

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

In the Matter of)	
)	
Wireless Bureau and OET Seek Comment On Progeny's M-LMS Field Testing Report)	DA 12-209 WT Docket No 11-49

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

Request to Extend Dates for Comments and Replies

Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC and other undersigned entities (together "SkyTel")¹ request, for reasons below, that the deadlines in DA 12-209 captioned above be extended to March 30, 2012 for Comments and April 30, 2012 for Replies (the "Request").

1. The captioned Testing or Test Report was unlawfully used in an impermissible ex parte presentation in a restricted proceeding. See SkyTel Reply Comments in this Docket on this subject. SkyTel refers to and incorporates herein said Reply Comments and its other pleadings in this Docket. Thus, SkyTel believes the Test Report is not suitable for the captioned Public Notice seeking comments.

This was a major violation of Commission rules for efficient and fair proceedings that involve multiple parties. Commission ex parte rules prescribe appropriate sanctions for violations of its ex parte rules to equitably address the violations. This, in itself, is good cause for grant of this Request.

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

2. In addition and in the alternative: The Test Report did not involve “existing deployments of systems of Part 15 devices...” or “cooperative testing”, as the subject rule requires under the Commission’s interpretation thereof, cited in the grant of the subject waivers.²

Thus, SkyTel believes the Test Report is not suitable for the captioned Public Notice seeking comments, and especially combined with item 1 above, it is a bad precedent to have done so and to maintain this Comments proceeding.

However, at minimum, this is good cause for grant of this Request, since without compliance with the cited rule and its interpretation, there is no Part 15 systems operators and users that took part in the design or at least the execution of the Test, and to thus have first hand, timely and substantial information on the Test, including, e.g., relevant locations and time periods to use, Part 15 “systems” (not devices per se) to test against, selection of Part 15 devices and configurations, busy times, etc. This makes it more complicated, at best, for any party to now Comment on the Progeny solo, ex parte Test, since each element must be more carefully scrutinized and consideration made of what actual “existing deployments of systems of Part 15 devices” may exist.

Further, the Test selects a few locations out of thousands nationwide. That also does not comply with the cited rule and interpretation (“tests” ... “when constructing” ... “in their area”...), nor is the Test “when constructing” which appears to me a Test of a system as to be

² See the grant of the Progeny waiver request, DA 11-2036, ¶ 25 (emphasis added):
...Included in these rules is the obligation, set forth in Section 90.353(d), that Progeny demonstrate through actual field tests that its M-LMS system will not cause unacceptable levels of interference to Part 15 devices.⁸⁵ As the Commission noted, the purpose of the testing condition “is to insure that multilateration LMS licensees, when designing and constructing their systems, take into consideration a goal of minimizing interference to existing deployments or systems of Part 15 devices in their area, and to verify through cooperative testing that this goal has been served.”⁸⁶

85. 47 C.F.R. § 90.353(d).

86. *LMS MO&O*, 12 FCC Rcd at 13968 ¶ 69.

actually used for services over a wide area. There are varying sort of “existing deployments or systems of Part 15 systems” in the various part of the nation (most all of it) where Progeny holds M-LMS licenses, and its waiver request and grant were for all of those licenses and areas. This further complicates consideration and comments, since one must attempt to apply the Progeny Test in other locations that have said different “existing deployments or systems.”

3. The Comment and Reply deadlines are too short given the complexity of the Test Report and the weight of the matters involved. Even apart from the above, the Test Report is lengthy and complicated. A more suitable period for Comments would have been 60 days (less than in this Request), not 30, and a proportionally longer period for Replies. It takes that amount of time to secure suitable engineering expertise for review, clear conflicts checks, review the substantial materials, and formulate comments, including attempts to fill in the gaps left by Progeny, described above.

4. Extending point 3 above: This involves nationwide spectrum in large amounts (and despite what Progeny suggests, this involves in effect rule changes, not merely waivers: the waivers are contrary to the underlying rules’ purpose: that is a rule change, not a waiver to better fulfill the rules).³ A decision on the Test Report is thus a weighty matter.

5. There is clearly no timing need to not grant this Request, since Progeny has been the cause of putting core M-LMS rules in a cloud of rulemaking for over 8 years (the request that commenced RM-10403, which then caused with further Progeny action NRPM 06-49). In those proceedings, Progeny repeatedly argued against what it now purports to espouse (see SkyTel pleadings in the captioned proceeding, and preceding ones). Further, it is clear that the FCC was in no hurry to resolve the M-LMS rules put in to that cloud since it took years for a decision on RM-10403 to mover to the NPRM in 2006, and it has been about 6 years after that with no

³ See SkyTel petition for partial reconsideration of the grant of the waiver, and and reply to the Progeny opposition.

decision, but to keep the cloud over all M-LMS other than Progeny, via the waiver grant at odds with the Progeny position, still maintained, in the NPRM. This record demonstrates anything but good case to now quickly decide upon the Progeny M-LMS plan which is to escape from the full-Commission designated ITS-purpose of LMS including M-LMS, secured primarily by the requirement to serve vehicles and only secondarily other things. The waiver grant had to parts: it granted the theory, then required the testing prior to operations (see the SkyTel petition for partial consideration of the waiver grant). Comments on the Test Report is an integral part of the waiver grant final decision. After nearly a decade of Progeny holding up all M-LMS (which also affects N-LMS for parties like SkyTel seeking to cooperate with government agencies that may use N-LMS), and the FCC not being fit to decide as just noted, there is no case to be made for a short time period for Comments and Replies.

6. Finally, there is no doubt that under law, Progeny hold no valid M-LMS licenses and never did. They are void *ab initio* under FCC rules and controlling DC Circuit Court case law.⁴ The FCC has several times been presented the clear evidence of this, including in this proceeding on the Progeny waiver request. Placing the Test Report on public notice is thus against this legal conclusion and against the public interest. It wastes Commission and parties' resources.

7. Further, the FCC several times, in response to this clear evidence case presented, noted in decisions in which this case was presented that it was deciding "without prejudice to" this case presented by SkyTel. That is, it put off to some undetermined time this threshold matter of the validity of the licenses and the public interest at the core. If this threshold license-validity issue has no particular timing requirement, then there is none with regard to actions by Progeny based on the licenses.

⁴ And used in violation of Sherman Act 1: See SkyTel Reply to Progeny Opposition to SkyTel petition for partial reconsideration of the grant of the Progeny waiver request.

Conclusion

The above reasons individually, and especially together, provide compelling good cause for grant of this Request.

Respectfully submitted, March 12, 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

Environmental 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.]
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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.

Certificate of Service and Notification

I, Warren Havens, certify that on this 12th day of March 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 pleading (request to extend) to the following:⁵

A copy will also be emailed to Mr. Olcott, and a voice notification given, each on the morning of March 12, 2012.

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

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

[Filed electronically. Signature on file.]

Warren Havens

⁵ The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.