

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

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	FCC File No. 0002919005
NETWORK, INC.)	
Station WPMP967, San Rafael Hills, California)	

ORDER OF MODIFICATION

Adopted: July 27, 2009

Released: July 28, 2009

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

1. *Introduction.* In this *Order of Modification*, we modify the authorization of National Science and Technology Network, Inc. (NSTN) for Industrial/Business Pool Station WPMP967 by deleting frequency pair 472/475.5750 MHz at San Rafael Hills, California (locations 1, 7, and 8). As explained below, we take this action as a result of an earlier order proposing to modify NSTN's license.¹ NSTN protested the proposed modification.² Based upon our review and analysis of the information before us, we deny NSTN's protest and modify the license for Station WPMP967 as proposed.

2. *Background.* Section 90.313 of the Commission's Rules provides that the maximum loading for a 470-512 MHz Industrial/Business Pool channel is ninety units, and a channel loaded to capacity cannot be reassigned within forty miles without the consent of the affected licensee(s).³ On February 8, 2007, Mobile Relay Associates (MRA) filed an application proposing to operate new base stations on frequency pair 472/475.5750 MHz at Avalon, Sunset Ridge, Sierra Peak, and Table Mountain, California, with ninety mobile units associated with each base station.⁴ On February 20, 2007, NSTN filed an application to modify its license for Station WPMP967 by, *inter alia*, adding frequency pair 472/475.5750 MHz at San Rafael Hills, California.⁵ On February 25, 2007, NSTN filed an informal petition to dismiss or deny MRA's application, on the grounds that MRA's proposed operations did not meet the required distance separation with respect to temporary fixed sites associated with Station WPMP967's existing permanent base stations.

3. NSTN's modification application was granted on August 21, 2007. On March 13, 2008, MRA requested that NSTN's license for Station WPMP967 be modified pursuant to Section 316 of the Communications Act of 1934, as amended (the Act),⁶ to delete the authorization for operation at San Rafael Hills on frequency pair 472/475.5750 MHz, on the grounds that the facility did not meet the

¹ See Mobile Relay Associates, *Order on Reconsideration and Order Proposing Modification*, 24 FCC Rcd 3238 (WTB MD 2009) (*Order Proposing Modification*).

² See Protest of National Science and Technology Network to Proposed Modification of WPMP967 to Delete Authorization For Frequency Pair 472/475.5750 [M]Hz at San Rafael Hills (filed Apr. 7, 2009) (NSTN Protest). MRA filed an opposition. See Opposition to Protest (filed Apr. 22, 2009). NSTN filed a reply. See Reply to Opposition to Protest to Proposed Modification of WPMP967 to Delete Authorization For Frequency Pair 472/475.5750 [M]Hz at San Rafael Hills (filed Apr. 30, 2009).

³ 47 C.F.R. § 90.313(a)(2), (b), (c).

⁴ FCC File No. 0002906356.

⁵ FCC File No. 0002919005.

⁶ 47 U.S.C. § 316.

required distance separation with respect to the co-channel Sunset Ridge and Sierra Peak locations in MRA's prior-filed application.

4. MRA's application was granted on March 20, 2008 under Call Sign WQIM782, after the Commission denied NSTN's informal objection.⁷ On April 18, 2008, NSTN requested reconsideration of the grant, on the grounds that the Sunset Ridge and Sierra Peak are within forty miles of NSTN's co-channel site at San Rafael Hills. On October 21, 2008, NSTN requested that MRA's license be modified by deleting the Sunset Ridge, Sierra Peak, and Table Mountain locations, because those sites are within forty miles of NSTN's San Rafael Hills site.

5. We concluded in the *Order Proposing Modification* that NSTN should not have been authorized to operate on frequency pair 472/475.5750 MHz at San Rafael Hills, because NSTN's San Rafael Hills site is within forty miles of fully-loaded co-channel sites for which MRA applied first.⁸ NSTN did not dispute this, but instead argued that the MRA application was defective and should not have been granted because Section 90.313 also requires a licensee "to show that an assigned [470-512 MHz] frequency pair is at full capacity before it may be assigned a second or additional frequency pair,"⁹ and MRA had 470-512 MHz frequencies in the same area that were not constructed.¹⁰ We "decline[d] to entertain NSTN's collateral attacks on MRA licenses other than the one at issue in this proceeding," and invited NSTN to file a separate request for license cancellation if it believed that it had sufficient evidence of non-construction or permanent discontinuance of operation.¹¹ We also concluded that deleting frequency pair 472/475.5750 MHz from NSTN's license for Station WPMP967 at San Rafael Hills would promote the public interest, convenience, and necessity because the coordination and eventual grant of NSTN's application were defective, and the deletion of one frequency pair from one of NSTN's sites would not unduly burden its operations.¹² As a result, we proposed to modify NSTN's license for Station WPMP967 accordingly, and we denied NSTN's petition for reconsideration and request for modification because they were premised on the validity of NSTN's authorization for frequency pair 472/475.5750 MHz at San Rafael Hills.¹³

6. *Discussion.* NSTN protested the proposed modification of its license within the requisite thirty-day time frame.¹⁴ In its protest, NSTN again does not dispute that its application was defectively coordinated, but instead reiterates its call for a Commission inquiry or hearing regarding the construction and operational status of other 470-512 MHz band stations licensed to MRA in the vicinity of Station

⁷ See Mobile Relay Associates, *Memorandum Opinion and Order*, 23 FCC Rcd 3202, 3204-05 ¶ 8 (2008) (concluding that the mileage separation in Section 90.313 prohibits new facilities within forty miles of permanent base stations, but not within forty miles of temporary fixed stations).

⁸ See *Order Proposing Modification*, 24 FCC Rcd at 3236 ¶ 7. The San Rafael Hills site is approximately twenty-eight miles from the Sunset Ridge site, thirty-seven miles from the Sierra Peak site, and thirty-four miles from the Table Mountain site.

⁹ 47 C.F.R. § 90.313(c).

¹⁰ See Opposition Filed by National Science and Technology Network (NSTN) to Request to Initiate Modification Proceedings at 3 (filed Mar. 25, 2008). Specifically, NSTN alleged that MRA Stations WQBZ908, Avalon, California, and WQG853, Adelanto, California, were not constructed. See *id.* at 4, Ex. B (Declaration of Alan M. Lurya).

¹¹ See *Order Proposing Modification*, 24 FCC Rcd at 3236 ¶ 8 (citing National Ready Mix Concrete Co., *Memorandum Opinion and Order*, 23 FCC Rcd 5250, 5253-54 ¶ 11 (2008)).

¹² See *id.* at 3236-37 ¶ 9.

¹³ See *id.* at 3237 ¶ 10.

¹⁴ See 47 C.F.R. § 1.87(g)(1).

WQIM782.¹⁵ It argues that, rather than being collateral or ancillary to the present proceeding, the validity of MRA's other licenses is relevant to whether or not modifying NSTN's license for Station WPMP967 would promote the public interest, convenience, and necessity.¹⁶

7. We disagree. NSTN did not challenge the validity of MRA's other licenses in NSTN's application for a co-channel station less than forty miles from sites requested in MRA's pending application, or in its informal objection to MRA's application, or in its petition for reconsideration of the grant of MRA's application, or in its request for modification of MRA's license.¹⁷ The validity of MRA's other licenses could have been relevant in any of those proceedings. Instead, NSTN first challenged the validity of MRA's other licenses in its opposition to MRA's request for modification of NSTN's license.¹⁸ NSTN has presented nothing to dissuade us from our prior conclusion that the validity of other MRA stations in the vicinity is ancillary to the question of whether NSTN's license for Station WPMP967 should be modified because the grant conflicted with the grant of MRA's prior-filed application for Station WQIM782. Consequently, we will not address the issue herein.

8. *Conclusion.* For the reasons stated above, we conclude that the underlying frequency coordination and subsequent grant of NSTN's application were defective, and that modifying NSTN's license would promote the public interest, convenience, and necessity. Accordingly, we modify NSTN's license for Station WPMP967 by deleting frequency pair 472.5750/475.5750 MHz at San Rafael Hills.

9. 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 license for Private Land Mobile Radio Service Station WPMP967 BE MODIFIED to delete frequencies 472.5750 MHz and 475.5750 MHz from locations 1, 7, and 8.

10. IT IS FURTHER ORDERED that this *Order of Modification* SHALL BE SENT by certified mail, return receipt requested to National Science and Technology Network, Inc., 2050 S. Bundy Drive, Suite 285, Los Angeles, CA 90025, Attn: Ted S. Henry; and to Professional Licensing Consultants, Inc., P.O. Box 1714, Rockville, MD 20849, Attn: J. A. (Josie) Lynch.

¹⁵ See NSTN Protest at 2.

¹⁶ See *id.* at 2-3.

¹⁷ It should be noted, however, that asserting the invalidity of MRA's other licenses would not necessarily justify the grant of NSTN's application, for NSTN was required to protect the MRA application or obtain MRA's consent until such time as MRA's application was dismissed or denied. Cf. National Science and Technology Network, Inc., *Order of Modification*, 18 FCC Rcd 11321, 11326 ¶ 12 (WTB PSPWD 2003) ("even assuming *arguendo* that the coordinations were improper, NSTN was still obligated to obtain the consent letters required by the Commission's Rules or show that the requisite interference protection was afforded to existing licensees until such time as those licenses were modified or cancelled"), *recon. denied, Order on Reconsideration*, 21 FCC Rcd 9050 (WTB PSCID 2006), *review denied*, 23 FCC Rcd 3214 (2008); Always Answering Service, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 3243, 3244-45 ¶ 5 (2000) (similar).

¹⁸ NSTN later also raised the issue in its reply to MRA's opposition to NSTN's petition for reconsideration of the grant of MRA's application, see Reply to Opposition to Petition for Reconsideration of Grant of Station License Filed by National Science and Technology Network, Inc. (NSTN) at 1-2 (filed Apr. 28, 2008), but this was improper because it went beyond the scope of the opposition. See 47 C.F.R. § 1.45(c) ("The reply shall be limited to matters raised in the oppositions . . .").

11. 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
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Wireless Telecommunications Bureau