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November 24, 1999

VIA HAND-DELIVERY

Magalie Salas, Esq.
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, D.C. 20554

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NOV 24 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: PR Docket 92-235 & WT Docket 99-87
Ex Parte Presentation

Dear Ms. Salas:

This letter supplements an ex parte notification letter filed with the Commission on November 23, 1999 in regards to meetings with members of the Commission's staff to discuss petitions for reconsideration in PR Docket 92-235 and related matters in WT Docket 99-87. In addition to individuals listed in the November 23rd letter, Mr. Larry Fineran of the National Association of Manufacturers, Mr. Paul Schlegel of the Weyerhaeuser Company, Ms. Stacey Kane of the Coors Company, and Mr. Paul Hart, Vice President of the United States Telephone Association, met with various members of the staff listed in the November 23 letter. Furthermore, in addition to the documents attached to the November 23 letter, the documents attached to this letter were also distributed in some of the meetings with the staff.

If there are any questions, please contact me.

Sincerely,



Paul J. Feldman
Counsel for Forest Industries
Telecommunications

cc: Mark Schneider, Esq. (w/encl.)
Peter Tenhula, Esq. (w/encl.)
Adam Krinsky, Esq. (w/encl.)
Ari Fitzgerald, Esq. (w/encl.)
Bryan Tramont, Esq. (w/encl.)
Thomas Sugrue, Esq. (w/encl.)
Kathleen Ham O'Brien, Esq. (w/encl.)
Ms. D'Wana Terry (w/encl.)
Michael J. Wilhelm, Esq. (w/encl.)
Mark Rubin, Esq. (w/encl.)
William Keane, Esq. (w/encl.)
Mr. Mark Crosby (w/encl.)

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AF&PA™



AMERICAN FOREST & PAPER ASSOCIATION
• Forestry and Wood Products

October 14, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
Room 8-B201H
445 Twelfth Street, S.W.
Washington, D. C. 20554

Re: PR Docket No. 92-235
Ex Parte Presentation

Dear Chairman Kennard:

Presently pending before the Commission is a proceeding ("Re-Farming") intended to introduce greater efficiencies and reduce channel congestion in the private land mobile bands. American Forest & Paper Association (AF&PA) wishes to take this opportunity to compliment the Commission on the progress made in this proceeding but, at the same time, register grave concerns regarding the coordination rule adopted in the Second Memorandum Opinion and Order.

AF&PA is the national trade association of the forest and paper industry. We represent approximately 200 member companies and many other affiliated forestry organizations. Our industry is a major user of the private land mobile bands. Private radios in thousands of mobile vehicles represent the mainstay of the communication network for foresters, fire fighters, first aid providers, forestry contractors, loggers, truck drivers, and many others working in the forest products industry. We are concerned that the proposed rule could make it more difficult and costly and time consuming for those working in the forestry sector to communicate and could risk the health and safety of those workers.

The rule in question requires that any forest products company seeking access to the VHF or UHF frequencies historically available to them first secure the consent of the coordinator for the pipeline or utility industries (United Telecom Council ("UTC"), for example, in the case of the utilities). In so doing, the rule handicaps AF&PA members' access to frequencies they have shared on a co-equal basis with pipeline and utility companies for years.

Moreover, the rule penalizes our member companies for using their traditional coordinator, Forest Industries Telecommunications, inasmuch as they would be required to pay more (for a UTC concurrence, for example) and wait longer as compared to using the services of FIT. The rule thus violates the most basic notions of fair competition, as well as one of the express goals of re-farming, namely bringing the benefits of competition to the coordination marketplace.

1

Underscoring the arbitrariness of the rule is the fact that pro-competitive, equally-effective alternatives are readily available. In particular, AF&PA would urge the Commission to adopt protected service contours for each of the industries sharing the subject VHF and UHF channels including, of course, forest product companies.

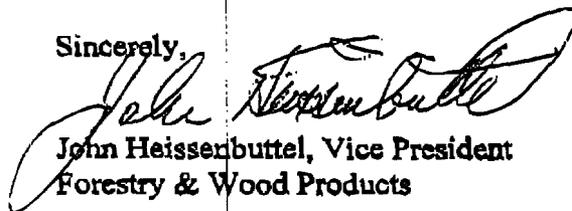
Such a rule would afford every bit of protection which utilities et al could reasonably expect, while at the same time preserving co-equal forest products industry access to the frequencies they have heavily relied upon for decades.

In this regard, it should be stressed that logging work is inherently dangerous -- our workers unfortunately suffer the highest rate of injury of any industry in the United States. Continued reciprocal and co-equal access to the VHF and UHF channels shared with manufacturers, pipelines, and utilities is not an option -- it is an absolute necessity.

Accordingly, AF&PA urges the Commission to either adopt reciprocal protected contours for all incumbent users sharing the subject VHF and UHF channels with forest products companies, or rescind the rule in its entirety. As such, the proposed rule is an anti-competitive measure which is inherently unfair to forest products companies and the other industries, such as manufacturers, which share these channels and undermines the safety of forest products workers.

An original and one copy of this letter is supplied for inclusion in the docket.

Sincerely,



John Heissenbittel, Vice President
Forestry & Wood Products

cc: The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
Thomas Sugrue
Kathleen O'Brien Ham
D'wana Terry
David Furth
Ari Fitzgerald
Peter A. Tenhula
Karen Gulick
Robert A. Calaff
Mark D. Schneider
Herbert Zeiler
Michael Wilhelm



November 10, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
Room 8-B201H
445 Twelfth Street, S.W.
Washington, DC 20554

RECEIVED
NOV 10 1999
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Re: PR Docket No. 92-235
Ex Parte Presentation

Dear Chairman Kennard:

The Alliance of Automobile Manufacturers ("Alliance") wishes to take this opportunity to register its serious concerns regarding the coordination rule adopted in the "Re-farming" proceeding for frequencies shared for decades by automobile manufacturers, pipelines and utilities.

The Alliance is a coalition of 11 car and light truck manufacturers representing more than 90% of U.S. vehicle sales. Alliance member companies have approximately 600,000 employees in the United States, with more than 250 facilities in 35 states.

The rule in question requires that any automobile manufacturer seeking access to the VHF or UHF frequencies available to them for over 40 years first secure the consent of the frequency coordinator for the pipeline or utility industries (United Telecom Council ("UTC"), for example, in the case of the utilities). In so doing, the rule restricts our members' access to frequencies they have shared historically on a co-equal basis with pipeline and utility companies.

Moreover, the rule limits our members' choice of frequency coordinator by channeling their business to UTC or API. The rule thus violates the most basic notions of fair competition, as well as one of the express goals of Re-farming, namely bringing the benefits of competition to the coordination marketplace.

Underscoring the unlawfulness of the rule is the fact that pro-competitive, equally effective alternatives are readily available to protect utility and pipeline communications, as well as that of automobile manufacturers. Specifically, the Alliance would urge the Commission to adopt protected service contours for the handful of industries which have shared the subject VHF and UHF channels including, of course, manufacturers.

Member Companies

BMW DaimlerChrysler Fiat Ford General Motors Isuzu Mazda Nissan Toyota Volkswagen Volvo

The Honorable William Kennard
November 10, 1999
Page 2

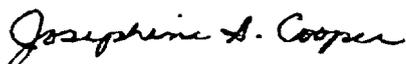
Such a rule would afford every bit of protection which utilities *et al* could reasonably expect against interference, while at the same time preserving co-equal manufacturer access to the frequencies they have heavily relied upon for decades.

In this regard, the Commission must appreciate that the subject channels are vital to our members. They are used for a wide variety of essential productivity and safety requirements: everything from just-in-time delivery to materials handling, from "man-down" systems to emergency medical response teams, from plant security to assembly line automation. With the cost of assembly line down time measured in the tens of thousands of dollars per minute, and our employees' safety dependent on the availability of these channels, it is utterly inappropriate to appoint coordinators that represent two out of the five industries which have shared these channels as gatekeepers over the other three industries' continued access to the channels

Accordingly, the Alliance urges the Commission to either adopt reciprocal protected contours for all incumbent users sharing the subject VHF and UHF channels with manufacturers, as has been urged by MRFAC, Inc., or rescind the rule altogether as an anti-competitive measure which undermines the safety of automobile and other manufacturers which share these channels.

