

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

In the Matter of License of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	File No. D099699
NETWORK, INC.,)	
Station WPLT688, Glendale, California)	
)	
and)	
)	
Application to Modify License of)	File No. D100478
MOBILE RELAY ASSOCIATES, INC.,)	
Station WIL337, Malibu, California)	

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2001

Released: December 28, 2001

By the Commission:

1. On February 20, 2001, Mobile Relay Associates, Inc. (MRA) filed an application for review¹ of the January 18, 2001, decision by the Wireless Telecommunications Bureau (Bureau) in which the Bureau affirmed the grant of an application filed by National Science and Technology Network, Inc. (NSTN) to operate on the frequency pair 472.8125/475.8125 MHz in the Glendale, California area. Additionally MRA objects to the dismissal of its above-captioned application.²

2. We have analyzed the Application for Review and find that the Bureau staff properly decided the matters raised. The Commission has determined that coordinators are permitted to select a channel associated with an expired license for recommendation to the Commission *before* the channel is actually available on our database.³ The Commission stated that “[t]his [practice] will enable the coordinator to process an application prior to the availability of the channel associated with that application and still file the application with the Commission on the first day the channel is available.”⁴ A coordinator is prohibited, however, from filing an application with the Commission for frequencies associated with an expired license, prior to deletion of the expired license from our database.⁵ The Commission recognized that this policy was an exception to the general policy that “coordinators may only coordinate applications for channels that are available on our database.”⁶ American Automobile

¹ Application for Review (filed Feb. 20, 2001).

² Mobile Relay Associates, Inc., *Order on Further Reconsideration*, 16 FCC Rcd 909 (WTB PSPWD 2001) (*Order on Further Reconsideration*).

³ See Amendment of Parts 1 and 90 of the Commission’s Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Memorandum Opinion and Order*, PR Docket No. 90-481, 8 FCC Rcd 6690, 6691 ¶ 5 (1993).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 6691 n.11.

Association's (AAA's) coordination of NSTN's application complied with the Commission's policy concerning coordination of channels associated with an expired license. Moreover, the filing of NSTN's application was proper because Laidlaw Transit's license for frequency 472.8125 MHz in the Los Angeles area was deleted from the database on December 10, 1997, but NSTN's application was not filed until December 17, 1997. Moreover, since the coordination and filing of NSTN's application was consistent with established Commission policy, as described above, we reject MRA's argument that there was a new or novel question of law and policy that the Bureau and the Division could not decide.⁷ Finally, in light of the above discussion, we reject MRA's argument that AAA's coordination was inconsistent with Section 90.175(e) of our Rules⁸ because that section requires frequency coordinators to specify frequencies that are available for assignment.⁹ Section 90.175(e) discusses "availability" of frequencies "in accordance with the loading standards and mileage separations"¹⁰ That rule does not address when it is proper for frequency coordinators to certify applications.

3. We further reject MRA's argument that the Bureau's actions contradict long-standing practices respecting frequency coordination committees.¹¹ The letter cited in MRA's application for review is not on point.¹² The 1997 Letter addressed the issue of limiting interference to incumbent systems and proposed system service areas to ensure that only viable system proposals were certified.¹³ The 1997 Letter further explained that the frequency advisory committees had agreed upon, and were committed to using, all practicable engineering solutions and administrative processes necessary to resolve competing applications.¹⁴ The 1997 Letter did not address the coordination of expired licenses or the timeliness of certification.

4. We also reject MRA's argument that *Always Answering Service*¹⁵ and *Valley County Water District*¹⁶ support MRA's arguments.¹⁷ *Always Answering Service* is readily distinguishable from this case because the application in that case was filed before the requested channel was available on the Commission's licensing database.¹⁸ In *Valley County Water District*, the frequency coordination was improper because it failed to take into account the other pending applications for the requested channel.¹⁹ In contrast, NSTN's application was not filed until after Laidlaw's license was deleted from the database, and there were no other mutually exclusive applications filed with the Commission.

⁷ See Application for Review at 2.

⁸ 47 C.F.R. § 90.175(e).

⁹ Application for Review at 10.

¹⁰ See 47 C.F.R. § 90.175(e).

¹¹ Application for Review at 4-5.

¹² *Id.* at 8 (citing Letter from Larry A. Miller, President, Land Mobile Communications Council, to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (dated Sep. 10, 1997 (1997 Letter))).

¹³ See 1997 Letter.

¹⁴ *Id.* at 2.

¹⁵ *Always Answering Service*, *Memorandum Opinion and Order*, 15 FCC Rcd 3243 (2000).

¹⁶ *Valley County Water District*, *Order on Reconsideration*, 14 FCC Rcd 18754 (WTB PSPWD 1999).

¹⁷ Application for Review at 9.

¹⁸ *Always Answering Service*, *supra*, 15 FCC Rcd at 3244 ¶ 5.

¹⁹ *Valley County Water District*, *supra*, 14 FCC Rcd at 18755 ¶ 3.

5. We accept NSTN's untimely opposition to MRA's application for review because MRA failed to serve NSTN's counsel at counsel's current address.²⁰ On February 20, 2001, MRA filed the instant application for review. On March 23, 2001, NSTN sought leave to file an untimely response to MRA's application for review.²¹ On April 2, 2001, MRA filed a reply to NSTN's opposition to the application for review.²² NSTN alleges that MRA did not provide it with timely service of the application for review. As a result, NSTN was not aware of the existence of the application for review and filed an untimely opposition.²³ Although we grant NSTN's request to file an untimely response to MRA's application for review, we reject as baseless, NSTN's request that the Commission impose sanctions against MRA's counsel for "lack of candor."²⁴

6. Finally, we dismiss as untimely AAA's comments on the application for review. On March 26, 2001, AAA filed comments relating to the application for review.²⁵ AAA did not make any showing concerning its failure to file its comments within the fifteen day time period established by Section 1.115(d) of the Commission's Rules.²⁶

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Mobile Relay Associates, Inc. on February 20, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁰ Application for Review. See Letter from Alan M. Lurya, counsel to National Science and Technology, Inc., to the Secretary, Federal Communications Commission (dated Mar. 21, 2001, and filed Mar. 23, 2001) (Opposition to Application for Review).

²¹ *Id.* at 1.

²² See Reply to Opposition to Application for Review (filed Apr. 2, 2001).

²³ *Id.* at 1.

²⁴ *Id.*

²⁵ See Letter from Gary Ruark, Frequency Coordinator, Automobile Association of America, to the Wireless Telecommunications Bureau, Federal Communications Commission (dated Mar. 20, 2001 and filed Mar. 26, 2001).

²⁶ 47 C.F.R. § 1.115(d).