

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

In the Matter of )  
 )  
NATIONAL SCIENCE AND TECHNOLOGY )  
NETWORK, INC. )  
Industrial/Business Pool Station WPMP967 )

**ORDER**

**Adopted: July 20, 2009**

**Released: July 21, 2009**

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

1. *Introduction.* We have before us a petition filed by Comm Enterprises, LLC (Comm Enterprises), licensee of Industrial/Business Pool Station WQAZ962, seeking modification of license of National Science and Technology Network, Inc. (NSTN) for Industrial/Business Pool Station WPMP967.<sup>1</sup> For the reasons stated below, we deny the petition.

2. *Background.* In 1998, NSTN was authorized under Call Sign WPMP967 to operate on, *inter alia*, frequencies 471.3500 MHz and 472.6750 MHz at various locations in Los Angeles County, California, including locations at or near locations where the Los Angeles County Metropolitan Transportation Authority (LACTMA) was authorized in 1991 and 1992 to operate on frequencies 471.3625 MHz, 472.6625 MHz, and 472.6875 MHz. In 2004, LACTMA assigned those three frequencies to James A. Kay, Jr.,<sup>2</sup> who assigned them to Comm Enterprises in 2005.<sup>3</sup>

3. In 2008, Comm Enterprises filed the instant petition, arguing that NSTN's operations on frequencies 471.3500 MHz and 472.6750 MHz do not provide it the required interference protection because NSTN's application did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88).<sup>4</sup> Comm Enterprises requests that NSTN's license be modified by deleting frequencies 471.3625

<sup>1</sup> See Petition for Modification of Licenses filed on July 17, 2008 by Comm Enterprises, LLC (Petition). Comm Enterprises also requested modification of NSTN's licenses for Stations WQGI981 and WQIV646, but the Petition is moot with respect to these licenses, in light of actions taken pursuant to other petitions. See National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 18644 (WTB MD 2007) (terminating license for Station WQGI981), *rev'g Order*, 22 FCC Rcd 1953 (WTB MD 2007), *aff'd*, *Order on Further Reconsideration*, 24 FCC Rcd 3577 (WTB MD 2009), *review pending*; National Science and Technology Network, Inc., *Order on Reconsideration*, DA 09-1404 (WTB MD rel. June 25, 2009) (returning to pending status and dismissing in relevant part NSTN's application for Station WQIV646), *recon. pending*. The caption of the Petition also lists NSTN's Station WPPH728, but the Petition does not discuss that license.

<sup>2</sup> See FCC File Nos. 0001487561, 0001839656.

<sup>3</sup> See FCC File No. 0002089219.

<sup>4</sup> See Filing Freeze to Be Lifted for Applications under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, Land Mobile Communications Council (LMCC), to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)). The LMCC Consensus was submitted by the LMCC in response to the Commission's direction that the private land mobile radio service coordinators reach a consensus on the applicable coordination procedures for the 12.5 kHz offset channels in the 470-512 MHz frequency band. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the

(continued....)

MHz, 472.6625 MHz, and 472.6875 MHz pursuant to Section 316 of the Communications Act of 1934, as amended, which permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.<sup>5</sup>

4. *Discussion.* While there is a strong public interest in upholding the Commission's rules and procedures, the fact that NSTN's application may have been improperly granted does not by itself require license modification under Section 316.<sup>6</sup> The Commission has stated that "[l]icense modification pursuant to Section 316 should be undertaken only under those limited and unusual cases where, in the light of the circumstances, it is clear that such action will promote the public interest, convenience, and necessity,"<sup>7</sup> and that the length of time between the grant of the license and the filing of the modification request "is certainly a legitimate question for consideration as part of the public interest, convenience, and necessity inquiry."<sup>8</sup> While there is no absolute time limit on Section 316 modifications, we know of no instance in which an improperly coordinated frequency was deleted pursuant to a request filed a decade after the license was granted. While there may be extraordinary circumstances in which such a license modification would promote the public interest, convenience, and necessity, Comm Enterprises has not demonstrated (or even attempted to demonstrate) that the instant matter presents such circumstances.<sup>9</sup>

5. *Conclusion.* For the reasons stated above, we conclude that Comm Enterprises has not demonstrated that modification of NSTN's license for Station WPMP967 would promote the public interest, convenience, and necessity. Consequently we deny its petition.

6. 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 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the Petition for Modification of Licenses filed by Comm Enterprises, LLC on July 17, 2008 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

---

(...continued from previous page)

Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability, using the interference criteria of TSB-88. See LMCC Consensus, Attachment at 2.

<sup>5</sup> 47 U.S.C. § 316.

<sup>6</sup> See, e.g., *Industrial Telecommunications, Inc., Order*, 18 FCC Rcd 25267, 25270 ¶ 9 (WTB PSCID 2003).

<sup>7</sup> See *Pacific Gas and Electric Company, Memorandum Opinion and Order*, 18 FCC Rcd 22761, 22767-68 ¶ 16 (2003).

<sup>8</sup> See *JPJ Electronic Communications, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5515 ¶ 6 (2002) (also stating that "the length of time that the target licensee has had its license directly relates to that licensee's likely level of investment in constructing and operating its facilities, as well as its reliance on that station").

<sup>9</sup> Comm Enterprises does not even assert that it has received actual interference from Station WPMP967.