

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

In the matter of	)	
	)	
Application for Transfer of Control of Progeny	)	ULS File No. 0003250058
LMS LLC to Progeny LMS Holdings LLC	)	
	)	
and	)	
	)	
Notification of the Consummation of the Transfer	)	ULS File No. 0003274382
of Control of Progeny LMS LLC to Progeny LMS	)	
Holdings LLC	)	

ORDER

Adopted: May 31, 2012**Released: May 31, 2012**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. For the reasons set forth below, the we hereby deny the Petition for Reconsideration and, in the alternative, Petition to Deny or Informal Request for Action under Section 1.41,¹ filed by Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, and Telesaurus-VPC LLC, along with Warren Havens (collectively, “Petitioners”),² of the Wireless Telecommunications Bureau’s (“Bureau”) grant of the above-captioned application (“Application”)³ seeking approval of the transfer of control of Progeny LMS, LLC (“Progeny LMS”) to Progeny LMS Holdings LLC (“Progeny Holdings”)⁴ and the acceptance of the notification of consummation of this

¹ Petition for Reconsideration and in the Alternative, Petition to Deny or Request under Section 1.41, filed by Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, and Telesaurus-VPC LLC, and Warren Havens (filed Jan. 11, 2008; amended Jan. 14, 2008) (“Petition”). The Petitioners filed an “errata copy” of the Petition for Reconsideration and an amended certificate of service. For convenience, when referring to the Petition for Reconsideration, we are referring to the amended copy that was filed on January 14, 2008.

² Warren Havens is the President of Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, and Telesaurus-VPC LLC. As such, Progeny frequently refers to the Petitioners as “Havens.” Where “Havens” appears in a quotation from Progeny, such references should generally be read to include the Petitioners as a group and not solely Mr. Havens.

³ Application of Progeny LMS, LLC Transfer of Control Application from Progeny LMS, LLC to Progeny LMS Holdings, LLC, Universal Licensing System (“ULS”) File No. 0003250058 (filed Dec. 7, 2007; consented Dec. 8, 2007).

⁴ The Progeny companies were referenced differently by the various parties in their filings. To avoid confusion, we refer to the Progeny companies collectively as “Progeny” throughout this order except where reference to a specific Progeny company is necessary or useful. References to “pre-transfer Progeny” and “post-transfer Progeny” are also utilized where reference to the ownership and control of Progeny LMS and/or the Progeny Licenses before and after the transfer of control are at issue.

transaction (“Petition”).⁵ Furthermore, we deny Petitioners’ requests that the licenses held by Progeny LMS be canceled and offered to the qualified high bidder in the Location and Monitoring Service (“LMS”) Auction 21,⁶ or that the Federal Communications Commission (“FCC” or “Commission”) hold a formal evidentiary hearing to consider the allegations raised in this proceeding to determine whether Progeny’s licenses are valid.⁷

II. BACKGROUND

2. In 1995, the Commission established the Location and Monitoring Service (“LMS”) as a radio service to be licensed in the 902-928 MHz spectrum band.⁸ There are two types of LMS systems: multilateration systems⁹ and non-multilateration systems.¹⁰ The M-LMS licenses were auctioned by the Commission in 1999 and 2001 (Auctions 21 and 39).¹¹ The licenses at issue here are M-LMS licenses that were auctioned in Auction 21.¹² Both Progeny LMS and Petitioners hold many M-LMS licenses and both participated and were winning bidders in Auction 21.¹³

3. *M-LMS Auction 21.* Progeny LMS filed a short-form application (“Form 175”), on January 25, 1999, to participate in M-LMS Auction 21.¹⁴ In its Form 175, Progeny LMS disclosed that it was a limited liability company, organized under the laws of Indiana, whose sole member was Progeny Post, LLC (“Progeny Post”). Progeny Post was a limited liability company, organized under the laws of Indiana, with eleven members. Curtis L. Johnson was reported as having a 60.79 percent ownership interest in Progeny Post; whereas, the other ten members, including Otto N. Frenzel III (“Frenzel”), were listed as holding less than a 10 percent interest in Progeny Post.¹⁵ In this auction, Progeny LMS applied for a 35 percent bidding credit as a very small business.¹⁶ Progeny LMS reported it had no gross revenues and Progeny Post had average gross revenues for the preceding three years that were less than \$3 million.¹⁷ Progeny LMS reported that Progeny Post held interests in seven affiliates, all of which were

⁵ Required Notification of Transfer of Control, ULS File No. 0003274382 (filed Jan. 3, 2008) (“Notification of Consummation”).

⁶ Petition at 1-2.

⁷ *Id.* at 2.

⁸ 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*”).

⁹ Multilateration systems track and locate objects over a wide geographic area by measuring the difference in time of arrival, or difference in phase, of signals 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.

¹⁰ Non-multilateration systems transmit data to and from objects passing through particular locations (*e.g.*, automated tolls, monitoring of railway cars) and are licensed on a non-exclusive basis using site-by-site licensing.

¹¹ 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 (WTB 1999) (“Winning Bidder Public Notice”); Public Coast and Location and Monitoring Service Spectrum Auction Closes, Winning Bidders Announced, *Public Notice*, 16 FCC Rcd 12509 (WTB 2001).

¹² See Winning Bidder Public Notice.

¹³ *Id.* at Attachment A.

¹⁴ Progeny, LMS, LLC, Form 175, File No. 0211049154 (filed Jan. 25, 1999) (“Form 175”).

