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Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of	)	
	)	
Progeny LMS, LLC	)	
	)	RM No. 10403
Amendment of Part 90 of the	)	
Commission's Rules Governing the	)	
Location and Monitoring Service to	)	
Provide Greater Flexibility	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF AXONN, LLC

Axonn, LLC ("Axonn"), pursuant to Section 1.405[1] of the Commission's Rules, hereby files its Comments to oppose Progeny's Petition for Rulemaking. In support of its opposition, Axonn states the following:

Axonn, located in New Orleans, Louisiana, is a manufacturer of telecommunications devices and equipment. Among Axonn's many products it manufacturers Part 15 devices for diverse uses. Axonn was one of the pioneers in manufacturing Part 15 spread spectrum devices. The Part 15 devices manufactured by Axonn are a matter of public record. Among the current applications of Axonn's unlicensed devices *are* wireless smoke detectors and security systems; devices used in the oil and gas industry to improve efficiency and ensure compliance with EPA regulations; residential utility meter reading; industrial controls to monitor and control processes such as temperature, pressure and flow; in-building controls to monitor and control HVAC systems; and asset tracking systems

[1] 47 C.F.R. § 1.403 (2001).

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Axonn's primary concern is that a grant of Progeny LMS, LLC's ("Progeny") Petition would result in significant harmful interference to its devices, possibly resulting in loss of life and property. At the very least, if Progeny's Petition is granted and its proposals accepted, it will force consumers of Part 15 devices to replace existing system infrastructure at considerable disruption and expense in order to withstand a more robust LMS system.

The Proposed Issues Have Already Been Decided

The issues upon which Progeny is requesting consideration in its Petition have already been considered and acted upon by the Commission. Progeny now states that the LMS marketplace has changed so dramatically since it purchased its licenses that it justifies changing the very rules that allowed for the creation of LMS in the first place.'

Yet Progeny leaves to the agency's imagination any specific changes in the marketplace that would warrant or justify any radical change in the LMS rules. Progeny must recognize that it bears a heavy burden to justify changes at this early stage in the development of LMS services, which services as presently described within the Commission's Rules have been found to be fully consistent with the demands of the marketplace and the needs of the public. It is insufficient to merely claim, as Progeny does, that Progeny's business plans would allegedly be better served by the suggested rule changes. Indeed, the Commission's duty to manage the spectrum for the benefit of all authorized users, and not simply at the behest of Progeny, requires a far more supported justification then Progeny offers in its Petition.

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[2] Progeny Petition for Rulemaking, March 5, 2002 at 17.

Progeny lists on page 7 of the Petition its many "problems" with the LMS service rules. The alleged "problems", such as the interference protection of Part 15 users and specific LMS service limitations, are the very issues the Commission tackled in a lengthy notice and comment rulemaking proceeding prior to the auction of the LMS licenses.[3] Progeny complains that these Commission created rules are limiting to operations on the channels.[4] However, the cited rules represent a careful balancing of issues among interested parties and users performed by the agency after studious consideration of years of proceedings, presentations, comments, and industry meetings. Progeny had every opportunity to raise its concerns in the original rulemaking and to have those concerns considered by the Commission. Progeny unilaterally accepted the benefits of the Commission's arduous efforts when it participated in the relevant auction. And Progeny has reaped the benefits of its decisions by having provided to it certainty in its development of LMS services, in accord with clearly established Commission guidelines. Now, Progeny would add new and unnecessary uncertainty into this settled area by restarting the debate that so entangled for years the agency and industry participants.

'Amendment of Part 90 of the Commission's Rule to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995) (*LMS Report and Order);* Amendment of Part 90 of the Commission's Rule to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Order on Reconsideration*, PR Docket 93-61, 11 FCC Rcd 16905, (1996) *(Order on Reconsideration);* Amendment of Part 90 of the Commission's Rule to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket 93-61, 12 FCC Rcd 13942 (1997) (*LMS Further Notice);* Amendment of Part 90 of the Commission's Rule to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, PR Docket No. 93-61,3 FCC Rcd 15182 (1998) (*LMS Second Report and Order).*

[4]Progeny Petition, at 7

While a few changes have occurred in the communications market place as a whole, such as the requirements of E911, no changes have occurred in the 902-928 MHz band that would allow such a dramatic departure from the established rules. Manufacturers, such as Axonn, have relied upon these rules in manufacturing devices for the market place and which millions of consumers, manufacturers ***and*** public safety entities rely upon everyday.

Nothing has changed in the 902-928 MHz band that would eliminate the harmful effect of allowing real time interconnection with the public switched telephone network (PSTN). Nothing bas changed in the 902-928 MHz band that would alleviate the significant harmful interference to Part 15 users or "secondary" users should Progeny's proposals for altering the current service limitations and Safe Harbor provisions be granted.[5]

Progeny cites to the doctrine of spectrum flexibility in support of its Petition." It is true that the Commission has long promoted spectrum flexibility. However, the Commission also values spectrum sharing. Spectrum flexibility is appropriate only where the results won't interfere with existing users, and then only after years of careful consideration. The LMS service rules were drafted after years of careful consideration. LMS has had its due process. It was found that in the case of LMS, spectrum flexibility was not appropriate because the results would be disastrous to the Part 15 devices and amateur users if it allowed LMS more operational

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[5]Progeny Petition, at 27.

[6]Id. at 7-14.

flexibility.' Nor is spectrum flexibility appropriate when, as here, it would serve as a distraction for LMS licensees in developing the core services which the Commission deemed in the public interest in the creation of LMS. The Commission has deemed LMS operations to be highly beneficial to the public and an appropriate use of valuable 900 MHz spectrum. Its rules reflect the importance and focus on delivery of this valuable service, without concurrent sacrifices by affected persons sharing the spectrum. Those services should be allowed to he developed and the benefits to the public realized prior to any consideration of a dilution of the objectives articulated within the original rulemaking

All of the issues raised in Progeny's Petition were already decided upon careful consideration of the Commission. **As** the Commission stated in its *LMS* ***Further Notice,*** "We believe that the safe harbor rule, ***which*** *was* ***adopted after careful study of the extensive record*** *in* ***this proceeding,*** appropriately balances the interest of the various parties operating in the 902-**928** MHz band so as to limit the potential for harmful interference."[8] There is no need or reason to revisit these issues so soon after they were promulgated.

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[7]***See,*** **e.g.** *LMS* ***Further Notice*** at ¶61. (The Commission granted LMS users the use of wideband forward links, but limited the power to 30 watts ERP to reduce the possibility of the devices from interfering with **Part** 15 devices.)

[8]*LMS* ***Further Notice,*** at ¶32. (Emphasis added).

LMS Licensees Bought What They Paid For

The Commission's competitive bidding rules were created to select from among mutually exclusive applications for the same license.' Every person or entity, through the Public Notice and notice and comment rulemaking proceedings, are given the same information upon which to base its decision to participate or not participate in a particular auction. The Auction Rules were established to provide notice to potential bidders of the service rules. Progeny was required to perform its due diligence. Therefore, Progeny h e w , at the time, what it was purchasing at the LMS auction and Progeny got what it paid for. No more, no less. To complain now that the service rules are too narrow is disingenuous.'"

Progeny is now asking for completely different service rules after the auction. The proposed changes to the service rules are material. Had the Commission adopted the service rules as Progeny now proposes, which essentially turns LMS into a CMRS or even cellular like service, there would have been significantly more interest in the auction, by significantly different types of bidders. It is likely that the licenses would have been purchased for much more money. To grant Progeny's request to revisit the issues decided prior to the LMS auction would call into question the very foundation of Auction 21 and 39, and the auction process in general. Therefore, if the Commission adopts the proposals of Progeny, Axonn proposes that the LMS band he re-auctioned as a new service so that all persons he given the opportunity to hid upon the licenses.

'47 C.F.R. § 1.2101.

[10] Progeny Petition, at 17.

A Grant of Progeny's Proposals Would Significantly Harm Part 15 Users

Allowing Progeny to operate a more robust system at higher power, with more bandwith and without the protections of the safe harbor provision would be disastrous not only to the equipment manufacturers of Part 15 devices, but also to the average consumer that relies upon unlicenced devices in their everyday life.

The grant of the safe harbor provision for Part 15 devices was intended to reduce the amount of harmful interference to unlicenced devices, but it was also designed to give Part 15 manufacturers the ability to rely upon the promulgated rules in their research and development of Part 15 devices." **As** stated in the *LMS* ***Further Notice,***

> ". . . the Commission recognized the concerns of Part 15 and amateur interests with respect to their secondary status. Accordingly, in order to alleviate such concerns and to provide all operators in the band with a greater degree of certainty in configuring their systems, thereby promoting competitive use of the band, the Commission adopted the safe harbor definition of non-interference.""

To change the rules now would not only waste the resources already put towards the Part 15 devices in use today and those that are to be manufactured tomorrow. The manufactures are not the only ones who will suffer. There are hundreds of state and local governments that have integrated Part 15 devices in their buildings and infrastructure; everything from ETTM devices,

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[11] *LMS* ***Further Notice,*** at ¶32.

[12] Id.

which are effective in reducing the amount of pollution, too operation of keyless entry systems and parking garages that use Part 15 devices. Business and utilities will also suffer if Progeny's Petition is granted. Businesses and utilities use Part 15 devices in many applications including parking garage, security systems, keyless entry systems, fire alarms, cordless phones and most of all meter reading. All of these devices will have to be replaced, at the expense of millions of consumers and taxpayers.

There are millions of consumers that rely upon Part 15 devices, many of whom don't even know how or why their garage door opens when they press a button, or how E-Z pas systems work, how they are able to enter their apartment building without a key or even how their utility company is able to read their water and gas meters without coming into their house. What they do know is the convenience of these systems and that they no longer have to pay more money each month to their utility company based upon an estimated use calculation. It is these systems that are at risk if Progeny's proposals are granted. Perhaps most important to note is that Axonn's Part 15 devices are manufactured for home security and fire alarms. To allow LMS systems to interfere with these devices would be disastrous and put lives and property at unnecessary risk. Axonn relied upon the Commission's Rules when it designed and manufactured these devices.

Part 15 systems were not designed to withstand a competing signal that the proposed LMS rules would allow. The current Part 15 devices were designed and manufactured in reliance upon the Commission's Rules and statements made in other documents that LMS would be a low

data rate, location information only in non-real time application. Manufacturers relied upon the Commission's statements that it believed that Part 15 devices were valuable enough to be protected from undue harmful interference. Part 15 devices were not designed to share the 902-928 MHz band with a LMS service that could compete with CMRS and cellular licensees. That is too much.

Perhaps the correct relief Progeny should request, due to its troubles in finding a manufacturer for its devices, is an extension in its build out requirements not a complete redrafting of the LMS service rules.

Conclusion

For the foregoing reasons Axonn, LLC opposes Progeny LMS, LLC's Petition for Rulemaking in whole and supports the position that the LMS rules remain as they are.

Respectfully submitted,

AXONN, LLC

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Dated: May 15,2002

Certificate of Service

I, Ava Leland, certify that I have this 15th day of May, 2002, caused to be sent by Hand Delivery a copy of the foregoing Comments of Axonn, LLC to the following:

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