

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In re Application of</b>	)	
	)	
<b>Texas RSA 20B2 Limited Partnership</b>	)	<b>File No. 00103-CL-MP-96</b>
	)	
<b>For authority to use an alternative CGSA determination for Cellular Radio Telephone Service Station KNKQ250 Texas 20 – Wilson RSA (Market No. 671B)</b>	)	
	)	
<b>In the Matter of</b>	)	
	)	
<b>Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico</b>	)	<b>WT Docket No. 97-112</b>
	)	
<b>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</b>	)	<b>CC Docket No. 90-6</b>
	)	

To: Wireless Telecommunications Bureau

**PETITION FOR RECONSIDERATION**

Texas RSA 20B2 Limited Partnership (“Texas RSA LP”), by its attorneys and pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby requests that the Commission reconsider its dismissal of the above-referenced application and reinstate the application. The application was dismissed as part of a group of so-called “*de minimis* extension applications” in the FCC’s *Gulf Order* issued on January 15, 2002.<sup>1</sup>

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<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, WT Docket NO. 97-112 and CC Docket No. 90-6, released January 15, 2002 (“*Gulf Order*”); *Wireless Telecommunications Bureau Site-By-Site Action*, Public Notice, Report No. 1080, released January 23, 2002.

## I. BACKGROUND

On October 2, 1995, Texas RSA LP filed the above-referenced application for a major modification of its cellular system. The application seeks Commission consent to the modification of Texas RSA LP's Cellular Geographic Service Area ("CGSA") resulting from the use of an alternative CGSA determination in accordance with Section 22.911(b) of the FCC's rules. A petition to deny the application was filed by RVC Services, Inc. d/b/a Coastel Communications, Inc. on January 11, 1996, followed by additional pleadings. The application was placed on hold along with other applications affected by the *Gulf* proceeding, and the application has remained in pending status until this year.<sup>2</sup>

In its *Gulf Order*, the FCC adopted changes to its cellular service rules for the Gulf of Mexico Service Area ("GMSA"). In that order, the Commission also dismissed all pending applications for *de minimis* extensions into the Gulf. *Gulf Order* at par. 42. Texas RSA LP's application was listed among the applications dismissed on this basis. *Gulf Order* at Appendix B.

## II. DISCUSSION

Texas RSA LP seeks reconsideration of the dismissal of its application based on the prejudice such dismissal will cause to Texas RSA LP. In its *Gulf Order*, the FCC "noted that pending applicants would not be prejudiced by a dismissal of extension applications, because such applicants would have the opportunity to resubmit

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<sup>2</sup> See *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*, Second Further Notice of Proposed Rulemaking, WT Docket No. 97-112 and CC Docket No. 90-6, 12 FCC Rcd 4576 at par. 26 (1997) ("*Second FNPRM*").

applications under our revised licensing rules for unserved areas in the Gulf.”<sup>3</sup> To the extent the dismissal of Texas RSA LP’s application was based on the Commission’s assumption that Texas RSA LP would not be prejudiced by dismissal of its application, it constitutes an erroneous finding of fact, and such assumption does not provide the basis for the action taken. As discussed below, if Texas RSA LP’s application is not reinstated as requested herein, Texas RSA LP may be required to purchase at auction the right to serve area within its CGSA that it has always served and continues to serve. If subject to a competing application, and an auction of a portion of its Rural Service Area, Texas RSA LP not only is faced with the possible need to expend significant resources to acquire a license to serve area within its market which it already serves, but it risks loss of the ability to serve the area altogether. As discussed further below, the other rationale set forth in the *Gulf Order* for dismissal of the application is based on another erroneous finding, and therefore does not provide support for the Commission to dismiss Texas RSA LP’s application.

**A. Texas RSA LP Will Be Unfairly Prejudiced By Dismissal of its Application**

The Commission’s decision in the *Gulf Order* to dismiss the pending applications appears to be based on its belief that the pending applications are similar in nature, and that dismissal followed by the submission of new applications will not result in any harm to any of the applicants. While such assumptions may be generally correct, they do not apply to Texas RSA LP. Based on the nature of its service area, Texas RSA LP’s

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<sup>3</sup> *Gulf Order* at par. 41. See *Second FNPRM* at par. 56 (“We also tentatively conclude that no injustices will result from the dismissal of these applications, because the land-based carriers will have the opportunity to resubmit unserved area applications to provide service to these areas . . .”).

situation distinguishes it from most if not all other “*de minimis* extension” applicants whose applications were dismissed by the *Gulf Order*.

Preliminarily, Texas RSA LP notes that the Commission has mischaracterized its application as one of a group of “applications for *de minimis* extensions into the Gulf.” Texas RSA LP’s application did not seek a service area boundary (“SAB”) extension into the Gulf. “SAB extensions are areas outside of the cellular market boundary, but within the service area as calculated using the methods of ? 22.911(a).” 47 C.F.R. ? 22.912. Texas RSA LP in its application does not seek to serve an area outside of its cellular market boundary. It simply seeks authority under ? 22.911(b) to modify its CGSA through use of an alternative engineering showing so that it reflects “real world” coverage rather than the coverage predicted by use of the methods contained in ? 22.911(a).

Texas RSA LP currently provides reliable service to portions of its licensed RSA that are not reflected in its CGSA as calculated using the methods of ? 22.911(a). Because the five-year fill in period established by ? 22.947 has expired in Texas RSA LP’s market, the Commission’s denial of Texas RSA LP’s application effectively converts the area currently served by Texas RSA LP which is outside of its CGSA as calculated using the methods of ? 22.911(a) (and which falls within Texas RSA LP’s CGSA using the alternative methods of ? 22.911(b), into “unserved area.” If Texas RSA LP refiles its application as the Commission suggests in its *Gulf Order*, the filing of a competing application (under the “Phase II” procedures set forth in 47 C.F.R. ? 22.949) will subject the area to competitive bidding as set forth in Section 22.960 of the FCC’s rules. Accordingly, Texas RSA LP will be subject to extreme prejudice if it is required to

refile its application. If it is forced to file a new application to serve the portion of its cellular market not currently covered by its CGSA (as calculated using the methods of ? 22.911(a)), Texas RSA LP faces the possibility of being outbid by a competing applicant for this area or having to expend potentially significant financial resources to win the auction.

While Texas RSA LP will thus be prejudiced by the Commission's decision to lump its application in with those seeking authority to extend their service area *outside* of their cellular markets, those other applicants will not experience similar prejudice. The other applicants whose applications were dismissed by the FCC in the *Gulf Order* were not seeking authority to have area they already serve included in their protected service area. Rather, they are seeking to *extend* their service area by changing their operating parameters or by adding new cell sites. If they are subject to competing applications as a result of refile, they do not risk the loss of area that they already serve.

**B. The Passage of Time and Rule Modifications Adopted in the *Gulf Order* do not Provide a Proper Basis for Dismissal of Texas RSA LP's Application**

As further justification for its dismissal of Texas RSA LP's application, the Commission concluded that "dismissal is the more equitable course in light of the passage of time since the applications were filed and the fact that the rules under which they were filed have undergone some modification." *Gulf Order* at par. 42. The passage of time since the filing of Texas RSA LP's application is no basis for dismissal. The facts set forth in the application remain current and Texas RSA LP's need for the grant of its application continues. That the rules under which the application was filed "have undergone some modification" also provides no support for the application's dismissal.

Texas RSA LP's application was filed pursuant to Section 22.911(b) of the Commission's Rules. While the *Gulf Order* modified various rules related to the provision of service in the Gulf of Mexico, it did *not* modify Section 22.911(b). Accordingly, the rule modifications made in the *Gulf Order* do not affect *Texas RSA LP's* application, and do not provide a basis for its dismissal.

For the foregoing reasons, Texas RSA LP respectfully requests that the Commission reconsider its dismissal of Texas RSA LP's above-referenced application and reinstate it *nunc pro tunc*.

Respectfully submitted,

**TEXAS RSA 20B2 LIMITED PARTNERSHIP**

By: \_\_\_\_\_/s/\_\_\_\_\_

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