



May 7, 2007

Telesaurus
Ex parte presentation in WT 06-49, LMS-M NPRM
[Response to Progeny's letter of April 27, 2007](#)

The letter from Progeny¹ dated April 27 2007 (“Progeny Letter”) filed in this docket responds to the ex parte presentation that Telesaurus Holdings GB LLC (“Telesaurus”), the licensee of over 80% of the LMS-M A-block licensed spectrum in the nation, submitted in this docket (“Telesaurus Filing”).²

All points in the Telesaurus Filing were relevant and central to the subject NPRM, and were also properly in response to the ongoing ex parte presentations of Progeny.³

The Progeny Letter fails to respond to any of the points made in the Telesaurus Filing other than with bald denials and diversions.

[Progeny licenses invalid: the NPRM lacks foundation.](#)

Progeny does not deny the facts asserted in the Telesaurus Filing; indeed, it cannot. See Exhibits 1 and 2 attached below: this evidence, from Progeny itself, demonstrates that Progeny violated numerous fundamental FCC rule requirements that result in the licenses being unlawfully obtained and invalid.

Such evidence is central to this NPRM since the NPRM was initiated and continues only due to Progeny’s unilateral campaign⁴ to force rule changes on all others in 902-928 MHz.

¹ Progeny LMS LLC, an Indiana LLC, which holds LMS-M licenses.

² The letter suggests that the individual Havens, not Telesaurus, made the filing, apparently to avoid the substance. Havens holds no LMS licenses.

³ Unlike the detailed written ex parte presentations by Telesaurus, the Progeny notices of ex parte meetings generally fail to provide sufficient description of the substance of the presentations.

⁴ If ever there was a case where changes in the fundamental rules of a radio service warranted diligent attempts by the party seeking the changes (and causing the NPRM) to seek consensus from the other authorized licensees and users of the band, it is this case. Indeed, the Commission made clear that in this 900 MHz ISM band, LMS-M licensees must, by rule (and by Commission Orders on said rule) act to reduce impact upon said other users. *Progeny made no such attempts*, apparently since, in objective discussion with informed parties, it would fail: it cannot even define the wireless services and technology it suggests require the rule changes, nor can it demonstrate need for rule changes,

Contrary to suggestions in the Progeny Letter, the Commission can at any time consider such evidence in the public interest, including under 47 USC §312(a), (1), (2) and (6). This section notes that the Commission may act on information that *comes to its attention*, and does not exclude obtaining such information in a NPRM proceeding or any other manner.

Counsel to and current or future interest holders in Progeny have legal obligations to not hide, obscure, or defend before the Commission rule violations and false statements it knows of or should know of.

Procedural Matters

The Progeny Letter states that the Telesaurus Filing was procedurally defective since it did not contain notice that it was an ex parte presentation.⁵ Telesaurus regrets this oversight and called ESFC staff to ask if it should re-submit the filing with this notice added. EFCS staff investigated the matter, and advised Telesaurus that FCC staff would make the correction on its side. In any case, the Telesaurus Filing was concurrently submitted to FCC staff by email and by filing on ECFS: thus, Progeny and all others involved in this docket had full and timely access to the Filing.

The Progeny Letter speciously suggests that Telesaurus seeks to delay this proceeding. Telesaurus is solely defending Commission rules, the nation's essential need for ITS wireless, and its license rights and business plan. It is Progeny that is the sole cause of this extenuated proceeding, and Progeny that has lobbied FCC staff for years, and that has changed its position over and over.⁶

The Progeny Letter did not state what authority the signer asserts to have in Progeny. In any case, it had no response to the substance of the Telesaurus Filing.

Respectfully,



Telesaurus Holdings GB LLC,
By, Warren Havens, President

Attachments: 2 exhibits

including since LMS-M's current purposes—*the nation's ITS*--are vital and viable, expanding, and are largely avoid, in space and time, Part 15 uses.

⁵ The Progeny Letter at footnote 2 notes that the Telesaurus Filing did not contain a referenced attachment. That attachment is not needed for the purposes of said Filing.

⁶ Progeny knew or should have known that its unilateral attempt to change the existing balanced rules and adversely affect all others in this band would result in the extenuated adversarial proceeding that has resulted. The LMS rulemaking in the 1990's involved years and over 1,000 filings. After the Commission therein carefully crafted rules balancing user interests—*and made entirely clear that LMS-M is for ITS wireless*--along comes Progeny, *without doing anything with its licenses* (but needing a reason to extend its licenses) to reopen the debate and attack the rules.

Exhibit 1

FCC 06-49: LMS-M NPRM
Telesaurus Ex Parte Filing, May 7, 2007

Form 10-K's (relevant excerpts) for

NATIONAL CITY CORP, 1998 and 1997

(From: <http://www.nationalcity.com/about/InvestorRelations/StockFinancialInfo/default.asp>.)

IPALCO, 1998 and 1997

(From SEC EDGAR website database.)

Notes

In the years reported below, 1997 and 1998, and in 1999, Mr. Frenzel was a Board member of the below bank and the Indiana subsidiary of this bank, and of IPALCO, a utility company: See items in red in these 10-K's, and also [Exhibit 2](#) to this Ex Parte filing.¹

National City Bank. This bank reports below:

Excluding merger and restructuring expenses, net income in 1998 of \$1,332.6 million, or \$4.00 per diluted share, increased 15.2% over 1997's net income of \$1,157.1 million, or \$3.53 per diluted share, and 27.8% over 1996's net income of \$1,042.6 million, or \$3.10 per diluted share. . .

IPALCO. This company reports below

(In Thousands . . .)	1998	1997	1996
-----	-----	-----	-----
Total utility operating revenues	\$ 821,256	\$ 776,427	\$ 762,503

These three years had to be attributed: Forms 175 deadline for this auction was in January 1999. For the above two affiliates of Mr. Frenzel, total of these three years is: \$5.982 billion, for an annual average of \$ 1.964 billion. That is 655 times greater than the \$3 million maximum annual average that qualified for the 35% bidding credit that the applicant "Progeny" certified it was entitled to on its Forms 175 and 601, and that Mr. Frenzel also informed the FCC he was qualified for.

¹ Also, Mr. Frenzel was at the relevant times an officer and director in Merchants National Corporation, listed below on this bank's 1998 10-K. Merchants National Corporation was earlier acquired by this bank. Mr. Frenzel had other affiliates as defined in FCC auction rules, regarding the subject LMS-M auction: see, e.g., [Exhibit 2](#).

Conclusions

Apart from the other affiliates of Mr. Frenzel and the other applicable years, just the attributable gross revenues from either one of these two affiliates causes Progeny LMS LLC (and the other “Progeny” that was utilized the bid in the subject LMS-M auction: Progeny Post: whose FRN and EIN numbers were used: see Exhibit 2 below) to be entirely disqualified from the applied-for and certified 35% bidding discount, and thus disqualified from the auction and grant of any licenses therefrom under 47 CFR §§1.2105, 1.2109, the subject LMS-M Auction Procedures PN, and FCC and court precedents on these rules.

Where, after the form 175 deadline, there is a change of control (including by change of an entity itself) and/or change in DE bidder-discount size, verses what was reported on Form 175, the application and the applicant are disqualified. Here, both of these impermissible changes occurred. Moreover, the evidence that reveal these changes was not reported to the Commission.

Relevant excerpts included below. Emphasis in red added.

The 1998 10-K is first below, then the 1997 10-K.

Form 10-K NATIONAL CITY CORP - ncc Filed: January 25, 1999 (period: December 31, 1998) Annual report which provides a comprehensive overview of the company for the past year

* * * *

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CORPORATE PROFILE

Headquartered in Cleveland, Ohio, National City is an \$88 billion-asset company providing banking and financial services primarily in Ohio, Michigan, Pennsylvania, Kentucky, Indiana and Illinois.

* * * *

FINANCIAL REVIEW

EARNINGS SUMMARY

National City Corporation ("National City" or "the Corporation") reported net income of \$1,070.7 million, or \$3.22 per diluted share, in 1998, compared to \$1,122.2 million, or \$3.42 per diluted share, in 1997, and \$993.5 million, or \$2.95 per diluted share, in 1996. Included in reported net income were after-tax merger and restructuring expenses of \$261.9 million, or \$.78 per diluted share, in 1998, \$34.9 million, or \$.11 per diluted share, in 1997, and \$49.1 million, or \$.15 per diluted share, in 1996.

Excluding merger and restructuring expenses, **net income in 1998 of \$1,332.6 million**, or \$4.00 per diluted share, increased 15.2% over **1997's net income of \$1,157.1 million**, or \$3.53 per diluted share, and 27.8% over **1996's net income of \$1,042.6 million**, or \$3.10 per diluted share. Results for 1998 and 1997 reflect strong loan and noninterest income growth and lower credit costs.

* * * *

SIGNATURES

Pursuant to the Requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on January 21, 1999.

National City Corporation

/s/ David A. Daberko

David A. Daberko
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated, on January 21, 1999.

