

IEEE 802.18

Radio Regulatory Technical Advisory Group
Homepage at <http://www.ieee802.org/Regulatory/>

September 29, 2002

To: Ms. Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Ave., NE, Suite 110
Washington, DC 20002

From: Carl R. Stevenson
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Dear Ms. Dortch:

Please find attached a *Motion to Accept Late-filed Comments* and the IEEE 802.18 Radio Regulatory Technical Advisory Group's *Opposition to Petition for Reconsideration in ET Docket 99-231 and Ex Parte Comments in RM-10403*.

In the event that the *Opposition* portion of this consolidated filing cannot be accepted as "late-filed," please alternatively consider it as our *Ex Parte Comments in ET Docket 99-231*.

Should you have any questions regarding this filing, please feel free to contact me.

Respectfully submitted,

/s/

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 15 of the)	ET Docket No. 99-231
Commission's Rules Regarding)	
Spread Spectrum Devices)	
)	
Amendment of Part 90 of the Commission's)	RM-10403
Regarding the Location and Monitoring)	
Service to Provide Greater Flexibility)	

To the Commission:

MOTION TO ACCEPT LATE-FILED COMMENTS

On behalf of the IEEE 802.18 Radio Regulatory Technical Advisory Group, I respectfully request that the Commission accept the attached late-filed *Opposition to Petition for Reconsideration in ET Docket 99-231 and Ex Parte Comments in RM-10403*.

While we understand that the normal filing deadline has passed, it was impossible for us to meet that deadline for the following reasons:

IEEE 802.18, 802.11, and 802.15 held their interim meetings in mid September and 802.16 held its interim meeting in late September.

Under the IEEE 802 LMSC operating rules, which are designed to assure that documents such as the attached comments represent the consensus views of a significant majority of our members, after a document such as this is prepared, it must be approved by the Wireless Working Groups and then be submitted to the IEEE 802 Sponsor Executive Committee ("SEC") for a minimum review period of five (5) days before it can be submitted as an IEEE 802.18 filing.

The attached document was drafted by the 802.18 RR-TAG during our September meetings, subsequently approved by the WirelessWorking Groups during their plenary sessions, and then submitted to the the SEC for the required review.

After the expiration of the SEC review period, a modest amount of time was required for final formatting and preparation for submission.

Therefore, I again respectfully request that the Commission consider the attached *Opposition to Petition for Reconsideration in ET Docket 99-231 and Ex Parte Comments in RM-10403*.

In the event that the *Opposition* portion of this consolidated filing cannot be accepted as “late-filed,” please alternatively consider it as our *Ex Parte Comments in ET Docket 99-231*.

Respectfully submitted,

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**Before the
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In the Matter of)	
)	
Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices)	ET Docket No. 99-231
)	
Amendment of Part 90 of the Commission's Regarding the Location and Monitoring Service to Provide Greater Flexibility)	RM-10403
)	

To the Commission:

**OPPOSITION TO PETITION FOR RECONSIDERATION IN ET DOCKET 99-231 AND
EX PARTE COMMENTS IN RM-10403**

IEEE 802.18, the Radio Regulatory Technical Advisory Group in IEEE Project 802¹, hereby submits its Opposition to the Petition for Reconsideration filed by Warren C. Havens and Telesaurus Holdings GB, LLC, d/b/a LMS Wireless ("LMSW") in ET Docket No. 99-231 ("the LMSW Petition") and simultaneously offers its Ex Parte Comments in RM-10403, a related Petition for Rulemaking ("the Progeny Petition") filed on March 5, 2002 by Progeny LMS, LLC ("Progeny") another LMS licensee.

IEEE 802 and its members that participate in the IEEE 802 standards process are interested parties in this proceeding because the IEEE 802.15.4 Draft Standard includes a physical layer ("PHY") that employs the 902-928 MHz Part 15 band^{2,3}.

¹ The IEEE Local and Metropolitan Area Networks Standards Committee ("IEEE 802" or the "LMSC")

² The IEEE 802.15.4 Draft Standard actually specifies multiple PHYs, including the 902-928 MHz band for U.S. use, the 868 MHz band for use in Europe, and the 2.4 GHz band for applications addressing global markets. It is reasonable to expect that the 902-928 MHz PHY will be important in applications requiring the absolute lowest power consumption and greatest battery life for a given range capability, due to the higher achievable DC-RF power conversion efficiencies attainable and the lower propagation losses in this band.

³ The IEEE 802.15.4 Draft Standard is in a mature stage, with a final Standard expected in March 2003, and manufacturers are committed to bringing products market in the 2nd quarter of 2003.

INTRODUCTION

1. In the LMSW Petition, Petitioner requests reconsideration (or deferral) of the changes to Part 15.247 of the Commission's rules adopted by the Commission in its Second Report and Order in ET Docket 99-231 ("the R&O"),⁴ which was adopted on May 16, 2002.

2. It is clear from even a casual reading of the subject filings that the LMSW Petition, the "White Paper" recently filed by LMSW, and the Progeny Petition seek the same, or very similar goals.

3. Both represent an unabashed attempt to rewrite the long-established LMS rules, eliminating well-considered restrictions therein, and furthermore to overturn the "safe harbor" provision for Part 15 devices in the 902-928 MHz band *vis a vis* LMS, for the purpose of advancing their own financial interests under the guise of Public Safety and Critical Infrastructure improvements.

THE LMSW PETITION SHOULD BE DENIED

4. LMSW asserts, without any supporting evidence, that its request to defer what it contends are "*premature*" changes in Part 15.247 of the Commission's rules is "necessary" because these changes allegedly would "*jeopardize important developments*" to LMS services.

5. We therefore believe the Commission should summarily deny the LMSW Petition, first on the basis that Petitioner has made no convincing showing that the changes enacted in the R&O would have any adverse effect on current LMS operations, if indeed any such operations actually exist⁵.

⁴ See FCC 02-151, Second Report and Order (Proceeding Terminated), in ET Docket 99-231

⁵ We note that Progeny, another LMS licensee, admits that "*equipment is not available for deployment of LMS services and under the current constraints is unlikely to become available.*" This would seem to logically imply that no, or essentially no, LMS services have actually been deployed by LMS licensees in the approximately five years that they have held their licences, while conversely, in the meantime, the Part 15 community has continued its tradition of delivering innovative and useful products and services to the public using the 902-928 MHz band.

6. We additionally believe that the Commission should summarily deny the LMSW Petition on the basis that the Commission has previously upheld its original determinations as to the appropriateness, legality, and public interest value of the existing LMS rules, including the “safe harbor” provision on more than one occasion.⁶

7. Because the existing LMS rules have been upheld by the Commission for many years, the recent changes to *47 CFR 15.247* adopted by the Commission in the R&O should not be “deferred” on the basis that LMSW “*intends to file a Petition for Rulemaking*” seeking changes in the LMS rules ... particularly since, according to the Commission’s own records, LMSW did not raise the instant issues during the lengthy course of the proceeding leading up to the Commission’s adoption of the R&O⁷.

8. If LMSW had wished to raise the issues of their instant Petition, they had ample opportunity to do so during the course of the Proceeding and should not be allowed to seek to overturn the results of a properly handled proceeding at this juncture.⁸

THE PROGENY PETITION IN RM 10403 SHOULD ALSO BE DENIED

9. We support Itron’s response to the Progeny proposal in RM-10403, especially Itron’s statement, “...*Progeny’s proposals would undo the delicate balance that the Commission has struck between permitting LMS services to operate in the band and protecting other users...*”⁹

⁶ See *See* FCC 97-305, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, adopted August 28, 1997. *See also*, Order on Reconsideration, PR Docket No. 93-61, 11 FCC Rcd 16905 (1996) (LMS Order on Reconsideration)

⁷ A search of the FCC’s ECFS shows that the very first filing in ET Docket No. 99-231 by LMSW is the instant Petition for Reconsideration.

