



September 17, 2014

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> St, SW  
Washington, DC 20554

Re: Authorization for the use of StingRay devices

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ROBERT REMAR  
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Dear Chairman Wheeler:

The American Civil Liberties Union and ACLU of Northern California (ACLU-NC) write to you today with concerns about the accuracy of information provided to the Commission by the Harris Corporation, regarding law enforcement agencies' use of Harris's StingRay line of cellular surveillance products.<sup>1</sup> Documents that the Commission recently turned over to the ACLU-NC in response to a Freedom of Information Act request suggest that your staff received incorrect information from Harris Corporation representatives when considering whether to approve its equipment authorization application. This information is particularly salient given your recent establishment of a "task force to combat the illicit and unauthorized use" of these particular technologies.<sup>2</sup> This information should be shared both with this task force and also with the Federal Communications Commission Inspector General in order to ascertain the scope and severity of these misleading statements.

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<sup>1</sup> For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin. The ACLU of Northern California, founded in 1934 and based in San Francisco, is the largest affiliate of the ACLU.

<sup>2</sup> Craig Timberg, *Feds to Study Illegal Use of Spy Gear*, WASHINGTON POST, Aug. 11, 2014, <http://www.washingtonpost.com/blogs/the-switch/wp/2014/08/11/feds-to-study-illegal-use-of-spy-gear/>

## **Harris Corp. told the FCC the devices would be used only for “emergency situations”**

On August 15, 2014, the FCC Office of Engineering and Technology (OET) disclosed to the ACLU-NC a series of emails from 2010 between OET staff and Harris Corporation employees concerning an equipment authorization application for law enforcement use of Harris’s StingRay line of products. In an email dated June 24, 2010, Harris representative Tania Hanna wrote the following:

Just want to make you aware of the question below we received regarding the application for the Sting Fish. I know many of these questions are generated automatically but it sounds as if there is some confusion about the purpose of the equipment authorization application. As you may recall, *the purpose is only to provide state/local law enforcement officials with authority to utilize this equipment in emergency situations.*<sup>3</sup> (Emphasis added).

Contrary to Harris’s claim, we now know—and Harris should have also been well-aware at the time—that state and local law enforcement agencies were using devices in the StingRay line of surveillance products for purposes other than emergency situations long before 2010, and continued to do so after. To the extent the Commission relied on this representation in the authorization and licensing process, its reliance is misplaced since the representation is clearly inaccurate.

## **Highly invasive StingRay devices are being used across the country by state and local enforcement for non-emergency situations**

The Harris Corporation’s StingRay line of cellular surveillance devices has received a significant amount of media coverage during the past few years. Through these stories, the American public has learned that this sophisticated surveillance equipment, initially designed for the military and intelligence community, operates by mimicking cellular service providers’ base stations and forcing all cellular phones in range to register their electronic serial numbers and other identifying information. It facilitates precise, real-time tracking of cell phone location as well as interception of information about cellular communications.<sup>4</sup> The cell phones of many innocent individuals, including those using their phones inside their homes, are swept up in the surveillance when StingRay devices are used.

It has also become clear that many state and local law enforcement agencies across the country are now using these invasive tracking devices. The ACLU has identified 43 law enforcement agencies in 18 states that own StingRay technology,<sup>5</sup> and our data likely

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<sup>3</sup> Email from Tania Hanna, Harris Corporation, to Bruce Romano, FCC (June 24, 2010, 6:13 PM).

<sup>4</sup> See, e.g., John Kelly, *Cellphone Data Spying: It’s Not Just the NSA*, USA TODAY, Dec. 8, 2013, <http://www.usatoday.com/story/news/nation/2013/12/08/cellphone-data-spying-nsa-police/3902809/>.

<sup>5</sup> ACLU, *Stingray Tracking Devices: Who’s Got Them?*, <https://www.aclu.org/maps/stingray-tracking-devices-whos-got-them>.

significantly underestimates the extent to which this equipment has spread. Funding for these purchases has largely come through Department of Justice and Department of Homeland Security grants.

Local law enforcement agencies have long made clear that they use the StingRay line of products for all manner of regular law enforcement investigations, not just to respond to emergencies. For example, as early as 2004, while seeking retroactive approval for purchase of a Harris StingRay/Amberjack system, the Miami-Dade, Florida, Police Department wrote that “[w]ireless phone tracking systems utilized by law enforcement have proven to be an invaluable tool in both the prevention of these [criminal] offenses and the apprehension of individuals attempting to carry out criminal acts.”<sup>6</sup> Likewise, in 2012 the Charlotte, North Carolina, Police Department sought city council approval to purchase a StingRay to “assist in searches related to criminal and/or homeland security investigations.”<sup>7</sup> A spokesperson for the Gwinnett County, Georgia, Police Department has stated publicly that his agency uses its StingRay device “in criminal investigations with no restrictions on the type of crime.”<sup>8</sup> A member of the Oakland County, Michigan, Sheriff’s Office described using a Harris Hailstorm device to track and locate fugitives and criminal suspects.<sup>9</sup>

Case records reflecting actual use of StingRay devices by local law enforcement confirm that they are routinely used outside of emergency situations. Records released by the Tallahassee, Florida, Police Department explain that in nearly 200 cases since 2007 where the department used a StingRay, only 29 percent involved emergencies; most of the rest involved criminal investigations in which there was ample time to seek some sort of authorization from a judge.<sup>10</sup> Evidence suggests that use of StingRays in emergency situations is actually the exception, not the rule.

