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Via Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: Ex Parte Notice, WT Docket No. 11-69, ET Docket No. 09-234

Dear Ms. Dortch:

Harris Corporation (Harris) submits further guidance on its assertion that the Commission's recent Orders prohibiting operation of TETRA technology applies to all TETRA technologies, including "low power" TETRA equipment.¹

As the Commission knows, until recently, TETRA equipment operating in accordance with the European ETSI standard could not be operated in any U.S. frequency band because its use violates the Commission rules.² Because of these rule violations, in November 2009, the TETRA Association filed a request with the Commission for a waiver of those rule sections. On April 26, 2011, the Commission released an Order granting in part and denying in part the TETRA Association waiver request.³ At the same time, the Commission released a Notice of Proposed Rule Making in which the Commission sought comment on proposed technical rules that would enable digital technologies like TETRA to operate in certain spectrum bands without causing interference to existing systems.⁴ Subsequently, on September 26, 2011, the Commission released a Clarification Order to address the scope of the restrictions imposed by the Waiver Order.⁵ The Clarification Order reaffirmed the Commission's clear intent to "ensure that TETRA equipment would not be operated in the vicinity of public safety systems."

The result of the Commission's clear wording is that all TETRA use (including "low power" TETRA) in 800 MHz public safety spectrum is prohibited. Through the Waiver Order, which is very limited in

¹ See Ex Parte Notice, Harris Corporation, WT Docket No. 11-69, ET Docket No. 09-234 (Mar. 16, 2012)

² Specifically, under the standards governing occupied bandwidth and emission mask requirements set forth in Part 90 of the Commission's rules, for devices operating within 25 kHz channel spacing, Section 90.209(b)(5) limits the authorized bandwidth to 20 kHz, while TETRA operates with a bandwidth of up to 22 kHz. In addition, TETRA fails to meet the emission mask requirements of Section 90.210 by up to 5 dB. (Id.). See also Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked Radio (TETRA) Technology; Request by the TETRA Association for Waiver of Sections 90.209, 90.210 and 2.1043 of the Commission's Rules, Notice of Proposed Rule Making and Order, WT Docket No. 11-69, ET Docket No. 09-234, 26 FCC Rcd 6503, 6504 (2011) (TETRA Waiver Order).

³ Id. at 6513.

⁴ Id. at 6505.

⁵ See Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked Radio (TETRA) Technology; Request by the TETRA Association for Waiver of Sections 90.209, 90.210 and 2.1043 of the Commission's Rules, Order on Clarification, WT Docket No. 11-69, ET Docket No. 09-234, 26 FCC Rcd 13360, 13362 (2011) (Clarification Order).

scope, the Commission restricted TETRA use “to Industrial/Business Pool frequencies in the 450-470 MHz band, and ESMR frequencies in the 800 MHz band.”⁶ Thus, the Commission made clear that the restrictions imposed by the Waiver Order, including the frequencies in which TETRA equipment may operate, broadly apply to all TETRA equipment, even previously-certified “low power” TETRA equipment.

A review of the two relevant Commission orders -- which broadly refer to “TETRA equipment,” not simply “full power TETRA equipment” in prohibiting TETRA use in the Public Safety Pool frequencies -- clearly demonstrates that the prohibition applies to the operation of all TETRA equipment in those frequencies, regardless of power level. For instance, the Commission restricted TETRA use to the Industrial/Business and ESMR frequencies expressly because the TETRA Association stated “that it does not intend to market TETRA equipment to public safety licensees.”⁷ No differentiation based on power level was mentioned by either the Commission or the TETRA Association.⁸ The Commission also later clarified that the Waiver Order “specifically prohibited TETRA equipment in portions of the 800 MHz band occupied by public safety licensees.”⁹ In emphasizing the point, the Commission stated that its “intent in the Waiver Order was to ensure that TETRA equipment would not be operated in the vicinity of public safety systems.”¹⁰ The Commission in no way limited these prohibitions only to “full power” TETRA operations. Accordingly, at this time, the Commission outright prohibits use of TETRA technology, whether operating at full or reduced power, by Public Safety Pool licensees.

