

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

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File No. 0003431479
NETWORK, INC.)	
Licensee of Station WQIV646)	

ORDER ON FURTHER RECONSIDERATION

Adopted: August 2, 2010

Released: August 3, 2010

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

1. *Introduction.* This item addresses a petition for further reconsideration and request for stay, filed by National Science and Technology Network, Inc. (NSTN), of an *Order on Reconsideration*¹ dismissing in part NSTN's above-captioned application.² For the following reasons, we deny the petition for reconsideration, and dismiss the stay request as moot.

2. *Background.* Comm Enterprises, LLC, James A. Kay, Jr., Ms Airwaves, Inc., and Marc D. Sobel (Petitioners) sought reconsideration of the grant of NSTN's application for authority to operate on ten 12.5 kHz offset channels in the 470-512 MHz band at San Rafael Hills, California,³ arguing that NSTN's requested operations on seven of those channels⁴ did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88).⁵ The Wireless Telecommunications Bureau's Mobility Division (Division) performed an engineering study that confirmed that the requirements of TSB-88 were not satisfied with respect to those seven frequency pairs.⁶ Consequently, the Division granted the petition,

¹ National Science and Technology Network, Inc., *Order on Reconsideration*, 24 FCC Rcd 8447 (WTB MD 2009) (*Order on Reconsideration*).

² Petition for Further Reconsideration of National Science and Technology Network, Inc. (filed July 7, 2009) (Petition for Further Reconsideration); Request for Stay Made by National Science and Technology Network, Inc. (NSTN) Against the Immediate Effect of Order DA 09-1404 (filed July 7, 2009). On July 24, 2009, NSTN filed a letter to supplement the record. Letter dated July 24, 2009 from Alan M. Lurya, counsel to NSTN, to Office of the Secretary, Federal Communications Commission (NSTN Letter).

³ 471/474.2750 MHz, 471/474.3000 MHz, 471/474.5000 MHz, 471/474.7000 MHz, 471/474.8500 MHz, 472/475.0000 MHz, 472/475.1750 MHz, 472/475.2250 MHz, 472/475.7250 MHz, and 472/475.8250 MHz. The application was granted on May 28, 2008.

⁴ 471/474.2750 MHz, 471/474.3000 MHz, 471/474.7000 MHz, 471/474.8500 MHz, 472/475.1750 MHz, 472/475.2250 MHz, and 472/475.7250 MHz.

⁵ 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 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. See LMCC Consensus, Attachment at 2.

⁶ See *Order on Reconsideration*, 24 FCC Rcd at 8448 ¶4.

returned NSTN's application to pending status, and dismissed it with respect to the seven contested frequency pairs while granting it with respect to the other three frequency pairs.⁷

3. *Discussion.* NTSN argues that Petitioners lacked standing to file a petition for reconsideration of the grant of NSTN application, because they are licensed for commercial mobile radio services, and therefore do not compete with NSTN, which is licensed for private land mobile radio (PLMR) services.⁸ We note, however, that their standing in this matter was based not on their status as NSTN's competitors, but upon the spectral proximity of their licensed operations.⁹

4. On the merits, NSTN argues that TSB-88 does not apply to this matter because, in a duplex system, there is a three megahertz separation between the base and mobile frequencies, effectively eliminating any possibility of interference between fixed stations.¹⁰ We have rejected this argument in previous matters involving NSTN, explaining that the three megahertz separation between the base and mobile frequencies is irrelevant to the TSB-88 analysis, which compares the base station frequencies of the existing and proposed operations.¹¹ NSTN further claims that, in any event, application of TSB-88 in the instant matter is in conflict with the PLMR narrowbanding mandate which will require 25 kHz PLMR licensees to adopt more efficient narrowband technology by 2013.¹² We also have rejected this argument when previously raised by NSTN, explaining that the Commission did not intend to reduce interference protection of 470-512 MHz band incumbents in order to encourage their transition to narrowband technology.¹³ Finally, we reject NSTN's argument that the defective frequencies should not have been deleted because Petitioners did not demonstrate actual interference.¹⁴ The case that NSTN cites is irrelevant to the instant matter, as it pertained to a request to modify a license pursuant to Section 316 of

⁷ See *id.* at 8448 ¶¶ 4-6. NSTN argues that the Division failed to "wait[] the required 30 days before acting to change the database." See Petition for Further Reconsideration at 1. The Division was under no such restriction. See 47 C.F.R. § 1.102(b)(1) ("Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action . . .").

