

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PCS PARTNERS, L.P.)	
)	
Applications for Waiver and Limited Extension of Time)	WT Docket No. 12-202
)	
SKYBRIDGE SPECTRUM FOUNDATION)	
)	
TELESAURUS HOLDINGS GB, LLC)	
)	
Applications for Waiver and Limited Extension of Time)	WT Docket No. 12-229
)	

ORDER ON RECONSIDERATION

Adopted: January 18, 2017

Released: January 18, 2017

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. In this Order, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) addresses both a petition for reconsideration filed by PCS Partners, L.P. (PCSP) and a joint petition for reconsideration filed by Skybridge Spectrum Foundation (Skybridge) and Telesaurus Holdings GB, LLC (Telesaurus).¹ The M-LMS Petitioners seek reconsideration of the Division's Order dated August 29, 2014 granting a waiver of Commission rule Section 90.155(d)² and an extension of time to meet the construction deadline for 900 MHz Multilateration Location and Monitoring Service (M-LMS) Economic Area (EA) licenses held by the M-LMS Petitioners, FCR, Inc. (FCR), and Helen Wong-Armijo (Wong-Armijo).³ Essentially, the M-LMS Petitioners claim the Division erred in not granting them substantially more time to meet performance benchmarks beyond the relief already granted. For the reasons discussed below, we deny the PCSP Petition and the Havens Petition.

¹ See Petition of PCSP for Partial Reconsideration and Clarification, WT Docket No. 12-202 (filed Sept. 29, 2014) (PCSP Petition); Petition of Skybridge and Telesaurus for Reconsideration, Docket Nos. 12-229 and 12-202 (filed Sept. 29, 2014) (Havens Petition). In this Order, we refer to PCSP, Skybridge, and Telesaurus collectively as M-LMS Petitioners and, where applicable, we refer to Skybridge and Telesaurus together as Havens Petitioners.

² 47 CFR § 90.155(d). Pursuant to Commission rules, M-LMS licensees must construct and operate a sufficient number of base stations to serve one-third and two-thirds of an EA's population within five and ten years of the initial license grant, respectively. *Id.* Alternatively, an M-LMS licensee may make a showing of substantial service for its license at the five- and ten-year benchmarks. *Id.* An M-LMS license will automatically terminate as of the construction deadline if the licensee fails to meet the construction requirement. See 47 CFR §§ 1.946(c), 1.955(a)(2).

³ See *Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P. and Helen Wong-Armijo for Waiver and Limited Extension of Time; Requests by Skybridge Spectrum Foundation and Telesaurus Holdings GB, LLC for Waiver and Limited Extension of Time*, Order, 29 FCC Rcd 10361 (WTB MD 2014) (2014 M-LMS Extension Order).

2. *Background. Havens Petitioners' Requests.* On July 18, 2012, the Havens Petitioners filed requests for extension of time to meet construction deadlines for 257 M-LMS licenses.⁴ The Havens Petitioners sought an extension for both their interim and end-of-term construction deadlines until the later of December 31, 2022,⁵ or ten years after final Commission action on the Commission's then pending Notice of Proposed Rulemaking initiated to examine the state of rules governing the M-LMS band.⁶

3. On July 18, 2014, Telesaurus and Skybridge filed additional requests for waiver and extension of time for their respective end-of-term construction deadlines,⁷ incorporating by reference the arguments in the Skybridge Waiver Request and Telesaurus Waiver Request⁸ as justification for further extending both deadlines.⁹ On July 24, 2014, Telesaurus and Skybridge jointly filed a supplement requesting that: (1) Telesaurus and Skybridge be included in blanket relief if the Bureau grants an extension to all M-LMS licensees based on the termination of the M-LMS proceeding (for example, five and ten years from the date the blanket extension is granted to meet the respective first and second buildout deadlines); and (2) Telesaurus and Skybridge be granted waiver relief regarding application of the population coverage benchmarks, safe harbor standards, and substantial service compliance where multiple M-LMS licenses are involved.¹⁰

4. *PCSP Requests.* On July 13, 2012, PCSP filed a request for extension of time to meet the mid-term construction deadline for its M-LMS licenses.¹¹ Specifically, PCSP requested that the Commission extend the deadline until five years after final Commission action on the rule changes

⁴ In 2008, the Bureau extended both the five-year and the ten-year construction deadlines for the M-LMS licensees to July 19, 2012 and July 19, 2014, respectively. *See Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, Order, 23 FCC Rcd 17250 (WTB 2008).

⁵ *See* Request of Skybridge for Extension of Time, Attachment, ULS File No. 0005315615 at 2 (filed July 18, 2012) (Skybridge Waiver Request). Telesaurus and Skybridge noted that for purposes of the extension request statement on Form 601, which requires a date certain, Applicants used a date based on its Preferred Alternative, assuming that the Commission has acted upon the *M-LMS NPRM* by the end of 2012. As a second alternative, Applicants sought an extension of the first buildout deadline until five years after final Commission action in the *M-LMS NPRM*, or if the Applicants must chose a date certain, five years from the last day of 2012 (i.e., December 31, 2017). Skybridge Waiver Request at 1-2. As a third alternative, Applicants requested that the Commission grant whatever additional time it determines to be reasonable to meet the first and second buildout deadlines. *See id.* at 4.

⁶ *See Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, 21 FCC Rcd 2809 (2006) (*M-LMS NPRM*).

⁷ Request of Skybridge for Waiver and Extension of Time, Attachment, ULS File No. 0006385481 (filed July 18, 2014) (Skybridge 2014 Waiver Request); Telesaurus Further Supplement to Pending Extension Requests, Waiver and Request for Extension of Time, Attachment, ULS File No. 0006393307 (filed July 18, 2014) (Telesaurus 2014 Waiver Request).

⁸ *See* Request of Telesaurus for Extension of Time, Attachment, ULS File No. 0005315744 (filed July 18, 2012) (Telesaurus Waiver Request).

⁹ *See* Skybridge 2014 Waiver Request; Telesaurus 2014 Waiver Request.

¹⁰ *See, e.g.,* Skybridge Supplement and Amendment to Requests for Extension of Time, Attachment, ULS File No. 0006393410 at 4 (Skybridge July 2014 Supplement). Skybridge/Telesaurus argued that if they cannot meet the standard set by the Commission for all licenses, they should be allowed to meet it for a lesser portion of their licenses. *See id.* Skybridge/Telesaurus reiterated arguments previously set forth in the Skybridge Waiver Request and Telesaurus Waiver Request as basis for grant. *See id.* at 7-8.

¹¹ Request of PCSP for Extension of Time, Attachment, ULS File No. 0005299291 (filed July 13, 2012) (PCSP Waiver Request).

proposed in the *M-LMS NPRM*.¹² PCSP stated that the factors the Bureau relied on when granting previous extensions to M-LMS licensees, lack of commercially available equipment and regulatory uncertainty, remained unchanged.

5. On July 18, 2014, PCSP filed another request for extension of time to meet its mid-term and end-of-term construction deadlines, until the later of July 18, 2019 and July 18, 2024, respectively; or (2) five years and ten years, respectively, after Commission action terminating the *M-LMS NPRM* becomes final.¹³ PCSP reiterated its arguments that a waiver grant is justified because regulatory uncertainty has inhibited the M-LMS band¹⁴ and equipment for M-LMS is not commercially available.¹⁵ Further, PCSP stated that termination of the *M-LMS NPRM* created additional uncertainty and the Commission failed to address the issues on the record.¹⁶

6. The Division placed the PCSP and Havens Petitioners' waiver and extension requests on Public Notice for comment on July 17, 2012 and August 16, 2012, respectively.¹⁷ Of the six commenting parties, only IEEE 802 directly opposed the requests, arguing that M-LMS is not a viable technology given the availability of other indoor location services, such as Global Positioning System (GPS) and Wi-Fi.¹⁸

