

**Skybridge Spectrum Foundation  
Telesaurus Holding GB LLC**

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31 July 2008

FOIA Request submitted by email to: [foia@fcc.gov](mailto:foia@fcc.gov)

The below numbered information follows the same number format as on the FCC's electronic FOIA request form at: <http://www.fcc.gov/foia/#reqform>, however, only the requested responses are provided here. If there are any questions on this request, please contact us immediately.

1. Skybridge Spectrum Foundation ("Skybridge"), and Telesaurus Holding GB LLC ("Telesaurus") severally make this request. Skybridge is the lead entity making the request. Telesaurus hereby submits the identical request, but only one response, addressed to Skybridge, is requested. On any appeal of the response to this request, both entities may be appellants.

2. 2649 Benvenue Ave., Suites #2-6  
Berkeley CA 94704

3. 510-841-2220

4. 510-740-3412

5. [jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)

6. July 31, 2008

7. All documents, in written, electronic, and other format (as they are held at the FCC) submitted by or on behalf of Progeny LMS, LLC ("Progeny"), or by any other person or entity, in connection with Progeny's request for a Four-Year Extension of the Five-Year and Ten-Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses, under File Nos. 0003423004-0003423231 and 0003422772-0003422999 (and any other File Numbers that may be involved in the same request) (together, the "Applications") (the "Progeny Extension Request"), **that were submitted under a request for confidentiality of any sort, or that the FCC is treating as confidential for any reason, or that otherwise are not posted and downloadable on ULS under the just-listed Applications** (the "Requested Documents").

If any of the Requested Documents are not released in full due to FCC determination that a FOIA exemption applies, or for other reason, then please release the remainder of the Requested Documents, using redaction where needed within a document. The requesting parties may challenge any withholding on appeal, for reasons indicated below or other good cause.

8. The requested documents should be found in the Wireless Telecommunications

Bureau records, but in any case, FCC staff can easily determine the location(s).

9. \$500.00 (five hundred dollars): however, see waiver below. If the waiver is not granted, then the requesting parties will pay up to that sum. If upon review of the records, it appears that a response will involve a higher amount, please contact us immediately with the details so that we can make a decision.

10. (a) Yes, to the knowledge of the requesting parties—as asserted by Progeny, however, the requesting parties do not know if said assertion has merit, and in any case, explain below why the Requested Documents should be released.

(b) 1. Reasons that the requested documents should be released is explained in part in the Petition to Deny and related Reply submitted by Skybridge and Telesaurus of the Applications and Request.

2. In addition (while partially redundant with the forgoing reason): the Request was placed on Public Notice by the FCC for public comments and such comments were made by Skybridge and Telesaurus, and other parties. Progeny in the Request relies upon the Requested Documents in making its factual case and related legal arguments. The purpose of the Public Notice and the related FCC rules, and the responsive comments submitted by the parties, are frustrated by withholding the Requested Documents that Progeny and its Request relies upon.

3. Further, Progeny's asserted facts and arguments include some of the same facts arguments that Progeny has asserted for years in RM-10403 and after that in the NPRM proceeding 06-49. (Progeny indicated that in its last ex parte filing in 06-49 dated 7.18.2008, including by continuing its assertion concerning unavailability of equipment.) Where, as in this case, a party to a rulemaking proceeding (in this case Progeny was the sole cause of the subject NPRM, as indicated in the NPRM itself) relies on factual assertions, and thereupon legal arguments, it cannot then seek confidentially of any documents it relies on and wants the FCC to consider in making a decision in said public proceeding. Otherwise, it clearly seeks a private confidential proceeding which is not allowed once the FCC has determined a matter is a public proceeding. Similarly, the FCC determined that it was in the public interest to create a public proceeding regarding the Applications and the Request, and parties did participate, and the decision in said proceeding will affect parties other than Progeny, as said comments indicate and said placement on Public Notice indicates. Thus, for the same reasons given above, since Progeny relies upon the Requested Documents, they must be released.

11. (a) Yes. A fee waiver, or reduced fee assessment, is requested.

(b) (1) Skybridge is a nonprofit corporation organized under IRS rules 501(c)(3) solely for, and that solely engages in, scientific, educational, and charitable purposes (explained in various FCC dockets including 06-49 noted above). Skybridge holds over one hundred FCC LMS licenses, and hundreds of other licenses. Its main purpose is to develop and operate wireless systems based in large part on its LMS licenses of the class that the Request, Applications, and Requested Documents deal with as their main subject, for the nations Intelligent Transportation Systems (“ITS”), as well as for environmental monitoring and protection, and other purposes in support of Federal, State, local, and tribal government purposes and programs. Part of that nonprofit purpose is to educate the relevant members of the public about LMS and ITS wireless, including FCC staff (who, as they have explained to Skybridge and Telesaurus, and as is evident in the NPRM, do not know much about ITS: it is a new and fact moving field, and is not principally a matter of FCC involvement), other LMS licensees, other participants in Docket 06-49 (who also show virtually no understanding of

ITS and the actual facts of LMS technology and equipment development, etc.), and others. A critical part of this nonprofit educational work involves placing before the FCC, in public proceedings, relevant information about ITS wireless and using LMS licenses, including defense of the current LMS rules which were created to, and in fact will, provide for viable ITS wireless systems using LMS licenses. Skybridge will use the Requested Documents for these educational purposes just stated. Skybridge has, from its inception, regularly engaged in said educational activity and publication, for example, by participation in and support of the public information dissemination in: [www.tetra-us.us](http://www.tetra-us.us), [www.telesaurus.com](http://www.telesaurus.com), and in papers presented at and published in relation to the 2007 and 2008 ITS World Congresses (in conjunction with co-authors at the University of California's CCIT ITS center).

(2) In the case at hand, as described above, there is already proceeding that the FCC determined to be in the public interest—created by placing the Request on Public Notice-- and Skybridge will place in full the Requested Documents (or those that are released) in that proceeding for the public review and further comments of existing and any other, new members of the public to access and comment on. Also, when the FCC creates a public proceeding (or even on contested restricted proceedings), it is in the public interest for FCC staff, as well as all of the parties, and any others that may be effected, to have as full and complete a record as possible of relevant and potentially relevant information. This will be served by fulfilling this FOIA request and by Skybridge action of placing the released documents in said public proceeding.

(3) For the above reasons, applying applicable FOIA fee waiver provisions and the case law criteria indicated in part below, Skybridge is entitled to a fee waiver, and it requests said waiver in full. However, if a full fee waiver is not granted, the Skybridge requests reduced fees to be assessed, such as only for duplication.

(4) Supporting law: (i) Congress intended public interest standard for fee waivers to be liberally construed. *Ettlinger v FBI* (1984, DC Mass) 596 F Supp 867. (ii) The Freedom of Information Act gives agency broad discretion in determining whether to waive fees for document search and duplication. *Eudey v CIA* (1979, DC Dist Col) 478 F Supp 1175, 5 Media L R 2115, 50 ALR Fed 547. (iii) Once requestor has made sufficiently strong showing of meeting of public interest test, burden is on agency to justify denial of requested fee waiver. *Ettlinger v FBI* (1984, DC Mass) 596 F Supp 867. (iv) Government was ordered to grant full fee waiver with regard to organization's Freedom of Information Act (FOIA) request because organization demonstrated its intent and ability to disseminate Bureau of Land Management (BLM) information on grazing permits, allotment management plans, annual operating plans, and field monitoring reports for grazing allotments located on public lands managed by BLM to reasonably broad audience of persons interested in subject. *W. Watersheds Project v Brown* (2004, DC Idaho) 318 F Supp 2d 1036. (v) Where plaintiff nonprofit institute had stated in reasonably detailed and non-conclusory terms exactly how and to whom it would disseminate information requested under Freedom of Information Act (FOIA) from defendant Department of Interior, fee waiver request under 5 USCS § 552(a)(4)(A)(iii) was ordered; institute was not required to show how it used prior FOIA responses. *Edmonds Inst. v United States DOI* (2006, DC Dist Col) 460 F Supp 2d 63.

- End.