

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

In the Matter of)
)
MOBILE RELAY ASSOCIATES)
Petition for Reconsideration)
)
NATIONAL SCIENCE AND TECHNOLOGY)
NETWORK, INC.)
Licensee of Stations WPMM274 and WPMP967)

ORDER ON RECONSIDERATION AND ORDER PROPOSING MODIFICATION

Adopted: October 10, 2012

Released: October 11, 2012

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

I. INTRODUCTION

1. We have before us a petition¹ filed by Mobile Relay Associates (MRA) for reconsideration of the denial² of its request for modification of the licenses of National Science and Technology Network, Inc. (NSTN) for 470-512 MHz (T-Band) Stations WPMM274 and WPMP967.³ For the reasons set forth below, we grant the petition for reconsideration and initiate a modification proceeding with respect to the NSTN licenses. Based upon our review and analysis of the information before us, we propose to modify NSTN's above-captioned licenses as follows:

Station WPMM274 – by deleting locations 4, 12, 13 entirely; and deleting frequencies 471.4250 MHz and 471.5000 MHz at location 2; frequencies 471.4250 MHz, 472.1500 MHz, 472.7500 MHz, 472.8000 MHz, 472.8500 MHz, and 472.8750 MHz at location 5; frequency pairs 471.4250/474.4250 MHz and 471.5000/474.5000 MHz at locations 8 and 9; and frequency pairs 471.4250/474.4250 MHz, 472.1500/475.1500 MHz, 472.7500/475.7500 MHz, 472.8000/475.8000 MHz, 472.8500/475.8500 MHz, and 472.8750/475.8750 MHz at locations 14 and 15;

Station WPMP967 – by deleting frequencies 475.4500 MHz and 471.6000 at location 1; frequency 471.8000 MHz at location 2; frequencies 471.4250 MHz and 471.9750 MHz at location 4; frequencies 471.4500 MHz, 471.6000 MHz, 471.8000 MHz, and 472.8750

¹ See Mobile Relay Associates, Petition for Reconsideration (filed May 29, 2012) (Petition for Reconsideration). National Science and Technology Network, Inc. filed an opposition. Opposition of National Science and Technology Network to Petition for Reconsideration of Mobile Relay Associates (filed June 5, 2012). MRA filed a reply. Reply to Opposition to Petition for Reconsideration (filed June 8, 2012). MRA also filed a request for expedited relief. Letter dated July 24, 2012 from David J. Kaufman to Ruth Milkman, Chief, Wireless Telecommunications Bureau.

² See Letter dated April 26, 2012 from Scot Stone, Deputy Chief, Wireless Telecommunications Bureau, Mobility Division to David J. Kaufman (*Letter Order*).

³ See Mobile Relay Associates, Request to Initiate Modification Proceedings (filed August 21, 2003) (Initial Modification Request). MRA later supplemented its request on September 29, 2003, October 28, 2003, May 26, 2004, June 2, 2004, October 24, 2006, and April 12, 2012. Where reference to an individual filing is necessary, we refer to it by its filing date (*e.g.*, April 12, 2012 Supplement).

MHz at location 5; frequencies 471.4250 MHz, 471.6000 MHz, and 471.8000 MHz at location 6; frequency pairs 471.4500/474.4500 MHz and 471.6000/474.600 MHz at location 7 and 8; frequency pair 471.8000/474.8000 MHz at locations 9 and 10; frequency pairs 471.4250/474.4250 MHz and 471.9750/474.9750 MHz at locations 13 and 14; frequency pairs 471.4500/474.4500 MHz, 471.6000/474.6000 MHz, 471.8000/474.8000 MHz, and 472.8750/475.8750 MHz at locations 15 and 16; and frequency pairs 471.4250/474.4250 MHz, 471.6000/474.6000 MHz, and 471.8000/474.8000 MHz at locations 17 and 18.

II. BACKGROUND

2. NSTN's above-captioned private land mobile radio (PLMR) stations operate on 12.5 kHz offset frequencies in the 470-512 MHz band at, *inter alia*, San Rafael Hills, Sunset Ridge, Oat Mountain, Monte Nido, and Castro Peak, California. MRA asked the Commission to modify NSTN's licenses for Stations WPMM274 and WPMP967 pursuant to Section 316 of the Communications Act of 1934, as amended,⁴ by deleting certain frequencies the MRA asserted were in conflict with MRA's authorizations.⁵ MRA requested modification of the licenses on the grounds that certain frequency pairs were not properly coordinated because, *inter alia*, they did not satisfy the interference protection criteria of TIA/EIA/TSB-88 (TSB-88).⁶ MRA also argued that the applications associated with the licenses in question did not comply with Sections 90.187 and 90.313⁷ of the Commission's Rules and should not have been certified by the frequency coordinator.⁸

3. On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) into law.⁹ Section 6103 of the Act provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles"¹⁰ The Act instructs the Commission to "begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C.

⁴ 47 U.S.C. § 316.

⁵ See Initial Modification Request at 6. The Initial Modification Request also sought modification of other NSTN licenses, but MRA subsequently withdrew the request with respect to those licenses because intervening Commission decisions had clarified that MRA did not need to protect those NSTN stations. See April 12, 2012 Supplement at 2.

⁶ 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.

⁷ 47 C.F.R. §§ 90.187, 90.313.

⁸ See Initial Modification Request at 6.

⁹ Pub. L. No. 112-96, 126 Stat. 156 (2012).

¹⁰ *Id.*, § 6103(a).

309(j)) to grant new initial licenses for the use of the spectrum.”¹¹ It also provides that “relocation of public safety entities from the T-Band spectrum” shall be completed not later than two years after completion of the system of competitive bidding.¹²

4. On April 26, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (the Bureaus) suspended the acceptance and processing of Part 22 and 90 applications for new or expanded use of the T-Band.¹³ The Bureaus concluded that while the Commission considered issues surrounding future use of the T-Band, solicited input from interested parties, and worked to implement the directives of the Act, prudent spectrum management dictated that they should stabilize the existing spectrum landscape by suspending the acceptance and processing of T-Band licensing applications that could alter the landscape and thereby make implementing the Act more difficult or costly.¹⁴

5. Later that day, the Wireless Telecommunications Bureau’s Mobility Division (Division) denied MRA’s modification request. The Division noted that it has broad discretion regarding Section 316 modification requests, and concluded that, in light of the T-Band licensing suspension and possible future relocation of T-Band licensees, the public interest would not be served at that time by initiating modification proceedings with respect to NSTN’s stations.¹⁵

6. On May 29, 2012, MRA sought reconsideration of the Division’s decision. MRA states that it is experiencing harmful interference from NSTN’s operations and that the Division erred in denying the modification request on the basis of the T-Band licensing suspension.¹⁶ MRA asks that the Division grant its requested relief and modify the offending NSTN authorizations.¹⁷

7. On October 2, 2012, the Commission released a *Notice of Proposed Rulemaking* seeking comment on proposals to implementing the Spectrum Act mandate to conduct an incentive auction of broadcast television spectrum, but made no proposals regarding the reallocation and auction of T-Band spectrum.¹⁸ The Commission stated that the T-Band will be addressed in a forthcoming *Public Notice* intended to advance the record on issues related to the technical, financial, administrative, legal, and policy implications of the Spectrum Act for T-Band licensees.¹⁹

III. DISCUSSION

8. After the Division denied MRA’s request to modify NSTN’s T-band licenses in light of the T-band licensing suspension and possible future relocation of T-band licensees, the Commission announced the forthcoming *Public Notice* seeking comment on options regarding the T-Band spectrum.

¹¹ *Id.*

¹² *Id.*, § 6103(b), (c).

¹³ See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012).

¹⁴ *Id.* at 4218.

¹⁵ See *Letter Order* at 2.

¹⁶ See Petition for Reconsideration at 2-6.

¹⁷ *Id.* at 15-16.

¹⁸ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, GN Docket No. 12-268, FCC 12-118, ¶ 19 (rel. Oct. 2, 2012).

¹⁹ *Id.*

Given the Commission's statement with respect to future proceedings involving the T-Band, we agree with MRA that, under the circumstances now presented, the public interest would be served by deciding whether to initiate a modification proceeding with respect to the NSTN licenses. Consequently, we grant the petition for reconsideration, and, as set forth below, initiate a proceeding to modify the licenses.

9. MRA requests modification of the licenses for NSTN's Stations WPMP967 and WPMM274 for facilities located within forty miles of preexisting MRA stations where there is spectral overlap and the NSTN facility fails a TSB-88 analysis.²⁰ MRA presented a list of NSTN frequencies that MRA indicates do not satisfy the TSB-88 analysis.²¹ Commission staff conducted an independent review of those NSTN frequencies. In certain instances, staff concluded that there was no spectral overlap to trigger the requirement that the NSTN frequency pass a TSB-88 analysis. With respect to the remaining frequencies challenged by MRA, we conclude that the NSTN facilities are within forty miles of preexisting MRA stations, there is spectral overlap, and the NSTN frequencies do not satisfy a TSB-88 analysis.

10. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.²² Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²³ 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 WPMM274 by deleting locations 4, 12, 13 entirely; and deleting frequencies 471.4250 MHz and 471.5000 MHz at location 2; frequencies 471.4250 MHz, 472.1500 MHz, 472.7500 MHz, 472.8000 MHz, 472.8500 MHz, and 472.8750 MHz at location 5; frequency pairs 471.4250/474.4250 MHz and 471.5000/474.5000 MHz at locations 8 and 9; and frequency pairs 471.4250/474.4250 MHz, 472.1500/475.1500 MHz, 472.7500/475.7500 MHz, 472.8000/475.8000 MHz, 472.8500/475.8500 MHz, and 472.8750/475.8750 MHz at locations 14 and 15. In addition, we propose to modify NSTN's license for Station WPMP967 by deleting frequencies 475.4500 MHz and 471.6000 at location 1; frequency 471.8000 MHz at location 2; frequencies 471.4250 MHz and 471.9750 MHz at location 4; frequencies 471.4500 MHz, 471.6000 MHz, 471.8000 MHz, and 472.8750 MHz at location 5; frequencies 471.4250 MHz, 471.6000 MHz, and 471.8000 MHz at location 6; frequency pairs 471.4500/474.4500 MHz and 471.6000/474.600 MHz at location 7 and 8; frequency pair 471.8000/474.8000 MHz at locations 9 and 10; frequency pairs 471.4250/474.4250 MHz and 471.9750/474.9750 MHz at locations 13 and 14; frequency pairs 471.4500/474.4500 MHz, 471.6000/474.6000 MHz, 471.8000/474.8000 MHz, and 472.8750/475.8750 MHz at locations 15 and 16; and frequency pairs 471.4250/474.4250 MHz, 471.6000/474.6000 MHz, and 471.8000/474.8000 MHz at locations 17 and 18.

11. In accordance with Section 1.87(a) of the Commission's Rules,²⁴ 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 on Reconsideration and 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-

²⁰ See April 12, 2012 Supplement at 3.

²¹ See April 12, 2012 Supplement at Appendix A.

²² See 47 U.S.C. § 316(a)(1).

²³ *Id.*

²⁴ See 47 C.F.R. § 1.87(a).

A325, Washington, D.C. 20554.²⁵ 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.

IV. CONCLUSION AND ORDERING CLAUSES

12. In light of the subsequent release of the *Notice of Proposed Rulemaking* seeking comment on proposals to conduct an incentive auction and the forthcoming *Public Notice* seeking comment on options regarding the T-Band spectrum, we grant MRA's petition for reconsideration of the Division's action denying MRA's request for modification of NSTN's above-captioned licenses. In addition, based upon our review and analysis of the information before us, we conclude that the underlying frequency coordination and subsequent grant of the NSTN licenses was defective. Accordingly, we propose to modify NSTN's licenses as set forth above.

13. 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, the Petition for Reconsideration filed by Mobile Relay Associates on May 29, 2012 IS GRANTED.

14. IT IS FURTHER 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 Request to Initiate Modification Proceedings filed by Mobile Relay Associates on August 21, 2003 IS GRANTED to the extent set forth herein.

15. 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 delete locations 4, 12, 13; and delete frequencies 471.4250 MHz and 471.5000 MHz at location 2; frequencies 471.4250 MHz, 472.1500 MHz, 472.7500 MHz, 472.8000 MHz, 472.8500 MHz, and 472.8750 MHz at location 5; frequency pairs 471.4250/474.4250 MHz and 471.5000/474.5000 MHz at locations 8 and 9; and frequency pairs 471.4250/474.4250 MHz, 472.1500/475.1500 MHz, 472.7500/475.7500 MHz, 472.8000/475.8000 MHz, 472.8500/475.8500 MHz, and 472.8750/475.8750 MHz at locations 14 and 15.

16. 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 WPMP967 BE MODIFIED to delete frequencies 475.4500 MHz and 471.6000 at location 1; frequency 471.8000 MHz at location 2; frequencies 471.4250 MHz and 471.9750 MHz at location 4; frequencies 471.4500 MHz, 471.6000 MHz, 471.8000 MHz, and 472.8750 MHz at location 5; frequencies 471.4250 MHz, 471.6000 MHz, and 471.8000 MHz at location 6; frequency pairs 471.4500/474.4500 MHz and 471.6000/474.600 MHz at location 7 and 8; frequency pair 471.8000/474.8000 MHz at locations 9 and 10; frequency pairs 471.4250/474.4250 MHz and 471.9750/474.9750 MHz at locations 13 and 14; frequency pairs 471.4500/474.4500 MHz, 471.6000/474.6000 MHz, 471.8000/474.8000 MHz, and 472.8750/475.8750 MHz at locations 15 and 16; and frequency pairs 471.4250/474.4250 MHz, 471.6000/474.6000 MHz, and 471.8000/474.8000 MHz at locations 17 and 18.

17. IT IS FURTHER ORDERED that, 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

²⁵ 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 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).

this *Order* 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.

18. 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
Wireless Telecommunications Bureau