

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

In the Matter of Application of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File No. 0001777202
NETWORK, INC.)	
)	
for Private Land Mobile Radio Station)	
WQBH275, La Crescenta, California)	

ORDER ON RECONSIDERATION

Adopted: March 31, 2006

Released: April 4, 2006

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

1. *Introduction.* On October 27, 2004, Mobile Relay Associates (MRA) filed a petition for reconsideration¹ of the grant by the Public Safety and Critical Infrastructure Division (Division), Wireless Telecommunications Bureau, of the above-captioned application filed by National Science and Technology Network, Inc. (NSTN) for a new trunked private land mobile radio (PLMR) station at La Crescenta, California.² The Petition notes that the Division did not address MRA's earlier-filed Informal Objection against the Application,³ in which MRA argued that grant of the Application would violate Sections 90.187 and 90.313 of the Commission's Rules.⁴ For the reasons discussed below, we grant the Petition insofar as we here consider the merits of the Informal Objection, but we otherwise deny the Petition and affirm the grant of the Application.⁵

2. *Background.* The Application sought, and NSTN was granted, a license for a PLMR station to operate on nine trunked channels, including the frequency pair 471/474.6125 MHz, at Sierra Peak, California. In its Informal Objection, MRA asserted that the Application was defective under Section

¹ Mobile Relay Associates, Petition for Reconsideration, filed October 27, 2004 (Petition).

² FCC File No. 0001777202, filed June 17, 2004 (Application). The Application was granted on October 5, 2004.

³ Mobile Relay Associates, Informal Objection, filed July 27, 2004 (Informal Objection). We also have before us a Reply to the Informal Objection filed by NSTN. Letter, dated August 4, 2004, from Ted S. Henry, President, NSTN, to Secretary, FCC (NSTN Reply). There is no standing requirement to file an informal objection pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41. See Nextel License Holdings 4, Inc., *Order*, 17 FCC Rcd 7028, 7033 ¶ 16 (WTB CWD 2002); National Science and Technology Network, Inc., *Order on Further Reconsideration*, 17 FCC Rcd 11133, 11135-36 ¶ 5 (WTB PSPWD 2002) (“[t]he question of whether MRA had standing to file a petition to deny against NSTN's application is irrelevant here because MRA's filing was an informal objection, not a petition to deny”). Accordingly, we do not reach the parties' arguments regarding MRA's standing to file the Informal Objection. See NSTN Reply at 1; Petition at 2.

⁴ 47 C.F.R. §§ 90.187, 90.313.

⁵ A decision addressing the merits of an Informal Objection *de novo* in an order on reconsideration cures any failure to address the merits of the Informal Objection prior to granting the underlying application, and effectively renders moot the petition for reconsideration to the extent that it relies on the earlier procedural omission. See, e.g., S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 (2001); Eagle Radio, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 5105, 5106 ¶ 3 (1997).

90.313 of the Commission's Rules.⁶ Specifically, MRA argued that the frequency pair 471/474.6125 MHz is a shared channel subject to a maximum channel loading of ninety units under Section 90.313(a)(2), but was already fully loaded at the time the Application was filed.⁷ MRA contended, therefore, that NSTN was obligated to obtain concurrence from co-channel licensee National Ready Mixed Concrete Co. (NRMC),⁸ licensed to operate on frequency pair 471/474.6125 MHz at Mt. Lukens, California, approximately forty-five miles from Sierra Peak.⁹ MRA also contended that the Application violated Section 90.187 of the Commission's Rules because it sought a centralized trunked facility (station class designation FB8), which presupposes exclusive use of the frequencies.¹⁰ In the Petition, MRA contends that the Commission improperly failed to address its Informal Objection prior to granting the Application,¹¹ and repeats and incorporates by reference the arguments in the Informal Objection.¹²

3. *Discussion.* We disagree with MRA that the Application required concurrence from NRMC. MRA's argument assumes that exclusivity under Sections 90.187(b) and 90.313(b) is defined by reference to the 113 kilometer (70 mile) radius of the proposed transmitter site.¹³ However, Section 90.313(c) specifies that "[a] frequency pair may be reassigned at distances 64 km. (40 mi.) ... or more from the location of base stations authorized on that pair without reference to loading at the point of original installation."¹⁴ We believe that this rule is controlling with regard to the instant matter; and, as a consequence, the forty-five mile distance between the NRMC base station and the proposed NSTN base station obviates any need for NSTN to obtain NRMC's consent.¹⁵ We have consistently used the forty-mile standard to determine co-channel separation/exclusivity/loading requirement issues such as those presented here.¹⁶ The seventy-mile standard in Section 90.187(b)(2)(ii) that MRA argues is the

⁶ MRA contends that if the Application is not dismissed or denied, the Commission should at least require that the Application be amended to delete the frequency pair 471/474.6125 MHz. Informal Objection at 3; Petition at 2.

⁷ *Id.* at 2.

⁸ Informal Objection at 2, *citing* 47 C.F.R. § 90.313(b).

⁹ NRMC has filed an application to assign to MRA its licenses authorizing operation on frequency pair 471/474.6125 MHz. *See* FCC File No. 0001799643, filed July 8, 2004, amended Aug. 17, 2004.

¹⁰ Informal Objection at 2, *citing* 47 C.F.R. § 90.187; 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, 15 FCC Rcd 16673, 16683-87 ¶¶ 22-27 (2000). Section 90.187(b) provides that a monitoring requirement otherwise required of trunked systems operating on frequencies between 150 MHz and 512 MHz in order to ensure they do not cause harmful interference to other systems does not apply if the trunked system (1) operates in the 470-512 MHz band, meets the loading requirements of Section 90.313, and has exclusive use of the frequencies in its service area; or (2) if the licensee does not have an exclusive service area, the licensee, *inter alia*, obtains written consent from "affected licensees." 47 C.F.R. § 90.187(b), (b)(1)-(2).

¹¹ Petition at 1.

¹² *Id.* at 2-3.

¹³ *See, e.g.*, Petition at 3 n.6.

¹⁴ 47 C.F.R. § 90.313(c).

¹⁵ MRA acknowledges that some frequency coordinators interpret Section 90.187(b)(2)(ii) as requiring only forty-mile separation, but contends that this interpretation is contrary to the "express wording" of the rule, and that NSTN has successfully blocked MRA applications in the past based on an argument that the rule protects incumbents beyond a forty-mile radius. *Id.* However, MRA cites to no Commission decision holding that the relevant protection radius is other than forty miles.

¹⁶ *See, e.g.*, Mobile Relay Associates, *Order*, 18 FCC Rcd 12974, 12980-81 ¶ 16 (WTB PSPWD 2003) (holding that applications were properly dismissed as defective because they proposed operations within forty miles of fully loaded co-channel stations, in violation of Section 90.313(c)); National Science and Technology Network, Inc., *Order*, 15 FCC Rcd 11639, 11639 ¶ 2 (WTB PSPWD 2000) (holding 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 forty miles).

appropriate measure for determining exclusivity and the applicability of the loading criteria under Section 90.187(b)(1) clearly does not apply to those determinations. Rather, the seventy-mile standard pertains only to identifying the “affected licensees” whose consent may be required if an applicant or licensee seeks to avoid the monitoring requirement set forth in the lead paragraph of Section 90.187(b).¹⁷ Accordingly, the existence of NRMC’s co-channel base station forty-five miles from the proposed site does not render the Application defective in the absence of NRMC’s written consent.

4. *Conclusion.* For the reasons discussed above, we conclude that the captioned Application was properly granted. We therefore deny MRA’s petition for reconsideration insofar as it seeks denial or dismissal of the application, or deletion of the frequency pair 471/474.6125 MHz.¹⁸

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Mobile Relay Associates on October 27, 2004 IS GRANTED insofar as we consider the merit of the Informal Objection filed by Mobile Relay Associates on July 27, 2004, and IS OTHERWISE DENIED.

6. 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

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁷ See 47 C.F.R. § 90.187(b), (b)(1), (b)(2)(i)-(ii).

¹⁸ Having resolved this matter for the reasons stated, we have no occasion here to address NSTN’s contention that NRMC’s licenses have canceled for discontinuance of station operation. See NSTN Reply at 1.