

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Request by Progeny LMS, LLC for Waiver of  
Certain Multilateration Location and  
Monitoring Service Rules

Progeny LMS, LLC Demonstration of  
Compliance with Section 90.353(d) of the  
Commission's Rules

WT Docket No. 11-49

**REPLY OF SILVER SPRING NETWORKS, INC.  
TO OPPOSITION OF PROGENY LMS, LLC**

Pursuant to 47 C.F.R. § 1.106, Silver Spring Networks, Inc. (“Silver Spring Networks”) hereby replies to the opposition of Progeny LMS, LLC, in the above-captioned proceeding. Silver Spring Networks asks the Commission to disregard Progeny’s opposition and move to reconsider its June 6, 2013 *Order*<sup>1</sup> permitting Progeny to begin commercial operations of a multilateration location monitoring service (“M-LMS”) network.

**I. SILVER SPRING NETWORKS IS PROPERLY A PARTY TO THIS PROCEEDING THROUGH ITS MEMBERSHIP IN THE PART 15 COALITION.**

As a preliminary matter, Silver Spring Networks must correct Progeny’s misapprehension regarding our participation in this proceeding. Silver Spring Networks has been actively involved in this proceeding as a member of the Part 15 Coalition. Indeed, its name

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<sup>1</sup> *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules; Progeny LMS, LLC Demonstration of Compliance with Section 90.353(d) of the Commission’s Rules*, Order, FCC 13-78, 28 FCC Rcd. 8555 (2013) (“*Order*”).

has been included in nearly every filing made by the Part 15 Coalition.<sup>2</sup> Though this petition is the first filing Silver Spring Networks has made solely in its own name, it has jointly participated in the proceeding from the start.

Progeny has cited no legal basis for asserting that joint participation in a proceeding with other interested parties who are similarly situated is insufficient to render an entity a “party to the proceeding.” Rather, Silver Spring Networks suspects that Progeny simply failed to review the record in sufficient detail before challenging our status as a party. Given the true facts, we respectfully ask the Commission to reject Progeny’s request to dismiss the Silver Spring Networks’ petition as procedurally defective.

Progeny’s argument does, however, serve to underscore a critical issue we raised in our petition: the importance of ensuring that licensing proceedings do not morph into *de facto* rule changes. Though Silver Spring Networks was following this proceeding, there may be other affected parties who have not participated because they had no reason to expect modification of the M-LMS rules that are supposed to protect Part 15 users. Those parties should not be deprived of the opportunity to be heard on the record, as required by the Administrative Procedures Act.

## **II. THE COMMISSION MUST CONSTRUE “UNACCEPTABLE LEVELS OF INTERFERENCE” IN LIGHT OF THE COMMISSION’S LONG-STANDING POLICY OF PROMOTING SHARING BETWEEN PART 15 USERS AND M-LMS LICENSEES.**

In petitioning for reconsideration, Silver Spring Networks noted that the *Order* sits in an unusual, perhaps even unique, procedural posture.<sup>3</sup> The *Order* does not itself grant a waiver, but is instead the culmination of a waiver proceeding in which the Commission expressly reassured

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<sup>2</sup> See, e.g., Letter from Laura Stefani, Counsel for the Part 15 Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 11-49 (May 17, 2013) (attaching list of Part 15 Coalition members, including Silver Spring Networks).

<sup>3</sup> Petition for Reconsideration of Silver Spring Networks, Inc., WT Docket No. 11-49, at 2 (filed July 8, 2013) (“Silver Spring Networks Petition”).

Part 15 users that they would continue to be protected by the field testing requirement in section 90.353(d).<sup>4</sup> It follows that the pro-sharing policies behind the M-LMS rules must be “the keys to determining whether Progeny’s test results satisfy section 90.353(d).”<sup>5</sup>

Progeny’s treatment of this argument is deeply flawed. It first misconstrues this argument as a collateral attack on the 2011 waivers,<sup>6</sup> but it is no such thing. Silver Spring Networks does not seek reconsideration of the waivers Progeny has already received; we are simply pointing out that the *reasoning* behind those waivers must inform the construction of the otherwise exceedingly-malleable phrase “unacceptable levels of interference.” Progeny then essentially conflates this argument with our—and other petitioners’—concerns regarding exactly how much protection Part 15 operations in 902-928 MHz have from M-LMS operations.<sup>7</sup> There is an obvious difference between waivers that increase interference to Part 15 users and waivers that do not, and our opposition to the Commission’s interference determination now is not tantamount to an attack on the waivers that were granted back in 2011 when the field testing had not yet occurred. We simply want the Commission to follow through on its commitment to “maintain[ing] coexistence of many varied users in the band,”<sup>8</sup> a policy that it emphasized in the *2011 Waiver Order* but appears to have ignored only two years later.

