

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

In the Matter of)
)
MOBILE RELAY ASSOCIATES) File No. 0003460698
)
Request for Waiver of Section 90.307 of the)
Commission’s Rules)

ORDER

Adopted: April 17, 2009

Released: April 20, 2009

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

1. *Introduction.* On June 3, 2008, Mobile Relay Associates (“MRA”) filed the above-captioned application for authority to operate a new Industrial/Business Pool station on frequency pair 471/474.3125 MHz with base stations near San Juan Capistrano and Roosevelt, California, and associated mobile units. MRA also requests a waiver of Section 90.307 of the Commission’s Rules regarding distance separation from protected television stations,¹ with respect to the proposed San Juan Capistrano location.² For the reasons set forth below, we deny the waiver request and will dismiss the application with respect to the proposed San Juan Capistrano location.

2. *Background.* Section 90.307(d) requires a minimum distance of ninety miles between a land mobile base station that has associated mobile units and a protected adjacent-channel television station.³ MRA’s proposed San Juan Capistrano site, however, is approximately seventy-two miles from adjacent-channel Channel 15⁴ Television Station KPBS, San Diego, California. MRA requests a waiver of that requirement on the grounds that Station KPBS will cease operating on Channel 15 after the upcoming digital television (DTV) transition.⁵ MRA states that its customers require service in the Roosevelt and San Juan Capistrano areas, and that it would construct the facilities promptly but not commence operations at San Juan Capistrano until after the DTV transition.⁶

¹ 47 C.F.R. § 90.307.

² See Request for Waiver of Section 90.307 (filed June 3, 2008) (“Waiver Request”). The proposed Roosevelt location meets the criteria of Section 90.307.

³ See 47 C.F.R. § 90.307(d).

⁴ Television channel 15 occupies the 476-482 MHz band.

⁵ KPBS will complete the transition on June 12, 2009. See FCC Releases Dates on Which Stations Intend to Terminate Analog Television Service, *Public Notice*, 24 FCC Rcd 3066 (MB 2009). Its request to continue to use Channel 15 as an “analog nightlight” was denied because the Commission concluded that such operation would conflict with co-channel land mobile operations authorized in County of Los Angeles, California, *Order*, 23 FCC Rcd 18389 (PSHSB 2008) (*Los Angeles Order*). See Implementation of the DTV Delay Act, *Second Report and Order and Notice of Proposed Rulemaking*, MB Docket No. 09-17, 24 FCC Rcd 2526, 2544 ¶ 44 (2009).

⁶ See Waiver Request at 1, 2. MRA also proposes to restrict its mobile operations to at least sixty miles from the site of Station KPBS, as required by the Commission’s rules. See Demonstration of Compliance with Section 90.307(d) (filed Oct. 16, 2008). (As noted above, Section 90.307(d) requires ninety miles separation between a land mobile base station that has associated mobile units and a protected adjacent-channel television station. In addition, Section 90.305(b) of the Commission’s Rules requires that mobile units operate within thirty miles of their associated base

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3. *Discussion.* In an *Order* addressing the spectrum to be vacated by Station KPBS, the Commission's Public Safety and Homeland Security Bureau (PSHSB) concluded that granting a waiver to allow the applicant to construct facilities that would commence operating on the spectrum after the DTV transition was appropriate where the applicant submitted its applications long before the DTV transition date, and there was no other suitable spectrum available.⁷ PSHSB emphasized that its decision was based on unique circumstances, and that it would not ordinarily grant such requests, particularly if they were filed closer to the DTV transition date.⁸

4. We agree with this standard, and conclude that MRA has not met it. MRA filed its application approximately eight months before the then-effective February 17, 2009 DTV transition date. Moreover, MRA does not assert that there is no other spectrum available to meet its (unidentified) customers' needs, or that such needs must be met immediately upon the DTV transition date, or that these customers have no other options. MRA does not present any persuasive reasons why it cannot wait until after the DTV transition to apply for the San Juan Capistrano facility. Consequently, it has not demonstrated that the public interest requires us to assign this spectrum to it sooner. Rather, we believe that the public interest is better served by a more orderly and equitable assignment process. We therefore deny the waiver request.⁹ MRA can reapply for the channel at San Juan Capistrano on the same basis as any other prospective applicant after the spectrum becomes available for assignment consistent with our rules.

5. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver associated with application FCC File No. 0003460698 filed by Mobile Relay Associates on June 3, 2008 IS DENIED.

6. IT IS FURTHER ORDERED that application FCC File No. 0003460698 SHALL BE DISMISSED with respect to locations 2, 5, and 6; and otherwise PROCESSED in accordance with the Commission's Rules.

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
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stations. *See* 47 C.F.R. § 90.305(b). In combination, then, the rules require a sixty-mile separation between mobile units and a protected adjacent-channel television station.)

⁷ *See Los Angeles Order*, 23 FCC Rcd at 18401 ¶ 22, 18408 ¶ 35.

⁸ *See id.* at 18408 ¶ 35.

⁹ Given our rejection of the waiver request, we need not address the arguments in the opposition filed by National Science and Technology Network, Inc. (NSTN), and the responsive pleadings thereto. *See* Letter dated June 23, 2008 from Alan M. Lurya, counsel to NSTN, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau; Opposition to Informal Petition to Dismiss or Deny (filed July 1, 2008); Letter dated July 3, 2008 from Alan M. Lurya, counsel to NSTN, to Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.