

Copy filed in FCC docket 09-234

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**From:** Warren Havens <warren.havens@sbcglobal.net>  
**To:** Phil Kidner <phil.kidner@tetra-association.com>  
**Cc:** Phil Godfrey <phil.godfrey@tetra-association.com>; jstobaugh@telesaurus.com  
**Sent:** Sun, July 25, 2010 6:54:26 PM  
**Subject:** TETRA petition to FCC. Threshold proof, etc. Docket 09-234.

This is an open letter.

From: W. Havens for Skybridge Spectrum Foundation, and supporting LLCs

To: The TETRA Association Chairman and CEO

BCC: By filing in the FCC waiver request proceeding noted below, by posting on Scribd, and by other distribution.

[1] Attached is a copy of a recent FCC filing submitted on ECFS today: a FOIA request and report of impermissible ex parte presentations. A copy is provided to the Association for reasons stated in the Special Note at the top.

[2] As you know, there are periodic reports fed to the US private mobile radio (PMR) press that TETRA is available in the US *but for* certain FCC actions sought in the Association's pending FCC rule waiver request to allow TETRA product to obtain FCC type approval as-is without modification. That is misleading.

Can you name one of your Association members willing to sell TETRA products in the US at this time, or at any time prior to the expiration of the Motorola US patents for TETRA (which is not for years, according to ETSI IPR and US patent records)?

- If you can, then add that to your declaration under oath in a filing in the proceeding-- that will be subject to US civil and criminal court jurisdiction including for perjury if it is false.
- If you cannot, then your Petition is misleading and so are your subsequent filings, declaration under oath, and ex parte meetings.

Your petition to the FCC is misleading the US government, and markets, since you state that if it is granted, then TETRA will be sold in the US. You know that is false: The evidence is in your own records and those of ETSI, as I often pointed out. You told me that also in person, by phone and email-- that you and the Association will not promote actual sales of TETRA in the US contrary to the position of Motorola and others who control the Association, but you will tell the US markets that "they cannot have TETRA" due to the Motorola patent blocking coordinated with Motorola's response which is (i) to ETSI and me: that Motorola simply will not license its US patents for TETRA, period, but (ii) to the easier part of the market, that if they get TIA and other approvals, then Motorola may (but with no promises) license its US patents on undisclosed terms. That nonsense has been going on for years, and there is every sign it will continue until

these patents expire. Indeed, your FCC petition seems designed to aid that continuation- and excuse why TETRA still cannot be sold in the US. And if the petition is granted, then no doubt it will take until the expiration of the patents for the relief granted to be put into use.

You are violating FCC rules by that misleading position.

The petition appears to be an attempted defense against violation of US antitrust law by your group- Motorola and others in control of the Association, but it is actually a continuation of antitrust violation. In that regard, communications with the FCC are not entitled to the Noerr Pennington doctrine protection to the extent they are misleading and employ impermissible means. That doctrine provides exemptions for sham and other unlawful communications in government petitions.

You are further violating FCC rules by presenting facts and arguments, on issues of decisional importance in petition proceeding, by "confidential" filings and in personal meetings not documented by required ex parte meeting reports (listing only the topics presented and not all material substance fails to meet the requirements). That violates FCC ex parte rules. It is closed-door influence attempts in a public proceeding, apparently since the facts and arguments you employ cannot withstand public scrutiny and refutation.

Nor are you following your Associations' two internal organizational documents, or the Association's MOU with ETSI. Those require promotion of TETRA worldwide and use of the Association assets only for that purpose, and not for contrary private-party purposes. Your actions in the US are for contrary private party purposes. You refused to allow me and my companies to be members of the Association, since we support its actual stated goals (and the complementary ETSI IPR Policy requirements) which conflicts with your "very good member" (as you often reminded me) Motorola that opposes those goals.

[3] You tell the FCC that TETRA is important for the US as leading edge new technology. That is also misleading. TETRA is at least a decade old (after substantial prior year commercialization) and has not kept up with advances easily employed if modern computing, antenna systems, SDR, mesh net, and other technology is used. TETRA is proven and viable, and that is good. But is not subject to real multi-vendor competitive supply-- that is painfully shown by your groups' actions partly indicated above. Instead, you have an effective cartel to manipulate the market, at least in the US. That is bad for not only the market, but it leads to stagnation in the technology. Where is the progress in TETRA technology in the last decade. Compared to commercial wireless, unlicensed (Wifi etc.) and military wireless, TETRA has fallen behind. More advanced and valuable technology will be available soon for the US PMR markets than TETRA, P25, DMR, and other stovepipe technologies. A good example of this direction is here--

<http://www.janes.com/articles/Janes-Military-Communications/PR4G-F-stnet-VHF-combat-radio-France.html>

<http://www.janes.com/articles/Janes-Military-Communications/FlexNet-JTRS-compliant-software-defined-radio-International.html>

<http://www.afcea.org/signal/articles/anmviewer.asp?a=1186&print=yes>

[http://www.rockwellcollins.com/content/pdf/pdf\\_10694.pdf](http://www.rockwellcollins.com/content/pdf/pdf_10694.pdf)

[http://www.rockwellcollins.com/content/pdf/pdf\\_11389.pdf](http://www.rockwellcollins.com/content/pdf/pdf_11389.pdf)

[http://www.rockwellcollins.com/content/pdf/pdf\\_11388.pdf](http://www.rockwellcollins.com/content/pdf/pdf_11388.pdf)

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Again, you should respond to the threshold issue in Blue above: You chose to take up the US public's resources-- FCC staff time and resources-- with your petition and should at this time be candid.

Sincerely,

President  
Skybridge Spectrum Foundation  
V2G LLC  
Environmental LLC  
Verde Systems LLC  
Telesaurus Holdings GB LLC  
Intelligent Transportation & Monitoring Wireless LLC  
Berkeley California  
[www.scribd.com/warren\\_havens](http://www.scribd.com/warren_havens)  
[www.atliswireless.com](http://www.atliswireless.com)  
[www.tetra-us.us](http://www.tetra-us.us)  
510 841 2220 x 30  
510 848 7797 -direct

FOIA Request to the FCC, via  
[FOIA@FCC.GOV](mailto:FOIA@FCC.GOV)

Requestor: Skybridge Spectrum Foundation (“Skybridge” or “Requester”)

Address: 2<sup>nd</sup> Office at: 2649 Benvenue Ave., Berkeley, CA 94704

Phone: 510-841-2220 or 510-848-7797

Fax: 510-740-3412

Email: [jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com) and  
[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)

Date: July 24, 2010

### Special Note

To expedite the resolution of release of the below requested documents, the Requester is filing a copy of this in docket 09-234 and also directly providing a copy to the CEO and Chairman of the TETRA Association, considering:

(i) the Association’s submission of alleged *confidential* information to the FCC and its allegation that the FCC has allowed it certain special, private confidentiality in this *public* docket, and

(ii) the Association’s use of ex parte in-person meeting presentations to the FCC without filing the required reports of said presentations before the FCC including in this docket: for example, the Association’s May 20, 2010 report filed on EFCS in this docket lists subjects of the meeting that are at heart of the disputed matters in this public proceeding, but the report fails to disclose what the Association presented at that meeting on those subjects. That violates FCC ex parte rules and makes a mockery of the public process involved. For this reason, as copy of the instant FOIA request (with the above Special Note) is being provided to Joel Kauffman, Associate General Counsel of the FCC, as a report of impermissible ex parte presentation, with a request for sanctions.

### Description of Records Requested

[1] Copies of all documents in the exact forms submitted to the FCC in docket **09-234** submitted by (1) the TETRA Association directly or (2) the law firm of Goldberg, Godles, Wiener & Wright, or (3) any other party, that --  
 (a) are marked “confidential” or any such marking, and  
 (b) that, due to said markings or due to FCC’s own-action or for any other reasons, are not publicly accessible on ECFS in that docket.

Said requested records include but are not limited to any filings in that docket on ECFS filed or entered on 06/07/2010 or 06/08/2010, whether or not marked as confidential on ECFS.

This is a public docket and proceeding on a broad FCC waiver request submitted, allegedly, to benefit the US public—all in the US that may want to buy TETRA from any TETRA equipment provider. (Indeed, there was no equipment provider who submitted the request. Also, any grant of the request is a waiver with broad implications to many potential

private-party requests for waiving the same or like rules.) All pleadings are submitted based on addressing the public-interest. It is *contrary* to FCC law and practice to accept confidential filings in such a public docket on such public interest matters.

For those and other reasons, it would also be against any the FOIA statutes, case law, and FCC rules to withhold any such spuriously-labeled confidential information from release under a proper FOIA request, as we submit here.

In addition, if any material was publicly filed on EFCS—inadvertently or not-- it cannot retroactively be “given confidential status” as the TETRA Association representative allege on page 2 of its filing dated June 15, 2010. The Association nor the FCC have a right to turn publicly disclosed information into private information barred from FOIA release or use in this public docket. The Association can seek damage remedies against the law firm that disclosed any *actual* confidential information it had no authority to disclose<sup>1</sup>, as in any such case of negligence among private parties. *But it cannot use the US government as a censure of what its representative publicized.*

[2] Copies of all records, whether in handwritten or typed format, or electronic or hard copy, that in FCC possession or control related to all meetings with any FCC employee(s) at any time in which any person made or may have made any “presentation” (as that term is defined in FCC “ex parte” rules) in the above said proceeding, docket 09-234, including:

- (a) all records that show the names and positions of all person at such meetings in person or by telephone or other means of attendance,
- (b) all records of said “presentations” by said persons,
- (c) all records of the matters of material substance that were presented, any all FCC responses, questions, and comments to said presentations,
- (d) any FCC invitations or suggestions to make any such presentations, including by email,
- (e) all FCC staff internal communications on the above matters.

This request ‘[2]’ includes but is not limited to the reports of ex parte meeting presentations filed on ECFS in said docket.

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<sup>1</sup> Simply asserting that something is confidential does not make it so actually or legally. For example, it is virtually impossible to keep confidential the names of entities that use TETRA since in most all nations that is public knowledge: (i) the spectrum is licensed and the protocol can be determined by lawful spectrum receive surveys compared with spectrum-authority lists of permitted protocols and equipment, and (ii) the end users are either public agencies or critical infrastructure companies which cannot keep confidential information on its PRM systems and suppliers. What the TETRA Association may be trying to keep “confidential” is not actually confidential information, but the fact that among the lists of some of its members’ customers are none in the US at all, and none that stand ready to buy TETRA, and no TETRA equipment provider including its members that has signed any commitment of any sort to supply TETRA in the US. Keeping that confidential would serve the TETRA Association’s misleading purpose in the noted public docket to not expose this fundamental defect in its position to Skybridge Spectrum Foundation that opposes The Association’s waiver request as lacking foundation and deliberately misleading.

### Maximum Search and Copying Fees

Skybridge will pay up to \$350 (three hundred and fifty dollars), and if getting the requested documents is going to exceed this maximum search fee, then Skybridge asks that it be informed of the amount by which it will be exceeded since Skybridge may want the FCC to proceed anyway for whatever additional cost there may be, or Skybridge may modify its request so as to obtain copies of documents up to the maximum amount specified here.

The below request for fee waiver or reduction does not conflict with the preceding payment commitment, nor is any basis to delay the fulfillment of this request. (If the waiver request is denied after fees are assessed or paid, Skybridge may submit an appeal and a payment refund.)