Misstating the purpose of StingRay technology as only for emergency situations fundamentally understates the amount of surveillance that state and local law enforcement will undertake and its related impact on the constitutional rights of Americans. When technologies like StingRays are used in emergencies, they are likely subject to more permissive constitutional standards than when used as part of everyday law enforcement. Misstating the circumstances in which StingRays are used risks hobbling federal oversight and facilitating Fourth Amendment violations by local law enforcement agencies.

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<sup>6</sup> Memorandum from George M. Burgess, County Manager, to Hon. Chairperson Barbara Carey-Schuler, at 18 (Feb. 12, 2004), available at <http://www.co.miami-dade.fl.us/govaction/legistarfiles/Matters/Y2004/040314.pdf>.

<sup>7</sup> Charlotte, North Carolina, City Council Meeting Agenda, Mar. 26, 2012, at 49, available at <http://charmack.org/city/charlotte/cityclerk/councilrelated/documents/agenda%20attachments/2012/03-26-2012/03-21-12%20agenda.pdf>.

<sup>8</sup> Matthew Keys, *Exclusive: PD Says No Limits on Stingray Use*, BLOT MAGAZINE, July 16, 2014, <http://theblot.com/exclusive-pd-says-no-limits-on-stingray-use-7722820>.

<sup>9</sup> Joel Kurth & Lauren Abdel-Razzaq, *Secret Military Device Lets Oakland Deputies Track Cellphones*, DETROIT NEWS, Apr. 4, 2014, <http://www.detroitnews.com/article/20140404/SPECIAL/304040043/Secret-military-device-lets-Oakland-deputies-track-cellphones>.

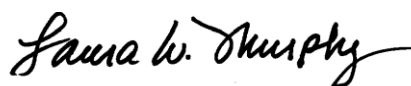
<sup>10</sup> Jennifer Portman, *TPD Changes Tracking Policy*, TALLAHASSEE DEMOCRAT, Apr. 13, 2014, <http://www.tallahassee.com/article/20140413/NEWS01/304130018>.

## **The FCC should take action to provide for greater transparency and oversight for approvals of dragnet surveillance technology**

For more than twenty years, the Harris Corporation has been petitioning the Commission regarding its desire to sell sophisticated surveillance technology to law enforcement agencies.<sup>11</sup> Often, the submissions that Harris makes to the Commission are *ex parte*, and most of the documents the company submits are sealed, preventing the public from knowing what the FCC is approving and why. Given the overbroad and indiscriminate nature of the surveillance conducted by a StingRay, which probes every cell phone in an area, including phones being used inside of homes, it is crucial that the Commission base its decisions on full and accurate information about law enforcement's use of this type of technology. Evidence that the Harris Corporation has been less than candid with the Commission regarding key facts underlines the importance of carefully scrutinizing approval of dragnet surveillance technology and of seeking input from the civil liberties community and other interested parties. In a day when DOJ is opening yet another investigation into a local law enforcement agency that may have abused its authority with the help of federally obtained high tech, high powered tools, the FCC should carefully consider decisions which will put even more such tools into the hands of local authorities.

This misleading statement raises troubling questions about the Commission's approval process for cellular surveillance devices, including those manufactured by the Harris Corporation. Given the number of StingRay related documents that the Commission refused to turn over to the ACLU-NC, citing a need to protect law enforcement information, the full scale of the problem may not yet be known. The FCC task force and FCC Inspector General should do a full investigation, one that reviews all applications related to this controversial technology and consults with a broad group of stakeholders, including technical experts and public interest organizations. If you need additional information or background please contact Chris Calabrese at [ccalabrese@aclu.org](mailto:ccalabrese@aclu.org).

Thank you,



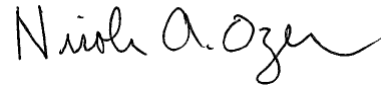
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<sup>11</sup> After a series of high-profile incidents of private phone interception in the early 1990s, the FCC enacted regulations to prohibit the sale of equipment capable of intercepting analog telephone calls. However, at the urging of the Harris Corporation and CTIA, the Commission exempted from the prohibition interception devices used by law enforcement agencies.



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