* * * *

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EXHIBIT
NUMBER EXHIBIT DESCRIPTION

* * * *

- 10.19 Amended Employment Agreement dated July 21, 1989 by and between **Merchants** National Corporation or a subsidiary and **Otto N. Frenzel**, III (filed as Exhibit 10(21) to Merchants National Corporation Annual Report of Form 10-K for the fiscal year ended December 31, 1987 and incorporated herein by reference).
- 10.20 Split Dollar Insurance Agreement dated January 4, 1988 between **Merchants** National Corporation and **Otto N. Frenzel**, III Irrevocable Trust II (filed as Exhibit 10(26) to Merchants National Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 1989 and incorporated herein by reference).
- 10.21 **Merchants** National Corporation Director's Deferred Compensation Plan, as amended and restated August 16, 1983 (filed as Exhibit 10(3) to Merchants National Corporation Registration Statement as Form S-2 filed June 28, 1985, incorporated herein by reference).
- 10.22 **Merchants** National Corporation Supplemental Pension Plan dated November 20, 1984; * * * *

* * * *

- 10.23 **Merchants** National Corporation Employee Benefit Trust Agreement, effective July 1, 1987 * * * *
- 10.24 **Merchants** National Corporation Non-qualified Stock Option Plan effective January 20, 1987, * * * *
- 10.25 **Merchants** National Corporation 1987 Non-qualified Stock Option Plan, effective November 17, 1987 * * * *.
- 10.26 **Merchants** National Corporation Directors Non-qualified Stock Option Plan and * * *

* * * *

1

EXHIBIT 21.1

SUBSIDIARY LISTING

STATE OR JURISDICTION
UNDER THE LAW OF

WHICH ORGANIZED

Advent Guaranty Corporation..... Vermont

* * * *

Merchants Capital Management, Inc..... Indiana

* * * *

National City Bank of Indiana..... United States

* * * *

Western Reserve Company..... Pennsylvania

100% ownership unless otherwise noted:

* * * *

[End 1998 10-K Excerpts]

<p>Form 10-K NATIONAL CITY CORP - ncc Filed: January 30, 1998 (period: December 31, 1997) Annual report which provides a comprehensive overview of the company for the past year</p>
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* * * *

SIGNATURES

Pursuant to the Requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on January 21, 1998.

* * * *

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BOARD OF DIRECTORS/OFFICERS

BOARD OF DIRECTORS

DAVID A. DABERKO (2,3,4)
 Chairman & CEO
 National City Corporation
 * * * *

OTTO N. FRENZEL III (3,4)
 Retired Chairman
 National City Bank of Indiana

* * * *

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PAGE NUMBER IN		SEQUENTIALLY NUMBERED
EXHIBIT		
NUMBER	EXHIBIT DESCRIPTION	COPY

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54

* * * *

- 10.17 Amended Employment Agreement dated July 21, 1989 by and between **Merchants** National Corporation or a subsidiary and **Otto N. Frenzel, III** (filed as Exhibit 10(21) to Merchants National Corporation Annual Report of Form 10-K for the fiscal year ended December 31, 1987 and incorporated herein by reference).
- 10.18 Split Dollar Insurance Agreement dated January 4, 1988 between Merchants

National Corporation and **Otto N. Frenzel**, III Irrevocable Trust II (filed as Exhibit 10(26) to Merchants National Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 1989 and incorporated herein by reference).

- 10.19 **Merchants** National Corporation Director's Deferred Compensation Plan, as amended and restated August 16, 1983 (filed as Exhibit 10(3) to Merchants National Corporation Registration Statement as Form S-2 filed June 28, 1985, incorporated herein by reference).
- 10.20 **Merchants** National Corporation Supplemental Pension Plan dated November 20, 1984; First Amendment to the Supplemental Pension Plans dated January 21, 1986; Second Amendment to the Supplemental Pension Plans dated July 3, 1989; and Third Amendment to the Supplemental Pension Plans dated November 21, 1990 (filed respectively as exhibit 10(n) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1984; as Exhibit 10(q) to the Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1985; as Exhibit 10(49) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990; and as Exhibit 10(50) to the Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990; all incorporated herein by reference).

* * * *

- 10.21 **Merchants** National Corporation Employee Benefit Trust Agreement, effective July 1, 1987 (filed as Exhibit 10(27) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1987, incorporated herein by reference).
- 10.22 **Merchants** National Corporation Non-qualified Stock Option Plan effective January 20, 1987, and the First Amendment to that Merchants National Non-qualified Stock Option Plan, effective October 16, 1990 (filed respectively as Exhibit 10(23) to Merchants National Corporation Annual Report on Form 10-K by the year ended December 31, 1986, and as Exhibit 10(55) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).
- 10.23 **Merchants** National Corporation 1987 Non-qualified Stock Option Plan, effective November 17, 1987, and the First Amendment to Merchants National Corporation 1987 Non-qualified Stock Option Plan, effective October 16, 1990, (filed respectively as Exhibit 10(30) to Merchants National Corporation Annual Report on Form 10-K by the year ended December 31, 1987, and as Exhibit 10(61) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).
- 10.24 **Merchants** National Corporation Directors Non-qualified Stock Option Plan and the First Amendment to Merchants National Corporation Directors Non-qualified Stock Option Plan effective October 16, 1990 (filed respectively as Exhibit 10(44) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1988, and as Exhibit 10(68) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).

* * * *

[END 10-K Excerpts]

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549

[X] Annual Report Pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934

For the fiscal year ended
December 31, 1998

* * * *

IPALCO Enterprises, Inc. (IPALCO) is a holding company and was incorporated under the laws of the state of Indiana on September 14, 1983. IPALCO has 15 employees and has two (2) subsidiaries: Indianapolis Power & Light Company (IPL), a regulated electric and steam service utility, and Mid-America Capital Resources, Inc. (Mid-America), a holding company for unregulated businesses. IPALCO and its subsidiaries are collectively referred to as "Enterprises".

* * * *

Item 6. SELECTED CONSOLIDATED FINANCIAL DATA

<CAPTION>

(In Thousands Except Per Share Amounts) 1998 1997 1996 1995 1994

<S>	<C>	<C>	<C>	<C>	<C>		
Total utility operating revenues (1)	\$ 821,256	\$ 776,427	\$ 762,503	\$ 709,206	\$ 686,076		

* * * *

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

IPALCO ENTERPRISES, INC.

By /s/ John R. Hodowal

(John R. Hodowal, Chairman of the Board
and President)

Date: February 23, 1999

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the

Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
-----	----	----
* * * *		
(iv) A majority of the Board of Directors of IPALCO Enterprises, Inc.:		
/s/ Joseph D. Barnett, Jr. ----- (Joseph D. Barnett, Jr.)	Director	February 23, 1999
/s/ Robert A. Borns ----- (Robert A. Borns)	Director	February 23, 1999
/s/ Mitchell E. Daniels, Jr. ----- (Mitchell E. Daniels, Jr.)	Director	February 23, 1999
/s/ Rexford C. Early ----- (Rexford C. Early)	Director	February 23, 1999
/s/ Otto N. Frenzel III ----- (Otto N. Frenzel III)	Director	February 23, 1999

* * * *

[End IPALCO 1998 10-K excerpts]

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549

[X] Annual Report Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

For the fiscal year ended
December 31, 1997

IPALCO ENTERPRISES, INC.
(Exact name of Registrant as specified in its charter)

* * * *

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities
Exchange Act of 1934, the Registrant has duly caused this report to be signed on
its behalf by the undersigned, thereunto duly authorized.

IPALCO ENTERPRISES, INC.

By /s/ John R. Hodowal

(John R. Hodowal, Chairman of the Board
and President)

Date: February 24, 1998

Pursuant to the requirements of the Securities Exchange Act of 1934, this
report has been signed below by the following persons on behalf of the
Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
-----	-----	----

(i) Principal Executive Officer:

/s/ John R. Hodowal ----- (John R. Hodowal)	Chairman of the Board and President	February 24, 1998
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(ii) Principal Financial Officer:

/s/ John R. Brehm ----- (John R. Brehm)	Vice President and Treasurer	February 24, 1998
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(iii) Principal Accounting Officer:

/s/ Stephen J. Plunkett Controller February 24, 1998

(Stephen J. Plunkett)

(iv) A majority of the **Board of Directors of IPALCO Enterprises, Inc.:**

/s/ Joseph D. Barnett, Jr. Director February 24, 1998

(Joseph D. Barnett, Jr.)

/s/ Robert A. Borns Director February 24, 1998

(Robert A. Borns)

/s/ Rexford C. Early Director February 24, 1998

(Rexford C. Early)

/s/ Otto N. Frenzel III Director February 24, 1998

(Otto N. Frenzel III)

* * * *

[\[End Exhibit 1 of FCC filing\]](#)

FCC 06-49: LMS-M NPRM
Telesaurus Ex Parte Filing,
May 7, 2007

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF ORGANIZATION

OF

PROGENY LMS, LLC

I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Organization of the above limited liability company have been presented to me at my office accompanied by the fees prescribed by law and that I have found such Articles conform to the provisions of the Indiana Business Flexibility Act, as amended.

NOW, THEREFORE, I hereby issue to such limited liability company this Certificate of Organization, and further certify that its existence will begin April 16, 1999.

Progeny LMS LLC, the LMS licensee, did not exist until well after the auction ended, and after its Form 601 was submitted.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Sixteenth day of April, 1999.


Deputy

WMRA
1999041189

ARTICLES OF ORGANIZATION
OF
PROGENY LMS, LLC

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be Progeny LMS, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

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the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

7.6 Employee or Agent. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Person.

7.7 Standard of Conduct.

7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

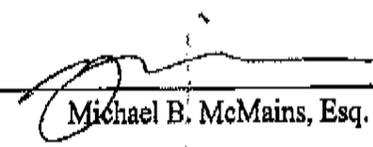
7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 18th day of February, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of Progeny LMS, LLC:

ORGANIZER



Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION
CAUSE NO. 49D07-9905-CP-0708

OTTO N. FRENZEL, III,)
PROGENY LMS, LLC, and)
LMS SPECTRUM PARTNERS, LLC,)

Plaintiffs,)

v.)

