

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

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	FCC File Nos. D102126
NETWORK, INC.)	
Licensee of Station WPME699, Monte Nido,)	
California)	
)	
MOBILE RELAY ASSOCIATES)	FCC File No. 414473, D134244
Licensee of Station WPPG553, Corona, California)	

ORDER

Adopted: February 26, 2007

Released: February 27, 2007

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

1. *Introduction.* We have before us a request from Mobile Relay Associates (MRA), licensee of Station WPPG553, Corona, California, for modification of the license of National Science and Technology Network, Inc. (NSTN) for Station WPME699, Monte Nido, California.¹ Based upon our review and analysis of the information before us, we deny MRA's request.

2. *Background.* MRA's application for Station WPPG553 was granted in December 1999.² While MRA's application was pending, NSTN filed its application for Station WPME699, which was granted in June 1998.³ In the instant request, MRA asserts that the NSTN application was defective in that neither NSTN nor its frequency coordinator sought MRA's consent to NSTN's proposed operations as required by Sections 90.187 and 90.313 of the Commission's Rules.⁴ MRA argues that its consent was required because NSTN sought, *inter alia*, to operate within forty miles on the same frequency as the site for which MRA sought authorization in its then-pending application.⁵ MRA requests that we modify NSTN's license to delete locations 3, 8, and 9; or, in the alternative, modify the station class code from FB8 (centralized trunking) to FB6 (decentralized trunking), which would require NSTN to monitor the channel.⁶

3. *Discussion.* We conclude, under the circumstances presented, that NSTN was not required to obtain MRA's consent for the proposed operations. Section 90.313(b) states that the loading standards can be exceeded upon submission of a signed statement by "all those sharing the channel," *i.e.*, existing

¹ See Request to Initiate Modification Proceedings (filed October 1, 2004) (Modification Request); *see also* Response to Request to Initiate Modification Proceedings (dated October 7, 2004); Reply to Opposition of NSTN (filed October 18, 2004); Additional Response to Request to Initiate Modification Proceedings (dated November 5, 2004).

² See FCC File Nos. 414473, D134244.

³ See FCC File No. D102126.

⁴ 47 C.F.R. §§ 90.187(b)(2) (requiring consent for trunking), 90.313(b) (requiring consent to exceed loading standards).

⁵ See Modification Request at 1.

⁶ See *id.* at 4.

licensees, agreeing to the increase.⁷ Similarly, Section 90.187(b)(2) requires written consent for trunking to be obtained from “affected licensees.”⁸ The plain language of neither rule requires the consent of entities that have filed applications for new facilities but have not been licensed. Since MRA was an applicant but not a licensee at the time NSTN’s application was filed and granted, MRA’s consent was not required.⁹ Commission precedent holds that pending applicants are not entitled to the same treatment as existing licensees.¹⁰ As a result, we deny MRA’s request.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.41 of the Commission’s Rules, 47 C.F.R. § 1.41, the Request to Initiate Modification Proceedings filed by Mobile Relay Associates on October 1, 2004 IS DENIED.

5. 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 COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁷ See 47 C.F.R. § 90.313(b).

⁸ See 47 C.F.R. § 90.187(b)(2).

⁹ Subsequently, the Commission adopted a rule that provides that the submission of a formal notice to a certified frequency coordinator of a potential applicant's intent to pursue trunking on specified frequencies will toll the coordination of conflicting applications for those frequencies for a period of sixty days. See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10928 ¶ 11 (1999); 47 C.F.R. § 90.187(d). This rule took effect November 15, 1999. See 64 Fed. Reg. 50257 (1999). The Commission gave no indication that it intended the rule to apply retroactively to previously conducted coordinations. We therefore decline to conclude that the earlier coordination of NSTN’s application was defective.

¹⁰ See, e.g., *Big Valley Cablevision, Inc., Memorandum Opinion and Order*, 85 F.C.C. 2d 180, 182 ¶ 7 (1981); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pearl and Magee, Mississippi), Memorandum Opinion and Order*, 6 FCC Rcd 246, 249 ¶13 (MMB PRD 1991).