The standards applied in the 2013 *Order* must build upon, not depart from, the reasoning used in the *2011 Waiver Order*. The Commission’s 2011 and 2013 decisions have to cohere logically. The *2011 Waiver Order* expressly conditioned its approval of Progeny’s modified

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<sup>4</sup> *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, DA 11-2036, 26 FCC Rcd. 16,878, ¶ 25 (2011) (“*2011 Waiver Order*”).

<sup>5</sup> Silver Spring Networks Petition at 7-8.

<sup>6</sup> *See, e.g.*, Opposition of Progeny LMS, LLC, WT Docket No. 11-49, at 13-14 (July 19, 2013) (“Progeny Opposition”).

<sup>7</sup> *See* Progeny Opposition at 14-15.

<sup>8</sup> *2011 Waiver Order* ¶ 25.

network design on completion of actual field tests “demonstrat[ing] that [Progeny’s] M-LMS system will not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band.”<sup>9</sup> This statement is consistent with nearly two decades of policy intended to provide “certainty to all users of the band”<sup>10</sup> and to ensure that unlicensed devices would continue to enjoy co-frequency use of the band. The *Order* turns its back on that policy. Rather than holding Progeny to a showing consistent with the Commission’s long-standing policy, the *Order* changed the conditions under which M-LMS and Part 15 users share the 902-928 MHz band.

Two years ago, Progeny benefitted from the Commission’s reliance on section 90.353(d) as a bulwark against inter-service interference. Progeny cannot with any justice now argue that *any* amount of interference to Part 15 users is now by definition acceptable simply because Part 15 users are unlicensed. Progeny should not find it easier to evict Part 15 users in two steps than it would have been to do so in one.

The Commission must not turn its back on its long-standing policy, particularly not without acknowledging that it is doing so. The Commission must reconsider the *Order* not only because of the detrimental effects of Progeny’s design change on unlicensed devices, but also because the *Order*’s analysis of section 90.353(d) essentially adopts a service-wide modification, one that eviscerates the explicit protections granted to Part 15 users by the *LMS Order* and *LMS Reconsideration Order* and acts as an eviction notice for unlicensed use in 902-928 MHz.

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<sup>9</sup> *Id.* ¶ 29.

<sup>10</sup> *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd. 4695 ¶ 2 (1995) (“*LMS Order*”).

### III. PROGENY CONTINUES TO CONFUSE THE PROTECTION OF INDIVIDUAL DEVICES WITH THE PROMOTION OF CO-FREQUENCY SHARING BETWEEN SERVICES.

It is clear from the *LMS Order*, the *LMS Reconsideration Order*, and the *2011 Waiver Order* that the Commission intended the M-LMS rules to afford Part 15 operations some additional protection—not from harmful interference, which is a touchstone of the Part 15 rules, but instead from “unacceptable levels of interference.” There can be no dispute about this—in adopting the rules, the Commission said that they were intended to “afford[] users in these services a greater degree of protection to their operations”<sup>11</sup> and to provide “certainty for all users of the band.”<sup>12</sup> The Commission further acknowledged in the *2011 Waiver Order* that it had adopted “specific interference rules designed to maintain coexistence”<sup>13</sup> in 902-928 MHz so that the “variety of important public, private, and consumer applications...includ[ing] ‘smart grid’ applications” would not experience “unacceptable levels of interference.”<sup>14</sup>

Despite this incontrovertible history, Progeny argues that the “unacceptable levels of interference standard does not provide a greater level of protection than the Commission’s harmful interference standard.”<sup>15</sup> But this line of reasoning merely extends the faulty reasoning to which we drew attention in our petition.<sup>16</sup> Progeny seems to believe (and seems to have convinced the Commission) that if the Part 15 rules do not provide Part 15 users with protection against harmful interference, then the interference protections in the Part 90 rules must be interpreted as equally unprotective. That just does not follow.

The interpretive key to the “unacceptable levels of interference” language lies not in Part 15, but in Part 90. What matters is not how “unacceptable” interference under Part 90 compares

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<sup>11</sup> *LMS Order* ¶ 11.

<sup>12</sup> *Id.* ¶ 2.

<sup>13</sup> *2011 Waiver Order* ¶ 25.

<sup>14</sup> *Id.* ¶ 29.

<sup>15</sup> Progeny Opposition at 8.

