

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

In the Matter of	)	
	)	
Amendment of the Commission's Rules to	)	ET Docket No. 08-59
Provide Spectrum for the Operation of	)	
Medical Body Area Networks	)	
	)	
	)	

To: The Commission

**COMMENTS**

Aerospace and Flight Test Radio Coordinating Council ("AFTRCC"), by its counsel, hereby submits its Comments on the Further Notice of Proposed Rulemaking ("FNPRM" or "Further Notice") in this proceeding.<sup>1</sup>

**Background**

As the Commission's records reflect, AFTRCC is an association of the nation's principal aerospace manufacturers (see Attachment). AFTRCC was founded in 1954 to serve as an advocate for the aerospace industry on matters affecting spectrum policy. AFTRCC is also the recognized non-Federal Government coordinator for the shared, Government/Non-Government spectrum allocated for flight testing. AFTRCC works closely with Government Area Frequency Coordinators, who are responsible for Federal Government use of the spectrum, in an effort to ensure that interference-free flight test operations are protected, and flight safety maximized.

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<sup>1</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 08-59, FCC 12-54, 27 FCC Rcd 6422 (2012).

The FNPRM sets forth proposals concerning the minimum qualifications for the Medical Body Area Network devices (“MBANs”) coordinator. These include, for example, (i) the ability to register and maintain a database of MBAN transmitter locations and operational parameters; (ii) knowledge of or experience with medical wireless systems in health care facilities (e.g., WMTS); (iii) knowledge of or experience with AMT operations; (iv) an ability to calculate MBANs interference potential, and enter into mutually satisfactory coordination agreements with the AMT coordinator based on the requirements in Section 95.1223(c); and (v) an ability to develop procedures to ensure that registered health care facilities operate an MBAN consistent with the requirements of the Rules.<sup>2</sup>

The Further Notice likewise asks whether there should be one or more than one MBANs coordinator, and whether the certification for the MBANs coordinator(s) should be limited to a ten-year term.

Finally, the Further Notice poses questions about the procedures/guidelines that should apply for coordinator fees.

## **Discussion**

### MBANs Coordinator Selection/Qualifications

AFTRCC has no issue with the minimum qualifications referenced above. With respect to the number of MBANs coordinators, AFTRCC concurs with the notion that there be a single coordinator for MBANs for the reasons stated in the Further Notice.<sup>3</sup>

AFTRCC supports the Commission’s proposal that the MBANs coordinator be certified for a ten-year term. The spectrum sharing contemplated for MBANs is unusual, if not

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<sup>2</sup> FNPRM at ¶ 77, 80.

<sup>3</sup> *Id.* at ¶ 78.

unprecedented. Given the important responsibilities assigned to the MBANs coordinator -- coordination of secondary devices in spectrum occupied by a primary, flight safety-related service, and the fact that this type of coordination is new and untried in AMT spectrum -- AFTRCC views it as entirely appropriate that there be a limited term for the coordinator's certification. The ten years proposed should allow sufficient time for the coordinator to amortize its start-up costs while affording the Commission and interested parties an opportunity to assess the performance of the coordinator. At the same time, the prospect of certification renewal represents a salutary incentive for the selectee to strive for superior performance during the certification period.

With respect to the minimum qualifications for the MBANs coordinator, it has been of the essence to resolution of this proceeding in a manner which protects Federal and Non-Federal AMT that there be a close working relationship between the two coordinators. To this end, the Commission contemplates that the MBANs and AMT coordinators "will have to agree to the procedures they will use to determine when coordination is required and how it is done, but we also are confident that the coordinators will be technically competent and will fully cooperate to develop mutually agreeable procedures to create coordination agreements."<sup>4</sup>

However, until the Commission has selected an MBANs coordinator, AFTRCC is not able to negotiate terms for the agreement between itself and the MBANs coordinator. More importantly, neither AFTRCC nor the AMT community as a whole are in a position to determine whether the selectee will be willing to agree to those terms. Absent a satisfactory agreement, an essential predicate for the sharing arrangement contemplated here would be placed at risk.

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<sup>4</sup> *Id.* at ¶ 69.

This is effectively the same issue facing the Commission which has delegated to the Wireless Telecommunications Bureau the actual selection of the MBANs coordinator, but which has made clear that the selectee will not be allowed to “assume its duties” until it has executed an acceptable Memorandum of Understanding with the Bureau.<sup>5</sup> So also with AFTRCC and the MBANs coordinator. Accordingly, the Commission should clarify that the selection of any MBANs coordinator is tentative, i.e. contingent upon the selectee’s subsequent agreement with AFTRCC on the terms of an appropriate coordination agreement.

#### Coordinator Fees

The Notice poses questions regarding the fees to be charged by the MBANs coordinator and AFTRCC. For example, the Commission seeks comments on: (i) whether the Commission should “adopt any fee requirements for MBAN registration and coordination, including for example whether service fees should only recoup costs and how such a requirement should be evaluated and whether service fees should be reasonable and non-discriminatory;”<sup>6</sup> (ii) whether the coordination rules should require that health care facilities bear responsibility for reasonable costs incurred in effecting the coordination;<sup>7</sup> (iii) what oversight the Commission should exercise over AMT-MBAN coordination fees; (iv) the procedures that should apply for health care facilities to pay coordination costs; and (v) whether service fees for MBAN coordination should include costs that AFTRCC would incur for coordinating Federal AMT operations.

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<sup>5</sup> FNPRM at ¶85.

<sup>6</sup> *Id.* at ¶ 83.

<sup>7</sup> FNPRM at ¶84 (quoting Joint Parties’ ex parte, filed January 30, 2012, Appendix § 95.1615 (g)(I)).

Preliminarily, the Commission should make clear that coordinator fees should be reasonable and non-discriminatory. This is the principle AFTRCC has followed for many years,<sup>8</sup> and it is the principle that the MBANs coordinator should adhere to as well. The selection of a single MBANs coordinator does not alter, or undermine, this requirement; rather it underscores its propriety. Moreover, should there be any complaint about fees, the Commission is in a position to investigate same. This should provide adequate protection for hospitals and health care eligibles.

With respect to responsibility for payment of coordination fees, the Commission has long prescribed that the cost-causer should bear the costs of its actions.<sup>9</sup> But for a hospital's coordination request (or that of another eligible health care facility), the coordinator, whether it be the MBANs coordinator or AFTRCC, would incur no costs. Clearly, the hospital -- the party seeking coordination -- should bear responsibility for payment of the costs its request entails. This principle does not vary depending on the identity of the incumbent flight test operator, i.e. whether it is a Government or a Non-Government entity: AFTRCC incurs costs and burdens imposed by a third-party, and it is entitled to recover its costs from that party. Accordingly, the Commission should make clear that the health care facilities seeking coordination for MBANs will be required to cover the costs incurred by the MBANs coordinator and by AFTRCC in providing that coordination.

Insofar as payment mechanics are concerned, AFTRCC envisions that the MBANs coordinator would collect both coordinator's fees in the first instance, and remit AFTRCC's

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<sup>8</sup> AFTRCC is a non-profit entity founded over 56 years ago to provide coordination services for the aerospace industry.

<sup>9</sup> See, e.g., Investigation of Interstate Access Tariff Non-Recurring Charges, Phase I, Part 3, *Memorandum Opinion and Order*, CC Docket No. 85-166, 2 FCC Rcd 3498 at paras. 33, 35 (1987)(Commission policies "encourag[e] recovery of costs from cost causers").

portion as part of the process. These are the types of matters which should be addressed in the agreement between the two coordinators as discussed above. The Commission need not prescribe details like these.

### **Conclusion**

Accordingly, AFTRCC urges that the Commission adopt the MBANs coordinator qualifications as specified above; make selection of an MBANs coordinator contingent upon the selectee's subsequent agreement to the terms of an appropriate coordination agreement with AFTRCC; and require that coordination fees be borne by the cost-causing health care facilities.

Respectfully submitted,

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