

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Industrial Telecommunications Association ) RM-10687
Informal Request for Certification To Coordinate )
the Power Radio Service, Railroad Radio Service, )
And Automobile Emergency Radio Service under )
Part 90 of the Commission's Rules )

ORDER

Adopted: October 25, 2004

Released: October 29, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On January 27, 2003, the Industrial Telecommunications Association (ITA) filed with the Wireless Telecommunications Bureau (Bureau) an informal request for certification as a frequency advisory committee, or frequency coordinator, for the Power, Railroad, and Automobile Emergency Radio Services under Part 90 of the Commission's Rules. For the reasons set forth below, we dismiss ITA's request.

II. BACKGROUND

2. A Part 90 frequency coordinator is a private-sector entity or organization that has been certified by the Commission to recommend the most appropriate frequencies for use by licensees in the Part 90 Private Land Mobile Radio (PLMR) Services. ITA is currently certified as a Part 90 frequency coordinator for frequencies in the Industrial/Business (I/B) Pool below 512 MHz and the 800 and 900 MHz Industrial/Land Transportation and Business Pools. The Commission has recognized the role of frequency coordinators in the process of selecting available frequencies since 1958, but it was not until 1986 that the Commission formally certified Part 90 frequency coordinators. At that time, the Commission examined the facets of the frequency coordination process in an effort to maximize service to the public by assuring that the assignment and management of the PLMR spectrum was performed in

1 Industrial Telecommunications Association, Informal Request for Certification to Coordinate the Power Radio Service, Railroad Radio Service, And Automobile Emergency Radio Service under Part 90 of the Commission's Rules (filed Jan. 27, 2003) (ITA Request).

2 For the Part 90 definition of a frequency coordinator, see 47 C.F.R. § 90.7. See also Frequency Coordination in the Private Land Mobile Radio Services, Report and Order, PR Docket No. 83-737, 103 FCC 2d 1093, 1094 ¶ 1 (1986) (Frequency Coordination R&O).

3 Frequency Coordination R&O, 103 FCC 2d at 1096 ¶ 4 (citing Amendment of Part 11, Rules Governing the Industrial Radio Services, to Delete, Modify and Create Services and to Effect Changes in the Availability of Frequencies, First Report and Order, Docket No. 11991, FCC 58-602, 23 Fed. Reg. 4784 (1958)).

4 Id. at 1126-47 ¶¶ 70-108.

an efficient and effective manner.<sup>5</sup> In several of the Part 90 radio services, the Commission received more than one request per radio service for frequency coordination certification.<sup>6</sup> The Commission recognized that certifying multiple coordinators per service could result in lower fees,<sup>7</sup> but decided instead to certify a single coordinator in each service in order to reduce the potential for confusion and avoid inconsistent coordination standards.<sup>8</sup>

3. In 1997, the Commission consolidated the twenty PLMR services below 512 MHz<sup>9</sup> into two pools, the Public Safety Pool and the I/B Pool.<sup>10</sup> The Commission authorized the frequency coordinators of the services consolidated into the I/B Pool to coordinate use of any frequency within the pool, essentially ending exclusivity of frequency coordination for the I/B Pool frequencies.<sup>11</sup> The Commission took this action to provide users with the opportunity to make marketplace decisions when seeking the services of a frequency coordinator.<sup>12</sup> Further, the Commission stated that this new policy of certifying multiple coordinators for the same frequencies was not a rejection of its 1986 requirement that each coordinator be representative of the users of the radio service in which it was certified.<sup>13</sup> The Commission explained that when “similarities exist in the types of systems that PLMR licensees utilize,” and “systems are virtually identical and user needs similar, ... any of the recognized in-pool frequency coordinators with their extensive experience, and technical expertise in engineering systems and selecting frequencies, possess the ability to provide frequency coordination recommendations.”<sup>14</sup>

4. However, the Commission identified three types of I/B Pool users – railroad, power, and petroleum companies – that routinely use PLMR frequencies for critical public safety-related communications and for responding to emergencies that could impact hundreds or even thousands of people.<sup>15</sup> The Commission stated that “maintaining the integrity of spectrum used for such public safety purposes is extremely important and using coordinators who are knowledgeable with such special communications needs is the best way to protect these systems ... and outweighs any potential benefits that may be gained through a competitive frequency coordination process.”<sup>16</sup> To ensure that the integrity of these communications is not impaired, the Commission required anyone seeking to use the frequencies

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<sup>5</sup> *Id.* at 1095 ¶ 2.

