

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

In the Matter of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File Nos. 0002919012, 0002919013,
NETWORK, INC.)	0003431479
Licensee of Industrial/Business Pool Stations)	
WQJD998, WQIP838, and WQKK919)	

ORDER PROPOSING MODIFICATION

Adopted: March 3, 2010

Released: March 4, 2010

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

1. *Introduction.* In this item, we propose to modify the licenses for three private land mobile radio (PLMR) stations. Mobile Relay Associates (MRA) requests modification of the above-captioned licenses held by National Science and Technology Network, Inc. (NSTN), or, in the alternative, reconsideration of the grant of the licenses, on the grounds that the applications should not have been granted because they were not properly coordinated.¹ Based upon our review and analysis of the information before us, we propose to modify NSTN's above-captioned licenses as follows: for Station WQJD998 by reducing the maximum authorized power at locations 1 and 3 to fifteen watts effective radiated power (ERP), reducing the number of units at location 2 to ninety, and deleting locations 4-6; for Station WQIP838 by deleting frequency pair 471/474.2500 MHz; and for Station WQKK919 by deleting frequency pairs 471/474.5000 MHz and 472/475.8250 MHz.

2. *Background.* NSTN's above-captioned applications for new PLMR stations operating on 12.5 kHz offset frequencies in the 470-512 MHz band at San Sevaire Peak, San Rafael Hills, and Rancho Palos Verdes, California, were granted in April and May 2008 under Call Signs WQJD998, WQIP838, and WQIV646 (which later was redesignated WQKK919).² In November 2008, MRA requested modification of the licenses or, in the alternative, reconsideration of the grant of the applications, on the grounds that certain frequency pairs³ were not properly coordinated because, *inter alia*, they did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88).⁴

¹ See Consolidated Request for Modification and Petition for Reconsideration (filed Nov. 4, 2008) (Request); see also Opposition of National Science and Technology Network, Inc. (NSTN) to Consolidated Request for Modification and Petition For Reconsideration filed by Mobile Relay Associates (MRA) (filed Nov. 10, 2008) (Opposition); Reply to Opposition (filed Nov. 20, 2008) (Reply).

² Specifically, FCC File No. 0002919012 (filed Feb. 20, 2007) sought authorization for stations at San Sevaire Peak and San Rafael Hills, and was granted under Call Sign WQJD998 on April 9, 2008; FCC File No. 0002919013 (filed Feb. 20, 2007) sought authorization for stations at Rancho Palos Verdes and San Rafael Hills, and was granted under Call Sign WQIP838 on May 28, 2008; and FCC File No. 0003431479 (filed May 7, 2008) sought authorization for a station at San Rafael Hills, and was granted under Call Sign WQIV646 on May 28, 2008. On reconsideration, FCC File No. 0003431479 was returned to pending status and dismissed in part, and the remaining frequencies were regranted under Call Sign WQKK919. See National Science and Technology Network, Inc., *Order on Reconsideration*, 24 FCC Rcd 8447, 8448 ¶¶ 4, 6 (WTB MD 2009) (*WQIV646 Order*), *recon. pending*.

³ Specifically, frequency pair 472/475.4750 MHz at San Sevaire Peak and San Rafael Hills under Call Sign WQJD998, frequency pair 471/474.2500 MHz at San Rafael Hills and Rancho Palos Verdes under Call Sign WQIP838, and frequency pairs 471/474.5000 and 472/475.8250 MHz at San Rafael Hills under Call Sign WQIV646. See Request at Ex. A. MRA also objected to the grant of frequency pairs 471/474.2750, 471/474.7000, (continued....)