An original and a copy of this letter are supplied for inclusion in the docket.

Sincerely,



Josephine S. Cooper
President

JSC/sf

cc: The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
Thomas Sugrue
Kathleen O'Brien Ham
D'wana Terry
David Furth
Ari Fitzgerald
Peter A. Tenhula
Karen Gulick
Robert A. Calaff
Mark D. Schneider
Herbert Zeiler
Michael Wilhelm



Michael Elias Baroody

Senior Vice President

Policy, Communications and Public Affairs

October 14, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Re: PR Docket No. 92-235
Ex Parte Presentation

Dear Mr. Chairman:

The National Association of Manufacturers ("NAM") has followed the deliberations of the Federal Communications Commission in the so-called "Re-Farming" proceeding with interest and, more recently, serious concern. The 14,000 member companies of the NAM depend, for productivity and safety reasons, on radio frequencies licensed by the commission.

Historically, manufacturing has been and continues to be responsible for between 20 and 23 percent of the U.S. Gross Domestic Product. During the 1990s, manufacturing contributed to 29 percent of economic growth – more than any other sector. Compared to other sectors, manufacturing has also consistently attained the highest U.S. productivity growth rates; indeed, in recent years the productivity growth rate of manufacturing has been double that of the business sector in general. Moreover, manufacturing originates 57 percent of all technological advances in the U.S. economy. In large measure due to this record, the United States' share of world exports has grown by 8 percent during these years.

Radio channels have played an integral role in the development and implementation of just-in-time manufacturing and other process improvements that have been at the heart of these dramatic productivity gains.

As important is the contribution that radio makes to worker safety. U.S. manufacturers have made great strides in improving workplace safety through the use of reliable radio communications. Radio plays a vital role in controlling employee exposure to hazardous manufacturing operations, in warning co-workers if an employee working alone has become incapacitated (*e.g.*, so-called "man-down" transmitters) and in facilitating the work of emergency medical response teams.

Against this background, the NAM views with alarm the commission's rule, currently stayed at the request of MRFAC and FIT, to vest access to frequencies historically and heavily relied on by U.S. manufacturers to the prerogative of coordinators for the pipeline, utility and railroad industries. These industries have shared the same frequencies harmoniously with

Manufacturing Makes America Strong

manufacturers for decades. Manufacturers have the same, if not greater, safety concerns as these other industries. Thus, manufacturers also have the same concern as the other three industries that their channels not be subject to harmful interference from poorly coordinated, new facilities.

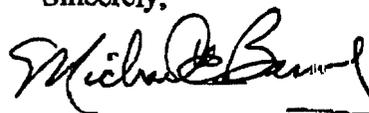
The solution to interference concerns is not to appoint railroad, power and pipeline coordinators as gatekeepers over frequencies that manufacturers have shared with these industries for decades. Such a result invites the creation *de facto* of the very same separate pool that the coordinators for these industries have sought in their pending Petition for Rulemaking – a proposal that the NAM has objected to in its Joint Reply Comments filed with MRFAC, Inc., in WT Docket No. 99-87. Rather, the solution is one readily available to the commission, *i.e.* the adoption of protected contours on a reciprocal basis for incumbent licensees on the subject channels.

Such a result protects the legitimate interference concerns of each of the sharing industries. Such a solution preserves co-equal access to vital spectrum resources. Such a solution provides a measure of assurance that manufacturers will not be subjected to wasteful delay or expense in trying to secure concurrences from one of the three referenced coordinators. Parity, in other words, is what manufacturers seek.

The NAM has reviewed MRFAC's Petition for Partial Reconsideration and related filings on this issue. The NAM supports those filings and urges the commission to adopt a reciprocal coordination rule, or none at all.

An original and one copy of this letter are supplied for the above-referenced proceeding.

