

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

In the Matter of)	
)	
NATIONAL SCIENCE &)	
TECHNOLOGY NETWORK, INC.)	
)	Case No. 97F003
Finder's Preference Request)	
Regarding Station WIL251)	
Los Angeles, California)	

ORDER

Adopted: March 14, 2000

Released: March 16, 2000

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

I. INTRODUCTION

1. On April 8, 1999, National Science & Technology Network, Inc. (National Science) filed a petition for reconsideration (Petition)¹ of the March 25, 1999,² dismissal of its finder's preference request targeting Station WIL251, located in Los Angeles, California. For the reasons set forth below, we deny National Science's Petition.

II. BACKGROUND

2. On October 15, 1996, National Science filed a finder's preference request³ targeting Ogden Aviation Services' (Ogden) authorization to operate Station WIL251 on frequency pair 471.8125/474.8125 MHz in the Los Angeles, California area. National Science alleged in its Request that Station WIL251 had not operated from 1994 through 1996, a period in excess of one year, in violation of Section 90.157 of the Commission's Rules.⁴ To substantiate its Request, National Science provided the sworn statement of a consultant, stating that an investigator from the Commission's Cerritos, California field office had informed

¹Petition for Reconsideration (filed April 8, 1999) (Petition).

²See Letter to Ted S. Henry, president, National Science and Technology Network, Inc., from John J. Borkowski, Federal Communications Commission (dated March 25, 1999).

³Finder's Preference Request (filed October 15, 1996) (Request).

⁴Request at 1-2 (citing 47 C.F.R. § 90.157 (1996)).

the consultant that an Ogden employee admitted to the investigator that Station WIL251 had not operated for over two years.⁵ On December 12, 1996, Ogden was served with National Science's Request.⁶

3. On January 13, 1997, Ogden provided evidence that Station WIL251 had not failed to operate for a period in excess of one year.⁷ As evidence of station operation, Ogden provided nineteen photographs of Ogden's office, maintenance shop, vehicles and various equipment associated with the operation of Station WIL251.⁸ Serial numbers associated with Station WIL251's main equipment were also provided.⁹ Ogden explained that Station WIL251 was not in operation on the day a Commission investigator visited, because the visit took place during the sixty-day period in mid-August, 1996, through mid-October, 1996, during which Ogden did not operate Station WIL251.¹⁰ Ogden stated that it stopped operating during this period to ascertain whether its radio traffic at Los Angeles International Airport (LAX) could be handled by Ogden's other LAX ground station.¹¹ Ogden stated that its test results revealed that the radio traffic at LAX was too voluminous to be handled by a single ground station.¹² On March 25, 1999, the Policy & Rules Branch (Branch), Public Safety & Private Wireless Division denied National Science's request.¹³ The Branch found that Ogden had provided sufficient evidence to indicate that Station WIL251 had not ceased operations for a period in excess of one year.¹⁴

4. On April 8, 1999, National Science filed the instant Petition.¹⁵ National Science argued that it was no longer interested in the subject channel, because illegal YG trunking on the channel had destroyed the usefulness of the channel.¹⁶ No evidence to corroborate National Science's allegations relating to Mobile

⁵*Id.* at 2.

⁶*See* Service Letter from William H. Kellett and Anne Marie Wypijewski, Federal Communications Commission, to Ogden Aviation Services (dated December 12, 1996).

⁷Opposition (filed January 13, 1997).

⁸*Id.* at 4-9.

⁹*Id.*

¹⁰*Id.* at 2.

¹¹*Id.*

¹²*Id.*

¹³*Supra* note 2.

¹⁴*Id.* at 2.

¹⁵*Supra* note 1.

¹⁶*Id.* at 1.

Relay Associates' use of the channel was included with the Petition. Further, National Science failed to serve the Petition on Ogden.

III. DISCUSSION

5. We find that the record in this proceeding consists of a *prima facie* showing that Station WIL251 had not ceased operations for a period in excess of one year.¹⁷ In this connection, we note that National Science failed to provide any documentation in its Petition, such as sworn affidavits or monitoring logs, to demonstrate non-operation of Station WIL251 during the subject period, and suggested that it was no longer seeking relief.¹⁸ National Science presented no new facts or arguments in its Petition that would lead us to change the Branch's earlier decision. Section 1.106(d) of the Commission's Rules provides that a petition for reconsideration must state with particularity the respects in which the petitioner believes the action taken by the Commission or the designated authority should be changed.¹⁹ Additionally, the petition must specifically state the form of relief sought.²⁰ We find that National Science failed to meet these requirements. Additionally, we note that National Science failed to serve Ogden with the Petition, in violation of Section 1.106(f) of the Commission's Rules.²¹ We therefore affirm our March 25, 1999, decision.

CONCLUSION AND ORDERING CLAUSE

6. 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 filed by National Science and Technology, Inc. IS DENIED.

¹⁷See Cellular Design Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 13,059 (1999) (where the target licensee demonstrated that it had not ceased operation of its station for a period in excess of one year); Cox Communications Inc., *Order*, DA 99-2214 (WTB PSPWD rel. Oct. 19, 1999) (where the target licensee in a finder's preference proceeding provided sufficient evidence to overcome the finder's allegation of non-construction of its station); Letter from John J. Borkowski, Federal Communications Commission, to Shirley S. Fujimoto, counsel to Riverside Communications (dated Oct. 20, 1999) (where the licensee in a finder's preference proceeding provided sufficient evidence to overcome the finder's allegation of non-operation of its station).

¹⁸*Supra* note 1 at 1.

¹⁹47 C.F.R. § 1.106(d)(2); see Ralph Hodge Construction Company, *Order*, DA 99-1691 (WTB CWD rel. Aug. 24, 1999) (where finder in a finder's preference proceeding presented no new facts or arguments to lead to a change in the underlying decision); Montgomery County, Maryland, *Order*, 14 FCC Rcd 7466 (1999) (target licensee stated that its interests were adversely affected, but failed to state the manner in which they were affected).

²⁰ 47 C.F.R. § 1.106(d)(1).

²¹47 C.F.R. § 1.106(f).

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