

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
The Wireless Telecommunications Bureau and)
the Office of Engineering and Technology)
Seek Comment on Progeny’s Joint M-LMS) WT Docket No. 11-49
Field Testing Reports)

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

**OPPOSITION OF
PROGENY LMS, LLC**

Progeny LMS, LLC (“Progeny”), by its attorneys, hereby opposes the request of the Part 15 Coalition for the Commission to extend the comment and reply periods for the Joint Part 15 Test Reports that were prepared and jointly filed with the Commission by many of the Part 15 Coalition’s own members.¹ It is a well-established Commission policy that extensions of time shall not be routinely granted. Adherence to this policy is particularly justified in this case given the growing and critical need for the E911 position location services that Progeny seeks to provide to support emergency first responders. The Commission has previous denied requests for extensions of comment deadlines when the result could delay, even briefly, the availability of services needed to support the public safety community.² Although the Part 15 Coalition

¹ See The Part 15 Coalition Request for Extension of Comment and Reply Comment Deadlines, WT Docket No. 11-49 (Nov. 26, 2012) (“*Part 15 Coalition Extension Request*”). The Coalition seeks an extension of the comment period from 21 days (the Coalition incorrectly states 20 days) to 30 days, and an extension of the reply comment period from 10 days also to 30 days.

² See *Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114*, Order, DA 08-2258, ¶ 3 (Oct. 8, 2008) (denying extension request because an abbreviated comment cycle was “appropriate given the compelling public interest in achieving accurate and reliable E911 location information”).

presents several possible justifications for its proposed extension request, none of them withstand even modest scrutiny.

I. MANY OF THE COALITION MEMBERS AND ITS LEGAL COUNSEL HELPED PREPARE AND HAVE HAD LENGTHY ACCESS TO THE JOINT TEST REPORTS

In attempting to justify additional time to file comments and reply comments on the Joint Test Reports, the Part 15 Coalition seems to suggest some element of surprise by the Commission's release of its public notice "on the eve of Thanksgiving."³ In reality, three of the Coalition members have already presented to the Commission their "preliminary observations" regarding the results of the Joint Test Reports.⁴ Additional Coalition members fought for the release of the public notice, filing letters and meeting with the Commission over many months to urge its issuance,⁵ most recently submitting letters on November 15th⁶ and 16th,⁷ the week before the public notice's release. Given the Coalition's significant advocacy for the adoption of

³ See *Part 15 Coalition Extension Request* at unnumbered page 3.

⁴ See, e.g., Letter from Stephen E. Coran, Counsel for WISPA; Laura Stephani, Counsel for Itron, Inc.; Lawrence J. Movshin, Counsel for Landis+Gyr Company, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice, WT Docket 11-49, at 1 (Nov. 8, 2012) (disclosing meeting in which the Part 15 parties provided their "preliminary observations" regarding the results of the joint test process).

⁵ See, e.g., *id.* (urging the Commission to place the Joint Test Reports on public notice for comment); Letter from Laura Stephani, Counsel for Itron, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice, WT Docket 11-49, at 2 (July 2, 2012) (urging the Commission to place the Joint Test Reports on public notice for comment).

⁶ See Letter from Robert Henes, VP Contracts and Proposals, Elster Solutions, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice, WT Docket 11-49, at 1 (Nov. 15, 2012) ("*Elster Solutions Letter*") (urging the Commission to place the Joint Test Reports on public notice for comment).

⁷ See Letter from Stephen E. Coran, Counsel for WISPA to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Oral Ex Parte Presentation, WT Docket 11-49, at 1 (Nov. 16, 2012) (urging the Commission to place the Joint Test Reports on public notice).

the public notice, the Coalition members should not now be permitted to argue that they were somehow caught off guard and require additional time to prepare their responses.

The information contained in the Joint Test Reports is exceedingly familiar to many of the Part 15 Coalition members and to its legal counsel, having worked jointly with Progeny to develop and conduct the tests that form the basis of the reports. The final versions of the Joint Test Reports were shared with many of the Part 15 Coalition members and its legal counsel on October 31, 2012 concurrently with their filing to the Commission. Draft versions of the reports were also prepared, reviewed and edited by many of the Coalition members and its legal counsel in the months proceeding the October 31, 2012 filing. Many of the Coalition members and its legal counsel are therefore intimately familiar with the contents of the Joint Test Reports.

The Coalition argues that additional time remains necessary for those Coalition members that did not participate in the joint test process.⁸ Nearly all of the Coalition members, however, are longstanding participants in this proceeding, having filed comments on Progeny's M-LMS network design, including comments arguing that the Commission should require Progeny to undertake the additional Part 15 testing that formed the basis of the Joint Test Reports,⁹ and urging that the results of the Joint Test Reports be placed on public notice for comment. The most recent of these letters was submitted by Elster Solutions,¹⁰ which was not actively involved

⁸ *Part 15 Coalition Extension Request* at unnumbered page 3.

⁹ See Letter from Jack Richards, Counsel to the American Petroleum Institute, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Communication, WT Docket 11-49, at 1 (June 14, 2012) (urging the Commission to require Progeny to undertake additional Part 15 testing); Letter from Brett Kilbourne, Vice President and Deputy General Counsel, Utilities Telecom Council, to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Communication, WT Docket 11-49, at 1 (May 3, 2012) (same).

¹⁰ See *Elster Solutions Letter* at 1 (noting the filing of the Joint Test Reports and urging that they be placed on public notice for comment).

in the additional Part 15 testing, but was nonetheless clearly aware that the Joint Test Reports were filed with the Commission and made public for review prior to the November 20, 2012 release of the Commission's public notice. No justification exists for the Coalition members to have delayed their review of the Joint Test Reports until the Commission released its public notice. Further, to the extent that some or all the Part 15 Coalition may be planning to file consolidated comments and/or reply comments on the Joint Test Reports, the Coalition already has the benefit of legal counsel that has been intimately involved throughout this proceeding.

II. THE FACT THAT BRIEF PORTIONS OF TWO JOINT TEST REPORTS ARE CONFIDENTIAL DOES NOT JUSTIFY A COMMENT PERIOD EXTENSION

The Coalition further argues that additional time is needed because brief portions of two of the Joint Test Reports were identified as confidential by two of the Coalition members prompting the Commission to release a Protective Order governing access to this redacted information. As the Commission is aware, the redacted portions of the Joint Test Reports are exceedingly brief, they do not include any of the actual test results, and they are of only marginal relevance to a review and analysis of the test findings. Any additional insight that might be provided by access to the redacted information could easily be considered by a party after it enters into a protective agreement allowing it access to the confidential data.

The Commission has previously rejected requests for extensions of comment deadlines based on the existence of a Protective Order noting that compliance with the Commission's confidentiality procedures "need not be time-consuming."¹¹ Further, given the fact that two of

¹¹ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, Order, FCC 10-536, ¶ 6 (Mar. 26, 2010); see also *Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations*, Order, DA 11-952, ¶ 3 (May 25, 2011) (denying extension request because "third parties have been able to file to request access to the unredacted copy of the application since the release of the protective order in this proceeding").

the Coalition members were the parties that sought confidential treatment for brief portions of the Joint Test Reports, it should come as no surprise to the Coalition members that written arrangements would be needed to provide access to the redacted information. Itron and Landis+Gyr indicated as early as July 2012 that they would seek to have portions of the Joint Test Reports subject to confidential treatment. Progeny promptly addressed this development by entering into Nondisclosure Agreements (“NDAs”) with Itron and Landis+Gyr giving Progeny access to the confidential information. The Coalition members could have just as easily entered into NDAs with each other. The Coalition should not now be permitted to argue that its lack of diligence in addressing this issue should justify an extension of the comment or reply comment deadlines.

III. THE PART 15 PARTIES ARE DISINGENUOUS IN ARGUING THAT THE COMMISSION MAY CONDUCT AN INADEQUATE REVIEW OF PROGENY’S M-LMS NETWORK

Apparently aware that it lacks a valid basis to justify an extension of the comment period, the Part 15 Coalition chastises the Commission, suggesting that it may be engaged in a “rushed analysis that may lack sufficient analytical rigor.”¹² The Coalition compounds this by arguing that the Commission “must be certain that it makes accurate findings” and “should be absolutely certain” of those findings.¹³

As the Coalition is aware, the Commission’s review of Progeny’s M-LMS network design has been extensive, lengthy, and thorough. The Commission began its formal examination of Progeny’s M-LMS network design in March 2011 in the context of Progeny’s request for waiver of certain outdated and unnecessary M-LMS technical rules. Progeny

¹² *Part 15 Coalition Extension Request* at unnumbered page 3

¹³ *Id.*

proposed to operate its M-LMS network using one-way beacon transmissions with a duty cycle (instead of two-way transmissions without a duty cycle), resulting in exponentially reduced M-LMS transmissions in the 902-928 MHz band and vastly less potential for interference to Part 15 devices. Progeny's waiver request was placed on public notice on March 10, 2011,¹⁴ prompting comments from some the Part 15 Coalition members.¹⁵ Following nearly ten months of deliberation, the Commission released an order granting waivers to Progeny and acknowledging that Progeny's M-LMS network design "takes the goal of minimizing interference to other users into account" and Progeny's statements in this regard "demonstrate that it intends to design its system so as to maintain the coexistence of the many varied users in the band."¹⁶

Progeny concurrently engaged an independent test firm to conduct thorough and comprehensive tests of Progeny's M-LMS network, the results of which were filed with the Commission on January 27, 2012. Progeny also filed a detail technical description of Progeny's M-LMS network design, its method of operations, and the numerous measures employed by Progeny to avoid causing unacceptable levels of interference to Part 15 devices. The

¹⁴ Wireless Telecommunications Bureau Seeks Comment on Request by Progeny LMS, LLC For Waiver of Certain Multilateration Location and Monitoring Service Rules, WT Docket No. 11-49, *Public Notice*, DA 11-446, 26 FCC Rcd 3495 (WTB 2011).

¹⁵ *See Comments of IEEE 802*, WT Docket No. 11-49 (Jan. 25, 2012) (Coalition member John Notor (Notor Research) appears to be a member of IEEE 802); *Reply Comments of Cellnet Technology, Inc., a Landis+Gyr Company*, WT Docket No. 11-49 (Apr. 11, 2011); *Comments of Itron, Inc.*, WT Docket No. 11-49 (Mar. 25, 2011).

¹⁶ *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, WT Docket No. 11-49, DA 11-2036, ¶ 26 (Dec. 20, 2011).

Commission placed these materials on public notice on February 14, 2012,¹⁷ prompting additional and extensive comment from many of the Coalition members.¹⁸

In response to requests by Coalition members, the Commission also instructed Progeny to engage in a second round of tests, this time jointly with three of the Coalition members. The development and execution of the joint tests took about four months to complete and resulted in the Joint Test Reports that are the subject of this proceeding. The most exhaustive of the joint tests (those involving Itron) were completed in July 2012 and the results of those tests have been available ever since to Itron and to the Coalition's legal counsel.

The Coalition members that now seek to delay the comment deadline for the Joint Test Reports are many of the same parties that have been actively involved in this proceeding from its beginning. These parties should acknowledge that the Commission has engaged in a very concerted, detailed and exhaustive analysis of Progeny's M-LMS network design. Further, the Coalition members should not be granted an extension of the comment or reply comment deadlines for the Joint Test Reports. Instead, the Commission should promptly conclude this lengthy proceeding in order to permit Progeny to begin providing position location services to support the public safety community.

¹⁷ See *The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny's M-LMS Field Testing Report*, Public Notice, DA 12-209 (Feb. 14, 2012).

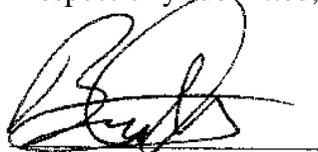
¹⁸ See *Comments of Itron, Inc. on Progeny Test Report*, WT Docket No. 11-49 (March 15, 2012); *Comments of Cellnet Technology, Inc., a Landis+Gyr Company*, WT Docket No. 11-49 (March 15, 2012); *Comments of the Wireless Internet Service Providers Association*, WT Docket No. 11-49 (March 15, 2012); *Reply Comments of IEEE 802*, WT Docket No. 11-49 (March 23, 2012).

IV. CONCLUSION

The Joint Test Reports have been in the public record since October 31, 2012 and have been available to many of the Coalition members and to its legal counsel in draft form for many months before then. Many of the Coalition members and the Coalition's legal counsel have also known since July that brief portions of the report would be subject to confidential treatment. The Coalition members had ample time to enter into nondisclosure arrangements to gain access to this redacted information. The fact that they may not have done so is nevertheless irrelevant given the fact that the redacted information is very brief, does not include any of the test results, and would be of little benefit to an entity seeking to prepare and file comments. Further, an interested party can secure access to these brief portions of the reports by entering into a protective agreement.

Given these facts, the Commission should not extend the deadline for filing comments or reply comments on the Joint Test Reports. The Commission should instead retain the existing pleading cycle and promptly issue a decision providing closure to its lengthy and thorough review of Progeny's L-LMS network design. Prompt action is justified to enable Progeny to begin providing position location services to support the critical needs of first responders.

Respectfully submitted,



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