7. *Commission's M-LMS Termination Order.* On June 10, 2014, the Commission released an order terminating the *M-LMS NPRM*,¹⁹ concluding that at that time the various proposals for broad revisions of the applicable rules did not merit further consideration. The *M-LMS Termination Order* stated that based on recent development in the M-LMS band, such as one M-LMS licensee's ability to commence commercial operations,²⁰ the Commission believed that the existing framework can provide M-LMS licensees with sufficient opportunities to provide location-based service offerings.²¹

¹² See PCSP Waiver Request at 6.

¹³ Request of PCSP for Waiver and Extension, Attachment, ULS File No. 0006384531 at 1 (filed July 18, 2014) (PCSP 2014 Waiver Request). PCSP also requested a waiver of Section 90.155(d), so that there is no obligation to satisfy a construction requirement prior to the end of the license term. *Id.*

¹⁴ See PCSP 2014 Waiver Request at 5-14.

¹⁵ See *id.* at 14-17.

¹⁶ See PCSP 2014 Waiver Request at 11, 13-14. PCSP also argued that the order terminating the M-LMS proceeding is procedurally defective because the Commission did not seek public comment before terminating the proceeding. *Id.* at 13. The Division noted that the appropriate vehicle for making such arguments is the filing of a Petition for Reconsideration, pursuant to Commission Rule 1.429, of the Commission's action terminating the M-LMS rulemaking proceeding. See 47 CFR § 1.429; 2014 *M-LMS Extension Order*, 29 FCC Rcd 10361 at n.34.

¹⁷ See *Wireless Telecommunications Bureau Seeks Comment on Requests by Progeny LMS, LLC, FCR, Inc., Helen Wong-Armijo, and PCS Partners, L.P. for Waiver and Extension of Time to Construct 900 MHz Multilateration Location and Monitoring Service Licenses*, Public Notice, 27 FCC Rcd 8070 (WTB 2012); *Wireless Telecommunications Bureau Seeks Comment on Requests by Skybridge Spectrum Foundation and Telesaurus Holdings GB for Waiver and Extension of Time to Construct 900 MHz Multilateration Location and Monitoring Service Licenses*, Public Notice, 27 FCC Rcd 9594 (WTB 2012).

¹⁸ See Comments of IEEE 802 LMSC at 2-3 (IEEE 802 Comments).

¹⁹ See generally *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Order, 29 FCC Rcd 6361 (2014) (*M-LMS Termination Order*).

²⁰ In December 2011, the Bureau and the Office of Engineering and Technology (OET) jointly granted Progeny's request for a waiver of two technical rules, conditioned on Progeny filing a field testing report prior to commencing commercial operation demonstrating that its M-LMS system would not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band. See *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878 (WTB/OET 2011) (*Progeny*

(continued....)

8. *M-LMS Extension Order*. On August 29, 2014, the Division adopted the *2014 M-LMS Extension Order*, which dismissed in part the request of Telesaurus as moot, granted in part and otherwise denied the requests for waiver of FCR, Wong-Armijo, PCSP, Skybridge, and Telesaurus, and extended the M-LMS license construction deadlines for FCR, Wong-Armijo, PCSP, Skybridge, and Telesaurus (call sign WQGN602 only) as follows: (1) the mid-term construction deadline was extended until September 4, 2016, and (2) the end-of-term construction deadline was extended until September 4, 2018.²² In granting further relief, the Division found it significant that the Commission terminated the *M-LMS NPRM* proceeding, thereby removing regulatory uncertainty for licensees regarding potential M-LMS rule changes.²³ The Division found that the further extension would permit M-LMS licensees to make appropriate business decisions regarding their licenses, including deployment of services, or, if necessary, to engage in secondary market transactions.²⁴ The Division also found that the M-LMS licensees did not provide adequate justification to support requests for relief of up to five and ten additional years for their respective interim and end-of-term construction deadlines.²⁵

9. *Havens Petition*. On September 29, 2014, the Havens Petitioners filed a petition for reconsideration of the *2014 M-LMS Extension Order* asserting that the Division erred by failing to adequately address why it was denying the “Preferred Alternative” and other alternative extension periods sought.²⁶ The Havens Petitioners seek reconsideration based on: the reasons they have already given to justify an extension; that they have demonstrated more “due diligence” than other M-LMS licensees and, therefore, should be granted more time to meet their construction deadlines than the other M-LMS licensees; and new reasons indicated in the petition.²⁷

10. In addition to the arguments raised in their previous extension requests, the Havens Petitioners state that the requested additional five and ten years is not “extraordinary relief” and that the *M-LMS NPRM* “in effect suspended for all practical purposes any practical meaning and use of the subject licenses.”²⁸ The Havens Petitioners claim that the Commission has ignored the purported goal of M-LMS, i.e., Intelligent Transportation Systems (ITS), and “appears unaware of the extensive materials Petitioners presented” demonstrating that they are pursuing ITS.²⁹ Further, the Havens Petitioners argue that Skybridge is a non-profit organization, working together with Telesaurus, and as such, only operates in the public interest.³⁰ Finally, the Havens Petitioners argue that Skybridge’s AMTS licenses are no

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Limited Waiver Order). In June 2013, the Commission adopted an Order allowing Progeny to commence commercial operations of its M-LMS network on Blocks B and C of its spectrum, subject to certain conditions. *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 28 FCC Rcd 8555 (2013) (*Progeny Commercial Service Order*).

²¹ *M-LMS Termination Order*, 29 FCC Rcd at 6362, para. 8.

²² *See 2014 M-LMS Extension Order*. The *2014 M-LMS Extension Order* specifically deferred consideration of Progeny LMS, LLC’s (Progeny) requests for waiver and extension of time. The Division released an Order on January 17, 2017, DA 17-20, addressing Progeny’s requests for relief. We note that FCR and Wong-Armijo did not seek reconsideration of the *2014 M-LMS Extension Order*.

²³ *See id.* at 10367, para. 17.

²⁴ *See id.*

²⁵ *See id.* at 10368, para. 18.

²⁶ *See Havens Petition* at 2.

²⁷ *Id.* at 5-6.

²⁸ *Id.* at 6.

²⁹ *Id.* at 8.

³⁰ *Id.* at 13.

longer encumbered, allowing Skybridge to use these licenses to supplement its M-LMS licenses for nationwide ITS.³¹

11. *Discussion.* We deny the Havens Petition because the Havens Petitioners have not demonstrated that the Division erred in granting an extension to September 4, 2016 for the mid-term deadline and September 4, 2018 for the end-of-term deadline rather than the longer periods of relief the Havens Petitioners requested, or that the Division erred in not granting the Havens Petitioners more time to construct than the other M-LMS licensees in the band.³² We are also not persuaded by the Havens Petitioners' repetition of assertions set forth in their initial extension request regarding why it is in the public interest to grant an extension of time beyond what the Division granted in the *2014 M-LMS Extension Order*.³³ The Havens Petitioners reassert that they deserve a longer extension than other M-LMS licensees because they have demonstrated more diligence, including their support of the M-LMS rules during the pendency of the *M-LMS NPRM*.³⁴ We disagree. The factors that justified an extension in the *2014 M-LMS Extension Order*, particularly the termination of the *M-LMS NPRM*, affected all licensees equally. Further, the Havens Petitioners' stance on the merits of the *M-LMS NPRM* is irrelevant as to whether an extension of the construction deadlines is warranted.

12. The Havens Petitioners' extensive filings purporting "due diligence" and "expenditures," including the newly presented "Private Commons" applications,³⁵ do not support an additional extension beyond the relief already afforded M-LMS licensees. The filings fail to demonstrate beyond speculation how actual construction resulting in service to the public will be achieved through the requested relief. The Havens Petitioners claim that they will use this spectrum for ITS and that Congress created the M-LMS band solely for the provision of ITS.³⁶ We note that the Commission intended that the M-LMS rules provide a flexible framework for licensees to develop a variety of technical options in providing multilateration service, defining M-LMS as a system designed to locate vehicles and other moving objects with great accuracy throughout a wide geographic area.³⁷ Indeed, in the original 1995 *LMS Report and Order*, the Commission observed that allowing M-LMS systems to provide non-vehicular location services "recognizes the general capability of multilateration systems to cover a wide area and perform location determinations for any type of object within that area."³⁸ M-LMS licensees are afforded

³¹ *Id.* at 13-14.

³² See Havens Petition at 5-11.

³³ See *supra* note 4.

³⁴ See Havens Petition at 5-6.

³⁵ The Havens Petitioners refer to Skybridge's applications for Private Commons status as further evidence of their due diligence, stating that the Private Commons system architecture is a form of "advanced radio technologies" that the Commission expected from M-LMS licensees. The Havens Petitioners state that since the applications were not accepted until after they filed their extension requests, they could not have submitted them as proof of due diligence at that time. See Havens Petition at 11-13. See Supplement to Pending Extension and Renewal Applications, Attachment, ULS File No. 0005315615 (filed Feb. 11, 2013) (Havens filed the Notification of Private Commons Arrangement manually with the Commission and processed and placed them on each license on ULS as attachments). A "private commons" arrangement is an arrangement in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license available to a class of third party users employing peer-to-peer communications and do not involve the end-to-end physical network infrastructure. See 47 CFR § 1.9003.

³⁶ Havens Petition at 7-8; see *supra* para. 10.

³⁷ See *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695, 4697, para. 4 and 4740, para. 89 (1995) (*LMS Report and Order*). See also 47 CFR § 90.7, defining an M-LMS system as a "system that is designed to locate vehicles or other objects by measuring...."

³⁸ *LMS Report and Order*, 10 FCC Rcd at 4708, para. 24.

flexibility in designing and implementing systems to provide location-based services, and the Commission specifically declined to adopt a cap on non-vehicular location services.³⁹ The Havens Petitioners' business decision to specifically focus on ITS is not mandated given the flexibility afforded M-LMS licensees in providing location services and does not persuade us that we erred in granting relief in the *2014 M-LMS Extension Order*. We reiterate that construction deadlines serve an important purpose to promote development and use of spectrum resources and discourage spectrum warehousing.

13. The Havens Petitioners restate the argument that the *M-LMS NPRM* created regulatory uncertainty hindering their ability to construct.⁴⁰ We note that the Commission periodically changes its rules in compliance with the Administrative Procedures Act⁴¹ and therefore some degree of regulatory uncertainty is inherent for all licensees. Moreover, while this factor does not in and of itself merit an extension of the Commission's deadlines, the *2014 M-LMS Extension Order* acknowledged that the pending rulemaking created some regulatory uncertainty, justifying previous extensions.⁴² However, the *2014 M-LMS Extension Order* clearly indicates that the uncertainty surrounding the pendency of the *M-LMS NPRM* was eliminated by its termination. The Havens Petitioners' argument that the pendency of the rulemaking hindered the ability to construct does not support an argument that the Division erred in granting extensions of the applicable build-out deadlines. As we found in the *2014 M-LMS Extension Order*, the extensions to September 4, 2016 for the interim deadline and September 4, 2018 for the end-of-term deadline provide sufficient time for licensees to make appropriate business decisions, including deployment of services or engaging in secondary market transactions.⁴³

