

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
ENGINEERS FREQUENCY ADVISORY) WT Docket No. 14-235
COMMITTEE, LLC Request for Certification as a)
Part 90 Frequency Coordinator)

**COMMENTS OF THE FORESTRY CONSERVATION COMMUNICATIONS
ASSOCIATION, THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, AND
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION**

The International Municipal Signal Association (“IMSA”), International Association of Fire Chiefs (“IAFC”), and Forestry Conservation Communications Association (“FCCA”) (together “Commenters”), by their attorneys and pursuant to the Public Notice issued by the FCC’s Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau (together, the “Bureaus”) on December 2, 2014,^{1/} hereby submit their comments in response to the above-referenced request by Engineers Frequency Advisory Committee, LLC (“EFAC”) for certification as a coordinator for Part 90 Public Safety and Industrial/Business Pool frequencies.^{2/} As demonstrated below, EFAC fails to satisfy the criteria outlined by the FCC to be certified as a frequency coordinator. Accordingly, the EFAC Request should be promptly denied.

I. INTRODUCTION AND BACKGROUND

The 10,000-member IAFC is a professional association representing the leaders and managers of America’s fire and emergency service. The IAFC represents the leadership of more than 1.2 million firefighters and emergency responders. IAFC members are the world’s leading

^{1/} See *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Request of Engineers Frequency Advisory Committee, LLC, to be Certified as a Part 90 Frequency Coordinator*, Public Notice, WP (sic) Docket No. 14-235, DA 14-1729 (rel. Dec. 2, 2014) (“Public Notice”).

^{2/} See *Engineers Frequency Advisory Committee, LLC Request for Certification as a Part 90 Frequency Coordinator*, WT Docket No. 14-235 (dated Nov. 4, 2014) (“EFAC Request”).

experts in firefighting, emergency medical services, terrorism response, hazardous materials spills, natural disasters, search and rescue, and public safety legislation. Since 1873, the IAFC has provided a forum for its members to exchange ideas and uncover the latest products and services available to first responders.

FCCA is a non-profit national trade organization that has, for over six decades, coordinated the use of frequency assignments within the Forestry Conservation spectrum. It makes available a full range of radio communications services for all public safety entities in addition to forestry conservation agencies, including related police, fire, and emergency medical functions of these agencies, operating in all 50 states.

IMSA is a non-profit organization dedicated to the development and use of electric signaling and communication systems in furtherance of public safety. IMSA's approximately 12,000 members include representatives of Federal, state, county, city, township, and borough governmental bodies, as well as representatives of governmental bodies of foreign nations. IMSA works to improve the efficiency, installation, construction, and maintenance of public safety equipment and systems by increasing the knowledge of its members in several diverse technical fields, including public safety communications.

Each of IAFC, FCCA, and IMSA is a certified coordinator for frequencies specified in Section 90.20(c) of the FCC's rules, and are among the recognized frequency coordinators for the Public Safety Pool frequency assignments.^{3/} The Public Notice seeks comment on EFAC's request for certification as a coordinator for Public Safety and Industrial/Business Pool frequencies under Part 90 of the Commission's rules.^{4/} Because the Commenters are frequency coordinators recognized by the FCC and seek to preserve the integrity of the frequency

^{3/} See 47 C.F.R. § 90.20(c).

^{4/} See Public Notice at 1; EFAC Request at 2.

coordination process, particularly with respect to Public Safety channels, they are pleased to have this opportunity to submit the following comments.^{5/}

II. COMMENTS

Approving the EFAC Request would be inconsistent with the Communications Act of 1934, as amended (the “Act”). Section 332 of the Act permits the FCC to utilize frequency coordination committees (*i.e.*, frequency coordinators) for coordinating and assigning frequencies in the private mobile radio services.^{6/} In implementing this authority, Congress “encourage[d] the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service.”^{7/} As the Public Notice and EFAC recognize, the Commission implemented the provisions of Section 332 of the Act by, in 1986, establishing criteria for certifying frequency coordinators in the Part 90 Private Land Mobile Radio (“PLMR”) services.^{8/} While the Commission evaluates several criteria to determine whether an entity is qualified to be a frequency coordinator,^{9/} consistent with Congressional directive, the first and primary factor of the FCC’s analysis is whether the potential frequency coordinator is representative of the users of the frequencies it proposes to

