

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
ENGINEERS FREQUENCY ADVISORY)	WP Docket No. 14-235
COMMITTEE, LLC)	
)	
Request for Certification as Frequency Advisory)	
Committee for the Part 90 Public Safety and)	
Business/Industrial Radio Frequencies)	

To: The Commission

REPLY COMMENTS

The Engineers Frequency Advisory Committee, LLC (“EFAC”), through counsel and pursuant to the Commission’s Public Notice of December 2, 2014,¹ hereby respectfully submits its Reply Comments in response to those Comments submitted to the Commission responsive to EFAC’s request that it be designated by the Commission as a certified Frequency Advisory Committee (“FAC”) for the purposes of performing frequency coordination for the Part 90 Public Safety and Business/Industrial Radio Service Pools.

Initially, EFAC is appreciative of the positive comments that EFAC’s Request received from licensees that have experience with navigating the frequency coordination process over the years. These comments are consistent with (and in some cases significantly expand upon) the EFAC request. In contrast, those opposing EFAC’s designation are those with a direct financial interest in frequency coordination activities, have a fundamental misunderstanding about EFAC, or the current coordination environment. EFAC will address these issues in this Reply.

¹ DA 14-1729, released December 2, 2014.

I. “REPRESENTATIVE” AND EFAC’S COMPLIANCE

It is the position of opponents that there is a difference between the “representative” in the context of the work of a trade association, and “representative” in the context of services requested by individual applicants.² However, the Commission has never made such a distinction in evaluating the qualifications of a Part 90 Frequency Advisory Committee. In fact, the Commission’s direction from Congress was to encourage the Commission to recognize FACs “... which are most representative of the users of that service.”³ Thus, the Commission’s initial selection was based upon which entity was most representative, not what the word “representative” means.⁴ Obviously, with the consolidation of radio pools by the Commission in WT Docket No. 92-235 and creation of competitive coordination, “most” representative is no longer a selection criteria.

With regard to EFAC’s compliance with this standard, there apparently seems to be a dichotomy of views on which user group EFAC has demonstrated representativeness. EFAC has seen communications amongst some APCO coordinators that believe that EFAC is representative of Business/Industrial users and will favor such users in coordination activities; while one Business/Industrial user seems to believe that EFAC is only representative of Public Safety users and will favor such users in frequency recommendations.⁵ While EFAC appreciates that each commenter believes EFAC to be representative of one or the other user group, the reality is that in the long history of EFAC’s members, such bias doesn’t exist.

² See, for example, the Comments of IMSA/IAFC/FCCA at 4; Comments of Association of Public-Safety Communications-Officials-International, Inc. (“APCO”) at 5.

³ *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, 51 FR 14993 (1986) at para. 11 (“*Frequency Coordination Order*”). Emphasis added.

⁴ In its Comments, APCO claims that the Commission rejected Comp Comm’s request to be a FAC because it was not representative of the users of the service. APCO Comments at 3. However, the Commission never reached that issue, because Comp Comm never claimed to be representative of 800 MHz users. *Frequency Coordination Order* at para. 98.

⁵ See, Comments of Mobile Relay Associates at 4.

Contrary to the litany of potential harms that these and other opponents see in recognizing EFAC as a frequency advisory committee, the Commission should instead review the “self-congratulatory litany of activities”⁶ in which EFAC members have performed for the benefit of the industry (not individual applicants) to see EFAC’s commitment to the industry, and which addresses MRA’s claim that EFAC only has public safety experience.

While this list is not exhaustive, EFAC members proposed and/or significantly participated in the creation or modification of the following FCC Rules: (a) High Density Cellular System definition (Section 90.7); Decentralized trunked system definition (Section 90.7); additional Airport Terminal Use frequency availability (Section 90.35(c)(61); Spectral Overlap rules (Section 90.187(d)(1); Derating factors (90.187(d)(ii)(B); Equivalent Efficiency in narrowbanding (90.203(j)(3)); UHF Low Power Channel Pools (90.267); Exclusive 929-930 MHz Paging Frequencies (90.493); 800 MHz Short-Spacing Rules (90.621(b)(4); and the definition of 800 MHz interference (90.672). In addition, EFAC members proposed that unused Part 22 frequencies be reassigned for Public Safety use,⁷ conceived and submitted the Petition for Rule Making that allowed the trunking of the former 800 MHz General Category Pool, and spent hundreds of thousands of dollars of uncompensated time on behalf of the industry demonstrating the interference being caused by carriers to public safety systems and creating the 800 MHz rebanding program.⁸

Over the past thirty years, EFAC members have provided free education on spectrum management issues, speaking appearances at local APCO meetings to a recent rail transit industry meeting where below-signed counsel was asked to provide information on criteria for

⁶ Comments of IMSA/FCCA/IAFC at 6.

⁷ RM-11311, submitted June 15, 2004.

⁸ Thus, IMSA/IAFC/FCCA’s claim that EFAC “may actually harm non-clients in the user community in order to protect its clients” is particularly offensive. IMSA/IAFC/FCCA Comments at 8.

sharing spectrum. In fact, it can be said that no single entity provided more free industry information on the Commission's multi-year VHF/UHF narrowbanding effort than below-signed counsel.⁹ These efforts have been for the land mobile radio industry. Unfortunately, some of the organizations that have directly benefitted from our efforts, providing education services to their members, now believe that EFAC is insufficiently qualified to provide services based upon these same rules.¹⁰

While EFAC members have performed services for many individual clients over the decades, these are but a few of the examples of work performed on behalf of the industry that has benefitted the land mobile radio industry, both public safety and business/industrial. Clearly, EFAC's experience is more than the "experience in system design" which IMSA/FCCA/IAFC claims.¹¹

Further, EFAC's experience in the Part 90 frequency coordination process goes well beyond the proceedings listed above. Rather, EFAC members have been involved not only in direct frequency selection, but also dozens of coordination disputes over the years on behalf of both public safety and business/industrial licensees. In some cases, these efforts have been to correct errors by FACs, such as failure to serve Petitions,¹² or to work with the Commission where errors were made by the Commission.¹³ Indeed, it is astonishing that APCO would suggest that EFAC members' work on behalf of public safety licensees begins and ends with 800

⁹ The Firm even entered into an agreement with the Transportation Research Board to provide free narrowbanding seminars to transit agencies across the country over the course of one year. The Firm was not compensated for these seminars (other than repayment of travel expenses).