14. We also disagree that Skybridge's status as a nonprofit organization merits special consideration. The Bureau addressed this claim in a previous proceeding and found that "the mere fact that a licensee is a non-profit organization does not entitle such an organization to a waiver of any regulation under Section 1.925 of the Commission's rules."⁴⁴ The Commission's rules make no distinction between for-profit and non-profit entities for purposes of determining compliance with construction requirements, and the Havens Petitioners provide no precedent to support a deviation from this policy.⁴⁵

15. Finally, the Havens Petitioners' contention that Skybridge's AMTS licenses are no longer encumbered, allowing Skybridge to use these licenses to supplement its M-LMS licenses for nationwide ITS, does not justify an extension.⁴⁶ The Havens Petitioners suggest that they will "pair" their AMTS with M-LMS to provide nationwide ITS.⁴⁷ Any Havens Petitioners' determination to use holdings in other spectrum bands, such as AMTS, to supplement their M-LMS licenses for nationwide ITS is a

³⁹ See *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 13942, 13966-67, para. 64 (1997).

⁴⁰ Havens Petition at 5.

⁴¹ See 47 U.S.C. § 553.

⁴² See *2014 M-LMS Extension Order*, 29 FCC Rcd at 10367, para. 17.

⁴³ See *id.*

⁴⁴ See 47 CFR § 1.925; *Warren C. Havens Applications for Waiver and/or Extension of the Five and Ten-Year Construction Deadlines*, Order on Reconsideration, 29 FCC Rcd 1019, 1033, para. 34 (WTB 2014) (*Havens 220 MHz Recon Order*).

⁴⁵ See *Havens 220 MHz Recon Order*, 29 FCC Rcd at 1033, para. 34.

⁴⁶ Havens Petition at 13-14.

⁴⁷ *Id.* at 14.

voluntary business decision. It is well-established that circumstances created by voluntary business decisions do not justify an extension of construction deadlines.⁴⁸

16. *PCSP Petition.* On September 29, 2014, PCSP filed a petition for reconsideration of the 2014 *M-LMS Extension Order* to the extent that the order denies in part PCSP's request for relief from the construction deadlines for its M-LMS licenses.⁴⁹ PCSP argues that the brief extensions granted in the decision are not supported by the record or applicable precedent, and PCSP also requests clarification of certain aspects of the order. PCSP requests that the Division extend on reconsideration the mid- and end-of-term construction deadlines until the later of (1) July 18, 2019 and July 18, 2024, respectively; or (2) five years and ten years, respectively, after Commission action terminating the *M-LMS NPRM* becomes final.⁵⁰ Alternatively, PCSP requests that the Division waive the requirements to satisfy a construction requirement prior to the end of the license term and ensure that PCSP is not afforded less time to satisfy the requirements than any other M-LMS licensee.⁵¹

17. PCSP states that the 2014 *M-LMS Extension Order* did not fully respond to its extension request.⁵² Specifically, PCSP states that the order did not address the following requests: (1) PCSP should not be afforded less time than any other M-LMS licensee to satisfy its construction requirements,⁵³ (2) the Division should waive the interim construction deadline;⁵⁴ and (3) an extension is warranted pursuant to Section 90.155(g) of the Commission's rules.⁵⁵

18. *Discussion.* We disagree with PCSP's assertion that extensions granted in the 2014 *M-LMS Extension Order* are not supported or that the Division failed to provide reasoned analysis for its decision. PCSP did not show why the five- and ten-year extensions requested are in the public interest, and PCSP provides no further justification for this amount of time in its petition for reconsideration. PCSP claims that the Division's conclusion that regulatory uncertainty has been removed is not justified and reiterates its argument that for "eight years, PCSP placed substantial reliance on the Commission's 2006 finding that 'current M-LMS rules place significant restrictions on M-LMS operations,'⁵⁶ and reasonably believed that the Commission either would adopt the proposed changes or take other actions consistent with its findings."⁵⁷ As stated above, the Division fully considered the impact of the *M-LMS NPRM* termination in its decision to afford additional relief to PCSP and other M-LMS licensees.⁵⁸ Additionally, contrary to PCSP's contention that the Division failed to consider the state of M-LMS equipment,⁵⁹ the Division fully considered the fact that equipment capable of operating in the M-LMS

⁴⁸ See *Havens 220 MHz Recon Order*, 29 FCC Rcd at 1031, para. 28.

