trunk") to operate a Multiple Address System ("MAS") in the Toledo, Ohio area, and the authorization became final. The authorization did not include certain engineering conditions required by an arrangement between the United States and Canada concerning frequency use near the Canadian border. The Bureau found that Section 1.87(a) of the Commission's rules required that before the Commission could modify the license to impose the required conditions, Grand Trunk had to be given notice and an opportunity to protest.[10] Modifying Grand Trunk's authorization is a far less drastic action than the Commission's attempted revocation of Alee's renewal grant, and yet the same Bureau did not give Alee the required notice and opportunity to respond.

The Commission must use the same set of procedures in the treatment of similarly situated licensees.[11] Although Grand Trunk and Alee are not identically situated, Alee is subject to the most severe Commission enforcement, revocation, and therefore should be given at least the same rights as Grand Trunk. Revocation is, after all, the most drastic modification of an authorization.

In *License Communications Services, Inc.*,[12] the Commission dealt with a situation in which the Wireless Telecommunications Bureau had licensed to Paging Systems, Inc. ("PSI") frequencies that were subject to an application for review by a prior applicant whose application for the same frequencies had been dismissed. The Bureau licensed the frequencies to PSI without conditioning the licenses on the outcome of that application for review, and the grants

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[10] Grand Trunk Western Railroad Communications Department, *Memorandum Opinion and Order*, DA 02-989, at ¶ 6 (released May 1, 2002).

[11] *See* Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551, 1555 (D.C. Cir. 1987).

[12] 13 FCC Rcd 23781, 23794, ¶ 28 (1998).

became final. Noting that conditions should have been put on the license, the Commission modified PSI's licenses by giving PSI unassigned spectrum and reclassifying the contested frequencies as unassigned pending the outcome of the application for review.[13] The Commission, acting under its authority in Section 316 of the Act, decided that it was in the public interest for the licenses to be modified because of the Bureau's error.[14] The Commission did not revoke the licenses because of its failure to properly condition the authorization, but instead provided PSI with other (evidently, comparable) frequencies.

These two cases demonstrate that when the Commission issues an authorization that becomes final and then later determines that such action was in error, the Commission cannot ignore its action. Instead, the Commission must provide the recipient of the authorization with notice of what the Commission intends to do and an opportunity to respond. The Bureau's May 30, 2002 Letter does not even mention the Bureau's grant of Alee's renewal application for KNKN271.

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[13] Id. at ¶ 30.

[14] 47 U.S.C. § 316(a)(1) states: "Any station license or construction permit may be modified by the Commission ... if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification."

For the foregoing reasons, Alee hereby requests that the Commission review the Bureau's May 30, 2002 Letter and acknowledge that the Bureau has renewed Alee's license for KNKN271. If the Commission decides to go further and attempt to modify or revoke such authorization, it first must provide Alee with appropriate notice and an opportunity to respond.[15]

Respectfully submitted,

ALEE CELLULAR COMMUNICATIONS

By: Howard M. Liberman

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Its Attorneys

July 1, 2002

[15] The Bureau's public notice of its May 30, 2002 Letter, included in Attachment A hereto, also sets forth procedures for new applications for the geographic area covered by KNKN271. Alee suggests that the Commission defer the processing of any such applications until the Commission deals with the matters raised in this Application for Review.

ATTACHMENT A

Federal Communications Commission
Washington, D.C. 20554

May 30, 2002

Alee Cellular Communications
1643 West Little River Drive
Seneca, SC 29672

Dear Licensee:

In accordance with its decision in In re Applications of ALGREG Cellular Engineering, et al., *Memorandum Opinion and Order*, 12 FCC Rcd 8148, 8172-8181 (1997) (*Algreg I*), pet. for recon. denied, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18533-18535 (1999) (*Algreg II*), aff'd, *Alee Cellular Communications v. FCC*, No. 99-1460 (D.C. Cir. Jan. 30, 2001), pet. for rehearing denied (D.C. Cir. Apr. 5, 2001), pet. for writ of cert. denied (S.Ct. Oct. 9, 2001), the Commission has revoked the Cellular Radiotelephone Service license held by Alee Cellular Communications (Alee) for the New Mexico 3 RSA, Market 555A (NM3), call sign KNKN271.

