

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

In the Matter of)	
)	
MOBILE RELAY ASSOCIATES)	FCC File Nos. 0006691596, 0006691379,
)	0006691971
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 AND ORDER ON RECONSIDERATION

Adopted: August 26, 2016

Released: August 29, 2016

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

1. *Introduction.* We have before us a petition¹ filed by Mobile Relay Associates (MRA), Highland Wireless Services, LLC, Terry Cameron, Radio Maintenance, Inc., and A Beep, LLC (collectively Petitioners) for reconsideration of a decision by the Wireless Telecommunications Bureau’s Mobility Division (Division) denying their requests for waiver of section 90.35 of the Commission’s rules to permit them to operate on frequency pairs 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz at various locations around the country, and dismissing their applications.² For the reasons set forth below, we deny the petition. We also have before us similar applications and waiver requests from MRA to operate on those frequency pairs in southern California,³ which we grant in part and deny in part as explained below.

2. *Background.* In 2014, the Division granted requests from MRA and other parties to operate on 451/456 MHz and 462/467 MHz frequency pairs that are allocated for land mobile operations, but are between Part 90 spectrum and Part 74 Broadcast Auxiliary Service (BAS) or Part 95 General Mobile Radio Service (GMRS) spectrum and currently are not designated for use on a primary basis by

¹ See Petition of Mobile Relay Associates, et al., for Reconsideration (filed Oct. 22, 2015) (Petition). Enterprise Wireless Alliance and Forest Industries Telecommunications filed comments in support of the Petition. Comments of Enterprise Wireless Alliance in Support of Petition for Reconsideration (filed Nov. 3, 2015); Comments of Forest Industries Telecommunications (filed Nov. 12, 2015).

² See *Mobile Relay Associates, et al.*, Order, 30 FCC Rcd 10199 (WTB MD 2015) (*Order*).

³ See FCC File Nos. 0006691379 and 0006691971 (filed March 3, 2015 and amended March 4, 2015 and May 1, 2015), Public Interest; Request for Waiver (filed March 3, 2015) (Waiver Request).

the Industrial/Business (I/B) Pool or any other Commission service.⁴ The Division concluded that the underlying purpose of the rules would not be served by application of the rules because the 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.⁵

3. In 2015, MRA and the other Petitioners filed applications and waiver requests for 454/459 MHz frequencies that also are allocated for land mobile operations⁶ but not designated for use on a primary basis by the I/B Pool or any other Commission service.⁷ Specifically, frequencies 454.009375 MHz and 459.009375 MHz are between an isolated I/B frequency pair⁸ and Part 22 Paging and Radiotelephone Service (PARS) and Rural Radiotelephone Service (RRS) frequencies,⁹ frequencies 454.990625 MHz and 454.996875 MHz are between Part 22 General Aviation Air-ground Radiotelephone Service (GAARS) frequencies¹⁰ and Part 74 BAS frequencies,¹¹ and frequencies 459.990625 MHz and 459.996875 MHz between Part 22 GAARS spectrum¹² and Part 90 Public Safety Pool (PS) frequencies.¹³

4. The Division denied the waiver requests and dismissed the applications.¹⁴ It distinguished the 2014 waiver grants from the instant applications because those requests were for operations on the band edges between I/B spectrum and BAS or GMRS spectrum, while these applications sought authorizations to place I/B operations on frequencies located in gaps between two non-I/B blocks or between an isolated I/B frequency and a non-I/B block.¹⁵ It explained that the designation of different frequency bands for different radio services serves the spectrum management purpose of consolidating similar uses and separating incompatible ones, and concluded that “inserting I/B operations between blocks of non-I/B spectrum could frustrate the purpose of the Commission’s spectrum management policy and practices.”¹⁶ Petitioners sought reconsideration.

⁴ See *Mobile Relay Associates, et al.*, Order, 29 FCC Rcd 7292, 7295-96, paras. 10-18 (WTB MD 2014) (*BAS Waiver*); *Mobile Relay Associates*, Order, 29 FCC Rcd 660, 662-63, paras. 10-11 (WTB MD 2014) (*GMRS Waiver*).

⁵ See *BAS Waiver*, 29 FCC Rcd at 7294, para. 7; *GMRS Waiver*, 29 FCC Rcd at 661-62, paras. 6-7.

⁶ See 47 C.F.R. § 2.106 (United States Table of Frequency Allocations).

⁷ 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).

⁸ Frequencies 454.000 MHz and 459.000 MHz, which are designated as assignable I/B frequencies on a primary basis for oil spill containment and cleanup operations, see 47 CFR § 90.35(b)(3), (c)(8), are upper-adjacent to 453/458 MHz Public Safety Pool frequencies, see 47 CFR § 90.20(c)(3).

⁹ 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).

¹⁰ See 47 C.F.R. § 22.805 (designating assignable 454/459 MHz GAARS frequencies ending with 454/459.975 MHz).

¹¹ See 47 C.F.R. § 74.402(a)(4) (designating assignable 455 MHz BAS frequencies beginning with 455.00625 MHz).

¹² See note 10, *supra*.

¹³ See 47 C.F.R. § 90.20(c)(3) (designating assignable 460 MHz PS frequencies beginning with 460.0125 MHz).

¹⁴ See *Order*, 30 FCC Rcd at 10201, paras. 7-12. Of the above-captioned MRA applications, only FCC File No. 0006691596 was addressed in the *Order*.

¹⁵ See *id.* at 10200-01, para. 6.

¹⁶ See *id.* at 10201, para. 7.

5. In 2016, the Commission released a *Notice of Proposed Rulemaking (NPRM)* proposing to codify the Division's 2014 waivers in part.¹⁷ It tentatively concluded that designating some of the frequencies for which the Division had granted waivers would serve the public interest, but that other frequencies should not be so designated or should be examined further to ensure that the proposed operation would not conflict with other uses.¹⁸ The Commission also sought comment on whether any frequencies not discussed in the *NPRM* also should be designated for Part 90 use.¹⁹

6. *Discussion.* We affirm the decision denying the waiver requests for 454/459 MHz frequencies. Given the pendency of the Commission's rulemaking proceeding seeking comment on what frequencies that are allocated for land mobile operations but not designated for use on a primary basis by any other Commission service should be added to the I/B Pool, we conclude that it would be inappropriate to grant waivers for frequency pairs beyond those that the Commission has proposed to codify.²⁰ Whether Part 90 operation should be permitted on additional frequency pairs should be decided in the pending notice-and-comment rulemaking proceeding, after careful consideration of the various possible uses and the relative needs, rather than on an individualized basis. Consequently, we need not address here Petitioners' claim that their proposed operations are fully compatible with all adjacent-band uses.²¹ With respect to their argument that the Division should at least have solicited public comment on the waiver requests,²² we note the Division is not required to put a waiver request on public notice and has broad discretion whether or not to do so.²³ We therefore deny the petition for reconsideration.

7. The MRA applications and waiver requests that were not addressed in the Division's 2015 *Order* seek authorization to operate on frequency pairs 454/459.009375 MHz, 454/459.990625 MHz, and 454/459.996875 MHz in the Los Angeles area²⁴ and the San Diego area.²⁵ MRA notes²⁶ that MRA itself is the Part 22 PARS licensee on the spectrum adjacent to frequency pair 454/459.009375 MHz in the license area that includes Los Angeles, Riverside, and Orange Counties.²⁷ This ameliorates concerns about compatibility or interference with adjacent Part 22 users. We therefore grant the waiver request in part—specifically, with respect to frequency pair 454/459.009375 MHz at the requested locations in those counties.²⁸ In all other respects, the pending waiver requests are denied for the same reasons that we denied the petition for reconsideration. The applications will be processed accordingly.

8. Accordingly, 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 CFR

¹⁷ See *Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum*, Notice of Proposed Rulemaking, FCC 16-110 (rel. Aug. 18, 2016).

¹⁸ See *id.* at paras. 6-10.

¹⁹ See *id.* at para. 7.

²⁰ See *J-Comm Corp.*, Order, DA 16-966, paras. 6-7 (WTB MD rel. Aug. 25, 2016).

²¹ See Petition at 4-8.

²² See *id.* at 8-9.

²³ See, e.g., *Tektron Micro Electronics, Inc.*, Order on Reconsideration, 15 FCC Rcd 4438, 4438-39, para. 2 (WTB PSPWD 2000); see also 47 C.F.R. § 1.925(c)(i) ("The Commission, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties.").

²⁴ FCC File No. 0006691379.

²⁵ FCC File No. 0006691971.

²⁶ See Waiver Request at 4, n.4.

²⁷ See Station WPVE956.

²⁸ *I.e.*, application FCC File No. 0006691379, locations 1, 2, 3, 5, 7, 8, 9, 11, 13, 14, 15, and 17.

§ 1.106, that the Petition for Reconsideration file by Mobile Relay Associates, Highland Wireless Services, LLC, Terry Cameron, Radio Maintenance, Inc., and A Beep, LLC on October 22, 2015, IS DENIED.

9. IT IS FURTHER 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 CFR § 1.925, that the Request for Waiver filed by Mobile Relay Associates on March 3, 2015 in conjunction with application FCC File No. 0006691379 IS GRANTED IN PART AND DENIED IN PART, and the application SHALL BE PROCESSED in accordance with this *Order and Order on Reconsideration* and the Commission's rules.

10. IT IS FURTHER 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 CFR § 1.925, that the Requests for Waiver filed by Mobile Relay Associates on March 3, 2015 in conjunction with application FCC File Nos. FCC File No. 0006691971 IS DENIED, and the application SHALL BE DISMISSED.

11. 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
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Wireless Telecommunications Bureau