

SUMMARY

Progeny LMS, LLC (“Progeny”) submits the following further reply comments to address new arguments that were raised by Warren Havens (“Havens”) and Cellnet Technologies, Inc. (“Cellnet”). Progeny provided detailed reasons in its Petition for Waiver (“Petition”) and reply comments why its proposed broadcast-only M-LMS network will reduce interference to other users of the M-LMS band. No party has claimed that Progeny’s foundations for these conclusions are incorrect. Instead of rebutting Progeny’s analysis, other parties have attempted to craft hypothetical theories why Progeny’s proposal could result in a greater number of base station transmitters or transmissions. These theories are not consistent with what Progeny has proposed and are often at odds with the Commission’s rules for M-LMS systems and therefore should be disregarded.

Cellnet incorrectly suggests that Progeny’s broadcast-only M-LMS network could increase its “effective occupancy” of its licensed spectrum. As explained herein, the opposite is true. Progeny has demonstrated that its proposed service will result in reduced transmissions and reduced effective occupancy of the band. Further, even though the Commission’s rules do not require it, Progeny will likely employ some combination of power control, pulse duration and/or duty cycle limits to further minimize the potential impact of its network.

Havens incorrectly argues that Progeny’s potential use of higher transmit locations could increase interference to other users of the 902-928 MHz band. Havens appears to assume that Progeny will combine higher transmit locations with higher power levels, which Progeny has not proposed. Absent increased power, any increased height of M-LMS transmitters will lengthen their distance from Part 15 devices, reducing the potential for interference.

Havens is also misguided in arguing that an increased risk of interference could result due to the strategic placement of Progeny’s transmitters and the peak hours of use of its position

location service. Progeny's broadcast-only multilateration network design will result in placement of its transmitters in a pattern surrounding urban centers. This will result in much lower transmitter density than a traditional two-way M-LMS network, a point Havens seems to acknowledge. Further, the argument about peak hours is irrelevant because Progeny's broadcast-only transmission is entirely unaffected by the number of mobile users that are tracked by the network.

Contrary to the concerns of Cellnet, grant of the requested waivers would result in a more regulatory certainty and reduced risks of interference for Part 15 equipment and would have no impact on the M-LMS rulemaking proceeding. Progeny has set forth a specific proposal that is far more favorable for Part 15 devices than the current rules require for M-LMS networks. Further, Progeny's Petition in no way prejudices the outcome of the M-LMS proceeding because the waivers will be subject to the outcome of the rulemaking proceeding.

Finally, Havens unpersuasively argues that the M-LMS spectrum should be preserved only for two-way vehicular tracking services and that Progeny has failed to meet the Commission's waiver standard. Havens is free to use his M-LMS spectrum to enter the market for vehicle telematics if he so chooses. The vehicle telematics market, however, is already served by numerous other providers. Progeny has therefore proposed to provide an innovative position location service that tracks vehicles and mobile devices in GPS-challenged locations. Progeny demonstrated in its Petition that imposition of the specific and inflexible requirements of Sections 90.155(e) and 90.353(g) of the rules would be inequitable, unduly burdensome and contrary to the public interest. Therefore, the Bureau should expeditiously grant Progeny's Petition.

TABLE OF CONTENTS

	Page
SUMMARY	i
I. PROGENY’S PROPOSED BROADCAST-ONLY M-LMS NETWORK WILL REDUCE POTENTIAL INTERFERENCE TO OTHER USERS OF THE 902-928 MHZ SPECTRUM BAND	2
A. Cellnet is Incorrect in Suggesting that Progeny’s Proposed M-LMS Network Could Increase its Effective Occupancy of its Licensed Spectrum	3
B. Havens is Incorrect in Arguing That Progeny’s Potential Use of Higher Transmit Locations Could Increase Interference to Other Spectrum Users	5
C. Havens is Also Incorrect in Suggesting that the Placement of Progeny’s Broadcast-Only Transmitters Could Increase Interference to Part 15 Devices.....	7
II. GRANT OF THE REQUESTED WAIVERS WOULD RESULT IN GREATER M-LMS REGULATORY CERTAINTY AND WOULD NOT PREJUDICE THE M-LMS RULEMAKING PROCEEDING	9
III. HAVENS IS UNPERSUASIVE IN CLAIMING THAT M-LMS SPECTRUM SHOULD BE PRESERVED ONLY FOR TWO-WAY VEHICULAR TRACKING.....	10
IV. PROGENY HAS DEMONSTRATED THAT ITS PETITION MEETS THE WAIVER STANDARD UNDER THE COMMISSION’S RULES	12
V. CONCLUSION.....	12

**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)	

**FURTHER REPLY COMMENTS
OF PROGENY LMS, LLC**

Progeny LMS, LLC (“Progeny”), hereby submits additional reply comments to address the new arguments that were raised by two parties in the above-captioned proceeding.¹ Both parties erect “straw man” technical arguments in an effort to allege that Progeny’s proposed broadcast-only Multilateration Location and Monitoring Service (“M-LMS”) network could increase the potential for interference to other users of the M-LMS spectrum band. In constructing these arguments, the parties implicitly (and, occasionally, overtly) acknowledge that Progeny’s M-LMS network, as detailed in its Petition for Waiver (“Petition”), would substantially reduce the potential for interference to Part 15 devices and other M-LMS networks.

A tremendous need exists for highly-accurate position location services to support E911 public safety and other services. In seeking to fulfill this need, Progeny has demonstrated that its Petition for Wavier satisfies each element of the Commission’s standard for waiver specified in Section 1.925 of the rules. The Commission should therefore promptly grant waivers of the two rules identified by Progeny in its Petition.

¹ See Reply Comments of Cellnet Technology, Inc., WT Docket No. 11-49 (filed Apr. 11, 2011) (“*Cellnet Reply Comments*”); Further Comments in Opposition of Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC, WT Docket No. 11-49 (filed Apr. 11, 2011) (“*Havens Further Comments*”).

I. PROGENY’S PROPOSED BROADCAST-ONLY M-LMS NETWORK WILL REDUCE POTENTIAL INTERFERENCE TO OTHER USERS OF THE 902-928 MHz SPECTRUM BAND

Progeny has detailed in its petition and reply comments numerous reasons why its proposed broadcast-only M-LMS network will reduce interference to other users of the 902-928 MHz spectrum band. For example, Progeny has demonstrated that its network will produce fewer individual signal transmissions in the M-LMS band due to:

- the absence of a return path from the mobile unit to the transmitter,
- the absence of a second forward link path from the transmitter to each mobile unit, and
- the use of common rather than unique forward link signals to mobile units.

Progeny has also demonstrated that its network will require far fewer base station transmitters than a traditional M-LMS network due to:

- the absence of a need to receive relatively weak return signals from mobile units,
- the absence of a need for cellularized frequency reuse, and
- the higher signal gain resulting from the low bit rate of Progeny’s signal.

Importantly, no party has suggested that Progeny is incorrect about these facts and the resulting substantial reduction in potential interference that would result for the Part 15 community and other M-LMS operators. In fact, an anonymous technical paper submitted by Warren Havens openly acknowledges that traditional M-LMS networks require the use of “a higher density of fixed transceivers to provide two-way wireless services to vehicular traffic at busy hour.”²

² *Havens Further Comments*, Technical Paper at 8-9 (“*Anonymous Technical Paper*”). The Commission’s rules require that oppositions and reply comments containing allegations of fact regarding an application must be “supported by affidavit of a person or persons with personal knowledge thereof.” 47 C.F.R. § 1.939(f). Havens not only failed to include an affidavit, he also failed to identify any individual with knowledge of the materials discussed in the paper. In fact, Havens acknowledges that the paper was prepared by “several persons” and the final draft has not yet been reviewed by the intended author. *See Havens Further Comments* at 2. This

Unable to rebut Progeny's Petition, other parties have attempted to craft hypothetical theories why Progeny may need to increase its transmitter count or signal transmissions. Most of these arguments rely on operational characteristics that were not put forth by Progeny and would necessitate additional waivers of the Commission's rules. Some of these arguments also rely on comparisons with hypothetical two-way M-LMS networks that are inconsistent with the Commission's rules for the M-LMS service. The Commission should disregard these specious arguments and instead promote the public interest by promptly granting Progeny's requested waivers so that Progeny can begin construction of its M-LMS network.

A. Cellnet is Incorrect in Suggesting that Progeny's Proposed M-LMS Network Could Increase its Effective Occupancy of its Licensed Spectrum

In its reply comments, Cellnet expresses concern that Progeny's M-LMS network could increase its "effective occupancy" of its licensed spectrum by potentially broadcasting its signal "every few milliseconds, with virtually no 'quiet' time between broadcasts."³ In making this argument, Cellnet disregards the fact that the existing rules for the M-LMS service do not include any restrictions on transmission pulse duration or duty cycle. Further, as Progeny highlighted in its Petition, the existing rules for the M-LMS service mandate that M-LMS networks operate three transmission paths, including return paths from mobile units that the Commission acknowledged "could present significant problems to Part 15 operations depending on the power levels, duty cycles and density of mobile units."⁴

provides yet another example of Havens' apparent belief that the Commission's rules apply to everyone other than himself.

³ *Cellnet Reply Comments* at 3.

⁴ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695, 4735, ¶ 77 (1995) ("1995 M-LMS Order") (quoting comments of various parties).

Progeny is proposing to operate its M-LMS network without any return link transmissions and also without any “third path” forward link transmissions. These steps alone should benefit tremendously in reducing Progeny’s effective occupancy of the band and the potential for interference to Part 15 devices. As Progeny explained in its Petition, the grant of the requested waivers will actually enhance Progeny’s ability to comply with the requirement that M-LMS operators demonstrate that their systems do not cause unacceptable levels of interference to Part 15 devices.⁵

Progeny acknowledges that the Commission suggested in its *1995 M-LMS Order* that M-LMS licensees have the option to employ additional technical refinements to facilitate band sharing, such as “limiting duty cycle, pulse duration power, etc.”⁶ Progeny is exploring these options and will likely employ some combination of power control, pulse duration and/or duty cycle limits in order minimize the potential impact of its network.

The Bureau, however, should not use this waiver request to eliminate the technical flexibility that currently exists for M-LMS licensees in designing their networks in a manner that enhances the provision of highly accurate position location services, while refraining from causing unacceptable interference to Part 15 licensees. Progeny is already proposing measures in its Petition that will reduce significantly the potential for interference to Part 15 spectrum users. Therefore, no reason exists to condition the grant of Progeny’s waiver on the use of specific additional spectrum sharing techniques that remain discretionary, rather than mandatory, under the Commission’s rules. Instead, the Commission and the Part 15 user community should remain assured that Progeny is fully aware of its obligations under Section 90.353(d) of the rules

⁵ See 47 C.F.R. 90.353(d).

⁶ *1995 M-LMS Order*, 10 FCC Rcd at 4737, ¶ 82.

and Progeny intends to employ a variety of spectrum sharing techniques in order to facilitate its successful demonstration.

B. Havens is Incorrect in Arguing That Progeny's Potential Use of Higher Transmit Locations Could Increase Interference to Other Spectrum Users

Havens includes with his further comments an anonymous technical paper providing speculation regarding the operational characteristics of Progeny's proposed M-LMS network. The paper argues that broadcast-only networks generally employ taller transmission sites and higher power levels than two-way networks, thus increasing the potential for interference to co-frequency Part 15 devices and adjacent frequency M-LMS networks.⁷ In order to assess this potential for interference, the paper seeks additional information regarding the operations of Progeny's network.⁸

The Commission's rules for M-LMS networks do not include any restrictions on permissible heights for M-LMS base station transmitters. Further, as the Bureau is well aware, no M-LMS network has been constructed to date. Thus, it is pure speculation to suggest that the average height of Progeny's M-LMS transmitters will be higher than the height of yet-to-be-built two-way M-LMS transmitters.

Even if Progeny's transmitters are placed at relatively high locations, this factor alone will not increase the potential interference to Part 15 devices. In fact, in nearly all environments, increasing the height of M-LMS transmitters will increase the distance between the transmitters and the nearest Part 15 devices, thus reducing the potential for interference to those devices.

⁷ *Anonymous Technical Paper* at 6-7.

⁸ *Id.* at 7.

Havens' technical paper appears to acknowledge this, suggesting that increased tower height is generally combined with the use of power levels at "the higher end of permitted ERP" and it is this combination that could increase the potential for interference.⁹ The Commission's rules for M-LMS, however, are already very restrictive with respect to M-LMS power levels, limiting transmissions in most spectrum to 30 watts ERP.¹⁰ Given this fact, the speculation in Havens' technical paper regarding the possible use of relatively high power levels is irrelevant.

Havens' technical paper also speculates that Progeny may need higher power levels to provide position location service to indoor locations.¹¹ As Progeny explained in its reply comments, the low bit rate nature of the Progeny M-LMS transmissions will result in higher processing gain, enabling reception indoors without the need for higher power levels or additional transmitters.

Havens' technical paper further speculates regarding the potential for out-of-band interference to M-LMS networks operating in adjacent bands.¹² In seeking to assess the potential for such interference, Havens' technical paper requests disclosure of a spectrum mask for Progeny's proposed signal.¹³ Here again, a clear reading of the existing rules for M-LMS licensees would alleviate Havens' concern. The Commission's rules for M-LMS licensees include three emission masks for M-LMS networks.¹⁴ Progeny will likely employ the emission

⁹ *Id.*

¹⁰ *See* 47 C.F.R. § 90.205(l).

¹¹ *See Anonymous Technical Paper* at 8.

¹² *See id.* at 7.

¹³ *See id.*

¹⁴ *See* 47 C.F.R. § 90.210(k).

mask for wideband multilateration transmissions indicated in Section 90.210(k)(1) of the rules. Havens can therefore rely on this rule to determine the interference environment for his network.

C. Havens is Also Incorrect in Suggesting that the Placement of Progeny's Broadcast-Only Transmitters Could Increase Interference to Part 15 Devices

Havens' technical paper speculates that Progeny may increase interference to Part 15 devices by locating its broadcast-only transmitters closer to large population centers in order to track concentrations of wireless devices.¹⁵ In making this argument, Havens suggests that a traditional two-way M-LMS network should be designed with most of its transmitters positioned along highways to track the movement of vehicles.

Havens' argument disregards the Commission's performance requirements for M-LMS licensees.¹⁶ The rules require M-LMS licensees to eventually provide service to two-thirds of the population in each economic area.¹⁷ This cannot be accomplished by limiting transmitter placement to major roadways.

Further, Progeny's plan to operate a broadcast-only network will generally result in the placement of Progeny's transmitters further away from urban centers rather than closer to such locations. As acknowledged by Havens' technical paper, a traditional M-LMS network requires "a higher density of fixed transceivers to provide two-way wireless services to vehicular traffic at

¹⁵ See *Anonymous Technical Paper* at 8.

¹⁶ See 47 C.F.R. § 90.155.

¹⁷ See 47 C.F.R. § 90.155(d). Although the rules provide the option of demonstrating substantial service, this is commonly associated with the provision of service to significant populations in a licensed area. See, e.g., *Cingular Interactive, L.P.; Showing of Substantial Service Pursuant to Section 90.665(c)*, Order, 16 FCC Rcd 19200, ¶¶ 4, 9-10 (2001) (finding that Cingular's existing population coverage in some markets, actual number of end users, existing base station build-out, and technologically sophisticated service offerings – when combined with Cingular's commitment to provide coverage to at least 30 percent of the population in its remaining six markets by the construction deadline – constitutes substantial service).

busy hour.”¹⁸ In contrast, a broadcast-only network requires only a few transmitters (at least three) positioned to surround an urban center and enhance multilateration. Therefore, Havens is incorrect in arguing that Progeny’s focus on serving the E911 needs of the wireless community could increase the proximity between Progeny’s transmitters and Part 15 devices.

Finally, Havens is incorrect in suggesting that Progeny’s focus on serving wireless E911 could increase potential interference to Part 15 devices by shifting the peak hour of use of Progeny’s network to times that coincide with increased unlicensed use.¹⁹ As Progeny explained in its reply comments, the signal density of Progeny’s broadcast-only service is entirely unaffected by the number of mobile users that are tracked by the network. Much like a television station, the Progeny network would transmit the same low data rate signals regardless of whether they are received by one hundred or one million mobile units. Therefore, Progeny’s network will not increase the potential for interference to Part 15 devices during peak commute hours or at any other time of the day.²⁰

Given these facts, the Commission should disregard the hypothetical technical arguments raised by parties in this proceeding. Progeny has demonstrated that its proposed broadcast-only M-LMS network design will reduce potential interference to Part 15 devices. The Commission should therefore promptly grant Progeny’s Petition for Waiver.

¹⁸ See *Anonymous Technical Paper* at 8-9.

¹⁹ See *id.* at 8.

²⁰ Although it is irrelevant to Progeny’s waiver request, Progeny also questions Havens’ assumption that high levels of Part 15 device use do not coincide with peak commute hours.

II. GRANT OF THE REQUESTED WAIVERS WOULD RESULT IN GREATER M-LMS REGULATORY CERTAINTY AND WOULD NOT PREJUDICE THE M-LMS RULEMAKING PROCEEDING

Contrary to the concerns advanced by Cellnet, grant of the requested waivers would result in a more regulatory certainty, a reduced interference environment for Part 15 operations, and would have no impact on the M-LMS rulemaking proceeding. Cellnet argues that grant of the Petition while the M-LMS rulemaking remains pending would “unnecessarily create regulatory uncertainty for Part 15 users while at the same time appearing to prejudge the issues to be addressed in the broader proceeding.”²¹ On the contrary, the regulatory and interference environment will be more certain with the grant of the Petition and the existence of a service provider with a constructed and operational network. Further, as Progeny has shown, Progeny’s Petition is separate from, and not impacted by, the M-LMS rulemaking.

The specific Progeny proposal brings certainty to the M-LMS regulatory environment. The M-LMS rulemaking raised multiple potential changes to the rules including increased flexibility to permit: 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.²² In contrast, the flexibility sought by Progeny is far narrower than what was considered by the *M-LMS NPRM*. Progeny has set forth a specific proposal for use of its M-LMS spectrum, which will result in regulatory certainty and an interference environment that is far more favorable than specified by the current rules. This will particularly be true once Progeny has constructed its network and begins providing service.

²¹ *Cellnet Reply Comments* at 3.

²² *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, 2816-18, ¶¶ 19-25 (2006) (“*M-LMS NPRM*”).

Further, Progeny's Petition in no way prejudices the outcome of the M-LMS rulemaking proceeding. As stated previously, Progeny accepts that its proposed waiver will apply only to the existing M-LMS rules and will not impact any future rule changes. Like all waivers granted by the Commission, the waivers requested by Progeny will only apply to the current M-LMS rules and be subject to the outcome of any relevant pending rulemaking proceeding.²³ The waivers have no effect on any outcome in the M-LMS rulemaking proceeding and will 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, grant of Progeny's Petition will have no prejudicial impact on the pending M-LMS rulemaking proceeding.

III. HAVENS IS UNPERSUASIVE IN CLAIMING THAT M-LMS SPECTRUM SHOULD BE PRESERVED ONLY FOR TWO-WAY VEHICULAR TRACKING

Progeny has proposed to provide a more advanced and spectrally efficient broadcast-only position location service that is greatly in demand, especially for E911 purposes. Havens argues that Intelligent Transportation Service ("ITS") requires two-way communications so that vehicles can "report their location and the status of the vehicle and occupants to the network, and get from the ITS network location-based and other critical instructions and information."²⁴

²³ 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).

²⁴ See *Havens Further Comments* at 3.

Havens can use his M-LMS spectrum to enter the market of vehicle telematics if he so chooses, but his decision is unaffected by Progeny's Petition.

As of 1999, the automatic vehicle location ("AVL") market had an estimated annual value of around \$484 million and was expected to grow.²⁵ AVL services, including two-way communications between drivers and dispatchers, have been provided by, among others, Qualcomm, @Track Communications, OnStar, SkyWave, Motorola, TeleNav, Inc. and various vehicle manufacturers.²⁶ AVL services primarily use GPS, but also other satellite and cellular technologies to provide fleet management services and communications.²⁷ If Havens wishes to enter this market using his M-LMS spectrum, he should do so, but his first milestone deadline is rapidly approaching.

Progeny, on the other hand, proposes to meet its milestone deadline by providing an innovative position location service that locates vehicles and mobile devices in GPS-challenged areas, such as indoors and in metropolitan areas. The demand for such technologies is perhaps best exemplified in the Commission's recently-released further notice of proposed rulemaking and notice of inquiry.²⁸ Therefore, as demonstrated in Progeny's Petition, grant of Progeny's

²⁵ See Strategis Group, *Automatic Vehicle Location: \$1 Billion Market?*, Global Positioning & Navigation News, Vol. 10, No. 19, Sept. 20, 2000.

²⁶ See *id.* See also TeleNav, Inc., *Taking GPS From Big Brother to Guardian Angel; Tracking Technologies Allow Businesses to Increase Safety for Mobile Employees*, Marketwire, Dec. 15, 2008; Howard Buskirk, *Imposing USF Fee on Telematics Could Deal Fatal Blow to Service, APCO and NENA Warn*, Communications Daily, Nov. 28, 2008.

²⁷ See Joni Morse, *Driving LBS*, RCR Wireless, Focus p. 12, Aug. 7, 2006.

²⁸ 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 Rcd 18957, 18966, FCC 10-177, ¶ 22 (rel. Sept. 23, 2010).

requested waivers would further the underlying intent of the Commission's rules and serve the public interest.

IV. PROGENY HAS DEMONSTRATED THAT ITS PETITION MEETS THE WAIVER STANDARD UNDER THE COMMISSION'S RULES

Progeny's Petition demonstrated in detail its qualification for waiver pursuant to Section 1.925 of the Commission's rules.²⁹ Havens argues unpersuasively that Progeny has not met the requirements for waiver because "the results of the waivers if granted cannot be shown, or even asserted, in comparison to results based on proceeding under current rules."³⁰ Havens cites to no Commission decision in support of his inexplicable argument. It is clear, however, that Progeny explained in its Petition the changes in the position location market since the M-LMS rules were adopted in 1995 and how application of the specific and inflexible technical requirements in Sections 90.155(e) and 90.353(g) would now be inequitable, unduly burdensome and contrary to the public interest.³¹ Havens' argument regarding Progeny's qualifications for waiver pursuant to Section 1.925 should therefore be disregarded.

V. CONCLUSION

Progeny has demonstrated in its Petition and reply comments that its proposed broadcast-only M-LMS network will reduce interference to other users of the M-LMS band. Cellnet and Havens have advanced only hypothetical theories why Progeny's proposal could result in a greater number of base station transmitters or transmissions, which prove to be unfounded.

²⁹ See Petition at 8-15.

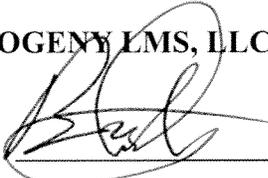
³⁰ See Havens Reply Comments at 4.

³¹ See Petition at 8-15.

Progeny's Petition requested expedited treatment and no party has asserted a valid argument in opposition to such treatment. The Bureau should therefore promptly grant Progeny's Petition so that Progeny can build out its proposed broadcast-only M-LMS network, meet its rapidly approaching construction milestone deadline and provide a critically-important E911 position location service.

Respectfully submitted,

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April 14, 2011