CURTIS L. JOHNSON,)
PROGENY POST, LLC,)
PROGENY POST LMS, LLC, and)
LAWRENCE GREEN,)

Defendants.)

FILED

JUN 21 1999

Christina M. Taylor
MARION CIRCUIT COURT

8:30 AM

AMENDED VERIFIED COMPLAINT

Plaintiffs Otto N. Frenzel, III ("Frenzel"), Progeny LMS, LLC ("LMS") and LMS Spectrum Partners, LLC ("Spectrum"), by their attorneys, for their Amended Verified Complaint against Curtis L. Johnson ("Johnson"), Progeny Post, LLC ("Progeny"), Progeny Post LMS, LLC ("Post") and Lawrence Green ("Green"), allege as follows:

PARTIES

False. See Document 1 above.

1. LMS is a limited liability company organized as of February 18, 1999 under the Indiana Business Flexibility Act, with its registered office in Indianapolis, Indiana. A true and correct copy of the "Articles Of Organization Of Progeny LMS, LLC" ("LMS Articles") is attached as Exhibit A.

2. Spectrum is a limited liability company organized as of February 18, 1999 under

the Indiana Business Flexibility Act, with its registered office in Indianapolis, Indiana. A true and correct copy of the “Articles Of Organization Of LMS Spectrum Partners, LLC” (“Spectrum Articles”) is attached as Exhibit B.

Contradicted in FCC filings and below.

3. Frenzel is a resident of Boone County, Indiana and is the sole owner, member and manager of both LMS and Spectrum. Frenzel for years was chairman and chief executive officer of Merchants National Bank in Indianapolis, Indiana, and currently is a director and chairman of the executive committee for that bank’s successor, National City Bank, Indiana. Frenzel also sits on the boards of IPALCO Enterprises, Indiana Energy, Inc., and American United Life Insurance Company, and is the immediate past president of the Riley Memorial Association. A true and correct copy of the “Progeny LMS, LLC Operating Agreement” (“LMS Operating Agreement”), which sets forth Frenzel’s roles in LMS, is attached as Exhibit C. A true and correct copy of the “LMS Spectrum Partners, LLC Operating Agreement” (“Spectrum Operating Agreement”), which sets forth Frenzel’s roles in Spectrum, is attached as Exhibit D.

Frenzel affiliates at time of auction.

Progeny Post

4. Progeny is a limited liability company organized under the Indiana Business Flexibility Act in 1996, with a listed registered office in Indianapolis. State records show that Progeny is not current with its required reports and has not had a registered agent since about April 1998.

5. Upon information and belief, Johnson is a resident of Marion County, Indiana. Johnson is president and one of the two managers for Progeny. Johnson claims to own a majority of the voting interest in Progeny, with Frenzel holding about 10% of the ownership interest and each of several other members, including John H. Barnard (“Barnard”), owning less than 4% of the ownership interest. Barnard is the other manager for Progeny and was its chief financial officer until last year. See Affidavit of John H. Barnard, attached as Exhibit E.

6. Upon information and belief, Green is a resident of Hamilton County, Indiana. Green has worked as an employee of Progeny and, upon information and belief, as an employee and/or independent contractor for one or more subsidiaries of Progeny.

7. According to filings made by Johnson with this Court, Post is a limited liability company organized under the Indiana Business Flexibility Act in 1996, with a listed registered office in Indianapolis. Also according to those filings, Post was originally organized as Progeny Sports Management, LLC ("Management"), but purportedly changed to its current name in about November 1998. According to the filings, Post's sole member is Progeny, which owns 100% of Post's membership interest, and thus is effectively controlled by Johnson.

FACTUAL BACKGROUND

8. Progeny was organized in 1996 to develop and operate interactive sports-related games and sites on the Internet and related ventures. In conjunction with or shortly after Progeny's organization, a number of related limited liability companies, all fully or partially owned by Progeny, were formed as vehicles for Progeny's various planned endeavors. Management/Post was one of those companies.

9. Frenzel became an owner in Progeny in the latter half of 1996 by a purchase of interests made by Johnson and Progeny through a private offering of non-voting membership units that was designed (but markedly failed) to raise about \$2,500,000 of startup cash for Progeny and its subsidiary entities.

10. Within months of the offering, and before any of the planned businesses were ever implemented, the cash raised through the offering had been spent and Progeny was in danger of failing. Johnson approached Frenzel and asked for his financial help to keep Progeny running.

At that time, Frenzel trusted Johnson and believed that Progeny had potential, so he agreed to fund certain Progeny operations through a series of relatively small loans (averaging about \$15,000 to about \$30,000) from his IRA trust account. The total balance of those loans -- which have been Progeny's sole source of funding since early 1997 -- now exceeds \$1 million.

11. Sometime in the latter half of 1996 and early 1997, Frenzel through a foreclosure gained ownership of certain technological hardware and other equipment, and certain licenses that had been issued by the Federal Communications Commission ("FCC") for broadcasting in connection with location monitoring and related services. Frenzel and Johnson agreed that the equipment and licenses could be valuable in a future Progeny venture, so Frenzel transferred those assets to a newly formed company, LMS Comm.net, LLC ("Comm.net") that was owned in equal shares by Frenzel and Progeny. Frenzel's hope to obtain value from Comm.net's equipment and licenses was a primary reason he continued to make the small loans to Progeny.

12. In the fall of 1998, Johnson and Green learned that the FCC was preparing to auction licenses for location and monitoring radio frequencies in a number of areas throughout the United States (the "licenses").

13. In about November 1998, Johnson, in concert with Green, filed a set of "Restated Articles of Organization" for Management with the Indiana Secretary of State. That document purported to record a change of Management's name to "Progeny Post LMS, LLC."

14. In about January 1999, Frenzel, Johnson and Green met to discuss the FCC licenses to be sold through auction. Based upon Johnson's and Green's statements, Frenzel believed and stated that the licenses offered a unique opportunity to obtain value from the assets owned by Comm.net, as well as provide other profit opportunities. Johnson and Green then

suggested that Progeny should participate in the auction, with Frenzel providing the needed funds (about \$2 million) through another loan, and Johnson and Green placing the actual bids and otherwise dealing directly with the FCC.

15. Frenzel rejected that suggestion because he did not want to make such a large lump-sum loan to Progeny, and because Johnson and Green had failed to generate any consistent income from Frenzel's two-year stream of smaller loans. However, Frenzel told Johnson and Green that he would fund purchase of the licenses if it resulted in Frenzel owning the licenses, either directly or through a company controlled by him. Frenzel also said that he was willing to share profits from the licenses with Johnson and Green to compensate them for serving as his limited agents or "point men" in the auction and bidding, and later finding profitable uses for the licenses. Frenzel, Johnson and Green all recognized that if the licenses could somehow be used in combination with the technology and other assets of Comm.net, Progeny (and therefore Johnson, as Progeny's 65% owner) would have tremendous new profit opportunities.

16. Johnson and Green orally agreed to Frenzel's terms. Johnson further agreed and stated that he would set up a new company through which Frenzel would own the licenses, and that Frenzel's funding would be treated as a contribution to that new company and not as a loan to Progeny. In about the last part of January 1999, Johnson told Frenzel that the new company, which Johnson called "Progeny LMS, LLC," had been formed in accord with Frenzel's wishes.

17. Unbeknownst to Frenzel, Johnson had not formed and never intended to form "Progeny LMS, LLC" or any other company through which Frenzel would own and control the licenses. Instead, Johnson and Green conspired and intended to misappropriate, convert and otherwise misuse Frenzel's money by secretly purchasing the licenses through an entity controlled by Johnson, or diverting the licenses to such an entity after their purchase.

18. After obtaining Frenzel's agreement to fund the bidding, Johnson and Green began executing their plan to misappropriate Frenzel's money and/or deprive him of the licenses.

In about January 1999, Johnson prepared and submitted to the FCC a Form 175 or "short-form" bidding application in the name of "Progeny LMS, LLC." A true and correct copy of that application is attached as Exhibit F. The Form 175, which Johnson did not show or discuss with Frenzel, contained false and misleading statements about the applicant. For example, the Form stated that "Progeny LMS, LLC" had been formed in 1996 and was owned by Progeny, when in fact the company had not been formed at all. Johnson, in concert with Green, deliberately listed the applicant as "Progeny LMS, LLC" on the Form 175, as well as other documents submitted to the FCC, to mislead Frenzel in the event he saw the application.

Any controlling owner requires a copy of the organizational documents. Frenzel suggests he did not. Frenzel was a director of a major bank and other corporations.

19. On about February 7, 1999, Johnson, in concert with Green and in furtherance of their plan, directed Frenzel to deposit \$1,879,155 via wire transfer in the name of "Progeny LMS, LLC" in an FCC escrow account in Pittsburgh, Pennsylvania. Frenzel followed Johnson's directions and made the deposit the next day, believing that the payment was made on behalf of the Frenzel-controlled company Johnson said had been formed. The record of that transfer, a true and correct copy of which is attached as Exhibit G, lists the payer as "Progeny LMS LLC." However, unbeknownst to Frenzel the transfer also listed the taxpayer identification number ("TIN"), as provided by Johnson, for Management/Post.

Progeny Post was the applicant. Progeny LMS LLC did not even exist.

