

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re Request of

<b>ASSOCIATION OF AMERICAN RAILROADS</b>	)	WT Docket No. 14-75
	)	
For Modification of Its Certification as a Part 90	)	
Frequency Coordinator to Include 800/900 MHz	)	
Spectrum Bands	)	

To: Chief, Wireless Telecommunications Bureau

**COMMENTS OF MOBILE RELAY ASSOCIATES**

Mobile Relay Associates (“MRA”), by its attorney and pursuant to the Commission’s Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Requests of National Frequency Coordination, LLC to Be Certified as a Part 90 Frequency Coordinator and the Association of American Railroads to Be Certified to Coordinate 800/900 MHz Band Business/Industrial/Land Transportation Frequencies*, DA 14-653, released May 14, 2014 (“Request Notice”), hereby submits its Comments in this proceeding. As discussed herein, MRA: a) supports the modification, with conditions, of the certification of the Association of American Railroads (“AAR”) to extend to the Business/Industrial/Land Transportation (“B/ILT”) frequencies in the 800/900 MHz band; but b) opposes in its entirety the request by National Frequency Coordination, LLC (“NFC”) to be certified as a Part 90 frequency coordinator.

**Description of MRA and Its Standing to Participate**

MRA is one of the longest-established and largest privately-held B/ILT licensees in the United States, serving tens of thousands of Part 90 eligibles across the country. MRA was founded in 1979, and its principals collectively have over one hundred years of experience in the

land mobile industry. MRA is one of only a few B/ILT operators to have in-house engineering expertise and resources; among other things, MRA is one of the few B/ILT operators to have its own in-house capability for preparing TSB-88 interference analyses and for engineering design. Indeed, MRA provides engineering design, consulting and system management services to other Part 90 licensees in multiple markets.

As such, MRA is an intended beneficiary of the Commission's system of Part 90 frequency coordination. MRA would suffer material harm if the Commission were to certify an unqualified entity as a frequency coordinator, since an unqualified entity would then issue defective coordinations, causing havoc with MRA's lawful operations and wasting the scarce resources of MRA, other industry participants, and the Commission. Accordingly, MRA has standing to participate in this proceeding.

**Certified Part 90 Frequency Coordinators Perform a Vital Function;  
Defective Coordinations Have Caused Havoc in the Past**

Over the years, MRA has probably suffered more damages from defective frequency coordinations than has any other Part 90 licensee. Beginning in the late 1990s and continuing for over a decade, MRA was the victim of multiple frequency coordinations made by a particular certified frequency coordinator which had been certified even though it did not possess the software to perform required TSB-88 interference analyses, and made these defective coordinations for a competitor of MRA that then caused massive disruption to MRA's operations.<sup>1</sup>

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<sup>1</sup> See, e.g., *National Science and Technology Network, Inc.*, 25 FCC Rcd 11384 (2010); *National Science and Technology Network, Inc.*, 25 FCC Rcd 559 (2010); and cases cited therein. Notably, each of the cited cases involved review or reconsideration, and each was only the last in a long line of decisions that were constantly appealed by the competitor.

All in all, between attorneys' fees and significant lost business (as some customers who suffered harmful interference blamed MRA, as their provider, for the problems), MRA suffered millions of dollars in damages from these defective coordinations. The damage was particularly acute, because in Part 90 there is no public notice of either the filing or grant of applications – an incumbent licensee which has been victimized can only learn of the problem long after the defective grant has ripened into a final order.<sup>2</sup>

Stated simply, every certified Part 90 frequency coordinator stands as a critical gatekeeper, preventing harmful interference and maintaining a level competitive playing field. Every certified Part 90 frequency coordinator is as much an agent of the Commission as it is an agent for its applicant/customers. In fact, Section 332(b)(1) of the Communications Act of 1934 as amended (“Act”), 47 U.S.C. §332(b)(1), states that frequency coordinators are rendering assistance *to the Commission*. Therefore, it is absolutely critical that this Commission only allow entities of which the Commission is entirely confident to be entrusted with the important task of conducting frequency coordination.

#### **I. MRA Supports the AAR Request, with Conditions**

AAR is a trade association of the major freight railroad corporations of the United States, as well as certain passenger railroads. The Commission at one time allocated certain frequencies below 512 MHz exclusively to the railroad industry, and AAR has long been certified to coordinate those frequencies, as well as other frequencies below 512 MHz.<sup>3</sup> AAR has shown

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<sup>2</sup> Specifically, in Part 90, a victimized incumbent can only learn of the interfering licensee when: a) the interfering licensee has built and fully loaded its own system; or b) the victimized licensee goes to make minor modifications to its incumbent system and can't, due to the presence of the interloper who never should have been licensed.

<sup>3</sup> As to such previously-railroad-only frequencies, where the interference contour of a new proposed station would overlap the authorized contour of an incumbent station, Section 90.35(b)(2)(iii) of the Commission's Rules requires the proponent to obtain AAR concurrence

itself to have the technical expertise to perform frequency coordinations in those railroad-exclusive frequency allotments. AAR claims that it also has the technical expertise to perform frequency analyses for the 800/900 MHz bands, and MRA has no reason to doubt this claim.

For MRA, there is only one open issue with respect to AAR being certified for B/ILT frequencies in the 800/900 MHz band – its representativeness of B/ILT licensees and the equality of treatment it will afford to future applicants. MRA’s past experience with AAR is limited to cases of inter-category sharing below 512 MHz (*see* n.3, *supra*). With respect to such past experience, AAR never coordinated anything for MRA in less than five weeks, and then only because the B/ILT coordinator sent reminder requests to AAR.<sup>4</sup>

Moreover, in one of those inter-category coordinations (File No. 0005894520), MRA and its coordinator submitted extensive documentation demonstrating that, under the governing LMCC coordination standards, MRA would be entitled to FB8 status with respect to its proposed channels. However, AAR agreed to coordinate the MRA application only if it were amended to FB6 status. AAR declined to explain the basis upon which AAR was insisting upon FB6 station class for MRA; it simply told MRA’s in-service coordinator to take it or leave it. The only apparent, albeit unstated rationale for treating MRA in this way was that MRA was not itself a railroad.

MRA highly doubts that AAR routinely took five weeks to complete coordinations for railroad entities. Nor does MRA believe that AAR required railroad entities to settle for FB6 station class when FB8 station class was appropriate under LMCC coordination standards. In other words, AAR has not demonstrated equality of treatment in the past.

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before filing, no matter what coordinator the proponent is using. For convenience, we refer to such mandatory AAR concurrence as “inter-category sharing.”

<sup>4</sup> *See, e.g.*, FCC File Nos. 0005892800 and 0005894520.

Nevertheless, MRA's interests are better served by changing AAR's behavior prospectively, rather than trying to punish past misconduct. Therefore, MRA requests that the Commission provisionally grant AAR's request, but require AAR to maintain separate records of its frequency coordinations for both railroad-entity applicants and other B/ILT applicants, and deliver reports to the Wireless Telecommunications Bureau ("Bureau") six months and one year after the effective date of its certification, stating its average completion time for each class (railroad and non-railroad), and whether AAR coordinated the proposal as requested or modified the applicant's proposal. If there is no material difference in treatment of the two classes of customers, or if there appears to be a reasonable explanation for any demonstrated differences, then the condition on AAR's certification could be removed.

## **II. MRA Opposes the Request from NFC**

The NFC Request fails to meet any of the requirements set forth by this Commission to qualify as a certified Part 90 frequency coordinator. As originally established in 1986 and most recently recounted in the Request Notice, p.1, those requirements are:

- (a) representativeness of the users of the frequencies to be coordinated, (b) the entity's overall coordination plan (including how recommendations would be made and equality of applicant treatment), c) the entity's experience coordinating frequencies in the service or technical expertise, and d) its nationwide coordination capability.

NFC provides not one shred of evidence that it meets any of these requirements; all it presents are bald, conclusory assertions. Tellingly, nowhere does NFC say one word about who are its owners or officers or governing board. The only employee identified is the one who signed the NFC Request, a Ms. Lorrie Coffman, whose title is given as "Deputy Director." On NFC's accompanying organizational chart, the various types of employment positions NFC intends to fill are set forth, but not what individuals would fill them. Nor is there one word about to whom the Deputy Director reports. Is it a "Director", or a chief executive, or some sort of

governing board? (There is no “Director” position on the organizational chart, nothing higher than a “Deputy Director”.)

Nor does NFC have any web site to which anyone could go to find out who is behind NFC; when MRA tried to do so on June 4, it got only the page saying that the domain is available. (*See* Appendix 1, attached.)

Nobody in the land mobile industry has ever heard of Ms. Lorrie Coffman; apparently she has never been employed by any other certified frequency coordinator and has no experience in the field. A Google search for that name in Jacksonville, Florida (where NFC claims to be headquartered) comes up empty.

In summary, NFC has failed to show even one person associated with it with any experience or expertise in the field. NFC states that it is a limited liability company, but NFC has purposely hidden who owns it and who controls it. *Ipsa facto*, it fails to show itself to be “representative” of the Part 90 licensee population.

Patently, with no experience in coordination, NFC is unqualified. However, in addition, NFC claims that it will use its own “internal Q-Comm software solution” to make its analyses of harmful interference. MRA has never heard of or seen this so-called software solution, nor is MRA aware of it having been employed by any currently-certified Part 90 frequency coordinator (which is not surprising, since it is “internal” to NFC). NFC presents no evidence whatsoever that this so-called Q-Comm software is viable; NFC presents only conclusory statements. NFC declines to reveal how this software was developed, or what its assumptions or formulas are, or where it has been tested, or who developed it, or anything whatsoever that might indicate it has any value for frequency interference analysis. This stands as an independent ground to deny the NFC Request.

## CONCLUSION

AAR has made a sufficient showing to be certified for the B/ILT frequencies in the 800/900 MHz band. However, due to AAR's past failures with regard to equality of treatment of all applicants, the Commission should condition AAR's certification upon AAR keeping records on its speed-of-service, and on whether it modified the applicant's initial proposal, for both railroad and non-railroad entities, and submit reports to the Bureau at the six-month and one-year anniversaries of its certification, to demonstrate that it is indeed providing equality of treatment to all customers.

NFC has made showing of eligibility whatsoever. NFC has purposely hidden from the Commission its owners, its officers, its governing board structure and the persons who hold that control. NFC has proffered no evidence at all on the issue of representativeness or expertise or experience. NFC's Request should be denied.

Respectfully submitted,  
**MOBILE RELAY ASSOCIATES**

June 13, 2014

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# APPENDIX 1



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