

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

| | | |
|--|---|---------------------|
| In the Matter of Application of |) | |
| |) | |
| RADIO COMMUNICATIONS ASSOCIATION |) | File No. 0003370765 |
| |) | |
| Request for Waiver of Section 90.313(c) of the Commission's Rules |) | |

ORDER

Adopted: June 25, 2009

Released: June 26, 2009

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

1. *Introduction.* By letter dated April 18, 2008, National Science and Technology Network, Inc. (NSTN) filed an informal petition to dismiss or deny the above-captioned application and request for waiver filed by Radio Communications Association (RCA).¹ For the reasons set forth below, we grant NSTN's petition to the extent described herein, deny RCA's waiver request, and will dismiss the application.

2. *Background.* RCA is authorized to operate on wideband (25 kHz) frequency pair 507/510.5125 MHz at various locations in Southern California under call signs KML417, KWB897, KH7048, and WQBE957.² No other entity is licensed on the channel in that area. In the instant application, filed March 25, 2008, RCA seeks authorization to operate at the same locations on four narrowband (6.25 kHz) frequency pairs within the authorized wideband frequency pair, using non-standard channel centers (507/510.50313 MHz, 507/510.50938 MHz, 507/510.51563 MHz, and 507/510.52188 MHz).³

3. Section 90.313(c) of the Commission's Rules provides that a licensee must demonstrate that an assigned 470-512 MHz band frequency pair is fully loaded before it may be assigned an additional frequency pair.⁴ RCA states, however, that the requested narrowband channels will not be fully loaded at the outset, because it proposes to use the channels to provide commercial service to future users.⁵ RCA therefore requests a waiver of Section 90.313(c). It argues that a waiver is appropriate because RCA already is the exclusive licensee of the requested spectrum, so grant of the application would not

¹ See Informal Petition to Dismiss or Deny the Application and Waiver Request of Radio Communications Association (RCA) filed by the National Science and Technology Network, Inc. (NSTN) (filed Apr. 25, 2008) (Petition). RCA filed an opposition. Opposition of Radio Communications Association (filed May 5, 2008) (Opposition). NSTN filed a reply. Reply to Objection to Informal Petition filed by National Science and Technology Network, Inc. (NSTN) (filed May 9, 2009).

² See Explanation of Application and Waiver Request at 1 (filed Mar. 25, 2008) (Waiver Request).

³ See 47 C.F.R. § 90.311(a)(2) (setting forth channel plan for 470-512 MHz band). Specifically, the proposed channel centers are situated 3.125 kHz from the edge of the current authorized bandwidth and every 6.25 kHz thereafter, which is offset 3.125 kHz from the frequencies designated in the regulations.

⁴ 47 C.F.R. § 90.313(c). The maximum channel loading for frequencies in the 470-512 MHz band is ninety mobile units for users in the Industrial/Business Pool. 47 C.F.R. § 90.313(a)(2).

⁵ See Waiver Request at 1-2. Specifically, RCA requests authority for only sixty mobile units.

undermine the rule's purpose of preventing spectrum hoarding.⁶

4. NSTN argues that the application should be dismissed because RCA has not demonstrated a need for four narrowband channels, and RCA's proposal would undermine the Commission's narrowbanding rules.⁷ On April 23, 2009, the Wireless Telecommunications Bureau returned the application to RCA for an explanation of why RCA's communications needs could not be met by three standard narrowband channels rather than four non-standard narrowband channels.⁸ RCA responded on June 2, 2009 that four non-standard channels would allow it to serve more customers than three standard channels.⁹

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest,¹⁰ or that, in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ RCA contends that grant of the application is in the public interest and the underlying purpose of the rule would be served by its application. However, we conclude that RCA has not made the requisite showing for grant of a waiver.

6. Specifically, we conclude that grant of the requested waiver would undermine the purpose of the Commission's narrowbanding rules. By January 1, 2013, wideband Industrial/Business and Public Safety licensees in the 150-174 MHz and 421-512 MHz bands must migrate to 12.5 kHz technology, or utilize a technology that achieves equivalent or greater efficiency.¹² Narrowbanding existing 25 kHz channels to 12.5 kHz bandwidth will create new 12.5 kHz channels for assignment on frequencies between the center frequencies of current 25 kHz channels. RCA argues that its proposal is consistent with the purposes of the narrowbanding rules, for it proposes 6.25 kHz operations in advance of any requirement to migrate to 6.25 kHz technology, as the Commission has encouraged licensees to consider.¹³ We disagree, for, under RCA's proposal, RCA would after 2013 retain four non-standard 6.25 kHz frequency pairs based on loading that would otherwise entitle it to retain only a standard 12.5 kHz frequency pair on its current channel center. We believe that it would be contrary to the Commission's intent to grant a waiver to permit RCA to encumber spectrum for which RCA has no immediate need.

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 Sections 1.41 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.925, the informal petition filed by National Science and Technology Network, Inc., to dismiss

⁶ *Id.* at 2.

⁷ See Petition at 1-2. RCA argues that NSTN lacks standing to challenge the application. See Opposition at 2. We note, however, that there is no standing requirement for informal petitions for Commission action. See, e.g., National Science and Technology Network, Inc., *Order on Further Reconsideration*, 17 FCC Rcd 11133, 11136 ¶ 5 (WTB PSPWD 2002).

⁸ See Return Letter, Ref. No. 4856880 (Apr. 23, 2009).

⁹ See Response to Notice of Return at 1 (filed June 2, 2009).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² 47 C.F.R. § 90.209(b)(5).

¹³ See Opposition at 4 n.8 (citing Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Report and Order*, WT Docket No. 99-87, 22 FCC Rcd 6083, 6089 ¶ 11 (2007); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Fourth Memorandum Opinion and Order*, WT Docket No. 99-87, 23 FCC Rcd 8042, 8045 ¶ 8 (2008).

or deny application FCC File No. 0003370765 IS GRANTED to the extent indicated above.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), and Section 1.934 of the Commission's Rules, 47 C.F.R. § 1.934, that application FCC File No. 0003370765 SHALL BE DISMISSED.

9. 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