This is a duplicate filing attempt. (1) SkyTel filed this on ULS before closing on 1.19.2012 using Firefox broswer. ECFS would not provide a filing confirmation upon hitting the submission button, but sent the filer, the undersigned, back to the cover sheet page. This happened several times. It is not clear if the filing succeeded. (2) Thus, in case the 1.19 attempt did not succeed, SkyTel is filing this Petition again, this time using the Safari brower, in case browser incompatibility is the problem.

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

In the Matter of Order on the Progeny LMS, LLC ("Progeny") Waiver Requests filed March 8, 2011	))))	 DA 11-2036 WT Docket No 11-49

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

Petition for Partial Reconsideration and Clarification
User Rule Sections 1.106, 1.2 and 1.41

Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC and other undersigned entities (together "SkyTel")[1] submits this petition for partial reconsideration and clarification under the above cited rules (the "Petition") of the Order captioned above (the "Order").

The Petition is submitted in the alternative under Sections 1.2 and 1.41, to the degree the Bureau believes a full response involves either or both of those rules, and cannot be fully responded to under Section 1.106. This Petition is timely under Section 1.106.

SkyTel supports what it understands to be the principal rationale of the Order, and some of the apparent waiver grant structure. We summarize that support and understanding below. SkyTel then presents requests for reconsideration and clarification of certain procedural and substantive aspects of the Order.

[The rest of this page is intentionally blank.]

[1] Except for an individual, these are not "Havens" individually or in the aggregate. See signature page.

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A summary is shown in the Contents above.

1. Initial Matters

Herein, "clarification" when used by itself also means reconsideration and clarification.

Timing. The Petition seeks a timely decision on all matters submitted herein under Section 1.106, including within the time set forth in 47 USC §405, since these matters are essential for the M-LMS license interests of SkyTel and their multi-radio-service nationwide plans for wireless servicing Intelligent Transportation Systems ("ITS") and complementary smart energy and environment-protection systems, as well as for the public interest reasons for M-LMS for ITS, which SkyTel has demonstrated in its filings in docket 06-49, and that are partly indicated in the Order. As noted below, by actions of Progeny, the M-LMS radio service has been in limbo for most of a decade, since 2003. *Progeny could have, but did not, seek waivers in 2003 to the 2011, but instead sought to change rules which placed SkyTel's M-LMS licenses in limbo* (when core use and technical rules are subject to potential change in rule-change proceedings, the practical use of the licenses and preceding required developments are put under a cloud: there

is no license authority that can be relied upon). For the above and other good causes indicated herein, SkyTel requests that its forthcoming Request and this Petition be acted upon in reasonable time.

SkyTel has informed the Bureau, prior to issuance of the Order, that it will be submitting a request for rule waivers applicable to its M-LMS licenses or in the alternative rule making regarding M-LMS (the "Request"). SkyTel does not expect the Bureau to act upon this Petition prior to the date it submits the Request, but SkyTel must consider the apparent rationale and determinations in the Order, and the issues in this Petition, in the Request. Due to reasons SkyTel may submit in a supplement to this Petition (with a request for leave to file under Section 1.106(f) with good cause shown), SkyTel cannot include here some information and issues that will be involved in the Request and that may also, to some degree, be relevant to this Petition.

SkyTel presents this Petition under the just stated perspective: Skybridge as it is required by law, and the other SkyTel entities by publicly stated choice, take positions in FCC licensing and licensed-business matters based on the public interest in "Intelligent Transportation System," Smart Energy Infrastructure systems, and Environmental monitoring and protection, all of which need dedicated wireless spectrum and systems nationwide, using advanced technologies and architectures. These matters are highly interrelated, and the required private wireless for each is similar, and can be provided with synergies (there are spatial, temporal, QoS and other differences allowing this; shared technology, equipment and architecture requirements; etc.). This is first a nonprofit exercise, as is GPS. It will not succeed if it is not. Core services must be at no cost, using open standards. See SkyTel filings in the NPRM docket 06-49. The "public interest" commonly assumed by the FCC under the Communications Act incudes what SkyTel just notes above, but also, without distinction in most cases, assumes that whatever may appear to make the most money for licensees, will serve the public interest. However, that looser

standard is not what the Commission discussed when establishing the M-LMS and N-LMS services, or the other ITS service DSRC.

Since the Order may be interpreted by a party, or potentially FCC staff at some point, to be relevant to the NPRM matters in docket 06-49, SkyTel hereby references and incorporates in full the issues, facts and law in all its filings in that docket, in support of this Petition. SkyTel also incorporated and references in full its pleadings in the above captioned docket in support of this Petition, to the extent parts of said pleading support the Petition.

2. Rationale of the Order

(1) The Order indicates the value of viable M-LMS, and maintaining the M-LMS status in the heiarchy of uses in 902-928 MHz. The Order cites and quotes in ¶25 the last Commission explanation of the "testing" condition in Section 90.353(d). Those appear to be the underlying rationale or premise of the Order's granting of the subject waivers. SkyTel agrees with these reaffirmations as it understands them.[2]

(2) The Order also appears to have the following unstated rationale, which is unusual but in the circumstance of M-LMS (as meant by the Commission), a sound one. This rationale is seen in the structure of the conditional two-stage waiver grant in the Order. This is discussed in a below numbered sub-section request. This rationale appears sound for the following reasons—*if the ITS purpose of M-LMS is not waived or encroached upon (discussed below)*. The

[2] However, Conditions (as defined herein) in the grant of the Progeny requested waivers adds conditions not in Section 90.353(d) and said Commission explanation. Comparing these two clearly demonstrates this, and if the Conditions were not in addition, they would have been in an Ordering clause. The Order also includes in the Conditions a condition not in the above-noted Commission explanation: that if, after meeting the pre-operational testing and reporting conditions, the Progeny M-LMS operations cause certain interference, it must be resolved (compare that to said Commission explanation, which only deals with "existing deployments… in their area.. testing… goal has been served").

Commission in establishing M-LMS for ITS (see the LMS R&O cited in the Order and related Commission rulemaking orders), clearly stated this ITS purpose for future advanced ITS yet to be developed (the concepts, applications, technologies, systems, etc.) For this purpose, the Commission established M-LMS rules with considerable technical and use flexibility (including, e.g., channelization, modulation, no antenna height limitation, use of the blocks for one-way or two-way radio transmissions, types of entities that may be served, types of multilateration that may be used, equipment certification flexibility, types of testing regarding Part 15 (no pre-determined methods and result targets), etc. For a M-LMS licensee to reach the stage of deployment, for this advanced ITS purpose, it necessarily involves substantial market assessment, technical, applications, business plans and financial, and other undertakings. For these, rules may need modification by formal rule change, or waiver, declaratory ruling, or other relief. However, the prevalent standard (required to meet legal standards, and not be arbitrary and capricious, such as under *Wait Radio* [see below] but for cases as described here) requires detailed showing demonstrations that call for much if not all of said undertakings to be completed or suitably advanced (otherwise, the showings are not showings, but general concepts, speculations, goals, jargon, and the like). A conditional grant of waiver requests, as in this Order, appears reasonable in such a situation, where the licensee obtains initial FCC approval relief to proceed upon its generally described path of desired improvements (verses the requirements under one or more current rules), but on the condition that to keep and practically use the relief in actual operations, the licensee must submit the results of the undertakings in writing, after suitable tests for a second FCC approval. (SkyTel above only discussed the nature and structure of said conditional two-stage waiver relief, not whether what was granted in the Order to Progeny makes sense. Below, SkyTel addresses some concerns on that.)

However, other rationales that underlie the Order, SkyTel respectfully disagree with, indicated below.

The DA Order Cannot Waive
the Commission's M-LMS ITS Purpose

The Order cites to the initial M-LMR Report and Order, in footnote 2 and related text (the "R&O"). The R&O makes clear that M-LMS is being established for the purpose of future advanced ITS radio sevices. However, while the Order cities some existing rules created for said purpose under the R&O and related rulemaking orders, the Order does not discuss in any clear fashion said ITS purpose of the M-LMS service.

SkyTel seeks reconsideration and modification of the Order, to the extent it may be deemed by Progeny, FCC staff, or any other party to modify the Commission's stated ITS purpose of M-LMS service and M-LMS licenses. Rules, including waived rules (which here means waived and changed rules) are always interpreted in light of their purpose. Only the Commission has authority to create rules which are always founded upon stated purposes. The Bureau cannot grant waivers that conflict with Commission ordered purposes of rules. Indeed, Section 1.925 is based upon the principal of maintaining said purpose, in special situations.

In this regard, the DC Circuit Court precedent guiding FCC waiver authority, *Wait Radio*, cites the US Supreme Court:

> As Justice Harlan recently said in the Permian Basin Area Rate Cases, 390 U.S. 747, 792, 88 S. Ct. 1344, 1373, 20 L. Ed. 2d 312 (1968):
>
> > The court's responsibility is not to supplant [a] Commission's balance of * * * competing interests with one more nearly to its liking, but instead to assure itself that the Commission has given reasoned consideration to each of the pertinent factors. Judicial review of the Commission's orders will therefore function accurately and efficaciously only if the Commission indicates fully and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry.
> > . . . .
> > [t]he very essence of waiver is the assumed validity of the general rule.

(emphasis added) *Wait Radio v. FCC*, 418 F.2d 1153 (1969). However, in this case:

(i) The ITS purposes of the subject rules are not sustained in the Order--it is devoid of discussion of ITS, as is the subject Progeny waiver request. Nor does any language in the said waiver request and responsive Order show any understanding or of commitment to ITS.

(ii) Progeny has rejected said purposes in its successful petition to obtain the NPRM, docket 06-49, in which it has not withdraw its requests for said NPRM and various further requests in pleadings thereunder. Thus, Progeny must be assumed to continue with said rejection in the subject waiver request. Indeed, Progeny did not withdraw any of its pleadings or pleading elements in the NPRM in response to SkyTel's comments in the subject docket (captioned above) on the waiver request, on this point '(ii)."

(iii) By not addressing and protecting the ITS purposes of the subject rules, Progeny and the Order failed in "assessment of the consequences… for the character and future development of the industry," in this case, the ITS industry. And,

(iv) The "character and future development" in M-LMS was described by the Commission in the LMS R&O (cited in the Order) and associated rulemaking orders, and is indicated herein. It is an ITS radio service for what the Commission described as future advanced ITS, that is not CMRS, and that may allow commercial subscription based service to subsidize the cost of development and operations etc. (see the SkyTel comments in this docket including attached excerpts from Commission orders). The Progeny waiver request and the Order do not support this "character and future development" but are at odds with it, at minimum they deviate from and put at risk what said orders and resulting, current rules secure in this regard. The Commission specifically rejected in said rulemaking orders, many proposals to make M-LMS into a general-use radio service, but secured it for ITS, both to protect the needs of future advanced ITS and to secure synergistic coexistence with Part 15 devices (said orders describe how said ITS uses would, generally, be in different areas, and that is obvious: ITS

focuses on major roadways, and Part 15 use concentrates outside said ITS-use areas, and the peak hour use times are also different, etc.)

(v) Further, in the case of this Progeny waiver request and the Order, the subject rules are not assumed valid (see quote above), indeed, Progeny has proposed that they are invalid in the public interest and should be changed, and the FCC has accepted that since year 2003, first by docket RM 10403 then by NPRM 06-69 which, contrary to SkyTel's demonstrations in the docket with details to the contrary, has been maintained for about 6 years already.

SkyTel submits that, apart from the Qualification Issue, to meet the standard noted above, the relief requested herein must be granted and the Order modified in accord. Then the conditional, two-step waiver grant (with prove up upon testing)[3]—as SkyTel understands the Order to provide (see below)-- as modified may comply with these public interest requirement.

The subject Progeny waiver request does not reflect any commitment to this ITS purpose. The ITS the Commission described in the R&O--at that time virtually all concepts for future development--is in fact being aggressively advanced in the US and worldwide. It is not merely any type of radio service or location function related to moving vehicles. SkyTel has described ITS developments and needs, including the wireless components, in docket 06-49. The FCC has not responded to any of the SkyTel in-person or documentary filings since year 2003, as to ITS and the epic rule-making in M-LMS indicated above. SkyTel understands that ITS is outside of the FCC area of expertise, but so is government public safety, railroads, etc. which all have special spectrum allocations and justifications for maintaining said spectrum for those critical public services and infrastructures. ITS is more quickly developing, and harder to grasp then police, fire, emergency medical, railroads, airports, etc. but it is one of the most needed

[3] SkyTel submits that without this prove up, the waiver grants in the Order fails to meet the standard in Wait Radio and other court precedents summarized in Wait Radio:

developments in the nation and worldwide: that is easy to ascertain by a cursory review of public literature. The spectrum allocated for M-LMS for wide-area ITS is all needed for that, to pair with short-range DSRC. If the Progeny-held M-LMS is allowed to be used for mostly or even co-equally (there is no quantification method for that in the Progeny waiver request and the Order), then it will damage the M-LMS radio service for the Commission's well-founded purpose: it is the one and only radio service dedicated for wide-area ITS, and there is no other radio service that can meet this need. That is easy to see in the spectrum allocations from VHF to 2 GHz (nothing lower will work, due to uncontrollable propagation and interference, and nothing higher will work due to insufficient propagation range: this is clear in well established radio technology and systems science).

Clarification of Conditional, Two-Stage Waivers Grant

The order grants the requested waivers, but adds conditions not contained in the waiver request, and that is not a reference to non-waived rules. The condition is summarily stated in the Ordering Clauses in ¶ 34:

> IT IS FURTHER ORDERED that Progeny LMS, LLC, file with the Commission a report in WT Docket No. 11-49 providing details on the M-LMS system design and the other matters specified in this Order. Progeny will file this report once it has completed design of its M-LMS system but prior to commencing commercial operations.[4] The report shall provide details on Progeny's M-LMS system design, describe the process by which Progeny carried out the field testing, including the particular Part 15 devices tested, and demonstrate that Progeny's M-LMS system will not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band.

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[4] The Order does not state whether or not the Condition applies to non-commercial operations. The Progeny waiver request makes no commitments to offer only commercial service. In one place, on p. 9, Progeny suggests its generally described services may serve public safety entities: "As the Commission recently acknowledged, an open question exists within … the public safety community regarding the most effective approach to position determination technology," and on p. 6, Progeny suggests that its undisclosed technology, or direction, could be used in emergency situations, further suggesting public safety entity use. Also, M-LMS is not a commercial mobile radio service. If the Condition is meant to apply to commencement of non-commercial as well as commercials operations, that should be clarified.

(With related preceding language as to this condition, the "Condition"). While the Order noted that the "testing" requirement in Section 90.353(d) is not waived for Progeny, that rule does not contain the specific requirements of the Condition.

Reconsideration, Clarifications of Order as to Conditional Waivers

The FCC grants waivers in various ways. Sometimes a waiver simply "waives" a rule,[5] and often it waives a rule conditionally (with or without an amended rule, or replacement- see section 7 below). [6]

In this Order, the FCC waived certain rules, not only noting that a non-waived rule still applies, but adding a condition.

Clarifications as to Spread Spectrum

At par. 4, the Order states that Mutilateration systems use spectrum-spectrum technology, citing the R&O. However, any over the air technology may be used. The Order should be

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[5] It is a cardinal principle of statutory construction that a court's interpretation of a statute begins with the plain meaning of the statute's words. Bates v. Runyon, 1996 U.S. App. LEXIS 24687, No. 95-5183, 1996 WL 532210, at *2 (10th Cir. Sept. 19, 1996); Robinson v. Shell Oil Co., 519 U.S. 337, 340, 136 L. Ed. 2d 808, 117 S. Ct. 843 (1997). "Waive" and "waiver" are not defined in FCC rules Part 90 or Part 2, In common use, such as in stated in Ballentine's Law Dictionary, (c) 2010 LexisNexix, "waiver" is defined as "[t]he intentional relinquishment of a known right, claim, or privilege...." There is no denotation or connotation of an amendment or substitution of what is waived.

[6] It is questionable that, unless the Commission or a delegated authority, for good cause, invokes special powers outside of the waiver rule criteria, it can both waive a rule and permit an amended or replacement rule. Section 1.925 itself does not explicitly provide for anything but waiving a rule. FCC 11-63 (waiver request by the TETRA Association, that has no standing as a licensee or equipment manufacturer, to waiver technical rules relating to TETRA equipment, and adopt rules based on ETSI TETRA standards) is one recent example of granting a request to waive rules and adopt replacement rules or standards, in the name of a waiver. The function of a waiver is not to change the general standard, a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act, but to justify an *ad hoc* exception to that standard in a particular case. Storer Broadcasting Co., 14 RR 742, 746-7 (1956); VHF Drop-In Proceeding, *Memorandum Opinion and Order,* 90 FCC 2d 160, 166 (1982), *aff'd sub nom. Springfield Television of Utah, Inc. v. F.C.C.*, 710 (F.2d 620 (10th Cir.1983).

clarified in this regard.

Reconsideration, Clarifications of Order's as to Progeny's "Status as a … Licensee"

The Order stated in footnote 99:

> We note that the relief granted Progeny in this order is without prejudice to Havens' allegations concerning Progeny's status as an M-LMS licensee. *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, 17259 ¶ 28 (WTB 2008).

In this subsection, SkyTel seeks reconsideration of the Order in that footnote 99 is the sole treatment in the Order of its referenced allegations (which are fully referenced and incorporated herein) (the alleged "Disqualification Information," and with the associated arguments of law, the "Qualification Issue"). To more fully describe footnote 99, and the just noted reference and incorporation, see Exhibit 1 hereto.

SkyTel requests that on reconsideration, the FCC respond to Qualification Issue under the standard discussed below.

In the alternative, and not waiving the just stated request and supporting argument provided below, SkyTel requests that the FCC clarify what it means by footnote 99, that the Order is "without prejudice to Havens' allegations concerning Progeny's status as an M-LMS licensee." As the footnote continued, this was stated previously, but with no explanation there either. For example, does the FCC mean that it will in a future circumstance respond to the substance of the Disqualification Information and Qualification Issue, and if so, when and how (on license renewal, or other time and event)? Or does it mean that if SkyTel submits a request under certain rules and procedures, then the FCC will respond to said substance. Or does it mean that it would prefer, or under some basis require, that this be pursued outside of the FCC, although it deals with FCC rules and procedure?

With regard to the above-stated reconsideration request in this section, in *FCC v Fox* the

US Supreme Court reaffirmed a well-established standard it insists upon:

> The Administrative Procedure Act, 5 U.S.C. § 551 et seq., which sets forth the full extent of judicial authority to review executive agency action for procedural correctness, see Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 545-549, 98 S. Ct. 1197, 55 L. Ed. 2d 460 (1978), permits (insofar as relevant here) the setting aside of agency action that is "arbitrary" or "capricious," 5 U.S.C. § 706(2)(A). Under what we have called this "narrow" standard of review, we insist that an agency "examine the relevant data and articulate a satisfactory explanation for its action." Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983). "

(emphasis added) *FCC v Fox*, 556 U.S. 502 (2009). The Disqualification Information (1) was "relevant data, but (2) the FCC in the Order did not "emamine[d] [this] relevant data and articulate a satisifactory explanation for its answer." Thus, the Order violates 5 USC §551 as arbitrary and capricious, and should be corrected. In this regard:

