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Federal Communications Commission
Office of Secretary

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March 14, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Progeny LMS, LLC Petition for Rulemaking to Amend Part 90 of the Commission's Rules Governing Location and Monitoring Service to Provide Greater Flexibility, RM-10403.*

Oral ExParte Presentation

Dear Ms. Dortch:

On Friday, March 11, 2005, representatives of Progeny LMS, LLC ("Progeny") met with Office of Engineering and Technology Deputy Chief James Schlichting and Lauren Van Wazer, special counsel to the Office Chief to discuss issues relevant to the above-captioned petition. Progeny was represented by Janice Obuchowski, Albert Halprin, Nick Frenzel, Mark McDowell and Mary Greczyn. The meeting was held to refresh the record in the instant proceeding and to discuss questions relating to Location and Monitoring Service ("LMS") in the 902-928 MHz band. Progeny has filed a pending Petition for Rulemaking that seeks additional flexibility for M-LMS, which shares the band with other licensees and users of unlicensed devices under Part 15 of the Commission's rules. Attached is a copy of the handout presented.

In accordance with Section 1.1206(b) of the Commission's Rules, please accept this original and one copy for submission.

Respectfully yours,

Janice Obuchowski

Janice Obuchowski

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Regulatory Flexibility Within and Beyond 900 MHz

Progeny LMS, LLC

March 11, 2005

Overview of LMS Petition for Rulemaking

Progeny filed a petition for rulemaking seeking a re-examination of the LMS rules in the 902-928 MHz band **three years ago**. Under the proposed changes, LMS operations would pose no greater interference risk than that posed by Part 15 devices.

Specifically, Progeny is asking the FCC to:

- *Eliminate anti-duopoly provisions:* An LMS service provider can only hold up to 8 MHz of the LMS spectrum allocated in the band. This "spectrum cap" represents an outmoded policy that the FCC abandoned when it lifted spectrum aggregation limits on larger licensees.
- *End the LMS service requirement:* The service restriction confines licensees to a narrow definition of LMS. E911 service is a mandate for cellular providers; GPS is globally available.
  - Thus, the narrow market for LMS, as originally envisioned, does not exist.
- *Eliminate Rule 90.353(d)*: This requires Progeny to prove in field tests that its equipment does not interfere with any unlicensed service in the band.
  - It is not possible to prove a negative; unlicensed users in the band do not have to reveal their presence.
- *Eliminate the no-interconnection restriction:* The rules prohibit interconnection with the PSTN and are an anachronism.

Why Action Needed Now

Continued implementation or consideration of regulatory flexibility in spectrum proceedings *has only increased* the urgency for the Commission to reconsider the M-LMS rules, which increasingly are outmoded.

Thus, an updated technical and regulatory framework for M-LMS licensees would foster the utilization of this spectrum through the provision of valuable services, including homeland security applications.

The same goals driving the FCC's spectrum flexibility changes should apply <u>with equal force</u> to M-LMS operations:

- Eliminating unnecessary regulatory restrictions, allowing spectrum utilization to respond to market demands while protecting against harmful interference.
- Ensuring spectrum is put to its most beneficial use by allowing *maximum feasible flexibility*.
- Applying Section 303(y) of the FCC's rules, which allows flexible spectrum use if it is:
  - In line with international agreements;
  - The FCC finds, after notice and an opportunity for comment, that it would be in the public interest; not deter investment in services or technology development; not cause harmful interference.

Flexibility at 900 MHz

Regulatory flexibility has been granted – or is under consideration – elsewhere in the band in which Progeny is licensed to operate. These changes have been made, or proposed, following Progeny's own request that the FCC eliminate outdated restrictions for M-LMS.

Examples of other flexibility at 900 MHz include:

- Updated technical rules for unlicensed devices in Parts 2 and 15 of the FCC's rules, including unlicensed systems at 902-928 MHz. The changes were designed to facilitate deployment of advanced technologies and provide greater flexibility to operators.
- Proposed elimination of "unnecessary regulatory restrictions" at 900 MHz by allowing more flexible use of channels allocated to Business/Industrial Land Transportation users.
- Reconfiguration of the 800 MHz band to mitigate public safety interference, including allowing flexibility to 900 MHz band licensees.

Flexibility Beyond 900 MHz

Overall FCC efforts toward spectrum flexibility have accelerated in the wake of the Spectrum Policy Task Force's recommendations in November 2002.

The Commission's recent Wireless Broadband Access Task Force report echoed this regulatory philosophy for spectrum based on flexibility:

> "The FCC should be vigilant and proactive in identifying and understanding emerging technologies and in ensuring that existing regulatory policies do not get in the way of these advances."

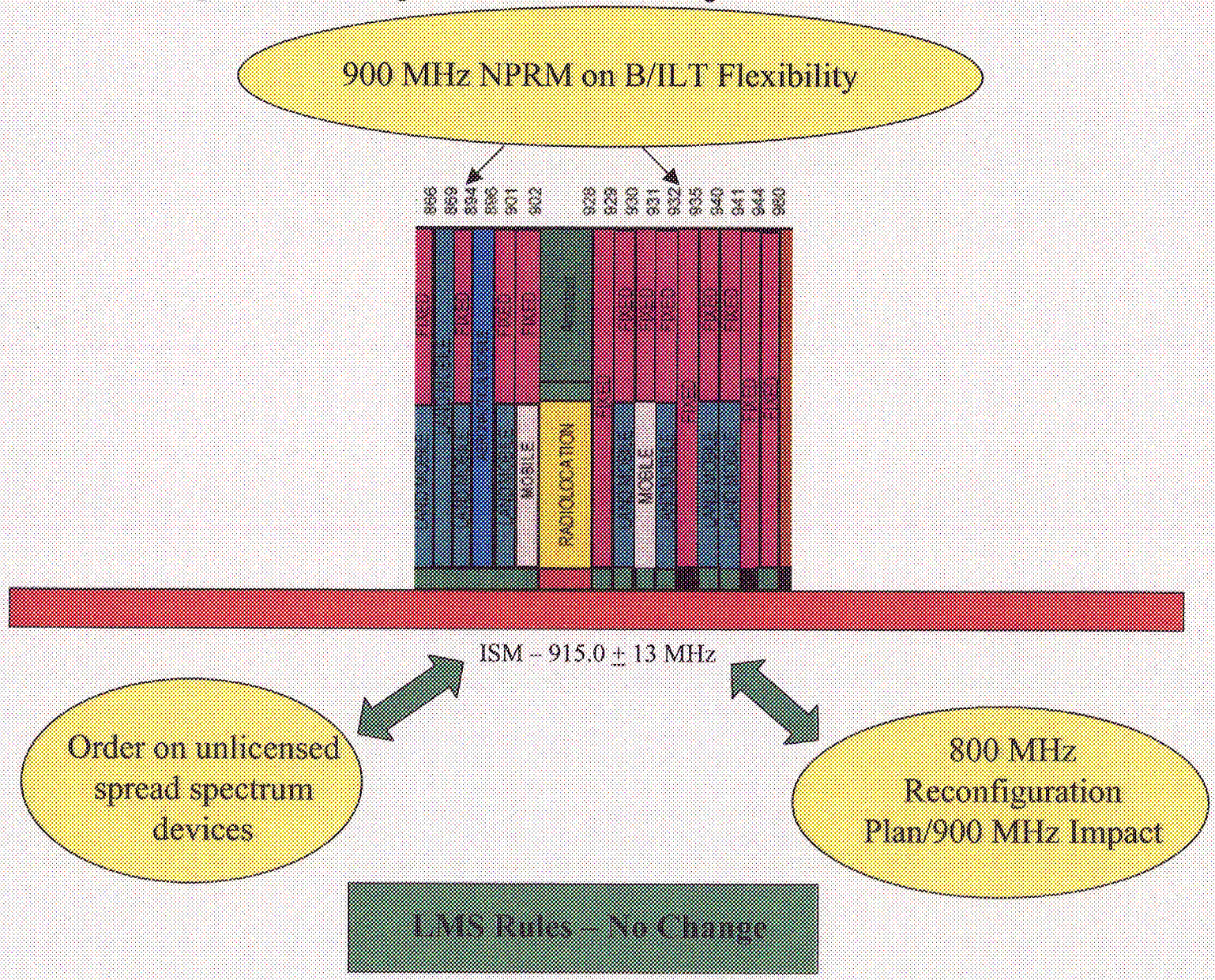
Flexibility Beyond 900 MHz

(Cont'd)

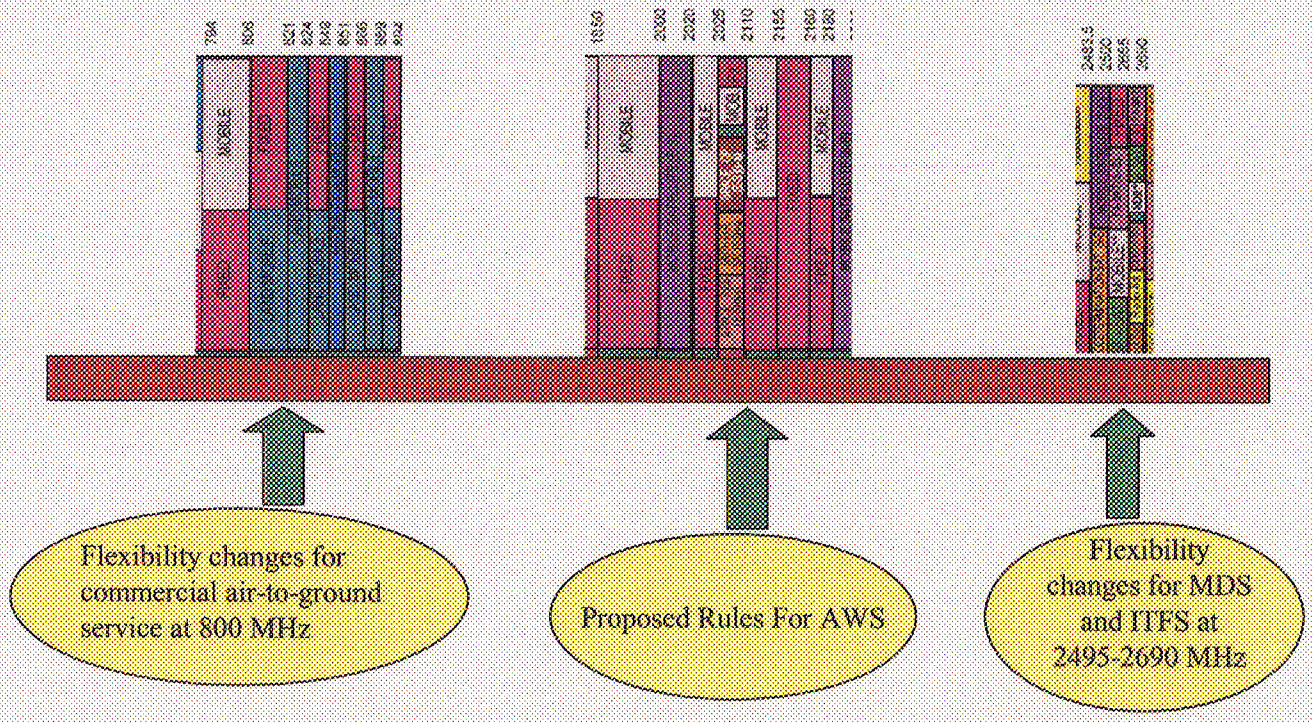
Recent examples of flexibility changes for spectrum rules include:

- Proposed Advanced Wireless Service rules: Designed to provide flexibility for licensees to offer 3G in the near-term while enabling them to quickly adapt to technological changes and marketplace conditions in the future.
- Air-to-Ground Service rules at 800 MHz: Includes proposed auction rules and streamlined requirements to eliminate unnecessary regulatory restrictions and protect nearby operators.
- MDS/ITFS Changes: Updated band plan for MDS and ITFS licensees, fostering more technologically and economically efficient uses of this band.
- Proposed relaxation of ban on cellphone use on aircraft: Sought to minimize potential for harmful interference, provide maximum flexibility.
- Flexibility changes to promote rural service: Allowed higher power levels for base stations located in rural or underserved areas.
- Rule Changes for 3650-3700 MHz: Adopted hybrid approach drawing on unlicensed and licensed regulatory regimes to promote spectrum sharing in this band and usher in wireless broadband services.
- 5 GHz WLAN Rules: Aimed to balance flexibility for these unlicensed devices while protecting incumbents (e.g., military radars) from interference.

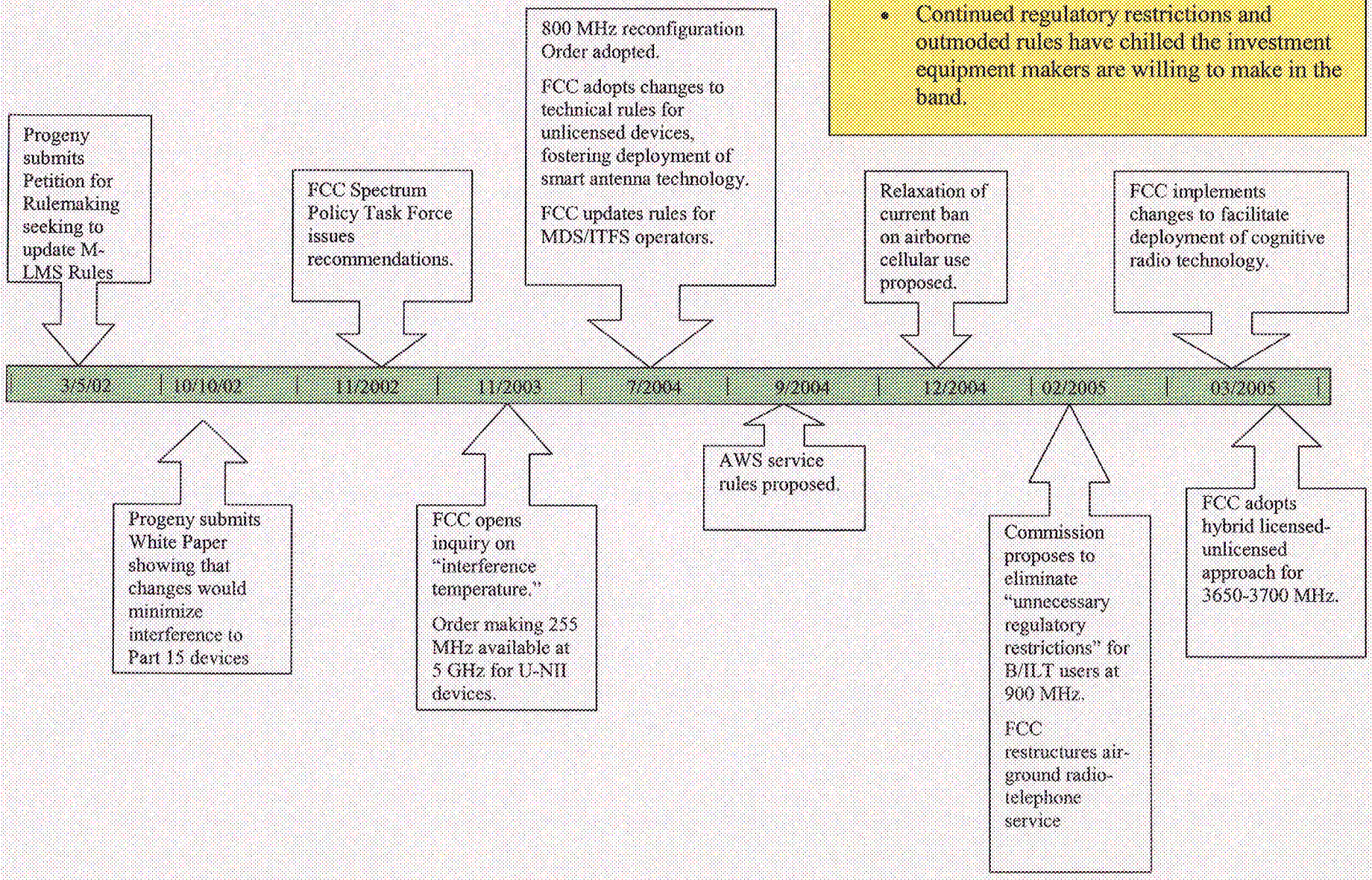
Regulatory Flexibility At 900 MHz



Regulatory Flexibility Beyond 900 MHz



Timeline of Flexibility Changes

The pace of spectrum flexibility changes at the FCC has only accelerated since Progeny filed its Petition for Rulemaking three years ago.

- This increased momentum adds to the importance and relevance of opening a rulemaking proceeding to bring M-LMS service rules to parity with other bands.
- Continued regulatory restrictions and outmoded rules have chilled the investment equipment makers are willing to make in the band.