<sup>6</sup> *Id.* at 1127-46 ¶¶ 71-108.

<sup>7</sup> Frequency Coordination in the Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, PR Docket No. 83-737, 49 Fed. Reg. 45454, 45456 ¶ 14 (1984).

<sup>8</sup> *Frequency Coordination R&O*, 103 FCC 2d at 1121-22 ¶¶ 57-59. The Commission permitted the continued use of three coordinators for recommending 800 MHz General Category frequencies because this procedure had evolved into a workable, manageable system. The Commission recognized that there was no reason to deviate from the then-current situation even though this was a departure from the overall policy and direction. *Id.* at 1146 ¶ 108.

<sup>9</sup> In general, the PLMR spectrum below 512 MHz comprises PLMR services within the 30-50 MHz, 150-174 MHz, 421-430 MHz, 450-470 MHz and 470-512 MHz bands.

<sup>10</sup> See 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, 14328 ¶ 40 (1997) (*Refarming Second R&O*).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 14310 ¶ 5.

<sup>13</sup> *Id.* at 14325-26 ¶ 34.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 14328-14329 ¶ 41.

<sup>16</sup> *Id.* at 14328-14329 ¶¶ 41-42.

previously allotted solely to the Railroad, Power, or Petroleum Radio Services to go through the same frequency coordinators that were responsible for coordinating these frequencies prior to the consolidation.<sup>17</sup> The Association of American Railroads (AAR) was designated as the exclusive coordinator for frequencies previously allotted to the Railroad Radio Service (RRS) on an exclusive basis, the United Telecom Council (UTC) was designated as the exclusive coordinator for frequencies previously allotted to the Power Radio Service (PRS) on an exclusive basis, and the American Petroleum Institute (API) was designated as the exclusive coordinator for frequencies previously allotted to the Petroleum Radio Service (PETRS) on an exclusive basis.<sup>18</sup> The Commission allowed any certified frequency coordinator in the I/B Pool to coordinate frequencies in the former RRS, PRS, or PETRS that were also allotted to another radio service.<sup>19</sup>

5. In 1999, on reconsideration of its 1997 action, the Commission required that frequencies that were allotted to the former RRS, PRS, or PETRS, either exclusively or on a shared basis with any other of the former radio services must be coordinated by AAR, UTC, or API, as appropriate.<sup>20</sup> Alternatively, AAR, UTC, or API, as appropriate, in its discretion, could determine that such frequencies could be coordinated by any other certified I/B Pool frequency coordinator, provided that coordinator receives prior written concurrence from API, UTC, or AAR, as appropriate.<sup>21</sup> Additionally, the Commission concluded that automobile emergency road services have a significant quasi-public safety component involving safety on the nation's highways.<sup>22</sup> Therefore, the Commission required that frequencies previously allotted the Automobile Emergency Radio Service (AERS) be coordinated only by American Automobile Association (AAA), the exclusive coordinator of the former AERS.<sup>23</sup> Similar to the three other services, the Commission allowed AAA, in its discretion, to determine that such frequencies could be coordinated by any other certified I/B Pool frequency coordinator, provided that coordinator receives prior written concurrence from AAA.<sup>24</sup>

6. In 2000, the Commission adopted a contour overlap criterion for entities choosing coordinators other than AAR, UTC, API, or AAA for frequencies previously allotted on a shared basis to the RRS, PRS, PETRS, or AERS, respectively.<sup>25</sup> The Commission allowed an applicant in the I/B Pool to submit its application to the coordinator of its choice for such frequencies, but the selected coordinator was required to determine whether the interference contour of the proposed facility overlapped the service contour(s) of any incumbent licensee on such frequencies.<sup>26</sup> If contour overlap exists, then the coordinator may not file the application unless that coordinator obtains the written concurrence of the

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<sup>17</sup> *Id.* at 14329-14330 ¶ 42.

<sup>18</sup> *Id.* at 14361-14362, Appendix D. ITA has a contractual agreement with API to coordinate frequencies previously allotted to the PETRS.

<sup>19</sup> *Id.* at 14329-14330 ¶ 42.

<sup>20</sup> See 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 Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 8642, 8647 ¶ 9 (1999).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8650 ¶ 16.

<sup>23</sup> *Id.* at 8651 ¶ 18.

<sup>24</sup> *Id.*

<sup>25</sup> See 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, PR Docket No. 92-235, *Fifth Memorandum Opinion and Order*, 16 FCC Rcd 416, 418-419 ¶ 7 (2000).

<sup>26</sup> *Id.*

industry-specific coordinator(s) or the affected licensee(s).<sup>27</sup>

### III. DISCUSSION

7. ITA requests certification as a frequency advisory committee or frequency coordinator for the PRS, RRS, and AERS under Part 90 of the Commission's Rules. ITA discusses the benefits of competitive frequency coordination and its coordination plan as justification for its request.<sup>28</sup> The ITA request for certification was placed on *Public Notice* on March 26, 2003.<sup>29</sup> We received forty-three comments,<sup>30</sup> one amended comment,<sup>31</sup> two reply comments,<sup>32</sup> and one further comment.<sup>33</sup> Five commenters fully support the ITA request, basing their arguments on the benefits of competitive frequency coordination.<sup>34</sup> Two other commenters do not support ITA's request to be certified to coordinate the former RRS frequencies, but otherwise support ITA's request with respect to the former PRS and AERS frequencies.<sup>35</sup> With the exception of ITA's reply comments, the remaining filings oppose the ITA request, as discussed below.

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<sup>27</sup> *Id.*

<sup>28</sup> ITA Request at 7-8.

<sup>29</sup> *Public Notice*, Consumer and Governmental Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed, Report No. 2601 (rel. Mar. 26, 2003).

<sup>30</sup> Comments were submitted by Ameren, Inc. and Dominion Resources, Inc. (Ameren and Dominion); AAA; AAA, AAR, UTC, and API (Joint Opposition); AAA Missouri; AAA North Jersey; AAA Southern New England; American Public Transportation Association (APTA); American Short Line and Regional Railroad Association; AAR; Automobile Club of Southern California; Booth & Associates Inc. (Booth & Associates); Burlington Northern and Santa Fe Railway Company (BNSF); California State Automobile Association; Canadian National Railway; Canadian Pacific Railway; Central Electric Power Collective; CenterPoint Energy, Inc.; Cinergy Corporation (Cinergy); Data Flow Systems, Inc. (Data Flow Systems); Wayne L. Ezell; Forest Industries Telecommunications (FIT); Lamar Electric Membership Corporation (Lamar); Lincoln Electric System; Lockhard & White, Inc. (Lockard & White); MRFAC, Inc. (MRFAC); National Grid USA Service Company, Inc.; National Railroad Passenger Corporation; National Rural Electric Cooperative Association (NRECA); Ohio Motorists Association; Personal Communications Industry Association (PCIA); Preferred Communications Systems, Inc. and Mobile Relay Associates; Progress Energy; PSEG Services Corporation (PSEG); Puget Sound Energy; Questar InfoComm, Inc.; Railway Association of Canada; Dale E. Reich; Salt River Project; Southern Company; Union Pacific Railroad; UTC; Westar Energy Inc. (Westar Energy); and Wisconsin Electric Power Company/Wisconsin Gas Company. In addition, AAA, AAR, and UTC filed a joint response to the ITA request before it was placed on public notice. See Response to Informal Request for Certification of the Industrial Telecommunications Association, filed by AAA, AAR, and UTC on Feb. 6, 2003 (AAA-AAR-UTC Response).

<sup>31</sup> Lockhard & White's original comments fully supported the ITA request; later, however, Lockhard & White amended those comments to reflect only qualified support of the request. See n.35, *infra*.

<sup>32</sup> Reply comments were submitted by ITA and Midwest Generation, EME, LLC (Midwest Generation).

<sup>33</sup> Further comments were submitted by PSEG.

<sup>34</sup> See Salt River Project Comments at 1; Wayne L. Ezell Comments at 1; Booth & Associates Comments at 2; MRFAC Comments at 2; PCIA Comments at 2. An additional commenter did not address the ITA request directly, but notes reduced cost as a benefit of competitive coordination. See Dale E. Reich Comments at 1-2. MRFAC, an FCC-certified Part 90 frequency coordinator for frequencies in the I/B Pool below 512 MHz, urges the Commission to certify not only ITA, but also MRFAC and any other certified coordinator expressing an interest, to coordinate the former PRS, RRS, and AERS frequencies. See MRFAC Comments at 3-4.

<sup>35</sup> See FIT Comments at 4-8; Lockard & White Amended Comments at 1. FIT, an FCC-certified Part 90 frequency coordinator for frequencies in the I/B Pool below 512 MHz, argues that all currently certified PLMR frequency coordinators are similarly qualified as ITA to coordinate the former PRS and AERS frequencies, and further includes the former PETRS frequencies as being ripe for competitive coordination. FIT Comments at 6-8.

8. ITA argues that the Bureau has jurisdiction to act on delegated authority and certify ITA as a coordinator for these frequencies.<sup>36</sup> Before we reach the merits of the ITA request, we must determine whether the Bureau indeed has the delegated authority to certify ITA or any other certified I/B Pool coordinator on the former PRS, RRS, and AERS channels on an *ad hoc* basis, or whether a full rulemaking proceeding at the Commission level is necessary. In certain cases, the Bureau has delegated authority to certify frequency coordinators under Sections 0.131(m) and 0.331 of our Rules. Section 0.131(m) lists “[c]ertifies frequency coordinators; considers petitions seeking review of coordinator actions; and engages in oversight of coordinator actions and practices” as Bureau functions.<sup>37</sup> In this regard, we note that Section 0.331 delegates authority to “perform all functions of the Bureau described in § 0.131, subject to ... certain exceptions and limitations.”<sup>38</sup> The exceptions and limitations include “new or novel interpretations of law or policy which cannot be resolved under outstanding Commission precedents and guidelines.”<sup>39</sup>

9. ITA argues that the Bureau has the delegated authority to certify ITA under Sections 0.131(m) and 0.311 of the Commission’s Rules, and cites an example of a recent certification of multiple frequency coordinators by the Bureau pursuant to delegated authority.<sup>40</sup> ITA also states that its request does not raise new or novel questions of law or policy.<sup>41</sup> We disagree. Some commenters note that the Commission has long recognized the special circumstances surrounding the former AERS, PRS, and RRS channels, and has properly afforded the three exclusive coordinators with the care and responsibility for their coordination.<sup>42</sup> Therefore, these commenters view the ITA request as contrary to current rules and policy.<sup>43</sup> Cinergy notes that pursuant to Section 90.35(b)(2) of our rules,<sup>44</sup> ITA is permitted to coordinate the frequencies so long as it obtains concurrence from the relevant coordinator.<sup>45</sup> Since ITA seeks to coordinate the former PRS, RRS, and AERS frequencies without having to obtain the concurrence of their primary coordinators, Cinergy concludes that ITA actually seeks a modification of Section 90.35(b)(2).<sup>46</sup> We agree, and note that granting ITA’s request of certifying ITA or additional coordinators for true competitive coordination, or in other words, removing the concurrence requirement on the former RRS, PRS, and AERS frequencies, would also require a revision of Section 90.175(b) of our Rules.<sup>47</sup> Such a request that can only be properly addressed through a rulemaking proceeding. Therefore, we agree with UTC, AAR, AAA, and API that ITA’s request is beyond the scope of the Bureau’s delegated authority,

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<sup>36</sup> *Id.* at 4-5.

<sup>37</sup> *See* 47 C.F.R. § 0.131(m).

<sup>38</sup> *See* 47 C.F.R. § 0.331.

<sup>39</sup> *See* 47 C.F.R. § 0.331(a)(2).

<sup>40</sup> ITA Comments at 22-23 (citing United Telecom Informal Request for Certification as a Frequency Coordinator in the PLMR 800 MHz and 900 MHz Bands, *Order*, 16 FCC Rcd 8436, 8441-2 ¶ 10 (WTB PSPWD 2001) (*UTC Order*) (certifying UTC, ITA, MRFAC, PCIA and UTC for 800 MHz and 900 MHz Business and Industrial/Land Transportation frequencies)).

<sup>41</sup> ITA Request at 5.

<sup>42</sup> *See* AAA-AAR-UTC Response at 9; Joint Opposition Comments at 11, 14; Ameren and Dominion Comments at 3; AAA Comments at 9-10; AAR Comments at 4; BNSF Comments at 2; Cinergy Comments at 5; NRECA Comments at 2; UTC Comments at 2-3; Westar Energy Comments at 4; Progress Energy Comments at 2.

<sup>43</sup> AAA-AAR-UTC Response at 10-11; Joint Opposition Comments at 12; AAA Comments at 2; Midwest Generation Reply Comments at 1-2 and 5.

<sup>44</sup> *See* 47 C.F.R. § 90.35(b)(2).

<sup>45</sup> Cinergy Comments at 2.

<sup>46</sup> *Id.*

<sup>47</sup> 47 C.F.R. § 90.175(b).

and cannot be handled by the Bureau on an *ad hoc* basis.<sup>48</sup>

10. Next, we must determine whether the rule changes sought by ITA's request merit a *Notice of Proposed Rule Making*. Opposing commenters, as members of the power, railroad, and automobile emergency industries, emphasize the nature of their radio communications systems as being critical to the safety and protection of life and property, compared to the day-to-day business nature other I/B Pool systems.<sup>49</sup> Indeed, in 1997 the Commission stated that for entities in the RRS, PRS, and PETERS, "radio is used as a critical tool for responding to emergencies that could impact hundreds or even thousands of people .... Any failure on their ability to communicate by radio could have severe consequences on the public welfare."<sup>50</sup> Power and automobile emergency commenters also cite congressional and other governmental recognition of the critical importance of their industries.<sup>51</sup> The commenters state that the rationale for exclusive frequency coordination is stronger now with the heightened concern for security and reliability of critical infrastructure systems and in the wake of the events of September 11, 2001.<sup>52</sup> We agree that the Commission's position established in the *Refarming Second R&O* regarding the coordination of these quasi-public safety frequencies still holds today. Commenters express their support for AAA, AAR, and UTC to continue maintaining the integrity of their respective services.<sup>53</sup> We believe the public interest and safety is best served by preserving the current coordination system and not introducing true competitive coordination on frequencies formerly allotted to the RRS, PRS, and AERS. We do not believe it is appropriate to initiate a rulemaking proceeding to remove the concurrence requirement from the frequency coordination system that has served and protected the critical

<sup>48</sup> Joint Opposition Comments at 12.

<sup>49</sup> AAA North Jersey Comments at 2; Automobile Club of Southern California Comments at 3; California State Automobile Association Comments at 1; Joint Opposition Comments at 8; CenterPoint Energy Comments at 2; Data Flow Systems Comments at 1; PSEG Comments at 1-2; Questar InfoComm Comments at 2; National Grid Comments at 1-2; CenterPoint Energy Comments at 2; Southern Company Comments at 3; UTC at 11; Progress Energy Comments at 4; AAA-AAR-UTC Response at 6; Joint Opposition Comments at 6; AAR at 5-7; Union Pacific Comments at 1.

<sup>50</sup> *Refarming Second R&O*, 12 FCC Rcd at 14328-14329 ¶ 41.

<sup>51</sup> See Joint Opposition Comments at 4 (citing 143 Cong. Rec. H6029, H6173 (July 29, 1997) (Congress recognized AAA as a quasi-public safety provider due to its provision of emergency road services and the important public safety function it provides)); Ameren and Dominion Comments at 4 (citing Executive Order No. 13010, 61 Fed. Reg. 37347 (Jul. 15, 1996) (The Order recognized that "certain national infrastructures are so are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States")); Cinergy Comments at 7 (citing Marshall W. Ross and Jeng F. Mao, *Current and Future Spectrum Use by the Energy, Water, and Railroad Industries*, U.S. Department of Commerce, National Telecommunications and Information Administration at 3 (Jan. 30, 2002); Homeland Security Act of 2002, Pub. L. No. 107-296, § 201(d) (2002) (both stressed the importance of maintaining the integrity of utilities' communications systems)); Westar Energy Comments at 6 (same).

<sup>52</sup> Ameren and Dominion Comments at 4; NRECA Comments at 2; UTC Comments at 7; Midwest Generation Comments at 2; National Grid Comments at 2; Progress Energy Comments at 4; AAR Comments at 5; BNSF Comments at 3; Canadian National Railway Comments at 2; Railway Association of Canada Comments at 2; Canadian Pacific Railway Comments at 2.

<sup>53</sup> AAA Missouri Comments at 1; AAA North Jersey Comments at 2; Ohio Motorists Association Comments at 1; Automobile Club of Southern California Comments at 1; California State Automobile Association Comments at 1; AAA Southern New England Comments at 1-2; Ameren and Dominion Comments at 4; CenterPoint Energy Comments at 2-3; Lamar Comments at 1; Lincoln Electric System Comments at 3; NRECA Comments at 3; PSEG Services Corporation Comments at 4; Puget Sound Energy Comments at 1; Questar InfoComm Comments at 2; Southern Company Comments at 2; Westar Energy Comments at 2-3; We Energies Comments at 1; Progress Energy Comments at 4; AAR Comments at 10; ASLRRRA Comments at 1; Union Pacific Comments at 1; APTA Comments at 2; BNSF Comments at 4; Amtrak Comments at 1-2; Canadian National Railway Comments at 1-2; Railway Association of Canada Comments at 1-2; Canadian Pacific Railway Comments at 1-2.

infrastructure and quasi-public safety community since the *Refarming* decisions. We note that the services where the Bureau and Commission have implemented competitive coordination have much broader eligibility than the RRS, PRS, and AERS, so it is reasonable to treat those services differently.

11. The final issue we address is the timing of the ITA request with respect to the *Refarming* proceeding. Some commenters note that ITA had multiple opportunities to contest Section 90.35(b)(2) during the rule's evolution in the *Refarming* proceeding, and, years after the rule was finalized, ITA now contests it with the current request.<sup>54</sup> These commenters argue that the opportunity for ITA to seek reconsideration of the *Refarming Second R&O* has long since passed.<sup>55</sup> Given our conclusion that the ITA request seeks to revise our rules for requiring concurrence from the exclusive coordinators,<sup>56</sup> and that the public interest factors referenced above make it inadvisable to weaken the protections afforded critical infrastructure and quasi-public safety licensees, we need not reach the issue raised by some commenters<sup>57</sup> of whether the ITA request is functionally an untimely petition for reconsideration of the Commission's *Refarming* decisions.<sup>58</sup>

#### IV. CONCLUSION

12. After careful consideration of the record in this proceeding, we conclude that we lack the delegated authority to certify ITA or any other entity as a frequency coordinator for the former RRS, PRS, and AERS frequencies; the rule changes sought by the ITA request do not merit initiation of a rulemaking proceeding; and the ITA request is functionally an untimely petition for reconsideration. We therefore dismiss ITA's Informal Request for Certification to coordinate frequencies formerly allotted to the RRS, PRS, and AERS.<sup>59</sup>

#### V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, the Informal Request for Certification filed by the Industrial Telecommunications Association on January 27, 2003, IS DISMISSED.

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<sup>54</sup> Cinergy Comments at 6; Westar Energy Comments at 5; Joint Opposition Comments at 17.

<sup>55</sup> Cinergy Comments at 6; Westar Energy Comments at 5; Joint Opposition Comments at 17; AAA-AAR-UTC Response at 15-16.

<sup>56</sup> See para. 9, *supra*.

<sup>57</sup> Cinergy Comments at 7; Westar Energy Comments at 6. See 47 C.F.R. § 1.429(d) (a petition for reconsideration shall be filed within thirty days from the date of public notice of the final Commission rulemaking action).

<sup>58</sup> See Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Memorandum Opinion and Order*, WT Docket No. 01-146, 19 FCC Rcd 22, 25-16 ¶ 10 (2004) (deeming untimely a 2003 petition that, in effect, contested an action taken in the *Refarming* proceeding).

<sup>59</sup> ITA has indicated that it has begun discussions with other frequency coordinators to address the issues associated with obtaining concurrence on these channels. See Letter dated Aug. 13, 2004 from Jeremy Denton, Director of Government Affairs, ITA, to Marlene H. Dortch, Secretary, FCC. We note that our decision today does not prejudice any agreement ITA reaches with the exclusive coordinators or other coordinators.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau