Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Progeny LMS, LLC	)	WT Docket No. 12-202
	)	
FCR, Inc.	)	
	)	
Helen Wong-Armijo	)	
	)	
PCS Partners, L.P.	)	
	)	
Requests For Waiver and Extension of Time To Construct	)	

To: Chief, Wireless Telecommunications Bureau

JOINT COMMENTS OF ITRON, INC., WISPA AND LANDIS+GYR COMPANY

Itron, Inc. ("Itron"), the Wireless Internet Service Providers Association ("WISPA"), and Landis+Gyr Company ("L+G") (collectively, "the Part 15 Parties"), by their attorneys, submit these comments in response to the requests for extension of time (the "Extension Requests") filed by Progeny LMS, LLC ("Progeny"), FCR, Inc. ("FCR"), Helen Wong-Armijo ("Wong-Armijo") and PCS Partners, L.P. ("PCS Partners") in the above-referenced proceeding.[1] In the case of Progeny, the licensee is engaged in testing

[1] *In the Matter of Request of Progeny LMS, LLC for Waiver and Limited Extension of Time* (filed June 21, 2012); *FCR, Inc., Request for Waiver and Extension of First Build-out Deadline* (filed June 28, 2012) (seeking a 5-year extension of the first M-LMS milestone for 13 licenses); *Helen Wong-Armijo, Request for Waiver and Extension of First Build-Out Deadline* (filed June 28, 2012) (seeking a 5-year extension of the first M-LMS milestone for 84 licenses); and *PSC Partners, L.P., Request for Extension of Time* (filed July 6, 2012) (seeking an extension of the first M-LMS milestone for 32 licenses until five years after final Commission action on proposed changes to the M-LMS rules pending in WT Docket No. 06-49). The FCC invited comment on the Extension Requests

to determine whether its system causes interference to Part 15 devices. The other licensees appear to have taken no steps to construct, and their licenses should either be extended, if the Federal Communications Commission ("FCC") believes an extension is justified, or cancelled, if the FCC concludes that there is no legal basis for an extension. In all instances, however, the FCC must recognize that there is no reason for any Multilateration Location and Monitoring Service ("M-LMS") licensee to continue building its network unless and until the licensee successfully demonstrates through cooperative testing with Part 15 interests that its system does not cause unacceptable levels of interference to Part 15 devices.

BACKGROUND

Progeny

On December, 20, 2011, the Wireless Telecommunications Bureau ("Bureau") and Office of Engineering and Technology granted Progeny a waiver of several M-LMS rules to allow Progeny to construct a system without meeting all of the M-LMS technical construction requirements and without providing primary vehicle location services. The waiver also requires Progeny to engage in field testing of its system with Part 15 devices prior to commencing commercial operations to demonstrate that its system "will not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928

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pursuant to Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Requests by Progeny LMS, LLC, FCR, Inc., Helen Wong-Armijo, and PCS Partners, L.P. for Waiver and Extension of Time to Construct 900 MHz Multilateration Location and Monitoring Service Licenses," WT Docket No. 12-202 (rel. July 17, 2012) ("*Public Notice*"). The licenses that are subject to the Extension Requests are listed in Attachments A, B and C to the *Public Notice*.

MHz band."[2] On June 12, 2012, Progeny filed a series of requests with the FCC to waive and extend the milestone deadlines for construction of certain of its M-LMS licenses.

In particular, Progeny seeks the following relief:

- A 90-day extension and waiver of its first milestone deadline with regard to operations in 40 economic areas ("EAs") so that it is not required to provide commercial service until cooperative testing has been completed;
- A two-year extension of its first and second milestone for 20 other EAs;
- A three-year extension of its first and second milestone for an additional 30 EAs; and
- A four-year extension of its milestones in 25 predominantly rural EAs.[3]

FCR and Wong-Armijo

FCR and Wong-Armijo each seek a five-year extension of their first construction milestones. Though they acknowledge that Progeny has equipment, they claim that Progeny will be using proprietary equipment, that no commercial equipment is available and that there may be no viable business model. Their extension requests rely entirely on Progeny's extension requests and do not articulate any independent efforts to take steps towards meeting their construction milestones.

PCS Partners

PCS Partners seeks an extension of its milestones until five years after the FCC acts on rule changes proposed in WT Docket No. 06-49, which will create greater certainty on technical requirements. It also claims that, to the best of its knowledge,

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[2] *In the Matter of Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878, WT Docket No. 11-49 (rel. Dec. 20, 2011) ("*Progeny Waiver*").
[3] *Progeny Extension* at 2-3.

there is no viable equipment available. Like FCR and Wong-Armijo, PCS Partners states that the grounds for the Bureau's previous extension in 2008[4] are largely unchanged.

DISCUSSION

Itron and L+G provide automatic meter reading ("AMR") systems used by utilities for meter reading and other smart grid uses. WISPA is a trade association representing the interests of fixed wireless broadband Internet service providers that serve millions of consumers across the country. The Part 15 Parties each operate in the unlicensed 902-928 MHz band.[5] During the past several months, the Part 15 Parties have worked with Progeny to conduct joint testing to determine whether the Progeny system causes unacceptable levels of interference to AMR and WISP devices.[6] At this juncture, several weeks of testing have been conducted and more remain, but the concerns of the Part 15 Parties on the impact of the Progeny system have not changed.

It is quite clear from Progeny's various reports to the Commission that it has constructed far more facilities than would be needed to complete cooperative testing

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[4] *See* Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Construction Rules, WT Docket No. 08-60, *Order*, 23 FCC Rcd 17250 (WTB, 2008).

[5] In addition to AMR and fixed wireless broadband, tens of millions of Part 15 devices operate in this band, including devices such as ZigBee, RFID devices, WLANs, wireless microphones, SCADA systems used by the oil and gas industry, and consumer devices such as cordless phones and garage door openers.

[6] As a condition of the *Progeny Waiver*, prior to commencing commercial operations, Progeny must conduct field testing of its system with Part 15 devices and file a report that: 1) details its system design; 2) describes how it conducted field testing; and 3) demonstrates that its system "will not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band." *Progeny Waiver* at ¶35. The Part 15 Parties challenged Progeny's report, leading to the further testing, on a cooperative basis, of Progeny's devices with AMR and fixed wireless broadband devices.

with Part 15 device owners and suppliers. To some degree this may well have been done to satisfy the upcoming construction milestone obligations. However, because Progeny is obligated to establish that commercial operations on such facilities will not cause unacceptable levels of interference to Part 15 devices, all construction is clearly undertaken at Progeny's risk. Therefore, the Part 15 Parties would not be averse to extending imminent construction deadlines until Progeny has made that demonstration through cooperative testing.

Indeed, the Part 15 Parties believe that the FCC should suspend Progeny's obligations to build until completion of the cooperative testing and completion of the FCC's review, and make clear that any further construction is at Progeny's risk, so that Progeny cannot use its fulfillment of those construction obligations as the basis for relief from the more significant testing obligations it must complete on its existing facilities. In short, it is reasonable for Progeny to seek additional time for completing construction milestones only if Progeny is contemporaneously suspending further construction activities until it has satisfied a key condition of the waiver allowing it, ultimately, to operate on a commercial basis – that is, demonstrating that such operation will not cause unacceptable interference to Part 15 devices.

With respect to FCR, Wong-Armijo and PCS Partners, the Part 15 Parties note that they have done little, if anything, to meet their construction deadlines. To the extent that the FCC finds their reasons to be sufficient for grant of the requested extension, the Part 15 Parties note that they are subject to the same cooperative testing requirement as Progeny – they should be required to demonstrate that their systems will not cause

unacceptable levels of interference to Part 15 devices and that they engage in cooperative testing. Given the claimed uncertainty over rules and equipment availability, and type of services they may ultimately offer, it is imperative that the FCC consider the M-LMS construction deadlines in light of the M-LMS/Part 15 cooperative testing requirement. The FCC established this testing requirement to allow M-LMS licensees to "fine tune" their systems[7] so that the licensees and Part 15 users can co-exist, and to ensure that "LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected."[8] Accordingly, there is no reason at this time to require M-LMS licensees to continue building until this interference showing has been met.

CONCLUSION

For the reasons stated above, the FCC should not require the subject licensees to continue construction efforts until it is certain, following cooperative testing, that commercial operation of their respective systems will not result in unacceptable levels of interference to Part 15 devices. Further, if they are to receive temporary relief from those milestones, they should be required to suspend any construction that is not directly tied to satisfaction of those testing obligations.

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[7] *In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicular Monitoring Systems*, 10 FCC Rcd 4695 (1995).

[8] *In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Order on Reconsideration, 11 FCC Rcd 16907 at 16911-12 (1996).

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