^{5/} See also Comments of International Municipal Signal Association, the Forestry Conservation Communications Association, and the International Association of Fire Chiefs, PS Docket No. 14-145 (filed Oct. 8, 2014) (“*IMSA/FCCA/IAFC ACD Comments*”); Comments of the International Association of Fire Chiefs, International Municipal Signal Association, and the Forestry Conservation Communications Association, WT Docket No. 14-75 (filed June 13, 2014). The recently submitted requests for certification by would-be frequency coordinators represent a disturbing trend by third parties attempting to have the Commission depart from the fundamental nature of frequency coordination. The Commission should strongly reject these requests in order to dissuade others who would unnecessarily occupy Commission time and resources.

^{6/} See 47 U.S.C. § 332(b)(1).

^{7/} *Frequency Coordination in the Private Land Mobile Radio Services*, Report and Order, 103 F.C.C.2d 1093, ¶ 11 (1986) (“*1986 Frequency Coordination Order*”) (internal citation omitted).

^{8/} See Public Notice at 1; EFAC Request at 2.

^{9/} See *1986 Frequency Coordination Order* ¶ 70.

coordinate.^{10/} Because EFAC has not demonstrated that it is representative of Public Safety or Industrial/Business Pool frequency users, and its request is otherwise flawed, it cannot be certified as a frequency coordinator.

A. EFAC is Not Representative of the Users it Seeks to Coordinate.

In determining “representativeness,” the FCC typically considers whether an entity has members that are representative of the users it seeks to coordinate or whether the entity demonstrates that it understands the unique needs of the user community. For instance, the Commission found that Associated Public Safety Communications Officers, Inc. (“APCO”) was representative of public safety users because it had over 6,000 members comprised of public safety communications officials, engineers, supervisors, and technicians that were employed by tax-supported agencies at all levels of government, and by organizations supplying these agencies with goods and services.^{11/} The Commission also noted, in determining representativeness for the Special Emergency Radio Service, that IMSA “has shown particular sensitivity to special emergency needs in the past.”^{12/} The purpose behind this requirement is to ensure that frequency allocations are fair and that the quality of the frequency coordination process is maintained.^{13/} Indeed, the FCC specifically rejected allowing private entities to treat their commercial services, such as “field studies,” as frequency coordination services because the

^{10/} See *id.* ¶ 98.

^{11/} See *id.* ¶¶ 71, 73; see also *id.* ¶ 74 (determining that FCCA was representative of the Forestry Conservation Radio Service because its membership “is open to any agency that is eligible in the radio service”); *International Association of Fire Chiefs, Inc., and International Municipal Signal Association; Informal Request for Certification as a Frequency Coordinator for PLMR 800 MHz and 900 MHz Public Safety Frequencies and American Association of State Highway and Transportation Officials; Informal Request for Certification as a Frequency Coordinator for PLMR 800 MHz Public Safety Frequencies*, Order, 16 FCC Rcd. 14530, ¶ 17 (2001) (“2001 IAFC/IMSA/AASHTO Order”).

^{12/} 1986 Frequency Coordination Order ¶ 77.

