



May 7, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

Re: WT Docket No. 11-49

Dear Ms. Dortch:

On May 3, Harold Feld and Kara Novak of Public Knowledge met with Paul Murray of the Wireless Telecommunications Bureau and Geraldine Maise of the Office of Engineering and Technology to discuss the above captioned matter.

PK noted that the initial waiver request contained little in the way of description of the proposed architecture of Progeny's post-waiver system, nor did it contain significant engineering data with regard to the potential impact on co-primary non-LMS licensees, federal users, or Part 15 devices. PK recognizes that the record in opposition to the waiver request was equally sparse, although in fairness to opponents and potential opponents the paucity of information made it difficult to determine the likelihood of interference and thus ascertain the necessity for opposition. In any event, it is only now that Progeny has submitted a more detailed description and some preliminary engineering analysis that parties can properly assess the potential for harmful interference (in the case of co-primary LMS licensees and Federal users) or unacceptable levels of interference (in the case of Part 15 devices).

As a general matter, arguments on interference testing should not be used to substitute for an untimely Petition for Reconsideration. Where new information comes to light, however, the Commission has the authority to reexamine its prior determinations and reopen consideration of the underlying waiver on its own motion. It has reason to do so here. The relevant standing committee of the IEEE has filed comments stating that Progeny's proposed system is "fundamentally incompatible with the operation of modern WLAN and WPAN network technology."¹ Licensees of co-primary non-mobile systems have raised concerns that substantially increasing the number of M-LMS units in the band may create interference despite existing service rules.² Users of Part 15 devices, notably the Wireless ISP Association, have also raised substantial concerns with regard to both testing and the overall wisdom of the grant of the waiver.

¹ Comments of IEEE 802, Docket No. 11-49 (filed January 25, 2012) at 2. Based on the date of filing, IEE's comments are best construed as comments on the Petition for Reconsideration of Skybridge, filed January 19, 2012, although they may arguably be late filed comments on the initial waiver request.

² Ex parte of the International Bridge, Tunnel and Turnpike Association, (April 5, 2012).
<http://apps.fcc.gov/ecfs/document/view?id=7021907222>

Given this new information, the Commission should exercise its authority to reopen the question of whether it serves the public interest to grant the waiver to Progeny in light of the intense uses of the band by unlicensed providers, federal users, and LMS providers such as EZ PASS.³ As part of its reconsideration, the Bureau could seek additional comment on what testing would provide sufficient evidence that the waiver will not cause unacceptable levels of interference to Part 15 devices, and how to resolve potential interference disputes between co-primary licensees.

If the Bureau does not wish to reconsider the underlying waiver, it should still consider whether a public notice is warranted on the question of appropriate definitions, what information should be required from Progeny, and what specific tests and results would satisfy the burden. This is a matter of basic fairness both to Progeny and waiver opponents. PK has stated numerous times that testing should not become the means of indefinite delay. At the same time, the FCC must proceed with caution given the important and intense use of the band by Part 15 devices. Because Part 15 devices must accept interference from Progeny's system once Progeny is approved for operation, this places an even greater emphasis on pre-deployment testing to ensure that operation of the Progeny system post-waiver is not, in the words of IEEE, fundamentally incompatible with Part 15 devices.

Even if the Bureau continues with the current *ad hoc* approach without any additional public notice, it should require more rigorous testing than that provided by Progeny to date. Specifically, PK supports WISPA in suggesting that the FCC require testing for outdoor systems as well as indoor systems. Outdoor uses of Part 15 devices operating in the band include numerous surveillance systems and consumer devices in addition to broadband, meter reading and smart grid uses already mentioned by commenters such as Itron and WISPA. In addition, PK supports testing for interference with non-mobile LMS providers such as EZ PASS. As the Commission has discovered on numerous occasions, such as the 800 MHz rebanding, widespread deployment can create unintended and unanticipated interference for systems in neighboring bands. Rigorous testing against co-primary non-mobile LMS systems at this early stage can potentially avert significant and widespread interference before it occurs.

Respectfully submitted,

/s Harold Feld
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³ Ex Parte of EZ Pass (March 15, 2012). <http://apps.fcc.gov/ecfs/document/view?id=7021905335>

