

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

Reply to Opposition to Petition for Partial Reconsideration and Clarification  
[Errata Copy\\*](#)

Petitioners, the undersigned, hereby Reply to the Opposition of Progeny to the Petition. Some terms herein are defined in the Petition. For reasons given in the Petition, and further since the Test Report described below is an impermissible ex parte presentation, and was also filed after the Petition, Petitioners assert here rights to amend and augment this Reply and the Petition.

Procedural

The Opposition was submitted by Progeny LMS LLC. Upon an initial look, the Progeny Report says that Progeny is a “wholly-owned” subsidiary of NextNav Holdings LLC, however, Progeny’s current Form 602 does not show that Progeny is owned by NextNav Holdings LLC (see Progeny Form 602, File No. 0003322280, attached as Exhibit 3 hereto). This appears to indicate a change in control of Progeny, but no transfer of control has been filed with the FCC. Also, see Exhibit 4 attached hereto: SEC Form D that describes NextNav Holdings LLC and Progeny LMS Holdings. Thus, Petitioners do not know how Progeny can submit the Opposition since it is not clear that the parent company approved the Opposition, and in any case, the current Progeny 602 does not show any transfer of control of Progeny to NextNav Holdings LLC.

Substance:

1. Re: Disqualification Information

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\* Deletions in ~~strikeout~~. Additions in text boxes and blue font.

Progeny fails to show any evidence refuting the clear documentary evidence in the Petition including ~~but~~ its reference and incorporation. Progeny is clearly incorrect, and knowingly so, to assert that the FCC records show that the defects were known to FCC staff and that it accepted them in the narrow waivers sought and granted. FCC and court precedent make clear that in this case, Progeny is simply disqualified and its licenses are *void ab initio*.

Progeny suggests in the Opposition that the FCC knew and waived the defects, but if that were the case, the FCC would have stated that and not stated that its decisions on the waiver<sup>request</sup> and preceding construction deadline extension were without prejudice to the Disqualification Issue case that Petitioners clearly presented with documentary facts and law, and after getting and reviewing the entire Progeny FCC files. Thus, the only issue is: in what forum and time, will the FCC hear this case?

The Opposition fails to address and refute the Petition's Disqualification Information, including but not limited to, the facts that show Progeny did not exist as a corporate legal entity until after the first LMS auction had concluded and Progeny's initial Form 601 had been filed, and the facts showing that Progeny failed to disclose affiliates of its alleged controlling interest holder at the time, Otto Frenzel, including his spouse and business entity affiliates. The Opposition fails to provide any attachment or exhibit with, and avoids directly citing to, specific information or evidence in FCC records refuting said Disqualification Information or showing that Progeny disclosed said information to the FCC as part of its Form 601.<sup>or otherwise.</sup>

It just generally asserts that the Commission previously addressed the matters. However, contrary to the Opposition, as Petitioners have shown numerous times in pending proceedings involving Progeny (and in which Progeny has responded similarly), there are no facts under Progeny's Form 601, File No. 0000006894, showing that Progeny ever admitted to the FCC that it did not exist as a corporate legal entity prior to and after the first LMS auction or at the time it filed its initial Form 601 application. Progeny's attachment "Exhibit F: Conditional Waiver

Request” to its amended Form 601, File No. 0000006894 (see Exhibit 1 hereto),<sup>only</sup> stated, “...Progeny LMS, LLC (“Applicant”), hereby requests waiver of certain FCC application processing policies so that it may amend its application to seek FCC recognition that Otto N. Frenzel, III (“Frenzel”) is the owner and controlling party of the Applicant.”

Also, Progeny does not mention in the “Exhibit F: Conditional Waiver Request”, or anywhere else in its amended Form 601, that Progeny did not exist until after the auction (as shown by the Disqualification Information, Progeny was formed in April 1999).

Further, Exhibit C to the amended Progeny Form 601, File No. 0000006894 (see Exhibit 2 hereto), shows that Progeny and Otto Frenzel asserted they had no affiliates. However, the Petition’s Disqualification Information, including the Indianapolis state court records, shows that Mr. Frenzel did have affiliates (including that Mr. Frenzel’s legal counsel was concerned about having to disclose his affiliates because of how it might affect Progeny’s Designated Entity Bidding Credit level, which of course would then affect its qualification for the LMS auction).

2. Progeny Part 15 Test Report, and  
Impermissible Ex Parte Presentation, and  
Motion to Strike

Regarding the Progeny Part 15 field test report submitted in Docket No. 11-49 on January 27, 2012 (the “Progeny Report” or “Test Report”), Petitioners note that they were not provided a copy of the Progeny Report, as required under the FCC’s ex parte rules (since the Opposition relies upon the Progeny Report and is part of a restricted proceeding), and only first became aware of it recently when reviewing the Opposition. Therefore, Petitioners have not had time to complete their review of the Progeny Report. However, from an initial review, Petitioners do not see where Progeny cooperated or coordinated with any current Part 15 manufacturers, service providers, or users as part of the Progeny Report, such as Silver Springs (a provider of meter reading equipment used by PG&E that operates<sup>including in the urban areas of the Report tests</sup> on Part 15 900MHz spectrum), wireless internet

service providers (links from their base stations to customers), federal users of Part 15 900 MHz (which have priority over M-LMS), companies using Part 15 900 MHz systems for tracking persons and/or animals, etc.

Also, the Progeny Report does not show that any notice was given to any Part 15 system operators or manufacturers so that they could participate in Progeny's tests and study. This is not the testing that the subject rule §90.353(d), or the waiver grant condition, described. It is thus defective and should be rejected.

The Opposition cites and relies on the Test Report. The Petition established a restricted proceeding and thus the Opposition and any thing related to <sup>it</sup> (that is a "presentation" as defined in FCC ex parte rules) ~~it~~ is an impermissible ex parte presentation if not served on Petitioners if in writing, and if orally presented, where ~~not~~ notice of opportunity to attend the meeting was not given (in reasonable time frame, detail, coordination for availability, etc.). Progeny did not meet those requirements regarding the Test Report as a written presentation, or the related oral presentations before FCC staff.

Petitioners thus hereby move that the FCC strike the Test Report for purposes of and related to the waiver request, its grant, and the Opposition to the Petition. Further, Petitioners intend to file a report with the FCC Office of General Counsel as to these impermissible ex parte presentations, seeking appropriate sanctions.

## 2. Other

Progeny suggests what is contrary to the LMS Order in the 1990's that resulted in the current rules. The Order at its start, at its end, and elsewhere specifically discussed future Intelligent Transportations Systems as the only purpose of M-LMS. Progeny lacks candor for suggesting otherwise.

Progeny further lacks candor to suggest that is now, for and to defend its waiver grants, arguing under said Order and said existing rules, when it is the sole cause of RM-10403 and

NPRM 06-49 in which it argued against the Order's purpose and content and the resulting rules, and where it maintains that position to this day in said NPRM. The Opposition could have, but did not, state that Progeny withdrew that position (if it had in fact done that in an appropriate filing). Instead, Progeny seeks to burden Petitioners<sup>ers</sup> with the NPRM while escaping from it by its waiver grants. That is anticompetitive, causes violations of §§1.52 and 1.24, and US antitrust law including under Sherman Act 1. Federal agency pleadings that are a sham do not have immunity under the Noerr Pennington doctrine or otherwise, from Antitrust violation claims, or other claims under federal and state law. Progeny's course of conduct from its start<sup>is</sup> in violation of Sherman Act 1 and other non-FCC law<sup>(as well as FCC law).</sup> Petitioners have a case, somewhat like this, currently in progress in a US District Court: like this Progeny case, it is based on demonstrated cheating in FCC auctions and consequent further actions with licenses obtained thereby (that are invalid and void under law) that blocked and restrained Petitioners, and the broader market (in this case, wireless for Intelligent Transportation Systems). [Havens v. Mobex, USDC, NJ.](#)

If Progeny now supports said M-LMS Order and its resulting rules (still current ones but subject to the NPRM) then it should give back its waiver grant.

Progeny asserts the Petition does not deal with its reality and the like, and refers to the Test Report, but that was not part of the waiver request and was not even filed until after the Petition was filed (nor, see above, is it a lawful FCC presentation). The fact is that the waiver request presented only a concept and at no point previous either did Progeny show any substance to speak of. The Petition, to some degree, however, did not disagree with the noted two-part waiver grant.

Petitioners challenge cheating in FCC licensing matters (rule violations, lack of candor, etc.) and challenge contradictory positions, lack of sound technical and legal positions, etc. That is all they have done and continue to do regarding Progeny.

Respectfully submitted, February 13, 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

Each Petitioner:

2509 Stuart Street, Berkeley, CA 94705  
Phone: 510-841-2220. Fax: 510-740-3412

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.

Appendix: List of Exhibits

Exhibit 1: Progeny Amended Form 601, Exhibit F: Conditional Waiver Request

Exhibit 2: Progeny Amended Form 601, Exhibit C re: gross revenues and affiliates

Exhibit 3: Progeny current Form 602, File No. 0003322280

Exhibit 4: SEC Form D describing NextNav Holdings LLC and Progeny LMS Holdings

Exhibits were separately filed on ULS.

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Reply to Opposition to Petition for Partial Reconsideration and Clarification, including any exhibits and attachments was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct

/s/ [Submitted Electronically. Signature on File.]

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Warren C. Havens

February 13, 2012

Certificate of Service

I, Warren Havens, certify that on this 13<sup>th</sup> day of February 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply to Opposition to Petition for Partial Reconsideration and Clarification, including any exhibits and attachments, to the following:<sup>1</sup>

Progeny LMS, LLC  
2058 Crossing Gate Way  
Vienna, VA 22181  
ATTN Carson Agnew

Squire Sanders (US) LLP  
Bruce A Olcott , Esq  
1200 19<sup>th</sup> Street, N.W.  
Washington, DC 20036

*[Filed electronically. Signature on file.]*

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Warren Havens

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<sup>1</sup> The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.