

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Request By Progeny LMS, LLC for Waiver of	)	
Certain Multilateration Location and Monitoring	)	WT Docket No. 11-49
Service Rules	)	

**REPLY COMMENTS OF PROGENY LMS, LLC**

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## SUMMARY

Progeny LMS, LLC (“Progeny”) hereby responds to the comments of Itron, Inc. (“Itron”) and the Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC (“Havens”) on Progeny’s Petition for Waiver and Request for Expedited Treatment (“Petition”). The minor concerns raised by Itron, Inc. (“Itron”) can be addressed with a clearer understanding of Progeny’s proposed broadcast-only Multilateration Location and Monitoring Service (“M-LMS”) network architecture. The baseless arguments asserted by Havens do not raise any legitimate technical or policy objections, but rather are another attempt by Havens to delay and harass a legitimate spectrum licensee. The minor comments filed should not delay the Commission’s expedited treatment of Progeny’s Petition. The Commission should permit Progeny to build out its proposed M-LMS network to serve important E911 position location needs.

Itron’s expressed concern that grant of Progeny’s requested waivers will result in a greater number of M-LMS base stations and forward link transmissions is unfounded. In fact, Progeny’s broadcast-only network architecture will result in fewer M-LMS transmitters and transmissions and therefore reduced potential for interference to Part 15 operations.

First, Progeny’s broadcast-only configuration does not require return link transmissions because the location processing is done by the mobile wireless receiver and not the network. Second, Progeny’s broadcast-only transmissions will reach a greater number of mobile units than a traditional M-LMS network without increasing the number of individual transmissions because all mobile units in a given area will receive the same forward link transmissions. Third, the higher processing gain of Progeny’s low bit rate transmissions will allow its signals to penetrate indoors without requiring a greater number of transmitters or transmissions. Finally, Progeny has a strong incentive to minimize the number of base station transmitters in its network because that will reduce the cost of providing its service.

Itron also raises concern that Progeny's Petition for Waiver does not address a possible interplay between the Petition and the pending M-LMS rulemaking. That is because there is no such interplay. Progeny requests waiver only of the current M-LMS rules. The waivers have no effect on, and are not implicated by, any changes to the M-LMS rules that the Commission may separately adopt.

In keeping with past practice, Havens has not raised any legitimate technical or policy concerns, but rather has used this proceeding to raise plainly misguided procedural arguments to delay and harass a legitimate spectrum licensee.<sup>1</sup> Havens incorrectly argues that the National Telecommunications and Information Administration ("NTIA") did not receive adequate notice of Progeny's Petition. The Bureau issued a public notice regarding the Petition even though it was not required to do so under its rules. At the same time, NTIA is not bound by, or subject to, the Commission's general procedural rules for filing comments. NTIA is not a party to the proceeding under the rules and it can provide its comments to the Bureau at any time.

Further, Havens speculates that Progeny intends to provide its proposed broadcast-only position location service to meet its construction milestone deadline and then convert its spectrum to provide a two-way wireless communications service. Grant of the requested waivers would not permit Progeny to provide such a communications service and Progeny intends to provide an M-LMS position location service that is in great demand as evidenced by the Commission's ongoing E911 proceeding. Therefore, the Commission should promote the public interest by promptly granting Progeny's request for waiver.

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<sup>1</sup> Further, Havens announced his intention to raise new arguments in his reply comments in contravention of the Commission's policies.

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**REPLY COMMENTS OF PROGENY LMS, LLC**

Progeny LMS, LLC (“Progeny”), hereby submits its reply comments in the above-captioned proceeding to address the comments filed in response to the Wireless Telecommunications Bureau’s (“Bureau’s”) Public Notice<sup>2</sup> of Progeny’s Petition for Waiver of the Rules and Request for Expedited Treatment (“Petition”).<sup>3</sup> The comments of Itron, Inc. (“Itron”) can be addressed by a clearer understanding of Progeny’s proposed broadcast-only Multilateration Location and Monitoring Service (“M-LMS”) network configuration.<sup>4</sup> Progeny’s proposed broadcast-only network configuration and low bit rate, higher processing gain signal will reduce the number of necessary base station transmitters and overall transmissions, thereby reducing the potential for interference to Part 15 operations.

Further, as demonstrated below, the objections raised by the Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC (“Havens”) are baseless.<sup>5</sup> Havens routinely uses

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<sup>2</sup> *Request By Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, WT Docket No. 11-49, Public Notice, DA 11-446 (rel. Mar. 10, 2011) (“Public Notice”).

<sup>3</sup> Progeny LMS, LLC Petition for Waiver of the Rules and Request for Expedited Treatment, WT Docket No. 11-49 (filed Mar. 8, 2011) (“Petition”).

<sup>4</sup> *See* Comments of Itron, Inc., WT Docket No. 11-49 (filed Mar. 25, 2011) (“Itron Comments”).

<sup>5</sup> *See* Comments in Opposition, Errata copy of Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC, WT Docket No. 11-49 (filed Mar. 25, 2011) (“Havens Comments”).

these proceedings to harass other spectrum licensees without regard for procedural requirements or the relevance of his arguments.

Progeny's Petition included a request for expedited treatment supported by the urgent need from consumers of wireless communications for more accurate position location services indoors and in metropolitan areas, as well as Progeny's impending initial construction milestone deadline in 2012. The commenters have raised minor concerns addressed herein and no party has asserted valid arguments against expedited treatment of Progeny's Petition. Therefore, the Commission should serve the public interest by expeditiously granting the requested waivers.

## **I. INTRODUCTION AND BACKGROUND**

As discussed in detail in Progeny's Petition, Progeny is one of six parties that hold economic area ("EA") M-LMS licenses.<sup>6</sup> The original five-year construction deadline was July 19, 2005 and the original ten-year construction deadline was July 19, 2010. The Commission twice granted Progeny and other M-LMS licensees extensions of the construction deadlines due to a lack of M-LMS equipment in the market.<sup>7</sup> The current construction deadlines require Progeny to provide service to at least one third of the population in each EA by July 19, 2012 and to at least two thirds of the population in each EA by July 19, 2014.<sup>8</sup>

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<sup>6</sup> See *Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, Order, 23 FCC Rcd 17250, DA 08-2614, ¶ 4 (2008) ("2008 Extension Order").

<sup>7</sup> The most recent extension was in 2008. See *2008 Extension Order*, 23 FCC Rcd at 17257, ¶ 22.

<sup>8</sup> See 47 C.F.R. § 90.155(d). Alternatively, Section 90.155(d) permits M-LMS licensees to satisfy their build-out requirements by demonstrating substantial service.

The Commission has acknowledged that the difficulties in providing M-LMS service are a consequence of the rapid entrance of competing services to the position location market.<sup>9</sup> Specifically, Global Positioning System (“GPS”) became widely available for civilian use shortly after Auction 21 when the use of selective availability ended. Since then, GPS chipsets and receivers became commonplace in countless consumer and commercial devices. Therefore, as described in further detail in Progeny’s Petition, in order to provide position location services, M-LMS licensees must find a way to meet a demand that GPS cannot. At this time, the fact remains that no M-LMS auction licensee is providing position location service using the M-LMS spectrum.

Progeny’s particular solution in this situation has been to develop, in cooperation with its technological partners, a technology that uses transmit-only beacons as part of a highly synchronized broadcast network that locates vehicles, wireless devices and other mobile assets using multilateration in areas that are GPS-challenged. Such areas include indoor and metropolitan areas. In order to implement its particular solution to provide M-LMS service, Progeny has petitioned the Commission for waiver of Sections 90.155(e) and 90.353(g) of the Commission’s rules. Waiver of these rules will allow Progeny to construct a broadcast-only multilateration network configuration to locate both vehicles and non-vehicular mobile devices on a non-discriminatory basis. The position location service will serve the public interest by making available the capability to locate citizens making E911 emergency calls from wireless devices in GPS-challenged areas.

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<sup>9</sup> See *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket No. 06-49, Notice of Proposed Rulemaking, 21 FCC Rcd 2809, 2817, ¶ 20 (2006) (“*M-LMS NPRM*”).

On March 10, 2011, the Bureau released a Public Notice announcing the Progeny Petition and providing deadlines for parties to file comments and reply comments.<sup>10</sup> Only two parties filed comments on the petition. The Itron comments raise concerns about protecting Part 15 operations in the 900 MHz M-LMS band, but reflect an apparent lack of understanding regarding how Progeny's proposed M-LMS network configuration will operate. The Havens comments raise irrelevant issues and baseless objections that are purely designed to delay action on the Petition and harass a fellow licensee.

## **II. ITRON'S MINOR COMMENTS CAN BE ADDRESSED WITH A CLEARER UNDERSTANDING OF THE PROPOSED PROGENY M-LMS NETWORK CONFIGURATION**

Itron raised a concern in its comments that Progeny's proposed broadcast-only M-LMS service might result in a greater number of base station transmitters and transmissions in the 902-928 MHz band as compared to a traditional M-LMS network. In fact, the opposite is true. Progeny's proposed network will result in fewer M-LMS transmitters and transmissions.

Further, Itron also raises a concern that Progeny's Petition does not account for a possible interplay between Progeny's Petition and the pending M-LMS rulemaking. In reality, there is no such interplay. Progeny's Petition for Waiver implicates only the current M-LMS rules and would not affect any change to the M-LMS rules that the Commission may make as a result of the pending M-LMS rulemaking.

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<sup>10</sup> See *supra* n. 1.

**A. Grant of the Progeny Petition Will Result in Fewer M-LMS Base Stations and Transmissions, and Therefore Reduced Potential for Interference to Part 15 Operations**

Progeny's proposed broadcast-only M-LMS network configuration will reduce the number of necessary base station transmitters and transmissions, as well as the potential for interference to Part 15 devices. Itron incorrectly argues that grant of Progeny's Petition could result in Progeny constructing an M-LMS network that will have a greater number of transmitters than a traditional M-LMS system.<sup>11</sup> As demonstrated below, a clearer understanding of Progeny's proposed broadcast-only M-LMS network configuration should allay Itron's concerns.

**1. The Proposed Progeny M-LMS Broadcast-Only Network Configuration Will Have Fewer Transmissions Because it Does Not Require Return Links or Frequency Reuse**

Itron appears to recognize that Progeny's broadcast-only network configuration would result in fewer transmissions because there are no return transmissions from the mobile units.<sup>12</sup> This fact reduces the number of transmissions, and therefore the potential for interference to Part 15 devices, in three ways. First, as Itron appears to acknowledge, the overall number of transmissions is reduced by having no return link transmissions. Second, the base station transmitters do not need to be spaced as closely together because there will be no need for the base stations to receive the relatively weak return link transmissions from user terminals (which is usually the weakest link in any two-way network). Third, there is no need to use downlink spectrum to send the network-side location estimate back to the mobile wireless device.

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<sup>11</sup> See Itron Comments at 3-5.

<sup>12</sup> See *id.* at 3-4 (addressing only potential additional forward link transmissions as a result of serving more mobile units).

Therefore, the proposed Progeny M-LMS network can operate with a minimal number of transmitters that use multilateration to locate mobile devices in a particular geographic area.

Further, Progeny's proposed M-LMS network configuration will not require a high level of frequency reuse because it broadcasts a single transmission to the entire coverage area. In a non-broadcast configuration, each base station transmitter uses multiple frequencies to query individual mobile devices, which must use other frequencies to respond on the return link. As the number of devices to be located increases and the available frequencies are used up, another cell must be created and base station transmitter installed in order to increase capacity. In contrast, in a broadcast configuration, only a minimal number of base station transmitters in a multilateration configuration are necessary to transmit the forward link broadcast transmission on the same frequency. Those base stations can serve a virtually unlimited number of mobile units in a particular geographic area. Therefore, Progeny's proposed broadcast M-LMS network configuration will result in far fewer base station transmitters than a traditional M-LMS system and reduce the potential for interference to Part 15 operations.

**2. Progeny's Broadcast-Only Configuration Allows it to Provide Position Location Service to a Greater Number of Mobile Units Without Increasing the Number of Forward Link Transmissions**

Itron notes that Progeny's requested waiver will permit Progeny to serve a greater number of mobile units, which, it claims, will result in more forward link transmissions and therefore greater potential for interference to Part 15 operations.<sup>13</sup> Itron's objection seems to emanate from its mistaken belief that Progeny's proposed broadcast network configuration will send forward link transmissions individually to each mobile unit. This is not the case.

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<sup>13</sup> See Itron Comments at 3-4.

Progeny's proposed broadcast-only model works similarly to a television broadcast signal. The signal is broadcast over a geographic area at a specified power level and can be received by an unlimited number of receivers (in this case mobile devices) in the area. The broadcast transmission is the same no matter how many receivers receive the signal or whether they are in vehicles or not. The Commission's grant of the Petition will allow Progeny to provide position location service on a nondiscriminatory basis to vehicles and non-vehicular mobile devices. The fact that this could potentially allow Progeny to serve a greater number of mobile devices will not increase the number of forward link transmissions or the potential for interference to Part 15 devices.

**3. The Higher Processing Gain of Progeny's Low Bit Rate Transmissions Will Allow its Signals to Penetrate Indoors Without the Need to Add Transmitters**

Itron further argues that the ability of Progeny's position location service to locate mobile devices indoors will require additional transmitters to "penetrate walls effectively and provide reliable service."<sup>14</sup> Itron first argues that indoor applications were not contemplated when the M-LMS rules were developed. There is, however, no restriction in the M-LMS rules on service indoors and there is no *per se* reason that M-LMS service indoors should be problematic for Part 15 devices. Rather, Itron's concerns stem from the potential implications from the transmissions necessary to locate mobile devices indoors.

Itron's concern is that fixing a position location indoors will require a greater number of transmitters in order to penetrate walls at the M-LMS power limits. In fact, however, the low bit rate nature of the Progeny M-LMS transmissions will result in higher processing gain, which will penetrate indoors without the need for additional transmitters. The M-LMS broadcast

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<sup>14</sup> See *id.* at 5.

transmission that Progeny will send will contain very simple location-related data, which can be transmitted with a lower bit rate than traditional M-LMS transmissions. This translates into higher effective gain for a given bandwidth. Progeny's broadcast-only network configuration will allow it to provide position location service over a specific geographic area with a minimal number of base station transmitters – significantly fewer than would be necessary for a traditional M-LMS system. Therefore, the reduced transmissions will result in reduced potential for interference to Part 15 operations.

**4. Using the Fewer Base Station Transmitters Will Allow Progeny to Provide its Position Location Service At the Lowest Cost Possible**

Progeny has a strong incentive to install the lowest possible number of base station transmitters to operate its M-LMS network. That is because the fewer base stations Progeny installs, the lower the cost to provide its position location service to the public. The single largest cost to deploy Progeny's M-LMS network will be the cost to install base station transmitters. If Progeny can build out its network with the fewest possible base stations, it can limit the cost of the service, which will benefit the public safety community and the public.

Progeny's incentive to build out its network using the fewest base stations possible will reduce the potential for interference to Part 15 operations. Itron should therefore take comfort from the fact that Progeny's clear economic incentives under its proposed network configuration serve to reduce the potential for interference to its products.

**B. Progeny's Petition for Waiver is Separate From, and Not Impacted By, the M-LMS Rulemaking**

Itron finally argues that Progeny has not addressed the interplay between its Petition and the pending M-LMS rulemaking.<sup>15</sup> Specifically, Itron laments the fact that Progeny has not

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<sup>15</sup> See Itron Comments at 5-6.

offered to reduce the power of its proposed M-LMS transmissions to compensate for its proposal to expand permitted M-LMS services.<sup>16</sup> In addition, Itron claims that Progeny has failed to address the impact of future rule changes on Progeny's operations under the proposed waiver.<sup>17</sup>

In short, Progeny has not offered to reduce the power of its proposed M-LMS service because the proposed broadcast-only transmissions would already reduce potential interference to Part 15 operations. Further, Progeny accepts that its proposed waiver will apply only to the existing M-LMS rules and would not impact any future rule changes.

Itron is correct that in the *M-LMS NPRM*, the Commission considered whether granting more flexibility to M-LMS operations would necessitate reducing the existing M-LMS power limits to minimize the potential for interference to Part 15 operations.<sup>18</sup> The Commission was considering this power reduction, however, in the context of two-way M-LMS transmissions and permitting: 1) M-LMS licensees to provide any type of service whether or not location-based, 2) non-vehicular service as primary operation and 3) real time interconnection.<sup>19</sup> The concern from the perspective of the Part 15 community would be that such "flexibility," which would permit M-LMS licensees to provide interconnected two-way voice communications, could in some configurations result in a greater number of M-LMS transmissions and arguably more potential for interference to Part 15 devices.

Although Progeny is also seeking greater flexibility through its waiver request, the flexibility sought by Progeny is far narrower than what was considered by the *M-LMS NPRM*

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<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *See M-LMS NPRM*, 21 FCC Rcd at 2818-22, ¶¶ 26-33.

<sup>19</sup> *See id.* ¶¶ 19-25.

and is arguably beneficial to users of Part 15 devices. The broadcast-only position location service that Progeny has proposed in its Petition would reduce the number of M-LMS transmissions and the potential for interference to Part 15 operations. Therefore, there is no justification for requiring Progeny to reduce the power of its proposed M-LMS base stations.

Itron also claims that Progeny's Petition has not accounted for the cumulative impact of granting the waivers and the potential rule changes as a result of the pending M-LMS rulemaking.<sup>20</sup> The simple reason is that, like all waivers granted by the Commission, the waivers requested by Progeny would only apply to the current M-LMS rules and would be subject to the outcome of any relevant pending rulemaking proceeding.<sup>21</sup> The waivers have no effect on any outcome in the M-LMS rulemaking proceeding and would not automatically be applicable to any revised M-LMS rules. Progeny would be willing to accept such a condition on the grant of its Petition for Waiver. Therefore, Progeny's Petition is separate from, and not impacted by, the pending M-LMS rulemaking proceeding.

The further detail regarding Progeny's proposed broadcast-only M-LMS network configuration provided herein should allay Itron's minor concerns regarding the Petition. The broadcast-only configuration will result in no return link M-LMS transmissions and fewer unique forward link transmissions than a traditional two-way M-LMS configuration. Further, Progeny's

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<sup>20</sup> See Itron Comments at 6.

<sup>21</sup> See *Town of New Haven, Vermont Request for Waiver of Section 90.175 of the Commission's Rules to Modify Station WPMP419, New Haven, Vermont, Operating on Narrow Bandwidth Emissions*, File No. 0002937722, Order, 24 FCC Rcd 2925, 2928, DA 09-548 (2009) ("Our decision in this Order [to grant a waiver] in no way prejudices the outcome or limits the Commission's consideration of the broader issue surrounding frequency coordination raised in [WP Docket 07-100]"); *Requests for Waivers for End-of-Train Devices to Exceed Power Limit for Telemetry Operations in the 450-470 MHz Band*, FCC File No 0004348068, Order, 25 FCC Rcd 16986, DA 10-2293 (2010) (granting waivers pending the outcome of a related rulemaking proceeding).

proposed low bit rate transmissions will penetrate indoors without the need for additional base station transmitters. Additionally, no need exists for Progeny to reduce the power of its M-LMS transmissions because the proposed network configuration already significantly reduces the potential for interference to Part 15 devices. Finally, Progeny's Petition requests waiver of the existing M-LMS rules only and will have no impact on any revised M-LMS rules. Given these facts, the Commission should promptly grant Progeny's requested waivers.

### **III. HAVENS' OBJECTIONS ARE BASELESS AND DESIGNED MERELY TO DELAY AND HARASS**

The Comments of Warren Havens do not raise any legitimate technical or policy objections to Progeny's proposal, and instead reflect his longstanding practice of using the Commission's procedural processes to harass legitimate spectrum licensees. The Commission has admonished Havens against filing "abusive or harassing pleadings," but these warnings do not seem to have had their intended effect.<sup>22</sup> Havens' Comments raise irrelevant or plainly incorrect procedural arguments and previously asserted arguments that have been, or are being, addressed by the Commission separately.<sup>23</sup> Further, in contravention of Commission policy, Havens has announced his intention to raise new issues and arguments in his reply comments.<sup>24</sup>

#### **A. NTIA Received Adequate and Lawful Notice of Progeny's Petition for Waiver and Can Comment at Any Time Without Notice to the Parties**

Havens incorrectly argues that the National Telecommunications and Information Administration ("NTIA") was not provided adequate notice of the Progeny Petition for Waiver

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<sup>22</sup> See *Mobex Network Services, LLC, to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Stations in Various Locations in the United States*, Order on Reconsideration, 22 FCC Rcd 665, 672, DA 07-148, ¶ 16 (2007).

<sup>23</sup> See Havens Comments at 7.

<sup>24</sup> See *id.* at 10.

and requests that the Bureau issue a second public notice and serve it directly on NTIA with additional time for comments and reply comments.<sup>25</sup> This is clearly a thinly veiled delay tactic. Havens cites no statute, rule or Commission decision to support his claim. That is because the Commission's rules do not require public notice of a request for waiver nor direct service on NTIA. Further, NTIA is not bound by the Commission's general procedural rules. It is not a party to the proceeding under the rules<sup>26</sup> and it can provide its comments to the Bureau at any time without notice to the parties.

Section 1.925 of the Commission's rules states that the Bureau, "in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties."<sup>27</sup> On March 10, 2011, the Bureau decided to exercise its discretion and released the Public Notice announcing Progeny's Petition with comment and reply comment deadlines.<sup>28</sup> The Public Notice, while not required by the Commission's rules, served as notice of the Petition to the entire public, including NTIA.

Given the public notice that has already been made by the Bureau, no need exists to provide NTIA additional notice. NTIA is under no obligation to comply with the comment deadline and procedural requirements indicated in the Bureau's Public Notice. Under the Commission's *ex parte* rules, NTIA is not a "party" to any proceeding and therefore does not

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<sup>25</sup> *See id.* at 4-5.

<sup>26</sup> *See* 47 C.F.R. § 1.1202(d)(1).

<sup>27</sup> 47 C.F.R. § 1.925(c)(i).

<sup>28</sup> *See supra* n. 1.

receive service even when service is required.<sup>29</sup> Further, *ex parte* presentations from NTIA representatives are generally exempt from the disclosure requirements.<sup>30</sup>

Because of this, NTIA can submit comments anytime it wants. Further, given the lack of a disclosure requirement, representatives from NTIA may have already discussed the Progeny Petition with Bureau staff. The parties will be made aware of any factual information obtained through such discussions, if relied upon by the Commission, at the time of the Commission's decision.<sup>31</sup>

NTIA has received adequate notice of Progeny's Petition under the Commission's rules. There is no basis in the Commission's rules for a second public notice of the Progeny Petition, or providing such notice directly to NTIA. Progeny stands ready to address any questions that NTIA might have if and when any are raised. Therefore, the Commission should not permit Havens to employ his delay tactics in this proceeding to harass a legitimate M-LMS licensee.

**B. Progeny Intends to Build-Out a Broadcast M-LMS Network to Satisfy a Growing Demand for Position Location Services in GPS-Challenged Areas**

Havens speculates that Progeny plans to provide its proposed position location service to meet its milestone requirements and then convert its spectrum to provide a two-way wireless communications service.<sup>32</sup> First, grant of Progeny's Petition will not permit it to provide a two-

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<sup>29</sup> See 47 C.F.R. § 1.1202(d)(1) (branches of the Federal Government or their staffs are not parties unless their submission affirmatively seeks party status or such status is otherwise ordered by the Commission).

<sup>30</sup> See 47 C.F.R. § 1.1204(a)(5) (presentations from an agency or branch of the Federal Government are exempt from the *ex parte* prohibitions, except that any new factual information obtained through such a presentation and relied on by the Commission will be disclosed no later than the Commission's decision).

<sup>31</sup> See *id.*

<sup>32</sup> See Havens Comments at 6.

way wireless communications service. Any decision regarding permitting such a service in the M-LMS band remains part of the pending rulemaking proceeding.

Second, and most importantly for purposes of the instant proceeding, there is an existing and growing demand for the position location service that Progeny proposes to provide, especially for E911 emergency location. The Commission recently released a further notice of proposed rulemaking and notice of inquiry seeking comment on, among other things, position location technologies to locate wireless devices in challenging environments (*i.e.*, areas such as indoors and in metropolitan areas where GPS does not reach).<sup>33</sup> The comments filed in that proceeding clearly indicate that position location services for E911 are in demand and will continue to be in the future.<sup>34</sup>

Progeny's proposed position location service using its M-LMS spectrum will meet industry demand and advance important public safety interests to locate accurately citizens using wireless devices in emergencies. Given this substantial public interest need, Progeny has no incentive to cease providing its position location service. Further, as noted in a previous section of this pleading, Progeny is requesting only a waiver of two of the existing rules for M-LMS and not a waiver of any rules for M-LMS that might be adopted in the future. In addition, any waiver granted to Progeny would be conditioned on the outcome of the M-LMS rulemaking proceeding. Havens procedural concerns are therefore unwarranted.

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<sup>33</sup> See *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Further Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Red 18957, 18966, FCC 10-177, ¶ 22 (rel. Sept. 23, 2010).

<sup>34</sup> See *e.g.*, Comments of True Position, Inc., PS Docket No. 07-114, WC Docket No. 05-196 (filed Jan. 19, 2011).

**C. Havens is Precluded By Commission Policy From Raising New Arguments in Reply Comments That Should Have Been Addressed in His Comments**

The Havens Comments also announced his intention to raise new arguments in his reply comments regarding Progeny's proposal to locate mobile units indoors and compliance with the waiver standard in Section 1.925 of the Commission's rules.<sup>35</sup> Commission policy dictates that the Bureau not consider novel issues or arguments raised in reply comments that should have been raised in comments.<sup>36</sup> Although the Bureau extended the deadline for the filing of reply comments in this proceeding, it did not convert the reply comment filing date into an opportunity to file a second round of comments.<sup>37</sup> Therefore, the Bureau should not consider such new arguments from Havens in his reply comments.

In anticipation of such arguments, however, Progeny has explained in the sections above the reasons why its proposed system will reduce potential interference to Part 15 devices. Further, Progeny demonstrated in its Petition that it meets the requirements for waiver contained

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<sup>35</sup> See Havens Comments at 10.

<sup>36</sup> See e.g., *Paging Systems, Inc. Application for Renewal of Automated Maritime Telecommunications System Stations in Hawaii*, File No. 0002257822, Order, DA 06-1401, ¶ 12 (2006) (agreeing with the applicant that Havens' arguments should be ignored because replies are limited to matters raised in the opposition); *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon elect Service Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Order, DA 02-777, ¶ 4 (2002) ("As the Commission has explicitly stated, reply comments may not raise new arguments or include new data that are not directly responsive to arguments other participants have raised..."); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Southampton, Bridgehampton, Westhampton and Calverton-Roanoke New York)*, MM Docket No. 90-283, Order, 7 FCC Rcd 4412, DA 92-863, n.2 (1992) ("The reply comment period is not intended to permit the presentation of new facts unless the facts could not have been presented during the initial comment period.").

<sup>37</sup> See *Wireless Telecommunications Bureau Extends Period to File Reply Comments on Progeny LMS, LLC Petition for Waiver of Certain Multilateration Location and Monitoring Service Rules*, WT Docket No. 11-49, Public Notice, DA 11-559 (rel. Mar. 25, 2011).

in Section 1.925 of the Commission's rules.<sup>38</sup> Specifically, Progeny demonstrated in its Petition that the grant of the waivers is justified because it would further the underlying intent of the rules, it would serve the public interest, and application of the existing rule to Progeny would be inequitable and unduly burdensome.

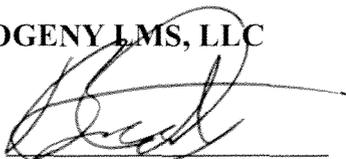
Therefore, the Commission should not allow Havens' untimely and improper arguments to delay action on Progeny's Petition. Expeditious grant of the Petition will allow Progeny to begin to build-out its network and serve important E911 public safety interests.

#### **IV. CONCLUSION**

Progeny has addressed herein the minor comments of Itron and the baseless assertions of Havens. Neither party has asserted a valid argument against the Commission's expedited treatment of Progeny's Petition. Therefore, the Commission should grant the requested waivers on an expedited basis to allow Progeny to build out its proposed broadcast-only M-LMS network, meet its rapidly approaching construction milestone deadline and provide an important E911 position location service.

Respectfully submitted,

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<sup>38</sup> See Petition at 8-15.