^{13/} See *id.* ¶¶ 11, 66-67.

quality of such services “varies widely.”^{14/}

EFAC explains that it is a company comprised of three members – Tusa Consulting Services (“Tusa”), Blue Wing Services (“Blue Wing”) and Shulman Rogers Gandal Pordy & Ecker, P.A. (“Shulman Rogers”).^{15/} Tusa is described as a consulting firm with expertise in “land-mobile radio design, infrastructure deployment, microwave transport and network integration, wireless broadband, interoperable solutions and navigating regulatory challenges.”^{16/} Blue Wing is touted as having an extensive background in public safety communications, involved in both the user- and vendor-side of Public Safety and Industrial/Business systems, and as offering consulting and system design services.^{17/} Finally, Shulman Rogers is described as a law firm, the telecommunications department chairman of which – Mr. Tilles – is described as having experience in counseling various Public Safety entities on communications law and regulations.^{18/}

However, EFAC confuses experience with representativeness and attempts to mask its lack of representativeness by asserting that many entities “have signed retainer letters with Shulman Rogers for the Firm to represent these licensees and entities before the Commission and

^{14/} *See id.* ¶ 66. Ironically, EFAC notes the Commission’s past experience with field studies, but completely mischaracterizes the Commission’s assessment of them. *See* EFAC Request at 17 n.9. EFAC would have the Bureaus believe that the Commission found field studies “valuable.” To the contrary, the Commission found their use to be “more disruptive than helpful to the coordination process” and therefore rejected their use as substitutes for frequency coordination. *See 1986 Frequency Coordination Order* ¶ 68.

^{15/} *See* EFAC Request at iii.

^{16/} *Id.* at 3; *see also id.* at 3-4 (adding that Tusa engineers and project managers have “a wealth of experience analyzing, designing and implementing P25 networks from all vendors with a special emphasis on 700/800 P25 simulcast networks”).

^{17/} *See id.* at 5-6 (noting that Blue Wing “has consulted in various capacities” and “takes a very pragmatic approach to system design”).

^{18/} *See id.* at 6-10.

other Frequency Advisory Committees.”^{19/} It concludes that “[t]his work represents the definition of ‘representative’ in its purest capacity.”^{20/} EFAC’s assertion is little more than a clumsy attempt at wordplay. Shulman Rogers and other EFAC members may “represent” clients. However, that does not mean that Shulman Rogers or any of the EFAC members are representative of the community that they seek to coordinate in the way that the FCC intended.^{21/}

Instead of demonstrating representativeness, EFAC’s request for coordination contains a self-congratulatory litany of activities in which its members have been engaged.^{22/} EFAC misses the point. As the Commenters previously explained,^{23/} experience in system design does not make an entity representative. To the contrary, the FCC has specifically rejected an entity’s experience in system design as sufficient to demonstrate that it is representative of the users of the frequencies it proposes to coordinate.^{24/} Moreover, reviews of channel availability are not the type of services provided by frequency coordinators; they are basic tasks that can be accomplished by any third party with access to the FCC’s public licensing database. The Commission has emphasized that frequency coordinators play a distinct role from third-party

^{19/} *Id.* at 10.

^{20/} *Id.* at 11.

^{21/} As noted above, for example, the Commission previously found that APCO was representative of public safety users and that IMSA was representative of the special emergency community. The Bureaus must reject EFAC’s proposed definition of representativeness as circular and a perversion of its intended meaning in this context.

^{22/} EFAC, for example, suggests that its members have been “intimately involved” with the frequency coordination process through their engineering and system design services. It explains that the EFAC members have a long history of providing services for Part 90 Public Safety and Industrial/Business land mobile radio entities, including by utilizing the latest engineering software and techniques to design systems to maximize spectrum utilization and minimize interference. *See* EFAC Request at 2-3. EFAC also notes that its members have performed high-level channel availability reviews, usually utilizing the same licensing tools as existing frequency advisory committees, and thus “represents the perfect combination of Part 90 frequency selection knowledge and field experience.” *Id.* at 2-3, 10.

^{23/} *See* IMSA/FCCA/IAFC ACD Comments at 4-5.

^{24/} *See, e.g., 1986 Frequency Coordination Order* ¶ 98 (rejecting a request for certification filed by Comp Comm, which used its experience in system design as support for its request).

consultants. Unlike third-party consultants, frequency coordinators must maintain ultimate control over the frequency coordination process and are responsible for maintaining all characteristics that make them eligible to be coordinators, especially representativeness.^{25/}

The Commenters recognize that, since the adoption of the *1986 Frequency Coordination Order*, the Commission has found that allowing additional entities to provide frequency coordination services could serve the public interest.^{26/} However, the Commission has also specifically cautioned that its policy of certifying multiple coordinators is “not a rejection of its requirement that each coordinator be representative of the users of the radio service in which it was certified”^{27/} and that the “integrity of the radio communications in the Public Safety Pool must be maintained without fail.”^{28/} The Commission has never altered the requirement that all frequency coordinators, including Industrial/Business Pool coordinators, must be representative of the users they seek to coordinate. Furthermore, to the extent Industrial/Business frequencies

^{25/} See *American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc.; Petition for Transfer of Frequency Advisory Committee Certification*, Memorandum Opinion and Order, 16 FCC Rcd. 12416, ¶ 14 (2001) (“*2001 AMTA/ATA Order*”); see also Letter from Ralph A. Haller, Chief, Private Radio Bureau, FCC, to Susan Dobronski, Teletech, Inc., attached to, *Teletech, Inc. Petition to Decertify IAFC, IMSA and SEFCC as Frequency Coordinators in the Fire and Special Emergency Radio Services*, Order, 5 FCC Rcd. 2887 (1990) (“A coordinator, in summary, has wide latitude to contract all or some of its coordination activity to a contractor, so long as it maintains reasonable oversight and control.”).

^{26/} See, e.g., *Industrial Telecommunications Association; Informal Request for Certification as a Frequency Coordinator for Part 90 929-930 MHz Paging Frequencies and PLMR Special Emergency Frequencies Below 512 MHz*, Order, 19 FCC Rcd. 7614, ¶¶ 4-7 (2004) (“*2004 ITA Order*”); *Informal Request for Certification as a Frequency Coordinator in the PLMR 800 MHz and 900 MHz Bands*, Order, 16 FCC Rcd. 8436, ¶ 9 (2001); *2001 AMTA/ATA Order* ¶ 2; *2001 IAFC/IMSA/AASHTO Order* ¶ 5.

^{27/} *2004 ITA Order* ¶ 5 (citing *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services*, Second Report and Order, 12 FCC Rcd. 14307, ¶ 34 (1997) (“*1997 Frequency Coordination Second Report and Order*”)).

^{28/} *2001 IAFC/IMSA/AASHTO Order* ¶ 6; see also *1997 Frequency Coordination Second Report and Order* ¶ 39; *Industrial Telecommunications Association; Informal Request for Certification to Coordinate the Power Radio Service, Railroad Radio Service, and Automobile Emergency Radio Service under Part 90 of the Commission’s Rules*, Order, 19 FCC Rcd. 21664, ¶¶ 4, 10 (2004) (noting that “maintaining the integrity of spectrum used for such public safety purposes is extremely important”) (internal quotations and citation omitted).

are used for Public Safety communications, the FCC has likewise found that “maintaining the integrity of spectrum used for such public safety purposes is extremely important.”^{29/} Allowing familiarity or experience to constitute “representativeness” would contravene these policies.

B. A Coordinator That Provides For-Profit Services is Particularly Problematic.

As private entities, each of the EFAC members is focused on providing consulting services for profit. They act to satisfy clients and are not representative of anything but their customer base. While the EFAC members may target their commercial services to and be “utilized by” Public Safety and Industrial/Business entities,^{30/} their main motive is to generate revenue, not to represent a user community or safeguard the frequency coordination process. While EFAC asserts that it will “ensure . . . non-discrimination in its coordination procedure,”^{31/} it cannot wear two hats and overcome the fundamental conflict between providing for-profit services and acting as a frequency coordinator. To the contrary, it may actually harm non-clients in the user community in order to protect its clients. As the Commission has explained, “[i]ndividual applicants need assurance that when coordinators provide a recommendation, it is done with total impartiality.”^{32/} EFAC members, however, would be motivated by client needs

^{29/} *1997 Frequency Coordination Second Report and Order* ¶ 41.

^{30/} *See* EFAC Request at 10. EFAC’s favorable reference to the request by ACD Telecom, LLC is telling. Neither entity is qualified to be a frequency coordinator.

^{31/} *Id.* at 12. While EFAC presumably means it will not discriminate in favor of its clients in the coordination process (as against other licensees and applicants for whom it does not perform coordination services), EFAC makes no representations about performing coordination services for entities that are for-profit clients of its engineering and legal services.

^{32/} *1986 Frequency Coordination Order* ¶ 18. The EFAC Request notes that Mr. Tilles represents PCIA, one of the FCC’s certified Frequency Advisory Committees, among other entities. *See* EFAC Request at 9. It appears particularly problematic that Shulman Rogers, as a member of EFAC, is seeking to be certified as a frequency coordinator. Shulman Rogers is ethically obligated to vigorously pursue its client’s interests. *See* MARYLAND LAWYER’S RULES OF PROF’L CONDUCT R. 1.2 (2014) (“[A] lawyer shall abide by a client’s decisions concerning the objectives of the representation”); *see also id.* at Preamble (“As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.”). It is difficult to understand how Shulman Rogers would fulfill those ethical obligations on the

and therefore may be inclined to issue frequency coordination to satisfy client demands regardless of the wisdom of doing so. In a shared frequency environment like Part 90, the fragile spectrum ecosystem could be destroyed if non-representative entities whose motives were company-, and not industry-based, were allowed to coordinate frequencies.

C. EFAC’s Request is Otherwise Flawed.

EFAC’s principal argument for becoming a frequency coordinator appears to be that even after it performs engineering and legal services for clients, applicants must still go through the coordination process, which produces delay and additional cost.^{33/} EFAC also recently claimed that “there is a trend of frequency selection becoming more and more engineering-centric.”^{34/} Its observations are beside the point. Applicants are welcome to use third parties to perform engineering and other services. However, only entities that are representative are obligated to take into consideration the broader spectrum ecosystem and not just their client’s interests. The Commission specifically reserved oversight of the prices charged by coordinators and the time it takes them to perform.^{35/} If EFAC’s clients are dissatisfied with coordinator performance, they should bring that dissatisfaction to the Commission’s attention; EFAC’s attempt to re-write the Commission’s rules to become a frequency coordinator is not the appropriate response.

Finally, approval of the EFAC Request could potentially disrupt the frequency coordination process. Today, frequency coordinators are required to share their findings with other certified coordinators and provide them with time to review and raise objections. This

one hand and protect non-clients on the other, particularly in those frequent cases where there may be reasonable differences in rule interpretations or engineering analyses.

^{33/} See EFAC Request at 2.

^{34/} “Proposed New Frequency Coordinator Says Its Approval Would Be a First For FCC,” COMM. DAILY (Dec. 5, 2014).

^{35/} See 1986 Frequency Coordination Order ¶¶ 45, 127.

allows others to analyze frequency selections and submit comments in order to protect their user community. If an unlimited number of for-profit entities are permitted to participate in this process, they could inject substantial delays thereby offsetting any “time-to-licensing” and/or cost reductions that EFAC purports would occur.^{36/} More importantly, allowing multiple non-representative entities to coordinate frequencies would threaten to harm the quality of the overall frequency coordination process. Such entities could object to a certain frequency selection because it would impede their clients’ objectives, regardless of whether doing so would serve the industry as a whole – the intended definition of representativeness.

III. CONCLUSION

For the reasons discussed above, the Commenters respectfully request that the Bureaus expeditiously deny the EFAC Request.

Respectfully submitted,

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^{36/} See EFAC Request at 2-3.