

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

In the Matter of)	
)	
MOBILE RELAY ASSOCIATES, INC.)	FCC File No. D100478
)	
Application for Authorization and Petition for)	
Reconsideration of License Granted to National)	
Science and Technology Network, Inc. for Station)	
WPLT688 at Glendale, California)	

ORDER ON FURTHER RECONSIDERATION

Adopted: January 16, 2001

Released: January 18, 2001

By the Deputy Chief, Wireless Telecommunications Bureau:

I. Introduction and Executive Summary

1. In this *Order on Further Reconsideration*, we address a Petition for Reconsideration (*Petition*), filed on January 13, 2000, by Mobile Relay Associates, Inc. (MRA).¹ MRA seeks reconsideration of an *Order* by the Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau, denying MRA’s earlier petition for reconsideration, filed on February 27, 1998, and dismissing the above-captioned application.² MRA argues that the *Order* should be vacated because of an alleged *ex parte* rules violation and because of alleged impropriety in the frequency coordination process.³ After a careful review of all the facts and circumstances herein, we deny the *Petition*.

II. Background

2. MRA’s Station WIL337, located at Saddle Peak and Sierra Peak in the Los Angeles area, previously shared frequency 472.8125 MHz with Station KXX710, licensed to Laidlaw Transit (Laidlaw).⁴ The license for Station KXX710 expired on September 21, 1997, when Laidlaw failed to file a renewal application.⁵

¹ MRA Petition for Reconsideration (filed Jan. 13, 2000) (*Petition*).

² Mobile Relay Associates, Inc., *Order*, 15 FCC Rcd 1361, 1364-65 ¶¶ 10-11 (WTB PSPWD 1999) (*Order*).

³ *Petition* at 11.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

3. On October 22, 1997, MRA submitted an application to modify its license for Station WIL337 to add sites at Mt. Lukens and Palos Verdes Peninsula, California, to both the Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Association (ITA) for frequency coordination.⁶ PCIA and ITA both advised MRA that, in accordance with the Commission's policy, they could not coordinate and certify MRA's application because the license for Station KXX710 had not yet been purged from the Commission's licensing data base.⁷

4. On November 25, 1997, National Science and Technology Network, Inc. (NSTN) submitted an application to use frequency 472.8125 MHz at Glendale, California, to the American Automobile Association (AAA) for frequency coordination.⁸ AAA states that it completed coordinating NSTN's application on or about December 9, 1997, and certified the application, pending the deletion of Station KXX710 from the Commission's licensing data base.⁹ PCIA states, however, that it received a coordination notice from AAA on November 20, 1997.¹⁰ Station KXX710 was deleted from the Commission's licensing data base on December 10, 1997.¹¹ AAA mailed NSTN's application to Mellon Bank on December 11, 1997.¹² PCIA coordinated MRA's application and filed it with the Commission on January 14, 1998.¹³ On January 30, 1998, NSTN was granted a license for Station WPLT688 at Glendale, California.¹⁴

5. On February 27, 1998, MRA requested reconsideration of the grant of NSTN's application on the grounds that it was improperly coordinated because the frequency coordinator, AAA, certified NSTN's application prior to the purging of Station KXX710 from the Commission's licensing data base.¹⁵ NSTN and AAA both submitted informal responses on March 9, 1998.¹⁶ MRA replied to NSTN's response on March 16, 1998, and NSTN responded to MRA's reply on March 25, 1998.¹⁷ PCIA filed comments on April 13, 1998, and NSTN replied to PCIA's comments on April 27, 1998.¹⁸

⁶ *Id.*; *Order*, 15 FCC Rcd at 1362 ¶ 3.

⁷ *Petition* at 3 & n.3.

⁸ *Order*, 15 FCC Rcd at 1362 ¶ 3.

⁹ *Id.*

¹⁰ *Id.* at 1363 ¶ 5.

¹¹ *Id.* at 1362 ¶ 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 1361 ¶ 1; MRA's *Petition for Reconsideration*, filed Feb. 27, 1998, at 5.

¹⁶ *Id.* at 1361 n.1.

¹⁷ *Id.*

¹⁸ *Id.*

6. In its *Order*, released December 19, 1999, the Division noted both AAA's representation that it did not coordinate NSTN's application until December 9, 1997, and PCIA's conflicting statement that it received a coordination notice from AAA on November 20, 1997.¹⁹ The Division did not attempt to resolve the discrepancy. Instead, the Division determined that NSTN's application was in conformance with the Rules because even though AAA completed the coordination process before the license for Station KXX710 was deleted from the Commission's licensing data base, the application was not received by the Commission until after the subject channel was available.²⁰ Consequently, the Division properly denied MRA's petition for reconsideration and dismissed its application.²¹

7. On January 13, 2000, MRA filed the instant *Petition*.²² MRA argues that the Division's decision should be vacated because it relied on a March 9, 1998, letter from AAA²³ that MRA contends was an improper *ex parte* comment.²⁴ MRA alleges that NSTN supplied MRA's original petition for reconsideration to AAA and solicited the filing of AAA's comments.²⁵ MRA also alleges that NSTN knew that AAA had not served its comments on MRA, and, in fact, intended to conceal AAA's comments from MRA.²⁶ In addition, MRA argues that NSTN's application was defective because AAA was prohibited from coordinating it until after the license for Station KXX710 was deleted from the licensing data base.²⁷

¹⁹ See *id.* at 1362 ¶ 3, 1363 ¶ 5.

²⁰ *Id.* at 1364 ¶ 8.

²¹ *Id.* at 1364-65 ¶¶ 10-11.

²² NSTN's response to the *Petition* was not received at the Commission until February 7, 2000. Letter from Alan M. Lurya, counsel for NSTN, to Chief, Wireless Telecommunications Bureau, dated January 31, 2000 (NSTN Response). Because oppositions to petitions for reconsideration are due 10 days after the petition is filed, 47 C.F.R. § 1.106(h), MRA moves to strike the NSTN Response as untimely. MRA Motion to Strike (filed Feb. 16, 2000). In the interest of having a complete record in this proceeding, however, we will accept the late-filed pleading. On February 11, 2000, ITA submitted comments. Letter from ITA to Chief, Wireless Telecommunications Bureau, dated February 11, 2000. NSTN responded to ITA on February 15, 2000. Letter from Alan M. Lurya, counsel for NSTN, to Chief, Wireless Telecommunications Bureau, dated February 15, 2000. On February 16, 2000, MRA replied to the NSTN Response. MRA Reply (filed Feb. 16, 2000). NSTN responded to the MRA Reply on February 23, 2000. Letter from Alan M. Lurya, counsel for NSTN, to Chief, Wireless Telecommunications Bureau, dated February 23, 2000. On February 28, 2000, MRA filed a Supplement to its *Petition*. MRA Supplement to Petition for Reconsideration (filed Feb. 28, 2000). NSTN responded to the Supplement on March 8, 2000. Letter from Alan M. Lurya, counsel for NSTN, to Chief, Wireless Telecommunications Bureau, dated March 8, 2000. In the interest of a complete and comprehensive record on this matter, we believe it is in the public interest to accept these further pleadings as well.

²³ See Letter from Gary Ruark, Frequency Coordinator, AAA, to Chief, Public Safety and Private Wireless Division, filed March 9, 1998.

²⁴ *Petition* at 5.

²⁵ *Id.*

²⁶ *Id.* at 5, 6.

²⁷ *Id.* at 10.

III. Discussion

8. *Alleged ex parte rules violation.* The March 9, 1998, AAA letter to the Division concerned the coordination of frequency assignments. Under Section 1.1204(a)(7) of the Commission's Rules, presentations between Commission staff and an advisory coordinating committee member with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services are exempt from the prohibitions against *ex parte* contacts.²⁸ The AAA is a FCC-certified advisory coordinating committee for private land mobile radio stations. Further, the March 9, 1998 letter from AAA pertained to its coordination of the NSTN application. Therefore, we conclude that, contrary to MRA's contentions, the AAA letter was not an improper *ex parte* contact.²⁹

9. *Alleged improper frequency coordination.* We find no impropriety in the frequency coordination process in this case. A channel associated with an expired license is available to all applicants on a first-come, first-served basis after the license associated with that channel is deleted from the Commission's licensing data base.³⁰ Further, the Commission permits a coordinator to select a channel associated with an expired license for recommendation to the Commission before the channel is actually available on the Commission's licensing data base and to evaluate and coordinate an application prior to its being available so that the application can be filed when the channel becomes available.³¹ However, an application for such a channel cannot be submitted to the Commission before the channel becomes available for licensing.³² Thus, the Commission's procedure is to grant the first grantable application it receives after a particular channel becomes available.³³

10. We conclude that the cases MRA cites are not contrary to our analysis. Both *Always Answering Service, Inc.*³⁴ and *Merryville Investments*³⁵ deal with applications that were properly dismissed because they were filed before the requested channel was available on the Commission's licensing data base. In addition, MRA's characterization of *Waste Management, Collection & Recycling, Inc.*³⁶ as a

²⁸ 47 C.F.R. § 1.1204(a)(7).

²⁹ See ADF Communications, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 17037, 17042 ¶ 19 (WTB 1999), *recon. pending* (filed Nov. 4, 1999); see also, e.g., Amendment of the Commission's *Ex Parte* Rules in Joint Board Proceedings, *Notice of Proposed Rule Making*, 13 FCC Rcd 13639, 13640 ¶ 5 (1998).

³⁰ See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Memorandum Opinion and Order*, PR Docket No. 90-481, 8 FCC Rcd 6690, 6691 ¶ 5 (1993).

³¹ *Id.* We nonetheless note that a coordinator is not required to consider and possibly recommend a channel associated with an expired license before such license is deleted from the Commission's licensing data base.

³² *Id.*

³³ *Id.*

³⁴ Always Answering Service, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 3243, 3244-45 ¶ 5 (2000).

³⁵ Merryville Investments, *Letter*, 15 FCC Rcd 4219, 4220 & n.4 (WTB CWD LTAB 2000).

³⁶ Waste Management, Collection & Recycling, Inc. *Memorandum Opinion and Order*, FCC 99-134 (rel. June 21, 1999) (*Waste Management*).

decision in which “the full Commission upheld a delegated authority decision that a coordinator is prohibited from coordinating an application which conflicts with a licensed facility appearing on the Commission’s licensing data base, even if that license is expected to be deleted shortly”³⁷ is incorrect, for several reasons. First, the Land Mobile Branch (Branch) decision to which MRA refers did not determine that it would have been improper to coordinate the frequency in question in anticipation of submitting an application once the expired license was deleted. Rather, the Branch’s letter stated that the coordinator “was required to protect” the frequencies until the expired license was deleted.³⁸ We believe that the Branch’s decision is consistent with the Commission policy, set forth above, prohibiting the filing of applications until the expired license is purged from the licensing data base. Second, the Commission did not uphold (or otherwise pass judgment on) this Land Mobile Branch action, because only a different licensing action was directly before it.³⁹ Thus, we conclude that *Waste Management, Collection and Recycling, Inc.* is inapposite to this case.

IV. Ordering Clauses

11. Accordingly, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, IT IS ORDERED that the petition for reconsideration filed by Mobile Relay Associates, Inc., on January 13, 2000, IS DENIED.

12. IT IS FURTHER ORDERED that the motion to strike National Science and Technology Network, Inc.’s opposition to the petition for reconsideration, filed by Mobile Relay Associates, Inc., on February 16, 2000, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O’Brien Ham
Deputy Chief, Wireless Telecommunications Bureau

³⁷ Petition at 10.

³⁸ See Letter from Terry L. Fishel, Chief, Land Mobile Branch, Wireless Telecommunications Bureau, to Dennis C. Brown, Esq., dated Nov. 17, 1994.

³⁹ See *Waste Management*, ¶¶ 1, 5.