

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Progeny LMS, LLC Request for Waiver of the) WT Docket No. 08-60
Commission’s Multilateralization Location and)
Monitoring Service Construction Rule)
)

**COMMENTS OF THE WIRELESS COMMUNICATIONS ASSOCIATION
INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCA”),¹ by its counsel, hereby submits its comments in response to the Commission’s May 5, 2008 *Public Notice*² soliciting comment on the request by Progeny LMS, LLC (“Progeny”) for a four-year extension of the Commission’s five-year and ten-year construction deadlines for Multilateralization Location and Monitoring Service licensees (“M-LMS”).³ For the reasons set forth below, WCA supports grant of Progeny’s request.

The core justifications for Progeny’s request are similar to those that supported the Commission’s recent extensions of its substantial service deadlines for Wireless

¹ WCA is the trade association of the wireless broadband industry. Its membership includes, among others, a wide array of companies that provide or support the provision of wireless broadband service in the licensed and unlicensed spectrum bands.

² See Public Notice, “Wireless Telecommunications Service Bureau Seeks Comment on Request by Progeny LMS, LLC For Waiver of Location and Monitoring Service (LMS) Construction Rule,” WT Docket No. 08-60, DA 08-1027 (rel. May 5, 2008) [“Public Notice”].

³ See Request of Progeny LMS, LLC for Waiver and Limited Extension of Time, ULS File Nos. 0003422722-0003422999 and 0003423004-0003423231 (filed May 1, 2008) [“Progeny Extension Request”]. Progeny’s current five-year and ten-year construction deadlines are July 19, 2008 and July 19, 2010, respectively. See Public Notice at 1.

Communications Service (“WCS”)⁴ and Local Multipoint Distribution Service (“LMDS”)⁵ licensees: (1) difficulties in obtaining viable, affordable equipment;⁶ (2) the additional time needed to develop equipment for evolving business models in the spectrum at issue;⁷ (3) unavoidable economic and technical constraints beyond the licensees’ control;⁸ and (4) the impracticality of and overall harm to the public interest that would result from forcing licensees to deploy “stop-gap” systems solely to ensure compliance with the Commission’s deadlines, even where those systems would have no long-term utility for service providers or their customers.⁹ In fact, the Commission explicitly acknowledged some of these difficulties just two years ago when it extended Progeny’s five-year construction deadline to July 19, 2008.¹⁰ The critical circumstances

⁴ See *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses et al.*, Order, 21 FCC Rcd 14134 (WTB 2006) (extending substantial service deadline for requesting WCS licensees to July 21, 2010) [“WCS Extension Order”].

⁵ See *Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, DA 08-54 (WTB, rel. Apr. 11, 2008) (extending the ten-year substantial service deadline) for requesting LMDS licensees to June 1, 2012) [“LMDS Extension MO&O”].

⁶ See Progeny Extension Request at 6-9; *WCS Extension Order* at 14139-40; *LMDS Extension MO&O* at ¶ 24.

⁷ See Progeny Extension Request at 5; *WCS Extension Order*, 21 FCC Rcd at 14141; *LMDS Extension MO&O* at ¶ 26.

⁸ See Progeny Extension Request at 9-10; *WCS Extension Order* at 14139; *LMDS Extension MO&O* at ¶¶ 6-7 and n. 33.

⁹ See Progeny Extension Request at 5; *WCS Extension Order*, 21 FCC Rcd at 14141; *LMDS Extension MO&O* at ¶ 26.

¹⁰ See *Request of Progeny LMS, LLC for a Three-Year Extension of the Five-Year Construction Requirement for its Multilateralization Location and Monitoring Services Economic Area Licensees*, Memorandum Opinion and Order, 21 FCC Rcd 5928, 5932 (WTB 2006) (finding that “the lack of available M-LMS equipment continues to make construction impossible” and that “spectrum sharing in the M-LMS band . . . has hindered the ability of licensees to secure equipment”).

surrounding that extension have not changed, and, as reflected in the cases of WCS and LMDS and the precedent cited in the Commission decisions extending the substantial service deadlines for those services, there otherwise is ample basis for the relief Progeny has requested here.

Furthermore, Progeny notes that the Commission is presently considering whether to modify the very same technical and spectrum sharing rules that have hindered the development of a market for M-LMS equipment (and thus required Progeny to seek extensions of its construction periods).¹¹ Again, there is ample Commission precedent for extending Progeny's construction deadlines under these circumstances.¹² For example, the Commission suspended its five-year buildout deadline for Broadband Radio Service ("BRS") Basic Trading Area licensees while the Commission reevaluated its buildout policies in its comprehensive rewrite of its BRS rules in WT Docket No. 03-66. In so doing, the Commission found that a suspension of the buildout deadline would "allow the Commission to evaluate the performance requirements and service rules for [the 2500-2690 MHz]," and was "consistent with prior Commission actions suspending a deadline while relevant policy is subject to the pending rulemaking proceedings."¹³

In sum, the Commission has repeatedly reaffirmed that users of wireless services are better served by a regulatory framework that provides licensees with sufficient time to

¹¹ See Progeny Extension Request at 4 n. 11, citing *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, 21 FCC Rcd 2809 (2006).

¹² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rule Making and Memorandum Opinion and Order, 18 FCC Rcd 6722, 6805 n. 490 (2003) and the cases cited therein.

¹³ *Id.* at 6805 (footnote omitted).

acquire equipment and deploy rational, cost-effective, consumer-driven networks. Conversely, arbitrary enforcement of the Commission's construction deadlines without consideration of market conditions, technological developments and other compelling factors would force licensees to make uneconomic choices about service deployment and divert valuable capital resources to sub-optimal business plans, neither of which provide any long term benefits to the public. These principles are equally relevant to the instant proceeding, and support a grant of the Progeny Extension Request for the reasons set forth above.

Respectfully submitted,

**THE WIRELESS COMMUNICATIONS
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