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

In the Matter of	)
	)
NATIONAL SCIENCE AND TECHNOLOGY NETWORK, INC.	)
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	)
Licensee of Stations WPMM274 and WPMP967	

ORDER ON FURTHER RECONSIDERATION AND ORDER OF MODIFICATION

Adopted: March 22, 2013 **Released: March 25, 2013**

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

I. INTRODUCTION

1. We have before us a petition for reconsideration[1] and a protest[2] filed by National Science and Technology Network, Inc. (NSTN) of an *Order on Reconsideration and Order Proposing Modification* (*Order Proposing Modification*)[3] that proposed to modify NSTN's licenses for land mobile Stations WPMM274 and WPMP967. For the reasons set forth below, we deny NSTN's petition for reconsideration and protest, and modify NSTN's licenses for Stations WPMM274 and WPMP967 as proposed.

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 (T-Band) at, *inter alia*, San Rafael Hills, Sunset Ridge, Oat Mountain, Monte Nido, and Castro Peak, California. Mobile Relay Associates (MRA) asked the Commission to modify NSTN's licenses for Stations WPMM274 and WPMP967 by deleting certain frequencies that MRA asserted were in conflict with MRA's authorizations.[4] 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).[5]

[1] National Science and Technology Network, Inc. (NSTN) Petition for Reconsideration filed on November 9, 2012 (Petition). Mobile Relay Associates (MRA) filed an Opposition to Petition for Reconsideration on November 27, 2012 (Petition Opposition). NSTN filed a Reply to Opposition to Petition for Reconsideration on December 5, 2012.

[2] *See* NSTN Protest of Order to Initiate Modification Proceedings filed on November 9, 2012 (Protest). MRA filed an Opposition to Protest of Order to Initiate Modification Proceedings on November 27, 2012 (Protest Opposition). NSTN filed a reply to opposition to Protest of Order to Initiate Modification Proceedings on December 4, 2012.

[3] Mobile Relay Associates and National Science and Technology Network, Inc., *Order on Reconsideration and Order Proposing Modification*, 27 FCC Rcd 12332 (WTB MD 2012) (*Order Proposing Modification*).

[4] *See* MRA Request to Initiate Modification Proceedings filed on August 21, 2003, supplemented September 29, 2003, October 28, 2003, May 26, 2004, June 2, 2004, October 24, 2006, and April 12, 2012.

[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 was submitted by the (continued….)

MRA also argued that the applications associated with the licenses in question did not comply with Sections 90.187 and 90.313 of the Commission's Rules[6] and should not have been certified by the frequency coordinator.

3. On February 22, 2012, President Obama signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act),[7] which, among other things, requires the Commission to conduct an incentive auction to recover a portion of the television broadcast spectrum.[8] Part of that spectrum (UHF television channels 14-20) includes frequencies on which the above-captioned PLMR licenses operate. In addition, Section 6103 of the legislation provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band (referred to in this section as the 'T-Band spectrum') currently used by public safety eligibles as identified in section 90.303 of title 47, Code of Federal Regulations" and "begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum."[9] 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.[10]

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.[11] 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 Spectrum 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.[12] The Bureaus also waived the January 1, 2013 deadline for PLMR licensees in the 470-512 MHz band to migrate to narrowband (12.5 kHz or narrower) technology.[13]

(Continued from previous page)
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.

[6] 47 C.F.R. §§ 90.187, 90.313.

[7] Pub. L. No. 112-96, 126 Stat. 156 (2012).

[8] *Id.*, § 6403.

[9] *Id.*, § 6103(a).

[10] *Id.*, § 6103(b), (c).

[11] *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).

[12] *Id.* at 4218.

[13] *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 27 FCC Rcd 4213, 4215 ¶ 7, *on recon.*, 27 FCC Rcd 14770 (WTB/PSHSB/OET 2012).

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 such modification requests, and concluded that, in light of the T-Band licensing suspension and possible future relocation of T-Band licensees under consideration by the Commission, the public interest would not be served by initiating modification proceedings with respect to NSTN's stations at that time.[14]

6. On May 29, 2012, MRA sought reconsideration of the Division's decision. MRA stated that it was 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.[15]

7. On October 2, 2012, the Commission released a *Notice of Proposed Rulemaking* seeking comment on proposals to implement 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.[16] The Commission stated that the T-Band would be addressed in a subsequent *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.[17]

8. On October 10, 2012, the Division granted MRA's petition for reconsideration and proposed to modify NSTN's above-captioned licenses. The Division concluded that, in light of the indefinite timetable for Commission action regarding the T-Band, the public interest would be served by addressing MRA's request.[18] Division staff studied the interactions of the NSTN stations with preexisting MRA stations and concluded that, in certain circumstances, the NSTN stations are within forty miles of the MRA stations, there is spectral overlap between the stations, and the NSTN frequencies do not satisfy the TSB-88 analysis.[19] The Division determined that the coordination and eventual grant of the NSTN applications were defective and that modification of the NSTN licenses was appropriate.[20] NSTN sought reconsideration and protested the proposed modification on November 9, 2012.

9. On February 11, 2013, the Bureaus released a *Public Notice* seeking comment on issues related to the technical, financial, administrative, legal, and policy implications of the Spectrum Act for T-Band licensees.[21]

III. DISCUSSION

10. NSTN argues that the Commission's statement in the *Notice of Proposed Rulemaking* with respect to future proceedings on the T-Band did not justify the Division's reconsideration of its initial decision to deny MRA's request, and that any license modification prior to Commission action

[14] *See* Letter dated April 26, 2012 from Scot Stone, Deputy Chief, Wireless Telecommunications Bureau, Mobility Division to David J. Kaufman, at 2.

[15] *See* MRA Petition for Reconsideration filed on May 29, 2012, at 2-6.

[16] *See* Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, GN Docket No. 12-268, 27 FCC Rcd 12357 (2012).

[17] *See id.* at 12365 ¶ 19.

[18] *See Order Proposing Modification*, 27 FCC Rcd at 12335 ¶ 8.

[19] *See id.* at 12335 ¶ 9.

[20] *See id.* at 12335 ¶ 10.

[21] *See* Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Options for 470-512 MHz (T-Band) Spectrum, *Public Notice*, PS Docket No. 13-42, 28 FCC Rcd 1130 (WTB/PSHSB 2013). Comments are due May 13, 2013, and reply comments are due June 11, 2013.

regarding the T-Band would be premature.[22] We disagree. The Commission's decision not to address the T-Band in the *Notice of Proposed Rulemaking* was a changed circumstance that justified reexamination of whether Commission action was sufficiently proximate that a proceeding to modify NSTN's licenses would be appropriate. That the Bureaus are still compiling a record regarding options for the T-Band further supports the Division's decision to proceed with respect to MRA's request.

11. NSTN also argues that MRA's request was untimely, and should have been raised within thirty days of the grant of the relevant applications.[23] The Commission rejected this argument in a proceeding addressing a request for modification of a different NSTN license in 2008.[24] We will not address it further.

12. NSTN posits that the standard for whether modification should be granted is not simply whether NSTN's licenses satisfy the TSB-88 analysis, but rather whether, considering other factors, modification is in the public interest.[25] We agree, but we note that the Division's decision to modify NSTN's licenses was not based solely on the defective frequency coordination, but also took into account interference to MRA's operations.[26] We continue to conclude that, under the circumstances, modifying NSTN's licenses as proposed will serve the public interest. While modification of the licenses will affect NSTN's end-users,[27] leaving the licenses unmodified would affect MRA's end users.[28] In light of the effort involved in reprogramming the mobile units, however, we will delay the effectiveness of the modification of the licenses for Stations WPMM274 and WPMP967 until ninety days after release of this *Order on Further Reconsideration and Order of Modification.*[29]

13. We find that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.[30] Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.[31] In light of the defective coordination and grant of NSTN's applications, modification of the NSTN licenses is appropriate. Specifically, NSTN's license for Station WPMM274 will be modified by deleting locations 4, 12, 13 entirely; and deleting frequencies 471.4250 MHz and 471.5000 MHz at location 2;

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[22] *See* Petition at 2-3; Protest at 7-8. NSTN also argues that the January 1, 2013 deadline for PLMR licensees to migrate to narrowband technology renders MRA's request moot. *See* Petition at 6; Protest at 5-6. As noted above, however, the Bureaus waived that deadline for T-Band licensees.

[23] *See* Petition at 4; Protest at 2.

[24] *See* National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 23 FCC Rcd 3214, 3219 ¶ 10 (2008).

[25] *See* Petition at 3-4; Protest at 2.

[26] NSTN asserts that MRA's evidence of interference was procedurally defective. *See* Petition at 4-5; Protest at 4-5. NSTN has not demonstrated that it could not have made this argument earlier. Consequently, it may not make the argument at this stage of the proceeding. *See* 47 C.F.R. § 1.106(c).

[27] *See* Petition at 7; Protest at 3. We agree with MRA, however, that NSTN overstates the effect of the proposed modification on its operations by failing to consider NSTN's other facilities at these locations. *See* Protest Opposition at 7-8.

[28] *See* Petition Opposition at 5-6; Protest Opposition at 5-6.

[29] *Cf.* National Science and Technology Network, Inc., *Order of Modification and Order*, 26 FCC Rcd 2067, 2071 ¶ 12 (WTB MD 2011).

[30] *See* 47 U.S.C. § 316(a)(1).

[31] *Id*.

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, NSTN's license for Station WPMP967 will be modified by deleting frequencies 471.4500 MHz[32] 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.

IV. CONCLUSION AND ORDERING CLAUSES

14. After consideration of the record in this proceeding, we deny NSTN's petition for reconsideration. Additionally, we conclude that NSTN's licenses for Stations WPMM724 and WPMP967 should be modified as proposed.

15. 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 National Science Technology Network on November 9, 2012 IS DENIED.

16. 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 license for Station WPMM724 BE MODIFIED by deleting locations 4, 12, 13; 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. The modification is effective ninety days after release of this *Order on Further Reconsideration and Order of Modification.*

17. 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 license for Station WPMP967 BE MODIFIED by deleting frequencies 471.4500 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

[32] In a typographical error, the *Order Proposing Modification* misstated this frequency as 475.4500 MHz. *See Order Proposing Modification*, 27 FCC Rcd at 12332 ¶ 1, 12334 ¶ 10, 12335 ¶ 16. The reference clearly is to frequency 471.4500 MHz, because frequency 475.4500 MHz is neither assigned to Station WPMP967 nor available for base station operations. *See* 47 C.F.R. § 90.311(a).

471.8000/474.8000 MHz at locations 17 and 18. The modification is effective ninety days after release of this *Order on Further Reconsideration and Order of Modification.*

18. IT IS FURTHER ORDERED that this *Order on Further Reconsideration and Order of Modification* SHALL BE SENT by certified mail, return receipt requested, to (1) National Science and Technology Network, Inc., Attn: Ted S. Henry, 2050 S. Bundy Drive, Suite 285, Los Angeles, CA 90025; and (2) Alan M. Lurya, 18662 MacArthur Blvd., Suite 200, Irvine, CA 92612.

19. 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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Wireless Telecommunications Bureau