Sincerely,



cc: The Honorable Harold W. Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Gloria Tristani
Thomas J. Sugrue
Kathleen O'Brien Ham
D'wana Terry
David Furth
Ari Fitzgerald
Peter Tenhula
Karen Gulick
Robert A. Calaff
Mark D. Schneider
Herbert Zeiler
Michael Wilhelm



October 14, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
Room 8-B201H
445 Twelfth Street, S.W.
Washington, D. C. 20554

Re: PR Docket No. 92-235
Ex Parte Presentation

Dear Chairman Kennard:

Presently pending before the Commission is a proceeding ("Re-Farming") intended to introduce greater efficiencies and reduce channel congestion in the private land mobile bands. American Forest & Paper Association (AF&PA) wishes to take this opportunity to compliment the Commission on the progress made in this proceeding but, at the same time, register grave concerns regarding the coordination rule adopted in the Second Memorandum Opinion and Order.

AF&PA is the national trade association of the forest and paper industry. We represent approximately 200 member companies and many other affiliated forestry organizations. Our industry is a major user of the private land mobile bands. Private radios in thousands of mobile vehicles represent the mainstay of the communication network for foresters, fire fighters, first aid providers, forestry contractors, loggers, truck drivers, and many others working in the forest products industry. We are concerned that the proposed rule could make it more difficult and costly and time consuming for those working in the forestry sector to communicate and could risk the health and safety of those workers.

The rule in question requires that any forest products company seeking access to the VHF or UHF frequencies historically available to them first secure the consent of the coordinator for the pipeline or utility industries (United Telecom Council ("UTC"), for example, in the case of the utilities). In so doing, the rule handicaps AF&PA members' access to frequencies they have shared on a co-equal basis with pipeline and utility companies for years.

Moreover, the rule penalizes our member companies for using their traditional coordinator, Forest Industries Telecommunications, inasmuch as they would be required to pay more (for a UTC concurrence, for example) and wait longer as compared to using the services of FIT. The rule thus violates the most basic notions of fair competition, as well as one of the express goals of re-farming, namely bringing the benefits of competition to the coordination marketplace.

Underscoring the arbitrariness of the rule is the fact that pro-competitive, equally-effective alternatives are readily available. In particular, AF&PA would urge the Commission to adopt protected service contours for each of the industries sharing the subject VHF and UHF channels including, of course, forest product companies.

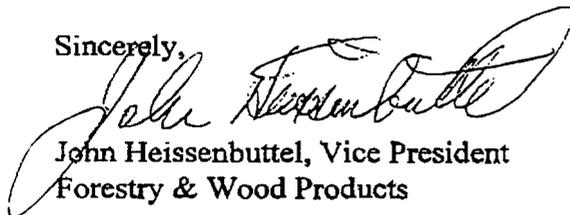
Such a rule would afford every bit of protection which utilities et al could reasonably expect, while at the same time preserving co-equal forest products industry access to the frequencies they have heavily relied upon for decades.

In this regard, it should be stressed that logging work is inherently dangerous -- our workers unfortunately suffer the highest rate of injury of any industry in the United States. Continued reciprocal and co-equal access to the VHF and UHF channels shared with manufacturers, pipelines, and utilities is not an option -- it is an absolute necessity.

Accordingly, AF&PA urges the Commission to either adopt reciprocal protected contours for all incumbent users sharing the subject VHF and UHF channels with forest products companies, or rescind the rule in its entirety. As such, the proposed rule is an anti-competitive measure which is inherently unfair to forest products companies and the other industries, such as manufacturers, which share these channels and undermines the safety of forest products workers.

An original and one copy of this letter is supplied for inclusion in the docket.

Sincerely,



John Heissenbuttel, Vice President
Forestry & Wood Products

cc: The Honorable Harold Furchtgott-Roth
The Honorable Susan Ness
The Honorable Michael Powell
The Honorable Gloria Tristani
Thomas Sugrue
Kathleen O'Brien Ham
D'wana Terry
David Furth
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FROM: KEN KEANE USER ID: WKK2061 CLIENT/MATTER NO: 66882/66391

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Comments

Russ:

Thought you might want to see the attached which should be helpful in connection with USTA.

Ken Keane

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TELFAC

Telephone Maintenance Frequency Advisory Committee
1119 North Glebe Road, Suite 500
Arlington, Virginia 22201
(703) 528-5115 • FAX (703) 524-1074

November 19, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Re: Refarming – PR Docket 92-235

Dear Chairman Kennard:

The Telephone Maintenance Frequency Advisory Committee (TELFAC) is an unincorporated association representing all common carriers engaged in the maintenance of the wireline and wireless infrastructure necessary to the provision of landline telephone service. TELFAC is governed by a council of licensee representatives presently composed of representatives from SBC/Pacific Bell, Bell Atlantic-New Jersey, Inc., The United States Telecom Association (USTA),¹ Home Telephone Company, Ameritech, and Sprint Ltd. While TELFAC is pleased that the Commission has resolved many of the outstanding issues in the "refarming" proceeding, it is nonetheless concerned about the concurrence rules adopted in the *Second Memorandum Opinion and Order*.

In April, when the Commission released its *Second Memorandum Opinion and Order* affirming its radio service consolidation decision and upholding the frequency coordination process, it also determined that all frequencies – *shared and exclusive* – assigned to the former Power Radio Service, Petroleum Radio Service, and Railroad Radio Service must be coordinated by the frequency coordinators responsible for these services.² The Commission also decided to include the former Automobile Emergency Radio Service in the list of frequencies that must receive concurrence from the frequency coordinator responsible for these services prior to consolidation.³

In July, however, MRFAC, Inc. and Forest Industries Telecommunications each filed a Motion for Expedited Partial Stay requesting that the Commission stay the effective date of the rules enacted in the *Second Memorandum Opinion and Order* until the issues raised in their petitions for reconsideration – dealing with the matter of

¹ As evidenced by its signature below, USTA (as a member of TELFAC) strongly supports the recommendations discussed in this letter.

² See 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 Assignment Policies of the Private Land Mobile Services, *Second Memorandum Opinion and Order*, PR Docket No. 92-235, FCC 99-68 (rel. April 13, 1999) (*Second MO&O*).

³ *Second MO&O* at ¶ 16.

concurrence for the shared frequencies – were addressed.⁴ On August 5, 1999, the Commission released the *Fourth Memorandum Opinion and Order* granting the stay.⁵ According to this Order, the stay will be in effect until the Commission resolves the outstanding petitions for reconsideration.⁶

TELFAC appreciates the Commission's decision to stay the *Second MO&O*, which has provided industry with the opportunity to develop a realistic and workable solution to the matter in question. The rules contained in the *Second MO&O* are clear; any telephone maintenance entity seeking access to frequencies available to them, frequencies that they historically shared with utilities, and pipelines (as well as manufacturers and the forest industry), must first secure the consent of the appropriate frequency advisory committee for the shared frequencies in question prior to filing the application with the Commission. There are, however, some outstanding questions. If the frequencies sought by a telephone maintenance industry applicant were shared by both the petroleum and the power industries, would consent from either or both of the appropriate coordinators be necessary? Also, if one of these coordinators approved the application and the other refused concurrence, how would the issue be resolved? We believe this would constitute a denial. In addition, there is the issue of competition among frequency coordinators – something the Commission has actively promoted in order to keep costs down and ensure that applicants are provided the best service possible. The concurrence process for shared frequencies, instead of promoting competition – potentially impedes it. There is little incentive for an incumbent in affected industries to seek out the best prices and the fastest speed of service if they will ultimately be forced to await concurrence from the designated frequency coordinator for that particular service. TELFAC does not believe it would be appropriate for the Commission to sustain the rules in the *Second MO&O* that serve to protect specialized constituencies, while having a detrimental effect on other like constituencies sharing the same frequencies.

The Commission needs to recognize that the fundamental reason behind the push for the “special” treatment on both formerly exclusive and *shared* channels is the “potential” for interference to power, railroad, and petroleum licensees.⁷ TELFAC agrees that there is the “potential” for interference due to unacceptable frequency selection practices. Nevertheless, we believe that creating administrative and financial

⁴ See Motion for Expedited Partial Stay, filed by MRFAC, Inc. on July 7, 1999; Petition for Partial Stay, filed by Forest Industries Telecommunications on July 9, 1999.

⁵ See 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 Assignment Policies of the Private Land Mobile Services, *Fourth Memorandum Opinion and Order*, PR Docket 92-235, FCC 99-203 (rel. August 5, 1999) (*Fourth MO&O*).

⁶ *Fourth MO&O* at ¶ 14.

⁷ While the Commission consolidated all of the separate pools into 2 pools – the public safety pool and the industrial/business pool, it also recognized some of the problems relating to protecting “safety-related” communications. Accordingly, the Commission required that applicants for frequencies that were *exclusively* allocated to certain radio services (the power, petroleum, and railroads) go through the recognized frequency coordinator. TELFAC agrees with this decision as it protects the needs of these industries while allowing the channels to be used by other entities in other parts of the country – resulting in a more efficient use of the spectrum.

burdens for the telephone maintenance industry is not a reasonable means to this end. While the Commission could, if it desired, reconsider the rules in the *Second MO&O*, TELFAC has an alternative suggestion. The frequency advisory committees already have the capability to initiate internal coordination procedures to protect their respective constituencies through engineering means, *i.e.* protective contours. Extraordinary Commission action to protect certain constituencies from “potential” interference is wholly unnecessary. Unfortunately, the rules do not currently provide an enforcement mechanism to ensure that *all* of the frequency advisory committees are adhering to the same coordination procedures. Thus, TELFAC strongly urges the Commission to adopt a uniform standard for the frequency advisory committees for *all* of the incumbents – whether they be power, petroleum, railroad, telephone maintenance, manufacturers, or forest industry – on the shared channels in question. To that end, we propose below to provide the Commission with a workable solution to these issues – one that we believe will respond to the needs of all parties.

TELFAC supports the approach suggested by API and MRFAC that the Commission institute an interference protection threshold for incumbents in all of the industries on the channels in question – the power, petroleum, railroad, the telephone maintenance, manufacturing, and forest industries. We suggest that the Commission prohibit the 21 dBu contour of the proposed station from interfering with the 39 dBu contour of the incumbent system for UHF systems, and the 19 dBu contour of the proposed system from interfering with the 37 dBu contour of the incumbent system for VHF systems on the channels shared by the petroleum, power, railroad, telephone maintenance, manufacturing, and forest industries. If the proposed system’s 21 dBu or 19dBu contours overlap with the incumbent system’s 39 dBu or 37 dBu contour, the application may either be rejected by the frequency coordinator or, in cooperation with the frequency advisory committee, seek concurrence from the incumbent system operator. The frequency advisory committees already exchange coordination data on a daily basis; there would therefore be little chance that any frequency advisory committee would be unaware of the location of both incumbent and proposed systems. Furthermore, this approach would provide each frequency advisory committee (including those representing the petroleum, power, and railroad industries) with the opportunity to initiate a very simple process – a contour analysis program – that would serve to protect the interests of their respective constituents.

TELFAC believes that this proposal, if adopted, would significantly reduce the “potential” for harmful interference. We also believe that this approach avoids placing additional administrative burdens on the frequency advisory committees by necessitating concurrence prior to the filing of an application for those frequencies historically shared by a number of industrial/business services. TELFAC’s proposal entirely obviates the need for prior concurrence on the channels in question. Instead, this approach provides the Commission with a pragmatic solution that will avoid further

controversy by satisfying the protection needs of all of the industries involved on the shared frequencies in question.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael R. Morris", written over a horizontal line. The signature is fluid and cursive.

Michael R. Morris

Chair

Telephone Maintenance Frequency Advisory Committee

A handwritten signature in black ink, appearing to read "Paul K. Hart", written over a horizontal line. The signature is fluid and cursive.

Paul K. Hart

Vice President, Technical Disciplines

United States Telecom Association