

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

NEW YORK File No. 04855-CL-MP-90
CELLULAR
GEOGRAPHIC
SERVICE AREA, INC.

For authority to construct
new facilities in the Domestic
Public Cellular Radio
Communications Service
at Market 38B, Providence, RI
Station KNKA233

**MEMORANDUM OPINION AND ORDER
ON RECONSIDERATION**

Adopted: December 8, 1993; Released: January 4, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. New York Cellular Geographic Service Area, Inc. (NYNEX) filed an application for two new base stations (cells) in the Providence, Rhode Island New England County Metropolitan Area (the Providence NECMA) on February 1, 1990. The application was granted by the Mobile Services Division (MSD) on April 25, 1990.¹ CGSA Cellular Partnership - RI (Rhode Island Partnership) filed a petition for reconsideration of the grant of the application. NYNEX filed an opposition. For the reasons set forth below, we dismiss the petition.

II. BACKGROUND

2. NYNEX holds the license for the Providence - Warwick - Pawtucket, Rhode Island/Massachusetts New England County Metropolitan Area (the Providence NECMA). The MSD originally granted the construction permit for the block B license in the Providence NECMA on December 8, 1983. NYNEX filed the above-referenced application for additional base stations at South Kingstown and East Greenwich on February 1, 1990. The maps included with the application showed that the CGSA extended southward into Block Island Sound by nearly 10 miles at the western edge of the CGSA.

3. In early 1989, Rhode Island Partnership filed an application to serve unserved areas of the Providence NECMA. Rhode Island Partnership's application was returned, and Rhode Island Partnership filed a petition for reconsideration which was denied.²

III. DISCUSSION

4. NYNEX's application appeared on public notice on March 16, 1990. That public notice started the 30 day window for filing petitions to deny the application.⁴⁷ C.F.R. §§ 1.41, 22.30. Within the 30 day time period, Rhode Island Partnership did not file a petition to deny NYNEX's application. However, after the Division granted this application,³ and grant appeared on public notice, Rhode Island Partnership filed a petition for reconsideration of the grant.

5. Section 1.106(b)(1) of the Commission's Rules, 47 C.F.R. § 1.106(b)(1), specifies that a party filing a petition for reconsideration must have participated in the proceeding below. In the alternative, the party must "state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding." *Id.* Rhode Island Partnership, alleging that NYNEX had changed the depiction of the CGSA on the map it filed with this application from the depiction on earlier filed maps, argues that "[t]here was nothing in the public notice of the application which alerted those potentially affected that the proposal might, contrary to the Commission's pronouncement on the subject, expand the Licensee's CGSA following the expiration of its five-year period of exclusivity." Rhode Island Partnership, Petition to Deny filed May 29, 1990, at 3. Petitioner claims that it learned subsequently of the CGSA alteration. According to Rhode Island Partnership, the public notice was inadequate to alert the public to the CGSA change and thus its reconsideration petition should be accepted.

6. We do not accept Rhode Island Partnership's arguments. We issue public notices of changes in CGSAs and service areas when licensees file applications. As a result, the public is on notice that a service area is being altered in a particular market. In this case, the specifics of the change which required Commission approval (i.e., adding two cell sites), and which were on public notice, were different from those which might have interested the Petitioner. Nonetheless, all information in the application was subject to comment, and the Petitioner had adequate opportunity within the thirty day petition period to review the application to ensure that its interests were not adversely affected by the application. Rhode Island Partnership did not avail itself of that opportunity. Since any change to the CGSA in the Providence NECMA could have had a potential effect on the Petitioner's interests, we find that Rhode Island Partnership could have, and if it wished to do so should have, participated in the proceeding below. Its failure to do so prior to the Division's action on the application bars the Petitioner from entering the pro-

¹ Public Notice, Report No. CL-90-160, released April 25, 1990.

² Rhode Island Partnership's petition for reconsideration was denied in the Commission's Unserved Areas Order, *Amendment of Part 22 for Unserved Areas*, 6 FCC Rcd 6185 (1991), *recon.* 7 FCC Rcd 7183 (1992), and was not further appealed. The re-

consideration petition was pending when the pleadings were filed in this matter. The pendency of that petition for reconsideration is sufficient for us to find that Rhode Island Partnership has standing in the case before us now.

³ Public Notice, Report No. CL-90-160, released April 25, 1990.

ceedings at this stage. 47 C.F.R. § 1.106(b)(1). Accordingly, we will dismiss Rhode Island Partnership's petition for reconsideration.

IV. ORDERING PARAGRAPH

7. IT IS HEREBY ORDERED THAT CGSA Cellular Partnership - RI's petition for reconsideration of the grant of NYNEX's application, file no. 04855-CL-MP-90, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau