

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

In the Matter of Application of)	
)	
MOBILE RELAY ASSOCIATES)	File No. 0002661086
)	
Informal Petition to Deny or Dismiss Filed by)	
National Science and Technology Network, Inc.)	

ORDER

Adopted: February 26, 2007

Released: February 27, 2007

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

1. *Introduction.* On June 23, 2006, Mobile Relay Associates (MRA) filed the above-captioned application to modify its license for Station KLH414, Corona, California. National Science and Technology Network, Inc. (NSTN) filed an informal petition to deny or dismiss the application.¹ For the reasons set forth below, we deny the NSTN petition, and will process MRA’s application.

2. *Background.* MRA’s application seeks to modify the license for Station KLH414 by implementing decentralized trunked operations on frequency pair 471.6125/474.6125 MHz at Sierra Peak, California. NSTN seeks dismissal or denial of the application because it has several stations in the area that it says would be affected by MRA’s modification request.² In particular, NSTN asserts that its Station WQBH275 must be afforded interference protection pursuant to Section 90.187 of the Commission’s Rules, and that the channel already is fully loaded.³ NSTN also asserts that MRA plans to operate more mobile units than the license authorizes.⁴

3. *Discussion.* We have reviewed NSTN’s arguments, and we conclude that none of them constitutes grounds to deny MRA’s petition. With respect to NSTN’s contention that its consent is

¹ See Informal Petition to Dismiss or Deny dated July 6, 2006 (NSTN Petition); see also Addendum to Informal Petition dated July 25, 2006 (NSTN Addendum). On July 18, 2006, MRA filed a response to NSTN’s petition and on August 2, 2006, filed a response to NSTN’s addendum. See Opposition to Informal Petition to Dismiss or Deny filed July 18, 2006; Motion to Strike Portions of Addendum and Reply filed August 2, 2006 (MRA Motion). MRA moves to strike portions of the NSTN Addendum on the grounds that it raises new issues not presented in the NSTN Petition. See MRA Motion at 1. As discussed below, we resolve those issues in MRA’s favor. Moreover, we note that, because the application at issue pertains to private land mobile radio services, no formal petition to deny can be filed against it. Instead, NSTN’s petition is considered an informal request for Commission action, for which there is no filing deadline. See, e.g., Pacific Gas and Electric Company, *Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22765 ¶ 12 (2003). Therefore, it is not clear that NSTN must necessarily be limited to raising every issue in its initial filing, provided that MRA received an adequate opportunity to respond.

² See NSTN Petition at 1; NSTN Addendum at 1.

³ See NSTN Addendum at 1.

⁴ See NSTN Petition at 1; NSTN Addendum at 1. In addition, NSTN suggests that the modification application should be held in abeyance pending the resolution of NSTN’s petition for reconsideration of the denial of its petition to deny the application assigning the frequency to MRA. See NSTN Petition at 1. This argument is moot, as we recently denied the NSTN petition for reconsideration. See National Ready Mixed Concrete Co., *Order on Reconsideration*, DA 07-802 (WTB MD rel. Feb. 22, 2007).

required because the channel already is fully loaded, we note that Sierra Peak is more than forty miles from all of the co-channel NSTN stations identified in the pleadings. Section 90.313(c) of the Commission's Rules 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."⁵ Thus, the channel is not fully loaded at Sierra Peak.⁶

4. Regarding Station WQBH275, NSTN argues that it is entitled to co-channel protection pursuant to Section 90.187 of the Commission's Rules because the stations are separated by less than seventy miles.⁷ We agree. We note, however, that MRA proposes decentralized trunking (*i.e.*, station class FB6) operations at Sierra Peak, rather than centralized trunking (station class FB8) as NSTN utilizes in connection with Station WQBH275. Thus, MRA does not seek to avoid its obligation to monitor the frequency prior to transmitting.

5. Finally, as we recently concluded in a separate matter involving NSTN and MRA, NSTN's supposition and speculation regarding MRA's intent does not constitute evidence that MRA will operate more mobile units than the license for Station KLH414 authorizes.⁸

6. The Commission's rules require private land mobile radio station licensees to "take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference."⁹ Further, the rules require all applicants and licensees to cooperate in the use of frequencies in order to reduce interference and make the most effective use of authorized facilities.¹⁰ The rules also provide that licensees of stations causing or receiving harmful interference are expected to cooperate and resolve interference problems by mutually satisfactory arrangements.¹¹ Based on the information before us, we have no basis for concluding that these grant of MRA's application would be inconsistent with these requirements.

7. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the informal petition to dismiss or deny filed by National Science and Technology Network, Inc., dated July 6, 2006 IS DENIED, and application FCC File No. 0002661086 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

⁵ See 47 C.F.R. § 90.313(c).

⁶ See, *e.g.*, National Science and Technology Network, Inc., *Order on Reconsideration*, 21 FCC Rcd 3548, 3549-50 ¶ 3 (WTB PSCID 2006) (reiterating that forty-mile standard is used to determine co-channel separation/exclusivity/loading requirement issues).

⁷ See 47 C.F.R. § 90.187(b), (b)(1), (b)(2)(i)-(ii).

⁸ See Letter dated February 15, 2007 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Alan M. Lurya, counsel for NSTN (regarding MRA applications FCC File Nos. 0001446695, 0002245518).

⁹ See 47 C.F.R. § 90.403(e).

¹⁰ See 47 C.F.R. § 90.173(b).

¹¹ *Id.*

8. 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