



April 18, 2013

Via Electronic Filing

Mr. Julius Knapp, Chief, Office of Engineering and Technology
Ms. Ruth Milkman, Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Mr. Knapp and Ms. Milkman:

Google understands that the Commission is evaluating Progeny's request to operate in the 902-928 MHz band. We write to clarify the legal burden Progeny bears in this proceeding, and to emphasize that Progeny has failed to demonstrate via the testing conducted so far that its service does not cause unacceptable interference to unlicensed users in the band.

47 C.F.R. § 90.353(d) establishes a license condition requiring that Progeny "demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR part 15 devices." Both the introduction to section 90.353, which authorizes operation "subject to the conditions [set forth] in this section" and subsection (d), which notes that M-LMS licenses "will be conditioned upon" compliance with the subsection's terms, leave no doubt that avoidance of unacceptable interference is a mandatory obligation. Progeny will violate its license condition if it commences operations without demonstrating through testing that it can coexist with the unlicensed users in the band.

To be clear, the burden lies with Progeny to "demonstrate" that its service complies with the non-interference condition on its license. The section speaks specifically of "the licensee's ability" to show compliance with subsection (d) and notes that the licensee must maintain the necessary records to establish its compliance with the conditions.¹

The Commission has not provided clear guidance to the staff as to what constitutes "unacceptable levels of interference." In a 1996 order, however, the Commission stated that the standard and associated testing requirement serve to ensure that "that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected."²

The limited test reports in the record do not allow the Commission to hold that Progeny's proposed operation meets its license condition. Rather, they demonstrate that Progeny's service in fact causes

¹ 47 CFR § 90.353.

² *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd. 16905, ¶ 15 (1996).

Google Inc. Letter
WT Dkt. 11-49
April 18, 2013

unacceptable levels of interference to some existing Part 15 users.³ The tests conducted thus far, moreover, fail to address Progeny's potential interference with a variety of other Part 15 services.⁴ As a result, the test reports either confirm that Progeny's system will "degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected," or do not provide sufficient information to address this requirement. At a minimum, Progeny has failed so far to meet its burden of showing that its service will not cause unacceptable interference.

These circumstances do not render Progeny's spectrum useless or upset any reasonable investment-backed expectations. Even when it sought a waiver from the Commission, Progeny recognized that any operations under the waiver would have to be consistent with its non-interference obligations.⁵ In granting the requested waiver, the Commission warned Progeny that "[i]f . . . significant interference concerns are raised, [the Commission] will determine what additional steps may be appropriate."⁶ Progeny remains free to modify its proposed operational plan so that successful test results can be achieved.

We look forward to working with the Commission and Progeny to resolve the serious interference concerns raised by Progeny's proposed operation. Please contact me should you have any questions.

Respectfully submitted,



Aparna Sridhar
Telecom Policy Counsel
Google Inc.

cc: *Via Electronic Mail*
Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai

³ See, e.g., Letter from Bruce Alcott, Attorney for Progeny LMS, LLC, and Stephen H. Coran, Attorney for WISPA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-49, at fig. 14 (filed Oct. 31, 2012).

⁴ See, e.g., Letter from Paul J. Sinderbrand and Timothy J. Cooney, Attorneys for Plantronics, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-49 (filed Apr. 17, 2013); Letter from Laura Stefani, Attorney for Inovonics, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-49 (filed Apr. 16, 2013).

⁵ See Petition for Waiver of the Rules and Request for Expedited Treatment, *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, March 8, 2011, at 7; *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878 (2011) (Waiver Order), ¶ 12.

⁶ Waiver Order at ¶ 12.

Google Inc. Letter
WT Dkt. 11-49
April 18, 2013

Geraldine Matisse
John Leibowitz
Sean Lev
David Horowitz