<sup>16</sup> Silver Spring Networks Petition at 12-13.

with “harmful” interference under Part 15; what matters is how “unacceptable” interference under Part 90 comports with the Commission’s repeatedly stated desire to ensure certainty for unlicensed use in 902-928 MHz. To effect that policy goal, the Commission’s *Part 90* rules require M-LMS licensees to ensure that their systems do not “degrade, obstruct, or interrupt Part 15 devices to the extent that Part 15 operations will be negatively affected,”<sup>17</sup> while the Commission’s Part 15 rules are utterly silent on the question. Progeny’s reliance on Part 15 rules to solve a Part 90 question has led the Commission into error.

Progeny’s discussion of the field-testing results also fails to distinguish between interference concerns of individual Part 15 devices, and concerns that the *Order* has made co-frequency use in 902-928 MHz infeasible. Progeny describes the Commission as “engag[ing] in a lengthy discussion regarding the Commission’s analysis and conclusions,” but this completely overstates the *Order*’s consideration of the test results. The *Order* does describe the results of testing, but it fails to determine whether those test results *actually verify* that the “many varied users in the band” will continue to be able to coexist.<sup>18</sup> Saying that “data packets get through over time,”<sup>19</sup> that “these devices continued to function,”<sup>20</sup> that devices “would continue to function in most cases”<sup>21</sup>—and that “*many Part 15 devices will adapt to Progeny’s operations because they are designed for operation in an interference environment*”<sup>22</sup>—is not the same as determining that Progeny’s system does not “operate[] in such a manner as to degrade, obstruct,

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<sup>17</sup> *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconstruction, 11 FCC Rcd. 22,462 ¶ 15 (1996) (“*LMS Reconsideration Order*”).

<sup>18</sup> *See 2011 Waiver Order* ¶ 25.

<sup>19</sup> *Order* ¶ 25.

<sup>20</sup> *Id.* ¶ 26.

<sup>21</sup> *Id.* ¶ 27.

<sup>22</sup> *Id.* ¶ 28 (emphasis added).

or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected.”<sup>23</sup>

The Part 15 rules—which deny protection from harmful interference to unlicensed users—do not define the limits on M-LMS licensees. M-LMS licensees are limited by the rules applicable to that service, including section 90.353(d), which is intended to ensure that M-LMS licensees do not cause Part 15 devices to experience “unacceptable levels of interference.” By deciding that section 90.353(d) provides no greater protection than Part 15, the Commission has rendered the “unacceptable levels of interference” standard irrelevant, and reversed its decades-long commitment to ensuring that Part 15 devices can continue to rely on 902-928 MHz, as they have since 1985. The result is that the *Order* effectively permits all M-LMS licensees to operate without any consideration for Part 15 devices—and establishes a new rule without notice and comment.

#### **IV. PROGENY IGNORES ENTIRELY THE RIPPLE EFFECT OF THE *ORDER* ON OTHER M-LMS LICENSEES AND PART 15 USERS.**

Despite the length of Progeny’s opposition—well over fifty pages—Progeny fails to address certain arguments at all. One such argument is Silver Spring Networks’ request that the Commission, at the very least, clearly limit the *Order* to only Progeny’s operations.

As we have noted, the *Order* creates an entirely new regime for M-LMS licensees, but does so in an individual waiver proceeding rather than in a rulemaking. This creates enormous uncertainty for device developers and manufacturers, as well as for operators of Part 15 devices, as the potential impact of the *Order* as written is much broader than an *Order* that is clearly limited to only Progeny. The Commission must therefore clarify that its statements regarding the “unacceptable levels of interference” standard apply only to the situation presented in this

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<sup>23</sup> *LMS Reconsideration Order* ¶ 15.

proceeding—namely, Progeny’s specific system, operating under a waiver granted because of that system’s unique benefit to the public interest (though the magnitude of that benefit is in dispute)—and that the *Order* does not apply to devices and systems deployed by any other M-LMS licensees or to any other systems deployed by Progeny.

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The *Order*’s application of section 90.353(d) to Progeny’s waiver has allowed what should be a licensing proceeding to become a *de facto* rulemaking—to the detriment of unlicensed users. The Commission should therefore vacate the *Order* and reaffirm that section 90.353(d) “affords users in these services a greater degree of protection to their operations,”<sup>24</sup> and reconsider the individual and joint test results under that understanding. The Commission must also clarify that, to the extent it announced any changes to the M-LMS rules in this proceeding, those changes are limited only to the specific licensee and system under consideration.

Respectfully submitted,

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August 2, 2013

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<sup>24</sup> *LMS Order* ¶ 11.

**CERTIFICATE OF SERVICE**

I, Kristine Laudadio Devine, hereby certify that on this 30th day of July, 2013, I served a copy of the Reply of Silver Spring Networks, Inc., by U.S. mail on the following:

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