

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
) WT Docket No. 16-149
PCS PARTNERS, L.P.)
)
Petition for Waiver of 47 C.F.R. § 90.353(b))
and Request for Extension of time and)
for Expedited Treatment)

To: Chief, Wireless Telecommunications Bureau

**OPPOSITION OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby opposes the Petition for Waiver of 47 C.F.R. § 90.353(b) and Request for Extension of Time and for Expedited Treatment filed April 15, 2016 by PCS Partners, L.P. (“PCSP”) (the “Petition”).¹

Introduction

WISPA is the trade association representing the interests of wireless Internet service providers (“WISPs”) that provide fixed wireless broadband Internet access services to millions of residences, businesses, hospitals and public safety access points across the country. WISPs rely principally on unlicensed frequencies to provide service. In some locations, WISPs may offer the only terrestrial source for broadband access, while in other locations, WISPs offer a competitive alternative.

PCSP’s Multilateration Location Monitoring Service (“M-LMS”) Block A licenses include the 904-909.750 MHz and 927.750-928 MHz bands that are co-channel with the 902-928

¹ See *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on PCS Partners Requests for Multilateration Location and Monitoring Service Waiver and Construction Extension,” DA 16-491 (rel. May 4, 2016).

MHz unlicensed band. The 902-928 MHz band is a primary band used by WISPs and the only non-line-of-site band that enables fixed broadband service to be delivered to customers in hilly, wooded or obstructed areas.

The Commission has rightfully expressed concern about the potential for interference that M-LMS operations could cause to millions of unlicensed devices in the 902-928 MHz band. When the Commission adopted Section 90.353(d) of its rules to require M-LMS licensees to conduct field testing to ensure that there would be no “unacceptable levels of interference” to Part 15 devices, one Commissioner noted the “potential bog of interference problems”² and another cited his belief “that the record in this proceeding offers little indication regarding the potential implications for all interested parties, including the consumers and manufacturers of many Part 15 devices.”³ On reconsideration, the Commission made clear that it “seeks to ensure . . . 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 devices will be negatively affected.*”⁴ More recently, in the order granting Progeny LMS, LLC (“Progeny”) the right to commence commercial M-LMS operations, the Commission acknowledged the “variety of licensed and unlicensed operations” in the 902-928 MHz band⁵ and reaffirmed the “‘safe harbor’ rule for unlicensed devices that permits Part 15 operations that conform to specified technical standards to be deemed as not causing interference to M-LMS systems.”⁶

² *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicular Monitoring Systems*, 10 FCC Rcd 4695, 4763 (1995) (“*LMS Report and Order*”) (Concurring Statement of Commissioner James H. Quello).

³ *Id.* at 4765 (Dissenting Statement of Commissioner Andrew C. Barrett).

⁴ *Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicular Monitoring Systems*, 11 FCC Rcd 16905, 16912 (1996) (emphasis added).

⁵ *Request by Progeny LMS, LLC for Waiver of Certain Multilateration and Monitoring Service Rules*, 28 FCC Rcd 8555, 8556 (2013) (“*Progeny Order*”) at 3. WISPA and others have sought reconsideration of the *Progeny Order*. See WISPA Petition for Reconsideration, WT Docket No. 11-49 (filed July 8, 2013).

⁶ *Progeny Order* at 8559.

In sum, the interests of WISPs and other Part 15 users of the 902-928 MHz band have been specifically recognized by the Commission, which has adopted rules and conditions intended to ensure that they will not suffer unacceptable levels of interference. Accordingly, WISPA has a keen interest in this proceeding.

Discussion

A. THERE IS NO LEGAL BASIS FOR WAIVER OR EXTENSION.

Section 90.155(g) states that “[e]xtensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment.” The Commission may grant a request for waiver when: (i) the underlying purpose of the rule(s) would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest, and (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁷

PCSP flatly admits that it meets “none of the[] circumstances” necessary for grant of a milestone extension request.⁸ In lieu of complying with Section 90.155(g), PCSP promotes an empty plan to “deploy an LTE system capable of supporting both a trilateration-based M-LMS and machine-type communication (“MTC”) for narrowband Internet of Things (“IoT”) applications and services”⁹ and assures the Commission that “a viable technology solution is becoming available” at some unspecified future juncture.¹⁰

⁷ 47 C.F.R. § 1.925(b)(3).

⁸ Petition at 13.

⁹ *Id.* at 2-3.

¹⁰ *Id.*

Even if the promise of some future technology somewhere down the road were to pan out, PCSP cannot escape the fact that it has not constructed any facilities and that such failure is within its control. Rather, PCSP is attempting to put lipstick on a pig – by offering rosy projections of technological breakthroughs and innovative new services – in an attempt to mask its impending failure to meet construction milestones. But no amount of hype and legerdemain can justify PCSP’s actions.

PCSP should know better than to burden the FCC with this request. Less than two years ago, the Bureau granted waivers to PCSP and other M-LMS licensees to extend their milestone deadlines so they could have more time “to make appropriate business decisions regarding their M-LMS licensees, including deployment of services or, if necessary, to engage in secondary markets transactions.”¹¹ The Bureau bluntly warned PCSP (and other M-LMS licensees) that it “*will not consider future requests for waiver or extension of either the interim or end-of-term construction deadline based on claims related to lack of equipment.*”¹² The Bureau further warned that “[e]ven if the equipment market does not develop consistent with M-LMS licensees’ chosen business plans, licensees will nonetheless be subject to the construction requirements.”¹³

The Bureau understood in 2014 that which is even more true today – that “it would be contrary to the public interest to grant extension requests in perpetuity where our build-out requirements have not been met.”¹⁴ PCSP obtained its licenses in 2003. Thirteen years of warehousing spectrum is long enough.

¹¹ *Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P. and Helen Wong-Armijo for Waiver and Limited Extension of Time*, 29 FCC Rcd 10361, 10367 (WTB 2014).

¹² *Id.* at 10368 (emphases added).

¹³ *Id.*

¹⁴ *Id.*

B. IF THE BUREAU GRANTS THE EXTENSION OR WAIVER REQUEST, IT MUST ENSURE THAT SUFFICIENT FIELD TESTING OCCURS AND THAT THERE ARE NO UNACCEPTABLE LEVELS OF INTERFERENCE TO UNLICENSED USERS.

Assuming *arguendo* the Bureau grants PCSP's request to again waive the applicable construction requirements, PCPS must remain subject to the requirements of Section 90.353(d), which condition grant of M-LMS licenses on "the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR Part 15 devices."¹⁵ Although PCSP acknowledges this condition¹⁶ and estimates that testing would occur in the first half of 2018,¹⁷ it attempts to pre-judge the outcome of such field testing by claiming that "a waiver is highly unlikely to cause interference to other band users."¹⁸ Its "preliminary analysis" is that the bandwidth use "will be comparable" to that approved for Progeny with respect to its M-LMS spectrum.¹⁹

PCSP "proposes to deploy an LTE system capable of supporting both a trilateration-based M-LMS and machine-type communication ("MTC") for narrowband Internet of Things ("IoT") applications and services."²⁰ It claims that "no user *outside the A Block* will be materially impacted by transmissions resulting from PCPS's proposed solution."²¹ But it makes no claim about unlicensed users that are co-channel with the Block A frequencies and which are used by millions of consumer and broadband devices. Further, substantial questions have been raised about the ability of LTE to coexist with WiFi and other unlicensed devices, and testing

¹⁵ 47 C.F.R. § 90.353(d).

¹⁶ *See* Petition at 8.

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 7. WISPA interprets this assertion to mean that the proposed technology, not the waiver itself, would not cause interference.

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

²¹ *Id.* at 8 (emphasis added).

among LTE and other technologies has not been completed.²² Despite PCSP's bold predictions, any claim about the absence of unacceptable levels of interference is speculative and premature.

PCSP has provided no real data to support its theory that there would be no interference, just an unsupported statement that it won't cause more interference than Progeny. Leaving aside the serious concerns that WISPA expressed about the results of its joint testing with Progeny,²³ predictions about potential interference cannot be reliable. Indeed, the lack of equipment that might prove PCSP's non-interference thesis is not only a basis for denying the waiver request, but also a reason why field testing remains a critical safeguard for millions of unlicensed devices.

Conclusion

PCSP is at the end of the line. It has apparently constructed no facilities, and instead begs the Bureau to give it one more chance. But it offers nothing other than vague pronouncements that fail to conceal its effort to continue to warehouse spectrum until sometime in the future when the stars will somehow magically align. The Bureau was clear in 2014 when

²² *Public Notice*, "Office of Engineering and Technology and Wireless Telecommunications Bureau Seek Information on Current Trends in LTE-U and LAA Technology," DA 15-516, ET Docket No. 15-105 (rel. May 5, 2015).

²³ *See* n.5, *supra*.

it warned PCSP that requests for extension of construction milestones based on the unavailability of equipment will be rejected. The Bureau should make good on its pledge and deny the Petition.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: */s/ Alex Phillips, President*
/s/ Mark Radabaugh, FCC Committee Chair
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CERTIFICATE OF SERVICE

I, Trina Coffey, do hereby certify that on this 24th day of May, 2016, a copy of the foregoing Opposition of The Wireless Internet Service Providers Association was sent by first-class, postage prepaid mail to the following:

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