

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

In re Application of)	
)	
N.E. COLORADO CELLULAR, INC.)	File No. 0000086223
)	
For Authority to Establish a New Station)	
in the Cellular Radiotelephone Service)	
in the Nebraska 1 – Sioux Rural Service Area,)	
Market No. 533A as a Phase II Unserved Area)	
Applicant)	

MEMORANDUM OPINION AND ORDER

Adopted: April 5, 2001

Released: April 6, 2001

By the Chief, Commercial Wireless Division:

1. The Commercial Wireless Division of the Wireless Telecommunications Bureau has before it a Petition to Dismiss or Deny (Petition) filed by Sagir, Inc. (Sagir) on April 7, 2000. Sagir requests that the above-captioned Phase II unserved area application of N.E. Colorado Cellular, Inc. (NECC) be dismissed or denied.¹ For the reasons stated below, we grant Sagir's Petition and dismiss NECC's application.

2. **Background.** Sagir is the Block A licensee of Station KNKN-383 serving the Nebraska 1-Sioux RSA (Sioux RSA). NECC is the Block A licensee of Station KNKR-307 serving the Colorado 2-Logan RSA, which is adjacent to the Sioux RSA. NECC filed the above-captioned Phase II unserved area application for a portion of the Sioux RSA on February 29, 2000.² NECC's application was accepted for filing and placed on Public Notice on March 8, 2000.³

3. In its Petition, Sagir states that the Service Area Boundary (SAB) of each of the ten cell sites proposed in NECC's application would impermissibly extend into Sagir's authorized cellular geographic service area (CGSA).⁴ Section 22.912(a) of the Commission's rules provides

¹ NECC filed an Opposition to the Petition on April 17, 2000. Sagir filed a Reply to the Opposition on April 27, 2000.

² See 47 C.F.R. § 22.949(b) (Phase II unserved area rule).

³ See *Public Notice*, Report No. 471 (rel. March 8, 2000).

⁴ Sagir Petition at 2. See 47 C.F.R. § 22.912 ("SAB extensions are areas outside of the cellular market boundary, but within the service area as calculated using the methods of § 22.911(a).").

that “SABs may extend into adjacent cellular markets if such extensions are *de minimis*, are demonstrably unavoidable for technical reasons of sound engineering design, and do not extend into the CGSA of any other licensee’s cellular system on the same channel block (unless the licensee of such other system consents to the extension)”⁵ Sagir states that NECC’s application violates Section 22.912(a) because it did not consent to any of the SAB extensions into its authorized CGSA.⁶ In its Opposition, NECC states that its “proposed contours do not overlap Sagir’s 32 dBu [service area] boundaries. They only overlap Sagir’s *alternative* CGSA”⁷ NECC argues that the Commission should “force Sagir to shrink its CGSA to its original [32 dBu] boundary as predicted by the agency’s standard formula,”⁸ and grant its Phase II application.

4. **Discussion.** We disagree with NECC. In *Sagir I*, the Commission denied NECC’s challenge to the propriety of Sagir’s alternative CGSA.⁹ Nothing in the record of this proceeding suggests that it would be appropriate to revisit the grant of Sagir’s alternative CGSA. We reject NECC’s allegation that Sagir’s construction of eight fill-in sites within its alternative CGSA demonstrates that it “never actually provided coverage in these areas,”¹⁰ warranting redrawing its alternative CGSA. Section 1.947(b) of the Commission’s rules provides that licensees may add internal fill-in sites “as a matter of right without prior Commission approval.”¹¹ In light of the Commission’s approval of the alternative CGSA in *Sagir I*, Sagir’s construction of the fill-in sites was proper.

5. NECC also claims that a March 2000 drive test shows that Sagir was not providing reliable service in its alternative CGSA, warranting redrawing its alternative CGSA. We note that a substantial portion of the area that NECC claimed Sagir did not serve actually is outside of Sagir’s alternative CGSA.¹² We also note that section 22.911(b) of the Commission’s rules provides that “service is considered to be provided in all areas, including ‘dead spots’” of an alternative CGSA.¹³ Thus, the mere fact that NECC’s drive test purports to show dead spots within Sagir’s alternative CGSA does not require us to redraw the CGSA. Accordingly, we conclude that NECC’s application is defective under Section 22.912(a) of the Commission’s rules because the SAB of each cell site it proposes impermissibly extends into Sagir’s authorized

⁵ 47 C.F.R. § 22.912(a).

⁶ Sagir Petition at 3.

⁷ NECC Opposition at 4 (emphasis in original).

⁸ *Id.*, citing 47 C.F.R. § 22.911(a).

⁹ Sagir, Inc., *Memorandum Opinion and Order*, FCC 01-115 (rel. Apr. 3, 2001) (*Sagir I*).

¹⁰ NECC Opposition at 3.

¹¹ 47 C.F.R. § 1.947(b).

¹² See Exhibit 4 to Declaration of John Roussos, attached as Exhibit A to Sagir Reply.

¹³ 47 C.F.R. § 22.911(b). Dead spots are defined as “[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service.” 47 C.F.R. § 22.99.

CGSA.¹⁴

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309(d), and Sections 1.934(d)(2), 1.939, 22.912(a) and 22.949(a) of the Commission's rules, 47 C.F.R. §§ 1.934(d)(2), 1.939, 22.912(a), and 22.949(a), the Petition to Dismiss or Deny filed by Sagir, Inc. on April 30, 2000 in the above-captioned matter is GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309(d), and Sections 1.934(d)(2), 1.939, 22.912(a) and 22.949(a) of the Commission's rules, 47 C.F.R. §§ 1.934(d)(2), 1.939 and 22.912(a) and 22.949(a), the above-captioned Phase II unserved area application filed by N.E. Colorado Cellular, Inc. on February 29, 2000 is DISMISSED as defective.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁴ *Branch Order*, 15 FCC Rcd. at 4468, ¶ 5.