3. *Discussion.* As an initial matter, we deny MRA's request that its filing be treated as a petition for reconsideration. A petition for reconsideration must be filed within thirty days from the date of public notice of the Commission action.⁵ Because the grants of the NSTN applications were not published in the Federal Register or placed on public notice, the date of public notice of the Commission's action is the date of the subject licensing actions were taken.⁶ MRA's request was filed more than thirty days after NSTN's applications were granted. As a result, we deny MRA's request to treat its filing as a petition for reconsideration,⁷ and instead will consider it as a request to modify NSTN's licenses.⁸

4. With respect to the request for modification, MRA states that it is incurring interference from the NSTN stations,⁹ and our engineering review confirms that the NSTN channels specified by MRA do not satisfy the requirements of TSB-88.¹⁰ NSTN contends that TSB-88 should apply only to simplex operations, and not to trunked duplex operations.¹¹ We have rejected this argument previously, and

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472.475.1750, 472/475.2250, and 472/475.7250 MHz at San Rafael Hills under Call Sign WQIV646, but those frequency pairs were deleted from the license when FCC File No. 0003431479 was returned to pending status and dismissed in part. See *WQIV646 Order*, 24 FCC Rcd at 8448 ¶ 4.

⁴ 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 PLMR service frequency 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 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.

⁵ See 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

⁶ See 47 C.F.R. § 1.4(b)(5).

⁷ MRA argues that the fact that the Commission does not place PLMR applications on notice, combined with NSTN's failure to seek MRA's consent to the applications, constitute extraordinary circumstances warranting extension of the filing period until thirty days after MRA received actual notice of the grants. See Request at 2-3 (citing, e.g., *Gardner v. FCC* 530 F.2d 1086, 1091-92 (D.C. Cir. 1976)). We disagree. See *Jonach Electronics, Order on Further Reconsideration*, 16 FCC Rcd 13094, 13097-98 ¶¶ 8-9 (WTB PSPWD 2001) (rejecting argument that thirty-day period for seeking reconsideration of the grant of a PLMR application does not begin until the petitioner receives actual notice of the grant). The narrow "extraordinary circumstances" exception to the filing deadline for petitions for reconsideration applies where the rules require personal notice or the Commission customarily provides such notice. See *Satellite Signals of New England, Inc., Memorandum Opinion and Order*, 25 FCC 515, 517 ¶ 6 (2010). This is not such a case.

⁸ NSTN argues that MRA should not be permitted to seek modification of the licenses because it did not timely object to the applications. See Opposition at 3. NSTN has made this argument before, to no avail. See *National Science and Technology Network, Inc., Order on Reconsideration*, 21 FCC Rcd 9050, 9055 ¶ 14 (WTB PSCID 2006) (citing *California Metro Mobile Communications, Inc. v. FCC*, 365 F. 2d 38, 45 (D.C. Cir. 2004)).

⁹ See Request at Ex. B (Declaration of Mark J. Abrams); Reply at Ex. B (Supplemental Declaration of Mark J. Abrams).

¹⁰ Because we conclude that the applications were defective for failure to satisfy the interference criteria of TSB-88, we do not reach MRA's other arguments.

¹¹ See Opposition at 4.

concluded that the three megahertz separation between the base and mobile frequencies in a duplex system does not render TSB-88 inapplicable, because the TSB-88 analysis compares only the base station frequencies of the existing and proposed operations.¹² In addition, the Commission has rejected NSTN's argument¹³ that TSB-88 is not applicable because there is no spectral overlap from NSTN's proposed operations on 12.5 kHz offset channels (with an occupied bandwidth of 11.25 kHz) on center frequencies 12.5 kHz removed from MRA's 25 kHz channels (with an occupied bandwidth of 20 kHz).¹⁴

5. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.¹⁵ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹⁶ Because the coordination and eventual grant of NSTN's applications were defective, we believe that a modification of the NSTN licenses is appropriate. Specifically, we propose to modify NSTN's license for Station WQIP838 by deleting frequency pair 471/474.2500 MHz; to modify NSTN's license for Station WQKK919 by deleting frequency pairs 471/474.5000 MHz and 472/475.8250 MHz; and to modify NSTN's license for Station WQJD998 by reducing the maximum authorized power at locations 1 and 3 (San Sevaine Peak) to fifteen watts ERP, reducing the number of units at location 2 to ninety, and deleting locations 4-6 (San Rafael Hills).¹⁷ We conclude that the proposed modifications would serve the public interest by allowing NSTN to continue serving customers, while avoiding or reducing harmful interference.¹⁸

6. In accordance with Section 1.87(a) of the Commission's Rules,¹⁹ we will not issue a modification order until NSTN has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, NSTN must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.²⁰ If no protest is filed, NSTN will have waived its right to protest the modification and will be deemed to have consented to the modification.

¹² See National Science and Technology Network, Inc., *Order on Reconsideration*, 24 FCC Rcd 4089, 4090 ¶ 4 (WTB MD 2009), *review pending*; National Science and Technology Network, Inc., *Order on Further Reconsideration*, 24 FCC Rcd 3577, 3579 ¶ 7 (WTB MD 2009) (citing University of Southern California, *Order*, 19 FCC Rcd 23155 (WTB PSCID 2004)), *review pending*.

¹³ See Opposition at 5.

¹⁴ See National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 549, 550-51 ¶ 4 (2010).

¹⁵ See 47 U.S.C. § 316(a)(1).

¹⁶ *Id.*

¹⁷ As MRA notes, we cannot modify NSTN's license for Station WQJD998 by deleting frequency pair 472/475.4750 MHz at both San Sevaine Peak and San Rafael Hills, because the station has no other authorized frequency pairs. See Request at 6 n.15. We propose to delete the San Rafael Hills authorization while preserving the San Sevaine Peak location (with reduced power and fewer mobile units) because NSTN has many more licenses with locations at San Rafael Hills than at San Sevaine Peak.

¹⁸ See National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 15728, 15734 ¶ 17 (WTB PSPWD 2002), *aff'd*, 23 FCC Rcd 3214 (2008).

¹⁹ See 47 C.F.R. § 1.87(a).

²⁰ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail, and for hand-delivered or messenger-delivered documents. Documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for

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7. NSTN requests a hearing in the event that we conclude that its applications should not have been granted, especially with respect to whether it is causing interference, and whether license modification would be in the public interest.²¹ Section 316 does not provide for an automatic right to a hearing prior to license modification.²² “Rather, to warrant an evidentiary hearing, the licensee[] . . . ‘must . . . set forth a substantial and material question of fact,’ *i.e.*, specific allegations of fact sufficient to show that the action would be *prima facie* inconsistent with the public interest, convenience and necessity.”²³ NSTN has not met this standard. Its arguments for why interference is not possible have been rejected in other proceedings;²⁴ no purpose would be served by a hearing on the issue. NSTN presents no other evidence with respect to whether its operations better serve the public interest than would license modification. We conclude that NSTN has not presented evidence warranting a hearing.

8. *Conclusion.* Based upon our review and analysis of the information before us, we conclude that the underlying frequency coordination and subsequent grant of the above-captioned applications was defective. Accordingly, we propose to modify NSTN’s licenses as set forth above.

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 Consolidated Request for Modification and Petition for Reconsideration filed by Mobile Relay Associates on November 4, 2008 IS GRANTED to the extent set forth herein.

10. IT IS PROPOSED 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 Station WQJD998 BE MODIFIED to reduce the maximum authorized power at locations 1 and 3 to fifteen watts ERP, reduce the number of units at location 2 to ninety, and delete locations 4, 5, and 6.

11. IT IS ALSO PROPOSED 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 Station WQIP838 BE MODIFIED to delete frequency pair 471/474.2500 MHz from locations 1, 2, 3, 4, 5, and 6.

12. IT IS ALSO PROPOSED 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 Station WQKK919 BE MODIFIED to delete frequency pairs 471/474.5000 MHz and 472/475.8250 MHz from locations 1, 2, and 3.

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delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009); FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

²¹ See Opposition at 5.

²² See National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 23 FCC Rcd 3214, 3219 ¶ 12 (2008).

²³ *Id.* (footnotes omitted) (quoting Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act, *Order*, 2 FCC Rcd 3327, 3327 ¶ 5 (1987)). If a *prima facie* showing is made, a hearing is warranted only if “the totality of the evidence arouses sufficient doubt that further inquiry to determine the facts is necessary.” *Id.* at 3220 ¶ 12.

²⁴ See para. 4, *supra*.

13. IT IS ORDERED, pursuant to Section 4(i) Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.87(i) of the Commission's Rules, 47 C.F.R. § 1.87(i), that this *Order Proposing 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.

14. 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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