⁸ While it may be somewhat tangential to the LMSW Petition, we would further note that a search of the Commission’s ECFS record in ET Docket No. 99-231 also indicates that Progeny likewise did not avail themselves of ample opportunity to comment in objection to the Commission’s proposed actions in the Proceeding.

⁹ *See* Reply Comments of Itron, Inc. in RM-10403, at the last paragraph of the first page

10. We support the previous positions the FCC has taken vis a vis the “safe harbor” provisions for Part 15 users¹⁰.

11. The Part 15 “safe harbor” provisions were made clear after all due review had been completed. Under these conditions many companies manufactured, and millions of consumers have purchased, equipment ... and new equipment is still being introduced into this band under the Commission’s Part 15 rules with reliance on the “safe harbor” provision.

**TO CHANGE THE LMS RULES AT THIS JUNCTURE WOULD BE
FUNDAMENTALLY UNFAIR TO OTHERS WHO PARTICIPATED IN THE LMS
AUCTIONS, AND THOSE WHO MIGHT HAVE PARTICIPATED, HAD THE RULES
AT THE TIME BEEN DIFFERENT**

12. The bidders, and prospective bidders, in the FCC LMS auctions had very detailed information from the FCC on the permitted LMS spectrum uses in the 902-928 MHz band. The rules for all users, especially the “safe harbor” provision for Part 15 devices, were considered and reconsidered with the FCC making its determination in FCC 97-305¹¹.

13. Potential bidders, after reviewing all the information, made the decision not to bid. Others withdrew from bidding. To radically change the service after the fact disenfranchises the unsuccessful bidders, as well as those who might have bid had currently requested changes been in effect at the time.

¹⁰ See FCC 97-305 Section III, B, starting at paragraph 28

¹¹ See FCC 97-305, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, adopted August 28, 1997.

14. Additionally, had the rules been different at the time of the bidding (and particularly had they been so permissive as the current LMS licensees seek to make them) it is likely that bidding would have been more vigorous and the government would almost certainly have realized substantially higher prices for the subject licenses. The current LMS licensees should not be permitted to realize a windfall on the basis of their current requests to radically alter the nature of the business permitted by their licenses under these circumstances.

THE CHANGES REQUESTED BY PROGENY, AND THE SEEMINGLY SIMILAR REQUEST LMSW CLAIMS TO BE PREPARING TO FILE, AIM TO UNFAIRLY UPSET THE BALANCE BETWEEN THE USERS OF THE 902-928 MHZ BAND THAT THE COMMISSION SO CAREFULLY CRAFTED

15. We oppose these blatant attempts by LMSW and Progeny to co-opt the spectrum currently used by a large number of services, consumer devices, telemetry devices and systems, and other activities to realize a windfall and futher their narrow financial interests at the expense of other users of the 902-928 MHz band.

16. LMSW and Progeny seek to unfairly subvert the position of the Part 15 community ... who have followed the current rules ... by making attempting to make an end run around the long-standing LMS rules for their own financial benefit.

TO CHANGE THE TYPES OF SERVICES LMS LICENSEES MAY PROVIDE IN THE RADICAL MANNER REQUESTED WOULD ALSO BE FUNDAMENTALLY UNFAIR TO CMRS OPERATORS WITH WHOM THE PETITIONERS OBVIOUSLY SEEK TO COMPETE

17. By seeking to subvert the Commission's spectrum allocation process and the intended use of LMS spectrum, Progeny and LMSW seek to obtain an unfair advantage over the incumbent CMRS operators that they clearly intend to compete with, in that the LMS licensees acquired their licenses for substantially less investment and under different conditions than the CMRS operators.

SUMMARY AND CONCLUSIONS

18. The LMSW and Progeny Petitions are without merit and seek to subvert the Commission's processes to the disadvantage of those who might, under different rules, have more vigorously and successfully bid on LMS licenses, the incumbent CMRS licensees with whom they seek to compete at an unfair advantage in terms of investment in spectrum, and the Part 15 community that has relied for years on the existing LMS rules.

19. We respectfully request that the Commission deny and dismiss both the LMSW Petition and the Progeny Petition for the reasons enumerated herein.

Respectfully submitted,

/s/

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