

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

In the Matter of
City and County of Denver, Colorado
Request for Waiver of Section 90.621(b)(4) of the
Commission's Rules
File No. 0009039161

ORDER

Adopted: October 12, 2021

Released: October 12, 2021

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

I. INTRODUCTION

1. On April 8, 2020, the City and County of Denver, Colorado (Denver) filed an application to modify its fifty-channel, two-site 800 MHz trunked station KNNR200 in Denver along with a waiver of section 90.621(b)(6) of the Commission's rules. For the reasons stated below, we grant the waiver request.

II. BACKGROUND

2. Denver states that station KNNR200 is currently authorized to be short-spaced to co-channel licensee, Iota Spectrum Partners, LP (Iota) station WQWC417. Denver operates its Site 1 at 600 watts -- the maximum effective radiated power (ERP) for the relevant Height Above Average Terrain (HAAT). Denver seeks to modify its authorization by raising its antenna 6.5 meters at Site 1 while maintaining the same ERP. Such a change is permitted under section 90.621(b)(6) of the Commission's rules, provided that the modification does not extend KNNR200's 22 dBu contour beyond its maximum contour in the direction of the short-spaced station.

3. Denver concedes that the proposed modification would extend KNNR200's 22 dBu contour towards Iota station WQWC417. However, Denver argues that the increase is de minimis and that KNNR200's new 22 dBu F(50,10) interference contour does not overlap Iota's 40 dBu F(50,50) service contour. Denver further submits an engineering study to support that proposition. Denver did not submit a letter of concurrence from Iota, but contends that a letter of concurrence is only needed if the

1 Denver seeks to modify its authorization by raising its antenna 6.5 meters at Site 1. See FCC File No. 0009039161 (filed Apr. 13, 2020). See 47 CFR § 90.621(b)(6). See attachment to FCC File No. 0009039161 (Waiver Request).

2 Waiver Request at 1.

3 Id.

4 See 47 CFR § 90.621(b)(6). The 22 dBu contour is calculated using the station's maximum power and antenna height at its original location.

5 Waiver Request at 1.

6 Id. at 1-2.

7 Id. at 3.

other station is constructed.<sup>8</sup> Denver cannot ascertain if Iota has constructed, but did serve Iota with a copy of the Waiver Request.<sup>9</sup>

### III. DISCUSSION

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>10</sup> 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>11</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>12</sup>

5. The underlying purpose of section 90.621(b)(6) is to protect the interference rights of both an incumbent licensee and a licensee authorized to operate within the minimum separation distance allowed, while allowing the incumbent to modify its station operations.<sup>13</sup> Denver's engineering analysis confirms that its proposed modification does not frustrate the purpose of that rule. As such, we grant its request for waiver of section 90.621(b)(6) of the Commission's rules.

### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the request for waiver of section 90.621(b)(6) of the Commission's rules filed by the City and County of Denver, Colorado on April 13, 2020, IS GRANTED.

7. IT IS FURTHER ORDERED that application FCC File No. 0009039161 SHALL BE PROCESSED in accordance with this decision.

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

John A. Evanoff  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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<sup>8</sup> See 47 CFR § 90.621(b)(5). The 22 dBu contour is calculated using the station's maximum power and antenna height at its original location.

<sup>9</sup> Waiver Request at note 4.

<sup>10</sup> 47 CFR § 1.925(b)(3)(i).

<sup>11</sup> 47 CFR § 1.925(b)(3)(ii).

<sup>12</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *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>13</sup> *Third District Enterprises, LLC*, Order, 27 FCC Rcd 1980, 1990 para. 25 (WTB 2012).