

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

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File Nos. 0003662993, 0003662994,
NETWORK, INC.)	0003662997, 0003662999, 0003663003
Applications for New or Modified Trunked)	
Industrial/Business Pool Station Licenses)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: August 10, 2009

Released: August 11, 2009

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

1. *Introduction.* On December 23, 2008, Mobile Relay Associates (MRA) filed an informal objection to the five above-captioned applications filed on December 1, 2008 by National Science and Technology Network, Inc. (NSTN) for authorization to operate on 470-512 MHz band channels in Corona, California, and a petition for reconsideration of the grant of application File No. 0003662994. For the reasons set forth below, we deny MRA's petition for reconsideration, but grant its informal objection and dismiss applications File Nos. 0003662993, 0003662997, 0003662999, and 0003663003.

2. *Background.* On December 1, 2008, NSTN filed five applications for new or modified trunked Industrial/Business Pool station licenses at two sites in Corona, California:

File No. 0003662993, which sought to modify NSTN's license for Station WPMM274 by adding a site at Sierra Peak to utilize ten 470-512 MHz frequency pairs for which Station WPMM274 already was authorized at other locations¹;

File No. 0003662994, which sought authorization for a new station on Blackstar Canyon Road to utilize the same ten base station frequencies requested in File No. 0003662993²;

File No. 0003662997, which sought to modify NSTN's license for Station WQIV646 by adding sites at Sierra Peak (base and mobile frequencies) and Blackstar Canyon Road (base station frequencies only) to utilize ten 470-512 MHz frequency pairs for which Station WQIV646 already was authorized at its existing location³;

¹ File No. 0003662993 (filed Dec. 1, 2008). Specifically, 471/474.500 MHz, 471/474.975 MHz, 472/475.150 MHz, 472/475.350 MHz, 472/475.375 MHz, 472/475.750 MHz, 472.275.775 MHz, 472/475.800 MHz, 472/475.850 MHz, and 472/475.900 MHz.

² File No. 0003662994 (filed Dec. 1, 2008).

³ File No. 0003662997 (filed Dec. 1, 2008). Specifically, 471/474.275 MHz, 471/474.300 MHz, 471/474.500 MHz, 471/474.700 MHz, 471/474.850 MHz, 472/475.000 MHz, 472/475.175 MHz, 472/475.225 MHz, 472/475.725 MHz, and 472/475.825 MHz. On December 10, 2009, NSTN amended the application to delete frequency pair 471/474.500 MHz from the Sierra Peak site. The license for Station WQIV646 subsequently was terminated and reissued under Call Sign WQKK919, after the grant of the original application was partially rescinded. *See* National Science and Technology Network, Inc., *Order on Reconsideration*, DA 09-1404 (WTB MD rel. June 25, 2009), *recon. pending*. Specifically, frequency pairs 471/474.275 MHz, 471/474.300 MHz, 471/474.700 MHz,

File No. 0003662999, which sought to amend NSTN's license for Station WPMP967 to add eight 470-512 MHz frequency pairs at the station's Sierra Peak site for which Station WPMP967 already was authorized at other locations,⁴ and to add a site at Blackstar Canyon Road to utilize the same eight base station frequencies and two others for which Station WPMP967 already was authorized at other locations⁵;

and

File No. 0003663003, which sought to amend NSTN's license for Station WQIP838 by adding sites at Sierra Peak (base and mobile frequencies) and Blackstar Canyon Road (base station frequencies only) to utilize nine 470-512 MHz frequency pairs for which Station WQIP838 already was authorized at its existing location.⁶

3. Application File No. 0003662994 was granted on December 11, 2008 under Call Sign WQJS443. On December 23, 2008, MRA filed an informal objection to the applications,⁷ and a petition for reconsideration of the grant of application File No. 0003662994.⁸

4. *Discussion.* Section 90.187(e) of the Commission's Rules provides,

No more than 10 channels for trunked operation in the Industrial/Business Pool may be applied for in a single application. Subsequent applications, limited to an additional 10 channels or fewer, must be accompanied by a certification, submitted to the certified frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation.⁹

(...continued from previous page)

471/474.850 MHz, 472/475.175 MHz, 472/475.225 MHz, and 472/475.725 MHz were deleted from the original authorization.

⁴ File No. 0003662999 (filed Dec. 1, 2008). Specifically, 471/474.325 MHz, 471/474.350 MHz, 471/474.450 MHz, 471/474.600 MHz, 471/474.800 MHz, 472/475.575 MHz, 472/475.675 MHz, and 472/475.875 MHz. On December 18, 2009, NSTN amended the application to delete frequency pair 472/475.575 MHz.

⁵ Specifically, 471.425 MHz and 472.525 MHz. On December 18, 2009, NSTN amended the application to delete frequency 472.575 MHz.

⁶ File No. 0003663003 (filed Dec. 1, 2008). Specifically, 471/474.250 MHz, 471/474.625 MHz, 571/474.650 MHz, 471/474.825 MHz, 471/474.900 MHz, 471/474.925 MHz, 471/474.950 MHz, 472/475.300 MHz, and 472/475.400 MHz.

⁷ See Informal Objection filed on December 23, 2008 by MRA (Objection). NSTN filed an opposition. See Opposition of National Science and Technology Network, Inc. (NSTN) to Informal Objection Filed by Mobile Relay Associates (MRA) filed on December 30, 2008 by NSTN (Opposition). MRA filed a reply. See Reply to "Opposition of National Science and Technology Network, Inc. (NSTN) to Informal Objection Filed by Mobile Relay Associates (MRA)" filed on January 2, 2009 by MRA.

⁸ See Petition for Reconsideration filed on December 23, 2008 by MRA (Petition). The Petition incorporates the arguments set forth in the Objection. NSTN filed an opposition. See Opposition of National Science and Technology Network, Inc. (NSTN) to Petition for Reconsideration Filed by Mobile Relay Associates (MRA) filed on December 30, 2008 by NSTN. MRA filed a reply. See Reply to "Opposition of National Science and Technology Network, Inc. (NSTN) to Petition for Reconsideration Filed by Mobile Relay Associates (MRA)" filed on January 2, 2009 by MRA.

⁹ 47 C.F.R. § 90.187(e).

5. MRA argues that the five NSTN applications should be deemed a single application, and that NSTN therefore exceeded the ten-channel limit.¹⁰ It also argues that NSTN should not be granted even ten channels, because NSTN had not constructed and placed into operation all of its existing channels authorized for trunked operation.¹¹ We are unpersuaded by MRA's bare assertion of non-construction, which is supported by no evidence and is disputed by NSTN.¹² We agree with MRA, however, that the applications should be deemed a single application for purposes of the channel limit in Section 90.187(e), because the Sierra Peak and Blackstar Canyon sites have overlapping contours.¹³ Consequently we deny MRA's petition for reconsideration of the grant of application File No. 0003662994, but we grant its informal objection to the other applications, and dismiss applications File Nos. 0003662993, 0003662997, 0003662999, and 0003663003.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition For Reconsideration filed on December 23, 2008 by Mobile Relay Associates IS DENIED.

7. IT IS FURTHER ORDERED that, 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 Objection filed on December 23, 2008 by Mobile Relay Associates IS GRANTED to the extent set forth above, and applications FCC File Nos. 0003662993, 0003662997, 003662999, and 0003663003 SHALL BE DISMISSED.

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
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¹⁰ See Objection at 2-4.

¹¹ *Id.* at 4-5.

¹² See Opposition at 2.

¹³ See i2way Request for Declaratory Ruling Regarding the Ten-Channel Limit of Section 90.187(e) of the Commission's Rules, *Memorandum Opinion and Order*, WT Docket No. 02-196, 19 FCC Rcd 8460, 8463-64 ¶ 6-7 (2004) ("We reject i2way's argument that Section 90.187 of our rules limits only the number of channels in a single application, not the number of applications that can be filed within a single service area. i2way argues that the language in Section 90.187 does not mention the terms 'location' or 'service area,' and further claims that the rule's reference to 'application' is the only term defining the scope of any restriction. i2way then argues that an application is merely a standard form and Section 90.187(e) limits the number of channels that may be applied for on each standard form. We disagree."), *aff'd per curiam*, No. 04-1174 (D.C. Cir. Mar. 23, 2005).