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May 24, 2012

*Via Electronic Filing*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules -- WT Docket No. 11-49*

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's rules, the Consumer Electronics Association ("CEA")<sup>1</sup> hereby submits this letter in response to the filings of Progeny LMS, LLC ("Progeny") and the subsequent *ex parte* submissions by various parties who have expressed concerns about the impact that the Commission's grant of Progeny's above-captioned waiver request will have on the manufacture and use of unlicensed products ("Part 15 devices") in the 902-928 MHz band.<sup>2</sup> For the reasons stated below, the Commission should proceed cautiously before authorizing any commercial deployments of Progeny's proposed multilateration Location and Monitoring Service ("M-LMS") system. Further, should the Commission require additional

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<sup>1</sup> CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA's more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multi-national corporations to specialty niche companies, CEA members cumulatively generate more than \$195 billion in annual factory sales and employ tens of thousands of people.

<sup>2</sup> See, e.g., Response of Progeny LMS, LLC, WT Docket No. 11-49 (filed March 30, 2012); Letter from Bruce A. Olcott, Counsel to Progeny LMS, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 11-49 (filed April 18, 2012); Letter from Henry Goldberg, Counsel to Itron, Inc., WT Docket No. 11-49 (filed May 1, 2012) ("Itron Letter"); Letter from Stephen E Coran, Counsel to the Wireless Internet Service Providers Association, WT Docket No. 11-49 (filed May 1, 2012) ("WISPA Letter"); Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Telecom Council, WT Docket No. 11-49 (filed May 3, 2012) ("UTC Letter"); Letter from Harold Feld, Legal Director, Public Knowledge, WT Docket No. 11-49 (filed May 7, 2012) ("Public Knowledge Letter").

field testing of Progeny's technology, steps should be taken to ensure that all interested segments of the Part 15 industry are afforded a full and fair opportunity to participate in the process.

CEA's interest in Progeny's activities dates back to the 2006 *Notice of Proposed Rulemaking* ("NPRM") in which the Commission requested comment on whether it should liberalize its rules governing the M-LMS at 902-928 MHz while, *inter alia*, "minimizing interference to unlicensed users."<sup>3</sup> There, the Commission acknowledged that a wide variety of Part 15 devices use the 902-928 MHz band, leading to a "proliferation of important public, private, and consumer applications."<sup>4</sup> Those consumer devices include, for example, cordless telephones, wireless speakers, intercom devices, wireless computer peripherals, baby monitors and video cameras. Many millions of these devices are now in use, and they continue to grow in number and variety.<sup>5</sup>

Now, over six years later, the Commission still has not found Progeny's arguments persuasive enough to justify *any* changes to the M-LMS rules. Nonetheless, the Commission recently granted Progeny's request for a waiver of selected M-LMS rules to facilitate commercial deployments of Progeny's proposed M-LMS system at 902-928 MHz.<sup>6</sup> The Commission conditioned the grant on Progeny's submission of a report detailing its M-LMS system design, describing the process by which Progeny carried out the required field testing (including the particular Part 15 devices tested), and demonstrating that Progeny's M-LMS system will not cause unacceptable levels of interference to Part 15 devices.<sup>7</sup> That report, submitted on January 27, 2012, has proven to be controversial and, in the view of multiple Part 15 interests, significantly flawed. Among other things, Part 15 interests have complained of being unfairly excluded from Progeny's testing process, and that Progeny's testing methodology was entirely inadequate for assessing the "real world" impact Progeny's M-LMS system will have on millions of Part 15 devices deployed everywhere in the country for a wide variety of services operating under diverse conditions.<sup>8</sup>

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<sup>3</sup> *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, 21 FCC Rcd 2809, 2816 ¶ 17 (2006). CEA filed comments on the NPRM, expressing many of the same concerns echoed by other parties seeking to preserve the development, manufacturing and use of Part 15 devices in the 902-928 MHz spectrum. See Comments of CEA, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket No. 06-49 (filed May 30, 2006).

<sup>4</sup> NPRM, 12 FCC Rcd at 2810 ¶ 3.

<sup>5</sup> In addition, the Commission must take account of the myriad of commercial Part 15 devices being used in or developed for the 902-928 MHz band, including, for instance, RFID devices, utility and meter reading devices, medical devices, and equipment used to provide wide area wireless broadband services.

<sup>6</sup> See *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878 (WTB, rel. Dec. 20, 2011).

<sup>7</sup> *Id.* at 16890 ¶ 35.

<sup>8</sup> See WISPA Letter at 2; Itron Letter at 2; UTC Letter at 1; Public Knowledge Letter at 2; Letter from Neil Gray, Director of Government Affairs, International Bridge, Tunnel and Turnpike Association, to Marlene H. Dortch, Secretary, FCC (filed April 5, 2012).

Any Commission attempt to revitalize M-LMS must not disrupt the valuable services Part 15 devices provide in the 902-928 MHz band. Millions of consumers and businesses rely on those services and have a reasonable expectation that the Commission will not subject them to new interference. The current Part 90 regime for the 902-928 MHz band was designed with that in mind. Indeed, the rules represent a careful balance of various factors (*e.g.*, power levels, types of services, duration of transmissions, location and mobility of transmitters, etc.) that makes it possible for M-LMS systems and Part 15 devices to share the 902-928 MHz band in a relatively orderly way.<sup>9</sup> Progeny and other holders of auctioned M-LMS licenses were fully aware of this regulatory framework when they bid on their spectrum. While Progeny's business situation may be unfortunate, the public's vested interest in preserving the 902-928 MHz band for Part 15 use should not be subordinated in the name of accommodating a new business plan that does not comply with existing FCC rules.

In sum, it seems clear that further work is necessary before the Commission and the Part 15 community can have any comfort that Progeny's proposed M-LMS system will not seriously compromise services that use Part 15 devices at 902-928 MHz. The Commission has a variety of options, including requiring additional field testing of Progeny's technology.<sup>10</sup> At a minimum, however, whichever route the Commission chooses should provide Part 15 interests with better information than Progeny has provided to date. Hence, if the Commission decides to require additional field testing, it should ensure that the testing process is more thorough and inclusive, such that all relevant interference scenarios are properly considered and all potentially affected Part 15 interests are afforded ample opportunity to participate in the process.

Very truly yours,

/s/ Julie M. Kearney  
Julie M. Kearney  
Vice President, Regulatory Affairs

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<sup>9</sup> See *Progeny Waiver Order*, 26 FCC Rcd at 16880 ¶ 4 (“In establishing the rules for M-LMS operations, the Commission sought to ensure ... the coexistence of the many varied users in the band. The Commission expected that, as M-LMS licensees designed their networks, certain technical refinements might be appropriate in order to ensure that the coexistence of various services in the 902-928 MHz band is as successful as possible, and it conditioned the grant of each license on the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices.”) (footnote omitted).

<sup>10</sup> See Public Knowledge Letter at 2 (recommending that the Commission re-open the record on Progeny's waiver request, issue a public notice seeking comment on testing-related issues, or, in the absence of a public notice, “require more rigorous testing than that provided by Progeny to date”).