

DT 05-183

**RCC MINNESOTA, INC.
RCC ATLANTIC, INC.**

Request for Redefinition of Granite State Telephone Service Area

Order *Nisi* Approving Stipulation Agreement

ORDER NO. 24,652

July 28, 2006

I. PROCEDURAL BACKGROUND

This proceeding before the New Hampshire Public Utilities Commission (Commission) arises out of an October 7, 2005 order of the Federal Communications Commission (FCC) with respect to affiliated cellular telephone carriers RCC Minnesota, Inc. and RCC Atlantic, Inc. (collectively, RCC), *RCC Minnesota, Inc.*, 20 F.C.C.R. 15,833 (2005) (FCC Order). At issue is RCC's request to be designated as an "eligible telecommunications carrier" (ETC) under section 214(e) of the Telecommunications Act, 47 U.S.C. § 214(e), which would make RCC eligible to receive federal universal service funds. As the FCC noted, ETC eligibility would require redefining the service territory of incumbent local exchange carrier Granite State Telephone (GST) such that each area served by an individual GST wire center would become a separate service territory. This is because RCC serves only three of the four areas in question. *See* 47 U.S.C. § 214(e)(1) (requiring ETCs to offer services supported by universal service funds "throughout the service area for which the designation is received"). As to those areas, the FCC approved the ETC request subject to the concurrence of the Commission. *See id.* at (e)(2) (vesting such authority in state commissions), 47 CFR § 54.207(d) (providing for FCC requests to state commissions for concurrence with service territory redefinitions in applicable FCC-initiated ETC proceedings); *see also* *RCC Minnesota, Inc.*, 83 NH PUC 611 (2003) (concluding

that Commission lacked state-law jurisdiction to confer federal ETC status on RCC directly).

The Commission, in turn, opened this docket to consider the question.

On June 28, 2006, RCC filed a stipulation agreement entered into with GST, agreeing to the redefinition of GST's service area. The agreement contains two substantive conditions.

Specifically, RCC and GST agreed that if, within one year of the signature date of the agreement, there is a change in facts material to the determination of whether a service area should be redefined under 47 CFR § 54.207, GST may file a petition with the Commission requesting that GST's four wire centers be redefined by recombination into a single service area. Such changes of fact are defined to include changes requiring GST to determine its costs on any basis other than the study area level or the imposition by the FCC of a primary-line restriction on the distribution of federal USF support. Second, should RCC obtain a license to offer Commercial Mobile Radio Service (CMRS) in Rockingham County, GST may file a petition with the Commission requesting that GST's four wire centers be redefined by recombination into a single service area. The signatories agreed that the Commission is the appropriate forum for resolving any disputes arising under the stipulation.

II. COMMISSION ANALYSIS

The FCC has proposed, and the signatories to the stipulation at issue here have agreed, to redefine GST's service area from a single, noncontiguous geographic area to four distinct geographic areas corresponding to GST's four exchanges and their four associated wire centers. Under Section 214(e)(5) of the Telecommunications Act, "service area" means "a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms." In the case of an area served by a rural telephone

company, such as GST, “service area” means “such company’s ‘study area’ unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) [47 USC §410(c)], establish a different definition of service area for such company.” A “study area” is used by the FCC for purposes of calculating the underlying costs of service used to determine Universal Service Fund support levels.

In its decision regarding redefinition, the FCC took into account the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), in accordance with 47 CFR § 54.207(d)(1). The FCC noted that the Joint Board had recommended that the FCC retain the presumption that the current study areas of rural telephone companies define their service areas.

The Joint Board made the following observations to support the recommendation:

- (1) the potential for cream-skimming is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area;
- (2) the Act, in many respects, places rural telephone companies on a different competitive footing from other local telephone companies; and
- (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than the study area level.

FCC Order at ¶ 24 (citing *In re Federal-State Joint Board on Universal Service*, 12 FCCR 87 (1996) (recommended decision of Joint Board) at ¶¶ 172-74).

The FCC structured its redefinition decision on the basis of the above observations of the Joint Board. However, the FCC also took into account the competitive context of cellular carriers in today’s telecommunications marketplace. As a result, the FCC found that GST’s service area should *not* be defined as its study area. In accordance with its own rules on

redefinition of service areas, the FCC, in its decision, outlined why it decided not to follow the Joint Board's recommendation that GST's study area define its service area.

In RCC's case, the FCC made the following findings in accordance with the Joint Board's observations and recommendations: (1) redefining GST's service area will not impose administrative burdens on the rural LEC because it will not require it to determine its costs on any basis other than the study area level; (2) redefinition at the wire center level should not result in opportunities for cream-skimming, as RCC is not picking and choosing which GST exchanges it will serve; (3) RCC is unlikely to compete with GST only in the lowest cost areas; and (4) redefining GST's service area will not change the amount of universal service support that is available to the incumbent. FCC Order at ¶ 25. The FCC, in effect, found that the Joint Board's concerns were not applicable in the case of RCC operating as a cellular provider in GST's service area.

In support of its finding, the FCC cites to its 1997 Universal Service Order, *In re Federal-State Joint Board on Universal Service*, 12 FCCR 8,776 (1997). In that decision, the FCC concluded that "universal service policy objectives may be best served if a state defines rural service areas to consist only of the contiguous portion of a rural study area, rather than the entire rural study area." *Id.* at ¶ 190. The FCC further concluded in the 1997 order that "requiring a carrier to serve a noncontiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers." *Id.*

As noted above, section 214(e)(5) of the Telecommunications Act states that redefinition of a telephone company's service area requires the agreement of both the FCC and the relevant state commission. Further, such agreement should take into account the recommendations of the

Joint Board. Thus, for the FCC designation to take effect, we must review and agree with the FCC's proposed redefinition of GST's service area.

In this case, the signatories to the stipulation have set forth two conditions to the redefinition proposed by the FCC. Both would permit GST to petition the Commission to recombine the four wire centers into a single service area under certain circumstances. We understand the conditions to provide that, in the event one or more particular scenarios occur which could affect either the amount of support GST receives under the USF or the burden of administering the cost studies required under the USF, GST would have the option to petition the Commission for review of the redefinition decision. The conditions agreed to by the signatories provide GST with recourse in the event that market or regulatory changes result in the very issues, such as a change in support levels, that the FCC found would not occur in the event of redefinition. In either case, GST would be the petitioner for Commission review and action. Thus, the issue of this Commission's jurisdiction would not arise as it did in Docket No. DT 03-128, the proceeding that led to our decision in 2003 that we lacked authority to grant RCC ETC status directly.

Upon review of the FCC's analysis and in light of the agreement, including the conditions agreed to by the two companies, we find the proposed redefinition and stipulation to be reasonable and in the public interest. We agree with the FCC that redefining GST's service area will not impose administrative burdens on GST because it will not require the company to determine its costs on any basis other than the study area level, which will remain the same. We also agree that redefinition at the wire center level should not result in opportunities for cream-skimming, as RCC is not picking and choosing which exchanges it will serve; that RCC is

unlikely to compete with GST only in the lowest cost areas; and that redefining GST's service area will not change the amount of universal service support that is available to it.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the stipulation agreement be APPROVED; and it is

FURTHER ORDERED, that the service area of Granite State Telephone be redefined at the wire center level in accordance with the October 7, 2005 order of the Federal Communications Commission; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 7, 2006 and to be documented by affidavit filed with this office on or before August 28, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 14, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 21, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 28, 2006, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of
July, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary