

April 11, 2013

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

**Re: Notice of Oral Ex Parte Presentation
WT Docket No. 11-49**

Dear Ms. Dortch:

On April 9, 2013, Henry Goldberg, representing the Part 15 Coalition, Michael Fitzpatrick, representing General Electric, and Stephen Coran, representing the Wireless Internet Service Providers Association (collectively, the “Part 15 Parties”), met with Commission personnel to discuss certain issues in the above-referenced matter. Attending the meeting on behalf of the Commission were Renee Gregory, Legal Advisor to Chairman Genachowski, Sean Lev, General Counsel, David Horowitz, Assistant General Counsel, Ruth Milkman, Chief of the Wireless Telecommunications Bureau (“WTB”), and Geri Matise, Chief of the Policy and Rules Division of the Office of Engineering and Technology (“OET”).

The discussion focused on legal and procedural issues. The Part 15 Parties asserted that Progeny, LMS, LLC (“Progeny”) has the burden of production and persuasion to show that its operations would not result in “unacceptable levels of interference to Part 15 devices,” the license condition the Commission affirmed when approving Progeny’s waiver request. The Part 15 Parties stated that, as the record demonstrates, Progeny has failed to meet this condition under any reasonable interpretation of “unacceptable level of interference,” including the Commission’s description in the 1996 Order on Reconsideration, which states that M-LMS networks must not be “operated in such a way as to *degrade, obstruct or interrupt* Part 15 devices to such an extent that Part 15 devices will be negatively affected.”¹ The Part 15 Parties further suggested that this description, and the lack of any alternative standard, may not provide WTB and OET with sufficient guidance on the appropriate standard of review of the record in this proceeding and thus a decision on delegated authority would not be appropriate.

The Part 15 Parties presented information indicating that this case presents “new and novel” questions that require resolution by the full Commission. To this end, the Part 15 Parties stated that the standard for “unacceptable levels of interference” had never been applied to the M-LMS service and that WTB and OET had no precedent to guide their review of the record. Moreover, unlicensed wireless technologies have changed and evolved dramatically since the Commission’s last statement on unacceptable interference. Finally, because this case involves

¹ *Amendment of Part 90 of the Commission’s rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd 16905, 16912 (1996) (emphasis in original).

the adverse impact of a licensed service on an unlicensed service that, uniquely, has interference protection, it is only prior to the roll-out of licensed services that the Commission will have the opportunity to determine whether Progeny's operations would cause unacceptable interference to a wide variety of unlicensed technologies and services. Therefore, prudence requires that the full Commission make this unprecedented and critically important decision.

The Part 15 Parties noted that Part 15 devices have operated successfully in the 900 MHz band for 20 years and that many other location monitoring services are being deployed in the marketplace. In addition, the Part 15 Parties explained that any court review of the full Commission's decision would be expeditious and lessen the impact on all of the involved parties. By contrast, a decision by the WTB and OET would need to be reviewed by the full Commission before being appealed to a court, which would extend the time for an ultimate decision.

The meeting attendees discussed whether further testing might be appropriate. The Part 15 Parties stated that testing of other Part 15 devices would provide a more comprehensive and reliable record and thus would offer greater assurances concerning the potential for unacceptable levels of interference.

This letter is being filed electronically in referenced docket pursuant to Section 1.1206 of the Commission's Rules.

Respectfully submitted,

/s/ Henry Goldberg

/s/ Michael Fitzpatrick

/s/ Stephen Coran

cc: Renee Gregory
Sean Lev
David Horowitz
Ruth Milkman
Geri Matisse