

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

In the Matter of)
)
Extension of Construction Deadline)
for Grandfathered Multilateration Licensees)
in the Location and Monitoring Service)

ORDER

Adopted: October 30, 1996

Released: October 30, 1996

By the Chief, Wireless Telecommunications Bureau:

1. By this Order, we extend by two months (from November 1, 1996 to January 1, 1997) the deadline for multilateration licensees in the Location and Monitoring Service (LMS) to construct their systems and place them into operation.¹ This is the third time we have extended the grandfathering date; we do not contemplate any further extension of this deadline. We are persuaded by Teletrac, License, Inc. (Teletrac) that an additional two months is necessary to enable it to resolve pending matters with the Commission, such as updating particular licenses to reflect recent Commission decisions and to correct typographical errors. In the interest of not giving one grandfathered licensee a competitive advantage over another, we extend the deadline for all multilateration LMS licensees.

2. In *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order*, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995) (*LMS Report and Order*), the Commission conferred grandfathered status on multilateration LMS licensees who had not constructed their systems, so that such licensees could construct and operate their licensed stations under the new LMS rules adopted in the *LMS Report and Order*. The Commission concluded that such systems must be constructed and operational by April 1, 1996, and must comply with the new rules by that date. The *LMS Report and Order* directed existing licensees to file applications to modify their licenses to reflect operations consistent with the new band plan for multilateration systems.² In its *Order on Reconsideration*, PR Docket No. 93-61, FCC 96-115 (released March 21, 1996), the Commission extended the

¹ Existing LMS systems generally fall into one of two broad technological categories: multilateration systems and non-multilateration systems. Multilateration systems use spread-spectrum technology to locate vehicles (and other moving objects) with great accuracy throughout a wide geographic area. Non-multilateration systems typically use narrowband technology to transmit data to and from vehicles passing through a particular location. Because only multilateration licenses will be auctioned, the only licensees eligible for grandfathering are those that propose to operate multilateration LMS systems.

² *LMS Report and Order* at 4728-29.

deadline for construction of grandfathered multilateration LMS facilities to September 1, 1996. On July 25, 1996, pursuant to a joint request by four LMS licensees, the Commission again extended the grandfathering deadline, to November 1, 1996.³

3. On October 10, 1996, MobileVision, L.P. (MobileVision), a multilateration LMS licensee, filed a request for waiver of Section 90.363 of the Commission's Rules, 47 C.F.R. § 90.363, to extend the grandfathering deadline to April 1, 1997. Mobile Vision contends that it was unable to meet the November 1 deadline due to the loss of its major manufacturer. Further, MobileVision asserts that receiving type acceptance, manufacturing of equipment, obtaining financing, constructing the system and making modifications requires a minimum of one year. It argues that this standard is reflected in Section 90.155(d) of the Commission's Rules, which affords licensees one year to construct and bring into operation an LMS system in a basic trading area (BTA). MobileVision submits that it could not begin construction until the Commission issued new licenses for the LMS service, and that those licenses were not issued until approximately April 1, 1996. As such, MobileVision argues, it was not afforded a full 12 months to construct under the November 1 deadline.⁴ MobileVision also filed with the Wireless Telecommunications Bureau a motion to stay the November 1 expiration of its licenses; that pleading raises arguments similar to those made by MobileVision in its waiver request.⁵

4. On October 23, 1996, Teletrac, also a multilateration LMS licensee, filed a request for waiver of Section 90.363, to extend by 60 days the grandfathering deadline for its Milwaukee, Wisconsin facility. Teletrac also requests that the Commission stay enforcement of the deadline until 30 days after the Bureau acts on the instant waiver request and other pending requests, including (1) Teletrac's requests for reconsideration of partial grants by the Land Mobile Branch, Licensing Division, Wireless Telecommunications Bureau, of Teletrac's modification applications for its unconstructed grandfathered multilateration LMS licenses for Detroit and various locations in Massachusetts; and (2) Teletrac's request for correction of typographical errors in coordinates for unconstructed grandfathered multilateration LMS licenses in Seattle, Washington, Worcester, Massachusetts, and Stamford, Connecticut.⁶

5. We are persuaded by the parties and by our own experience in this area that a brief, final extension of the grandfathering deadline is appropriate. At this point, it appears that

³ *Request of Pinpoint Communications Networks, Inc., MobileVision, L.P., Uniplex Corporation and Roger D. Linquist for Waiver of Section 90.363(d) of the Commission's Rules, Order, 11 FCC Rcd 8760 (Wireless Telecommunications Bureau 1996).*

⁴ *See MobileVision, L.P., Motion for Extension of Time to Construct Major Modifications to Licenses, filed October 10, 1996.*

⁵ *See MobileVision, L.P., Pinpoint Communication Networks, Inc., Uniplex Corporation and Roger D. Linquist, Motion to Stay Expiration of Licenses Pending Commission Decision on MobileVision's Waiver Request, filed October 22, 1996.*

⁶ *See Teletrac License, Inc., Petition for Waiver and Stay of Enforcement, filed October 23, 1996.*

MobileVision (and affiliated companies) and Teletrac intend to be the principal national providers of LMS service to the public. As such, we give serious consideration to their need for additional time to construct.⁷

6. We do not believe, however, that the five-month extension sought by MobileVision is warranted. The multilateration LMS licenses in question had remained unconstructed for some time prior to the Commission's decision to adopt permanent LMS rules in the February 1995 *LMS Report and Order*. In many instances, this spectrum has now remained unused for more than five years. MobileVision could have constructed its system under the former rules until the date the *LMS Report and Order* was adopted; if MobileVision had constructed by that date, it would have been afforded until April 1, 1998 to come into compliance with the new rules. This is because pursuant to Section 90.363 of the Commission's Rules, 47 C.F.R. § 90.363, multilateration LMS operators that had systems that were constructed and operational as of February 3, 1995, have until April 1, 1998 to bring those systems into conformity with the new LMS rules adopted in the *LMS Report and Order*.

7. Further, the Commission's intention in grandfathering existing multilateration LMS licenses that were not yet constructed as of February 1995 was to give parties that had already conceived their systems a chance to build before the institution of wide-area licensing via competitive bidding. This situation is therefore distinguishable from the issuance of a new license for the first time, whereby the licensee must plan and build an entirely new facility. While MobileVision is correct in its observation that new licensees are given one year to construct, the authorizations in question here were initially issued several years ago and went unbuilt. We also emphasize that new and existing LMS providers will be able to bid for spectrum in the LMS auction, so that a licensee that loses its authorization due to its failure to meet the grandfathering deadline may regain that spectrum by being the winning bidder in the auction. In addition, we note that MobileVision is the only party to seek an extension until April 1, 1997. For all the above reasons, we do not believe that MobileVision has justified its request for an extension of time until April 1, 1997 to construct its multilateration LMS facilities. We are persuaded, however, that Teletrac has demonstrated good cause for extending the deadline by two months, until January 1, 1997, and in the interest of fairness we will grant that extension to all multilateration LMS licensees.

8. Accordingly, **IT IS ORDERED** that the deadline for existing multilateration LMS licensees to construct their LMS systems and place them into operation **IS EXTENDED** until **January 1, 1997**.

9. **IT IS FURTHER ORDERED** that the Motion for Extension of Time to Construct Major Modifications to Licenses filed by MobileVision, L.P. on October 10, 1996, **IS GRANTED**

⁷ We did not put the MobileVision Request or the Teletrac Request on Public Notice. We note that pursuant to Section 1.45(e) of the Commission's Rules, 47 C.F.R. § 1.45(e), the Commission has discretion to rule *ex parte* on requests for extensions of time without waiting for the filing of oppositions or replies.

to the extent indicated herein and IS OTHERWISE DENIED.

10. IT IS FURTHER ORDERED that the Petition for Waiver and Stay of Enforcement filed by Teletrac License, Inc. on October 23, 1996, IS GRANTED to the extent indicated herein and IS OTHERWISE DENIED.

11. IT IS FURTHER ORDERED that the Motion to Stay Expiration of Licenses Pending Commission Decision on MobileVision's Waiver Request, filed by MobileVision, L.P., Pinpoint Communication Networks, Inc., Uniplex Corporation and Roger D. Linquist on October 22, 1996, IS DISMISSED AS MOOT.

12. This action is taken pursuant to authority delegated by Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau