

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Progeny LMS, LLC (“Progeny”))	
Waiver Request filed March 8, 2011)	DA 11-446 WT Docket No 11-49

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau

Request to Reissue Public Notice
And Place in Existing Relevant Docket
and
Request to Extend Deadlines
for Comments and Reply Comments

Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC are M-LMS licensees, and with entities (the undersigned, “Petitioner”) are engaged in development of M-LMS licenses for purposes described in the M-LMS NRPM docket 06-40.¹ The subject waiver request proceeding and decision will affect Petitioners. For reasons given below, they submit this request (the “Request”).

Request

If either request below cannot be acted upon today, March 25, 2001, then Petitioners intend to submit Comments today, to the degree possible; and in that case, Petitioners still request grant

¹ Skybridge is a nonprofit operating foundation under IRC §501(c)(3) and holds 2 MHz of the M-LMS A-block licenses assigned to it by outright charitable donations by Telesaurus Holdings GB LLC of all of its M-LMS licenses. The rest of the Telesaurus M-LMS A block spectrum is committed to Skybridge also for its nonprofit ITS purposes, under a new LLC Asset Series, subject to FCC approval of the process to be employed for this effective transfer of control. This has been discussed with attorneys in the FCC Wireless Bureau. This will enable Skybridge to use all of the A-block for nonprofit ITS wireless services. Petitioners assert in the M-LMS docket that critical core ITS location and communication services, like GPS, *cannot be effective on a for-profit basis. They must be open and at no cost like GPS.* The FCC, in its Orders creating M-LMS decided to allow for-profit services, but that was based on an economic rationale that the profit would subsidize the needed critical ITS services—and not since M-LMS is or should be another commercial wireless service. M-LMS is an ITS radio service, and is not a CMRS service.

of this Request as soon after today as possible, where the grant results in re-setting the pleading cycle in accord with the granted request.

Petitioners have spent substantial time on but have not completed Comments in this captioned matter, including due to recent changes in their technical expertise, and unavailability of new experts, due to their scheduling conflicts, needed to complete the Comments. The time currently allowed is insufficient in any case, for reasons submitted below. Also there is no valid argument for a faster track than proposed herein, also for reasons given below.

Request 1. For reasons stated in Section I below, Petitioners request (i) a new Public Notice regarding the Progeny waiver request captioned above establishing from the date of the Public Notice a comment period of 30 days and a reply period of 15 days, and (ii) filing of said new Public Notice in the M-LMS NPRM docket 06-46.

Request 2. Alternatively, for reasons given in Section II below, Petitioners seek a comment period of 30 days date from the release date of DA 11-446 (March 10, 2011), thus to the end of April 9, 2011, and a reply period of 15 days to the end of April 24 (with weekend days not counted).

Petitioners submit this Request for their own purposes but also the public interest involved. Petitioners conferred on March 24, 2011 with Bruce Olcott, counsel for Progeny LMS, LLC (“Progeny”) as to the contemplated extension request of some kind (the undersigned did not have the request elements completed yet, but sought discussion of some principles). The discussion was not conclusive. A copy of this will be emailed to Mr. Olcott upon its filing. Petitioners do not know of other parties to this captioned matter at this time, but for reasons they submit in Request 1, they place a copy of this Request in docket 06-49.

I. Reasons for Request 1

1. This waiver request was not placed in the M-LMS NPRM docket 06-49 by Progeny or by the FCC. That is questionable based on the public interest foundation of this and any NPRM, and Progeny's assertions in that docket. Progeny's stated position to the FCC since year 2003 – (when it submitted its rule making request that resulted in RM-10403, which resulted in 06-49 in 2006), that it holds the majority of M-LMS in the nation (that it asserts were validly obtained, and Petitioners dispute) and this more or less required a rule making for what Progeny proposed. The FCC staff told the undersigned the same: that if Progeny or my companies sought rule waivers on any fundamental FCC rules, they would probably be treated as a rule change proceeding (which I took to me, denied but with leave to file a rule making request). Here, Progeny did file such a rule making request, and Progeny leaves its position in that unchanged, yet now seeks waivers that conflict with the position in the NPRM (also see item 3 below).

If the FCC had a valid purpose for the NPRM, it should place the Progeny waiver request in that docket, and allow the parties that combined have spent a great deal of time and effort the right to comment, since the outcome of the subject Progeny waiver request may affect the parties in that docket as much as a decision on Progeny's proposed rule changes in that docket.

II. Reasons for Request 2

The reasons for the Request 2, in the alternative are the following:

1. Under FCC rule § 1.1202(d)(2) Petitioners are “parties” to the subject Progeny M-LMS licenses in several proceedings, since they filed “a complaint or request to revoke a license or other authorization” in the M-LMS docket 06-49, and in a past Progeny waiver (deadline extension) request (pending on reconsideration) with regard to all of the subject Progeny M-LMS

licenses and that is still pending (the “Validity Challenge”).² Thus, it appears that the subject Progeny waiver request is an impermissible ex parte written presentation as it was not served upon Petitioners and since it is based Progeny’s dispute of the Validity Challenge (that is, Progeny’s premise of its subject waiver request is that M-LMS licenses are fully valid, contrary to the pending Validity Challenge). In addition, the waiver request also appears to be an impermissible ex parte presentation since it based on the grant to Progeny, in DA 08-2614, of the construction deadline described in the subject waiver request: this DA 08-2614 extension grant to Progeny is subject to a pending petition for reconsideration by Petitioners.³

If the waiver request is an impermissible ex parte presentation, it cannot be a legally valid basis of a FCC public notice calling for comments and reply comments. At minimum, it prejudices Petitioners challenge rights, described above, afforded under the Communications Act, Administrative Procedures Act and FCC rules. This, by itself, is good cause to grant this request. (Petitioners do not waive rights to challenge the waiver request or this docket based on the issues raised in this paragraph above, even if this Request is granted.)

2. The current comments and reply comments periods are especially short compared to the importance of this matter in terms of spectrum quantity involved, the public interest involved, the effect a decision will have on Petitioners, the complexity of the request (to the limited degree its alternative to the current rules is indicated), and other matters. A 30 day comment and 15 day reply comment period is within more common periods used by the FCC, and justified in those

² See *Order*, DA 08-2614, Rel. Nov. 26, 2008 (reconsideration pending) (footnotes in original deleted):

28. Havens claims in his Further Comments that Progeny holds no valid M-LMS licenses.⁹² We note that Havens and various Havens-controlled entities also raise this argument in more detail in other pending proceedings.⁹³ The relief granted Progeny in this order is without prejudice to Havens’ allegations concerning Progeny’s status as an M-LMS licensee.

³ Petitioners will provide a copy of this Request to the FCC Office of General Counsel based on this paragraph, to determine if this involved impermissible ex parte communications, and if so, to take appropriate action.

and in this case, for parties with potential interest to review, obtain expert advice, and submit comments to properly express their interest and their view of the public interest to inform the FCC. For example, under 47 USC §309(a)-(d), a 30 day period is specified (with exceptions).⁴

3. There are novel or at least unusual legal issues that Petitioners need to complete researching and submit to the FCC for public interest consideration. These include the use of waivers of rules that are subject of a pending rule change proceeding, including where the same party seeks waivers of the rules it seeks to change. There are both legal and practical considerations. How the FCC and other agencies, and courts, have addressed situations as these should be carefully researched and presented. In addition, decision on any waiver request should consider the history and clarity of the requesting party in the course of its dealing with the FCC up to the waiver request, and in this case, there is considerable work to compare Progeny's asserted facts and arguments for rule changes since year 2003 (that are still pending) based on allegations that location and monitoring services for ITS is not needed (that GPS and commercial wireless obviated the need for M-LMS to pursue those) to its position in the current waiver request.

4. Progeny was the sole party commencing RM-10403 in year 2003 (Petitioners opposed it in discussions with Progeny before it submitted the rulemaking request, and in that docket) which was the sole case of the NRPM proceeding 06-49 in which most parties commenting, including Petitioners, opposed. This has effectively suspended rules (any that could be counted on) for about eight years. Even now, Progeny maintains this situation by not withdrawing its rule-change request. Progeny fully understood that it could have in 2003 or any time thereafter,

⁴ License applications involving auctioned spectrum are often on shorter public notice periods. It is not the purpose of this Request to generally revisit matters in docket 06-49, but Petitioners submitted evidence there that Progeny was not a winner of any M-LMS auctioned spectrum. Its M-LMS licenses were eventually granted after a long period, by certain methods and disclosures and lack of disclosures that remain in dispute by Petitioners.

withdrawn its request to change the entire radio service, and sought its own path without or with waivers, if justified. The point here is that Progeny cannot credibly argue, not can the FCC or any party, that there is all of sudden a need for several-week deadlines to comment on a new direction for M-LMS. That is effectively what Progeny now proposes. Progeny has demonstrated just the opposite of what it asserts in the waiver request, that it believes there is an “urgent need” for its nonspecific new location technology and service, if only its new plan, rule waivers, is granted. (There is such a need, but it cannot be met by secret, vague, contradictory appeals to the government, or in the market.)

5. Serious technical issues are also involved that will take the requested time above to properly address. These include adjacent channel issues, and the apparent full duty cycle Progeny indicates under its “broadcast” mode, etc. Petitioners hold, as part of the M-LMS A-block spectrum, in most of the nation, 927.75 to 928 MHz, which is immediately above M-LMS spectrum Progeny hold in those or most of those areas. Progeny proposes in the waiver request technical changes including broadcast-only multilateration based service. While cryptic, this at minimum implies full duty cycle (which conflicts with its position in docket 06-49), and also implies use of this spectrum adjacent to Petitioners spectrum since the M-LMS spectrum from 927.25 to 928 MHz allows 300 Watts EPR vs. the rest of the M-LMS spectrum which allows 30 W. EPR: broadcast will cover further and more fully with higher power. This rule waiver if granted could have major impact upon Petitioners’ critical, adjacent spectrum for its purposes. This requires suitable additional time to complete an assessment for Comments, and alone justifies this Request.

Conclusion

For reasons given above, the Request should be granted in the public interest, and for equitable reasons of Petitioners interests.

There is no question that M-LMS is an important service, but also no question that—based

largely on Progeny's own actions since year 2003—M-LMS has not been subject to any fast action. What is required is full disclosures and proper action.

Progeny now has a very different presentation in the subject waiver request than in RM-10403 and 06-49, and its new ideas should not be subject to a fast track. That will only increase the probability of and extent of issues in a petition for reconsideration stage by the parties: Progeny, Petitioners, Part 15 interests, or others.

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Respectfully submitted,

Skybridge Spectrum Foundation, by
[Filed electronically. Signature on file.]
Warren Havens, President

Telesaurus Holdings GB LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

Environmental LLC (formerly known as AMTS Consortium LLC), by
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Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by
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Intelligent Transportation & Monitoring Wireless LLC, by
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V2G LLC, by
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Start of
March 25, 2011