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April 17, 2013

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, NW
Washington, DC 20554

Re: *In the Matter of Progeny LMS LLC, WT Docket No. 11-49:* Written Ex Parte Communication

Dear Ms. Dortch:

We are writing on behalf of Plantronics, Inc. ("Plantronics") to reiterate Plantronics' call for the Commission to defer authorizing Progeny LMS LLC ("Progeny") to operate in the 902-928 MHz band under its Multilateration Location and Monitoring Service ("M-LMS") license until such time as Progeny satisfies its obligation under Section 90.353(d) of the Commission's Rules "to demonstrate through actual field tests that [its] systems do not cause unacceptable levels of interference to 47 CFR part 15 devices." [1]

Plantronics is an American telecommunications equipment company, headquartered in Santa Cruz, California, that is a leading designer, manufacturer and marketer of lightweight communications headsets, telephone headset systems and accessories for the worldwide business and consumer markets under the Plantronics brand. In addition, the company manufactures and markets, under the Clarity brand, specialty products such as telephones for the hearing impaired and other related products for people with special communication needs. Among the millions of products sold by Plantronics are wireless headsets that are designed for use in the 902-928 MHz band under Part 15 of the Commission's Rules in contact centers where dozens, if not hundreds, of units must operate simultaneously and in close proximity.

While the record in this proceeding reflects a heated debate over what constitutes "unacceptable interference" for purposes of Section 90.353(d), there can be no serious debate that the rule on its face requires actual field testing demonstrating some level of protection to Part 15 devices and that the Commission anticipated that this testing would be conducted on a

[1] 47 C.F.R. § 90.353(d) (2012).

cooperative basis with potentially affected Part 15 interests.[2] Indeed, when the Office of Engineering and Technology ("OET") and the Wireless Telecommunications Bureau ("WTB") granted in 2011 Progeny's request for waivers of certain rules that effected a fundamental change in the nature of Progeny's offering over its M-LMS spectrum, they reiterated that all of the other M-LMS rules remain in place:

> Included in these rules is the obligation, set forth in Section 90.353(d), that Progeny demonstrate through *actual field tests* that its M-LMS system will not cause unacceptable levels of interference to Part 15 devices. As the Commission noted, the purpose of the testing condition "is to insure that multilateration LMS licensees, when designing and constructing their systems, take into consideration a goal of minimizing interference to existing deployments or systems of Part 15 devices in their area, *and to verify through cooperative testing that this goal has been served*.[3]

Plantronics has had wireless headset equipment certified for use in the 900 MHz band under Part 15 since 2003. Each of Plantronics' equipment authorizations is available online in OET's Equipment Authorization Database. Despite having ready access to this online database, Progeny did not contact Plantronics and did not engage in the cooperative testing with Plantronics called for by the Commission, a requirement reinforced by OET and WTB when they granted Progeny its waivers. In fact, Progeny's initial test report indicates that its testing was <u>not</u> conducted cooperatively with any of affected 900 MHz Part 15 user or manufacturer communities. While Progeny subsequently engaged in joint tests with three Part 15 interests that utilize the 900 MHz band for data communications, the voice communications carried by Plantronics' Part 15 devices are fundamentally different, and Progeny's testing with those three Part 15 data communications interests has no bearing on the question of whether Progeny's M-LMS operations meet the requirements of Section 90.353(d) for sophisticated voice equipment of the sort Plantronics manufactures and markets.[4] Yet, to date Progeny has not suggested any cooperative testing with Plantronics.

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[2] *See Location and Monitoring Service*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 13942, 13968 (1997).

[3] *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878, 16887 (2011) (footnotes omitted, emphasis supplied).

[4] The fundamental differences between data communications technology and that employed by Plantronics to support voice communications are explained by Plantronics in its December 20, 2012 *ex parte* communication. *See* Letter from Steve Cahill, Principal RF Engineer, Plantronics to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 n. 1 (Dec. 20, 2012)["Plantronics 12/20/12 Filing"].

In light of Progeny's failure to engage Plantronics in the cooperative effort called for by the Commission, and recognizing that Progeny's unilateral testing was fatally flawed,[5] Plantronics conducted its own preliminary investigation into the impact of Progeny's system. The results of that preliminary work, which establish a grave risk to those using Plantronics' devices if Progeny is granted operational authority, are a matter of record before the Commission.[6] Subsequently, Progeny and Plantronics have exchanged a series of *ex parte* letters in which Progeny seeks to diminish the implications of Plantronics' work, and Plantronics has identified fundamental misconceptions by Progeny regarding Plantronics equipment and its usage.[7] But neither Plantronics' preliminary study nor this flurry of subsequent filings is an acceptable substitute for the "actual field tests" that Progeny is required by the Commission's Rules to conduct in a cooperative manner with Plantronics.

Plantronics stands ready, willing and able to work with Progeny in the design and conduct of such field tests, and welcomes the FCC staff and other interested parties to observe those tests. But until Progeny conducts with Plantronics the testing mandated by Section 90.353(d), the Commission lawfully cannot, and as a matter of sound spectrum policy should not, authorize Progeny to commence operations in the 902-928 MHz band it shares with Plantronics and other Part 15 users.

Pursuant to Sections 1.1206(b)(2) and 1.49(f) of the Commission's Rules, this letter is being filed electronically with the Commission via the Electronic Comment Filing System.

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[5] The only telephony products tested by Progeny were individual "consumer" devices, not the enterprise-level wireless headsets designed, manufactured and marketed by Plantronics for high-density operations such as contact centers. *See* Letter from Bruce A. Olcott, Counsel to Progeny LMS, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, Part 15 Test Report and M-LMS Network Description, WT Docket No. 11-49 (filed January 27, 2012), at Attachment 2 "Part 15 Test Report". Moreover, even with respect to the consumer devices it did test, Progeny's initial test report presents no test data from which one might extrapolate information regarding potential interference to Plantronics' devices, but merely reflects Progeny's conclusory statements as to whether the impact of its beacons were "unacceptable."

[6] Plantronics 12/20/12 Filing, at 4-8.

[7] *See, e.g.* Letter from Steve Cahill, Principal RF Engineer, Plantronics to Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 11, 2013); Letter from Steve Cahill, Principal RF Engineer, Plantronics to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 25, 2013); Letter from Steve Cahill, Principal RF Engineer, Plantronics to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 28, 2013).

Please contact the undersigned if you have any questions.

Respectfully submitted,

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Timothy J. Cooney

Counsel to Plantronics, Inc.

cc: Hon. Julius Genachowski
Hon. Robert M. McDowell
Hon. Mignon Clyburn
Hon. Jessica Rosenworcel
Hon. Ajit Pai
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Ruth Milkman
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