(1) The Disqualification Information is relevant data under 47 USC §§ 308, 309, and 405, since it pertains to whether Progeny and its initial controlling sole owner and controller obtained the subject M-LMS licenses under strict FCC rule requirements pertaining to the subject initial M-LMS auction failing which it was disqualified to obtain the licenses. If the Disqualification Information shows this disqualification, then the licenses are void ab intio, and no waiver or other relief is reasonable to grant and even if granted, is ineffective. If the FCC believes that the licenses may not be void ab initio by simple application of the relevant rules, then it could commence a revocation hearing. The FCC is engaged in such a hearing at this time in a similar situation. See the Order to Show Cause and Hearing Designation Order, FCC 11-64 (MCLM HDO) (regarding Maritime Communications/ Land Mobile LLC violations, as this order describes, of the same auction rules as Progeny and its controlling interested violated shown by the Disqualification Information: false statement of control, false claim to a designated-entity bidding and payment discount, failure to disclose affiliates and attributable gross revenues, and related matters. However, in the case of Progeny, there is, in addition, failure

to even exist as a legal entity at the relevant auction period, and lack of candor in not disclosing that, as well as other wrongdoing not in the MCLM HDO.

(2) As stated above, the Order noted the Relevant Data in footnote 99.

> We note that the relief granted Progeny in this order is without prejudice to Havens' allegations concerning Progeny's status as an M-LMS licensee. 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, 17259 ¶ 28 (WTB 2008).

That note, however, fails to comply with the Supreme Court's requirement stated above that the agency "examine the relevant data and articulate a satisfactory explanation for its action," which in this case is to avoid fully the Disqualifying Information in rendering a decision that assumes as it premise that the licensee and the subject licenses are valid.

Clarification of the NPRM in Relation to the Order

The Order should be clarified as to the following. It the current rules are changed, other than the rules waived for Progeny in the Order, how will that affect the rights and obligations of Progeny? Changes in said other rules may affect the relief in the granted waivers in various ways. In that case, which prevails for Progeny: the waivers, or the changed rules?

In addition, as discussed above, under controlling precedent cited, waivers may be granted based upon the assumption that the rules being waived are valid for most purposes (other than special situations as in meritorious waiver requests). But in this case, the rules being waived are not deemed by Progeny or the Commission as any longer valid, but are being questioned in the NPRM. Indeed, as noted above, Progeny is the entity that has challenged said validity: from the purpose to the particulars of said current rules. The Order should be modified to meet the requirements of said controlling precedents, of if the Bureau disagrees with SkyTel analysis, SkyTel requests clarification, at minimum.

Clarification that a Rule Waiver can Include a Substitute

For reasons indicated above, even if there is a common practice at the FCC, there does not

appears to be authority under Section 1.935 to both waive a rule and replace that with some new rule particular to the requesting party on the same matter. SkyTel request that the Bureau clarify the authority for this practice as applied in the Order.

Closing and Conclusions

For reasons given, the reconsideration and clarifications requested should be timely processed and granted.

Respectfully submitted, January 19, 2012,

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

Environmentel LLC (formerly known as AMTS Consortium LLC), by
[Filed electronically. Signature on file.]
Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by
[Filed electronically. Signature on file.]
Warren Havens, President

Intelligent Transportation & Monitoring Wireless LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

V2G LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

Warren Havens, an Individual
[Filed electronically. Signature on file.]
Warren Havens

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Unless inaccurate practice is intended and invited, these are not "*Havens*" individually or in the aggregate. Each undersigned entity is a separate legal entity, with different ownership, financial, asset and other elements, shown in these entities various licensing disclosures. In addition, Skybridge is a fully nonprofit corporation under IRC §501(c)(3) no part of whose assets may be used or distributed for the benefit of any private individual or for-profit entity, including the other SkyTel entities. Skybridge is not permitted under law to provide any benefit to said other entities and is not their "affiliate" under FCC and nonprofit law. *As previously stated in various FCC proceedings, each SkyTel entity objects to the FCC and others, characterizing these entities as "Havens."* In FCC formal proceedings, unless good cause is asserted, the parties (and FCC staff) should respect elements of law outside FCC jurisdiction. Legal entities' character, differences, names, etc. are under State law, and in the case of a most nonprofits like Skybridge, also under federal IRC-IRS law.