¹⁰ EFAC appreciates that some individual commenters are perhaps unfamiliar with EFAC members' work that directly benefitted that commenter over the years.

¹¹ Comments of IMSA/FCCA/IAFC at 6.

¹² See, for example, *Township of West Orange, New Jersey*, DA 14-428, released March 31, 2014; *Township of West Orange, New Jersey*, DA 13-687, released April 11, 2013.

¹³ As part of the 800 MHz rebanding proceeding, the Commission discovered that it had inadvertently granted more effective radiated power for certain licensees in the Canadian Border Region.

MHz rebanding.¹⁴ For example, APCO should well recall the efforts by Shulman Rogers in the early 2000s (well before rebanding) on behalf of Washoe County, Nevada, regarding a dispute over the RPC system. Further, Shulman Rogers never suggested that its representation of public safety entities is a static group of users. Just as users join and leave APCO's membership, some Shulman Rogers clients are short-term, and others long-term.

In any event, the different "levels" of representation that APCO, etc. seeks to create in this proceeding has no usual purpose in today's land mobile radio environment. As discussed in EFAC's original Request, these coordination services are moving from shared usage, where consideration of different types of users was paramount, to an exclusive frequency model, where science rules. Even as far back at 2002, APCO recognized this transition in its effort to expand its own coordination activities.

In the NPRM, the Commission notes certain differences between the public safety bands below 512 MHz and those in the 700 MHz and 800 MHz bands, and inquires whether those differences justify retaining exclusive frequency coordination on the lower frequencies. APCO believes that the distinctions noted by the Commission are either insignificant, or irrelevant. First, as the Commission notes, 800 MHz channels are assigned on an exclusive basis to licensees, while channels below 470 MHz are, at least in theory, assigned on a shared basis. The reality, however, is that all Public Safety Pool channels, including those below 470 MHz, are coordinated to provide geographic exclusivity to the maximum extent possible.... Thus, all Public Safety Pool channels, both above and below 800 MHz, are subject to similar exclusivity requirements, and any theoretical distinctions do not provide a basis for restricting the number of coordinators in the lower frequencies.¹⁵

II. EFAC'S REQUEST IS CONSISTENT WITH THE OUTSOURCING OF COORDINATION

It has long been the Commission's position that a frequency advisory committee can outsource coordination activities to a third party contractor.¹⁶ However, it is likely that the

¹⁴ Although our efforts on behalf of such licensees and the public safety radio industry in general ought to more than demonstrate our qualifications.

¹⁵ APCO Comments in WT Docket No. 02-285, submitted on December 5, 2002 at 8-9 (footnote omitted).

¹⁶ See, for example, the November 17, 1987 letter from IMSA/IAFC to Richard J. Shiben, Chief, Land Mobile & Microwave Division, a copy of which is attached as Exhibit 1 hereto.

extent of such outsourcing was not envisioned by the Commission when it initiated its coordination rules, or when the Commission conducted its review of coordinators in the late 1980s. Since the original set of frequency advisory committees were authorized, some FACs have decertified (for example, the American Trucking Association) while a number have outsourced their activities to a select few third parties.¹⁷ These same entities have contracted out to other third parties for actual coordination work. For example, ACD Telecom, LLC (“ACD”) has represented to the Commission that it has been a third party contractor for both AASHTO and IMSA.¹⁸ The extent of this outsourcing is underlined by ACD’s Reply Comments, wherein ACD stated that the coordination work that it had performed for IMSA resulted in coordination charges to clients of well over \$2.5 million.¹⁹

While FACs may outsource to third party for-profit entities, the FAC is supposed to provide oversight of such activities. Yet it is abundantly clear that such oversight is by far not universal, and is in fact uncommon.²⁰

Another frequency band used by public safety and business/industrial users are those frequencies set aside for microwave use. These frequencies are coordinated by for-profit entities, yet no trade association has ever suggested that the microwave coordination system fails because those coordinating entities are consulting engineers, with no trade association oversight. Here, EFAC has gone beyond the engineering capability demonstration, and shown how its members have worked on behalf of the industry at large for decades.

¹⁷ For example, a single for-profit entity performs coordination services for the American Association of State Highway and Transportation Officials (“AASHTO”), the Manufacturers Frequency Advisory Committee (“MRFAC”) and the American Automobile Association (“AAA”). Another entity performs coordination services for IMSA, IAFC and FCCA. <http://www.imsasafety.org/fccchanges.html>.

¹⁸ See, Request of ACD Telecom, submitted on July 25, 2014.

¹⁹ Reply Comments of ACD Telecom, LLC in PS Docket No. 14-148 at 3.

²⁰ This is not a new phenomenon, but rather has existed for many years in both public safety and business/industrial services. The Commission may wish to conduct an audit, similar to its 1987 inquiry, to confirm what processes are presently in place, and determine whether such processes serve the public interest.

Similar to ACD, EFAC has been offered the opportunity to provide coordination services as a sub-contractor to more than one existing coordinator. In other words, should the Commission decline to certify EFAC, EFAC will be able to provide the exact same services as EFAC proposes to provide in its certification request. The only difference will be: (1) EFAC will not have its name on the application; and (2) an FCC applicant will pay a fee to an existing FAC for the mere usage of that existing FAC's name. However, it is EFAC's intention to take responsibility for its coordination work and save applicants unnecessary fees. This proposal is not meant to replace the existing coordination system, as such FACs may continue to outsource their coordination work to third party engineering consultants. Rather, this proposal supplements and provides alternatives to the existing system, while keeping in place the same safeguards that currently exist.

III. EFAC WILL PROVIDE NON-DISCRIMINATORY SERVICES

IMSA/IAFC/FCCA believes that EFAC will not be able to provide non-discriminatory services because EFAC is a for-profit organization. However, this same situation exists today with numerous other FACs. For example, IMSA/IAFC/FCCA's coordination service is provided by a third party entity that also provides engineering services, and writes waiver requests. In doing so, the coordinator/third party consultant becomes the same advocate for an individual applicant for which IMSA/IAFC/FCCA criticizes EFAC. As noted by ACD, APCO provides similar consulting services,²¹ and AASHTO, MRFAC and AAA's coordinator does the same. Somehow, these consultants can claim to provide non-discriminatory services, and there is no reason why EFAC cannot do the same.²²

²¹ ACD Reply Comments at 7.

²² With regard to the questions raised by IMSA/IAFC/FCCA in footnote 32 of its Comments, the efforts of Shulman Rogers with regard to EFAC are no different than Mr. Tilles' 30 year representation of PCIA (and at other times, AASHTO and EWA's predecessor organization). Shulman Rogers serves as counsel to the organization, and may

By virtue of being able to offer both coordination and consulting/engineering services, these organizations unfairly compete in the marketplace with EFAC, and therefore harm applicants who chose not to use the FAC's services. A level playing field in the application process was a core goal of Congress in permitting the use of frequency advisory committees.

...Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Conferees note that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.²³

Unless the Commission precludes FACs and/or their contractors from providing consulting services (beyond mere application completion or frequency selection services), EFAC must be permitted to provide coordination services, having otherwise demonstrated its qualifications. Failure by the Commission to certify EFAC would be tantamount to sanctioning such unfair competition.²⁴

To the extent that an applicant (or a FAC) believes that EFAC's services have been delivered on a discriminatory basis, the Commission's processes are in place to provide redress. For example, early in the frequency coordination program, the Commission reviewed whether the Enterprise Wireless Alliance's predecessor organization, the Special Industrial Radio Service Association, Inc. ("SIRSA"), discriminated in favor of its members in the coordination process

also represent some individual applicants. Shulman Rogers is not applying to be the coordinator, EFAC is. EFAC does not know the procedures of other land mobile radio attorneys, but for its part Shulman Rogers has always informed potential clients about potential conflicts with the interests of represented user groups, and Shulman Rogers has refused representation of applicants where such conflicts have arisen, including commenters in this proceeding. It may be appropriate for the Commission to address how current FACS should handle such conflicts.

²³ *Conference Report No. 97-765*, 97th Cong. 2nd Sess., August 19, 1982, at 53, reprinted at 1982 U.S. Code Cong. & Ad News 2237. See also, *Frequency Coordination Order* at para. 11.

²⁴ It should also be noted that any of the 800 MHz coordinators can coordinate applications for certain 800 MHz frequencies, regardless of the applicant's eligibility. Yet there is no problem with such coordination performed by a FAC that is not in any way representative of the applicant's eligibility pool.

by allegedly providing members with a coordination fee discount.²⁵ More recently, the Commission has reviewed an issue regarding a single outside contractor performing coordination services for multiple FACs, and how applications are handled in the process.²⁶

Similar Commission review, where necessary, can continue to ensure non-discriminatory service. In addition, certification of EFAC as an FAC will serve to increase the number of FAC options, giving increased competition to what has become a less competitive landscape. The increased competition serves to provide an additional backstop against discrimination in the process, as applicants have choices for service where they believe that their interests will best be served, and therefore ensuring that the Commission's coordination workload will not expand.

IV. CONCLUSION

From a “small business,”²⁷ frequency coordination has grown into a huge business that some with vested financial interests are trying to protect. However, as APCO stated to the Commission when it attempted to expand its coordination activities to other services, “[t]he current rules also add unnecessary layers of coordination, slowing the application process and creating additional costs for applicants and coordinators.”²⁸ The only change in the coordination system since that statement was written is that there are fewer entities performing coordination services. Public safety applicants should be able to choose the coordinator they feel will provide the most accurate, comprehensive, reliable, efficient and cost-effective frequency coordination.²⁹

It is the intention of EFAC to bring “... enlightened frequency recommendations [which] help to ensure that the Commission optimizes the use of the available spectrum for the benefit of

²⁵ See, the Letter from Mark E. Crosby, to W. Riley Hollingsworth, Chief, Compliance Branch, Land Mobile and Microwave Division, Private Radio Bureau, dated September 29, 1988, attached hereto as Exhibit 2.

²⁶ See, *Smartcomm License Services, LLC*, DA 14-49, released January 16, 2014.

²⁷ *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 88-548, DA 89-982, released August 15, 1989 at para. 34.

²⁸ APCO Comments in WT Docket No. 02-285, submitted on December 5, 2002 at 3.

²⁹ *Id.* at 2.

all members of the public.”³⁰ In particular, below-signed counsel has a 30 year history of working with the best and brightest industry engineers to solve land mobile radio problems.³¹ It is indeed ironic that the same organizations that have benefitted by EFAC’s innovative industry efforts now find EFAC unqualified to coordinate applications under those same rules (unless EFAC agrees to put the existing FAC’s name on the application, and pay a fee). The Commission should ignore the blatantly self-serving efforts by certain coordinators to protect income, to the detriment of users.

WHEREFORE, the premises considered, it is respectfully requested that the Commission designate the Engineers Frequency Advisory Committee, LLC as a certified Frequency Advisory Committee for Part 90 Public Safety and Business/Industrial Pool frequencies, consistent with the above-referenced comments.³²

Respectfully submitted,

ENGINEERS FREQUENCY ADVISORY
COMMITTEE, LLC

By: Alan S. Tilles, Esquire

Its Attorney

Shulman Rogers Gandal Pordy & Ecker, P.A.
12505 Park Potomac Ave., Sixth Floor
Potomac, Maryland 20854
(301) 230-5200

Date: January 20, 2015

³⁰ *Frequency Coordination in the Private Land Mobile Radio Services*, PR Docket No. 83-737, 51 FR 14993 (1986) at para. 2.

³¹ Such efforts have included working with Trott Consulting Group over twenty years ago to create a Commission acceptable methodology for allowing decentralized trunked radio systems to operate on 800 MHz shared frequencies, working with Trott and Pericle Communications to solve the 800 MHz interference problem, working with Trott and Motorola engineers to “fix” the Commission’s short-spacing rules, and working with Radiosoft and Motorola engineers to develop acceptable VHF/UHF adjacent channel interference measuring methodologies.

³² EFAC again reiterates its commitment to adhere to ALL FAC rules and policies enacted by the Commission for FACs, and to continue to work with the LMCC on coordination procedures (and join LMCC if permitted).

EXHIBIT 1



Fire Radio Service Frequency Coordination

P.O. Box 1513
Providence, RI 02901
Tel. (401) 738-2220



International Municipal Signal Association

International Association of Fire Chiefs

November 17, 1987

Mr. Richard J. Shiblen
Chief, Land Mobile & Microwave Division
Federal Communications Commission
Washington, DC 20554

Dear Mr. Shiblen:

Attached is the information you requested regarding I.M.S.A./I.A.F.C. frequency coordination activities.

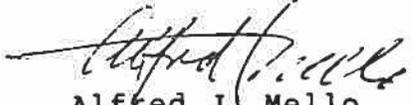
As I indicated in the report, the first three months' activities is an estimate because we neglected to acquire a report from the computer's base prior to SMS's (computer service) deleting of that portion of our data base.

The way our computer system works is that the total coordinations in this report are the total frequencies coordinated - NOT the total 574 Forms. As you know, most applications have more than one frequency on them such as 10-Med Channels and requests for system license.

This office is open daily from 8:30 to 4:30 with the staff working until 5:00 p.m. We have been working half-days on Saturday in order to try to reduce the 20-day turn around time. You will note from this report that we have already met that objective.

I hope the attached meets with your approval. If you have any questions, feel free to call or write.

Sincerely,


Alfred J. Mello

Question A: Detailed cost analysis of frequency coordination fees; see attached letter of Richard A. Leroux, CPA

Question B: Breakdown of fees; see attached letter of Richard A. Leroux, CPA

EDMUND J. CLEGG, JR.

CERTIFIED PUBLIC ACCOUNTANT

680 WARREN AVENUE

EAST PROVIDENCE, R I 02914

438-4880

November 13, 1987

Alfred J. Mello, President
Frecoor, Inc.
303 Jefferson Blvd.
Warwick, RI 02888

Dear Mr. Mello,

As you requested I have compiled data from Frecoor, Inc. to answer parts (a) & (b) of the October 13, 1987 letter from Mr. Richard J. Shiben of the Federal Communications Commission.

Part (a) request a detailed cost analysis of your frequency coordination costs. When we began preparing your books of record in 1986 we were all unaware of any cost accounting recording requirements, and therefore; no system was in place to correctly allocate cost, number of frequencies issued, and time study per application. Due to the lack of time to prepare this report I am using some ball park frequency coordination estimates to achieve some reasonable frequency coordination costs.

The number of frequencies coordinated by quarters is as follows:

January to March	1987	600 Estimated
April to June	1987	1,028
July to September	1987	<u>1,268</u>
<u>Total</u>		<u>2,896</u>

For the nine months ending September 30, 1987 you have incurred \$259,355.00 in operating expenses plus \$82,264.00 of additional costs made up of 1986 deferred salary \$50,000.00, Coordination Damage Reserve of \$22,500.00 and the 1986 net operating loss of \$9,764.00. The deferred salary is a result of not taking a salary in 1986 due to lack of funds.

By dividing normal operating expenses of \$259,355.00 by 2,896 frequency coordinations arrives at a per unit cost of \$89.56. By adding non recurring costs and dividing total this costs of \$341,619.00 by 2,896 frequency coordinations arrives at a per unit cost of \$117.97.

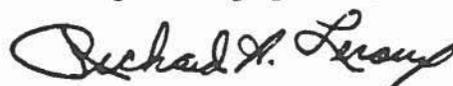
As for part (b) the quarterly breakdown of fees collected is as follows:

January to March	\$117,563
April to June	149,416
July to September	<u>146,489</u>
<u>Total</u>	<u>\$413,489</u>

Approximately \$42,870.00 of the above receipts was not earned due to the time needed from preparing and actually filing applications, and therefore; these funds on hand should not be included in computing an average fee collected. Subtracting these funds reduces the total collections to \$370,619.00. Dividing this new total by 2,896 units processed results in an average fee of \$127.98.

If you have any questions, please call me.

Very truly yours,

A handwritten signature in cursive script that reads "Richard A. Leroux".

Richard A. Leroux, C.P.A.

RAL:lcl

Question C: Determination of frequency coordination fees.

Prior to starting frequency coordinations as per the F.C.C. Rule set forth in the Report and Order adopted April 3, 1986, I.A.F.C./I.M.S.A. determined that its frequency coordination obligations could be best met through the services of a contractor. See the materials set forth below in the response to Question F for additional information. The I.A.F.C./I.M.S.A. contractor is FreCoor, Inc. At the present time, FreCoor provides frequency coordination services only for I.A.F.C./I.M.S.A.

A multiple fee schedule has been established shown in the enclosed brochure. The bulk of applications are for a Simplex System with a single frequency and base with mobiles for which a fee of \$125 is charged.

Our basic assumption, in establishing the initial fee structure was that frequency coordination had to be self-supporting. Initial start up costs had to be paid. Thereafter, there would be indirect overhead charges that would be relatively fixed regardless of volume and direct costs that would vary with volume. We gathered information we had available and information retrieved from the Commission's records concerning past volume, projected the start up costs, direct and indirect operating costs and set our fees.

In its first six months, we had a deficit. Much of this is related to the start up expenses incurred when there was no income. At the end of the first nine months of 1987, we had a small surplus. After we have been operating for a sufficient length of time to establish reliable data concerning volume of business and costs, the fee schedule will be adjusted as necessary to reasonably reflect costs.

Frequency coordination by I.M.S.A./I.A.F.C. is a discrete self-sustaining project. At present, all monies collected via fees are applied to frequency coordination activities. If and when there is a surplus, it will be paid by FreCoor to the associations for use in training costs for the betterment of radio communications in public safety.

SCHEDULE OF ACCOUNTS

RECEIPTS

Payroll

Payroll Taxes

Computer Service

Telephone

Postage

Insurance

Equipment Lease

Travel

Auto

Seminars, Conferences, and Conventions

Rent

Consulting Fees

Interest

Legal and Professional

Entertainment

Other Taxes

Dues and Subscriptions

Depreciation

Amortization of Organization Expense

Cleaning & Maintenance

Office Supplies & Expense

Retirement Plan

Coordination Damage Reserve

State Corporation Tax

Federal Corporation Tax

Assessment Fees-IMSA/IAFC

Question E:

The following information regarding our speed of service is taken from a computer printout which is part of our computer program capability:

	<u>April</u>	<u>May</u>	<u>June</u>
Average length to issue	6.1 days	8.6 days	12.3 days
Number information	0	1	1
Number inter-service	6	6	3
Number w/o action	0	0	0
Number issued	276	345	407
	<u>July</u>	<u>August</u>	<u>September</u>
Average length to issue	10.0 days	21.0 days	21.8 days
Number information	0	2	7
Number inter-service	9	25	43
Number w/o action	0	0	0
Number issued	473	323	472

The first three months (January, February, March) were deleted from the computer prior to our retrieving our month reports. Based on the following six months, we have estimated 600 as the number issued for that period.

Note on Interservice sharing: for the nine month period, the applications we have to send to other users for concurrence are averaging 67.8 calendar days before they are returned to us for processing.

Note on average length of time for processing: for the nine month period, we take an average 13.4 calendar days to issue a coordination.

Our biggest difficulty, as the above information indicates, is the speed of service for those frequencies which are used on a shared basis with other public safety services. This office historically handled all requests for shared frequencies on a daily basis. The longest turnaround time is four working days with 95% being done in one working day.

All new applications are entered onto the computer on a daily basis with no new applications left unattended to at the end of any given work day.

I.M.S.A./I.A.F.C.'s Frequency Coordination Office is being operated as per the rules. It is a national point for all fire and E.M.S. requests. We have three terminals (soon to install a fourth) on line with a dedicated line to Spectrum Management System's main computer. All coordinations are entered and completed at the I.M.S.A./I.A.F.C. Frequency Coordination Office. Local coordinators are used as advisors if a question should arise that may be generic to a given area of the country.

Question F:

Attached is a copy of the I.M.S.A./I.A.F.C. contract with Alfred J. Mello (d/b/a FreCoor).

I.M.S.A./I.A.F.C.'s purpose for entering into a contract was to keep frequency coordination as a separate entity. I.M.S.A. and I.A.F.C are multi-faceted organizations which have interests in many areas of public safety throughout this nation. Both organizations are involved with all types of early warning, suppression and prevention of fire.

I.M.S.A also involves itself in traffic control, fire alarm systems, and fire communication. Both organizations are members of L.M.C.C. and P.S.C.C.

It was felt that frequency coordination would be better served by entering into a contract with Mr. Mello who on a volunteer basis coordinated fire frequencies for seventeen states at one time. Frequency coordination still remains the responsibility of I.M.S.A./I.A.F.C. The contract is a vehicle to assure that this end is met.

Question G:

I.M.S.A./I.A.F.C. does not discriminate between a member and non-member. Frequency coordination is done for anyone who is eligible on a non-discriminatory basis.

OBJECTIVES:

To assure that coordinations are done on a non-discriminatory basis, application information is entered into the computer daily upon receipt. A log number is given each application form 574 upon entry. The applications are processed in chronological order by the log numbers.

This office is reviewing the Form 574 for completeness. We are making the necessary changes on Questions 1-25 rather than returning the application to the applicant. Since the employees have received additional training, we are attempting to correct the Form 574 application beyond Questions 1-25. We do contact the applicant via telephone while making these changes. This office also sends the applicant a copy of the corrected Form 574 as it is sent to the Commission.

In regard to post licensing conflicts, we are in constant daily contact with users and vendors. We try to assist them with their applications. We also advise as to what is available in the area that is in question. Being on line with the data base (via dedicated telephone line) we are able to query the data base at any time. In some cases if we are requested by a consultant or engineer, we will go into the data base and try to give the applicant a band or frequency that will be workable. The S.M.S. data base allows us to select a frequency that will be workable for the given area based on distance, loading, and co-channel usage. We have a contract with S.M.S. (see attached).

This office also has a fax machine to facilitate and expedite the transfer of information in terms of interservice sharing and shared use of a particular frequency. It is our hope and desire that all coordination groups acquire this expeditious method of exchanging copies of Form 574 for review.

MELLO/CLILEG

AGREEMENT

This Agreement is made 30, JUNE, 1986, by and between FRECOOR, INC. (FreCoor) and the INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION, INC. (IMSA).

WHEREAS, IAFC/IMSA has been designated by the Federal Communications Commission (FCC) as the frequency coordinator for the Fire Radio Service and, along with another party, the Special Emergency Radio Service;

WHEREAS, the IAFC has delegated authority to IMSA to enter into this contract and has by separate agreement concurred with the terms of this Agreement;

WHEREAS, the FCC requires IAFC/IMSA to establish a single nationwide point of contact with the Commission through which the frequency coordination process can be administered for The Fire Radio Service;

WHEREAS, FreCoor has the expertise and capability necessary for IAFC/IMSA to discharge its responsibilities as frequency coordinator;

IT IS HEREBY AGREED AS FOLLOWS:

- I. Single Nationwide Point of Contact: FreCoor shall take all actions necessary to establish and maintain the single nationwide point of contact for IAFC/IMSA as the FCC designated frequency coordinator for the Fire Radio Service. & SPECIAL EMERGENCY. *(RAH) [Signature]*
- II. Services To Be Furnished By FreCoor:
 - A. Applications: Review and process all frequency license applications submitable through IAFC/IMSA.

1. Application review shall consist of an examination of the technical data in items 1-25 of Form 574 to assure that the information is accurate and complete.
2. FreCoor shall be responsible to forward completed applications to the FCC and to return incomplete or inaccurate applications to the applicant for completion or modification.
3. FreCoor is authorized to exercise IAFC/IMSA's discretion to make such comments on the applications as it deems appropriate.
4. FreCoor will generally process all applications in the order received, but shall have the discretionary authority to process an application out of sequence when the circumstances warrant.
5. FreCoor will use its best efforts to process each application within twenty (20) working days by either forwarding the application to the FCC for action or returning the application to the applicant for modification or completion.
6. Reapplications shall be submitted through and processed by FreCoor.

B. Frequency Selection

1. FreCoor will have the power and duty to exercise IAFC/IMSA's authority to make recommendations to the FCC on the assignment of frequencies to the applicants.

2. FreCoor will take all action necessary to make an informed recommendation to the FCC on honoring or rejecting an applicant's request to be assigned a specific frequency.
 3. FreCoor will represent IAFC/IMSA in all interservice sharing requests.
- C. Post Application Services: FreCoor shall use its best efforts to resolve all post licensing problems regarding frequency assignments.
- D. Nondiscrimination: In meeting its obligations under this contract, FreCoor shall provide coordination services to all end users in a nondiscriminatory basis.
- E. Data Base
1. FreCoor is authorized to contract with Spectrum Management Systems, Inc. (Spectrum) to furnish and maintain a computerized National Data Base of Fire Radio Service and Special Emergency Radio Service licensees.
 2. A copy of the proposed contract with Spectrum is attached.
- F. Liability for Negligence: FreCoor shall not be liable to IMSA or any third party for direct or consequential damages except as a result of FreCoor's own negligence.
- G. Promoting the Use of New Technologies
1. IAFC/IMSA has an FCC imposed obligation to aid

implementation of new technologies in the private land mobile radio services.

2. FreCoor shall make its best efforts to assist IAFC/IMSA in meeting this obligation by
 - a. Acquiring and maintaining current information on available technologies.
 - b. Disbursing information to end users, local coordinators and others through personal contact, mailings and telephone conferences.
 - c. Conducting and/or supporting educational seminars and conventions.

III. Fee Schedule

- A. Setting Fee: FreCoor shall establish an application fee schedule which reasonably reflects all reimbursable costs, as set forth in paragraph IV, incurred by FreCoor in meeting its contractual obligations to IMSA and any additional costs directly or indirectly incurred by IMSA as Frequency Coordinator.
- B. Collections and Disbursements: FreCoor shall be responsible for the collection and disbursement of all application fees.
- C. Balance of Fees: FreCoor shall recoup its reimbursable costs as set forth in Paragraph IV, and pay over the balance of any collected fees to IAFC/IMSA or their designees as follows:

1. IMSA - 75% of any balance;

2. IAFC - 25% of any balance.

D. Fee Adjustments: The initial fee schedule shall be established on FreCoor's estimates of all costs and shall be adjusted as necessary based on FreCoor's actual experience.

IV. Reimbursable Costs: FreCoor shall be entitled to reimbursement for all reasonable expenses of operation. FreCoor shall recoup its costs directly from the fees it establishes and collects. The reimbursable fees include but are not limited to:

Salaries and benefits

Start up costs

Computer Terminals

Communication equipment

Office furniture and equipment

Data load up

Annual computer costs

Rent

Supplies

Insurance and self-insurance liability escrow

Utilities and telephone

Legal and accounting fees

Travel and automobile expenses

Dues and publications

Printing

Coordinator expenses

Seminars, conferences and conventions

Miscellaneous expenses

Assessments - Land Mobile Communication Council

- Public Safety Communication Council

V. Term of Contract:

- A. This Contract shall remain in full force and effect for a term of five years from the date of signing.
- B. The contract shall be extended for an additional five year term unless a party to this contract wishing to terminate the contract provides written notice of the intent to terminate. The notice to terminate must be delivered one hundred eighty (180) days before the end of the contract term.
- C. The parties may by mutual agreement modify the provisions of this contract. All such modifications shall be in writing.

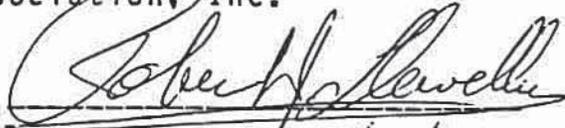
VI. Miscellaneous Matters.

- A. FreCoor shall be entitled to perform its contractual obligations as an official representative of IAFC/IMSA and shall be entitled to use the stationery and logo of these organizations.
- B. FreCoor shall furnish IAFC/IMSA with an annual activity report.
- C. IAFC/IMSA retains ultimate responsibility as the FCC designated frequency coordinator. It is understood that FreCoor has been delegated broad

powers and has assumed significant responsibilities under this contract. IAFC/IMSA will conduct all of its FCC frequency coordination activity through FreCoor. IAFC/IMSA will not in any way interfere with FreCoor's activities unless IAFC/IMSA first determines that FreCoor's activity contravenes IAFC/IMSA's obligations and officially notifies FreCoor of this determination.

International Municipal Signal
Association, Inc.

By


6/30/86

FreCoor, Inc.

By



INTERNATIONAL ASSN. OF FIRE CHIEFS/INTERNATIONAL MUNICIPAL SIGNAL ASSN.

MEMORANDUM OF UNDERSTANDING ON FREQUENCY COORDINATION

This is an initial memorandum of understanding between these two organizations to clarify roles and responsibilities concerning fire and special emergency radio frequency coordination and to agree that IMSA will continue to coordinate fire and special emergency frequencies.

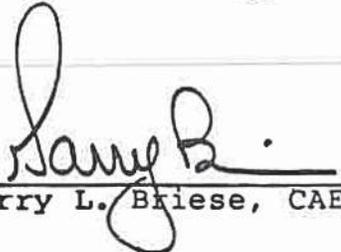
IMSA will be responsible for day-to-day operations and IMSA will keep IAFC informed on all matters before the commission relating to the joint responsibility on frequency coordination and will also supply news bulletins for IAFC publication. IAFC reserves the right to secure any news and information concerning the F.C.C. and communications in general that it deems necessary to inform its members.

I.M.S.A. will enter into a contract with a data base company to establish a national data base, and will also enter into a contract with a management corporation to supply the necessary staff and cost to maintain a central point as per the requirements set forth by the F.C.C. report and order number 83-737 released on April 15, 1986. IAFC will not take any action in-  consistent with these agreements.

IMSA and IAFC will establish a joint committee to maintain the policy and procedures for frequency coordination. The joint IAFC/I.M.S.A. committee will have the right of review and approval on all major commitments, decisions, policies and procedures with regard to the frequency coordination function. IAFC will not take any action inconsistent with these agreements.

IMSA will collect all fees and assume all costs of frequency coordination. If there are net proceeds available at the end of an operating year, 25% will be disbursed to IAFC.

This agreement shall be subject to modification as agreed by the parties.


Garry L. Briese, CAE, IAFC

Date: June 25, 1986


Robert Llewellyn, I.M.S.A.

Date: 6/27/86

**FREQUENCY COORDINATION AND DATA BASE MANAGEMENT SERVICES
PROVIDED BY SPECTRUM MANAGEMENT SYSTEMS, INC.**

IMSA/IAFC have contracted with Spectrum Management Systems, Inc. (SMS) to provide the following services in support of the Fire and Special Emergency Radio Service coordination effort:

- (1) Providing and maintaining the electronic data processing capability, including hardware and software, necessary for IMSA/IAFC to discharge its frequency coordination responsibilities. Items include:
 - o Data base storage
 - o Telecommunications interface
 - o Hardware and software maintenance

- (2) Providing data base management services which include among other items:
 - o Verifying the accuracy of FCC licensing output (new, modified and renewal grants).
 - o Fire and Special Emergency Radio Service data base record updating.
 - o Ongoing data base management programs including, license purge, license expiration and license renewal programs.
 - o Research capabilities from Gettysburg, Pennsylvania.

EXHIBIT 2

September 29, 1988

Mr. W. Elley Hollingsworth
Chief, Compliance Branch
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
3025 N Street, N.W.
Washington, DC 20884

RE: 7320-01

Dear Mr. Hollingsworth:

In reply to your letter of September 19, 1988, which I received on September 26, 1988, the following is in response to your further inquiry regarding SIRSA's frequency coordination policies and procedures.

1. SIRSA stated that its existing members (those who have paid the Association's one year annual dues within the previous twelve months), receive a 100 discount for their first coordination each year. This discriminatory fee structure appears to violate the requirement for non-discriminatory fees set forth in Paragraph 18 of the Report and Order.

Please describe in detail how you reached the determination that this fee structure complies with the requirements for non-discriminatory fees, set forth in Paragraph 18 of the Report and Order.

As you have already labeled our fee structure "discriminatory", it would appear that any explanations we provide are meaningless. Regardless, it is our view that the critical language of Paragraph 18 of the Report and Order in PR Docket No. 88-787 states, "Such (member) relationships must not affect the manner in which coordinators perform their services; also the treatment of all applicants must be similar and without discrimination, including charges for services rendered."

SIRSA does not discriminate against those who are non-members during its performance of frequency coordination and related services (i.e., selection of frequencies, handling post-licensing conflicts, data base management, etc.).

Further, it is our view that SIRSA does not discriminate against non-members as all existing licensees seeking to modify communication systems

Special Industrial Radio Service Association, Inc.
1700 N. Moore Street, Suite 910, Rosslyn, Virginia 22209
703/529-3115 • Branch Office • Gettysburg, Pennsylvania

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FEDERAL COMMUNICATIONS COMMISSION

W. R. Hollingsworth
September 29, 1988
Page 2 of 7

must have submitted a minimum of \$90 to the Association in order for SIRSA to initiate its frequency coordination procedures for applications specifying assignments below 800 MHz. The FCC's "discriminatory fee structure" issue is inapplicable for all new Special Industrial Radio Service applicants seeking assignments below 800 MHz and all Industrial/Land Transportation applicants seeking assignments (new or modified) above 800 MHz.

If your requirement is that all applicants pay the same basic fee, in our case \$90, as previously advised, SIRSA credits \$50 towards the \$90 frequency coordination fee from the SIRSA member licensee's membership account to fund the difference. The member is not entitled to this credit if membership dues have not been paid within the previous twelve (12) months or if that member already received one (1) frequency coordination credit within the previous twelve (12) months. By way of information, total credits for calendar year 1987 were \$13,800; and for the 1988 period ending August 31, 1988, \$11,800.

It is important to bring to your attention the fact that SIRSA has never stated that its existing members "receive a \$50 discount" in its published fee schedules nor in our earlier statements to the Commission dated November 19, 1987.

In view of the Commission's continued concern over SIRSA's frequency coordination fee structure, modifications will be proposed during SIRSA's Board of Directors meeting scheduled for October 22, 1988. It is believed that the contemplated changes will alleviate any remaining anxiety that SIRSA's fee structure is in non-compliance with the provisions contained in Paragraph 18 of the Report and Order.

2. **Spectrum Management Systems, Inc., is a frequency coordination data base service owned by SIRSA.**

(a) **SIRSA stated that it incurred an expense of \$97,428 for computer services during the reporting period. Did SIRSA, for the purposes of this calculation, charge itself the same fees as those charged to other customers of Spectrum Management Systems, Inc.? If not, please explain in full.**

(b) **Please provide documentation to verify the amount stated for the computer services expense.**

For the record, Spectrum Management Systems, Inc. (SMS), was organized in 1980 under the laws of the District of Columbia, and is the wholly-owned, for-profit, subsidiary organization of SIRSA. It is not particularly accurate to describe SMS as a "frequency coordination data base management service". Rather, SMS was formed to engage in the sale and distribution of radio frequency utilization and related administrative data base management processing services.