⁴⁹ On April 15, 2016, PCSP filed separate applications requesting waiver relief and a further extension of time to construct its M-LMS licenses beyond the September 2016 deadline, which are currently pending. See ULS File No. 0007232513 et al.

⁵⁰ PCSP Petition at 2.

⁵¹ See *id.*

⁵² *Id.* at 18-20.

⁵³ *Id.* at 2, 18.

⁵⁴ *Id.* at 18-19.

⁵⁵ See *id.* at 19-20; 47 CFR § 90.155(g).

⁵⁶ See *M-LMS NPRM*, 21 FCC Rcd at 2816, para. 18.

⁵⁷ See PCSP Petition at 12-13.

⁵⁸ See *supra* para. 8.

⁵⁹ See PCSP Petition at 17-18.

band currently exists when granting relief to PCSP.⁶⁰ The Division considered both precedent and the effects spectrum sharing has had on this band in terms of equipment availability in concluding that lack of equipment will not be a basis for further extensions beyond the relief granted in the *2014 Extension Order*.⁶¹

19. Further, PCSP claims that the Division failed to consider regulatory uncertainty created by proceedings other than the *M-LMS NPRM*.⁶² Specifically, PCSP states that the Division failed to acknowledge the effects of two proceedings related to Progeny's request for waiver of two M-LMS rules.⁶³ While the Division in fact gave full consideration to the factors affecting M-LMS licensees, PCSP has not shown how these two orders, and the related pending requests for reconsideration, which address the waiver request of one individual licensee, either prevented PCSP from timely meeting its construction deadline or warrant the substantial extension PCSP seeks.

20. PCSP claims that the *2014 M-LMS Extension Order* did not address all of the issues raised in its extension request.⁶⁴ First, in response to PCSP's request that it should be afforded the same time as other licensees to meet its deadlines, we note that while M-LMS licensees originally had staggered construction deadlines based on the various grant dates, the Bureau streamlined the construction benchmarks for all M-LMS licensees over six years ago when granting the first band-wide extension for M-LMS licensees.⁶⁵ Further, all M-LMS licensees have been afforded the full five and ten years, respectively, to meet their interim and final construction deadlines. Second, PCSP argues that the interim construction requirement should be waived entirely "in light of the regulatory uncertainty that has existed since at least 2006."⁶⁶ We note that the Commission's construction requirements serve the important purpose of ensuring that licensees construct their licenses in a timely fashion and do not warehouse spectrum, and we find that regulatory uncertainty was fully considered when the Division granted an extension of the interim deadline to September 4, 2016 – not a complete waiver – in the *2014 M-LMS Extension Order*.⁶⁷ Third, in response to PCSP's claim that we did not address its request for extension pursuant to Section 90.155(g) of the Commission's rules,⁶⁸ we note that PCSP sought a request for extension of its construction deadlines pursuant to Sections 1.925, 1.946(e), and 90.155(g) of the Commission's rules. These rule sections have different standards for relief, and PCSP has not demonstrated that we erred in exercising our discretion to resolve the PCSP Petition through a finding that PCSP merited relief pursuant to Section 1.925, as it requested.

21. PCSP also requests that the Division resolve uncertainty from the *2014 M-LMS Extension Order* by clarifying: (1) the reference to "secondary market transactions," including whether such

⁶⁰ See *2014 M-LMS Extension Order*, 29 FCC Rcd at 10367, para. 17.

⁶¹ *Id.*

⁶² See PCSP Petition at 12.

⁶³ See *id.* at 13; *Request by Progeny LMS, LLC for Waiver of Certain M-LMS Rules*, Order, 26 FCC Rcd 16878 (2011), *recon. pending*; *Progeny Commercial Service Order*. Six parties filed petitions for reconsideration of the *Progeny Commercial Service Order*.

⁶⁴ See PCSP Petition at 18-20.

⁶⁵ See *supra* note 4. As noted, in 2008, the Bureau extended the interim and final construction deadlines for all M-LMS licensees to July 19, 2012 and July 19, 2014, respectively. Prior to this extension, PCSP's interim and final construction deadlines were July 25, 2008 and July 25, 2013, respectively.

⁶⁶ PCSP Petition at 18-19.

⁶⁷ See *supra* paras. 18-19.

⁶⁸ See PCSP Petition at 19-20.

transactions include combinations of M-LMS spectrum blocks that would require rule waivers;⁶⁹ (2) whether its statement regarding existence of equipment includes commercially available M-LMS equipment;⁷⁰ (3) whether the Division will require Progeny to license its equipment to other M-LMS licensees;⁷¹ (4) whether Progeny's technology currently satisfies the definition of M-LMS in Section 90.7 and whether its network satisfies the construction and obligation requirements of Section 90.155(e);⁷² and (5) whether the issues raised in various pending petitions in WT Docket No.11-49 are now moot.⁷³ Finally, PCSP asks that as an alternative to establishing new deadlines, the Division should immediately initiate a proceeding to determine, given the totality of the circumstances, what would constitute a reasonable construction obligation for M-LMS licensees.⁷⁴

22. In response to PCSP's request to clarify the *2014 M-LMS Extension Order*'s reference to "secondary markets," we clarify that M-LMS licensees are free to make whatever appropriate business decisions are warranted to ensure use of the spectrum in the public interest; these could include licensee deployment of service or secondary markets transactions (including assignment of license, partition, disaggregation, or leasing). We decline to address, as beyond the scope of this proceeding, PCSP's requests for clarification regarding the availability of equipment generally or Progeny's equipment specifically, particularly given that the *2014 M-LMS Extension Order* explicitly did not rely on the then-existing state of equipment development as justification for relief and cautioned that the availability of equipment would not be considered as a basis for further extensions beyond the relief granted.⁷⁵ For the same reason, we also decline to address PCSP's requests for clarification regarding any rule waivers that may be required in connection with secondary market transactions and issues raised by the *M-LMS NPRM*, which would be addressed on a case-by-case basis. Lastly, we decline PCSP's request to initiate a proceeding to determine what would constitute reasonable construction obligations as also beyond the scope of this proceeding. PCSP made this request within a petition for reconsideration, governed by Section 1.106 of the Commission's rules⁷⁶ to challenge final actions taken pursuant to delegated authority, and not a process to propose new rules or standards, and therefore does not fall within the scope of a reconsideration petition.⁷⁷ For the reasons discussed above, we deny the Havens Petition and the PCSP Petition.

23. ACCORDINGLY IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation on September 29, 2014 IS DENIED.

24. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the

⁶⁹ See 47 CFR § 90.353(d), (f). M-LMS licensees may not aggregate Block A with Block B or Block C. See *id.* PCSP seems to be asking whether we would consider allowing one M-LMS licensee to own both Blocks A and C. See PCSP Petition at 20.

⁷⁰ See PCSP Petition at 20; *2014 M-LMS Extension Order*, 29 FCC Rcd at 10367, para. 17.

⁷¹ See PCSP Petition at 20.

⁷² See *id.*

⁷³ See *id.* at 2.

⁷⁴ See *id.*

⁷⁵ See *2014 M-LMS Extension Order*, 29 FCC Rcd at 10367, para. 17.

⁷⁶ See 47 CFR § 1.106.

⁷⁷ Further, PCSP's request to initiate a proceeding within a petition for reconsideration does not meet the requirements for filing a petition for rulemaking under 47 CFR § 1.401.

Commission's Rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration and Clarification filed by PCS Partners, L.P. on September 29, 2014 IS DENIED.

25. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau