

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

In the Matter of Request of )  
 )  
ACD TELECOM, LLC )  
 )  
To be Certified as a Part 90 Frequency Coordinator ) PS Docket No. 14-148  
of Public Safety Frequencies in the VHF and UHF )  
Bands below 512 MHz, 700 MHz Narrowband, )  
800 MHz NPSPAC and 800 MHz Public Safety )  
Category Frequencies )

To: Public Safety & Homeland Security Bureau

**COMMENTS OF APCO**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Public Notice*, DA 14-1292 (September 8, 2014), regarding the above-captioned Request submitted on July 25, 2014, in which ACD Telecom, LLC (“ACD”) seeks to be certified as a frequency coordinator for Public Safety Pool channels. As discussed below, APCO opposes the Request as ACD is not representative of public safety frequency users.

Founded in 1935, APCO is the nation’s oldest and largest public safety communications organization. APCO is a non-profit association with over 20,000 members, most of whom are state or local government employees who manage and operate communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO appears regularly before the Commission on a wide range of public safety communications issues, and is the largest FCC-certified frequency coordinator for Public Safety Pool channels. APCO’s frequency coordination is conducted by 9 full time APCO

employees, with the support of 61 volunteer local frequency advisors across the nation who are active members of APCO.

ACD is a small privately held business entity that describes itself as an “engineering and management telecommunications consulting firm.”<sup>1</sup> It is not an association or organization of any type, and obviously has no members. Thus, ACD fails to meet the Commission’s threshold requirement that certified frequency coordinators be representative of the users of the frequencies to be coordinated.<sup>2</sup>

### **I. REPRESENTATIVENESS IS THE PRIMARY CONSIDERATION FOR FREQUENCY COORDINATOR CERTIFICATION.**

In 1982, Congress expressly authorized the Commission to certify “advisory coordinating committees” for the private land mobile radio services.<sup>3</sup> The Conference Report for the legislation stated that “to further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service.”<sup>4</sup> Thus, when the Commission exercised its authority and established procedures for frequency coordinator certification in 1986, it stated that “representativeness is a primary consideration and criterion in our selection of frequency coordinators.”<sup>5</sup> The Commission noted that it had previously recognized the role of informal frequency advisory committees, which “were generally representative of the entities

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<sup>1</sup> ACD Request at 1.

<sup>2</sup> As such, it is not necessary in this context to address whether ACD has satisfied the Commission’s other criteria for certification.

<sup>3</sup> The Communications Amendments Act of 1982, P.L. 97-259, 96 Stat. 1087, September 13, 1982. Section 331 of the Communications Act of 1934, as amended, codified at 47 U.S.C. § 332(b).

<sup>4</sup> Conference Report No. 97-765, 97th Cong. 2nd Sess., August 19, 1982, at 53, reprinted in 1982 U.S. Code Cong. & Ad. News 2237.

<sup>5</sup> Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737. *Report and Order*, 103 FCC 2d 1093 (1986) (“1986 Order”) at ¶18.

using the services” and that “[c]onsequently, for the most part, applicants could be assured that, in selecting a frequency for their use, the committees would be both knowledgeable and impartial.”<sup>6</sup> The Commission had also previously set forth general principles for recognizing frequency coordinating committees, the first being that “a frequency coordinating committee must be representative of all eligible in the radio service the committee purports to serve.”<sup>7</sup>

The Commission’s *1986 Order* proceeded to examine the qualifications of the entities seeking certification, and in each case the Commission selecting associations or organizations that were representative of users.<sup>8</sup> Of particular relevance to the matter at hand, the Commission addressed a certification request from a private firm, Comp Comm, Inc., that claimed to have “extensive experience and technical expertise in the design of land mobile communication systems and in the development and management of data bases.”<sup>9</sup> The Commission rejected Comp Comm’s request, explaining that “[w]e have repeatedly stated that the most important criterion in choosing the coordinators is representativeness.”<sup>10</sup>

In 1997, the Commission consolidated the private land mobile radio services into two pools, the Public Safety Pool and the Industrial Business Pool, which broadened eligibility for frequencies. Significantly, the Commission continued to limit coordination in the Public Safety Pool to the representative entities that it had previously certified, and stood by its prior determination, that “special emphasis” should be “placed on the need for each coordinator to be

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<sup>6</sup> *Id.* at ¶3.

<sup>7</sup> Frequency Coordination in the Industrial Radio Services, 16 FCC 2d 305, 306 (1969).

<sup>8</sup> *1986 Order* at ¶¶70-108.

<sup>9</sup> *Id.* at ¶98.

<sup>10</sup> *Id.*

representative of the users of the radio service in which it was certified.”<sup>11</sup> Within the Public Safety Pool (and for certain Industrial Business Pool categories), the Commission also required that applications for frequencies in the original service-specific categories must continue to be coordinated by the representative coordinators for those services.<sup>12</sup>

Representativeness of users continues to be an essential requirement for frequency coordination, as it ensures the fairness and effectiveness of the process for both applicants and incumbent licensees. Associations representing users necessarily balance not only the needs of an applicant, but also the potential for interference to existing operations. This is especially important in the Public Safety Pool where interference could disrupt emergency communications of first responders and other public safety personnel. In contrast, a non-representative coordinator (especially if it is a for-profit entity) will be primarily interested in assigning channels to its paying clients/applicants. It will have no obligation, fiduciary or otherwise, to protect incumbents. Representative coordinators are also well-suited to resolve disputes among licensees and applicants (who, in most cases, will be its members), without the need for Commission intervention. Finally, representative coordinators have a unique understanding of the particular operational needs and concerns of their constituents.

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<sup>11</sup> 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 Assignments Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, ¶34 (1997). (Referring to the representation criteria, the Commission stated: “Our decision to permit each of the current certified coordinators to provide coordination service in a consolidated pool is not a rejection of this concept.”)

<sup>12</sup> Through procedures established by the Public Safety Communications Council, an applicant seeking a Public Safety Pool channel may file its application initially with any of the four certified public safety coordinators. If the frequency is subject to coordination by a different coordinator pursuant to Section 90.20(c), the application will be shared with the relevant coordinator for its approval.

## II. ACD DOES NOT SATISFY THE “REPRESENTATIVENESS” REQUIREMENT

Despite its claims to the contrary, ACD does not even attempt to meet the “representativeness” requirement, at least as the term has long been applied by the Commission. Nor could it, as ACD is not an association and obviously has no members of any type. Unable to meet the requirement, ACD attempts instead to undermine the importance of “representativeness,” suggesting that it has come to mean no more than “substantial familiarity with the operations of Part 90 licensees and applications.”<sup>13</sup> However, ACD’s vague, unsubstantiated arguments to support that claim do not stand up to scrutiny.

For example, ACD twice claims, without citation, that in the 800/900 MHz bands, “APCO is authorized to perform Industrial/Business licensing ... and the Enterprise Wireless Alliance is now authorized to perform Public Safety licensing,”<sup>14</sup> apparently suggesting that such an alleged rule blurs the representation of the coordinators. However, ACD’s premise is simply incorrect. As a general matter, there is no such “cross-pool” coordination allowed in the Commission’s rules or policies.<sup>15</sup>

ACD also makes passing, vague references to a supposed application backlog and heavy workload for certified coordinators. While APCO cannot speak for the other coordinators, it

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<sup>13</sup> ACD Request at 3.

<sup>14</sup> ACD Request at 3.

<sup>15</sup> Perhaps ACD is referring to the extremely limited circumstances of APCO and EWA coordinating applications seeking the small number of channels vacated by Sprint Nextel as part of the 800 MHz rebanding plan. That is a unique situation in which channels previously assigned to Sprint Nextel are being made available for a limited time to public safety on an exclusive basis. EWA cannot otherwise coordinate Public Safety Pool channels in 800/900 MHz or other bands. Nor can APCO can coordinate non-public safety 800/900 MHz channels.

does not have a significant backlog of applications, and it is well-equipped to handle the workload from public safety applicants.

ACD then refers to the fact that the microwave bands have an entirely different method of frequency coordination that includes the use of private entities. However, microwave bands (which are governed by Part 101, not Part 90) are also allocated in an entirely different manner, with no designated channels for public safety, and eligibility is open on a co-equal basis to virtually any non-foreign entity, public or private.<sup>16</sup> Representativeness obviously has little relevance in that context. Coordinating high frequency, fixed, point-to-point microwave links is also far less complex, and generally requires less knowledge of user operations, than coordinating land mobile radio frequencies, which can involve multiple transmitter sites, wide area omnidirectional signals, different types of users and operations, and thousands of mobile/portable units on a radio system.

ACD also appears to rely on the fact that some coordinators have outsourced aspects of their frequency coordination responsibilities to private contractors,<sup>17</sup> though it is not clear why that might be relevant. APCO conducts all of its frequency coordination “in house” with APCO employees and the assistance of volunteer members. In any event, outsourcing of coordination responsibility would, at most, raise a theoretical question about a particular coordinator’s certification, and then only if it had ceded all control and direction to a contractor. Outsourcing says nothing about the broader Commission policy of requiring that certified coordinators be representative.

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<sup>16</sup> 47 C.F.R. §101.7.

<sup>17</sup> ACD Request at 4.

Finally, for some unstated reason, ACD notes that APCO offers certain consulting services to public safety agencies.<sup>18</sup> Perhaps it is suggesting that ACD and APCO are alike in that regard. Yet, such a specious argument would overlook the most relevant distinction, *i.e.*, APCO is a large non-profit organization that represents the interests of members, while ACD is a privately held, for-profit consulting firm.

In short, nothing in the ACD Request supports its assertion that the representativeness criteria is no longer relevant. To the contrary, it remains the primary factor for frequency coordinator certification.

### CONCLUSION

Therefore, for the reasons set forth above, the Commission must dismiss ACD's Request as it is clearly not representative of Public Safety Pool frequency users.

Respectfully submitted,

/s/

Robert M. Gurss  
Senior Regulatory Counsel  
APCO International  
(202) 236-1742 (m)  
[gurssr@apcomail.org](mailto:gurssr@apcomail.org)

APCO Government Relations Office  
1426 Prince Street  
Alexandria, VA 22314  
(571) 312-4400

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<sup>18</sup> *Id.*