



Federal Communications Commission  
Washington, D.C. 20554

FCR, Inc.  
4832 Givens Court  
Sarasota, FL 34242

DA 05-541

Attention: Bruce E. Fox

RE: Request for extension of five-year  
construction requirement  
Call Signs: WPOJ871, WPOJ872,  
WPOJ873, WPOJ874, and WPOJ875

Dear Mr. Fox:

On June 18, 2004, you filed FCC Form 601 for the above referenced call signs<sup>1</sup> to request a three-year extension of time for FCR, Inc. (FCR) to meet the five-year construction requirement for its Multilateration Location and Monitoring Service (M-LMS) licenses authorized to operate in the 902-928 MHz M-LMS frequency band. For the reasons set forth below, we grant FCR's request.<sup>2</sup>

Pursuant to 1.946(e) of the Commission's rules,<sup>3</sup> an extension of time may be granted if the licensee shows failure to complete construction is due to causes beyond its control. You contend FCR has met the requirements of this provision because FCR has attempted to obtain equipment to meet its requirements, but there is no M-LMS equipment available.<sup>4</sup> You note M-LMS systems are unique because they must operate within particular technological parameters (*e.g.* co-existing with unlicensed devices and amateur radio service operations). As a result, the development of technology for this band has been extremely slow and there is no commercially viable M-LMS equipment currently available.<sup>5</sup> As further evidence to matters beyond FCR's control, you point out Progeny has filed a Petition for Rulemaking with the Commission to change the M-LMS rules, which has resulted in uncertainty in the band for any entity that would attempt to produce M-LMS equipment.<sup>6</sup>

On December 8, 2004, the Wireless Telecommunications Bureau granted Warren C. Havens (Havens), an M-LMS licensee, a three-year extension of his M-LMS five-year construction requirement. The relief was granted to Havens based upon the existence of "unique factual circumstances [specifically, the lack of commercially available M-LMS equipment] and strict

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<sup>1</sup> See Universal Licensing System file numbers 0001778449 through 0001778454.

<sup>2</sup> We note FCR's request was filed in a timely manner – the first construction deadline was July 14, 2004.

<sup>3</sup> 47 C.F.R. § 1.946(e).

<sup>4</sup> Request for Extension of Time, Exhibit 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id. at 2.*

application of the construction requirement would be contrary to the public interest.”<sup>7</sup> FCR is similarly situated insofar as the unique sharing constraints presented by the M-LMS band have resulted in a lack of M-LMS equipment leaving FCR unable to fulfill its five-year construction requirement. As with Havens, we believe the three-year extension should be sufficient for M-LMS licensees to actively pursue equipment development to provide service within the three-year window. Accordingly, pursuant to section 1.946(e) of the Commission’s rules, we find a three-year extension of the construction requirement will serve the public interest.<sup>8</sup>

Accordingly, FCR’s five-year construction requirement is hereby extended until July 14, 2007 for each of the licenses referenced above.

Sincerely,

Thomas Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>7</sup> In the Matter of Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for his Multilateration Location and Monitoring Service Economic Area Licenses, DA No. 04-3864, 2004 WL 2848137 (FCC) (WTB Dec. 9, 2004), at ¶7.

<sup>8</sup> 47 C.F.R. § 1.946(e).