

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

In the Matter of
Request of Progeny LMS, LLC
For Waiver and Extension of Time
WT Docket No. 12-202

ORDER

Adopted: July 17, 2020

Released: July 17, 2020

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses a request for waiver and extension of time to satisfy construction requirements for certain Multilateration Location and Monitoring Service (M-LMS) licenses, filed by Progeny LMS, LLC (Progeny) on March 31, 2020 (Request).1 Progeny requests a waiver and six-month extension of time to satisfy the end-of-term construction requirements for 42 M-LMS licenses (Licenses) as set forth in the order issued by the Mobility Division (Division) on January 17, 2017 (2017 Order).2 For the reasons set forth below, and given the impact of the coronavirus pandemic (COVID-19) on Progeny's deployment efforts, we conditionally grant Progeny's Request.

II. BACKGROUND

2. In the 2017 Order, the Division conditionally granted Progeny a waiver of section 90.155(d) of the Commission's rules3 for its B and C Block M-LMS licenses to facilitate Progeny's provision of service to wireless carriers. This relief enabled Progeny to assist carriers in meeting the Enhanced 911 (E911) location accuracy deadlines the Commission adopted in its 2015 Indoor Location Accuracy Report and Order.4 The Division extended the end-of-term construction deadlines for Progeny's B and C Block licenses in three license groupings based substantially on deadlines established in the Indoor Location Accuracy Report and Order for wireless carriers.5

3. The Division's extension grant was conditioned on Progeny's demonstrating that it is in fact

1 See Progeny LMS, LLC, Request for Waiver and Extension of Time, WT Docket No. 12-202, filed March 31, 2020, amended by Erratum to Request of Progeny LMS, LLC for Waiver and Extension of Time, WT Docket No. 12-202, FCC File Numbers 0009029687 through 0009029728, dated April 18, 2020 (Request).

2 See Request of Progeny LMS, LLC for Waiver and Limited Extension of Time, Order, 32 FCC Rcd 122 (MD 2017) (2017 Order). The 42 licenses and construction deadlines are identified in Attachment C to the 2017 Order.

3 47 CFR § 90.155(d). Pursuant to this rule, M-LMS licensees must construct and operate a sufficient number of base stations to serve one-third and two-thirds of an Economic Area's (EA's) population within five and ten years of the initial license grant, respectively. Id. Alternatively, an M-LMS licensee may make a showing of substantial service for its license at the five-year and ten-year benchmarks. Id.

4 See Order, citing Wireless E911 Location Accuracy Requirements, Fourth Report and Order, 30 FCC Rcd 1259 (2015) (Indoor Location Accuracy Report and Order).

5 See 2017 Order, 32 FCC Rcd at 135-36, para. 27.

supporting the wireless carriers' efforts to comply with their E911 location accuracy requirements.⁶ Accordingly, Progeny was required to demonstrate the required population coverage or substantial service at the end-of-term deadline, and also to show its efforts to support the wireless carriers' compliance with their E911 location accuracy requirements.⁷ Further, the *Indoor Location Accuracy Report and Order* requires that, by April 2021, nationwide CMRS providers must deploy vertical location technology in the top 25 CMAs nationwide.⁸ In that regard, the Commission highlighted the NextNav technology as a promising option for wireless providers to use to meet their location accuracy commitments.⁹ In conditionally granting Progeny's extension in the 2017 Order, the Division reasoned that it was important for the NextNav equipment to remain an option for the wireless carriers to improve location accuracy and for Progeny's service to be available for E911 emergency response.¹⁰

4. *Progeny's Request.* On March 31, 2020, Progeny filed the instant Request; it argues that fire departments in the top 21 Economic Areas (EAs) that were planning to use Progeny's vertical location service have delayed their use of the service because of federal and state directives that non-essential functions should be postponed in response to COVID-19.¹¹ Specifically, Progeny explains that the International Association of Fire Chiefs (IAFC) had agreed for its members to receive Progeny's end user receivers to be used for training and search and rescue exercises in advance of the Commission's April 2021 vertical location deadline, and that Progeny had arranged to deploy the receivers by the April 3, 2020, construction deadline and initiate the training.¹² Progeny reports, however, that the IAFC notified Progeny on March 25, 2020, that it must delay receipt of the receivers because of federal, state, and local directives to postpone or curtail non-mission critical functions.¹³ Progeny claims that the IAFC indicated that it would resume work on the deployment of Progeny's vertical location technology to its members once the fire departments could return to working on non-essential activities.¹⁴

5. Progeny seeks relief for 42 licenses addressed in the 2017 Order, which correspond to the top 25 most populous Cellular Market Areas (CMAs), that have an extended end-of-term construction deadline of April 3, 2020.¹⁵ To support its request to extend the end-of-term construction deadline applicable to the Licenses for six months, Progeny contends that the COVID-19 pandemic and related emergency declarations warrant relief under the Commission's section 1.3 "good cause" provision.¹⁶ Progeny also argues that the situation is beyond its control and therefore that it satisfies the requirements of section 1.9469(e)(1) of the Commission's rules for a construction extension.¹⁷

6. In its Request, Progeny describes the progress it has made in furthering the Commission's goal of making improved vertical location accuracy services available to support 911 emergency response

⁶ See *id.*, 32 FCC Rcd at 138-39, para. 33-35.

⁷ *Id.*

⁸ *Indoor Location Accuracy Report and Order*, 30 FCC Rcd at 1302-1305, paras. 112-120.

⁹ *Id.* at 1294-95, para. 95-96; 1302, para. 113. Progeny's affiliate NextNav LLC has developed a technology that uses Progeny's M-LMS licenses to assist carriers in meeting their vertical location accuracy requirements.

¹⁰ 2017 Order, 32 FCC Rcd at 137, paras. 29-30.

¹¹ See Request at 2.

¹² See *id.* at 3.

¹³ See *id.*

¹⁴ See *id.* at 4.

¹⁵ See 2017 Order, Attachment C.

¹⁶ Request at 4.

¹⁷ *Id.*

and other public safety applications.¹⁸ Progeny reports that, to date, its beacon network is providing significant coverage of multi-tenant buildings in excess of three stories in each of the top 21 EAs as well as providing significant population coverage.¹⁹ In addition, Progeny states that it has manufactured end user receivers that can receive M-LMS beacon signals and, when coupled with visual displays on smart devices and application software, can calculate and display vertical location within three meters.²⁰ Further, Progeny asserts it has provided these receivers to third party contractors to support calibration activities in the top 21 EAs.²¹ Specifically, Progeny has provided these end user receivers to third party contractors in each of the 21 EAs to make vertical location determinations in each city, which can be used as reference points to calibrate the barometric pressure sensors in consumer handsets as a part of NextNav's vertical location solution to support E911 emergency services.²² Progeny argues that more time will ensure the continued availability of its technology which is important for wireless carriers to timely implement the Commission's indoor location rules.²³ Progeny claims that the vertical location service will be available for use by wireless carriers and public safety within the top 50 CMAs "in advance of the Commission's vertical location compliance deadlines."²⁴

III. DISCUSSION

7. Pursuant to section 1.3 of the Commission's rules, the Commission may waive any rule on its own or on petition for good cause shown.²⁵ Licensees may request an extension of time pursuant to section 1.946(e) of the Commission's rules where a licensee demonstrates that the failure to meet the construction deadline is due to circumstances beyond its control.²⁶ We find good cause to grant a waiver, and therefore extend Progeny's end-of-term construction deadline for the Licenses an additional six months from April 3, 2020, to October 3, 2020.

8. In the Request, Progeny argues that an extension is warranted because, despite being on track to satisfy its construction requirements for the Licenses, the delivery of end user receivers and the initiation of service to the fire departments was suspended suddenly as a result of the COVID-19 pandemic and related governmental directives to postpone or curtail all non-essential functions.²⁷ Progeny explains that IAFC officials indicated that its member fire departments are under "immense pressure" as a result of COVID-19, which is requiring the deployment of many first responders and medical personnel.²⁸ Progeny claims that the IAFC intends to "pick up and start work" on the deployment

¹⁸ See *id.* at 2-3. As an alternative to the requested waiver relief, Progeny filed construction notifications purporting to demonstrate substantial service for the Licenses, including link budgets, shape files, and coverage maps showing population and tall building coverage from its beacons in each of the relevant EAs, but did not provide required customer information. As we are providing Progeny relief to meet an extended deadline, we will consider Progeny's notifications after Progeny has filed amendments demonstrating it has provided substantial service to customers.

¹⁹ See *id.* at 2.

²⁰ See *id.* at 3.

²¹ *Id.*

²² *Id.*

²³ See *id.* at 6.

²⁴ *Id.*

²⁵ 47 CFR § 1.3.

²⁶ See 47 CFR § 1.946(e). This rule also specifies circumstances for which an extension will not be granted, such as a licensee's failure to obtain financing, antenna sites, or equipment. 47 CFR § 1.946(e)(2).

²⁷ See Request at 3.

²⁸ *Id.* at 3-4.

of Progeny's vertical location technology to its members when the fire departments can resume non-essential activities.²⁹

9. We find good cause to grant the requested relief, given the impact of COVID-19 and the resulting declarations of emergencies at the local, state, and federal levels.³⁰ We find it relevant to our decision that Progeny was on track to meet the applicable construction deadline and that the pandemic caused disruption to delivery of the devices needed to initiate service to the fire departments. We recognize that the ability of emergency personnel to locate individuals in distress accurately through improved vertical location accuracy is essential. It is imperative that first responders have access to accurate vertical location information, and Progeny's technology remains an important option for achieving improved accuracy. Given the evolving and unpredictable nature of the pandemic, we find that a six-month extension of the construction deadline is warranted.

10. We find it in the public interest to grant Progeny a waiver and to extend its applicable construction deadline by six months, subject to the condition that, by the extended deadline, Progeny must ensure that performance of the agreement with IAFC to deliver end user receivers for training and search and rescue exercises has resumed and that the receivers are being used by fire departments. We remind Progeny that it must continue to support the wireless carriers' efforts to comply with their E911 location accuracy requirements as set forth in the *Indoor Location Accuracy Report and Order*.³¹ We also remind Progeny that, when filing its amended construction notifications to demonstrate the required population coverage or substantial service, Progeny may only include coverage areas where its signal strength is sufficient for carrier compliance with the requirements established in the Commission's *Indoor Location Accuracy Report and Order*.³² Finally, we remind Progeny that the Licenses will terminate automatically if Progeny fails to meet these required benchmarks by the extended deadline.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.131, 0.331, and 1.3, the request for waiver and extension of time filed March 31, 2020, by Progeny LMS, LLC, is hereby GRANTED, to the extent provided and as conditioned herein.

12. IT IS FURTHER ORDERED that the end-of-term construction deadlines for the licenses listed on Attachment C to *Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, Order, 32 FCC Rcd 122 (MD 2017) are extended to October 3, 2020.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau

²⁹ *Id.* at 4.

³⁰ See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

³¹ See 2017 Order, 32 FCC Rcd at 138, para. 33; see *supra* para. 6.

³² See *id.* at 138-39, para. 34.