Exhibit 1

Regarding Footnote 99 matters (continued from Petition text).

1. Regarding: FCC decisions where the FCC has stated that its decision is without prejudice to the SkyTel-raised Disqualification Information and Qualification Issue or that it will not address them (at such time), are the following:

(1) Order, DA 08-2614, released November 26, 2008, *23 FCC Rcd 17250,* at paragraph 28:

> "Havens claims in his Further Comments that Progeny holds no valid M-LMS licenses. [FN92] We note that Havens and various Havens-controlled entities also raise this argument in more detail in other pending proceedings.[FN93] The relief granted Progeny in this order is without prejudice to Havens' allegations concerning Progeny's status as an M-LMS licensee…."
>
> [FN92]: Havens Further Comments at 2-3. Havens made similar arguments in this proceeding in a document captioned "Petition to Deny," which he submitted with the Skybridge Comments.
>
> [FN93]: *See e.g.*, *Ex Parte* of Telesaurus Holdings GB LLC, WT Docket 06-49 (filed May 7, 2007); Petition for Reconsideration and, in the Alternative, Petition to Deny or Request Under Section 1.41, filed January 11, 2008 by Telesaurus Holdings GB LLC, Intelligent Transportation and MonitoringWireless LLC, AMTS Consortium LLC and Telesaurus-VPC LLC re: grant of transfer of control applications under ULS File Nos. 0003250058 and 0003274382.

(2) Public Notice, DA 11-559, that decided on the Timing and Procedures Request and granted additional time to file reply comments in Docket 11-49, the FCC stated at footnote 7 of the Public Notice:

> "We note that the Request raises other issues. *See* Request at 2, 3. We do not need to address these issues in this Public Notice."
>
> The "Request" is the Timing and Procedures Request, and at those pages, it discussed the evidence of Progeny's invalidity at the time of the auction.

(3) The subject Order, DA 11-2036, released December 20, 2011.

2. Regarding: Facts *(which are among the Disqualification Information)* showing Progeny did not exist as a legal entity until after the subject auction of M-LMS licenses, from which Progeny obtained its M-LMS licenses from another legal entity that also used the name "Progeny." These facts were filed in this Docket 11-49 (the "Progeny Waiver Docket").

SkyTel referenced and incorporated said facts in both its initial comments (the "Comments in Opposition") filed on March 25, 2011 and in its "Timing and Procedures Request" (requesting an extension of time, among other things) also filed March 25, 2011, both filed in Docket 11-49.

The Comments in Opposition referred to the citations in the Timing and Procedures Request, which cited to two of our pending challenges: (1) a petition regarding a Progeny extension request and (2) a request to revoke Progeny's licenses filed in Docket 06-49.

Progeny LMS LLC formation in Indiana on April 16, 1999, after the subject, first LMS auction, which ended on March 5, 1999, and after Progeny filed its Form 601 for the LMS licenses. (Also, there were competing long forms. We do not here to in that issue, again.)

SkyTel presented this evidence to the FCC since at least middle of 2007, over 4 years ago.

See the attached (part of this Exhibit, below): the Progeny certificate of organization and Progeny articles of organization that SkyTel filed in Docket 06-49 in May 2007.

The certificate of organization has notes on it in text boxes placed by SkyTel in a previous FCC filing, as indicated.

The date-stamp on the articles of organization is April 16, 1999 and the certificate of organization says the entity will begin as of April 16, 1999.

(Other facts, and associated law and arguments, were presented by SkyTel in past pleadings including those noted in this Exhibit above.)

/ / /