

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

In the Matter of)	
)	
SAGIR, INC)	
)	File No. 00557-CL-MP-95
For Authority to Modify)	
the Facilities for Station KNKN383)	
Serving the Nebraska 1 – Sioux)	
RSA Market No. 533A)	
)	

ORDER

Adopted: February 28, 2000

Released: March 1, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this order, we address N.E. Colorado Cellular, Inc.’s (“NECC”) Petition to Deny (“Petition”) the above-captioned major modification application of Sagir, Inc. (“Sagir”) for authority to modify a cell site at Chappell, Nebraska. NECC alleges that Sagir’s proposed service area boundary (“SAB”) extends into NECC’s Cellular Geographic Service Area (“CGSA”)¹ in violation of section 22.912 of the Commission’s rules.² In its opposition, Sagir claims that NECC has an unauthorized extension into Sagir’s CGSA and that its attempts to negotiate an agreement with NECC have been unsuccessful.³ Sagir also requests a waiver of Section 22.912 of the Commission’s rules.⁴

2. Section 22.912(a) provides in part that a licensee may extend its SAB into adjacent cellular markets if the extension is *de minimis*, and demonstrably unavoidable for technical reasons and does not extend into the CGSA of any other licensee unless it obtains consent from the other licensee.⁵ We have examined the record in this proceeding and conclude that Sagir’s proposed SAB extension is defective pursuant to Section 22.912 because it overlaps NECC’s CGSA without NECC’s consent. We therefore dismiss Sagir’s major modification application and grant NECC’s Petition.

¹ Petition at 2.

² 47 C.F.R. § 22.912. The Petition cites to the recodified Part 22, effective January 1, 1995.

³ Opposition at 2.

⁴ *Id.* at 4. Sagir filed a complaint on June 8, 1995, against NECC alleging an improper extension into its CGSA. The Commission granted Sagir’s request for relief and ordered NECC to remove the unauthorized extension. *See, Sagir, Inc. v N.E. Colorado Cellular, Inc.* 13 FCC Rcd 23762(1998).

⁵ 47 C.F.R. § 22.912(a).

3. In addition, we will not consider Sagir's assertion that NECC has an unauthorized extension into Sagir's CGSA. The issue in this proceeding concerns Sagir's pending application to modify a cell site at Chappell, Nebraska. Because the issue of whether NECC has an unauthorized extension into Sagir's CGSA is not relevant to our consideration of Sagir's above-captioned application, we dismiss this argument.

4. We also deny Sagir's request for waiver of Section 22.912 of the Commission's rules. A request for a waiver of Commission rules must "set forth the reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative within the existing rules."⁶ Sagir claims a waiver is warranted because NECC failed to negotiate with Sagir in good faith. Sagir also states that with a waiver it will not be able to adequately serve its subscribers.⁷ On the basis of the record before us, we are not persuaded that Sagir has presented unique circumstances sufficient to justify grant of its waiver request. We therefore deny Sagir's request.

5. Accordingly, IT IS ORDERED, pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d), and Sections 0.331 and 22.130 of the Commission's rules, 47 C.F.R. §§ 0.331 and 22.130, the Petition to Deny, filed by N.E. Colorado Cellular, Inc., on February 7, 1995, IS GRANTED.

6. IT IS FURTHER ORDERED, pursuant to Section 309(a) of the Communications Act of 1934, as amended 47 U.S.C. § 309(a), and Sections 0.331 and 22.912 of the Commission's rules, 47 C.F.R. § 0.331 and 22.912, the application for Major Modification of Facilities for Station KNKN383 filed by Sagir, Inc., on October 20, 1994, IS DENIED.

7. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Commissions Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the request for waiver filed by Sagir, Inc. on February 17, 1995, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Branch

⁶ 47 C.F.R. § 1.3; *Wait Radio v FCC*, 418 F.2d1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁷ *Id*