⁸ See Petition for Further Reconsideration at 3.

⁹ NSTN fails to explain why it believes that Petitioners lacked standing because they were licensed in different radio services from NSTN, while also believing that NSTN had standing to challenge others' applications in different radio services. See *City of El Segundo*, Order, 20 FCC Rcd 10105, *aff'd*, Order on Reconsideration, 20 FCC Rcd 18857 (WTB PSCID 2005). We again remind NSTN's counsel that an attorney may be subjected to appropriate disciplinary action pursuant Section 1.24 of the Commission's Rules, 47 C.F.R. § 1.24, for a willful violation of Section 1.52 of the Commission's Rules, 47 C.F.R. § 1.52, which provides that an attorney's signature on a pleading constitutes a certificate by him that there is good ground to support it, to the best of his knowledge, information, and belief. See *National Science and Technology Network, Inc.*, Order on Reconsideration, 24 FCC Rcd 4089, 4091 n.23 (WTB MD 2009) (citing *Mobile Relay Associates*, Order on Reconsideration and Order Proposing Modification, 24 FCC Rcd 3234, 3236 n.15 (WTB MD 2009)), review pending.

¹⁰ See Petition for Further Reconsideration at 2.

¹¹ See *National Science and Technology Network, Inc.*, Order Proposing Modification, 25 FCC Rcd 2124, 2126-26 ¶ 4 (WTB MD 2010), protest pending; *National Science and Technology Network, Inc.*, Order on Further Reconsideration, 24 FCC Rcd 3577, 3579 ¶ 7 (WTB MD 2009) (*WQGI981 Order*), review pending.

¹² See Petition for Further Reconsideration at 4.

¹³ See *WQGI981 Order*, 24 FCC Rcd at 3479-80 ¶ 8; *National Science and Technology Network, Inc.*, Order on Reconsideration, 23 FCC Rcd 5723, 5725-26 ¶ 7 (WTB MD 2008), *aff'd*, Memorandum Opinion and Order, 25 FCC Rcd 549 (2010); see also Samuel Moses PR, Second Order on Further Reconsideration, 24 FCC Rcd 8857, 8866-67 ¶ 24 (WTB 2009), *aff'd*, Order on Partial Reconsideration, DA 10-1224 (WTB rel. June 30, 2010).

¹⁴ See NSTN Letter at 1 (citing *National Science and Technology Network, Inc.*, Order, 24 FCC Rcd 9220 (WTB MD 2009)).

the Communications Act of 1934, as amended,¹⁵ rather than a timely petition for reconsideration as was filed in this proceeding.¹⁶

5. *Conclusion.* In summary, the *Order on Reconsideration* correctly concluded that the coordination of NSTN's applications with respect to the seven frequencies was defective. We therefore deny NSTN's petition for further reconsideration. In addition, we dismiss as moot NSTN's request for stay.¹⁷

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 Further Reconsideration filed on July 7, 2009 by National Science and Technology Network, Inc. IS DENIED, and the Request for Stay filed on July 7, 2009 by National Science and Technology Network, Inc. IS DISMISSED AS MOOT.

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 COMMUNICATION COMMISSION

Scot Stone
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Wireless Telecommunications Bureau

¹⁵ 47 U.S.C. § 316.

¹⁶ See National Science and Technology Network, Inc., *Order on Reconsideration*, 22 FCC Rcd 20973, 20975 ¶ 9 (WTB MD 2007), *rev'd on other grounds, Memorandum Opinion and Order and Order Proposing Modification*, 25 FCC Rcd 559 (2010).

¹⁷ See, e.g., James A. Kay, Jr., *Second Memorandum Opinion and Order*, FCC 10-104, ¶ 9 (rel. June 2, 2010).