¹⁵ Form 175, Attachment A.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at Exhibit C.

inactive and had no reportable gross revenues.¹⁸

4. After the conclusion of Auction 21, the Commission released a public notice announcing the winning bidders. Both Progeny LMS and Warren Havens were listed on this Closing Public Notice as winning bidders for licenses.¹⁹ On March 18, 1999 and March 22, 1999, Progeny filed and amended, respectively, a long-form application (“March 1999 Form 601”) to apply for the 228 licenses for which it was the high bidder.²⁰ The March 1999 Form 601 disclosed that Progeny LMS had two members – Progeny Post, which held 79 percent of the ownership interests, and Lawrence R. Green, which held 21 percent of the ownership interests.²¹ Progeny reported that Curtis Johnson held a 65.5 percent interest in Progeny Post and that the other twelve members, including Frenzel, did not hold a 10 percent or greater interest.²² Progeny also provided information regarding LMS Spectrum Partners, LLC (“LMS Spectrum”), a wholly-owned subsidiary of Progeny LMS, because it was considering having the LMS licenses issued to this subsidiary.²³ Progeny reported gross revenues for Progeny LMS, Progeny Post, and LMS Spectrum.²⁴

5. On June 15, 1999, Progeny LMS amended the Form 601 to add a request for waiver of the Commission’s rules to permit the late filing of the Form 602 (“June 1999 Form 601”).²⁵ The waiver states that Progeny LMS and LMS Spectrum were not aware that a Form 602 was required.²⁶ On November 8, 1999, Progeny LMS filed amendments to the Form 601 (“November 1999 Form 601”) to report that Frenzel, who was listed on the Form 175 and March 1999 Form 601 as a member of Progeny Post holding less than a 10 percent interest, was the sole owner of Progeny LMS.²⁷ Progeny amended the gross revenue information to reflect that Frenzel was the sole owner of Progeny LMS. Progeny LMS continued to report that it had no revenues for the previous three years and provided gross revenue information for Frenzel. The application further states that Progeny LMS and Frenzel had no affiliates.²⁸ It reported that Progeny LMS, as controlled by Frenzel, had gross revenues averaging less than 3 million for the preceding 3 years.²⁹

¹⁸ *Id.* at Exhibits A and C.

¹⁹ Winning Bidder Public Notice at Attachment A.

²⁰ Progeny LMS, LLC, Form 601, ULS File No. 0000006894 (filed Mar. 18, 1999; amended Mar. 22, 1999). The original Form 601 was filed on March 18, 1999, but does not contain any attachments. For convenience, when discussing the originally-filed Form 601, we will refer to the amended Form 601 filed on March 22, 1999 Form 601 (“March 1999 Form 601”).

²¹ March 1999 Form 601, Exhibit A, at 1-2.

²² *Id.* at 2.

²³ *Id.* at 1 n.1.

²⁴ March 1999 Form 601, Exhibit C. Progeny LMS reported that it held an interest in one entity and that Progeny Post held interests in five entities, but none of these entities had gross revenues. March 1999 Form 601, Exhibit A, at 3.

²⁵ June 1999 Form 601, Exhibit F.

²⁶ *Id.*

²⁷ November 1999 Form 601, Exhibit A. Progeny filed “proposed” amendments to its Form 601 on October 29, 2009. October 29, 1999 Form 601. The October 29, 1999 Form 601 states that the amendments reporting the information regarding Frenzel were proposed amendments. These amendments were no longer proposed when the November 1999 Form 601 was filed. For convenience, when referring to these amendments, we only cite to the November 1999 Form 601.

²⁸ November 1999 Form 601, Exhibit C.

²⁹ *Id.*

6. The application also included a “conditional waiver request” in which Progeny LMS requested a “waiver of certain FCC application processing policies so that it [could] amend its application to seek FCC recognition that [Frenzel was] the owner and controlling party of [Progeny LMS].”³⁰ Progeny LMS explained that the “this Amendment is being tendered to effectuate a settlement, not to improve the comparative position of the Applicant.”³¹ Progeny further states that “the FCC should, if necessary, waive its rules and policies relating to real-party-in-interest, major changes to applications, post-auction filing procedures, and any other rules or policies that would otherwise preclude the agency from recognizing the Parties’ settlement and Progeny LMS, L.L.C., with the ownership as described herein, as the Applicant.”³² Progeny LMS also filed an updated Form 602 reporting Frenzel as the sole member of the limited liability company.³³

7. On December 6, 1999, the Progeny LMS application was placed on public notice as accepted for filing and a pleading cycle for comment was established.³⁴ The December 1999 Public Notice explained that Progeny LMS initially filed a Form 601 identifying Progeny Post and Lawrence Green as sole members of Progeny LMS and Curtis Johnson as CEO of Progeny Post. It also disclosed that Frenzel had an indirect interest in Progeny Post and that he loaned \$1.35 million to Progeny Post and executed another note for \$1.9 million to a subsidiary of Progeny LMS. The December 1999 Public Notice further stated that Frenzel filed an emergency motion for preliminary injunction in Indiana State Court and simultaneously filed a motion for declaratory and injunctive relief with the Commission requesting that the Commission temporarily stay further processing of Progeny LMS’ Form 601. The December 1999 Public Notice also explained that Progeny LMS filed an amended Form 601 with Frenzel as the sole member and noted that documents related to the Indiana court proceedings were available for public inspection.³⁵ No petitions were received.

8. On May 4, 2000, the Bureau announced that it was prepared to grant Progeny’s applications upon full and timely payment of the remaining balance of each applicant’s winning bids.³⁶ On July 19, 2000, the Bureau granted 228 M-LMS licenses to Progeny LMS.³⁷

9. *Transfer of Control Application.* On December 7, 2007, Progeny LMS filed an application seeking consent to the transfer of control of 228 M-LMS licenses from Progeny LMS to Progeny Holdings.³⁸ The Application states that Progeny LMS was “50.18 [percent] owned and controlled by Otto N. Frenzel.”³⁹ The remaining 49.82 percent interest in Progeny LMS was held by other members, which each held less than a 10 percent interest.⁴⁰ The applicants were seeking to create a holding company,

³⁰ See November 1999 Form 601, Exhibit F.

³¹ November 1999 Form 601, Exhibit F, at 3.

³² *Id.* at 1-2.

³³ Progeny LMS, LLC, Form 602 (Oct. 27, 1999).

³⁴ Location and Monitoring Service Application Accepted for Filing, *Public Notice*, 15 FCC Rcd 1591 (WTB 1999) (“December 1999 Public Notice”).

³⁵ *Id.*

³⁶ Wireless Telecommunication Bureau Announces it is Prepared to Grant Location and Monitoring Service Licenses after Final Payment is Made, *Public Notice*, 15 FCC Rcd 7888 (WTB 2000) (“May 2000 Public Notice”).

³⁷ Wireless Telecommunication Bureau Grants 228 Location and Monitoring Service Licenses to Progeny LMS, *Public Notice*, 15 FCC Rcd 12807 (WTB 2000).

³⁸ See Application.

³⁹ Application, Attachment 1.

⁴⁰ *Id.*

Progeny LMS Holdings, in which Frenzel would hold less than 50 percent in order to admit new investors in Progeny LMS Holdings. Frenzel would surrender *de jure* and *de facto* control and as a result no one entity would exercise control over the licenses.⁴¹ After the transaction, Progeny LMS would be a wholly-owned subsidiary of Progeny Holdings. Progeny Holdings membership interests would be held as follows: 25.08 percent by Frenzel, 27.46 percent by Telecom LMS Holdings, LLC, 20.27 percent by Columbia Capital Equity Partners IV (ECI), Ltd,⁴² and the remaining 24.7 percent interest would be held by multiple members that would each hold less than a 10 percent interest. Telecom LMS Holdings, LLC is 100 percent owned and controlled by Rajendra Singh, Neera Singh, the Singh Educational Trust, and The Samir Raj Singh Educational Trust (“Singh Family”).⁴³

10. This application was consented to on December 8, 2007 and the grant appeared on public notice on December 12, 2007.⁴⁴ The transaction was consummated on December 20, 2007 and the consummation notification was filed on January 3, 2008.⁴⁵ On February 12, 2008, Form 602 was filed for Progeny LMS, LLC⁴⁶ and Progeny LMS Holding, LLC.⁴⁷ Both forms were filed with a request for waiver.

11. *Petition for Reconsideration.* On January 11, 2008, the Petitioners filed a Petition for Reconsideration or, alternatively a Petition to Deny, or request under Section 1.41 regarding the Bureau’s grant of the Application and its acceptance of the Notification of Consummation. The Petitioners challenged the Bureau’s automatic grant of the Application on numerous procedural and substantive grounds, arguing that the Application: (1) was incomplete; (2) contained false or misleading information; and (3) required waivers or declaratory rulings that were not requested. Moreover, the Petitioners claimed that Progeny LMS was not qualified to hold its current M-LMS licenses. Petitioners asked that the Bureau reverse the grant, deny the application, cancel Progeny’s licenses, and offer those licenses to the next qualified bidder in the auction.⁴⁸ Alternatively, Petitioners state that, at a minimum the Commission must hold an evidentiary hearing to consider these matters.⁴⁹

12. On January 22, 2008, Progeny LMS and Progeny Holdings filed an Opposition to the Petition for Reconsideration (“Opposition”) in which they argue that the Petition is procedurally defective, asserts factual inaccuracies, and raises largely irrelevant issues that have been long resolved in Progeny’s favor.⁵⁰

⁴¹ *Id.*

⁴² Columbia Capital Equity Partners IV (ECI), Ltd. is controlled by Columbia Capital IV, LLC. Columbia Capital IV, LLC indirectly owns 22.76% of the Applicant, because it controls an additional 2.49% indirect interest through Columbia Progeny Partners IV, Inc. See Application, Attachment 1, note 1.

⁴³ Application at Attachment 1, Exhibit B.

⁴⁴ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 3662 (WTB 2007).

⁴⁵ Notification of Consummation; Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action, *Public Notice*, Report No. 3754 (WTB 2008).

⁴⁶ Progeny LMS, LLC, Form 602, File No. 0003322280 (Feb. 12, 2008).

⁴⁷ Progeny LMS Holdings, LLC, Form 602, File No. 0003322287 (Feb. 12, 2008).

⁴⁸ Petition at 1-2. It bears noting that, in most cases, the next qualified bidder would be one of the Petitioners.

⁴⁹ Petition at 2.

⁵⁰ Opposition to Petition for Reconsideration, filed by Progeny LMS, LLC and Progeny LMS Holdings, LLC, at 1, 8-9 (filed Jan. 22, 2008).

Petitioners filed a reply to the Opposition on February 5, 2008⁵¹ (“Reply”), to which Progeny LMS and Progeny Holdings filed a further response on February 12, 2008 (“Further Response”).⁵²

III. DISCUSSION

13. After careful review of the record and considering the totality of the circumstances, we deny the Petition for the reasons set forth below. Specifically, we find that: (1) the Petitioners failed to fulfill the fundamental pleading requirements of the Commission’s rules; (2) the Petitioners’ objections to Progeny’s conduct during Auction 21 and the validity of its Licenses are untimely and procedurally deficient; (3) Progeny Holdings existed prior to the filing of the Application; (4) Progeny properly disclosed the ownership and control of the Progeny companies both before and after the transfer of control; (5) Progeny’s late-filed amendments to its Form 602 were non-fatal; (6) Petitioners’ failed to identify essential Commission rules requiring a waiver; and (7) the Application was properly granted under the Commission’s Immediate Approval Procedure (“IAP”) rules.

A. Procedural Issues

1. The Petition is Properly Considered a Petition for Reconsideration

14. The Petition was submitted as a Petition for Reconsideration or, alternatively, as a Petition to Deny or an informal request under Section 1.41. Progeny states that the Petition cannot be properly deemed a petition to deny or an informal request for action and that Petitioners did not comply with the Commission’s filing requirements for petitions for reconsideration.⁵³ Progeny asserts that the Petition is not a petition to deny because the application was consented to and consummated prior to the filing of the Petition.⁵⁴ Progeny states that, even if the Petition was considered a petition to deny, Petitioners do not meet the requirements of Section 1.939 of the Commission’s rules,⁵⁵ because this rule required that petitioners must be a party in interest and must provide “specific allegations of fact sufficient to make a prima facie showing that the petitioner is a party.”⁵⁶

15. Progeny also argues that the Petition also cannot be an informal request for action under Section 1.41 of the Commission’s rules,⁵⁷ because there are formal procedures in place to challenge the transfer of control Application under Section 1.948(j)(2)(iii) of the Commission’s rules.⁵⁸ Section 1.41 of the Commission’s rules states that informal action is appropriate “[e]xcept where formal procedures are required. . . .”⁵⁹ Section 1.948(j)(2)(iii) of the Commission’s rules states that transfers of control that are granted pursuant to the Commission’s immediate approval procedures are subject to petitions for

⁵¹ Reply to Opposition to Petition for Reconsideration and in the Alternative, Petition to Deny or Request under Section 1.41, filed by Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, and Telesaurus-VPC LLC, and Warren Havens (filed Feb. 5, 2008; amended Feb. 13, 2008) (“Reply”). The Petitioners filed an “errata copy” of the Reply and an amended certificate of service. For convenience, when referring to the Reply, we are referring to the amended copy that was filed on February 13, 2008.

⁵² Further Response to Petition for Reconsideration, filed by Progeny LMS, LLC and Progeny LMS Holdings, LLC (filed Feb. 12, 2008).

⁵³ Opposition at 2.

⁵⁴ *Id.*

⁵⁵ 47 C.F.R. § 1.939.

⁵⁶ Opposition at 2 (citing 47 C.F.R. § 1.939).

⁵⁷ 47 C.F.R. § 1.41.

⁵⁸ 47 C.F.R. § 1.948(j)(2)(iii); Opposition at 2.

⁵⁹ 47 C.F.R. § 1.41.

reconsideration.⁶⁰

16. We agree that the Petition is not accurately defined as a petition to deny or a request for informal action in this context. In the *Secondary Markets Second Report and Order*, the Commission applied the IAP Rules to all wireless services⁶¹ and clearly stated that, if an application is acted upon pursuant to IAP, the correct vehicle for challenging such an action is a petition for reconsideration.⁶² Since the Application was granted pursuant to the Commission's IAP rules, the Petition must be considered a petition for reconsideration. However, as set forth below the Petition does not satisfy the pleading requirements for petitions for reconsideration.

2. Petitioners Did Not Comply with the Commission's Rules Governing Petitions for Reconsideration

17. Progeny asserts that the Petitioners did not comply with the Commission's pleading requirements for petitions for reconsideration.⁶³ Section 1.106(b)(1) states that an entity that is not a party to a proceeding must "state with particularity the manner in which the person's interests are adversely affected by the action taken."⁶⁴ Progeny states that Petitioners are not a party to the transfer of control application and did not state how they were adversely affected by the consent to the transfer of control application.⁶⁵ Moreover, they assert that "[t]he restructuring of Progeny that resulted from the Application had no effect on Petitioners whatsoever."⁶⁶ Thus, Progeny concludes that Petitioners did not comply with the Commission's filing requirements and the Petition should be dismissed as defective.⁶⁷

18. In the Reply, Petitioners counter that they have standing, under Sections 309(d) and 405 of the Communications Act, as amended,⁶⁸ as persons whose interests are adversely affected by the Commission's action. They further assert that the facts that underlie their pleadings could not have been presented earlier due to Progeny's withholding of information.⁶⁹ However, Progeny never challenges the Petitioners' standing but rather asserts that the Petition was procedurally defective.

19. Under the Commission's Rules, since Petitioners are not parties to this proceeding, they must "state with particularity the manner in which the person's interests are adversely affected by the action taken" to bring a petition for reconsideration.⁷⁰ As noted in Section II above, the Petitioners make several allegations regarding the information included in the Application, the completeness of the Application itself, the ownership and control of Progeny LMS and Progeny Holdings, and Progeny LMS' original

⁶⁰ See 47 C.F.R. § 1.948(j)(2)(iii).

⁶¹ See In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17557-17558 ¶110 (2004) ("*Secondary Markets Second Report and Order*").

⁶² *Id.* at ¶101.

⁶³ Opposition at 2.

⁶⁴ 47 C.F.R. § 1.106(b)(1).

⁶⁵ Opposition at 3.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ 47 U.S.C. §§ 309(d), 405.

⁶⁹ Reply at 1.

⁷⁰ See 47 C.F.R. §1.106(b)(1); Wireless Co., L.P., *Order*, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

qualifications to hold the Progeny Licenses.⁷¹ However, at no point do the Petitioners state that these alleged deficiencies will cause Petitioners direct injury or provide any evidence sufficient to impute such injury. Neither do the Petitioners attempt to establish a causal link between the transfer of control and any actual harm that would befall the Petitioners as a result of its approval. Therefore, the Petitioners clearly fail to satisfy their burden under 1.106(b) and, as such, the Petition must be dismissed as procedurally defective.

3. Petitioners' Objections to Progeny's Conduct During Auction 21 and the Validity of its Licenses Are Untimely and Procedurally Deficient

20. Petitioners assert that Progeny violated the Commission's auction and licensing rules before, during, and after Auction 21.⁷² Petitioners argue that, under the Commission's rules and Commission and court precedent, these violations rendered Progeny's Auction 21 long-form application invalid.⁷³ In support of these arguments, Petitioners attach an *ex parte* filing that was originally submitted as part of the ongoing M-LMS rulemaking proceeding and includes an amended complaint filed by Otto Frenzel, Progeny LMS, and LMS Spectrum Partners, LLC against Curtis Johnson, Progeny Post LMS, LLC, and Lawrence Green in Indiana State Court as well as other public documents.⁷⁴ According to Petitioners, these documents show that Progeny LMS: (1) did not exist until after Auction 21; (2) failed to disclose the controlling interest holder's affiliates and revenues; (3) failed to ask for and receive required waivers; and (4) submitted false certifications to the Commission.⁷⁵ Petitioners also argue that this information was "kept secret" and not disclosed to the Commission at the time the Progeny Licenses were granted.⁷⁶ Petitioners cite to three cases – *McKay v. Wahlenmaier*,⁷⁷ *Biltmore v. FCC*,⁷⁸ and *Superior Oil Co. v. Udall*⁷⁹ – in support of the proposition that such "new facts" result in disqualification.⁸⁰ Petitioners also argue that Progeny does not address these legal precedents in its Opposition so it is conceding these arguments.⁸¹

21. In its Opposition, Progeny states that "[t]he circumstances raised in the Petition, such as the Indiana state court proceeding brought by Frenzel, were acknowledged in the Commission's public notice accepting Progeny's amended long-form application for filing...[t]he issues raised by Havens in the Petition have long since been put to rest by the Commission and are irrelevant to the instant proceeding."⁸² Accordingly, Progeny does not address the substantive arguments raised by the Petitioners with regard to Auction 21.

22. After careful examination of the Petitioners' allegations and the relevant Commission

⁷¹ See Petition.

⁷² Petition at 3.

⁷³ *Id.* at 4.

⁷⁴ See Petition, Exhibit 2. Exhibit 2 was originally submitted to as Telesaurus Holdings LLC, Ex Parte Presentation, WT 06-49 (May 7, 2007).

⁷⁵ See Petition at 3-4 and Exhibit 2; Reply at 3-5.

⁷⁶ Reply at 3.

⁷⁷ 226 F.2d 35 (D.C. Cir. 1955).

⁷⁸ 321 F.3d 155 (D.C. Cir. 2003).

⁷⁹ 409 F. 2d 1115 (D.C. Cir. 1969).

⁸⁰ Reply at 4.

⁸¹ *Id.* at 5.

⁸² Opposition at 8.

records, we find that the Petition does not raise novel issues or bring to light previously unknown information regarding Auction 21 or the validity of the Progeny Licenses. The issues raised by the Petitioners, including those associated with the litigation initiated by Frenzel, were considered by the Bureau in granting the Progeny Licenses.⁸³ Indeed, in the December 1999 Public Notice, the Bureau specifically referenced documents from the Indiana litigation and noted that documents relating to the court proceedings were available for public review at the Commission.⁸⁴ Petitioners do not provide any new information in their pleadings nor do they offer evidence that any relevant documents were withheld from the Commission or concealed from the public. Accordingly, Petitioners' claim that these matters were not considered by the Bureau during its deliberations or that they were somehow concealed from the public is without merit.

23. Because Petitioners offer no evidence that would require the Bureau to reexamine its grant of the Progeny Licenses, the Petition must be viewed as an untimely petition to deny insofar as it deals with issues related to Auction 21. The November 1999 Form 601 was placed on public notice after Auction 21 and the public was given ample opportunity to comment or object in accordance with the pleading schedule.⁸⁵ As participants in Auction 21, any of the Petitioners that bid on the Progeny Licenses in that auction would have had standing to file a petition to deny the grant of the Progeny Licenses.⁸⁶ As noted in the December 1999 Public Notice, petitions to deny should have been filed by December 16, 1999.⁸⁷ However, no comments or petitions were filed by any of the Petitioners (or any other party) in response to any of the public notices. Petitioners cannot use this unrelated proceeding to address issues that should have properly been raised eight years before the Application was filed. Thus, insofar as the Petition addresses matters related to Auction 21 or the original grant of the Progeny Licenses, we find it to be untimely and procedurally deficient and we hereby dismiss all such arguments in their entirety.⁸⁸

B. The Progeny Transfer of Control Application was valid

24. Petitioners contend that the Application contained numerous misstatements and factual errors that should disqualify the Application. Notably, Petitioners claim that: (1) Progeny Holdings did not exist at the time of the Application; (2) Progeny failed to properly disclose the ownership and control of the Progeny companies; (3) Progeny failed to update its Form 602 as required by Commission rules; (4) Progeny failed to apply for necessary waivers; and (5) the Application should not have been granted under IAP. Notwithstanding the fact that the Petition is procedurally defective, we have examined the

⁸³ See December 1999 Public Notice.

⁸⁴ *Id.* at 2 and note 3.

⁸⁵ *Id.*

⁸⁶ See 47 C.F.R. §1.939 and 47 C.F.R. § 1.208.

⁸⁷ December 1999 Public Notice.

⁸⁸ We note for the record that the Petitioners and other entities controlled by Mr. Havens have raised these same issues in several other proceedings, including Docket No. 06-49 and Docket No. 11-49. We have previously cautioned Mr. Havens and entities controlled by him, including the Petitioners, against filing "abusive or harassing pleadings" with the Commission. See *In the Matter of Mobex Network Services, LLC, to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Stations in Various Locations in the United States, to Transfer Control of AMTS Licenses, to Assign AMTS Licenses, Order on Reconsideration*, 22 FCC Rcd 665, 672 ¶16 (WTB 2007); *Petition for Reconsideration of Various Auction 87 Public Notices, Memorandum Opinion and Order*, DA 12-676 (WTB 2012). Indeed, Mr. Havens was recently sanctioned for making repetitious and frivolous filings in an unrelated proceeding. See *Warren C. Havens, Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, Memorandum Opinion and Order*, 27 FCC Rcd 2756 (2012). We hereby reiterate this warning and encourage Petitioners to refrain from raising these well-settled issues in other proceedings.

Petitioners' substantive claims regarding the Application and find them to be without merit. Accordingly, for the reasons set forth below, we find that the Application complies with Commission rules and was correctly approved under IAP.

1. Progeny Holdings Existed Prior to the Filing of the Application

25. In the Application, Progeny states that "[t]he Applicant proposes to create a holding company called Progeny LMS Holdings, LLC . . . transfer Frenzel's interest in the Applicant to the Transferee and dilute Mr. Frenzel's interest to less than 50 [percent] in order to admit new investors to the transferee."⁸⁹ Petitioners claim that Progeny Holdings is described as a "proposed entity" and that "an Application cannot be granted based on a proposed entity."⁹⁰ In its Opposition, Progeny states that Progeny Holdings was formed in Delaware on December 6, 2007, one day before the Application was filed, and attached the certificate of formation.⁹¹ Petitioners respond that they relied on the Application in which Progeny states that it plans to create a holding company and that they cannot presume an entity actually exists.⁹² Further, Petitioners argue that it is too late to provide the documentation showing that the entity was actually formed and, therefore, the Application must be dismissed as defective.⁹³

26. Progeny has provided the certificate of formation to demonstrate that the company was formed and registered before the Application was filed, therefore, we do not find any defect in the Application that would warrant a dismissal. Furthermore, the Commission does not have a rule that requires Progeny to file the certificate of formation with the Commission so Progeny's decision not to provide the certificate of formation with its Application does not render the Application defective.⁹⁴

2. Progeny Properly Disclosed and Documented Ownership and Control of the Progeny Companies both Before and After the Transfer

27. Petitioners allege that there is no information or explanation in the Application regarding the ownership or control of Progeny prior to or after the transfer of control.⁹⁵ Progeny argues that the pre-transfer and post-transfer ownership and control of Progeny were fully disclosed in the Application and that Petitioners' arguments are inaccurate and should be disregarded.⁹⁶

28. *Pre-Transfer Progeny.* Petitioners state that the Application does not clearly identify who controlled pre-transfer Progeny.⁹⁷ Specifically, Petitioners claim that the Application, which states that "[t]he Applicant is currently 50.18 [percent] owned and controlled by Otto N. Frenzel. . ."⁹⁸ is unclear

⁸⁹ Application at Attachment 1.

⁹⁰ Petition at 3.

⁹¹ Opposition at 3.

⁹² Reply at 5.

⁹³ *Id.* at 5.

⁹⁴ We also dismiss Petitioners claim that Progeny should have filed a sworn affidavit along with its certificate of formation. Even if the certificate had been required, as Progeny notes, the Commission typically gives official notice to government documents that are accessible to the public. See Further Response at 5 (citing Citadel Broadcasting Company for Renewal of Licenses for Stations, *Memorandum Opinion and Order*, 22 FCC Rcd 7083, 7094 ¶21 (2007)).

⁹⁵ Petition at 3, 5-6.

⁹⁶ Opposition at 3-5.

⁹⁷ Petition at 3 and 5; Reply at 6.

⁹⁸ Application at Attachment 1, Exhibit A.

and can be read in two different ways.⁹⁹ Petitioners state that “[f]rom this it is not clear whether or not [Progeny] is stating that 50.18 [percent] of the interests in [Progeny] is owned and controlled by Frenzel or if Mr. Frenzel holds 50.18 [percent] and also has *de facto* and *de jure* control of the pre-transfer [Progeny]. Holding 50.18 percent does not mean that a person actually controls an entity.”¹⁰⁰ Further, Petitioners state that the Opposition cannot be used to cure this defect in the application.¹⁰¹

29. Progeny asserts that the Application clearly explains the ownership and control of pre-transfer Progeny when it states “[t]he Applicant is currently 50.18 [percent] owned and controlled by Otto N. Frenzel”¹⁰² In addition, the pre-transfer ownership and control of Progeny LMS is reflected in the ownership chart that was provided in Exhibit A of the Application.¹⁰³ Specifically, Progeny states that “Havens ignores the fact that ‘the Applicant’ is the subject of the quoted sentence and the verb ‘controlled’ clearly refers to the subject.”¹⁰⁴ Thus, Progeny states that it accurately reported that Frenzel held both *de jure* and *de facto* control of Progeny prior to its transfer of control to the Transferee.¹⁰⁵

30. We agree that Progeny’s disclosure regarding the control of pre-transfer Progeny is sufficient. In its Application, Progeny clearly stated that Frenzel held 50.18 percent interest in pre-transfer Progeny and thus had ownership and control of the company. We have thoroughly reviewed the Application, including the ownership information submitted by Progeny, and we are satisfied with Progeny’s showing regarding the ownership and control of pre-transfer Progeny. Moreover, Petitioners provide no evidence or precedent to support their claim that the Application was somehow unclear or deficient as a matter of law.

31. *Post-Transfer Progeny.* Petitioners also assert that the ownership and control of post-transfer Progeny is not disclosed and that the real party in interest must be disclosed under the Commission’s rules.¹⁰⁶ Petitioners argue that Progeny failed to disclose the real party in interest and/or control group as required by the instructions for the Form 603 and Sections 1.2112(a)¹⁰⁷ and 1.2110(b)(3)(ii)¹⁰⁸ of the Commission’s rules.¹⁰⁹ They also assert that, while the Application listed Progeny Holdings as the real party in interest, the Form 603 instructions state that the real party in interest must be a person and cannot be the applicant. In addition, if there is more than one real party in interest, an applicant must add an attachment to specify who is in control.¹¹⁰ In the Reply, Petitioners argue that Progeny fails to refute the argument that the Application failed to disclose the real party in interest and, further, that Progeny admits that no one has *de jure* or *de facto* control, but fails to disclose who controls.¹¹¹

⁹⁹ Reply at 6.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Opposition at 4 (quoting Application, Attachment 1).

¹⁰³ See Application at Attachment 1, Exhibit A.

¹⁰⁴ Further Response at 3.

¹⁰⁵ *Id.*

¹⁰⁶ Petition at 5; Reply at 6.

¹⁰⁷ 47 C.F.R. § 1.2112(a).

¹⁰⁸ 47 C.F.R. § 1.2110(b)(3)(ii).

¹⁰⁹ Reply 6-7

¹¹⁰ *Id.* at 6-7.

¹¹¹ *Id.* at 6.

32. Progeny responds that the Application specifically states who will control Progeny post transaction. The Application states that “no one entity will have *de jure* or *de facto* control of the Transferee” and fully discloses those entities who will hold at least a 10 percent interest in Progeny Holdings after the transfer.¹¹² Progeny explains that no one entity owns, votes, or controls more than 50 percent of the equity in transferee (Progeny Holdings), which, in turn, owns and controls 100 percent of Progeny LMS.¹¹³ Progeny further states that the real party in interest is the entity that owns or controls the applicant, and in this instance it is Progeny Holdings.¹¹⁴ Progeny also notes that, when alleging that Progeny was required to disclose the control group, Petitioners argue that applicants always have a control group.¹¹⁵ However, Progeny argues that Petitioners contradict themselves by referencing Section 1.2110(b)(3)(ii) of the Commission’s rules,¹¹⁶ which addresses applicants without controlling interests.¹¹⁷ Thus, Progeny concludes that Petitioners have acknowledged that companies can be structured without identifiable *de jure* or *de facto* control groups.¹¹⁸

33. In arguing that all of Progeny LMS’ owners must be disclosed because Progeny LMS does not disclose its control group, Petitioners rely on Section 1.2110(b)(3)(ii) of the Commission’s rules, which states that “[w]here an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.”¹¹⁹ This rule requires that, for the purposes of determining whether an applicant is eligible for designated entity status, an entity that cannot identify its controlling interests must attribute the gross revenues of all of its interest holders in its calculation for determining eligibility for small business and entrepreneur provisions.¹²⁰ However, Section 1.2110(b)(3)(ii) is specific to determining eligibility for designated entity benefits and, therefore, does not apply to the Application.

34. Petitioners are correct that the Commission’s rules state that an applicant must disclose the real party or parties in interest, “including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.”¹²¹ Although an applicant has to disclose its real party in interest, we agree that it is possible for no one entity to be in control of a company. Progeny fully disclosed its post-transfer corporate structure, including all entities that will own 10 percent or more of Progeny Holdings and Petitioners do not present any evidence that the structure of post-transfer Progeny is not as Progeny has disclosed. Therefore, we find that Progeny’s statements regarding its post-transfer ownership and control fully complied with the Commission’s rules.

3. Progeny’s Late Filed Amendments to Form 602 Were Non-Fatal

35. Petitioners assert that Progeny has not filed an updated or new Form 602 for either the pre- or post-transaction Progeny as required by Sections 1.919¹²² and 1.2112¹²³ of the Commission’s rules.¹²⁴

¹¹² Application at Attachment 1.

¹¹³ Application at Exhibit 1; Opposition at 4.

¹¹⁴ Further Response at 3.

¹¹⁵ *Id.* at 3-4.

¹¹⁶ 47 C.F.R. § 1.2110(b)(3)(ii).

¹¹⁷ Further Response at 3-4.

¹¹⁸ *Id.* at 4.

¹¹⁹ 1.2110(b)(3)(ii).

¹²⁰ 1.2110(b).

¹²¹ 1.2112(a)(1).

¹²² 47 C.F.R. § 1.919.

Petitioners further claim that the only Form 602 on file lists Frenzel as holding 100 percent of the ownership of Progeny.¹²⁵ Petitioners conclude that since these Form 602s were not filed, the Application is defective.¹²⁶

36. In its Opposition, Progeny claims that Petitioners' statements are inaccurate and that it in fact maintained its Form 602 as required by the Commission's rules.¹²⁷ However, in its Further Response, Progeny admits that it inadvertently failed to file an updated Form 602 to reflect the information included in the Application.¹²⁸ Progeny states that it corrected the error and filed a request for waiver of the relevant Commission rules.¹²⁹ Progeny further argues that "[a] waiver is appropriate in this case because Progeny's ownership information was disclosed fully in Progeny's Application, the failure to update the form was inadvertent, and the oversight was promptly corrected."¹³⁰

37. Progeny should have filed Form 602 ownership reports for pre-transfer and post-transfer Progeny at the time it filed the Application, in accordance with Sections 1.919(a)¹³¹ and 1.2112.¹³² However, while Progeny did not make a timely filing of the Form 602s in accordance with our rules, we find that failure to do so was not prejudicial in this specific situation because the required ownership information was accurately disclosed in the Application. We conclude that a waiver is appropriate under these limited circumstances because the underlying purpose of the rule – ensuring that the relevant ownership information was accurately disclosed – would be frustrated if we disallow the late filed Form 602s. Accordingly, we find that a waiver, pursuant to Section 1.925 of the Commission's rules,¹³³ to allow for the late-filed Form 602s is in the public interest.

4. The Application Did Not Require Waivers That Would Preclude Processing Under the Commission's IAP Rules

38. Under Section 1.948(j)(2)(C), an application may be processed under IAP if it does not require a waiver of applicable Commission rules.¹³⁴ Petitioners repeatedly assert that the transfer of control of the Progeny licenses required waivers of the Commission's rules and/or declaratory rulings.¹³⁵ Many of the Petitioners' claims appear to be in reference to the original grant of the Progeny licenses,

(...continued from previous page)

¹²³ 47 C.F.R. § 1.2112.

¹²⁴ Reply at 5.

¹²⁵ *Id.*

¹²⁶ Reply at 5-6.

¹²⁷ Opposition at 4-5.

¹²⁸ Further Response at 4.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ 47 C.F.R. § 1.919(a).

¹³² 47 C.F.R. § 1.2112.

¹³³ 47 C.F.R. § 1.925. A request for waiver may be granted "if it is shown that: (1) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n the view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

¹³⁴ 47 C.F.R. § 1.948(j)(2)(C).

¹³⁵ See Petition at 3-4, 8-9, and Exhibit 1.

though others may have been intended to apply to the Commission's rules governing license transfers, or other Commission rules.¹³⁶ However, as Progeny accurately points out, Petitioners never specifically identify the Commission rules that they believe should be waived or that would require a "declaratory ruling" with respect to the transfer of control.¹³⁷ Other than a waiver permitting Progeny to submit a late-filed Form 602, we are not aware, and the Petitioners have not identified, any Commission rules that must be waived in order to grant the Application. As noted, waiver of the late-filed Form 602 is appropriate because the requisite information was contained in the Application. We find that this limited waiver is not in contravention of policies underlying IAP because it does not implicate other potential public interest concerns associated with the Licenses.¹³⁸ The waiver merely permits the acceptance of the late-filed Form 602, it does not introduce any new issues regarding the information in the Application or the Form 602. In addition, to the extent that Petitioners argue that waivers would have been necessary to correct perceived issues related to Auction 21 and/or the validity of the Progeny Licenses, we do not consider these arguments in light of our findings in this order.¹³⁹

5. The Application Was Properly Considered and Granted Under the IAP Rules

39. Petitioners argue that the Application did not satisfy the Commission's requirements for immediate transfer approval under the IAP rules.¹⁴⁰ To qualify for approval under IAP, an application must be "sufficiently complete...and also must establish, through certifications, that the following additional qualifications are met:...(C) the assignment or transfer of control does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules, and there is no pending issue as to whether the license is subject to revocation, cancellation, or termination by the Commission."¹⁴¹ Petitioners claim that: (1) the Application is incomplete; (2) Progeny's certifications are false; (3) the Application requires waivers or declaratory rulings to be granted; and (4) there are pending issues as to whether the licenses are subject to revocation, cancellation, or termination.¹⁴² As such, the Petitioners claim that the Application is defective and its grant under the IAP procedures was invalid.¹⁴³ We have addressed Petitioners' first three claims in this order and have found that (1) the Application was complete; (2) the certifications made by Progeny were sufficient; and (3) Progeny did not fail to submit any required requests for waivers or declaratory rulings.

40. With regard to the "pending issues" that would prevent approval under the IAP rules, Petitioners rely on an Application for Review ("AFR") filed by Petitioners in a separate docket that challenged the Mobility Division's grant of an extension of the construction deadlines for the Progeny Licenses.¹⁴⁴ Progeny argues that the fact that Petitioners filed an Application for Review of a Commission action does not automatically mean that there are actual open issues that would prevent the

¹³⁶ *Id.*

¹³⁷ Opposition at 5.

¹³⁸ See *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17519 ¶ 28.

¹³⁹ See Section III(A)(3).

¹⁴⁰ Petition at 3-4 and Exhibit 1.

¹⁴¹ 47 C.F.R. § 1.948(j)(2).

¹⁴² Petition at Exhibit 1.

¹⁴³ *Id.* at 4 and Exhibit 1.

¹⁴⁴ See Petition at 4 and Exhibit 1; In the Matter of 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; Grant of Request for Extension of Five-Year Construction Requirement for FCR, Inc.'s Multilateration Location and Monitoring Services Economic Area Licenses, *Application For Review* (filed March 2, 2007).

grant of the Application under the IAP Rules. They note that Petitioners filed the Application for Review after the Division had issued an Order granting the three-year extension and a second order rejecting Petitioners' petition for reconsideration.¹⁴⁵ They further argue that the Application for Review is an example of the sort of harassment that the Commission has cautioned Petitioners to avoid and that it should not act as an impediment to the Application's automatic approval.¹⁴⁶

41. While it is true that the AFR is currently before the Commission, we find that the specific circumstances here permit us to approve the Application under the IAP procedures. In the *Progeny Extension Order*, we found that Progeny's failure to timely construct its Licenses was due entirely to causes beyond its control and that the public interest would be served by granting an extension of the construction requirements.¹⁴⁷ We subsequently denied Havens' petition for reconsideration and affirmed our findings.¹⁴⁸ In addition, the transfer of control at issue does not alter the character of the Licenses such that even if the Commission were to address the AFR and find in Havens' favor, the Licenses would automatically terminate regardless of whether or not the transfer is approved.¹⁴⁹ Thus, since no decision on the AFR is likely to have a material effect on the subject transfer, there is no reason for us to subject it to a lengthier review process. Accordingly, considering the totality of the circumstances in this case, we find that the Application was properly approved under the IAP rules.

IV. CONCLUSION

42. We find that the Petition was procedurally defective and that the Petitioners failed to comply with the Commission's rules governing petitions for reconsideration. Moreover, even if the Petitioners had followed the proper procedures, they failed to present any substantive arguments or supporting evidence that would entitle them to relief. In addition, with regards to the Petitioners' assertions regarding the conduct of Auction 21 and the validity of the original grant of Progeny's licenses, we find the Petition to be untimely and procedurally defective.

V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that, pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R., § 1.106, the Petition for Reconsideration filed by Petitioners is DENIED.

44. IT IS FURTHER ORDERED that, pursuant to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, Sections 1.919 and 1.2112, 47 C.F.R. §§ 1.919 and 1.2112, ARE WAIVED to permit

¹⁴⁵ Opposition at 6-7 citing 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, ULS File Nos. 0002049041-0002049297, *Memorandum Opinion and Order*, 21 FCC Rcd 5928 (WTB MD-2006) ("*Progeny Extension Order*"); and 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, ULS File Nos. 0002049041-0002049297, *Order on Reconsideration and Memorandum Opinion and Order*, 22 FCC Rcd 1925 (WTB MD-2007) ("*Reconsideration Order*").

¹⁴⁶ Opposition at 7.

¹⁴⁷ See *Progeny Extension Order* at 5933 ¶16.

¹⁴⁸ See *Reconsideration Order* at 1927 ¶7.

¹⁴⁹ While the Commission has stated that IAP should not be used where a license is subject to revocation, cancellation, or termination for failure to meet construction requirements, for example, see *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17554 ¶ 101 n. 165, we emphasize that the pending AFR cited by Petitioners challenges the decisions granting and affirming extensions of construction deadlines for Progeny and other M-LMS licensees. Given the totality of the circumstances here, including the fact that the transaction affects only control of the Licenses and no other aspect of the Licenses, we conclude that it was appropriate to process the Application under IAP.

acceptance of Progeny's late-filed Form 602.

45. These actions are 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 S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau