

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

In the Matter of)	
)	
MOBILE RELAY ASSOCIATES)	File No. 0001995876
)	
Request for Waiver of Section 90.313(c) of the Commission's Rules)	

ORDER

Adopted: March 17, 2009

Released: March 19, 2009

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

1. *Introduction.* On January 5, 2005, Mobile Relay Associates (MRA) filed the above-captioned application for a new Industrial/Business Pool station with base stations in Avalon, Rancho Palos Verdes, Malibu, and Claremont, California.¹ In connection with this application, MRA seeks a waiver of the spacing requirements in the Commission's Rules, because its requested operations at Rancho Palos Verdes and Malibu would be short-spaced to co-channel Station WPMP751, licensed to National Science and Technology Network, Inc. (NSTN). For the reasons set forth below, we dismiss the waiver request as moot, and will grant the application.

2. *Background.* On October 27, 2004, MRA requested that NSTN's license for Station WPMP751 be modified to revoke the authorization for the Monte Nido site, on the grounds that the authorization should not have been granted without MRA's consent.² While that request was pending, MRA filed the above-captioned application, and requested a waiver of Section 90.313(c) of the Commission's Rules,³ which provides that a fully loaded frequency in the 470-512 MHz band will not be reassigned for use by another facility within 64 kilometers (40 miles), because the proposed Rancho Palos Verdes and Malibu sites are less than 64 kilometers from NSTN's Monte Nido site. MRA seeks a waiver on the grounds that NSTN's authorization should not have been granted.

3. NSTN opposes MRA's application and waiver request because MRA's proposed facilities would be short-spaced to NSTN's Monte Nido site.⁴ NSTN also argues that MRA's proposed Avalon and Rancho Palos Verdes sites do not afford the requisite protection to NSTN's adjacent-channel Stations WPPH728 and WPWC850, respectively.

4. Additionally, San Diego State University (SDSU) filed an informal objection regarding

¹ See FCC File No. 0001995876 (filed Jan. 5, 2005).

² See Request for to [sic] Initiate Modifications filed by MRA on October 27, 2004.

³ 47 C.F.R. § 90.313(c).

⁴ See Petition to Dismiss or Deny filed by NSTN on February 1, 2005. MRA filed an opposition. See Opposition to Informal Objection filed by MRA on February 3, 2005. NSTN filed a reply. See Response to Opposition to Informal Objection filed by NSTN on February 8, 2005. On May 6, 2008, MRA filed a request that the above-captioned application be processed. See Request for Expedited Action filed by MRA on May 6, 2008. NSTN filed an opposition. See Opposition of National Science and Technology Network, Inc. (NSTN) and License Communications Services, Inc. (LCS) to Request for Expedited Action Filed by Mobile Relay Associates (MRA) filed by NSTN on May 15, 2008. MRA filed a reply. See Reply to Opposition filed by MRA on May 21, 2008.

the impact of MRA's proposed Avalon facility on the operation of non-commercial educational Television Station KPBS, San Diego, California.⁵ Specifically, SDSU argues that the associated mobile units may cause interference to television reception.

5. On January 14, 2008, the Wireless Telecommunications Bureau, Mobility Division (Division) granted MRA's modification request to the extent that it instructed NSTN to file an application to modify its license for Station WPMP751 to relocate the Monte Nido operations to Mt. Lukens, or the site would be deleted from NSTN's license.⁶ On January 24, 2008, NSTN filed an application to relocate the Monte Nido facilities.⁷ That application was granted on March 31, 2008.

6. *Discussion.* In light of the modification of NSTN's license for Station WPMP751, none of MRA's proposed sites is short-spaced to any Station WPMP751 base station. We therefore dismiss as moot MRA's waiver request, which was premised on the pendency of its request that NSTN's license for Station WPMP751 be modified.

7. In addition, NSTN and SDSU oppose MRA's proposed Avalon site. NSTN opposes the site on the grounds that it would not afford protection to NSTN's Station WPPH728, but we note that the license for Station WPPH728 authorizes only temporary-fixed (FB8T) transmitters,⁸ which are not entitled to interference protection from permanent fixed stations.⁹ Moreover, NSTN's objection based upon its Station WPWC850 is meritless because of the frequency separation involved. Specifically, Station WPWC850 is authorized to operate on frequency pairs 471/474.6500 MHz and 471/474.9750 MHz, while MRA proposes to operate on frequency pair 471/474.2625 MHz. Given the frequency separation, no consideration of Station WPWC850 is required under our rules.

8. SDSU concedes that the proposed site satisfies the spacing requirements set forth in Section 90.307(b) of the Commission's Rules¹⁰ with respect to Station KPBS, but argues that the application should nonetheless be denied because, due to the proposed location on Santa Catalina Island, the base station's signal could be received beyond the proposed operational radius, resulting in wider interference from mobile operations. We rejected this argument with respect to another proposed MRA station at Avalon.¹¹ We continue to find unpersuasive the suggestion that a proposed station at that location must meet television interference protection requirements beyond those set forth in the Commission's Rules.

9. *Conclusion and Ordering Clauses.* MRA's proposed sites are no longer short-spaced to NSTN's Station WPMP751, as modified. In addition, we find unpersuasive the objections of NSTN and SDSU to MRA's proposed Avalon site. Consequently, we will grant MRA's application.

10. Accordingly, IT IS ORDERED, pursuant to Sections 2 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152, 154(i), and Section 1.934(d)(2) of the Commission's Rules,

⁵ See Informal Objection filed by the State of California on April 22, 2005.

⁶ See National Science and Technology Network, Inc., *Order*, 23 FCC Rcd 273 (WTB MD 2008).

⁷ See FCC File No. 0003300688 (filed Jan. 24, 2008).

⁸ See license for Station WPPH728.

⁹ See Mobile Relay Associates, *Order*, 22 FCC Rcd 1600, 1601 ¶ 4 (WTB MD 2007) (*MRA Avalon Order*), *aff'd*, *Memorandum Opinion and Order*, 23 FCC Rcd 3202 (2008).

¹⁰ 47 C.F.R. § 90.307(b).

¹¹ See *MRA Avalon Order*, 22 FCC Rcd at 1601 ¶¶ 5-6 (declining to hold a proposed station on Santa Catalina to a higher television interference standard than that set forth in Section 90.307 on the basis of "unusual terrain"), *aff'd*, 23 FCC Rcd at 3204 n.19.

47 C.F.R. § 1.934(d)(2), that application FCC File No. 0001995876 SHALL BE PROCESSED consistent with this *Order*.

11. IT IS FURTHER ORDERED that the waiver request filed on December 29, 2004 by Mobile Relay Associates in conjunction with application FCC File No. 0001995876 is DISMISSED AS MOOT.

12. IT IS FURTHER ORDERED that the petition to dismiss or deny filed by National Science and Technology Network, Inc. on February 1, 2005, and the informal objection filed by the State of California on April 22, 2005, ARE DENIED.

13. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a) and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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