



Federal Communications Commission  
Washington, D.C. 20554

August 6, 2010

Warren Havens  
2d Office  
2649 Benvenue Avenue  
Berkeley, CA 94704

Henry Goldberg  
Goldberg, Godles, Wiener & Wright  
1229 19th Street, N.W.  
Washington, D.C. 20036-2413

Re: Ex parte complaint by Skybridge Spectrum Foundation  
against TETRA Association (ET Docket No. 09-234)

Dear Mr. Havens and Mr. Goldberg:

This responds to that portion of an e-mail by Skybridge Spectrum Foundation (Skybridge) that alleges that TETRA Association (TETRA) violated the Commission's ex parte rules.<sup>1</sup> Skybridge asserts that a notice of an ex parte meeting,<sup>2</sup> filed on May 20, 2010 by TETRA in ET Docket No. 09-234, fails to conform to the requirements of the Commission's ex parte rules.<sup>3</sup> For the reasons stated below, we find that there is no basis to conclude that TETRA's notice is inadequate.

According to the notice, the meeting occurred May 19, 2010, and involved representatives of TETRA and personnel of the Commission's Office of Engineering and Technology, Public Safety and Homeland Security Bureau, and Wireless Telecommunications Bureau. The notice indicated that the purpose of the meeting was to discuss TETRA's waiver request, filed November 20, 2009, which is the subject of ET Docket 09-234.<sup>4</sup> In its waiver request, TETRA seeks a waiver of various Commission technical rules on behalf of manufacturers of equipment utilizing Terrestrial Trunked Radio, or "TETRA," technology. TETRA claims that the waivers will facilitate the use of this technology in the United States. The notice summarizes four specific points made by TETRA at the meeting. These are: (1) the opponents of the waiver have shown no risk of interference to other spectrum users from grant of

<sup>1</sup> See E-mail from Skybridge Spectrum Foundation to [FOIA@fcc.gov](mailto:FOIA@fcc.gov) (Jul. 24, 2010) (Complaint) at 1.

<sup>2</sup> See Letter from Henry Goldberg to Ms. Marlene H. Dortch (May 20, 2010) (Notice).

<sup>3</sup> See 47 C.F.R. §§ 1.1200-1.1216.

<sup>4</sup> See *Request for Waiver of Sections 90.209, 90.210 and 2.1043*, filed by TETRA (Nov. 20, 2009) (Request).

the waiver, and TETRA has demonstrated that no interference would occur; (2) initiating a rulemaking would merely delay the introduction TETRA technology while developing no new information necessary to rule on the waiver; (3) delaying the introduction of TETRA technology would only serve the interests of radio manufactures wishing to avoid competition from TETRA technology products; and (4) there is precedent for an association, such as TETRA, to receive a waiver on behalf of others, [*i.e.*, TETRA's members].<sup>5</sup>

The provisions of 47 C.F.R. § 1.1206(b)(2) require that:

A person who makes an oral ex parte presentation subject to this section [such as a meeting] that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, an original and one copy of a memorandum which summarizes the new data or arguments. . . . Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. . . .

Skybridge contends that TETRA's notice failed to comply with these requirements in that the notice: "lists subjects at the meeting that are at [the] heart of the disputed matters in this public proceeding. But the [notice] fails to disclose what [TETRA] presented at that meeting on those subjects."<sup>6</sup>

As noted above, the rule requires reporting only data or arguments not already reflected in the presenter's written filings. Thus, to the extent the data and arguments presented by TETRA at the meeting are already reflected in TETRA's waiver request, TETRA had no obligation to summarize them in the notice (or even file a notice), inasmuch as other interested parties have already had an opportunity to respond to them.<sup>7</sup>

We examined TETRA's notice in light of its previous written submissions, specifically TETRA's waiver request and reply comments.<sup>8</sup> We find that the first two points stated in TETRA's notice (the absence of demonstrated interference concerns and the lack of need for a

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<sup>5</sup> See *id.* at 1-2.

<sup>6</sup> See Complaint at 1. Skybridge indicates that the May 20 notice is an example of TETRA's failure to file required notices but presents no evidence of other alleged violations.

<sup>7</sup> We note that the Commission has proposed to amend the rule to require the presenter to provide specific references (including page or paragraph number) to the prior filings containing data or arguments. See *Amendment of the Commission's Ex Parte Rules*, 25 FCC Rcd 2403, 2407 ¶ 8 (2010). The proposed change does not, of course, apply to this case.

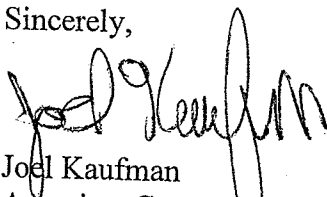
<sup>8</sup> See *Reply Comments of the TETRA Association* (Jan 29, 2010, refiled Feb. 1, 2010). (Reply).

rulemaking) represent the major focus of TETRA's written submissions.<sup>9</sup> The notice briefly summarizes these arguments, whereas the written submissions also present the supporting technical detail. The second two points (the anticompetitive effect of delay and TETRA's standing to seek a waiver) are collateral arguments set forth briefly in TETRA's written submissions in roughly the same terms as stated in the notice.<sup>10</sup> Accordingly, the brevity of the notice on the last two points appears to be consistent with how TETRA has otherwise treated them in the proceeding.

To further ascertain whether TETRA's notice complied with the requirements of the rule, the Office of General Counsel consulted with nine of the ten the individuals who attended the meeting on behalf of the Commission.<sup>11</sup> The participants confirmed without exception that TETRA's notice accurately summarizes the substance of the meeting. This confirms our impression, based on a facial examination of the pleadings, that when read in conjunction with TETRA's written submissions, the notice adequately reported the arguments presented at the meeting and did not merely list the subjects discussed.

In view of the foregoing, we have no basis to find that TETRA violated the ex parte rules.<sup>12</sup> We will therefore take no further action in this matter.

Sincerely,



Joel Kaufman  
Associate General Counsel and  
Chief, Administrative Law Division  
Office of General Counsel

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<sup>9</sup> Compare, e.g., Notice at 1 with Request at 9; Reply at 4-5 (interference). Compare, e.g., Notice at 2 with Reply at 1-2 (no need for a rulemaking).

<sup>10</sup> Compare Notice at 2 with Reply at 2 (anticompetitive effect). Compare Notice at 2 with Reply at 1 n.4 (standing).

<sup>11</sup> One participant was not available.

<sup>12</sup> Skybridge's complaint also appears to take exception to the submission of certain material by TETRA in ET Docket No. 09-234 on a confidential basis. See Complaint at 1. Issues regarding confidentiality will be addressed in connection with the Freedom of Information Request (FOIA Control No. 2010-506) that Skybridge submitted for the material in question. The Commission's rules permit parties to seek confidential treatment for material they submit. See 47 C.F.R. § 0.459.