

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

In the Matter of)
)
NATIONAL SCIENCE AND TECHNOLOGY)
NETWORK, INC.) FCC File No. D136357
)
Request by Dial Mobile Communications for)
Dismissal or Denial of Referenced Application for a)
New Industrial/Business Trunked System at Sierra)
Peak, Corona, California)

ORDER

Adopted: June 26, 2000

Released: June 27, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. National Science and Technology Network, Inc. (NSTN) has filed an application for a new Industrial/Business station to be operated on frequencies in the 470 MHz band to be located at Sierra Peak, Corona, California. One of the channels that NSTN requests is 471/474.4125 MHz. On March 10, 2000, Dial Mobile Communications (Dial) filed a pleading requesting that the Commission dismiss or deny NSTN's application. For the reasons given below, we deny Dial's request and will grant NSTN's application for the frequencies requested in the application, including channel pair 471/474.4125 MHz.

2. Background. Section 90.313(c) of the Commission's Rules provides, among other things, that once a channel in the 470-512 MHz is loaded to capacity, the frequency will not be reassigned for use by another station within 64 kilometers (40 miles). Dial is the licensee of Industrial/Business Station WPMV644 at Palos Verdes, California, located at 33-44-42 North Latitude, 118-19-55 West Longitude. Station WPMV644 is fully loaded on frequency pair 471/474.4125 MHz with 90 mobile units. NSTN's proposed co-channel station would be located at 33-51-00 North Latitude, 117-39-05 West Longitude. Dial contends that NSTN's proposed station would be impermissibly close to Station WPMV644. In this

1 FCC File No. D136357, filed Jan. 18, 2000.

2 Informal Protest, filed Mar. 10, 2000 (Protest).

3 47 C.F.R. § 90.313(c).

4 Protest at 1.

5 Id.; see 47 C.F.R. § 90.313(a)(2).

6 Protest at 1.

7 Id.

connection, Dial states that it calculated the distance between the two stations using four different methods, all of which revealed a separation distance of less than 40 miles.⁸ Dial requests that we calculate the distance between the two stations, and deny or dismiss NSTN's application for authorization to operate on channel pair 471/474.4125 MHz if the calculation shows that the separation distance does not meet the rule requirement.⁹ Dial also requests, pursuant to Section 90.127(c) of the Commission's Rules, that we require NSTN to provide either the purchase order or serial number for each of the 5500 transmitters to be operated under the authorization requested.¹⁰

3. *Discussion.* Dial correctly notes that the Commission's Part 90 rules do not specify the method of calculating distance for purposes of Section 90.313(c).¹¹ Calculating the distance between the stations in accordance with the guidelines set forth in Section 73.208(c) of the Commission's Rules,¹² we find it to be 64.1 kilometers, which is greater than the 64 kilometers separation that Section 90.313(c) requires.¹³ Therefore, we find no basis for dismissing or denying NSTN's license application.

4. We also conclude that Dial's request to require NSTN to supply either the purchase order or the serial number for each of the proposed transmitters lacks merit. Section 90.127(c) of the Commission's Rules relates to applications for modification and renewal of a station license, thus it does not apply to NSTN's application.¹⁴ Section 90.127(b)(2) does relate to an application for a new license, but only requires that there be signed purchase orders for mobile transmitters and paging receivers.¹⁵ That section does not require that copies of the purchase order be forwarded to the Commission with the application, nor does it require the applicant to apprise the Commission of the transmitter serial number. We do not believe that we should burden an applicant by requiring it to submit purchase orders or serial numbers. We nonetheless reiterate that there is the possibility of enforcement action in the event that a willful false statement is made on an application.¹⁶

⁸ *Id.* at 2. The results Dial obtained ranged from 39.72 miles to 39.9 miles. *Id.*

⁹ *Id.*

¹⁰ *Id.* at 2 (citing 47 C.F.R. § 90.127(c)).

¹¹ *Id.* at 2.

¹² 47 C.F.R. § 73.208(c). We do not believe that measuring distance is not service-specific. Therefore, we believe that use of the guidelines set forth in Part 73 of the Commission's Rules, 47 C.F.R. Part 73, is appropriate in this context in the absence of specific measurement guidelines in the Commission's Part 90 rules.

¹³ In 1993, the Commission essentially completed the conversion of its rules to the International System of Units (metric system), stating that English units have been included in parentheses. The English units are for information purposes only, and where the two figures are not precisely equivalent, the metric unit shall be considered as the sole requirement. *See* Metric Conversion of Parts 1, 2, 15, 18, 21, 22, 23, 25, 36, 61, 63, 68, 69, 73, 74, 76, 78, 80, 87, 90 and 94 of the Commission's Rules, *Order*, 8 FCC Rcd 3720, 3720 ¶ 1, 3721 ¶ 3 (1993).

¹⁴ 47 C.F.R. 90.127(c).

¹⁵ 47 C.F.R. § 90.127(b)(2).

¹⁶ *See* 18 U.S.C. § 1001; *see also* 47 U.S.C. §§ 312(a)(1), 503.

5. Accordingly, IT IS ORDERED, pursuant to Section 4(i) and 303(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(f), that the request of Dial Mobile Communications, filed March 10, 2000, for dismissal or denial of National Science and Technology Network's application FCC File No. D136357, filed January 18, 2000, for a new Industrial/Business Trunked System at Sierra Peak, Corona, California, IS DENIED, and the application SHALL BE PROCESSED in accordance with this *Order*.

6. This action is taken under delegated authority pursuant to Section 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau