

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

In the Matter of
Multilateration Location and Monitoring
Service Construction Requirements

ORDER ON RECONSIDERATION,
AND MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2007

Released: January 31, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. For the reasons stated below, the Mobility Division (Division) hereby denies the petitions for reconsideration filed by Warren Havens (Havens)1 of the orders granting FCR, Inc. (FCR) and Progeny LMS, LLC (Progeny) three additional years to meet the five-year construction requirement for certain multilateration Location and Monitoring Service (M-LMS) Economic Area (EA) licenses.2 We also grant requests for additional time to meet the 5-year requirement filed by various licenses. Further, on our own motion, we grant Telesaurus two additional years to meet the 5-year requirement for certain licenses (previously afforded more time to meet that requirement), and extend the 10-year requirement for such licenses two years.

I. BACKGROUND

2. In 1995, the Commission established LMS as a new service in the 902-928 MHz band,3 which is shared by myriad users and allocated on a primary basis to federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment. Federal fixed and mobile services are allocated next. M-LMS licensees are tertiary. Amateur radio operations are last in priority among licensed uses.4 Part 15 unlicensed devices also intensively use the band.5

3. Multilateration LMS systems track and locate objects over a wide geographic area (e.g., tracking a bus fleet) by measuring the difference in time of arrival or phase, of signals

1 Three entities related to Havens —Telesaurus Holdings GB, LLC (Telesaurus), Telesaurus VPC, LLC (TVL), and the AMTS Consortium LLC (ACL) — joined in each petition. We refer to Havens, Telesaurus, TVL, and ACL collectively as Havens.

2 An M-LMS licensee must cover one-third and two-thirds of an EA’s population within five and ten years of initial license grant, respectively. See 47 C.F.R. § 90.155(d).

3 Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, 10 FCC Rcd 4695 (1995) (LMS Report and Order).

4 47 C.F.R. § 97.301.

5 M-LMS licensees must demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices 47 C.F.R. § 90.353(d).

transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit that is to be located. Non-multilateration LMS systems transmit data to and from objects passing through particular locations (e.g., automated tolls), and are licensed site-by-site.

4. The Commission auctioned M-LMS licenses in 1999 and 2001 (Auctions 21 and 39).⁶ Licensees must construct and operate a sufficient number of base stations to serve one-third and two-thirds of an EA's population within five and ten years of initial license grant, respectively.⁷ Under Sections 1.946(c) and 1.955(a)(2) of the Commission's rules,⁸ an M-LMS license will terminate automatically as of the construction deadline if the licensee fails to meet the construction requirement, unless it obtains an extension of time to construct under Section 1.946(e),⁹ or a waiver of the construction requirement under Section 1.925.¹⁰ In 2003, Havens requested more time to meet the 5-year construction requirement. The Division granted Havens three additional years to meet the 5-year requirement,¹¹ and subsequently granted FCR and Progeny similar relief.¹² In March 2006, the Commission commenced a rulemaking regarding possible refinements of the M-LMS rules,¹³ which is pending.

5. When the Commission adopted LMS rules in 1995, it expected that both M-LMS and non-multilateration LMS systems would play a central role in emerging advanced radio transportation-related services.¹⁴ Non-multilateration systems flourished remarkably since 1995 with more than 2,000 sites licensed to state and local governments, railroads, and other entities. By contrast, no M-LMS licensee provides service today. The Commission's equipment authorization records, moreover, reveal that the FCC has approved only five M-LMS devices from 1996 to the present. And the record before us confirms that no viable M-LMS equipment is available for deployment in the United States today.

⁶ "Location and Monitoring Service Auction Closes, Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service," *Public Notice*, 14 FCC Rcd 3754 (1999); Public Coast and Location and Monitoring Service Spectrum Auction Closes, Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 12509 (2001).

⁷ 47 C.F.R. § 90.155(d).

⁸ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

⁹ An extension of time to complete construction may be granted where the licensee demonstrates that the failure to complete construction is due to causes beyond its control. 47 C.F.R. § 1.946.

¹⁰ Under Section 1.925, a waiver may be granted provided the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925.

¹¹ Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for his Multilateration Location and Monitoring Service Economic Area Licenses, *Memorandum Opinion and Order*, 19 FCC Rcd 23742 (WTB MD 2004) (*Havens M-LMS Order*).

¹² Request for Extension of Five-Year Construction Requirement, *Letter*, 20 FCC Rcd 4293 (WTB MD 2005) (*FCR Order*); Request of Progeny LMS, LLC for a Three-Year Extension of the Five-Year Construction Requirement for its Multilateration Location And Monitoring Services Economic Area Licenses, *Memorandum Opinion and Order*, 21 FCC Rcd 5928 (WTB MD 2006) (*Progeny Order*).

¹³ Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, WT Docket No. 06-49, *Notice of Proposed Rulemaking*, 21 FCC Rcd 2809 (2006).

¹⁴ *LMS Report and Order*, 10 FCC Rcd at 4698 ¶ 5.

II. DISCUSSION

6. We deny Havens Petition for Reconsideration of the *FCR Order*.¹⁵ Foremost, as Havens acknowledges, there is no M-LMS equipment available for deployment in the United States. And, as noted in the *FCR Order*, “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.”¹⁶ We find no basis on the record before us to overturn the *FCR Order*.

7. We deny Havens’ Petition for Reconsideration of the *Progeny Order*.¹⁷ We note that the record demonstrates that Progeny made varied efforts to develop M-LMS equipment and applications, but to no avail. Factors that supported the grant of additional time to Havens apply equally to Progeny, including the lack of available M-LMS equipment make construction impossible,¹⁸ and complex spectrum sharing hindering the ability to secure such equipment.¹⁹

8. We have reviewed the request of Helen Wong-Armijo, filed September 14, 2006, for three additional years to meet the 5-year requirement, and find that the failure to complete construction is due to causes beyond her control,²⁰ and that the public interest would be served by granting her more time to construct.²¹ Further, based on the totality of the record, we find that strict application of the construction requirement would be contrary to the public interest, and that granting additional time to construct will serve the public interest.²²

9. We have reviewed the request of FCR, filed September 14, 2006, for three additional years to meet the 5-year requirement for certain licenses, and find that the failure to complete construction is due to causes beyond its control,²³ and that the public interest would be served by granting it a three-year extension of time.²⁴ Further, based on the totality of the record, we find that strict application of the construction requirement would be contrary to the public interest, and that granting additional time to construct will serve the public interest.²⁵

10. We have reviewed FCR’s request, filed January 18, 2007, for two more years to meet the 5-year requirement for five licenses previously afforded three additional years to meet that requirement. We find that the failure to complete construction is due to causes beyond its

¹⁵ See Havens Petition for Reconsideration or Alternative Action, Erratum Version (Apr. 4, 2005).

¹⁶ 20 FCC Rcd 4293.

¹⁷ Havens also filed a Reply to Opposition (filed July 13, 2006), and an Amended Reply to Opposition (filed July 19, 2006). Progeny filed an Opposition to Petition for Reconsideration (filed July 3, 2006), and an Amended Opposition to Petition for Reconsideration (filed July 5, 2006).

¹⁸ *Havens M-LMS Order*, 19 FCC Rcd at 23744 ¶7.

¹⁹ See *supra* para 2.

²⁰ See also *Havens M-LMS Order*, 19 FCC Rcd at 23746 ¶10 (“failure to complete construction was due to causes beyond” the control of Havens).

²¹ See 47 C.F.R. § 1.946.

²² See 47 C.F.R. § 1.925.

²³ See also *Havens M-LMS Order*, 19 FCC Rcd at 23746 ¶10 (“failure to complete construction was due to causes beyond” the control of Havens).

²⁴ See 47 C.F.R. § 1.946.

²⁵ See 47 C.F.R. § 1.925.

control,²⁶ and that the public interest would be served by granting it additional time.²⁷ Further, based on the totality of the record, we find that strict application of the construction requirement would be contrary to the public interest, and that granting additional time to construct will serve the public interest.²⁸ We also, on our own motion, extend the 10-year requirement for such licenses by two years.

11. We have reviewed the request of Telesaurus, filed October 4, 2006, for three additional years to meet the 5-year requirement for certain licenses, and find that the failure to complete construction is due to causes beyond its control,²⁹ and that the public interest would be served by granting it a three-year extension of time.³⁰ Further, based on the totality of the record, we find that strict application of the construction requirement would be contrary to the public interest, and that granting additional time to construct will serve the public interest.³¹ We decline to find that Telesaurus's opposition to the pending rulemaking regarding possible refinements of the M-LMS rules warrants its request for more time to construct.

12. Finally, on our own motion, we grant Telesaurus two additional years to meet the 5-year requirement for certain licenses (previously afforded more time to meet the requirement). We take this action *sue sponte* because there is less than six months remaining for Telesaurus to meet the construction requirement and no M-LMS equipment is available to meet this obligation. We also, on our own motion, extend the 10-year requirement for such licenses by two years.

III. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration or Alternative Action, of Telesaurus Holdings GB, LLC, et al., Erratum, April 4, 2005, and the Petition for Reconsideration of Telesaurus Holdings GB, LLC, et al., filed June 23, 2006, ARE DENIED.

14. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, 90.155(d), that the request of FCR, Inc., filed on September 14, 2006, for a three-year extension of time to meet the five-year construction requirement for its multilateration Location and Monitoring Service Economic Area licenses, File Nos. 0002752062 - 0002752069, IS GRANTED, and that the construction deadline is HEREBY EXTENDED until October 5, 2009.

15. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946 and 90.155(d) of the Commission's

²⁶ See also *Havens M-LMS Order*, 19 FCC Rcd at 23746 ¶10 ("failure to complete construction was due to causes beyond" the control of Havens).

²⁷ See 47 C.F.R. § 1.946.

²⁸ See 47 C.F.R. § 1.925.

²⁹ See also *Havens M-LMS Order*, 19 FCC Rcd at 23746 ¶10 ("failure to complete construction was due to causes beyond" the control of Havens).

³⁰ See 47 C.F.R. § 1.946.

³¹ See 47 C.F.R. § 1.925.

rules, 47 C.F.R. §§ 1.925, 1.946, 90.155(d), that the request of FCR, Inc., filed on January 18, 2007, for additional time to meet the five-year construction requirement for its multilateration Location and Monitoring Service Economic Area licenses, File Nos. 0002882775 - 0002882779, IS GRANTED, and that the construction deadline is HEREBY EXTENDED until July 14, 2009.

16. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.3, 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, 1.946, 90.155(d), that FCR, Inc., BE GRANTED additional time to meet the ten-year construction requirement for multilateration Location and Monitoring Service Economic Area licenses, Call Signs WPOJ871 - WPOJ875, and that the construction deadline is HEREBY EXTENDED until July 14, 2011.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, 90.155(d), that the request of Helen Wong-Armijo, filed on September 14, 2006, for a three-year extension of time to meet the five-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licenses, File Nos. 0002751940 - 0002752023, IS GRANTED, and that the construction deadline is HEREBY EXTENDED until October 5, 2009.

18. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946, 90.155(d), that the request of Telesaurus Holdings GB, LLC, filed on October 4, 2006, for a three-year extension of time to meet the five-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licenses, File Nos. 0002775136 - 0002775178, IS GRANTED, and that the construction deadline is HEREBY EXTENDED until October 5, 2009.

19. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.3, 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, 1.946, 90.155(d), that Telesaurus Holdings GB, LLC, BE GRANTED additional time to meet the five-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licenses, Call Signs WPOJ876 - WPOJ927, and that the five-year construction deadline is HEREBY EXTENDED until July 14, 2009.

20. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.3, 1.925, 1.946 and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, 1.946, 90.155(d), that Telesaurus Holdings GB, LLC, BE GRANTED additional time to meet the ten-year construction requirement for certain multilateration Location and Monitoring Service Economic Area licenses, Call Signs WPOJ876 - WPOJ927, and that the ten-year construction deadline is HEREBY EXTENDED until July 14, 2011.

21. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
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Wireless Telecommunications Bureau