

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

In the Matter of)
MOBILE RELAY ASSOCIATES) FCC File No. 0006691596
HIGHLAND WIRELESS SERVICES, LLC) FCC File No. 0006701591
TERRY CAMERON) FCC File No. 0006800635
RADIO MAINTENANCE, INC.) FCC File No. 0006802714
A BEEP, LLC) FCC File No. 0006841323
Requests for Waivers to Permit Part 90 Use of)
Channels Between Spectrum Designated for)
Various Services)

ORDER

Adopted: September 23, 2015

Released: September 23, 2015

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

1. Introduction. We have before us an application and a request filed by Mobile Relay Associates (MRA) for waiver of Sections 2.106 and 90.35 of the Commission's Rules to permit MRA to operate on frequency pairs 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz at four locations in Clark County, Nevada. While MRA's request was pending, other entities submitted the above-captioned applications with similar waiver requests for use of the same frequency pairs in various areas. For the reasons set forth below, we deny the waiver requests and will dismiss the applications.

2. Background. Frequencies 454.009375 MHz, 454.990625 MHz, 454.996875 MHz, 459.009375 MHz, 459.990625 MHz, and 459.996875 MHz are allocated for land mobile operations, but currently are not designated for use on a primary basis by the Industrial/Business Pool (I/B) or any other Commission service. Frequencies 454.009375 MHz and 459.009375 MHz are between I/B frequencies

1 See FCC File No. 0006691596 (filed March 3, 2015 and amended March 4, 2015 and May 1, 2015), Public Interest; Request for Waiver (filed March 3, 2015) (Waiver Request).

2 See FCC File No. 0006701591 (filed March 10, 2015 and amended March 24, 2015 and May 1, 2015) (Highland Wireless Services, LLC; six locations in Broward, Miami-Dade, and Palm Beach counties, Florida); FCC File No. 0006800635 (filed May 12, 2015) (Terry Cameron; one location in Houston, Texas); FCC File No. 0006802714 (filed May 14, 2015) (Radio Maintenance, Inc.; one location in Reading, Pennsylvania); FCC File No. 0006841323 (filed June 15, 2015) (A Beep, LLC; three locations in Cook and Will counties, Illinois).

3 See 47 C.F.R. § 2.106 (United States Table of Frequency Allocations). Consequently, we conclude that no waiver of Section 2.106 is required. See Mobile Relay Associates, Order, 29 FCC Rcd 660, 660 n.6 (WTB MD 2014) (MRA GMRS Order).

4 Medical Micropower Networks operate on a secondary basis in the 451-457 MHz band. See 47 C.F.R. §§ 2.106 note US64, 95.628(b).

5 See 47 C.F.R. § 90.35(b)(3) (designating frequencies 454.000 and 459.000 MHz as assignable I/B frequencies).

and Part 22 Paging and Radiotelephone Service (PARS) and Rural Radiotelephone Service (RRS) frequencies.⁶ Frequencies 454.990625 MHz and 454.996875 MHz are between Part 22 General Aviation Air-ground Radiotelephone Service (GAARS) frequencies⁷ and Part 74 Broadcast Auxiliary Service (BAS) frequencies.⁸ Frequencies 459.990625 MHz and 459.996875 MHz between Part 22 GAARS spectrum⁹ and Part 90 Public Safety Pool (PS) frequencies.¹⁰

3. MRA and the other applicants seek assignment of these frequencies with a 4 kilohertz emission designator, which they contend will present no risk of harmful interference because the requested channels will not overlap any designated frequencies on either side, in light of the implementation of narrowband technology.¹¹ Further, MRA and other applicants contend that there is widespread and increasing private land mobile radio congestion in the areas in which they seek relief.¹²

4. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest,¹³ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or the applicant has no reasonable alternative.¹⁴ Based on the record before us, we conclude that the parties have not presented sufficient facts to meet the standard for grant of the requested waivers.

5. The Wireless Telecommunications Bureau's Mobility Division (Division) granted similar requests last year.¹⁵ MRA and others requested waivers to operate with a 4 kHz emission designator on frequency pairs on the band edges between I/B spectrum and General Mobile Radio Service spectrum,¹⁶ and between I/B spectrum and BAS spectrum.¹⁷ The Division concluded that the underlying purpose of the rules would not be served by application of the rules because MRA's proposed operations would not spectrally overlap the occupied bandwidth of any currently assignable frequency, and the public interest would be served by permitting the assignment of the requested frequency pairs to alleviate PLMR congestion at the requested locations.¹⁸

6. The applicants are correct that the requested frequency pairs do not overlap any frequencies already designated for another use. We note, however, that the previous waiver requests

⁶ See 47 C.F.R. §§ 22.561 (designating assignable 454/459 PARS frequencies beginning with 454/459.025 MHz), 22.725 (designating assignable 454/459 RRS frequencies beginning with 454/459.025 MHz).

⁷ See 47 C.F.R. § 22.805 (designating assignable 454/459 MHz GAARS frequencies ending with 454/459.975 MHz).

⁸ See 47 C.F.R. § 74.402(a)(4) (designating assignable 455 MHz BAS frequencies beginning with 455.00625 MHz).

⁹ See 47 C.F.R. § 22.805.

¹⁰ See 47 C.F.R. § 90.20(c)(3) (designating assignable 460 MHz PS frequencies beginning with 460.0125 MHz).

¹¹ See Waiver Request at 1-2.

¹² See, e.g., *id.* at 2-3.

¹³ 47 C.F.R. § 1.925(b)(3)(i).

¹⁴ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁵ See Mobile Relay Associates, *Order*, 29 FCC Rcd 7292, 7295-96 ¶¶ 10-18 (WTB MD 2014) (*MRA BAS Order*); *MRA GMRS Order*, 29 FCC Rcd at 662-63 ¶¶ 10-11.

¹⁶ See generally *MRA GMRS Order*.

¹⁷ See generally *MRA BAS Order*.

¹⁸ See *MRA BAS Order*, 29 FCC Rcd at 7294 ¶ 7; *MRA GMRS Order*, 29 FCC Rcd at 661-62 ¶¶ 6-7.

sought frequencies located in gaps between a block of I/B frequencies and a block of frequencies designated for another use, so grant of the waivers merely effected a slight expansion of the I/B blocks to permit I/B operations on previously unusable frequencies. The present requests, in contrast, seek frequencies in gaps between two non-I/B services (in the case of frequency pairs 454/459.990625 MHz and 454/459.996875 MHz) or between an isolated I/B frequency and a non-I/B block.¹⁹

7. The Commission designates different frequency bands for different radio services in order to consolidate similar uses and separate incompatible operations.²⁰ Inserting I/B operations between blocks of non-I/B spectrum could frustrate the purpose of the Commission's spectrum management policy and practices. Therefore, we deny the waiver requests.

8. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by Mobile Relay Associates on March 3, 2015, in conjunction with application FCC File No. 0006691596 IS DENIED, and the application SHALL BE DISMISSED.

9. IT IS FURTHER ORDERED that the Request for Waiver filed by Highland Wireless Services, Inc. on March 10, 2015 in conjunction with application FCC File No. 00006701591 IS DENIED, and the application SHALL BE DISMISSED.

10. IT IS FURTHER ORDERED that the Request for Waiver filed by Terry Cameron on May 12, 2015 in conjunction with application FCC File No. 0006800635 IS DENIED, and the application SHALL BE DISMISSED.

11. IT IS FURTHER ORDERED that the Request for Waiver filed by Radio Maintenance, Inc. on May 14, 2015 in conjunction with application FCC File No. 0006802714 IS DENIED, and the application SHALL BE DISMISSED.

12. IT IS FURTHER ORDERED that the Request for Waiver filed by A Beep, LLC on June 15, 2015 in conjunction with application FCC File No. 0006841323 IS DENIED, and the application SHALL BE DISMISSED.

13. 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

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁹ Specifically, frequencies 454.000 and 459.000 MHz are upper-adjacent to 453/458 MHz PS Pool frequencies. See 47 C.F.R. § 90.20(c)(3). Frequencies 454.000 and 459.000 MHz designated on a primary basis for oil spill containment and cleanup operations. See 47 C.F.R. § 90.35(c)(8).

²⁰ Cf. Use of Spectrum Bands above 24 GHz for Mobile Radio Services, *Notice of Inquiry*, 29 FCC Rcd 13020, 13027 ¶ 17 (2014).