

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

In the Matter of	)	
	)	
BRISTOL-MEYERS SQUIBB COMPANY	)	FCC File No. 0007457084
	)	
MOBILE RELAY ASSOCIATES, LLC	)	FCC File No. 0007592460
	)	
Requests for Waiver to Use Airport Terminal Use	)	
Frequencies	)	

**ORDER**

**Adopted: September 5, 2017**

**Released: September 6, 2017**

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

1. *Introduction.* We have before us two applications and requests for waiver of section 90.35(c)(61) and (68) of the Commission’s rules to permit use of Airport Terminal Use (ATU) channels.<sup>1</sup> The first request, filed by Bristol-Meyers Squibb Company (Bristol-Meyers) seeks authority for operations in New Jersey and Connecticut.<sup>2</sup> The second, filed by Mobile Relay Associates, LLC (MRA), seeks authority for operations in Colorado, Florida, and Nevada.<sup>3</sup> For the reasons set forth below, we deny both requests.

2. *Background.* Frequency pairs between 460/465.650 MHz and 460/465.89375 MHz are available within 16 kilometers (approximately 10 miles) of the airports listed in section 90.35(c)(61) only to entities providing commercial air transportation services in connection with servicing and supplying aircraft; and are available on a secondary basis to other Industrial/Business Pool entities at locations between 16 and 80 kilometers (about 50 miles) from the protected airports, with 460 MHz operations restricted to the confines of an industrial complex or manufacturing yard area and 465 MHz operations restricted to the licensee’s area of normal day-to-day operations.<sup>4</sup>

3. *Bristol-Meyers.* On September 16, 2016, Bristol-Meyers filed an application seeking authorization to operate a centralized trunked system at four locations in New Jersey and one location in Connecticut on a total of 10 ATU channels. The Wireless Telecommunications Bureau (WTB) returned the application because Bristol-Meyers is not eligible for ATU channels, and all of the requested locations

<sup>1</sup> 47 CFR § 90.35(c)(61), (68).

<sup>2</sup> See File No. 0007457084 (filed Sept. 16, 2016; amended Nov. 21, 2016; Dec. 15, 2016; and Mar. 13, 2017), Description of Proposal; Request for Waiver (Bristol-Meyers Request). The application and waiver request were filed in the name of “Bristol-Meyers Squibb Company,” so we refer to the applicant thusly herein. The applicant’s current licenses are held in the name of “Bristol-Myers Squibb Company.”

<sup>3</sup> See File No. 0007592460 (filed Dec. 14, 2016; amended Apr. 18, 2017; Apr. 24, 2017; May 25, 2017), Waiver of §90.35(c)(61) (MRA Request).

<sup>4</sup> 47 CFR § 90.35(c)(61)(i), (iii), (68)(i), (iii).

are within 80 kilometers of at least four protected airports (including four of the 25 busiest airports in the country), with three locations within 16 kilometers of a protected airport.<sup>5</sup>

4. On March 13, 2017, Bristol-Meyers requested a waiver of section 90.35(c)(61) and (68) to permit operation on ATU channels. Bristol-Meyers, a pharmaceutical manufacturer, states that the proposed system will serve its plant operations in New Jersey and Connecticut for purposes of plant safety, plant operations, security, and environmental and human services.<sup>6</sup> It states that no other exclusive frequencies are available for its proposed centralized trunked system.<sup>7</sup> It argues that grant of a waiver would be in the public interest.<sup>8</sup>

5. WTB sought comment on the waiver request.<sup>9</sup> Aviation Spectrum Resources, Inc. and Federal Express jointly filed comments opposing the request on the grounds that granting the application would endanger commercial aviation and public safety.<sup>10</sup> They assert that reliable ATU communication is the backbone of safe operation in the airport environment, and it is essential that the Commission protect ATU communications from interference and preserve ATU channels to meet future ATU service needs.<sup>11</sup> They also argue that Bristol-Meyers has not demonstrated that it has no alternative but to use ATU channels.<sup>12</sup>

6. Bristol-Meyers's frequency coordinator, the Enterprise Wireless Alliance (EWA), filed comments in support of the request, asserting that sufficient ATU channels will remain available in these areas even if the request is granted.<sup>13</sup> In reply comments, EWA states that Bristol-Meyers would accept secondary status with respect to any current or future ATU licensee.<sup>14</sup>

7. MRA. On December 14, 2016, MRA filed an application seeking authorization to operate centralized trunked systems at locations in Colorado, Florida, and Nevada where MRA already operates, on a total of 12 ATU channels (which it subsequently reduced to four ATU channels and two non-ATU

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<sup>5</sup> All of the requested locations are within 80 kilometers of at least four of the following airports: Barnes Municipal (Westfield, Massachusetts), Bradley International (Hartford, Connecticut), Hartford-Brainard, JFK International, LaGuardia, Lehigh Valley (Pennsylvania) International, Morristown (New Jersey) Municipal, Newark International, Northeast Philadelphia, Philadelphia International, Sikorsky Memorial (Stratford, Connecticut), Teterboro (New Jersey), Trenton Mercer, and Tweed-New Haven Municipal. Three of the requested locations are within 16 kilometers of Trenton Mercer.

<sup>6</sup> See Bristol-Meyers Request at 2-3.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> See *Wireless Telecommunications Bureau Seeks Comment on Bristol-Meyers Squibb Company Request for Waiver to Use Airport Terminal Use Frequencies in New Jersey and Connecticut*, Public Notice, 32 FCC Rcd 4017 (WTB MD 2017).

<sup>10</sup> See Comments of Aviation Spectrum Resources, Inc. and FedEx (filed June 16, 2017) (viewable in the Commission's Universal Licensing System under File No. 000457084).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> See Comments of the Enterprise Wireless Alliance at 3-4 (filed June 16, 2017) (EWA Comments) (viewable in the Commission's Universal Licensing System under File No. 000457084).

<sup>14</sup> See Reply Comments of the Enterprise Wireless Alliance at 3-4 (filed June 16, 2017) (viewable in the Commission's Universal Licensing System under File No. 000457084).

channels).<sup>15</sup> Each location is within 16 kilometers of a protected airport (including two top-25 airports), and two locations also are within 80 kilometers of other protected airports (including two more top-25 airports).<sup>16</sup> It requested a waiver of section 90.35(c)(61) to permit operation on ATU channels, and on April 18, 2017, clarified that it also sought a waiver of section 90.35(c)(68). MRA, which is in the business of providing non-interconnected communications service on a for-profit commercial basis to eligible users, states that it is unable to meet increasing demand for its services due to an absence of available exclusive frequencies.<sup>17</sup> It asserts that sufficient ATU channels will remain available in these areas even if the request is granted.<sup>18</sup> MRA also argues that a waiver is in the public interest because its subscribers include local government and other quasi-public-safety operations.<sup>19</sup>

8. *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; 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.<sup>20</sup> We conclude that neither Bristol-Meyers nor MRA has met either prong of the waiver standard.

9. Frequencies are set aside for ATU operations so that aircraft at designated airports can readily communicate with each air terminal radio system, protected against interference from other Industrial/Business users.<sup>21</sup> The Commission specifically designated enough ATU frequencies to allow air carriers to use the same frequency(ies) at each airport where they operate.<sup>22</sup> The separation distances are intended to balance the interference protection needs of ATU users with the spectrum capacity requirements of non-ATU users.<sup>23</sup> Grant of the instant requests would conflict with these purposes, for it would reduce the amount of spectrum set aside for current and future ATU operations below what may be needed and increase the potential for interference to current and future ATU communications. Any party that believes that the spectrum set aside for ATU use now exceeds the need should pursue a petition for rulemaking, rather than seeking waiver relief in the proximity of protected airports throughout the

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<sup>15</sup> The MRA application also seeks authorization for a fourth location, but that site is not within 80 kilometers of any protected airport.

<sup>16</sup> The proposed Las Vegas site is within 16 kilometers of McKarran International. The proposed Plainview, Colorado, site is within 16 kilometers of Rocky Mountain Metropolitan (formerly known as Jeffco) (Jefferson County, Colorado) and within 80 kilometers of Centennial (Arapahoe County, Colorado) and Denver International. The proposed Miami site is within 16 kilometers of Miami International and within 80 kilometers of Fort Lauderdale Executive, Fort Lauderdale-Hollywood International, Miami Executive (formerly known as Kendall-Tamiami Executive), and Miami-Opa Locka Executive (formerly known as Opa Locka).

<sup>17</sup> See MRA Request at 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 47 CFR § 1.925(b)(3).

<sup>21</sup> *Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services*, Report and Order, 20 FCC Rcd 1966, 1969-70, paras. 6-7 (2005) (*ATU Report and Order*).

<sup>22</sup> See *Amendment of Parts 89, 91, 93, and 95 (Formerly 10, 11, 16, and 19) of the Commission's Rules to Reduce the Separation Between the Assignable Frequencies in the 450-470 Mc/s Band, et al.*, Report and Order, 11 FCC 2d 648, 655, para. 20 (1968).

<sup>23</sup> See *ATU Report and Order*, 20 FCC Rcd at 1975, para. 22.

country.<sup>24</sup> Only after reviewing a record built on notice and comment can the Commission ascertain with confidence whether the number of frequencies reserved for ATU communications can safely be reduced.<sup>25</sup>

10. Bristol-Meyers's willingness to accept secondary status does not resolve these concerns. Secondary operations may not cause interference to operations authorized on a primary basis.<sup>26</sup> Bristol-Meyers proposes to operate in centralized trunked mode. Centralized trunked systems do not monitor a frequency for a signal from another system prior to transmitting.<sup>27</sup> Consequently, Bristol-Meyers would be unaware of co-channel ATU communications, and thus unable to avoid interfering with them. EWA itself recognizes that the rule permitting secondary operations between 16 and 80 kilometers from the protected airports is premised on licensees sharing the channel, which requires monitoring.<sup>28</sup>

11. In addition, neither applicant has demonstrated unique or unusual circumstances that render application of the rule inequitable, unduly burdensome, or contrary to the public interest, or leaves them no reasonable alternative. That they operate in areas of spectrum congestion does not warrant grant of a waiver.<sup>29</sup> Nor is a waiver warranted based on their preference for exclusive spectrum, in the absence of a showing that they cannot operate on shared spectrum<sup>30</sup> or in another frequency band.<sup>31</sup>

12. *Conclusion.* We conclude that neither Bristol-Meyers nor MRA has demonstrated that a waiver of the ATU rules is warranted under the circumstances presented. We deny both waiver requests.

13. *Ordering Clauses.* ACCORDINGLY, IT IS ORDERED that, 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, the Request for Waiver filed by Bristol-Meyers Squibb Company on March 13, 2017, IS DENIED and application FCC File No. 0007457084 SHALL BE DISMISSED.

14. IT IS FURTHER ORDERED that the Request for Waiver filed by Mobile Relay Associates, LLC on December 14, 2016, IS DENIED and application FCC File No. 0007592460 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

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<sup>24</sup> See *Amendment of Part 90 of the Commission's Rules to Relax Restrictions on Certain Frequencies in the Business Radio Service*, Report and Order, FCC 86-186 (Apr. 30, 1986), 1986 WL 291576 (relaxing restrictions on non-ATU use of ATU frequencies in response to a petition for rulemaking).

<sup>25</sup> See, e.g., *Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum; Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431, 9435-36, paras. 11-14 (2016) (*PLMR Spectrum NPRM*) (seeking comment on whether the number of frequencies designated for central station commercial protection services can safely be reduced).

<sup>26</sup> 47 CFR § 90.7.

<sup>27</sup> *PLMR Spectrum NPRM*, 31 FCC Rcd at 9437, n.43.

<sup>28</sup> See EWA Comments at 3.

<sup>29</sup> See *Diverse Power Inc.*, Letter Order, 31 FCC Rcd 10765, 10767-68 (WTB MD 2016).

<sup>30</sup> See *Northeast Utilities Service Company*, Order, 22 FCC Rcd 18652, 18654, para. 6 (WTB MD 2007). We note that all of Bristol-Meyers's current licenses, and many of MRA's, include non-exclusive frequencies.

<sup>31</sup> See *R. William Jamann*, Letter Order, 31 FCC Rcd 67, 67-68 (WTB MD 2016). We note that MRA holds numerous licenses in frequency bands other than 450-470 MHz.

15. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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