Pursuant to Sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f), and section 1.931 of the Commission's rules, 47 C.F.R. § 1.931, we hereby grant on our own initiative special temporary authority (under call sign WPUY978) to Alee to continue to operate its existing cellular facilities in the NM3 RSA for the lesser of 180 days from today, May 30, 2002, or 60 days following receipt of written notification from a new licensee authorized to provide service in any part of Alee's current cellular geographic service area (CGSA) in the NM3 RSA. Because Alee currently has subscribers in the NM3 RSA (based on information previously provided to us), we find that it is in the public interest to grant STA to Alee subject to certain conditions, in order not to unduly disrupt the service relied upon by these subscribers and to permit an orderly transition for such subscribers, as well as to provide Alee with an opportunity to make arrangements to discontinue its operations in the NM3 RSA.

The grant of STA is subject to the following conditions:

1. Alee is not permitted to solicit or add new subscribers in the NM3 market while it is operating under the grant of STA.

2. Alee shall provide written notice to each of its subscribers at least 30 days prior to permanently discontinuing service.[1]

3. After the expiration of the STA or any renewals or extension thereof, Alee will no longer be authorized to provide further service and shall cease any and all operations in the NM3 market.

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[1] Alee shall also provide a copy of such notice to the Commission.

4. At such time as Alee shall cease operations in the NM3 market, Alee shall notify the Commission and shall provide the date upon which its operations ceased.

5. The Commission may terminate or modify the STA in its discretion in furtherance of the public interest.

The STA is subject to renewal or extension upon application by Alee in accordance with the Commission's rules. The Commission will evaluate each renewal or extension request upon its merits and in light of the public interest factors associated with the request at the time of filing.

If you have any question, please contact me at 202.419.0609.

Sincerely,

Katherine M. Harris

Katherine M. Harris
Deputy Chief,
Commercial Wireless Division
Wireless Telecommunications Bureau

cc: Philip J. Mause

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 02-1294
May 31, 2002

WIRELESS TELECOMMUNICATIONS BUREAU IMPLEMENTS REVOCATION OF CELLULAR CALL SIGN KNKN271 (NM3 RSA); PHASE II UNSERVED AREA APPLICATION RULES TO BE APPLIED

The Wireless Telecommunications Bureau (Bureau) has implemented the Commission's revocation of cellular call sign KNKN271, held by Alee Cellular Communications (Alee) for the New Mexico 3 RSA, Market 555A (NM3). This action was taken pursuant to the Commission's order in In re Applications of ALGREG Cellular Engineering, et al., *Memorandum Opinion and Order*, 12 FCC Rcd 8148, 8172-8181 (1997) (*Algreg I*), pet. for recon. denied, *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18533-18535 (1999) (*Algreg II*), aff'd, *Alee Cellular Communications v. FCC*, No. 99-1460 (D.C. Cir. Jan. 30, 2001), pet. for rehearing denied (D.C. Cir. Apr. 5, 2001), pet. for writ of cert. denied (S.Ct. Oct. 9, 2001).

The Bureau also has granted special temporary authority to Alee to continue to operate its cellular system in the NM3 RSA for the lesser of 180 days from May 30, 2002, or 60 days following receipt of written notification from a new licensee authorized to provide service in any part of Alee's currently authorized cellular geographic service area in the NM3 RSA.

Pursuant to section 22.949(b) of the Commission's rules, 47 C.F.R. § 22.949(b), the area previously licensed to Alee under call sign KNKN271 is now subject to the Phase II cellular unserved area application rules contained in Part 22 of the Commission's rules. Specifically, since the Phase I unserved area licensing period has expired, interested parties may file an application under section 22.949(b), and we invite them to do so. Any such application must protect any previously authorized cellular geographic service area (CGSA) extensions into the NM3 service area for systems operating on cellular channel block A. Phase II unserved area applications may propose only one CGSA per application, and may propose *de minimis* and contract service area boundary (SAB) extensions. Any mutually exclusive Phase II applications for this market will be processed in accordance with section 22.131 of the Commission's rules, 47 C.F.R. § 22.131.

For further information, please contact Kathy Harris at 202.418.0609.

ATTACHMENT B

DrinkerBiddle&Reath LLP

John P. Bankson, Jr.
Of Counsel
[illegible]

1500 K Street N.W.
Suite 1100
Washington, DC
[illegible]

October 12, 2000

RECEIVED
OCT 12 2000
Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

RE: File No. 00002 16499
Alee Cellular Communications, Wireless Telecommunications Bureau

Dear Ms. Salas:

On behalf of Alee Cellular Communications ("Applicant"), we are submitting additional information relating to the referenced renewal application submitted on September 8, 2000, for call sign KNKN271 ("Application"). The Application was submitted via the Commission's Universal Licensing System ("ULS"), as required by Section 1.913(b) of the Commission's rules, 47 C.F.R. § 1.913(b). The electronic form for renewal seeks minimal responses, and ULS did not permit Applicant to supplement or amend its renewal application to provide additional information or to attach an explanatory exhibit.

ULS restricts flexibility in providing additional information with renewal applications. Specifically, Applicant has not had an opportunity to respond to Question 45 of Main Form FCC Form 60 1. In an abundance of caution, Applicant is submitting this letter. In response thereto, Applicant refers to the Commission's CC Docket No. 91-142 and United States Court of Appeals (District of Columbia Circuit) Case No. 99-1460. Applicant is a party to the latter docket as the appellant, and was a licensee party in the Commission docket.

Please stamp as received the additional copy of this filing and return it to our courier.

If any questions arise, please contact the undersigned.

Very truly yours,

John P. Bankson, Jr. /BB

John P. Bankson, Jr.

150th ANNIVERSARY 1849-1999

ATTACHMENT C

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W., TW-A325
Washington, DC 20554

News Media Information (202) 418-0500
Fax-On-Demand (202) 418-2830
Internet:http://www.fcc.gov
ftp.fcc.gov

Report Number: 721 | Date of Report: 12/13/2000

Wireless Telecommunications Bureau
Site-By-Site
Action

Below is a listing of applications that have been acted upon by the Commission.

AI - Aural Intercity Relay

File Number	Action Date	Call Sign	Applicant Name	Purpose	Action
0000222404	12/06/2000	WPQY887	KUTE Inc.	AM	G

AS - Aural Studio Transmitter Link

File Number	Action Date	Call Sign	Applicant Name	Purpose	Action
0000258855	12/05/2000		Marx, Rose A	AM	D
0000283792	12/06/2000	WLG372	Tele-Media Company of Vermont, L.L.C.	CA	G
0000283793	12/06/2000	WLL218	Tele-Media Company of Vermont, L.L.C.	CA	G
0000283794	12/06/2000	WLL223	Tele-Media Company of Vermont, L.L.C.	CA	G
0000285319	12/07/2000	WPQW836	Grand County Wireless Inc	CA	G
0000164084	12/06/2000	WHG272	SOUTHERN UTAH UNIVERSITY	MD	G
0000207668	12/03/2000	WMG218	SOUND BROADCASTING LLC	MD	D
0000260905	12/05/2000	WLF842	Citadel Broadcasting Company	MD	G
0000204948	12/03/2000		HOLIDAY BROADCASTING CO	NE	D
0000254071	12/05/2000	WPQY733	Dakota Circle Tipi Inc	NE	G
0000259815	12/05/2000		Dowdy & Dowdy Partnership	NE	D
0000262626	12/08/2000	WPQY996	Kasa Moku Ka Pawa Broadcasting, Inc.	NE	G
0000263396	12/04/2000	WPQY868	Midwest Radio Network L.L.C.	NE	G

CL - Cellular

File Number	Action Date	Call Sign	Applicant Name	Purpose	Action
0000227140	12/07/2000	KNKQ283	EASTERN SUB-RSA L.P.	AM	G
0000227143	12/07/2000	KNKN489	WASHINGTON RSA NO. 8 LIMITED PARTNERSHIP	AM	G
0000236837	12/06/2000	KNKN890	NORTH CAROLINA RSA 1 PARTNERSHIP	MD	G
0000211166	12/07/2000	KNKN519	GTE WIRELESS OF THE SOUTH INCORPORATED	RM	G
0000211277	12/07/2000	KNKN888	TEXAS RSA 10B3 LIMITED PARTNERSHIP	RM	G
0000211283	12/07/2000	KNKN608	GTE MOBILNET OF TEXAS RSA #16 LIMITED PARTNERS	RM	G
0000221065	12/07/2000	KNKA811	WWC Midland License Corporation	RM	G
0000227485	12/07/2000	KNKN498	GILA RIVER CELLULAR GENERAL PARTNERSHIP	RM	G
0000227488	12/07/2000	KNKN607	OKLAHOMA RSA 6 LIMITED PARTNERSHIP	RM	G
0000227491	12/07/2000	KNKN578	OKLAHOMA RSA 7 LIMITED PARTNERSHIP	RM	G
0000227504	12/07/2000	KNKN646	TEXAS RSA NO. 2 LIMITED PARTNERSHIP	RM	G
0000227520	12/07/2000	KNKN562	SYGNET COMMUNICATIONS, INC.	RM	G
0000227524	12/07/2000	KNKN660	SYGNET COMMUNICATIONS, INC.	RM	G
0000227535	12/07/2000	KNKN625	SYGNET COMMUNICATIONS, INC.	RM	G
0000227576	12/07/2000	KNKQ434	Dobson Cellular Systems, Inc.	RM	G
0000227592	12/07/2000	KNKN711	Dobson Cellular Systems, Inc.	RM	G
0000227598	12/07/2000	KNKN658	Dobson Cellular Systems, Inc.	RM	G
0000229031	12/07/2000	KNKN545	Dobson Cellular Systems, Inc.	RM	G
0000229075	12/07/2000	KNKN295	Dobson Cellular Systems, Inc.	RM	G
0000229082	12/07/2000	KNKN268	Dobson Cellular Systems, Inc.	RM	G
0000229090	12/07/2000	KNKN407	Dobson Cellular Systems, Inc.	RM	G
0000229094	12/07/2000	KNKN441	WWC HOLDING CO., INC.	RM	G
0000229120	12/07/2000	KNKN205	Dobson Cellular Systems, Inc.	RM	G
0000229139	12/07/2000	KNKQ409	ACC Minnesota License LLC	RM	G
0000229142	12/07/2000	KNKN512	ACC NEW YORK LICENSE I LLC	RM	G
0000229165	12/07/2000	KNKN633	ACC NEW YORK LICENSE I LLC	RM	G
0000229283	12/07/2000	KNKN447	ACC MINNESOTA LICENSE LLC	RM	G
0000229284	12/07/2000	KNKN375	ACC Minnesota License LLC	RM	G
0000231238	12/07/2000	KNKN393	Litchfield County Cellular, Inc.	RM	G
0000237952	12/07/2000	KNKA817	AT&T WIRELESS SERVICES OF WASHINGTON, INC.	RM	G
0000209087	12/07/2000	KNKN327	N.E. COLORADO CELLULAR, INC.	RO	G
0000212352	12/07/2000	KNKN676	Price Communications Wireless II, Inc.	RO	G
0000212354	12/07/2000	KNKN680	PRICE COMMUNICATIONS WIRELESS V, INC.	RO	G
0000216499	12/04/2000	KNKN271	ALEE CELLULAR COMMUNICATIONS	RO	G
0000251538	12/07/2000		CONCHO CELLULAR TELEPHONE CO., INC.	WD	W

ATTACHMENT D

Federal Communications Commission

SITE	KNKN271	A	ALEB CELLULAR COMMUNICATIONS
602-7 COLLEGE AVENUE	CLEMSON	SC	29631
0 -	CMA555	0	New Mexico 3 - Catron
Dec 04, 2000	Dec 04, 2000	CL	
0 -	Oct 01, 2010	A	N
Sep 13 2000 11:59:59:000PM	Dec 13 2000 11:59:59:000PM	Dec 4 2000 10:39:23:686AM	

1 Row(s) were Retrieved

Table of Contents | Help

If you have suggestions for improvements to this application, please contact the FCC at betacomm@fcc.gov or (202) 414-1250.
General Menu Reporting System

License Information

Call Sign: KNKN271	Status: Active	Authorization Type: Regular	
Radio Service: CI	Auction ID: -		
Market: CMA555	SubMarket: 0	Channel Block: A	Phase: 2
Grant Date: 12/04/2000	Effective Date: 12/04/2000	Expiration Date: 10/01/2010	Cancellation Date:
1st Build Out Deadline:	2nd Build Out Deadline:		
3rd Build Out Deadline:	4th Build Out Deadline:		
1st Build Out Notification Date: 01/18/1996	2nd Build Out Notification Date:		
3rd Build Out Notification Date:	4th Build Out Notification Date:		
Cellular SIDs: 0079			
Tribal Land Bidding Credit: ( )Yes No			
TribalLand Bidding Credit Calculated:	Tribal Land Bidding Credit Awarded:		
Additional Bidding Credit Requested:	Additional Bidding Credit Awarded:		
Tribal Land Build Out Date Deadline:	Tribal Land Build Out Notification Date:		

Licensee Information

STAMP & RETURN

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

RECEIVED

JUL 11 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Alee Cellular Communications	)	File No. _____
	)	
Cellular Radiotelephone Station KNKN271	)	
	)	

To: The Commission

SUPPLEMENT TO APPLICATION FOR REVIEW

Alee Cellular Communications ("Alee"), by its attorneys, hereby submits this Supplement to the Application for Review it filed with the Commission on July 1, 2002. Alee's Application for Review asks the Commission to review the May 30, 2002, letter of the Wireless Telecommunications Bureau ("Letter") concerning the cellular radiotelephone license held by Alee for New Mexico 3 RSA, Market 555A, call sign KNKN271.

The purpose of this Supplement is to bring to Commission's attention, in the context of Alee's Application for Review, a Commission decision released on July 3, 2002. In that decision, *Star Development Group, Inc.* (FCC 02-190), the Commission stated, at paragraph 7:

> Previously, the Commission has held that its databases are an unofficial, secondary source of information that "in a few instances may not agree with the primary source (e.g., the station authorization, application, petition for rulemaking, etc.)." These earlier decisions relied in large part on subsection (e) of Section 0.434 of our rules, which provided that electronic databases were unofficial sources of information. . . . However, subsection 0.434(e) was deleted in 1998. Further, in 1999 we adopted Section 1.911 of the rules, which establishes the files comprising the Wireless Telecommunications Bureau's Universal Licensing System as the official records for stations in the Wireless Radio Services. . . . [Footnotes omitted]

As pointed out in Alee's Application for Review, at note 8, from the time the Wireless Telecommunications Bureau granted Alee's renewal of license application for KNKN271 in December 2000, the Commission's ULS database consistently specified that the Bureau granted Alee's renewal application for KNKN271 in December 2000 and that the expiration date for KNKN271 is October 1, 2010. A printout from that database was included with Alee's Application for Review as Attachment D.

Thus, as the Commission stated just last week in *Star Development Group, Inc.*, the ULS is the official record for the Wireless Radio Services; therefore, the Bureau's grant of Alee's renewal of license application and the new license expiration date of October 1, 2010 established by that renewal became official Commission actions because of their inclusion in the Commission's ULS database. Indeed, those dates evidently have remained in the ULS database official record for more than 18 months.

A further point: Alee pointed out in its Application for Review that the new authorization the Bureau issued upon grant of Alee's renewal application in December 2000 included no condition with regard to the then-pending Algreg Proceeding. A copy of that authorization is attached hereto. Note that it does contain the normal conditions the Bureau regularly includes with such authorizations, but no special condition with regard to the Algreg Proceeding.

Therefore, for the reasons stated herein and in Alee's July 1, 2002 Application for Review, Alee requests that the Commission review the Bureau's May 30, 2002 Letter and acknowledge that the Bureau has renewed Alee's license for KNKN271 for a term that ends on October 1, 2010.

Respectfully submitted,

ALEE CELLULAR COMMUNICATIONS

By: Howard M. Liberman

Philip J. Mause
Howard M. Liberman
DRINKER BIDDLE & REATH LLP
1500 K Street, NW
Suite 1100
Washington, DC 20005
(202) 842-8800

Its Attorneys

July 11, 2002

DC351783J

KNKN271 01/04/2001

Federal Communications Commission

Wireless Telecommunications Bureau

Radio Station Authorization

Name of Licensee:	Call Sign	File Number	Print Date
Attention: ALEE CELLULAR COMMUNICATIONS 602-7 COLLEGE AVENUE CLEMSON SC 29631	KNKN271		01/04/2001
	Market Number: CMA555		Channel Block: A
	Sub-Market Designator: 0		SID: 0079
	Market Name: New Mexico 3 - Catron		
	Effective Date: 12/04/2000	Five Yr Build-Out Date	Expiration Date: 10/01/2010

SITE INFORMATION

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
1	34-03-18.2 N	106-57-46.1 W	2207.7	16.6	

Address	City	County	State	Construction Deadline
Atop Socorro Peak, 5 miles W of I-25 and low	Socorro	SOCORRO	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	824.5	778.1	763.5	791.9	841.5	838.5	852.6	893.5
Transmitting ERP (watts)	23.550	22.460	21.990	21.990	23.020	22.460	23.020	23.020

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
2	32-58-10.3 N	107-13-33.1 W	2241.6	16.3	

Address	City	County	State	Construction Deadline
CABALLO PEAK CELL SITE: SW CORNER	Caballo Mountain	SIERRA	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	579.2	663.2	679.4	639.8	602.9	608.5	608.5	921.4
Transmitting ERP (watts)	14.250	13.390	9.390	1.470	0	1.460	8.570	11.860

KNKN271 01/04/2001

SITE INFORMATION

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
3	34-28-08.2 N	106-46-26.1 W	1472.2	37.8	

Address	City	County	State	Construction Deadline
2 miles East of Highway 304, 1.2 miles N of	Bernardo	SOCORRO	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	56.7	-9.1	-60.3	-98.0	-25.3	60.0	28.0	21.3
Transmitting ERP (watts)	97.720	93.330	91.200	91.200	95.500	93.330	95.500	95.500

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
4	33-19-34.3 N	107-18-49.1 W	1542.5	85.1	

Address	City	County	State	Construction Deadline
1.2 miles W of I-25, .8 miles N of Alamosa Cr	Truth or Consequences	SIERRA	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	-9.1	162.4	237.4	218.2	150.9	104.8	28.6	-27.4
Transmitting ERP (watts)	97.720	93.330	91.200	91.200	95.500	93.330	95.500	95.500

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
5	34-39-18.2 N	106-42-16.1 W	1623.4	39.9	

Address	City	County	State	Construction Deadline
BLOCK 4, UNIT 85, LOT 30A PART OF RIO	BELEN	VALENCIA	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	71.6	17.4	-20.4	12.8	48.5	76.6	35.0	66.5
Transmitting ERP (watts)	97.720	93.330	91.200	91.200	95.500	93.330	95.500	95.500

Location	Latitude	Longitude	Ground Elevation (meters)	Structure Hgt to Tip (meters)	Antenna Structure Registration No.
6	33-39-57.2 N	107-04-58.1 W	1404.0	96.6	

Address	City	County	State	Construction Deadline
22 MILES SE OF SAN ANTONIO, 300' E OF	SAN ANTONIO	SIERRA	NM	

Antenna: 1 Azimuth (degrees from true north)	0°	45°	90°	135°	180°	225°	270°	315°
Antenna Height AAT (meters)	-0.9	94.2	141.7	194.6	161.7	55.8	-12.5	-15.8
Transmitting ERP (watts)	97.720	93.330	91.200	91.200	95.500	93.330	95.500	95.500

Waivers/Conditions

This authorization does not convey to the licensee the right to receive protection from the capture of subscriber traffic, co-channel interference or first-adjacent-channel interference in any area outside of the authorized cellular geographic service area (CGSA) of the system. Moreover, any facility authorized herein with a service area boundary (SAB) extending into the CGSA of any other operating cellular system on the same channel block, regardless of when such other cellular system was authorized, is subject to the following condition: In the event that the licensee of the other cellular system requests that the SAB of the facilities authorized herein be removed from its CGSA, the licensee herein must reduce transmitting power or antenna height (or both) as necessary to remove the SAB from the CGSA, unless written consent from the licensee of the other cellular system, allowing the SAB extension to remain, is obtained.