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January 15, 2004

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By *ECFS*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**RE: ITA Informal Request for Certification To Coordinate the Power
Radio Service, Railroad Service, and Automobile Emergency Radio
Service Under Part 90 of the Commission's Rules, RM-10687
Notice of *Ex Parte* Presentations**

Dear Ms. Dortch:

On behalf of the American Automobile Association ("AAA"), the Association of American Railroads ("AAR") and the American Petroleum Institute ("API"), this is to notify you of *ex parte* meetings regarding the above-captioned proceeding on January 14, 2004 with certain members of the Commission's staff. Gary Ruark (Manager, Network Communications), Kathleen Marvaso (Managing Director, Government Relations) and I represented AAA; Thomas Keller represented AAR; and Nicole Donath of Keller and Heckman LLP represented API.

We met with the following Commission staff:

- Catherine Seidel, Deputy Chief, Wireless Telecommunications Bureau
- Jeanne Kowalski, Deputy Chief, Public Safety & Critical Infrastructure Division, Wireless Telecommunications Bureau
- Michael Wilhelm, Acting Deputy Division Chief - Legal, Public Safety & Critical Infrastructure Division, Wireless Telecommunications Bureau
- Barry Ohlson, Advisor to Commissioner Adelstein
- Paul Margie, Advisor to Commissioner Copps

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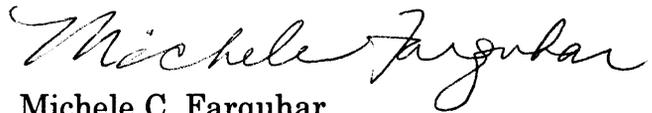
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During the meetings, AAA, AAR and API discussed the issues raised in the attached presentation, which reflects positions discussed in previous individual and joint comments filed by these organizations over the course of the proceeding.

Please contact me with any questions concerning this presentation.

Respectfully submitted,



Michele C. Farquhar
Counsel for the American Automobile
Association

Attachment

Electronic copies to:

Catherine Seidel
Jeanne Kowalski
Michael Wilhelm
Barry Ohlson
Paul Margie
Gary Ruark, AAA
Kathleen Marvaso, AAA
Thomas Keller, AAR
Nicole Donath, Keller and Heckman LLP
Jill Lyon, UTC
Jeremy Denton and Robin Landis, ITA

Opposition to the ITA Informal Request

(RM-10687)

American Automobile Association
American Petroleum Institute
Association of American Railroads
United Telecom Council

January 2004

Overview

- Our longstanding roles serving the public interest as frequency coordinators
- The Informal Request fails to justify overturning established rules and policy
- The Informal Request ignores the recognized quasi-public safety nature of the services performed by AAA, AAR, and UTC
- The Informal Request is inconsistent with the recently released *ARS Order*
- ITA appears to be motivated solely by profit rather than the public interest
- ITA does not possess the unique knowledge of automobile emergency, railroad and utility operations necessary to avoid catastrophic interference
- The AERS, RR and IW coordinators best protect users and maintain the highest quality of service
- Proper coordination of these channels is even more important in light of changed circumstances
- Homeland security efforts rely on proper and efficient coordination of these critical channels
- Users overwhelmingly support the high quality service and protection offered by AAA, AAR and UTC

AAA's Longstanding Role Serving the Public Interest as a Frequency Coordinator

- American Automobile Association (“AAA”)
 - 102 year-old, non-profit, federation of 77 auto clubs with more than 46 million members in the U.S. and Canada
 - Primary mission is to promote highway driver safety, including provision of emergency road services
 - Responds to over 80,000 road service calls per day – almost one third of which involve immediate threat to life or property
 - Exclusive frequency coordinator for the former Automobile Emergency Response Service (“AERS”) channels
 - Consistent with its non-profit status, AAA's Frequency Coordination Department is not driven by revenue – in fact, AAA does not actively market its frequency coordination services and this department operates at a modest loss annually

API's Longstanding Role Serving the Public Interest as a Frequency Coordinator

- American Petroleum Institute (“API”)
 - National trade association representing about 400 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas
 - API's Petroleum Frequency Coordinating Committee is (and should remain) exclusive coordinator for the former petroleum channels
 - Although the Informal Request does not seek to change the procedures for coordinating the petroleum channels, API opposes the Informal Request because API believes that its grant would undo and/or undermine the well-founded coordination concurrence procedures adopted by the Commission to preserve the integrity of critical infrastructure industry radio systems

AAR's Longstanding Role Serving the Public Interest as a Frequency Coordinator

- Association of American Railroads (“AAR”)
 - Non-profit membership organization of freight and passenger railroads (AAR’s freight members generate approximately 97% of the total operating revenues of all freight railroads in the U.S.)
 - Exclusive frequency coordinator for the former Railroad Radio Service (“RRS”) channels and overseer of interoperability standards (including standards for locomotives, freight cars, car components, signaling equipment, and communications and electronics equipment)

UTC's Longstanding Role Serving the Public Interest as a Frequency Coordinator

- United Telecom Council (“UTC”)
 - National representative on communications matters for the nation’s critical infrastructure entities -- electric, gas, and water utilities and natural gas pipelines
 - Approximately 1000 members – ranging in size from large combination electric-gas-water utilities that serve millions of customers, to smaller, rural electric cooperatives and water districts that serve only a few thousand customers each
 - Expansive nature of critical infrastructure systems require ongoing maintenance, remote control and monitoring, and repair
 - Exclusive coordinator for the former power radio service (“IW”) channels

The Informal Request Fails to Justify Overturning Established Rules and Policy

- ITA’s generic coordination experience does not reflect the needs of AERS, RRS, or IW channel users
- Rather than improve upon the frequency coordination process, grant of the Informal Request would add needless confusion and complexity, and could greatly reduce the quality of service to and level of protection for these channel users
 - Even under the current rules, there have been a number of instances when a licensee fails to obtain a concurrence, thereby necessitating the time consuming and administratively burdensome process of seeking to dismiss a license application (or setting aside a license grant) in order to prevent harmful interference on these channels
- If granted, the Informal Request would completely reverse the present rules, which were adopted by the full Commission after years of opportunity for public comment, a thorough airing of the issues, and careful, deliberate consideration
- For this reason, any changes sought by the Informal Request must be considered by the full Commission, and only after a formal rulemaking proceeding

The Informal Request Ignores the Recognized Quasi-Public Safety Nature of the Services Performed by AAA, AAR, and UTC

- Congress and the Commission have both recognized the important public safety role played by the power, railroad, petroleum, and emergency automobile services
- The Informal Request ignores the recognized quasi-public safety roles played by AAA, AAR, and UTC – the Commission has recognized that “using coordinators who are knowledgeable with such special communications needs is the best way to protect those operations, which involve safety-related communications, and outweighs any potential benefits that may be gained through a competitive frequency coordination process.”
- In fact, neither the *NPRM* nor the *First Report & Order* in the Refarming proceeding sought to create competition among frequency coordinators in general – rather, “competitive” frequency coordination was only a side result of the Commission’s main focus on increasing channel capacity, making channel use more consistent among the then-19 different user groups, and creating a means to flexibly assign frequencies in the PLMR bands

The Informal Request is Inconsistent with the Recently Released *ARS Order*

- In the *ARS Order*, FCC 03-238, the Commission upheld Section 87.261(c) of its rules, known as the “one-licensee-per-location” rule, thereby permitting ARINC to continue to serve as the sole licensee of all domestic network aeronautical enroute stations in the continental United States
- In considering the possibility of allowing more than one aeronautical enroute licensee at a given location, the Commission found it “significant that the current rule has worked exceedingly well over the years, fostering safety, efficiency, competition, innovation and growth”
- Despite the different frequency bands and applicable rules, the Commission’s findings are also relevant to AAR, UTC, and AAA’s respective roles as exclusive frequency coordinators for the railroad, utility, and AERS channels:
 - Just as ARINC fosters safety through its use and management of the aeronautical enroute frequencies, there is no doubt that AAR, UTC, and AAA also foster safety through their management of the railroad, power, and auto emergency channels
 - While ARINC efficiently coordinates and uses the domestic network aeronautical enroute frequencies given the spectrum scarcity in the aeronautical enroute service (and in the ARS more broadly), AAR, UTC, and AAA also seek to maximize efficiency as they coordinate the congested railroad, power, and auto emergency frequencies
 - Just as ARINC equitably facilitates the entry of competing enroute communications service providers, and has not rejected requests for access to the spectrum on grounds of unavailability, AAR, UTC and AAA consistently cooperate with ITA and other frequency coordinators with respect to inter-service sharing requests and ultimately accommodate their clients in the vast majority of cases

ITA Appears to be Motivated Solely by Profit Rather Than the Public Interest

- It is important to keep in mind that *all* PLMR I/B eligibles may be licensed on the former AERS, RRS and IW frequencies – eligibility is not limited
- Moreover, the Commission's rules *do* allow other I/B coordinators to coordinate these frequencies, provided that those coordinators obtain concurrence (which is provided on a regular basis without incident)
- This option permits competitive coordination without jeopardizing the critical communications systems that represent the predominant use of these frequencies, while simultaneously insulating private radio users against the possibility of causing or receiving harmful interference
- ITA and its coordination business has not been harmed, or even hampered, by the limited authority held by AAA, AAR and UTC (nor have the coordination businesses of PCIA, FIT or MRFAC, who have made filings supporting ITA and requesting similar consideration)
- In fact, the number of channels that require prior written concurrence from UTC, AAR, AAA, or API frequency coordinators is relatively small, especially when compared to the Industrial/Business Pool's more than 800 VHF channels and several hundred UHF channel pairs located in these 10 frequency bands

ITA Does Not Possess the Unique Knowledge of Auto Emergency, Railroad and Utility Operations Necessary to Avoid Catastrophic Interference

- ITA’s self-described “nationwide coordination capability” is only one of many tools required to effectively coordinate quasi-public safety channels
- ITA’s request reveals *no* understanding of the idiosyncrasies of these channels, but naively dismisses all PLMR systems as basically identical
- AAA, AAR, and UTC do not merely “support day-to-day business” but are an integral part of their respective members’ operations – any failure in their members’ ability to communicate by radio could have severe consequences on the public welfare
- AAA’s, AAR’s and UTC’s frequency coordinators: (1) are knowledgeable and well-versed in the intricacies of respective industry operations, and (2) monitor and control the frequency coordination function for their respective industries

The AERS, RR and IW Coordinators Best Protect Users and Maintain the Highest Quality of Service

- Successful frequency coordination for the railroad industry's national mobile radio network assures that channel usage will be compatible across the network, so that trains operated by various railroads can communicate with dispatchers, maintenance crews and other personnel at all locations throughout the U.S.
- The communications systems of electric, gas and water utilities are used for voice and data applications that provide emergency power restoration, support traditional public safety operations and control the vital systems that provide basic services across the country
- By treating the standard computerized frequency search as a mere preliminary step, and following it up with at least three specialized (and more costly) engineering analyses, AAA's frequency coordinators limit the safety exposure of operations by maintaining a high degree of sensitivity to the implications and special requirements of the various automobile emergency response units

Proper Coordination Of These Channels Is Even More Important In Light Of Changed Circumstances

- In addition to providing superior coordination services, the exclusive frequency coordinators are best equipped to tackle the unique issues facing their respective industries in the new century
 - The nation's roadways have become significantly more congested, resulting in forgone productivity, wasted fuel, and a reduced quality of life, let alone loss of life itself
 - In fact, the World Health Organization recently determined that, on a global basis, traffic is deadlier than wars – road deaths have claimed 1.26 million lives, whereas wars and conflicts claimed 310,000 lives

Proper Coordination Of These Channels Is Even More Important In Light Of Changed Circumstances (continued)

- The railroad industry’s upcoming migration to narrowband technology will require careful frequency coordination due to potential interaction of adjacent narrowband and wideband radio systems, and the consequent risk of destructive interference to ongoing operations
 - This massive undertaking involves nothing less than a complete reshuffling of channel assignments throughout the entire railroad mobile radio network in the U.S. and Canada, and will require a high degree of cooperation and consensus among the individual railroads
- Due to the robustness of their networks, utilities and pipelines increasingly operate shared systems on which all emergency responders rely for routine and emergency communications, and the industry seeks wide-area interoperability – UTC must retain its current role as exclusive coordinator of the former power channels to help coordinate this effort

Homeland Security Efforts Rely On Proper And Efficient Coordination Of These Critical Channels

- At a time when the nation's highway, railway, and critical industries could be threatened in a terrorist attack, it is more critical than ever that AERS, RR, and IW channel users have interference-free access to spectrum, as well as designated coordinators with specialized knowledge of their unique and vital communications needs
 - More than two years after the terrorist attacks of September 11th, the nation's infrastructure, which is critical to the national economy, remains subject to terrorist threat, as evidenced by the sudden and unexpected raising of the nation's terror alert level and associated increased security procedures
 - The nation's homeland security effort includes an increased awareness of the viability and reliability of the quasi-public safety services

Homeland Security Efforts Rely On Proper And Efficient Coordination Of These Critical Channels (continued)

- UTC and its members are working with federal, state and local agencies to take action to minimize disruption to the critical infrastructure industries
- AAR has established a 24 hour/7 days a week DOD-certified Operations Center to provide warning, alert and analysis pertaining to threat information, terrorist incidents and crisis situations affecting the nation's railroad structure
- The nation's highways would be the main arteries for evacuation in a threatening situation, and AAA would be in a position to assist in the effort to quickly remove citizens from harm's way

Users Overwhelmingly Support the High Quality Service and Protection Offered by AAA, AAR, and UTC

- 38 separate comments were filed opposing the Informal Request, reflecting a wide range of railroad, utility, and automobile club users and user groups
- Users overwhelmingly state that multiple coordinators for AERS, RRS and IW channels without the necessary background and expertise would introduce needless (and possibly dangerous) complexity into the frequency coordination process, for example:
 - The American Short Line and Regional Railroad Association explains that “AAR possesses ... specialized knowledge, and does a good job coordinating frequencies for railroad use so as to avoid interference.”
 - Among other things, the Railway Association of Canada is concerned that grant of the Informal Request “would unnecessarily complicate and impede the consultative process for near-border and through-service applications.”

Users Overwhelmingly Support the High Quality Service and Protection Offered by AAA, AAR, and UTC (continued)

- Central Electric Power Cooperative recognizes that “UTC knows and understands what we do here at the electric cooperative, ITA does not!”
- Southern Company urges the Commission to “exercise caution” in reviewing the Informal Request, stating that it is “concerned that the introduction of another coordinator not accustomed to the coordination issues prevalent in the Power Radio spectrum could have an unintended, adverse effect on Southern Company’s electric utility operations.”
- The Ohio Motorists Association, which has a 100-year history with AAA, states that AAA “best understands our needs and the road service business. They have a clear understanding of how frequency assignments on the AERS channels can be used efficiently and effectively.”
- The California State Automobile Association, Automobile Club of Southern California, and AAA North Jersey “are concerned by the ‘mass production’ approach employed by large coordinators such as ITA ...” and state that they are “completely satisfied with the high quality of service received from AAA ...”

Conclusion

- The Informal Request ignores the Commission's designation of AAA, AAR and UTC as exclusive frequency coordinators of the former AERS, RRS, and IW channels, and is inconsistent with the recent *ARS Order*
- ITA does not provide sufficient justification to support grant of the Informal Request
- Proper coordination of these channels is more important now than ever, given the significant challenges facing these industries and new focus on homeland security efforts
- For these reasons, AAA, API, AAR and UTC urge the Commission to dismiss or deny the Informal Request