

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

In the Matter of Licenses of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	FCC File Nos. D133825, D134193,
NETWORK, INC.)	D134194, D134195, D134196, D134197,
)	D134370, D134371, and D134372
To Operate Temporary Industrial/Business)	
Conventional Stations WPPY931, WPPZ712,)	
WPPY935, WPPZ716, WPPZ719, WPPY937,)	
WPPZ660, WPPZ661 and WPPZ662 in the Los)	
Angeles, California Area)	

ORDER ON RECONSIDERATION

Adopted: October 17, 2001

Released: October 19, 2001

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

I. INTRODUCTION

1. On February 17, 2000, Mobile Relay Associates (MRA) requested denial of nine applications filed by National Science and Technology Network, Inc. (NSTN), requesting authorization to locate nine stations at temporary locations.¹ The nine applications were subsequently granted and issued the above-captioned call signs.² On June 30, 2000, MRA filed a petition for reconsideration relating to the nine authorizations.³ For the reasons discussed below, we grant the Petition with respect to six licenses,⁴ and find that the remaining three licenses⁵ have cancelled automatically.

II. BACKGROUND

2. During the period of November 12, 1999 through November 22, 1999, NSTN filed nine applications seeking authorization to operate private land mobile radio (PLMR) stations in the 450-470

¹ Informal Objection relating to NSTN Application File Nos. D133825, D134193, D134194, D134195, D134196, D134197, D134370, D134371 and D134372 (filed Feb. 17, 2000) (February 2000 Informal Objection).

² The licenses for Stations WPPY931, WPPY935 and WPPY937 were granted on March 22, 2000. The licenses for Stations WPPZ660, WPPZ661 and WPPZ662 were granted on April 4, 2000. The licenses for Stations WPPZ712, WPPZ716 and WPPZ719 were granted on April 5, 2000.

³ Petition for Reconsideration (filed June 30, 2000) (Petition).

⁴ The six licenses are for Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719 and WPPY937.

⁵ The three licenses are for Stations WPPZ660, WPPZ661 and WPPZ662.

MHz and 470-512 MHz bands.⁶ On February 17, 2000, MRA filed an informal objection relating to the nine subject NSTN applications.⁷ During the period of March 22, 2000 through April 5, 2000, NSTN's nine applications were granted without resolving the informal objections.⁸ Pursuant to the Commission's rules governing operation of PLMR facilities, NSTN had one year from the date the licenses were granted to construct the stations.⁹ The Commission neither placed the grant of NSTN's applications on public notice, nor notified MRA of the grant of NSTN's applications. On June 30, 2000, MRA filed the instant Petition requesting the set-aside of the nine authorizations issued to NSTN.¹⁰ In June 2001, MRA requested cancellation of the nine stations that were the subject of its Petition. MRA alleged that NSTN failed to construct the stations.¹¹

III. DISCUSSION

3. The parties raise a number of issues for our consideration: specifically, (1) whether MRA's Petition is defective because it was late-filed; (2) whether MRA's Petition is defective, because MRA does not have standing; (3) whether the Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau (Bureau) lacks jurisdiction to resolve MRA's Petition because MRA addressed the Petition to the Bureau's Commercial Wireless Division; (4) whether NSTN's applications were defective because they violated Section 90.137 of the Commission's Rules and were filed during an application freeze; and (5) whether the authorizations cancelled for failure to timely construct the associated facilities and to comply with the requisite technical parameters.

4. *Procedural Matters.* Based on the information before us, we conclude that MRA's petition is timely. A petition for reconsideration and any supplement thereto shall be filed within thirty days from the date of public notice of the final Commission action.¹² In this case, because the Commission's actions granting NSTN's applications were neither published in the Federal Register nor announced in a public notice, the date of public notice is the date appearing on the document sent to

⁶ NSTN Application File Nos. D133825 (filed Nov. 12, 1999), D134193 (filed Nov. 18, 1999), D134194 (filed Nov. 18, 1999), D134195 (filed Nov. 18, 1999), D134196 (filed Nov. 18, 1999), D134197 (filed Nov. 18, 1999), D134370 (filed Nov. 22, 1999), D134371 (filed Nov. 22, 1999) and D134372 (filed Nov. 22, 1999).

⁷ See February 2000 Informal Objection.

⁸ See note 2, *supra*.

⁹ 47 C.F.R. § 90.155(a).

¹⁰ Petition at 1-2. NSTN filed an opposition to the Petition on July 10, 2000. Opposition to Petition (filed July 10, 2000). MRA filed a reply to the Opposition to Petition on July 11, 2000. Reply to Opposition to Petition (filed July 11, 2000). MRA supplemented its Petition on December 15, 2000. Supplement to Petition (filed Dec. 15, 2000).

¹¹ Request for Cancellation of Licenses (filed June 22, 2001)(Cancellation Request). NSTN filed an opposition to the Cancellation Request on June 25, 2001. Opposition to Cancellation Request (filed June 25, 2001). MRA filed a Reply to NSTN's Opposition to the Cancellation Request on July 5, 2001. Reply to Cancellation Request (filed July 5, 2001). NSTN filed a response to the Reply to Cancellation Request on July 16, 2001. Response to Reply to Cancellation Request (filed July 16, 2001).

¹² 47 C.F.R. § 1.106(f).

persons affected by the action.¹³ Although NSTN's applications were granted during the period from March 22, 2000 to April 5, 2000,¹⁴ MRA did not receive notice of these licensing actions when they were taken. In the absence of any contrary information, we accept MRA's representation that it did not learn of the grants until June 2000. Because MRA did not receive personal notice of the denial of its informal objection until after the thirty-day period for petitions for reconsideration had run, we conclude that the Petition should not be rejected as untimely.¹⁵ As a result, although MRA did not file the Petition until June 30, 2000, we will consider MRA's Petition as timely.

5. Further, we conclude that MRA has standing to file its Petition. To have standing to file a petition for reconsideration, an entity must either be a party to the proceeding or be one whose interests are adversely affected by the action in question, in which case it shall show why it was not possible to participate in the proceeding earlier.¹⁶ In this case, we find that MRA was a party to the licensing proceeding because it had filed a pre-grant informal objection.¹⁷

6. Moreover, we reject NSTN's argument that MRA's error in addressing its Petition to the Bureau's Commercial Wireless Division, instead of the Public Safety and Private Wireless Division, deprives the Division of jurisdiction over this matter. We agree with MRA that this argument is specious. The Commission's Rules require interested parties to file petitions for reconsideration with the Office of the Secretary,¹⁸ but there is no requirement that a petitioner correctly identify the specific entity within the Commission that is to act on its petition. Accordingly, we will consider the merits of MRA's Petition.

7. *Construction and Technical Parameters.* Turning to the merits of the Petition, for Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719 and WPPY937, we conclude that the licenses should not have been granted. NSTN proposed to use frequencies in the 450-512 MHz band that were 6.25 kHz removed from the channels existing prior to June 23, 1995 ("6.25 kHz offset channels").¹⁹ In the

¹³ 47 C.F.R. § 1.4(b)(5).

¹⁴ The licenses for stations WPPY931, WPPY935 and WPPY937 were granted on March 22, 2000. The licenses for stations WPPZ660, WPPZ661 and WPPZ662 were granted on April 4, 2000. The licenses for stations WPPZ712, WPPZ716 and WPPZ719 were granted on April 5, 2000.

¹⁵ See *Gardner v. FCC*, 530 F.2d 1086, 1091-1092 (D.C. Cir.1976).

¹⁶ 47 C.F.R. § 1.106(b)(1). See, e.g., *Regionet Wireless Licensee, LLC, Order on Reconsideration*, DA 01-2099 (WTB PSPWD rel. Sept. 7, 2001); *Application of Bank of America NT & SA, Assignor and Customtronics, Assignee, Memorandum Opinion and Order*, DA 01-1992 (WTB PSPWD rel. Aug. 24, 2001).

¹⁷ See February 2000 Informal Objection.

¹⁸ 47 C.F.R. § 1.106(i).

¹⁹ On June 23, 1995, the Commission released a *Report and Order and Further Notice of Proposed Rule Making* in PR Docket No. 92-235 that established a narrowband channel plan for PLMR frequency bands, which allows the flexibility of aggregating up to the equivalent of four narrowband channels, provided that spectrum-efficient technology was employed. The increased channel capacity in the PLMR bands below 800 MHz promoted more efficient use of these channels. As a result, the Commission has established assignable channels every 6.25 kHz in the UHF bands, based on current channel centers. See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995) (*Refarming R&O*).

450-512 MHz band, requests to operate on the 6.25 kHz offset channels may not propose operation with a bandwidth greater than 6 kHz.²⁰ In each of those six applications, NSTN proposed to operate on 6.25 kHz offset channels with a bandwidth of 11.3 kHz. Accordingly, NSTN's applications were defective and should not have been granted. We therefore grant MRA's Petition with respect to these six licenses, we will return the applications to pending status, and then dismiss those applications.

8. Finally, we conclude that the licenses for Stations WPPZ660, WPPZ661 and WPPZ662 have cancelled automatically. Each transmitter used in a station licensed under Part 90 of the Commission's Rules must be certified for use under Part 90.²¹ In obtaining type certification of equipment, the equipment manufacturer must measure and report the occupied bandwidth of the transmitter.²² No person may modify equipment to change the occupied bandwidth without obtaining a new type certification for the equipment.²³ Accordingly, in order for NSTN to validly construct its stations, it was required to use equipment certified for operation with a maximum bandwidth of 6 kHz. Pursuant to its authorization, NSTN was required to construct Stations WPPZ660, WPPZ661 and WPPZ662 by April 4, 2001. We find that NSTN could not have constructed Stations WPPZ660, WPPZ661 and WPPZ662, because there was no type-certified 6 kHz equipment prior to July 13, 2001, the date on which the first piece of equipment with a maximum occupied bandwidth of 6 kHz was certified by the FCC.²⁴ Given the total absence of 6 kHz bandwidth type-certified equipment on April 4, 2001, NSTN could not have validly constructed those stations prior to the deadline established by the Commission's Rules. Moreover, based upon our review of our licensing records, we find that NSTN did not file a request for extension of time to construct the stations prior to April 4, 2001. Accordingly, on April 5, 2001, the licenses for Stations WPPZ660, WPPZ661 and WPPZ662 cancelled automatically as a matter of law for failure to construct.²⁵

IV. CONCLUSION

9. The six NSTN applications that proposed to operate on 6.25 kHz offset channels, with a bandwidth of 11.3 kHz, were defective and should not have been granted.²⁶ These applications will be returned to pending status, and then dismissed. MRA's Petition is granted with respect to these six authorizations. Three of NSTN's subject stations were not constructed pursuant to their authorizations, therefore those three licenses cancelled automatically.²⁷ As a result, we find that MRA's Petition is moot

²⁰ See *Refarming R&O*, 10 FCC Rcd at 10094, 10114-5, ¶¶ 27, 76. In the 450-470 MHz band, this limitation is codified at 47 C.F.R. § 90.20 n.44 and 47 C.F.R. § 90.35 n.33. In the 470-512 MHz band, this limitation is not codified in a specific rule because the specific frequencies available in that band are not listed in the Commission's Rules.

²¹ 47 C.F.R. § 90.203(a).

²² See 47 C.F.R. § 2.1049.

²³ See 47 C.F.R. § 2.1043.

²⁴ This information was obtained by a review of the Commission's equipment authorization database.

²⁵ 47 C.F.R. § 90.155(a).

²⁶ The six applications are Application File Nos. D133825 (WPPY931), D134193 (WPPZ712), D134194 (WPPY935), D134195 (WPPZ716), D134196 (WPPZ719), and D134197 (WPPY937).

²⁷ Stations WPPZ660, WPPZ661 and WPPZ662.

with respect to these three authorizations. Since the licenses for all the stations at issue in this proceeding have been set aside or cancelled automatically as a matter of law, the February 2000 Informal Objection and the Cancellation Request are both moot and will be dismissed.²⁸

V. ORDERING CLAUSES

10. 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, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed on June 30, 2000, on behalf of Mobile Relay Associates, Inc. IS GRANTED with respect to Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719 and WPPY937.

11. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 405, and Section 90.155 of the Commission's Rules, 47 C.F.R. § 90.155, the grants of the license for Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719 and WPPY937 ARE HEREBY SET ASIDE, FCC File Nos. D133825, D134193, D134194, D134195, D134196, and D134197 are returned to pending status, and the applications then will be DISMISSED consistent with the terms of this *Order on Reconsideration*.

12. IT IS FURTHER ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and Section 90.155 of the Commission's Rules, 47 C.F.R. § 90.155, Stations WPPZ660, WPPZ661 and WPPZ662 HAVE CANCELLED due to their failure to be placed in operation in a timely manner. Therefore, the Cancellation Request filed by Mobile Relay Associates, Inc. on June 22, 2001 IS DISMISSED AS MOOT.

13. IT IS FURTHER ORDERED that pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Objection filed on February 17, 2000, on behalf of Mobile Relay Associates, Inc. relating to FCC Application File Numbers D133825, D134193, D134194, D134195, D134196, D134197, D134370, D134371 and D134372 IS DISMISSED AS MOOT.

14. 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

²⁸ In light of our action herein, we need not address MRA's argument that NSTN's applications violated Section 90.137 of the Commission's Rules or that the applications were improperly filed during an application freeze.