### Waiver or Reduction of Fees

The undersigned certified under penalty of perjury that the following is true and correct: Skybridge is a nonprofit, tax-exempt scientific, educational and charitable foundation which, as one of its primary functions, researches and publishes information on FCC matters (and other matters) in the public interest.\* Skybridge intends to publish information resulting from the fulfillment of this FOIA request. In addition, and apart from said publication activity, Skybridge is, according to its Delaware certificate of incorporation and its IRS tax-exemption determination letter (see these documents submitted with the Skybridge Form 175 in this Auction 87), and according to its actual activities, a nonprofit tax-exempt corporation and a private operating foundation engaged in educational activities for the public benefit. It is thus entitled to fee waiver or at least fee reduction for FOIA requests.

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\* See e.g. the [www.tetra-us.us](http://www.tetra-us.us) website, and the [http://www.scribd.com/warren\\_havens](http://www.scribd.com/warren_havens) website. These are both undertaken by and for Skybridge Spectrum Foundation as the principal entity involved in the described public interest educational (and scientific and charitable) activities.

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The FCC in past FOIA responses to Skybridge seeking fee waivers or reduction has indicated that it is not aware of how Internet websites effectively publish information to the public. That is a spurious response. The fact is that the above listed web sites and pages are operated by and for Skybridge and state in the information and documents published on these sites the nonprofit public interest reasons for these online publications, including those pertaining directly and indirectly to FCC issues. The sites have had tens of thousands of visitors, and have generated a lot of interest, and some of that is reflected in FCC proceedings on TETRA, MCLM, Auction 61, major court cases involving the FCC, and other major FCC-law and FCC-policy issues. The information sought in this request will be published on one of the Skybridge sites to inform the public of the workings of government on a major issue of public interest – Federal Agencies, in this case the FCC, treatment of FOIA matters, which the records in the Request shows is specious and prejudicial. Skybridge intends to publish the relevant documents responsive to this request and allow the public access to them, along with other, past FCC FOIA request responses. In addition, Skybridge will use the information it obtains from this FOIA request in its other (non-publishing) private operating foundation educational activities. The FCC has not shown, in past denials of Skybridge's FOIA-request fee waivers or reductions, any basis to challenge the content or nature of these programs.

Whether or not Skybridge benefits from the requested information is not a basis to deny the fee waiver or reduction request. Under State and IRS law, all assets of Skybridge including documents it obtains must be used for its educational, scientific and charitable nonprofit purposes. The FCC's past assertions that use of FOIA requested documents for Skybridge's internal purposes renders a fee waiver invalid is thus in error: it is an indirect challenge to Skybridge's status under State and IRS law, with no basis shown for that challenge. Rather, it merely continues the unlawful prejudice the FCC often has demonstrated to Skybridge (and any entity managed by the undersigned).

The nature of this filing itself is clearly in the public interest since any such FCC public docket should not be subject to secret, private influence via presentations to FCC staff in person and in writing. That is, by processing and grant of this request, the FCC record will be improved and FCC law upheld. This will be via the requester, Skybridge, placing the documents obtained in this docket, of course FCC staff could do that on their own—and should already have done so, and it should have required proper reports of ex parte in-person meetings that do not withhold obviously presented substance behind the simple listing of subjects discussed: that violates FCC ex parte meeting disclosure standards.

*Thus, under FOIA law, fees should be waived or reduced.*

However, if the FCC decides to use this fee waiver or reduction request to delay in any way the response to this FOIA request, then, under protest, Skybridge will pay the amount due (if reasonable) and seek a decision reversal and refund. In addition, Skybridge has never been late on any *valid* FCC FOIA (or other) payment obligation (nor has any Skybridge affiliate, but there is no FCC FOIA rule allowing attribution of non-requester late payments by any "affiliate" to a requester). Thus, the FCC cannot *lawfully* require advance payment from Skybridge in relation to this FOIA request. However, again, if the FCC requires that, Skybridge will pay that (if reasonable) under protest and undertake an appropriate appeal.

Thanks for your assistance.

/s/

Warren Havens

for

Skybridge Spectrum Foundation,

Warren Havens, and

Jimmy Stobaugh