20. Frenzel relied reasonably and in good faith on Johnson and Green as his agents at all stages of the bidding process. Frenzel made the February 8, 1999 deposit only because he believed, in reliance on Johnson and Green, that Johnson had formed "Progeny LMS, LLC" and that Frenzel owned, controlled and was to own the licenses through that company.

21. Johnson, Progeny and Management/Post have never paid, advanced, contributed

or escrowed any funds of their own toward purchase of the licenses.

22. Johnson and Green also advanced their plan by denying Frenzel key information. During January, February and March 1999, Frenzel repeatedly asked Johnson for specific information and documentation about the formation of "Progeny LMS, LLC," the company's bidding and purchase of the licenses, his payment to the FCC and related issues, but Johnson rebuffed each request. Frenzel renewed his requests after the auction, but never received satisfactory information from Johnson. Frenzel was concerned about Johnson's failures to provide him with information, but justifiably and reasonably relied on Johnson to perform his duties in good faith, to act in accord with his statements and the parties' agreement, and to provide accurate information to the FCC.

23. The license auction was held in several stages from about February 22, 1999 to about March 8, 1999. During this time, Frenzel kept tabs on the auction's progress and bid amounts, conferring frequently with Johnson in person and via telephone. Frenzel approved bids made by Johnson and Green, and in the latter days authorized bids totaling about \$400,000 beyond the escrowed \$1,879,155 so that "Progeny LMS, LLC" could secure licenses providing near-nationwide coverage in the desired frequencies. In all, "Progeny LMS, LLC" was the high bidder for 230 of 289 licenses sold in the auction. B-C block

24. On about March 17, 1999, Frenzel met with Johnson and Green to discuss matters related to the licenses, including a proposed ownership/organizational structure for "Progeny LMS, LLC" that had been prepared by Johnson and Green. Frenzel asked Barnard to attend the meeting and to review the proposed structure, because it was complicated and appeared inconsistent with Frenzel's control of "Progeny LMS, LLC" and the licenses. Frenzel had earlier told Barnard that he (Frenzel) was to own the licenses directly or through a controlled company,

that according to Johnson such a company had been formed, and that he had paid \$1,879,155 toward the purchase of the licenses.

25. During the meeting on about March 17, 1999, Barnard reviewed the proposed structure for "Progeny LMS, LLC" that Johnson and Green had presented. Barnard told Frenzel, Johnson and Green that the proposal appeared unfair and inconsistent with Frenzel's 100% ownership of the licenses, and told Frenzel that he should seek legal advice before accepting the proposal. Frenzel agreed with Barnard, prompting Johnson to complain that any delay in approving the proposal as presented would jeopardize compliance with the March 22, 1999 deadline for submission of the post-auction Form 601 or "long-form" application, which was to provide supplemental detailed information on the applicant. Frenzel left the meeting without approving the proposal or agreeing to any structure for "Progeny LMS, LLC" that gave Frenzel less than full control.

26. On about March 18, 1999, Frenzel met with Johnson, Green, and attorney Steve Dutton ("Dutton") to discuss additional issues related to the licenses. Dutton represented Progeny, but at that time and through at least mid-May 1999 also served as Frenzel's lawyer on matters related to the technology, hardware and other assets of Comm.net.

27. At some point during the meeting, a telephone conference was conducted with one or more Washington, D.C. attorneys who had apparently been retained to provide advice in connection with purchase of the licenses. During that conference, Johnson, Green, Dutton and the Washington attorneys discussed possible methods for ensuring that "Progeny LMS, LLC" would qualify for a 35% "very small business" discount of the licenses' purchase price. Frenzel asked one or two questions about the mechanics of the discount, but otherwise remained silent.

Entirely false. The gross revenues of the applicant, its controlling party, and the controlling party's affiliates all have to be attributed. The unnamed DC attorney would not have advised otherwise.

28. A number of possible methods were discussed, including classifying part or all of Frenzel's \$1,879,155 contribution to "Progeny LMS, LLC" as debt. Nothing in these discussions concerned Frenzel or seemed inconsistent with his ownership and control of the licenses. Based on what Johnson had told him, Frenzel owned and controlled "Progeny LMS, LLC," and that control would not be affected by any of the possible methods being discussed -- even if the \$1,879,155 payment were classified as a "debt" to that company. Moreover, Frenzel had not approved any plan or structure reducing his presumed 100% ownership in "Progeny LMS, LLC." Thus, Frenzel had no reason to question characterization of his payment as a "debt" in order to preserve the "very small business" discount.

Johnson's response to this Complaint's characterizations is in separate documents.

29. At about 4:30 p.m. on Friday, March 19, 1999, Dutton faxed to Frenzel's attorney, Michael McMains, portions of an incomplete draft Form 601 that was filled with false and misleading information. Contrary to prior statements and discussions and the initial Form 175, Dutton's draft for the first time listed the purchaser of the licenses as Spectrum, which it said was a wholly-owned subsidiary of "Progeny LMS, LLC." The draft also falsely showed Frenzel with no direct ownership interest in Spectrum or the licenses, treated Frenzel's February 8, 1999 payment as a loan to Spectrum, claimed that Spectrum had issued a "Master Note" to evidence the debt, and said the loan was "secured by substantially all the assets of Spectrum." Dutton sent no message with the draft, and did not tell McMains that the final Form 601 had to be filed the next business day, March 22, 1999.

30. McMains was not familiar with the Form 601, but was immediately troubled by the draft's discussion of a purported loan to Spectrum and the absence of any mention of Frenzel's ownership in either Spectrum or "Progeny LMS, LLC." McMains called Frenzel, who told him that the fax was wrong in numerous respects, including its recitation of the ownership

structures for Spectrum and "Progeny LMS, LLC" and the discussion of a purported loan.

31. On Monday, March 22, 1999, McMains called Johnson and pointed out critical misstatements in the draft Form 601, including its discussions about the purported loan and the ownership structures of Spectrum and "Progeny LMS, LLC." McMains also reiterated -- in accord with Johnson's statements and agreement with Frenzel, the parties' subsequent discussions and actions, and Frenzel's refusal to consent to anything but 100% ownership -- that the owner of the licenses (whatever its name) was to be controlled by Frenzel

32. Later on March 22, 1999, in concert with Green and in furtherance of their plan to deprive Frenzel of his money and/or the licenses, Johnson filed a finalized version of the Form 601. Frenzel never received the filed version from Johnson, Green or Dutton, and did not see any part of it until mid-May 1999. The filed Form 601 differed in some respects from the March 19 draft, but did not correct the errors McMains pointed out to Johnson. In particular, the final Form 601 repeated without change the false information about applicant ownership and the purported loan by Frenzel to Spectrum.

33. The next day, Johnson, again in concert with Green, sent a letter to the FCC seeking a "minor amendment" in the Form 601 he had filed on March 22. That letter did not correct the errors that McMains had pointed out to Johnson and reemphasized the false claim that Spectrum is "wholly-owned" by LMS.

34. Soon after these events, Frenzel confirmed that there was no "Master Note" evidencing any Spectrum debt to Frenzel, and that neither "Progeny LMS, LLC" nor "LMS Spectrum Partners, LLC" had ever been formed or existed in Indiana, whether in their own names or as registered "d/b/a" designations for other companies. In an attempt to cure the

serious problems caused by these misstatements in the Form 601, and also to protect his \$1,879,155 investment against possible forfeiture and penalties, Frenzel promptly authorized the organization of LMS and Spectrum with an effective date of February 18, 1999 -- at least four days before the auction began.

False. The effective date under law is the date on Document 1 above: as the Secretary of State therein states and as Indiana law provides.

35. Johnson and Green continued advancing their plan against Frenzel after the Form 601 was filed. Sometime after March 22, 1999 Johnson delivered a purported promissory note to the National City Bank trust department in Indianapolis. The note falsely claimed that Frenzel's \$1,879,155 payment was actually a loan to Progeny, and not Spectrum or LMS, which contradicted both Frenzel's understanding, as supported by Johnson's statements, and the information contained in the filed Form 601

36. Barnard, one of Progeny's two managers (with Johnson), did not participate in any vote or meeting concerning the purported note tendered by Johnson, and was unaware of such a note until told about it by Frenzel sometime after March 22, 1999

37. Sometime after March 24, 1999, Frenzel received a copy of a letter written by Johnson to Randall Tobias, the former chief executive officer for Eli Lilly & Co. and with whom Frenzel some time earlier had arranged for Johnson to meet. That letter, a true a correct copy of which is attached as Exhibit H, was printed on letterhead that bore the name and a symbol for "Progeny LMS, LLC." Frenzel had never seen such letterhead before. Also, Johnson in that letter referred to himself as the "President and CEO" of "Progeny LMS, LLC" -- neither of which Johnson was authorized to use and which Frenzel had never even discussed with Johnson.

38. After about April 28, 1999, defendants began claiming that their repeated listing of "Progeny LMS, LLC" as applicant for the licenses was a mistake resulting from a

“typographical error” made by Johnson in filings with the Indiana Secretary of State. Defendants also now claim -- notwithstanding their repeated references to “Progeny LMS, LLC” in federally-filed documents, correspondence, and other documents -- that the “true” applicant for the licenses has always been Management/Post, which simply used “Progeny LMS, LLC” as a d/b/a. However, no such d/b/a has ever been registered for Management/Post, and the only entity authorized to conduct business under the name “Progeny LMS, LLC” is LMS, as formed by Frenzel effective February 18, 1999. False. See preceding note.

COUNT I – FRAUD

39. Paragraphs 1 through 38 are incorporated as if fully restated herein.

40. As set forth above, Johnson and Green (individually and as agents for Progeny and Management/Post) made misrepresentations of material fact to Frenzel, all of which were deliberately false, misleading and fraudulent under the Indiana law.

41. Johnson, Progeny and Green knew the misrepresentations were false and fraudulent, and/or made them in reckless ignorance of their falsity.

42. Frenzel reasonably and detrimentally relied on the misrepresentations by, for example, agreeing to fund purchase of the licenses and making the \$1,879,155 payment to the FCC, and has been damaged thereby.

43. The misrepresentations were made willfully, wantonly and maliciously, warranting the imposition and award of punitive damages.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against defendants on Count I;
- b. Grant rescission of his agreement to fund purchase of the licenses;
- c. Disgorge and refund his payment to the FCC;
- d. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- e. Grant him all other just and appropriate relief.

COUNT II – CONSTRUCTIVE FRAUD

44. Paragraphs 1 through 43 are incorporated as if fully restated herein.

45. As set forth above, Johnson and Green (individually and as agents for Progeny and Management/Post) made false and fraudulent factual and promissory misrepresentations to Frenzel.

46. Frenzel, by virtue of his ownership in Progeny, his longstanding business relationship with Johnson, and Johnson's role as Frenzel's agent during the FCC auction, had and continues to have a confidential, fiduciary relationship with Johnson and Progeny.

47. Defendants, by their false and fraudulent misrepresentations, intended to and did gain an unconscionable advantage over Frenzel.

48. The misrepresentations constituted constructive fraud against Frenzel.

49. Frenzel reasonably and detrimentally relied on the misrepresentations and has been damaged thereby.

50. The misrepresentations were made willfully, wantonly and maliciously, warranting the imposition and award of punitive damages.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against defendants on Count II:
- b. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- c. Grant him all other just and appropriate relief.

COUNT III -- DECLARATORY JUDGMENT

51. Paragraphs 1 through 50 are incorporated as if fully restated herein.

52. Defendants' various actions and statements -- including but not limited to their false representations in documents submitted to the FCC -- evidence the existence of clear and ripe disputes between the parties -- including disputes about which (if any) of the parties is the true applicant for the licenses, who or what entity owns and controls Spectrum, the character of Frenzel's payment to the FCC on behalf of LMS, and what rights Frenzel has with respect to the licenses.

53. All of these disputes, and particularly the disagreement concerning the applicant's true identity, must be resolved before the licenses can be issued. The FCC has delayed final approval of the licenses pending action by the Court in this case, but upon information and belief, wants all issues resolved and the licenses issued very soon.

54. In addition, a clear and ripe dispute exists concerning whether the "Progeny LMS,

LLC" mentioned repeatedly in the FCC filings is LMS (which was formed effective February 18, 1999, at least four days before the auction began) or is instead Management/Post, as defendants now claim. That dispute is inextricably linked with the question of the applicant's true identity, and must be resolved by this Court in expedited fashion.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court, on an expedited basis, enter a judgment declaring that:

A court cannot change by declaration what was in fact submitted to the FCC on Forms 175 and 601, nor cure violations caused thereby of FCC rules and the Comm. Act.

- a. LMS was properly organized and in existence, effective February 18, 1999, and is wholly owned and controlled by Frenzel;
- b. All references to "Progeny LMS, LLC" in correspondence, forms submitted to the FCC and other documents refer to LMS as formed by Frenzel effective February 18, 1999, and that LMS is the true applicant for the FCC licenses;
- c. Spectrum was properly organized and in existence, effective February 18, 1999, and is wholly owned and controlled by Frenzel; and
- d. Frenzel's payment to the FCC on February 8, 1999 constitutes a contribution to LMS, as organized by Frenzel effective on February 18, 1999, and is not a loan to Progeny, Management/Post, or any other entity not owned and controlled by Frenzel.

A court can't change the dates a LLC became in existence by an accepted filing with the Secretary of State.

Frenzel above said it could be "charaterized" as a loan.

COUNT IV -- VIOLATION OF INDIANA SECURITIES STATUTE

55. Paragraphs 1 through 54 are incorporated as if fully restated herein.
56. As set forth above, Johnson and/or Green (individually and as agents for Progeny)

made one or more misrepresentations of material fact in connection with Johnson's tender of the purported note delivered to National City Bank sometime after March 22, 1999, and in so doing employed a device, scheme and artifice to defraud Frenzel of his money and/or the licenses.

57. Johnson's and Green's misrepresentations and actions violated Ind. Code §§ 23-2-1-12 and 23-2-1-19.

58. Frenzel reasonably and detrimentally relied upon, and did not know about or participate in, Johnson's and Green's misrepresentations and actions.

59. Frenzel has suffered damages from the misrepresentations and actions.

60. Johnson's, Progeny's and Green's conduct was willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against Johnson, Green and Progeny on Count IV;
- b. Grant rescission of Frenzel's agreement to pay and ultimate payment of funds to the FCC toward purchase of the licenses;
- c. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- d. Grant him all other just and appropriate relief.

COUNT V -- CRIMINAL MISCHIEF

61. Paragraphs 1 through 60 are incorporated as if fully restated herein.

62. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constituted a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

63. Johnson's and Green's actions constitute criminal mischief as defined in Ind. Code § 35-43-1-2, because Johnson and Green have recklessly, knowingly or intentionally damaged Frenzel's property without his consent, and have knowingly or intentionally caused Frenzel to suffer financial loss by deception or by expression of intent to injure, damage or impair his rights or the rights of another person.

64. Frenzel has been damaged by Johnson's and Green's actions.

65. Johnson's and Green's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count V;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VI – THEFT

66. Paragraphs 1 through 65 are incorporated as if fully restated herein.

67. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

68. Defendants' actions constitute theft as defined at Ind. Code § 35-43-4-2, because defendants have knowingly or intentionally exerted unauthorized control over Frenzel's property with intent to deprive him of its value or use.

69. Frenzel has been damaged by defendants' actions.

70. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VI;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VII – CONVERSION

71. Paragraphs 1 through 70 are incorporated as if fully restated herein.

72. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of

control of property belonging to Frenzel for their own use and benefit.

73. Defendants' actions constitute conversion as defined at Ind. Code § 35-43-4-2, because Johnson and Green have knowingly or intentionally exerted unauthorized control over Frenzel's property.

74. Frenzel has been damaged by defendants' actions.

75. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VII;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VIII -- DECEPTION

76. Paragraphs 1 through 75 are incorporated as if fully restated herein.

77. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

78. Defendants' actions constitute deception as defined at Ind. Code § 35-43-4-2,

because they knowingly or intentionally made one or more false or misleading written statements with intent to obtain property belonging to Frenzel, and misapplied property entrusted to him by Frenzel in a manner that they knew was unlawful and/or involved a substantial risk of loss or detriment to Frenzel.

79. Frenzel has been damaged by defendants' actions.

80. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VIII;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT IX – FRAUD ON FINANCIAL INSTITUTION

81. Paragraphs 1 through 80 are incorporated as if fully restated herein.

82. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful attempt to obtain and assert control over funds that Frenzel deposited with and that are currently in the custody and control of Mellon Bank in Pittsburgh, Pennsylvania.

83. Mellon Bank is a state or federally chartered or federally insured financial institution.

84. Defendants' actions constitute fraud on a financial institution as defined at Ind. Code § 35-43-5-8, because defendants have knowingly executed or attempted to execute a scheme or artifice to obtain funds in the custody or control of Mellon Bank by means of false or fraudulent pretenses, representations or promises, as set forth above.

85. Frenzel has been damaged by defendants' actions.

86. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count IX;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT X – FALSE INFORMATION TO GOVERNMENT ENTITY

87. Paragraphs 1 through 86 are incorporated as if fully restated herein.

88. As set forth above, the actions of Johnson (individually and as agent for Progeny and Management/Post) constitute the provision of false information to a government entity as

defined at Ind. Code § 35-43-5-8, because Johnson has knowingly or intentionally provided false information to the FCC in an attempt to obtain contracts (purchase of the licenses) from that agency.

89. Frenzel, LMS and Spectrum have been damaged by Johnson's actions.

90. Johnson's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court:

- a. Enter judgment in their favor and against Johnson, Progeny and Management/Post on Count IX;
- b. Award them compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award them pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant them all other just and appropriate relief.

COUNT XI – BREACH OF CONTRACT

91. Paragraphs 1 through 90 are incorporated as if fully restated herein.

92. Johnson's agreements with Frenzel -- including without limitation his agreements to use and characterize Frenzel's funding only as directed and desired by Frenzel, and to form a new company that Frenzel would control and through which Frenzel would own the licenses -- were binding and enforceable legal obligations by Johnson and Progeny.

93. Johnson's actions and omissions -- including without limitation his failure to form "Progeny LMS, LLC" as a company controlled by Frenzel and his misuse and mischaracterization of Frenzel's funding -- have breached the agreements with Frenzel and constitute one or more unexcused failures to perform the contractual obligations.

94. Frenzel has performed all of his obligations and satisfied all conditions under the agreements.

95. Frenzel has been damaged by Johnson's and Progeny's actions, failures and breaches.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Progeny on Count XI;
- b. Award Frenzel damages in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XII -- RESCISSION FOR MUTUAL MISTAKE

96. Paragraphs 1 through 95 are incorporated as if fully restated herein.

97. The agreement between Frenzel and Johnson (individually and as agent for Progeny) for Frenzel to advance \$1,879,155 to the FCC was based on the shared, common assumption that the applicant for the licenses was "Progeny LMS, LLC." That common

assumption is shown in Frenzel's payment on behalf of "Progeny LMS LLC," and also in Johnson's repeated filing of FCC papers in the name of "Progeny LMS, LLC."

98. The true identity of the applicant for the licenses was a vital fact upon which the parties' agreement was based and was a material component of the bargain.

99. Frenzel and Johnson (individually and as agent for Progeny) were mutually mistaken about the true identity of the applicant for the licenses. As a result of that mutual mistake, the actual exchange of values embodied in the parties' agreement was quite different from the contemplated exchange.

That is preposterous: two very experienced businessmen and neither knew that a legal entity they alleged to control and that took multiple major actions before the FCC and Mellon Bank did not even exist.

100. Frenzel has suffered damages through performance of the agreement (and payment of his \$1,879,155) as a result of the parties' mutual mistake.

101. Frenzel has received no benefits under the agreement or from his payment of money to the FCC, and is entitled to a full rescission and repayment of the money.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment for him and against Johnson and Progeny on Count XII;
- b. Grant rescission of Frenzel's and Johnson's agreement for Frenzel to advance funds to the FCC in conjunction with the license auction;
- c. Return the funds paid by Frenzel, with appropriate interest, so that Frenzel is returned to the status quo that existed before the agreement was formed; and
- d. Grant Frenzel all other just and appropriate relief.

Rescission and refund would require asking the FCC to return the funds deposited. That is contrary to the position that Frenzel took before the FCC.

-

COUNT XIII -- PROMISSORY ESTOPPEL

102. Paragraphs 1 through 101 are incorporated as if fully restated herein.

103. As set forth above, Johnson (individually and as agent for Progeny) made several clear and definite promises to Frenzel, including without limitation promises to form a new company through which Frenzel would own and control the licenses, and to treat any contribution by Frenzel as a contribution to that new company.

104. Frenzel reasonably and justifiably relied to his detriment on those promises, which Johnson deliberately failed to keep, and Frenzel suffered damages as a result.

105. Enforcement of Johnson's promises is required as a matter of justice, so that Frenzel will be restored to his pre-promise position and reimbursed for the losses he suffered from Johnson's failure to keep the promises.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Progeny on Count XIII;
- b. Award Frenzel damages in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XIV – CIVIL CONSPIRACY

106. Paragraphs 1 through 105 are incorporated as if fully restated herein.

107. As set forth above, Johnson and Green have worked in concert and conspired to deprive Frenzel of his money and/or the licenses, to substitute Management/Post for LMS as the true applicant for the FCC licenses, to remove or cloud Frenzel's clear ownership and control of Spectrum, and to inflict other damages upon plaintiffs, all for their own benefits and purpose.

108. Johnson and Green are liable for civil conspiracy, because, as set forth above, they have combined and worked by concerted action to accomplish an unlawful purpose or to accomplish some lawful purpose by unlawful means.

109. Frenzel has suffered damages from Johnson's and Green's concerted wrongful conduct.

110. Johnson's and Green's conduct was willful, wanton and malicious.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court:

- a. Enter judgment in their favor and against Johnson and Green on Count XIV;
- b. Award them all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- c. Grant them all other just and appropriate relief.

COUNT XV -- CORRUPT BUSINESS INFLUENCE

111. Paragraphs 1 through 110 are incorporated as if fully restated herein.

112. Johnson's and Green's various wrongful actions, including without limitation their separate violations of Ind. Code §§ 23-2-1-12 and 23-2-1-19 (securities statute) and Ind. Code § 35-43-4-2 (theft statute), constitute a pattern of racketeering activity as defined at Ind. Code § 35-45-6-1.

113. Johnson and Green have knowingly and intentionally received proceeds through their pattern of racketeering activity and have used or invested those proceeds or proceeds derived from them to acquire an interest in property or to operate an enterprise, in violation of Ind. Code § 35-45-6-2(1).

114. Johnson and Green, through their pattern of racketeering activity, have knowingly or intentionally acquired or maintained a direct or indirect interest in or control of property or an enterprise, in violation of Ind. Code § 35-45-6-2(2).

115. Frenzel has been damaged by Johnson's and Green's actions.

116. Johnson's and Green's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Green on Count XV;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-2-6 in an amount to be determined at trial;

- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XVI -- INJUNCTIVE RELIEF

117. Paragraphs 1 through 116 are incorporated as if fully restated herein.

118. The actions and statements of Johnson and Green (individually and as agents for Progeny and Management/Post) -- including but not limited to their false representations about the true identity of the license applicant, their false characterization of Frenzel's payment to the FCC, and their false statements concerning the ownership of Spectrum in documents submitted to the FCC -- are part of a continuing pattern of wrongful and illegal conduct that continues to violate Frenzel's rights as sole owner, member and manager of Spectrum, casts doubt on the structures of LMS and Spectrum, enables the defendants to misuse and profit from funds obtained from Frenzel through fraud and other wrongful conduct, and subjects Frenzel, LMS and Spectrum to potentially severe losses.

119. Defendants' wrongful actions will continue to cause irreparable harm to Frenzel, LMS and Spectrum unless enjoined by this Court. For example, defendants claim in FCC documents that Spectrum is owned by Progeny and Management/Post, when in fact the company is wholly owned by Frenzel, and deny that LMS, which was organized with an existence effective as of February 18, 1999, is the true applicant for the licenses. Defendants also continue to benefit from the fraudulent and other wrongful acts they have perpetrated against Frenzel.

120. Defendants' continuing wrongful actions have harmed and will continue to harm

LMS, Spectrum and Frenzel in ways that cannot be remedied by damages, and/or with the result that any damages suffered cannot be calculated or even reasonably estimated. If the actions of defendants are not enjoined, the integrity, viability and business reputation of Frenzel, Spectrum and LMS will be severely and permanently damaged. Conversely, defendants will suffer no harm from an injunction that simply requires them to act legally, with respect for Frenzel's rights as owner of Spectrum and LMS, and otherwise consistent with the January 1999 agreement between Frenzel and Johnson and this Court's orders. Moreover, given the clearly wrongful character of defendants' conduct, and its impact on the ownership of licenses for broadcast frequencies controlled by the federal government, the public interest would not be disserved by entry of such an injunction.

123. In addition, plaintiffs are entitled to an injunction pursuant to Ind. Code § 34-24-2-6(a), because they have suffered and continue to suffer from corrupt business influence as set out in Count XV above.

WHEREFORE, plaintiffs pray that this Court, on an expedited basis, enter a judgment preliminarily and permanently enjoining defendants directly or indirectly from:

- a. Making false or misleading statements to the FCC or any other person or authority concerning ownership, management, membership or control of the applicant for the licenses, including statements reflecting directly or indirectly that Frenzel does not own and control Spectrum;
- b. Denying that "Progeny LMS, LLC," as listed in the documents filed with the FCC, is LMS and not Management/Post;
- c. Using funds obtained from Frenzel through fraud or other wrongful means to

Progeny LMS LLC did not exist until well after the auction. A judgement can't change that, nor cure violation of FCC rules, but--

- purchase, secure rights to or otherwise affect any issuance of the licenses;
- d. Taking any action that is inconsistent with Frenzel's ownership and control of Spectrum or with the January 1999 agreement between Frenzel and Johnson;
 - e. Transferring, selling or encumbering, and negotiating or attempting to make any unauthorized transfer, sale or encumbrance of any of the licenses and any related present or future assets; and
 - f. Causing or engaging in corrupt business influence.

JURY DEMAND

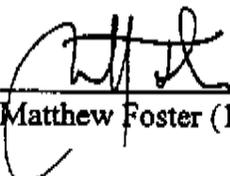
Plaintiffs demand a jury trial on all claims and issues so triable.

Respectfully submitted,

McMAINS, GOODIN & ORZESKE, P.C.



Michael B. McMains (17075-49)



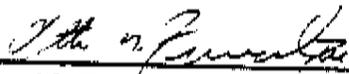
Matthew Foster (16400-49)

McMAINS, GOODIN & ORZESKE, P.C.
20 North Meridian Street, Suite 9000
Indianapolis, Indiana 46204
Telephone: 317-638-7100
Telecopier: 317-638-7171

VERIFICATION

I, Otto N. Frenzel, III, declare under the penalties for perjury that the foregoing
factual representations are true and correct.

Date: 6-18-99


Otto N. Frenzel, III

CERTIFICATE OF SERVICE

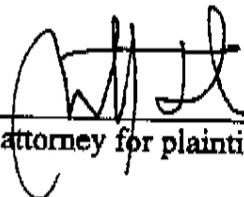
I certify that on this 21st day of June, 1999, I caused a copy of the foregoing "Amended Verified Complaint" to be served via first-class United States mail, postage prepaid, on the following:

Scott R. Leisz
William M. Braman
McHALE, COOK & WELCH
320 North Meridian Street
Suite 1100
Indianapolis, IN 46204

and by certified mail, return receipt requested, on the following:

Lawrence R. Green
12188 Windsor West Drive
Fishers, IN 46038

Progeny Post LMS, LLC
c/o Curtis L. Johnson
10 West Market Street, Suite 500
Indianapolis, IN 46204



An attorney for plaintiffs

EXHIBIT

A

**ARTICLES OF ORGANIZATION
OF
PROGENY LMS, LLC**

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be Progeny LMS, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

7.6 Employee or Agent. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Person.

7.7 Standard of Conduct.

7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

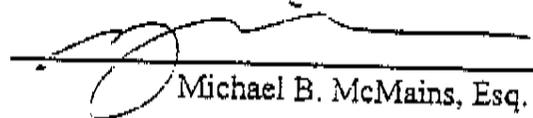
7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 18th day of February, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of Progeny LMS, LLC:

ORGANIZER


Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

EXHIBIT

B

APPROVED
AND
FILED
IND. SECRETARY OF STATE

ARTICLES OF ORGANIZATION
OF
LMS SPECTRUM PARTNERS, LLC

RECEIVED
99 APR 13 PM 1:07
SUE ANNE GILROY

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be LMS Spectrum Partners, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

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7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

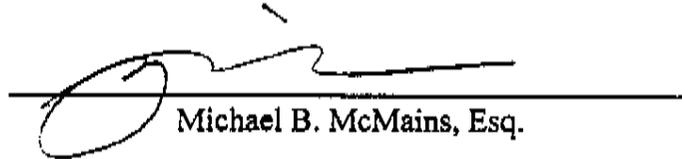
7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 12th day of April, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of LMS Spectrum Partners, LLC:

ORGANIZER



Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

EXHIBIT

C

PROGENY LMS, LLC

OPERATING AGREEMENT

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STATE OF INDIANA)
) SS: IN THE MARION _____ COURT
 COUNTY OF MARION) CIVIL DIVISION
) CAUSE NO. _____

OTTO N. FRENZEL, III and)
 PROGENY LMS, LLC,)
)
 Plaintiffs,)
)
 v.)
)
 CURTIS L. JOHNSON and)
 PROGENY POST, LLC,)
)
 Defendants.)

AFFIDAVIT OF JOHN H. BARNARD

John H. Barnard, being first duly sworn upon his oath, deposes and states as follows:

1. I am one of several owners in Progeny Post, LLC ("Progeny"). The majority of Progeny's voting interest is owned by Curt Johnson ("Johnson"), and Otto N. Frenzel, III ("Frenzel") owns no more than 10% of the total ownership interest. Each of the several other members owns less than about 4% of the ownership interest. Johnson and I are the only members of Progeny's board of managers. Johnson is Progeny's president, and I was the company's chief financial officer until last year.

2. On a recent occasion, I had a conversation with Johnson about the status of certain efforts by Frenzel, with Johnson's assistance, to purchase licenses from the Federal Communications Commission ("FCC") for a number of radio broadcast frequencies. I understood and presumed from prior communications with Frenzel and Johnson that the licenses purchased would belong to Frenzel, whether personally or through an entity owned and controlled by him, and not by Progeny or any other person. During the conversation, Johnson

told me that FCC regulations related to bidder income would prevent Frenzel from owning the licenses, and that Progeny instead would be the owner. This news surprised me, because I had never been part of any discussion or vote, either with Johnson as a manager and officer or the entire membership, concerning Progeny's purchase of the licenses in this manner.

3. I also have learned recently that sometime after March 22, 1999, Johnson came to Frenzel's office and tendered some sort of promissory note, purporting to be payable to Frenzel from Progeny, for more than \$1.8 million that Frenzel apparently paid to help secure the licenses. Neither the managers nor the members of Progeny have ever approved such a debt or note to Frenzel. As a manager, I would have been involved in any discussions among members, managers or officers concerning such a debt and note, both before and after the debt was incurred, and no such discussions were ever held. Also, to the best of my knowledge, Frenzel never asked for or accepted the note tendered by Johnson or any other similar note from Progeny.

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true and correct.


John H. Barnard

EXHIBIT

F

Auction ID 21 LOCATION AND MONITORING	FCC Account No. 0211049154
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Applicant Progeny LMS, LLC

Mail Address (No P.O. Boxes) 4220 S Franklin Rd

City Indianapolis	State IN	ZIP Code 46239
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Applicant Classification		
<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Partnership
<input type="checkbox"/> Trust	<input type="checkbox"/> Corporation	<input type="checkbox"/> Consortium
<input type="checkbox"/> Association	<input checked="" type="checkbox"/> LLC	<input type="checkbox"/> Govt. Entity

Applicant Status	
<input checked="" type="checkbox"/> Small Business	<input type="checkbox"/> Minority owned business
<input type="checkbox"/> 35 % Bidding Credit Eligibility	<input type="checkbox"/> Woman owned business
<input type="checkbox"/> Rural telephone company	<input type="checkbox"/> None

Markets and Frequency Blocks/Channels selected by applicant. SELECTED ALL 528 LICENSES
--

Person(s) authorized to make or withdraw a bid (a) Curtis L Johnson (b) Lawrence R Green (c)
--

Name of Person Certifying Curtis L Johnson	Title of Person Certifying C.E.O.
--	---

Contact Person Curtis L Johnson	E-mail address curt@progeny.com
---	---

Date Feb 4 1999 2:11PM	Telephone No. (317)955-5546	FAX No. (317)955-5550
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Initial Date Jan 25 1999 2:06PM	Resub Date Feb 4 1999 2:11PM	Date Last Change Feb 4 1999 2:11PM
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Application Certification

FILES EXIST

ATTACHMENTS

Type	Date	Description	Contents
Ownership	Jan 25 1999 12:17PM	FCC Attachment Exhibit A	4003 1.pdf
Other	Jan 25 1999 12:18PM	FCC Attachment Exhibit B	4003 2.pdf
Other	Feb 4 1999 2:11PM	FCC Attachment Exhibit C	4003 3.pdf

PROGENY LMS, LLC
ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit A: Applicant Identity and Ownership Information

We hereby certify that Progeny LMS, LLC is a Limited Liability Company whose sole member is Progeny Post, LLC. Both entities are organized under the laws of Indiana and have a business address of:
 20 N. Meridian St.,
 Indianapolis, IN 46204

Progeny Post, LLC is a Limited Liability Company with the following members who are all US Citizens. Only Curtis L. Johnson with 60.79% holds more than a 10% interest in Progeny Post, LLC.

Curtis L. Johnson	4220 S. Franklin Rd. Indianapolis, IN 46239
Otto N. Frenzel III	11330 Templin Rd. Zionsville, IN 46077
Jim Cornelius	1055 Park Place Zionsville, IN 46077
Brad Goff	310 Rurnford Pointe Atlanta, GA 30350
Joe Luigs	2008 Burning Tree Lane Carmel, IN 46032
Jack Farr	5735 N. 400 W. Bargersville, IN 46106
Don Arbogast	7532 Brookview Circle Indianapolis, IN 46250
John Barnard	3616 Newhouse Pl. Greenwood, IN 46143
Anthony W. Packer	6927 Ancient Oak Lane Charlotte, NC 28277
John Hall	3855 Eagle Trace Dr Greenwood, IN 46143
Mike Flannery	8304 Honeyhill Rd. Laurel, MD 20723

Progeny Post, LLC also owns interests in the following entities, all of which are inactive and none of which hold FCC licenses or are applicants for any FCC licenses.

Entity Name	Ownership Percentage Held By Progeny Post, LLC
Progeny Post Entertainment, LLC	100 %
Progeny Post Kids, LLC	100 %
Progeny Post Matchpower, LLC	100 %
Progeny Post RotoSpace, LLC	100 %
Progeny Post Sports, LLC	100 %
LMS Comm.net, LLC	50 %
Gimme the Ball, LLC	100 %

PROGENY LMS, LLC
ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit B: Agreements with Other Parties/Joint Bidding Arrangements

Although the Company has had discussions with several other companies in the telecommunications industry concerning potential strategic partnerships in a range of different general business categories, the Company has no agreements or arrangements and has had no discussions with any parties regarding bid pricing or bidding strategies for licenses in the upcoming auction.

PROGENY LMS, LLC
ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit C: Status as a Very Small Business

Progeny LMS, LLC certifies that it qualifies as a very small business. The applicant was established as an entity on July 2, 1996 but has been inactive and has had no revenue to date.

Progeny LMS, LLC	Gross Revenues
1996	\$0
1997	\$0
1998	\$0
Average for the preceding 3 years	\$0

Progeny Post, LLC, as the sole owner in Progeny LMS, LLC, also certifies that it qualifies as a very small business. Progeny Post, LLC was established as an entity on April 17, 1996 to develop business opportunities in several different areas and to date has had only minimal gross revenues for the last three years as follows:

Progeny Post, LLC	Gross Revenues
1996	\$498.00
1997	\$14,320.00
1998	\$0
Average for the preceding 3 years	\$4,939.33

None of the entities in which Progeny Post, LLC has an equity interest has had any revenue in the preceding three years.

EXHIBIT

G

DATE 02/28/99

STATEMENT OF TRANSACTIONS
 ADMINISTRATIVE OFFICER, PPT

ACCOUNT NUMBER: 20-2493-00-8
 ACCOUNT NAME: FRENZEL, OTTD N LII CUSTODIAN
 PRINCIPAL CASH
 ASSET CARRYING VALUE

DATE 02/08/99
 DESCRIPTION
 SOLD 500946.720 UNITS @ 1.05000
 ARHADA TAX EXEMPT MONEY MARKET FUND
 1,079,155.00-

DATE 02/09/99
 DESCRIPTION
 HIRED MELLON PITTSBURGH ABA
 04300261 FOR ACCT 910-0198 N/O FCC
 FFC ACTIONPAY TIB 35-199324 PYMT
 TYPE CODE ALIM FCC CODE 1 21 PAYER
 PROSENY LMS LLC LOCKBOX 8358410
 INCOME CASH

DATE 02/10/99
 DESCRIPTION
 SOLD 17110.460 UNITS @ 1.00000
 ARHADA TAX EXEMPT MONEY MARKET FUND
 WIBED ALPINE BANK CAMBODDALE CO ABA
 102103407 CREDIT ACCT 4040715778
 N/O CAMICRAEL CONSTRUCTION INC
 PER DIRECTION

DATE 02/11/99
 DESCRIPTION
 SOLD 5008.000 UNITS @ 1.00000
 ARHADA TAX EXEMPT MONEY MARKET FUND
 DELOITTE & TOUCHE
 PROFESSIONAL SERVICES 10/18/98 TO
 1/22/99 INVOICE 006100471

DATE 02/11/99
 DESCRIPTION
 KARY ANN FRENZEL
 BENEFITANCE HDQ C/A
 460 99 1311
 PER REQUEST
 SOLD 7675.000 UNITS @ 1.00000
 ARHADA TAX EXEMPT MONEY MARKET FUND

DATE 02/11/99
 DESCRIPTION
 PITKIN COUNTY TREASURER
 PROPERTY TAX DUE 2/28/99
 FIRST HALF SCHEDULE RD15946

EXHIBIT

H

March 24, 1999

Mr. Randy Tobias
Chairman Emeritus
Eli Lilly
500 East 96th St.
Suite 100
Indianapolis, IN 46240

Dear Mr. Tobias,

Nick Frenzel and I appreciated your interest in our wireless project, so I just wanted to drop you a line to fill you in on our progress and share a few thoughts with you. We have made significant progress in the last couple of months and want to sustain the momentum we have created as we pursue some critical strategic partners.

I believe the last time we spoke we were beginning to meet with wireless carriers to outline our solution to the FCC mandate on E911 location and were preparing to participate in the FCC auction of the LMS frequencies. We've now had several successful meetings with all of the top wireless communications companies regarding our solution, which has been well received. However, it had become evident during these meetings that a national footprint for our wireless network was critical to being considered seriously as a viable alternative. To be honest, we couldn't have hoped for a better outcome. After two weeks of bidding at the auction, which ended on March 5, we succeeded in securing nationwide coverage by acquiring 230 licenses (all major economic areas with populations of 500,000 or more) representing over 225 million pops. And at \$2.36 million (funded by Nick), the cost was significantly lower than we allocated in our Business Plan and Financial Projections.

Since the auction closed, we have received a number of positive and encouraging responses from many of the companies with whom we've met, which has confirmed how valuable a nationwide set of frequencies is to our prospective partners and our overall business plan. We have also had several additional opportunities since then to make presentations to potentially significant partners. However, while we have made good progress moving up the ladder in these organizations and have continued to have good dialogue, we are still a couple of steps away from the top decision maker in most companies. Reaching the right people at each company will be one of our top priorities now.

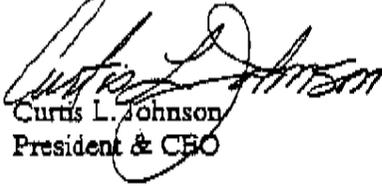
As you may recall, our business model relies heavily on strategic partnerships in several key areas. Now that we've finished with the auction process, another top priority is to begin finalizing the more critical pieces of our strategic partnership plan, with particular focus on the technology (Motorola, Alcatel, Qualcomm) and tower co-location (AT&T, Sprint, GTE, etc.) partners. We believe our strategic partnership model has some creative elements that potential partners will find quite attractive. The key features of this partnership model have been presented in general terms with several of the potential strategic partners, and they have all reacted positively to the concept. A short outline of the partnership model is attached.

I really appreciate the time you have spent with us and would like to thank you again for the effort you made on our behalf with Dan Hesse and Craig McCaw. At this juncture in the development of our business, your insight to and contacts in the industry would be invaluable to us. Your background and experience are exactly what we need to efficiently reach the next level. Your reaction to our strategic partnership plan and your comments on its feasibility in a large corporate setting would be particularly helpful as we begin our next level of negotiations. Calls from you on our behalf to a select group of additional companies would help strengthen our position with those companies where we are already well received at lower levels. I know you

are very busy, but we could really use your help. Of course, I would want to work out some form of compensation that would allow you to participate in the success we will have as a result of your efforts.

I would like the opportunity to discuss this further at your convenience. I hope everything is going well and you are enjoying all you are doing. Thanks again for your time and interest. I hope to be speaking with you soon.

Sincerely,



Curtis L. Johnson
President & CEO

Cc: Nick Frenzel

PROGENY LMS, LLC Strategic Partnership Model

The following is a brief sketch of the organizational and financial models we have put together. Separate Limited Liability Companies will be established for spectrum, technology, co-location and manufacturing partners. Each company will receive licensing royalties on all revenue generated by Progeny LMS. The strategic partner in each company will receive a baseline equity position that will provide them a 35% internal rate of return on their "investment" which will consist of cash, services or some combination of both. In addition, each partner will receive an equity enhancement that will bring their effective position to 49% of the Company. The equity enhancement will be subject to a call by Progeny LMS within 5 years at a cost equal to one-half the strategic partner's investment. As a result of the equity enhancement, the actual return to the partner is significantly higher than the 35% baseline. Since the calculated return is based only on operational cash flows from the conservative revenue projected for Progeny LMS and does not include an exit payment as part of the valuation, the ultimate return is expected to be even higher.

The strategic partnership model will allow us to build out the infrastructure for the business at a dramatically lower cost than trying to buy and build all the pieces ourselves. Except for the spectrum partner, each partner will be contributing services whose internal costs are substantially lower than what it would cost us to purchase. Using a fixed royalty in a separate entity helps Progeny better manage its overall costs.

More detail on the Technology and Tower Co-Location partnership categories follows. This same format and concept is being used for the Spectrum and Manufacturing partnership categories.

Technology

Progeny LMS Contribution. Progeny agrees to contribute to LMS Technology Partners, LLC, its 50% ownership in LMS Comm.net, LLC that holds rights to the LMS technology and other related intellectual property. Progeny agrees to acquire the balance of the ownership in LMS Comm.net, LLC by paying the \$3.5 million option price exclusively available to Progeny. That remaining 50% will then be contributed to LMS Technology Partners, LLC as part of Progeny's contribution. Additionally, all work completed and in progress with respect to the upgrading of the technology will be transferred to LMS Technology Partners, LLC.

Technology Partner Contribution. The Technology Partner agrees to:

- Provide design and engineering services required to update the technology and produce a prototype to a demonstration level.
- Create a chip/chip set that can be incorporated into a wireless phone.
- Fund the cost of contract labor for original system programmers and engineers to support the refreshing process (estimated to be approximately \$250,000)
- Design all network infrastructure equipment and produce and manage specifications for all end-user equipment manufacturers.

The technology partner will have no responsibility for other costs to deploy the network, manufacture or install the equipment, develop the markets or build out other components of the infrastructure.

Valuation of Contributions. The Technology Partner's contribution will be valued on the following basis:

- A 35% internal rate of return over a five-year period will be used as the Technology Partner's return objective.
- The assigned cost of the Technology Partner's contribution will be based on the internal cost of its design and engineering time, including a fair and reasonable allocation of overhead, plus other direct costs, including the contract labor fees.
- Licensing fees of \$.125 per unit per month will be assumed for all location units.
- A reasonable penetration rate over a five-year period will be assumed for location units sold.

The equity allocation required to meet the 35% return objective will serve as the baseline equity of the Technology Partner. This baseline equity position will be adjusted to 49% during the recovery period term.

Tower Co-location

Progeny LMS Contribution. Progeny agrees to provide:

- Location functionality to the partner at a reduced price
- Licensing royalties on all other Progeny LMS location revenue
- Equity in this entity as outlined below
- Rights to the frequencies required by the sites of operating the system
- Installation, Maintenance and Management of the system's transmit sites
- Use of the technology for other location technologies that may be offered by the partner

Progeny also agrees to contribute to LMS Tower Partners, LLC all work completed and in progress with respect to the siting and location of its receive equipment. Progeny will execute a royalty licensing agreement with LMS Tower Partners for use of the towers in all applications being developed by Progeny. Additionally, Progeny LMS, LLC will execute agreements between LMS Tower Partners, LLC and its other location service partners in technology updating, spectrum management, product distribution and marketing. These agreements will provide for exclusive use of each partner's products and services in the deployment of the network and development of the location services.

Tower Partner Contribution. The Tower Partner agrees to:

- Provide rent free co-location on all partner owned/leased tower sites.
- Install and maintain all Progeny LMS receive equipment at the sites

The tower partner will have no responsibility for other costs to deploy the network, manufacture or install the equipment, develop the markets or build out other components of the infrastructure.

Valuation of Contributions. The Tower Partner's contribution will be valued on the following basis:

- A 35% internal rate of return over a five-year period will be used as the Tower Partner's return objective.
- The assigned cost of the Tower Partner's contribution will be based on the internal cost of its time for equipment installation and an estimate of the annual cost of its maintenance during the first five years of operation, net present valued at an annual rate of 20% including a fair and reasonable allocation of overhead, plus other direct costs.
- Licensing fees of \$.075 per unit per month will be assumed for all location units.
- A reasonable penetration rate over a five-year period will be assumed for location units sold.

The equity allocation required to meet the 35% return objective will serve as the baseline equity of the Tower Partner. This baseline equity position will be adjusted to 49% during the recovery period term.