

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

In the Matter of )
State of Ohio Department of Transportation )
Request for Waiver of Section 90.242(b)(4)(iv) )
of the Commission's Rules ) File No. 0008989476

ORDER

Adopted: October 13, 2020

Released: October 14, 2020

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On February 25, 2020, the State of Ohio Department of Transportation (ODOT) filed an application and waiver request to modify its Travelers' Information Station (TIS) to expand its service area so that it may provide a 2 mV/m signal at 4.5 kilometers from the TIS transmitter site.

II. BACKGROUND

2. ODOT currently uses its TIS station to broadcast information about traffic congestion, road closures, severe weather, and truck restrictions that impact travelers and pose a threat to their safety. ODOT requests authorization to increase its transmitter power to 10 watts to allow for a larger coverage pattern than normally allowed by the rules.

1 See File No. 0008989476 and accompanying Waiver Request of State of Ohio Department of Transportation (filed February 25, 2020) (Waiver Justification). Ohio's TIS operates on frequency 1620 kilohertz in the AM radio band under call sign WRFC301.

2 47 CFR § 90.242(b)(4)(iv).

3 See id. ("The field strength of the emission on the operating frequency shall not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system.")

4 Waiver Justification at 3.

5 47 CFR § 90.242(b)(4)(iv).

6 Waiver Justification.

7 Id.

### III. DISCUSSION

3. Section 1.925(b)(3) of the Commission's rules provides that: "the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."<sup>8</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>9</sup>

4. We find that ODOT has met the waiver standard. ODOT provided an engineering study that demonstrates the lack of interference to the closest co-channel and adjacent channel stations.<sup>10</sup> ODOT also specifically demonstrated that it complies with the TIS spacing rule<sup>11</sup> in section 90.242(a)(2)(i) of the Commission's rules.<sup>12</sup>

5. With respect to the Commission's waiver criteria,<sup>13</sup> we agree with the ODOT's contention that the purpose of section 90.242(b)(4)(iv)—to protect broadcasters from TIS interference—would not be served if applied to the instant matter because ODOT has demonstrated the lack of interference from its proposed TIS facility.<sup>14</sup> In addition, strict adherence to section 90.242(b)(4)(iv) would have the unintended effect of requiring ODOT to install additional expensive TIS facilities to realize expanded coverage.<sup>15</sup> We agree with ODOT that section 90.242(b)(4)(iv) was not intended to impose an unnecessary cost burden on agencies responsible for informing the travelling public.<sup>16</sup>

### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the

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<sup>8</sup> 47 CFR § 1.925(b)(3).

<sup>9</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

<sup>10</sup> See Statement of Doug Vernier and associated attachments, February 24, 2020 appended to the State of Ohio Department of Transportation application and waiver request and demonstrating compliance with 47 CFR § 73.37 governing co-channel and adjacent channel separation.

<sup>11</sup> The TIS spacing rule in §90.242(a)(2)(i) provides that the transmitting site of the TIS Station must be located at least 15 km (9.3 miles) measured orthogonally outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on a first adjacent channel and at least 130 km (80.6 miles) outside the measured 0.5 mV/m daytime contour (0.1 mV/m for Class A stations) of any AM broadcast station operating on the same channel.

<sup>12</sup> The proposed TIS station is outside the 0.5 mV/m contour of the nearest co-channel station operating on 1620 kilohertz (KOZN, Bellevue, Nebraska) by 720 miles; outside the 0.5 mV/m contour of the nearest 1st adjacent station operating on 1630 kilohertz (KCJJ, Iowa City, Iowa) by 470 miles; and outside the 0.5 mV/m contour of the nearest 1st adjacent station operating on 1610 kilohertz (CHHA, Toronto, Ontario) by 79 miles. See File No. 0008936675, State of Ohio Department of Transportation, dated 1/15/2020.

<sup>13</sup> See 47 CFR § 1.925.

<sup>14</sup> Waiver Justification.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Commission's rules, 47 CFR § 1.925, that the Request for Waiver of the State of Ohio Department of Transportation, filed on February 25, 2020, **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that application File No. 0008989476, filed by the State of Ohio Department of Transportation **SHALL BE PROCESSED** in accordance with this Order and the Commission's rules.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau