

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

AMERICAN AUTOMOBILE ASSOCIATION)	WT Docket No. 10-3
)	
Informal Request for Certification to Provide)	
Frequency Coordination for 800/900 MHz Band)	
Business/Industrial Land Transportation Pool)	
Frequencies)	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR RECONSIDERATION

Mobile Relay Associates (“MRA”), by its attorney and pursuant to Sections 1.106 and/or 1.429 of the Commission’s Rules,¹ submits this Petition for Reconsideration (“Petition”) of the Public Notice, *Wireless Telecommunications Bureau Certifies Additional Frequency Coordinators for 800/900 MHz Business/Industrial/Land Transportation Pool*, DA 10-480, released March 23, 2010 (“AAA Grant Notice”). In the AAA Grant Notice, the Mobility Division (“Division”) certified the American Automobile Association (“AAA”) as a frequency coordinator for the 800/900 MHz Business/Industrial/Land Transportation Pool frequencies (“B/ILT Pool Frequencies”), over the objection of MRA. As discussed herein, the Wireless Telecommunications Bureau (“Bureau”) should reconsider that decision, and either not certify AAA as a frequency coordinator for these frequencies, or else condition AAA’s certification upon AAA keeping certain promises it made in its February 19, 2010 Reply Comments to the Division.

¹ It is not clear whether the Commission views this proceeding as an adjudicatory matter, in which case reconsideration lies pursuant to Section 1.106, or as a quasi-rulemaking, in which case reconsideration would lie pursuant to Section 1.429. Regardless, this Petition is timely filed, within thirty days of the release date of the order for which reconsideration is sought.

RELIEF SOUGHT

MRA seeks either of two alternative forms of relief in this Petition. MRA would be satisfied if the Bureau reverses the Division and rules that AAA not be certified as a frequency coordinator for the B/ILT Pool Frequencies.

Alternatively, MRA would be satisfied if the Bureau were to condition AAA's certification as a frequency coordinator upon each of the three following items, two of which AAA claims already to be doing voluntarily: a) AAA retains all back-up materials and data from each coordination for seven years, and longer if a particular coordination is still the subject of litigation (Reply Comments, p.3); b) AAA uses RadioSoft as a contractor to perform the actual interference analyses, rather than perform such analyses internally (Reply Comments, pp.2-3); and c) AAA accepts all B/ILT eligibles as customers, and does not discriminate among such entities (something AAA did not address in Reply Comments). If the Bureau were to so condition its certification of AAA, MRA is willing to withdraw this Petition.

GROUND FOR RECONSIDERATION

The *AAA Grant Notice* relied upon certain false or misleading statements AAA made in its Reply Comments below, in deciding to certify AAA as a frequency coordinator. Because those Reply Comments closed out the pleading cycle, MRA did not have an opportunity to rebut those false or misleading statements. Moreover, the *AAA Grant Notice* failed completely to address one of MRA's main arguments below – that AAA discriminated in the past against MRA and refused to accept MRA as a coordination customer for improper reasons.²

² See MRA Comments filed February 4, 2010 herein, pp.5-6. The *AAA Grant Notice* did not rule that AAA does not discriminate; rather, the decision just pretended MRA had never raised the issue.

The specific false or misleading statements in the AAA Reply comments were that: 1) MRA's comments are not entitled to any weight because MRA supposedly has lacked candor in the past, citing to *Mobile Relay Associates*, 22 FCC Rcd 17317 (Enf. Bur. 2007) ("MRA") (Reply Comments, p.4 & n.10); and 2) AAA had in fact conducted TSB-88 studies before certifying multiple defective proposals to the FCC (Reply Comments, p.4), when in fact that is a material false statement and AAA did not do so at the time. Because the *AAA Grant Notice* relied upon these material false statements, it erred in making an unconditioned certification of AAA.

DISCUSSION

I. AAA Must Be Required Not to Discriminate

While AAA's Reply Comments criticized MRA for attempting to "coordinator-shop" when MRA tried to become a AAA customer in the past, AAA did not deny that it refused to perform coordinations for MRA, and, more significantly, AAA made no commitment to avoid discriminating against MRA in the future. Frequency coordinators act as agents of the FCC under authority delegated to them by the FCC pursuant to specific Congressional authorization. *See* 47 U.S.C. §332. As such, a frequency coordinator has no more discretion to refuse to coordinate a proposal from an eligible member of a particular frequency pool than does the FCC itself to refuse to accept a valid application from an eligible member of the public. The obligation to accept eligible entities' requests for coordination is basic to the coordinator regime.

Therefore, the *AAA Grant Notice* erred in certifying AAA when the evidence showed that AAA has and apparently will continue to improperly discriminate. The Bureau must either reverse the issuance of certification to AAA, or must condition that certification upon non-discrimination in the future.

II. AAA Must Be Required to Maintain Its Coordination Records at Least Seven Years

In its January 4, 2010 Supplement filed herein, at unnumbered page 3, AAA offered to maintain its coordination records “for at least six months after the application is granted . . .” Given that there is no separate FCC public notice of the filing or grant of PMRS applications, and that the Commission depends upon coordinators to ensure pre-filing notice to affected licensees, this offer of six months of retention was ridiculous on its face. If a defective coordination were granted, it would not even need to be constructed until twelve months after grant, and if not fully loaded immediately upon construction, might not start interfering with protected licensees until two years or longer after grant. Thus, under AAA’s six-month retention offer, many and probably most defective AAA coordinations would not become the subject of litigation until long after AAA had destroyed its records.

MRA pointed out the ridiculous nature of the AAA six-month proposal in its Comments below, pp.6-7. In response, AAA, in its Reply Comments, p.3, pretended it had never said anything about “six months” in its own prior pleading, and instead said that AAA’s pre-existing policy was and is to maintain such records for seven years.

Given the unexplained turnabout in AAA’s own description of its current procedures between the filing of its Supplement on January 4 and its filing of the Reply Comments on February 19, it was error to certify AAA as a coordinator without simultaneously imposing a condition on AAA requiring AAA to adhere to the seven-year standard. Otherwise, AAA can disown that standard, or pretend it never had such a standard, as easily as AAA pretended it had never had a six-month standard.

III. AAA Must Be Obligated to Continue Using RadioSoft

The AAA Reply Comments, p.4, state that in those specific cases cited by MRA, where AAA declined to provide the Commission with a copy of any TSB-88 study and where the Commission ultimately confirmed that the AAA coordination would never have passed any TSB-88 study, AAA had in fact conducted such a TSB-88 study, using RadioSoft's software. That is a material false statement; there is no possibility that AAA used RadioSoft in those cases cited by MRA.

First, all of the instances cited by MRA pre-dated the relationship between AAA and RadioSoft. Second, if RadioSoft had in fact conducted any TSB-88 studies, then AAA would never have filed the defective applications. Third, in some of those cases, including one in which MRA submitted documentation as an exhibit to its Comments,³ AAA had claimed it was not bound by the LMCC consensus and did not have to conduct TSB-88 studies except when AAA itself deemed them appropriate! So patently, AAA did not use RadioSoft if it conducted no TSB-88 study.

The multiple defective AAA coordinations issued before the commencement of the AAA-RadioSoft relationship have seriously injured MRA in its business, and cost MRA hundreds of thousands of dollars. Because the Division relied upon AAA's false statement on this issue, the *AAA Grant Notice* erroneously certified AAA without conditioning such certification upon AAA maintaining its current relationship with RadioSoft. Unless RadioSoft conducts all future analyses for AAA, future AAA coordinations will be as defective as the slew of pre-RadioSoft AAA coordinations which plagued MRA in years past. Therefore, AAA's

³ *I.e.*, the Commission's October 29, 2004 letter to AAA.

certification must be conditioned upon the continuance of AAA using RadioSoft to conduct all interference analyses going forward.

IV. MRA's Statements Are Entitled to More Weight Than Are AAA's

To undercut MRA, AAA cites to *MRA, supra*, and to an unpublished court decision (which AAA chose not to attach to its Reply Comments). *MRA*, notwithstanding AAA's mischaracterizations, found only that MRA had inadvertently set a transmitter to excess output power. MRA had readily cooperated with the Enforcement Bureau and eliminated the problem as soon as the Bureau brought it to MRA's attention. The unpublished court decision found only that the court lacked personal jurisdiction over AAA, not that AAA was correct on the merits.⁴ By pretending otherwise in its Reply Comments, AAA demonstrated its continuing lack of candor with the Commission, and its ineligibility to be certified as a frequency coordinator.

In contrast, MRA attached to its Comments hard evidence of AAA wrongdoing in the past. So, as between MRA and AAA, it is MRA which is entitled to be believed.

CONCLUSION

The Division, misled by false or misleading statements in the AAA Reply Comments, erroneously certified AAA as a frequency coordinator for the B/ILT Pool Frequencies without conditioning that certification to protect the public against a potential recurrence of defective AAA coordinations. Unless the AAA certification is appropriately conditioned, it is contrary to the public interest to certify AAA as a frequency coordinator.

Specifically, to protect the public, the Bureau must condition AAA's certification upon:
a) AAA not discriminating among B/ILT eligibles; b) AAA retaining all coordination records, including all interference analyses, for at least seven years after grant of a AAA-coordinated

⁴ A courtesy copy of the court decision is attached hereto as Exhibit A.

application (and longer if the matter is then still the subject of litigation); and c) AAA continuing to use RadioSoft to conduct all actual interference analyses for AAA. Only if each of these three items is specifically and expressly included as a condition to continued certification can AAA be certified. The Bureau should clarify that any future failure by AAA to adhere to each of these three conditions will result in *automatic* termination of AAA's certification as a frequency coordinator, without further action by the Commission.

Respectfully submitted,
MOBILE RELAY ASSOCIATES

By: 

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April 16, 2010

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WT Docket No. 10-3
Mobile Relay Associates
Petition for Reconsideration
April 16, 2010

EXHIBIT A

COPY OF COURT DECISION

MOBILE RELAY ASSOCIATES v. AMERICAN AUTOMOBILE ASSOCIATION,

CV 00-4511 JSL (CD Cal., June 7, 2000)

JS-6 SEND
 FILED
 CLERK, U.S. DISTRICT COURT
 JUN 7 2000
 CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

MOBIL RELAY ASSOCIATES,)	CV 00-4511 JSL
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS'
)	MOTION TO DISMISS
v.)	
)	
AMERICAN AUTOMOBILE)	
ASSOCIATION, GARY RUARK,)	
)	
Defendants.)	

The motion of defendants American Automobile Association and Gary Ruark to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and by defendant Gary Ruark to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) was decided without hearing on June 7, 2000.

Having reviewed the papers filed in connection with this matter and being fully apprised of the relevant facts and law,

IT IS HEREBY ORDERED that the motion of defendants American Automobile Association and Gary Ruark to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) be GRANTED.

IT IS FURTHER ORDERED that the motion of defendant Gary

ENTERED ON 10:15
 JUN - 8 2000
 CV Pg (15)

1 Ruark to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) be GRANTED.

2 This action is to be dismissed with prejudice in its entirety.

3 IT IS SO ORDERED.

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DATED: 6/7/00

Sn Letts
J. Spencer Letts
United States District Judge

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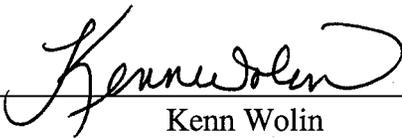
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CERTIFICATE OF SERVICE

I, Kenn Wolin, a paralegal at the law firm of Rini Coran, P.C., hereby certify that I have caused a copy of the foregoing "Petition for Reconsideration" to be sent by facsimile and e-mail, this 16th day of April, 2010, to:

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Counsel to the American Automobile Association


Kenn Wolin