

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

In the Matter of Application of )
THE BOBBY SHERMAN VOLUNTEER EMT ) File No. 0001583794
FOUNDATION )
Petition For Reconsideration of Grant Filed By )
National Science And Technology Network, Inc. )

ORDER

Adopted: January 29, 2007

Released: January 29, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us a petition for reconsideration filed by National Science and Technology Network, Inc. (NSTN), on September 14, 2004. NSTN seeks reconsideration of the Commission's August 4, 2004 action granting the above-captioned application filed by The Bobby Sherman Volunteer EMT Foundation (Foundation). For the reasons set forth below, we deny the NSTN Petition.

2. Background. Foundation's application for a new Industrial/Business Pool station in Los Angeles County, California was filed on January 15, 2004. NSTN filed an informal petition to deny the application, on the grounds that grant of the application would prejudice the outcome of pending proceedings regarding NSTN's license for Station WPMJ456. On August 4, 2004, the Commission granted Foundation's application for under Call Sign WQAT717, but expressly conditioned the grant on the outcome of the pending proceeding regarding Station WPMJ456. On September 14, 2004, NSTN filed a petition for reconsideration of the grant of Foundation's application, on the basis that it has the effect of prejudicing the outcome of the proceeding concerning Station WPMJ456. It argues that a conditional grant, as opposed to holding the Foundation application in abeyance pending the completion of the Station WPMJ456 proceeding, is a "poor choice" because it creates the potential for interference to NSTN's system. NSTN indicates that its response was late-filed because it learned of the grant shortly before the filing deadline and the long Labor Day weekend delayed the filing.

3. Discussion. Section 405 of the Communications Act, as amended, sets forth the

1 See Petition for Reconsideration filed on September 14, 2004 by NSTN (NSTN Petition).

2 See FCC application 0001583794.

3 See Letter dated Feb. 1, 2004 from Ted S. Henry, President, NSTN, to Mary Shultz, FCC-Gettysburg.

4 See license for Station WQAT717. On August 7, 2006, the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division denied NSTN's petition for reconsideration of an order modifying the license for Station WPMJ456. See National Science and Technology Network, Inc., Order on Reconsideration, 21 FCC Rcd 9050 (WTB PSCID 2006). On September 5, 2006, NSTN filed an application for review of the Order on Reconsideration.

5 See NSTN Petition at 1.

6 Id.

7 Id.

requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.<sup>8</sup> Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the date of public notice of the Commission's action.<sup>9</sup>

4. Based on the information before us, we conclude that the NSTN Petition is timely. Because the action granting the subject Foundation application was neither published in the Federal Register nor announced in a public notice, the date of public notice of the grant of Foundation's application was August 4, 2004, the date appearing on the license grant for Station WQAT717.<sup>10</sup> A review of our licensing records suggests that NSTN did not receive notice of the licensing action when it was taken. In the absence of any contrary information, we accept NSTN's representation that it did not learn of the grant until early September 2004. Based on the chronology of events, detailed herein and the fact that NSTN is a party to this proceeding that did not receive prior notice thereof, we conclude that the NSTN Petition should not be rejected as untimely.<sup>11</sup>

5. We nonetheless deny the NSTN Petition because the concerns identified therein that grant of the Foundation application not prejudice the disposition of its then pending WPMJ456 proceeding were addressed by the condition placed on Foundation's license for Station WQAT717. NSTN's pending pleadings concerning its station do not have the effect of staying Commission actions with respect to Station WPMJ456.<sup>12</sup> The licensing staff therefore is not required to hold other matters in abeyance in order to protect NSTN's prospective interests. Consequently, we conclude that no further action is necessary or warranted under the circumstances presented.

6. Accordingly, IT IS ORDERED 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, that the petition for reconsideration submitted by National Science and Technology Network, Inc., on September 14, 2004 IS DENIED.

7. 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

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>8</sup> See 47 U.S.C. § 405.

<sup>9</sup> See 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>10</sup> See 47 C.F.R. § 1.4(b)(5).

<sup>11</sup> See *Gardner v. FCC*, 530 F.2d 1086, 1091-1092 (D.C. Cir. 1976).

<sup>12</sup> See 47 C.F.R. §§ 1.106(n), 1.115(g)(2).