SIRSA did incur expenses of \$97,428 for computer services required to support its frequency coordination responsibilities. SIRSA, however, did not charge itself these fees. On the contrary, SMS charged SIRSA these fees which are based on the identical price schedule with which SMS bases its charges to other frequency advisory committee customers who also access their data bases directly on-line. SMS charges are based on the following components:

- o **Connect Time -**
 - 1 to 400 hours, \$9 per hour
 - 401 to 600 hours, \$8 per hour
 - 601 to 800 hours, \$7 per hour
 - over 800 hours, \$6.50 per hour
- o **CPU Time -** \$.025/second
- o **Disc Storage -**
 - 01 to 10, \$60 per Mb/month
 - 10 to 20, \$50 per Mb/month
 - 21 to 30, \$40 per Mb/month
 - 31 to 60, \$30 per Mb/month
- o **Printer Charges -**
 - 400 LPM, \$.05 per page
 - 45 CPS, \$.15 per page

During the period January 1, 1987, to September 30, 1987, SMS charged SIRSA:

• Contact Time		
	7,829.51 hours	\$ 54,806.57
• CPU Time		
	1,242,019 seconds	31,050.40
• Disc Storage		
	178.85 Mb/month	40,241.25
• Printer Charges		
	32,500 pages	1,125.00
• Other Services		2,880.80
		<hr/>
		\$ 129,904.12
		<hr/>

As SMS does not have the software capabilities to statistically record segments of time that employees devote to individual programs that support SIRSA's frequency coordination effort (only gross terminal connect time is recorded), SIRSA has historically used a 75% frequency coordination use factor to apportion those SMS computer charges related to frequency coordination.

An intense examination of this percentage would reveal that it is quite conservative as it is based upon such factors as the number of staff directly interfacing with the computer supporting frequency coordination functions; the number of actual programs utilized by the staff; the degree to which frequency coordination programs are accessed by the staff; the extent to which certain frequency coordination oriented programs use the resource capabilities provided by the computer system; and the actual number of peripheral components (e.g., terminals and printers) used by frequency coordination personnel. Seventy five percent of \$129,904.12 is \$97,428.08. The other \$32,476.04 is allocated towards association administrative and membership oriented projects.

3. Please provide a certification that SIRSA's speed-of-service performance for the period January 1-August 31, 1988, is in compliance with the requirements of Paragraphs 27 and 28 and at Note 14 of the Report and Order. Provide a description of how SIRSA calculates its speed-of-service performance. If SIRSA cannot certify full compliance, provide an analysis of SIRSA's speed-of-service performance for the period January 1-August 31, 1988. Include a description of how SIRSA calculates its speed-of-service performance and explain why it failed to comply.

It is not clear to us what would constitute a valid "certification" as to SIRSA's speed-of-service performance for the period January 1-August 31, 1988. We have submitted, however, photocopies of computerized reports that we routinely generate which provide us with an "average length to issue" statistic. One report represents work performed for applicants below 800 MHz, the other for frequency coordination work performed for Industrial, Land Transportation, Public Safety and SAR applicants in the bands above 800 MHz for the period in question.

Please note that each report identifies the "sort name" of all applicants, and provides each applicant's log number, unique (FAC) number, the date all applications are received, status dates and status codes. The status codes are as follows: ID - issued (mailed to Gettysburg, Pennsylvania); WO - returned without action; IS - interservice clearance pending; II - waiting for information to process application. Changes to the status codes for each individual application are made by frequency coordination personnel using "application update" programs as each application proceeds from date of receipt through date of issue (submission to Pittsburgh, Pennsylvania via United Parcel Service). These reports reveal an average speed-of-service of 13.8 days for work performed below 800 MHz and 3.8 days for work performed above 800 MHz. The computer is programmed to measure these average speed-of-service statistics on "calendar" days, not working days as prescribed in Paragraph 28 of the Report and Order. It is our view that the "20-90%" working day requirement is simply too liberal, and not graciously accepted by those for whom we provide frequency coordination services.

The specific software which generates these reports is proprietary, and we would prefer not to release actual code to the FCC for its review. Hopefully, the above will be satisfactory as certification that SIRSA's speed-of-service complies with the FCC's frequency advisory committee requirements.

4. Provide a complete description of SIRSA's current fee schedule for each coordination service performed. Explain how fees are calculated if a formula approach is used, and describe the fee for each coordination service requiring the payment of a fee.

SIRSA's present frequency coordination fee schedule, which applies per frequency or frequency pair, is as follows:

- **Special Industrial Radio Service Applications**
 - First fixed station or mobile only system (new or modified) \$ 90
 - Current members, first fixed station or mobile only system \$ 40
 - Each additional fixed station \$ 20
- **800/900 MHz Industrial/Land Transportation Applications**
 - First fixed station or mobile only system (new or modified) \$ 125
 - Each additional fixed station \$ 20
- **Preliminary Frequency Searches \$ 25**

Our preliminary frequency search of \$25 also applies to those applications for which an intensive frequency search is not required, (i.e., itinerant assignments, etc.). In those instances, SIRSA only conducts a review of the FCC Form 574 for completeness and accuracy and applies its certification. Additionally, \$25 is retained by SIRSA for services rendered for applications that have been entered into our "application initiation" programs and are later returned to the applicant at their request.

Our fee structure is not really based on a complicated formula. If an applicant wishes to secure a frequency assignment that entails one fixed station below 800 MHz (fixed or remote controls are not considered fixed stations), the fee is \$90. If the system entails, for example, three fixed stations, the fee is \$90, plus \$40, or \$130. The \$20 additional fixed station fee is charged for multiple stations as each additional station requires a separate analysis both above and below 800 MHz.

W. R. Hollingsworth
September 29, 1968
Page 7 of 7

Our fee structure also applies to "out-of-service" applications submitted in accordance with FCC Rules and Regulations, Section 90.176. As the Private Radio Bureau is aware, negotiations with other frequency advisory committees are virtually concluded whereby a "90.176" applicant would not be subject to multiple (more than two) frequency coordination fees. SIRSA does not charge applicants a frequency coordination fee for either out-of-service applications submitted in accordance with FCC Rules and Regulations, Section 90.261, or for those applications seeking a channel(s) shared on a co-primary basis with Special Industrial Radio Service licenses. Our views on charging fees on these forms of interservice sharing are well known at the Commission.

* * * * *

The foregoing should be fully responsive to the Commission's request for further information regarding SIRSA's performance as a certified frequency advisory committee. If additional information is required, we will be pleased to submit further explanations or documentation. We will appreciate an equally timely response as to our frequency advisory committee performance.

Sincerely,



Mark E. Crosby
President

MEC:glc
Enclosures

cc: SIRSA Board of Directors w/o attachments