Any possible doubt that the Commission’s prohibition in its Waiver Order and Clarification Order applies to all TETRA is dispelled based on the fact that the Commission has demonstrated that it is fully capable of differentiating between “full power” and “reduced power” TETRA in administering the Commission rules on TETRA use. For instance, early in the Waiver Order, the Commission explained that, in addition to a waiver of the Part 90 operational requirements, “[t]he Association also request[ed] a waiver of the permissive change rules regarding equipment certification.”¹¹ The Commission made no further mention of “reduced power” TETRA until late in the Waiver Order, in a paragraph expressly dealing only with the equipment authorization aspect of the waiver request and rulemaking.¹² In that paragraph, the Commission did not even reference TETRA operation in the Public Safety Pool frequencies. Similarly, in the Clarification Order, the only mention of “reduced power” TETRA was expressly in regard to waiver of the equipment authorization rules.¹³ These equipment authorization regulations are in Part 2 of the Commission’s rules, and therefore unrelated to any operational prohibitions for use of Part 90 spectrum, including the Public Safety Pool frequencies.

The Commission’s frequent references to “reduced power” TETRA with respect to the Part 2 equipment authorization rules, but never with respect to the Part 90 use restrictions, evidence its intent to broadly apply the public safety prohibitions to all TETRA use. In other words, where the

⁶ Waiver Order, 26 FCC Rcd at 6510.

⁷ *Id.*, emphasis added.

⁸ See Reply Comments of the TETRA Association, WT Docket No. 11-69, p. 13 (filed Aug. 9, 2011) (“TETRA Reply”) (“[T]he Association will not promote TETRA to the public safety sector. Indeed, the Association’s Waiver Request did not specify 700 MHz as a required band.”); *id.* at 15 (“The Association has publicly committed not to promote TETRA into public safety markets and does not expect to have access to channels that are designated as public safety use only.”)

⁹ Clarification Order, 26 FCC Rcd at 13362, emphasis added.

¹⁰ *Id.* at 13362-63, emphasis added.

¹¹ See Waiver Order, 26 FCC Rcd at 6504.

¹² See *id.* at 6511.

¹³ See Clarification Order, 26 FCC Rcd at 13362-64.

Commission sought to differentiate between full and low power TETRA, such as with respect to permissive equipment certification changes only needed by reduced power TETRA manufacturers, it expressly did so. On the other hand, when the Commission sought to grant or deny operational authority with respect to all TETRA equipment, such as the prohibition of TETRA use in the public safety bands, it used the all-encompassing term “TETRA equipment,” as there was no need to differentiate between reduced and full power TETRA. The Commission’s broad references to all “TETRA equipment” in imposing the public safety prohibitions was not accidental, as evidenced by the fact that the Commission referenced “low power” and “reduced power” TETRA equipment in several places in the orders, but only with respect to modifying equipment authorizations for TETRA equipment already certified by the Commission for “reduced power” operations, not with respect to use of TETRA on Public Safety Pool frequencies. Thus, the Commission clearly indicated its awareness that certain TETRA equipment, because of its lower maximum power, had been certified as in compliance with the Part 90 technical rules. Nevertheless, the Commission only differentiated between the two types of TETRA equipment with respect to the equipment certification aspect of the orders, not with respect to the actual operation of TETRA equipment in the Public Safety Pool frequency bands.

Despite this clear evidence to the contrary, one party still markets its “low-power” TETRA equipment as acceptable for use in public safety frequencies.¹⁴ For this reason, Harris reiterates its request that the Commission affirm that pre-existing type certifications are not grand-fathered and that “low power” TETRA equipment is not exempt from the Waiver Order’s and Clarification Order’s clear statement that all TETRA equipment and operations are prohibited in public safety frequencies or otherwise in the vicinity of public safety systems.

We thank the Commission for its ongoing consideration of this matter.

Respectfully submitted,

/s/

Patrick Sullivan
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Harris Corporation

¹⁴ See, e.g., Letter from Jose M. Martin, Executive Vice President & Chief Operating Officer, PowerTrunk, Inc. to Marlene Dortch, Secretary, FCC, WT Docket No. 11-69 (June 8, 2011).