

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

In the Matter of
NATIONAL SCIENCE & TECHNOLOGY NETWORK INC.
Finder's Preference Request
Pertaining to Station KCQ805,
Licensed to Bob Hills Inc. d/b/a
Bob Hill Hydraulic Crane Rentals
Case No. 97F026

ORDER

Adopted: March 21, 2000

Released: March 23, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us a petition filed on June 7, 1999, by National Science & Technology Network Inc. (National Science) requesting reconsideration of a May 19, 1999, action by the Public Safety and Private Wireless Division, Policy and Rules Branch (Branch) dismissing a finder's preference request targeting Station KCQ805, licensed to Bob Hills Inc. d/b/a/ Bob Hill Hydraulic Crane Rentals (Bob Hills). Based on the record in this proceeding, we find no basis to reverse the Branch's action.

2. Background. On March 26, 1997, Aircraft Service International Inc. (Aircraft Service) filed a finder's preference request targeting Bob Hills's authorization to operate Station KCQ805 at its Signal Hill, California site. Aircraft Service, a co-channel licensee, alleged that Bob Hills had failed to construct the Signal Hill site, in violation of Section 90.155 of the Commission's Rules.

3. On May 19, 1999, the Branch dismissed the request on the grounds that the construction and operational status of Station KCQ805's Signal Hill site already was the subject of a Commission compliance review. In addition, the Branch stated that because such compliance review was initiated prior to the filing of Aircraft Service's request, Station KCQ805 was not the proper subject of a finder's preference proceeding. Specifically, the Branch noted that Commission agents had visited Bob Hills's

1National Science Petition for Reconsideration (filed June 7, 1999) (Petition).

2See Letter to Russell Campbell, Aircraft Service International Inc., from John J. Borkowski, Federal Communications Commission (May 19, 1999) (Branch Letter).

3Aircraft Service Finder's Preference Request (filed Mar. 26, 1997).

4Id. at 1 (citing 47 C.F.R. § 90.155 (1997)).

5Branch Letter at 1.

place of business in October 1996 to investigate the operational status of the subject frequencies, and requested additional information from Bob Hills by letter dated November 1, 1996.<sup>7</sup> On June 7, 1999, National Science, the assignee of the license previously held by Aircraft Service, submitted a pleading characterized as an “informal petition for reconsideration” of the Branch decision.

4. *Discussion.* When the Commission established the finder’s preference program, it “exempt[ed] from finder’s preference the channels of those licensees scheduled for review or currently under review for violations.”<sup>8</sup> The Commission stated, “[I]t was never our intention to offer a finder’s preference on an unrestricted basis. The finder’s preference program will supplement rather than duplicate our compliance efforts.”<sup>9</sup> Thus, once a compliance investigation is instituted by the Commission, a subsequently filed finder’s preference request relating to the same frequencies will be dismissed.<sup>10</sup>

5. National Science argues that the Signal Hill site was not sufficiently “under review” to prevent the filing of a finder’s preference request.<sup>11</sup> It states that the inquiry into the construction and operational status of the Signal Hill site was “simply a routine inspection . . . by the local FCC field office conducted as a part of their normal duties,” and not “an official FCC investigation.”<sup>12</sup> We disagree. Even assuming *arguendo* that routine inspections alone do not constitute Commission investigations for these purposes, once the site visit and subsequent correspondence revealed that the site had not been constructed, all of which occurred prior to the filing of National Science’s finder’s preference request, the matter was no longer routine and clearly was under review. We find, therefore, that Station KCQ805’s Signal Hill site was not the proper subject of a finder’s preference request at the time of filing. Thus, we affirm the Branch’s decision and deny the petition for reconsideration.

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<sup>6</sup>Branch Letter at 2. *See* Amendment of Parts 1 and 90 of the Commission’s Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC Rcd 7297, 7307 ¶ 59 (1991) (*Finder’s Preference Report and Order*).

<sup>7</sup>Branch Letter at 1. *See* Letter to Bob Hill, President, Bob Hills Inc. from J.R. Zoulek, Federal Communications Commission (Nov. 1, 1996). In response to the November 1, 1996, inquiry letter, Bob Hills admitted that the mobile relay station was not installed and in operation at the Signal Hill site of Station KCQ805. *See* Letter to J.R. Zoulek, Federal Communications Commission, from Bob Hill, Bob Hills Inc. (filed Nov. 15, 1996). Bob Hills subsequently filed an application to modify its license to remove the Signal Hill site from Station KCQ805’s authorization, which was granted on October 21, 1997.

<sup>8</sup>*Finder’s Preference Report and Order*, 6 FCC Rcd at 7307 ¶ 59.

<sup>9</sup>*Id.*

<sup>10</sup>*See, e.g.*, Crown Mobile Systems Inc., *Memorandum Opinion and Order*, DA 99-2499, ¶ 5 (WTB rel. Nov. 10, 1999) (affirming dismissal of a finder’s preference request because the target station was already under compliance review due to a previously-filed request for special temporary authorization to operate); Jersey Central Power & Light, 14 FCC Rcd 14040, 14042 ¶ 4 (WTB PSPWD 1999), *review pending* (filed Oct. 1, 1999).

<sup>11</sup>Petition at 1.

<sup>12</sup>*Id.*

6. Accordingly, IT IS ORDERED, 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, that the petition for reconsideration submitted by National Science and Technology Network Inc. on June 7, 1999, is DENIED.

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

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau