

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

In the Matter of)
)
LightSquared Subsidiary LLC) SAT-MOD-20101118-00239
Request for Modification of its)
Authority for an Ancillary Terrestrial)
Component)

CONSOLIDATED REPLY OF LIGHTSQUARED SUBSIDIARY LLC

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LightSquared Subsidiary LLC (“LightSquared”) hereby submits this consolidated reply to the Petition to Deny and the Comments that have been submitted in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

On November 18, 2010, LightSquared filed an application for a minor modification to its license to operate an MSS/ATC system.² The substantive portion of the application consisted of a letter from LightSquared providing an update as to how LightSquared plans to offer integrated service in accordance with the Commission’s

¹ Petition to Deny of Wireless Communications Association International, Inc. (“WCAI Petition”); Comments of AT&T, Inc. (“AT&T Comments”); Comments of CTIA - The Wireless Association (“CTIA Comments”); Comments of the U.S. GPS Industry Council (“USGIC Comments”); Comments of Iridium Satellite, LLC (“Iridium Comments”); Comments of Open Range Communications, Inc. (“Open Range Comments”); Comments of TerreStar Networks Inc. (“TerreStar Comments”); Comments of Verizon Wireless (“Verizon Comments”).

² See File No. SAT-MOD-20101118-00239.

rules.³ The Commission issued a public notice accepting the application for filing on November 19, 2010, requiring comments within ten days and replies within seven days afterwards.⁴ Subsequently, in response to a request for extension of time filed by CTIA, the Chief of the Satellite Division extended the deadlines and allowed for comments on December 2, 2010 and replies on December 9, 2010.⁵ On December 2, 2010, WCAI filed a Petition to Deny,⁶ several parties filed comments objecting to the procedure selected by the Commission for reviewing the LightSquared request, Verizon took issue with LightSquared's integrated service showing, and Open Range, TerreStar and others filed comments supporting LightSquared's request.

Although some parties characterize LightSquared's integrated service showing as far-reaching and precedent-setting, LightSquared's request is quite narrow and well within the Commission's existing rules regarding MSS/ATC. The principal issues relating to LightSquared's business plan already have been resolved. The Commission, in consenting to a transfer of control of LightSquared, approved the company's business plan to deploy, as part of its satellite-terrestrial service, a terrestrial broadband network with tens of thousands of base stations that will be capable of serving more than 80

³Letter from Jeffrey J. Carlisle, Exec. V.P., Regulatory Affairs & Public Policy, LightSquared Subsidiary LLC, to Marlene H. Dortch, Secretary, FCC (dated Nov. 18, 2010) ("LightSquared Application Narrative").

⁴ FCC Public Notice, SAT-MOD-20101118-00239, Report No. SAT-00738 (rel. Nov. 19, 2010).

⁵ See *LightSquared Subsidiary LLC*, DA 10-2243, *slip op.* (Sat. Div., released Nov. 26, 2010).

⁶ As LightSquared explains below, although WCAI styled its filing as a Petition to Deny, under the Commission's rules the filing is classified as an informal objection.

percent of the U.S. population.⁷ The Commission found that the business plan has a substantial public interest benefit because of “the competition it will bring in mobile wireless broadband services and because it will provide mobile wireless broadband service to traditionally underserved areas.”⁸ No party objected to Commission approval of LightSquared’s business plan either initially or on reconsideration.

LightSquared’s minor modification application is limited to a modification in the manner in which LightSquared will integrate the satellite and terrestrial components of its service offerings. LightSquared’s predecessor had proposed to satisfy the Commission’s integrated service requirement by providing a dual-mode handset to every end user. LightSquared will still ensure dual-mode handsets are available, but now also proposes to satisfy the integrated service requirement through a combination of integrated pricing and other technical and economic factors. The actions taken by LightSquared pursuant to its business plan also: (1) make it impossible for LightSquared to profit by selling a terrestrial-only service; (2) eliminate any economic incentive for retailers to withhold satellite service from end users; and (3) establish the market conditions needed for competitive pricing of dual-mode handsets.

LightSquared’s wholesale model draws no economic or technical distinction between end users who select dual-mode handsets and end users who do not make this

⁷ See *SkyTerra Communications Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary LLC*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059 (“LightSquared MO&O”), ¶¶ 70, 72.

⁸ LightSquared MO&O, ¶ 70.

selection. LightSquared will charge the same integrated price to all of its retail customers, without regard to handset, and all traffic will be carried on the same integrated core network regardless of whether it originates on the satellite portion of the network or the terrestrial portion.

As shown in LightSquared's application and in this reply, there is no basis – procedural or substantive - for deferring action on LightSquared's application or denying the application. The parties' procedural objections are unfounded; the Commission was well within its authority to establish a comment period of less than 30 days for this minor modification. The precedents cited by the parties seeking for the Commission to defer action pending the outcome of the ongoing MSS NPRM/NOI rulemaking are inapposite because, unlike the applicants in those cases, LightSquared has shown compliance with a current regulatory requirement. Moreover, the concerns raised by some parties regarding coordination with GPS operations are irrelevant to this proceeding and should be resolved through collaborative processes among the interested parties that already are in place. Verizon's substantive objections to LightSquared's minor modification application conflict with the express terms of the ATC rules, which permit MSS/ATC operators to satisfy the Commission's integrated service requirement without providing dual-mode devices to every end user. In sum, the objections to LightSquared's minor modification application are without merit and the application should be granted forthwith.

II. LIGHTSQUARED'S APPLICATION IS EXEMPT FROM 30-DAY PUBLIC NOTICE REQUIREMENTS

Some parties question the procedural course taken by the Commission. They assert that the Commission lacked authority to establish a period for initial comments that is less than 30 days.⁹ They base this assertion principally on the references in Sections 25.151 and 25.154 of the Commission's rules¹⁰ to 30-day comment periods and on the terms of Section 309 of the Communications Act.¹¹

These procedural arguments are erroneous. It is well-established that minor modifications are exempt from formal 30-day public notice requirements. In cases in which these 30-day requirements are inapplicable, moreover, the Commission may, and frequently does, issue informational public notices permitting informal objections to be filed within a time frame shorter than 30 days.

A. The Communications Act Exempts Minor Modifications from 30-day Public Notice Requirements

Section 309 of the Communications Act establishes a procedural framework for radio license public notices by dividing applications into two categories. The first category consists of applications for a radio license in specified services, including common carrier services. As a general matter, these applications cannot be granted "earlier than 30 days following issuance of public notice by the Commission of the

⁹ See WCAI Petition at 6-10; USGIC Comments at 7-9;

¹⁰ 47 C.F.R. §§ 25.151 and 25.154.

¹¹ 47 U.S.C. § 309.

acceptance for filing of such application.”¹² Interested parties have a right to file a petition to deny applications falling into this first category.¹³

The second category consists of certain applications that are exempted from the general rule. Section 309 expressly exempts applications in this second category from the requirement for a 30-day public notice period.¹⁴ It also provides that there is no right to file a petition to deny against applications in the second category.¹⁵ The second category of applications includes applications for “a minor change in the facilities of an authorized station.”¹⁶

B. Under the Commission’s Rules and Precedents, LightSquared’s Application Properly is Classified as a Minor Modification

The Commission has found that ATC applications are minor modifications. That finding goes back to the Commission’s first order authorizing ATC operations,¹⁷ and Section 25.117(f) of the Commission’s rules¹⁸ expressly provides that “[a]n application for ... an ancillary terrestrial component ... will be treated as a request for minor modification.” Accordingly, LightSquared’s application, which is an application for

¹² 47 U.S.C. § 309(b).

¹³ See 47 U.S.C. § 309(d)(1).

¹⁴ See 47 U.S.C. § 309(c) (providing that “[s]ubsection (b),” which establishes the 30-day requirement, “shall not apply” to the applications identified in Section 309(c)).

¹⁵ See 47 U.S.C. § 309(d)(1) (limiting the right to file petitions to deny to the first category of applications, *i.e.*, those identified in subsection (b) of Section 309).

¹⁶ 47 U.S.C. § 309(c)(2)(A).

¹⁷ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003) (“2003 ATC Order”), ¶ 240.

¹⁸ 47 C.F.R. § 25.117(f).

ATC authority, is a minor modification application. As such, the application is exempt from Section 309 requirements for 30-day public notice¹⁹ and interested parties do not have a right under Section 309 to file petitions to deny against the application.

WCAI argues that Section 25.117(f) should not be applicable to LightSquared's modification application. WCAI rightly states that the rule provides that ATC application will receive minor modification treatment if "the particulars of operations provided by the applicant comply with the criteria specified in Section 25.149."²⁰ But WCAI then questions whether LightSquared has satisfied this "particulars of operation" requirement.²¹

WCAI misreads the requirements of the rule and the Commission's explicit statement as to how it should be applied. When the Commission adopted Section 25.117(f), it explained what it meant by "particulars of operation." The Commission stated that ATC applications "will be treated as minor modifications" if they "provide specific information and certifications describing the ATC operations in ... [certain] categories."²² The Commission defined these categories as follows:

¹⁹ In an order on reconsideration, the Commission amended Section 25.117(f) of its rules to provide that "initial" ATC applications will be placed on public notice notwithstanding the fact that they are minor modifications. *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Order on Reconsideration, 18 FCC Rcd 13,590 (2003) ("2003 ATC Reconsideration Order"), ¶ 14. LightSquared's ATC application is not an "initial" one, and no party to this proceeding contends otherwise. Rather, LightSquared seeks to modify the authority the Commission granted when it acted on the initial ATC application filed by LightSquared's predecessor.

²⁰ 47 C.F.R. § 25.117(f).

²¹ See WCAI Petition, pp. 15-16.

²² 2003 ATC order, ¶ 240.

information demonstrating that the terrestrial facilities will comply with the technical restrictions adopted herein; a statement that the terrestrial facilities will comply with the Commission's rules regarding environmental impact; and that the terrestrial facilities will comply with Part 17 of the Commission's rules regarding antenna structure clearance with the Federal Aviation Administration; and a certification that the terrestrial facilities will be operated consistent with all international agreements.²³

LightSquared's minor modification application satisfies this requirement. There has been no change to LightSquared's original showings in the above respects, which were approved by the Commission, and the present application proposes no changes to them. LightSquared's application, therefore, is in compliance with Section 25.149 for all particulars of operation defined by the Commission and qualifies for minor modification treatment under Section 25.117(f).

C. The Commission's Satellite Rules Exempt Minor Modification Applications from 30-day Public Notice Requirements

The Commission's public notice requirements for satellite applications, as set forth in Part 25 of the rules, mirror the two-category structure Congress established in Section 309. Section 25.151(a) of the rules²⁴ identifies categories of applications as to which the Commission must issue public notices. Applications within this first category will not be granted "until the expiration of a period of thirty days following the issuance of the public notice listing the application."²⁵

²³ 2003 ATC order, ¶ 240 (citation omitted).

²⁴ 47 C.F.R. § 25.151(a).

²⁵ 47 C.F.R. § 25.151(d).

Part 25, like Section 309, establishes a second category of applications as to which 30-day public notice is not required. In the case of modification applications, Part 25 draws the same distinction that is drawn in Section 309. Major modifications are subject to 30 day public notice requirements²⁶; minor modifications are not.²⁷

Part 25 also draws a Section 309-like distinction between applications as to which petitions to deny may be filed and applications as to which only to informal objections may be filed. If an application is subject to 30-day public notice requirements under Section 25.151(a) of the rules, then petitions to deny may be filed up to the end of this 30-day period.²⁸ If, on the other hand, an interested party files “any pleading to which the thirty (30) day public notice period of § 25.121 does not apply,”²⁹ then the Commission “will classify” the pleading as an “informal objection[.]”³⁰

Under Part 25, therefore, LightSquared’s minor modification application is exempt from 30-day public notice requirements. Interested parties, moreover, have no right to file petitions to deny against LightSquared’s application. For this reason,

²⁶ See 47 C.F.R. § 25.151(a)(3) (limiting modification applications that are within the class of applications for which “the Commission will issue public notices” to “applications for major modifications”).

²⁷ See 47 C.F.R. § 25.151(c)(1) (including applications for “authorization of a minor technical change” within the class of applications for which “[a] public notice will not normally be issued.”).

²⁸ 47 C.F.R. § 25.151(d). Comments also are due within the 30-day time frame.

²⁹ 47 C.F.R. § 25.154(b)(2).

³⁰ 47 C.F.R. § 25.151(b).

WCAI's Petition to Deny is an unauthorized pleading and should be treated as an informal objection.³¹

D. The Commission's May Issue Informational Public Notices Establishing Comment Periods that are Less than 30 Days

WCAI suggests that the only public notice the Commission may employ in this proceeding is a 30-day public notice. According to WCAI, even if the Commission is entitled to act on LightSquared's minor modification application without issuing a public notice, once the Commission chooses to issue a public notice it must be a 30-day public notice.³² This contention defies common sense and runs counter to longstanding Commission practice.

No support can be found for WCAI's position in Section 309. Rather, that provision states that the requirement for a 30-day comment period "shall not apply"³³ to the classes of applications, including minor modification applications such as the one filed by LightSquared, that are identified in Section 309(c). There is no ambiguity in the phrase "shall not apply."

³¹ WCAI's filing falls short of the requirements for a petition to deny for a second reason. Section 25.154(a)(4) of the rules requires that petitions to deny be supported by an affidavit of a person with personal knowledge thereof setting forth sufficient facts to demonstrate that the petitioner is a party of interest and that a grant of the application would be prima facie inconsistent with the public interest. WCAI did not provide such a petition, and did not otherwise provide any facts in its petition that would allow a determination that it is an appropriate party in interest. Under Section 25.154(b) of the rules, pleadings not satisfying the affidavit requirement are treated as informal objections.

³² See WCAI Petition at 7-8.

³³ 47 U.S.C. § 309(c).

The Commission, moreover, has a longstanding practice of issuing informational public notices triggering comment periods of less than 30 days.³⁴ WCAI made no effort to address this established practice.

The routine public notice that the Commission issued on November 19, which included reference to LightSquared's application, is in keeping with this practice. General language at the top of the public notice states that, "unless otherwise noted," any "[p]etitions, oppositions and other pleadings filed in response to this notice should conform to Section 25.154 of the Commission's rules,"³⁵ *i.e.*, the rule requiring a 30-day comment period for applications that are subject to Section 25.151(a). However, the specific entry identifying LightSquared's minor modification application limits filings addressing the application to "comments," in recognition of the fact that petitions to deny do not lie against minor modification applications. The entry also provides for a 10-day comment period, later extended to 13 days,³⁶ in recognition of the fact that 30-day comment periods are not required for minor modifications.

In sum, the public notice accepting LightSquared's application for filing is consistent with the Communications Act, the Commission's rules, and Commission

³⁴ See, e.g., *Public Notice, Application for Consent to Transfer of Control Filed by AT&T Inc. and BellSouth Corporation, Commission Seeks Comments on Proposals Submitted by AT&T Inc. and BellSouth Corporation*, WC Docket No. 06-74 (Oct. 13, 2008) (11 days permitted for comment); *Public Notice, Wireless Telecommunications Bureau Seeks Comment on Lojack Corporation's Request for a Waiver of 47.C.F.R. 890.20(e)(6)*, DA 05-1782 (June 28, 2005) (15 days permitted for comment).

³⁵ Report No. SAT-00738 (Nov. 19, 2010).

³⁶ See Order, DA 10-2243 (Nov. 26, 2010).

precedent and practice. LightSquared's application, because it seeks a minor modification, is exempt under Section 309 and Part 25 from the requirement for a 30-day public notice. Issuing an informational public notice that provides for a comment period of less than 30 days is consistent with longstanding Commission practice. For all of these reasons, the procedural objections raised by certain parties should be rejected.³⁷

III. THE COMMISSION SHOULD NOT DEFER ACTION ON LIGHTSQUARED'S MINOR MODIFICATION APPLICATION PENDING THE OUTCOME OF A RULEMAKING PROCEEDING OR RESOLUTION OF GPS ISSUES

A. LightSquared Has Not Requested a Rule Change

AT&T, CTIA, the USGIC, and WCAI take the position that LightSquared's filing should be considered in the MSS Flexibility Rulemaking,³⁸ which was commenced several months ago, rather than in the context of a modification application.³⁹ These parties proceed from the premise that LightSquared has requested a modification of the

³⁷ WCAI makes an additional procedural argument, claiming that LightSquared made a waiver request improperly because the Form 312 accompanying LightSquared's filing did not have checked the "yes" box for waiver requests. See WCAI Petition at 13-14. WCAI's argument is easily addressed; LightSquared is not requesting any rule waivers. In the event the Commission should determine on its own initiative that waivers are warranted, however, it has the authority to grant such waivers without regard to whether LightSquared has requested them.

³⁸ See *Fixed and Mobile Services in the Mobile Satellite Service Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, ET Docket No. 10-142, 25 FCC Rcd 9481 (2010) ("MSS Flexibility Rulemaking").

³⁹ See AT&T Comments at 7-10; CTIA Comments at 6-8; USGIC Comments at 4-6; WCAI Petition at 10-13.

integrated service requirement set forth in Section 25.149(b)(4) of the Commission's rules.⁴⁰

This premise is erroneous. LightSquared has made no such request. Rather, LightSquared – updating a showing made by its predecessor company seven years ago -- has made a particularized showing, based on specific facts and circumstances, that it will provide an integrated service.

LightSquared made its showing under Section 25.149(b)(4). This rule states that ATC applicants may make their integrated service showing either on the basis of using dual-mode handsets⁴¹ or by providing “[o]ther evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.”⁴² The Commission has clarified that the “other evidence” standard can be satisfied “through technical, economic or any other substantive showing”⁴³ and that “[a]n economic showing could include, for example, information on the pricing structure of an integrated service.”⁴⁴

LightSquared's Section 25.149(b)(4) showing fits squarely within this rule. In keeping with the Commission's clarification of what “other evidence” may be used,

⁴⁰ 47 C.F.R. § 25.149(b)(4). Iridium takes a related but narrower position, asking that any Commission findings extending beyond “the limited facts and circumstances presented by LightSquared” be addressed in a rulemaking. *See* Iridium Comments at 4. Iridium also requests that “the Commission's decision on the merits of the LightSquared's pending application ... not serve as a precedent in the Big LEO spectrum utilized by Iridium.” *Id.* LightSquared takes no position concerning this latter request.

⁴¹ *See* 47 C.F.R. § 25.149(b)(4)(i).

⁴² 47 C.F.R. § 25.149(b)(4)(ii).

⁴³ 2003 ATC Order, ¶ 88.

⁴⁴ 2003 ATC Order, n.230.

LightSquared's showing is based on economic, technical and other factors. Requiring LightSquared to await the outcome of a rulemaking after it has made a showing complying with the elements of the current rule would have the effect of writing that part of the rule out of existence. The Commission should not interpret its rules in a manner that gives no effect to provisions that are explicit and unambiguous.

B. The Cases Cited by the Proponents of Addressing LightSquared's Showing in a Rulemaking are Inapposite

The proponents of addressing LightSquared's showing in a rulemaking rely on two cases in support of their position. The cases, however, are inapposite.

In *M2Z Networks*,⁴⁵ relied on by WCAI,⁴⁶ the Commission was asked to grant an exclusive license for 20 MHz of spectrum before service rules had been adopted for the spectrum that would address technical and operational issues and provide a basis for choosing among multiple applicants.⁴⁷ The Commission concluded it would be contrary to the public interest to entertain license applications without first engaging in a rulemaking proceeding to develop service and licensing rules.⁴⁸

The circumstances presented in *M2Z Networks* bear no resemblance to the facts here. In the case of the L-band used by LightSquared, service and licensing rules have

⁴⁵ *In the Matter of Applications for License and Authority to Operate in the 2155-2175 MHz Band; Petitions for Forbearance Under 47 U.S.C. §160*, 22 FCC Rcd 16563 (2007) ("*M2Z Networks*").

⁴⁶ See WCAI Petition at 15-16.

⁴⁷ *M2Z Networks*, 22 FCC Rcd at 16582.

⁴⁸ *Id.* at 16582-83.

been in place for a long time; the spectrum already has been licensed; LightSquared already has ATC authority, which it is updating; and the rules provide for the very kind of showing that LightSquared has submitted.

The *Globalstar*⁴⁹ case cited by CTIA and other parties⁵⁰ is similarly off-point. Globalstar initially had been permitted, on a temporary basis, to deviate from the Commission's ATC "gating" requirements, including the satellite coverage and integrated service requirements.⁵¹ Globalstar sought an extension of this authority based on delays in deployment of its next generation satellites. Globalstar argued it would be "pointless" to provide its customers with dual-mode handsets for a satellite service they could not receive before the new satellites were launched.⁵²

The Commission rejected these arguments, concluding that the primary reason for Globalstar's failure to meet its FCC-imposed milestone deadline was "due to ordinary contingencies and a shortage of funds that prevented Globalstar from fully meeting its contractual payment obligations, not to circumstances beyond its control."⁵³ The Commission also found that Globalstar's argument in the alternative, that advancing broadband policy goals overrode the need for compliance with the

⁴⁹ *In the Matter of Globalstar Licensee LLC; Application for Modification of License to Extend Dates for Coming into Compliance with Ancillary Terrestrial Component Rules And Open Range; Request for Special Temporary Authority*, 25 FCC Rcd 13114 (2010) ("*Globalstar Order*").

⁵⁰ See, e.g., AT&T Comments at 6-7; Verizon Comments at 8.

⁵¹ *Globalstar Order* at 13133.

⁵² *Globalstar Order* at 13128.

⁵³ *Globalstar Order*, ¶ 34.

Commission's ATC gating requirements, should be addressed in a notice and comment rulemaking proceeding where the public policy benefits of relieving Globalstar from complying with the gating criteria could be more appropriately examined.⁵⁴

Unlike Globalstar, LightSquared is not seeking to operate outside the bounds of the Commission's current rules. LightSquared has demonstrated through an economic and technical showing as required by the rules that it will provide an integrated service. In contrast, Globalstar asked for relief so it would not have to do so. The Commission's denial of Globalstar's request, therefore, has no bearing on its consideration of LightSquared's minor modification application.

C. Passing on LightSquared's Integrated Service Showing in the Adjudicatory Context of Its Minor Modification Application is in the Public Interest

Some parties question the legality or appropriateness of acting on LightSquared's integrated service showing in an adjudicatory context based on the fact that the Commission's findings will set a precedent.⁵⁵ This argument proves too much. Every decision on every application can set a precedent. Similarly, whenever a showing is made under an existing rule a precedent can be set. This, however, is nothing more than the effect of the common law of Commission adjudication. If precedential effect were a reason for deferring to a rulemaking, the Commission never would be able to exercise its adjudicatory authority.

⁵⁴ *Globalstar Order* at 13130.

⁵⁵ *See, e.g., WCAI Petition* at 1-2.

Public interest considerations also weigh in favor of considering LightSquared's integrated service showing via adjudication. There is no proposal in the Commission's Notice of Proposed Rulemaking or its Notice of Inquiry in the MSS Flexibility Rulemaking touching on integrated service. The only mention of integrated service in the record is in the comments of a small number of parties – not including LightSquared – that were filed in response to the Notice of Inquiry and seek liberalization of the integrated service requirement.⁵⁶

In reality, then, if consideration of LightSquared's integrated service showing were deferred pending the outcome of a rulemaking, the Commission would start almost from scratch. It would have to direct its staff to prepare a notice of proposed rulemaking; put that item to a vote of the Commissioners; seek comments and reply comments; and, after evaluating these comments draft an order for consideration by the Commissioners. And after all that, the Commission still might have to await action by Congress if the changes in the integrated service requirements were coupled with incentive auctions, as the Commission is considering.⁵⁷ Thus, the timing for the rulemaking called for by some of the parties in this proceeding would likely be measured in multiple years.

⁵⁶ See ET Docket No. 10-142, Comments of Cricket Communications, Inc. (Sept. 15, 2010); Comments of Inmarsat (Sept. 15, 2010); Reply Comments of Globalstar, Inc. (Sept. 30, 2010); Reply Comments of T-Mobile USA, Inc. (Sept. 30 2010).

⁵⁷ See *Fixed and Mobile Services in the Mobile Satellite Service Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, ET Docket No. 10-142, 25 FCC Rcd 9481 (2010), ¶ 31 & n. 83.

LightSquared and its customers cannot wait that long. The Commission has found there is a substantial public interest benefit in LightSquared's deploying a high-capacity terrestrial network as part of its satellite-terrestrial service and has held LightSquared to a rigorous terrestrial network construction timetable.⁵⁸ It is anticipated that testing of the LightSquared system will commence in the first quarter of 2011, and commercial service will commence by the third quarter. LightSquared is currently conducting discussions with customers who want to start using the LightSquared network as soon as it is available, and need to know the extent and nature of the devices they can offer, which require lead times to develop. Accordingly, if the benefits the Commission perceived in implementing LightSquared's business plan are to be realized, LightSquared must know as soon as possible it can proceed with its plan to offer integrated services.⁵⁹

D. Granting the Application Will Not Relieve LightSquared from Any of Its Existing Regulatory Obligations Related to GPS

AT&T, USGIC and CTIA argue that, because of what they consider to be a possibility of interference from MSS/ATC transmitters to GPS receivers, the Commission should defer to the ongoing MSS proceeding, start a new proceeding, or

⁵⁸ LightSquared MO&O, ¶¶ 70, 72 and Appendix B.

⁵⁹ On a related note, WCAI questions the need for quick action by the Commission in light of the fact that LightSquared has not requested expedited processing. *See* WCAI Petition at 2, 6. LightSquared's application, however, is a minor modification, which the Commission is not required to place on public notice, so there was no need to request expedited treatment. Now that LightSquared's application has appeared on public notice, LightSquared hereby makes explicit what was already implicit in its filing and requests expedited processing.

otherwise delay commencement of LightSquared's service.⁶⁰ This argument is a *non sequitur*, however, because the possibility of GPS interference has nothing to do with LightSquared's integrated service showing.

The Commission, moreover, already addressed the GPS interference issue in the original MSS/ATC proceeding. To protect GPS, the rules adopted in that proceeding impose extensive and specific out-of-band emission ("OOBE") limits on MSS/ATC operations and place a specific obligation on LightSquared to coordinate with terrestrial CMRS operators.⁶¹ AT&T, USGIC, and CTIA all participated in the proceeding, both initially and on reconsideration.⁶² Grant of LightSquared's minor modification application will have no impact on these requirements and will in no way mitigate LightSquared's obligation to meet them.

The proposal to inject the GPS interference issue into this proceeding is especially unwarranted given that coordination with CMRS providers is underway and, as USGIC acknowledges, interested parties regularly engage in discussions on the issue and reach "collaborative solutions."⁶³ In fact, LightSquared's predecessor and other MSS/ATC licensees have entered into multiple agreements with USGIC in which, to protect GPS,

⁶⁰ AT&T Comments at 13-14; CTIA Comments at 8-9; USGIC Comments at 3-6.

⁶¹ See 47 C.F.R. § 25.253.

⁶² See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Order, 18 FCC Rcd 1962, App. A (2003); Order on Reconsideration, 20 FCC Rcd 4616 (2005); 47 C.F.R. § 25.253.

⁶³ USGIC Comments at 9.

they have agreed to observe more stringent OOB limits than those required by the rules.⁶⁴ Similarly, only a year ago USGIC withdrew its objection to LightSquared's application, which requested modification of the technical limits of its ATC authorization, following a satisfactory resolution of USGIC's concerns.⁶⁵ Indeed, in accordance with its regulatory requirements, LightSquared reached out to CMRS carriers operating in its test markets almost a year before it is scheduled to commence commercial operations and looks forward to moving quickly to conclude coordination activities with them.

Separately, USGIC alleges that the GPS interference environment will be changed by LightSquared's wholesale model, which in USGIC's view will "remov[e] the motivation of enlightened self-interest" needed to protect satellite service including GPS.⁶⁶ Nothing could be further from the truth. LightSquared will remain the sole licensee of both the satellite and terrestrial infrastructure and the terrestrial portion of LightSquared's network will itself rely on reception of GPS signals for operation of both

⁶⁴ See, e.g., Letter from USGIC and MSV to Marlene H. Dortch, IB Docket No. 01-185 (July 17, 2002); USGIC, Petition for Reconsideration, IB Docket No. 01-185 (June 11, 2003); Letter to Marlene H. Dortch from Raul R. Rodriguez, Counsel to USGIC, File Nos. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, SES-MOD-20031118-01879 (March 24, 2004). see also *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 22144, at ¶ 95(c) (Int'l Bur. 2004); *New ICO Satellite Services G.P.* 24 FCC Rcd 172, at ¶¶ 65, 69(g) (Int'l Bur. 2009); *TerreStar Networks Inc.*, 25 FCC Rcd 228, at ¶¶ 28, 34(d) (Int'l Bur. 2010).

⁶⁵ See Comments of the USGIC, File Nos. SAT-MOD-20090429-00047, SAT-MOD-20090429-00046, and SES-MOD-20090429-00536 (July 10, 2009); Letter from USGIC to Marlene H. Dortch, File Nos. SAT-MOD-20090429-00047, SAT-MOD-20090429-00046, and SES-MOD-20090429-00536 (August 17, 2009) (withdrawing from proceeding). Notably, LightSquared's modification application proposed numerous changes to the power levels and other technical parameters under which its ground network would operate. These changes allowed LightSquared to operate a robust terrestrial network using characteristics similar to existing terrestrial networks. No issues regarding "intensity" or intended use were raised at that time, which would have been the appropriate time to do so.

⁶⁶ Comments of USGIC at 3.

base stations and user devices, providing LightSquared with ample reason to protect GPS. USGIC's argument also ignores the fact that LightSquared has always been permitted to provide wholesale services, its predecessors have done so for years, and the LightSquared MO&O expressly contemplates terrestrial service being offered on a wholesale basis.

Thus, while LightSquared has taken and will continue to take its obligations with regard to GPS seriously, the GPS-related issues raised by AT&T, USGIC, and CTIA provide no basis for delaying action on LightSquared's minor modification application.

IV. LIGHTSQUARED'S PROPOSED SERVICE IS INTEGRATED

Verizon is the only party to question whether LightSquared's showing satisfies the "gating" requirement to provide an integrated service that is set forth in Section 25.149(b)(4)(ii) of the Commission's rules. Some of the arguments made by other parties in support of their contention that LightSquared's showing be addressed in a rulemaking are similar to arguments made by Verizon, but only Verizon takes issue with the merits of LightSquared's showing under the integrated service requirement.

Verizon challenges whether LightSquared's integrated service showing is sufficient principally based on the fact that some users of the LightSquared's network, if they are not supplied with dual-mode devices, may have access only to the terrestrial portion of the network. Verizon also argues that (1) LightSquared's proposal is inconsistent with the Commission's secondary market leasing principles,

(2) Commission statements limit the use of ATC to extending the reach of MSS networks, (3) LightSquared does not have an appropriate ratio between terrestrial service and satellite service in its integrated pricing plan, and (4) LightSquared has not made sufficient commitments regarding integrated chipsets and devices. None of these arguments has merit, as demonstrated by LightSquared below.

Customers accessing only the terrestrial portion of the network. The starting point for determining whether an MSS licensee complies with the integrated service rule is the rule itself. Section 25.149(b)(4) of the Commission's rules states that an MSS licensee can show compliance with the integrated service requirement in one of two ways: it can either "use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component"⁶⁷ or provide "[o]ther evidence establishing that ... [it] will provide an integrated service offering to the public."⁶⁸

It follows from these two choices that under Section 25.149(b)(4) an MSS licensee need not provide a dual-mode handset to every end user to satisfy the integrated service requirement. If the Commission had meant for dual-mode handsets to be the only way to comply with the rule, it would not have provided for an "other evidence" alternative. And because an end user who does not have a dual-mode handset cannot access an MSS licensee's satellite network, it also follows that the rule permits end users who receive terrestrial-only service. Whether an MSS licensee has some terrestrial-only

⁶⁷ 47 C.F.R. § 25.149(b)(4)(i).

⁶⁸ 47 C.F.R. § 25.149(b)(4)(ii).

end users, therefore, is the beginning of the analysis under Section 25.149(b)(4), not the end. Accordingly, Verizon's suggestion that Section 25.149(b)(4) is not satisfied simply because there may be terrestrial-only customers on LightSquared's network⁶⁹ is incorrect.

Even if every customer were to have a dual-mode handset, there is no guarantee they all would use an MSS licensee's satellite network. There might well be customers whose usage patterns precluded accessing the satellite network because, for example, because their use was limited to urban areas where only the terrestrial portion of the network was available. Or as a more extreme example, an MSS/ATC operator not using integrated pricing could set the price for satellite capacity sufficiently high that users never would want to access the satellite.

LightSquared's business plan moves beyond the limits of a device-centric approach and fully integrates satellite and terrestrial service, so that all customers will have the appropriate incentive to access satellite service if they want it. LightSquared charges a commercially competitive flat integrated rate at the wholesale level that entitles its customer to a designated amount of both satellite capacity and terrestrial capacity.⁷⁰ The only way that an end user will not have the right to use capacity on LightSquared's satellite network, therefore, is if one of LightSquared's retailer

⁶⁹ Verizon Comments at 3.

⁷⁰ As stated in LightSquared's minor modification application, for each GB of terrestrial usage LightSquared's customers will receive 500 kB of satellite usage and the right to additional satellite usage at a competitive price. LightSquared Application Narrative, p. 6.

customers elects not to pass through to the end user satellite capacity for which the retailer already has paid. The retailer has no economic incentive to do so, but it does have an economic incentive to refrain from doing so. If a retailer decides not to offer end users access to satellite capacity, the customers can avail themselves of the open access nature of LightSquared's network and find other retailers who will provide satellite access.

Integrated pricing also eliminates the possibility of "ATC-only subscriptions."⁷¹ It is not an "ATC-only subscription" if a subscriber's payments to a retail provider support the retail provider's acquisition of both terrestrial capacity and satellite capacity from LightSquared on the customer's behalf. Under LightSquared's integrated pricing plan, all subscriber payments to retail providers support the acquisition of both terrestrial capacity and satellite capacity.

In addition to using integrated pricing, LightSquared has underwritten the development of a chipset that will be fully integrated. Through an agreement with Qualcomm, LightSquared has ensured that dual-mode chipsets will be available to device manufacturers on pricing terms equal to those which apply to the same chipsets without the satellite protocol software. This arrangement eliminates price as a factor for end users deciding whether to use dual-mode handsets.

⁷¹ See Verizon Comments at 2-3.

The Commission has stated that the purpose of a grant of ATC authority is to “provide satellite licensees flexibility in providing satellite services that will benefit consumers” but not “to allow licensees to profit by selling access to their spectrum for a terrestrial-only service.”⁷² Under LightSquared’s integrated pricing structure, the company cannot profit from selling spectrum for a terrestrial-only service.

LightSquared will garner the same revenues if its retailer customers provide a terrestrial-only service as it will if they provide a satellite-and-terrestrial service, because the retailer customers will have paid for satellite capacity even if they make available only terrestrial capacity.

In sum, LightSquared’s integrated pricing plan and its underwriting of the development of integrated chipsets satisfy the integrated service requirement of Section 25.149(b)(4). The actions taken by LightSquared pursuant to its business plan also: (1) make it impossible for LightSquared to profit by selling a terrestrial-only service; (2) eliminate any economic incentive for retailers to withhold satellite service from end users ; and (3) establish the market conditions needed for competitive pricing of dual-mode handsets.

Secondary market principles do not apply. Verizon argues that LightSquared cannot allow its wholesale customers to provide terrestrial-only service because doing so would grant them greater rights than those enjoyed by LightSquared, contrary to the

⁷² 2003 ATC order, ¶ 3 n. 5.

secondary market principles limiting the rights of a lessee of spectrum to those of the licensee.⁷³ But LightSquared is not leasing spectrum: it is selling a wholesale service that includes access to its core network, and the secondary market rules do not apply to such a service. Indeed, the 2008 Globalstar order cited by Verizon is clearly limited to the context of a lease of spectrum associated with ATC,⁷⁴ and not to an offering of an integrated service otherwise compliant with the Commission's rules.

Use of ATC to extend the reach of MSS networks. Verizon relies in part on statements by the Commission to the effect that it envisioned ATC being used "to enhance MSS coverage and to enable MSS operators to extend service into areas that they were previously unable to serve, such as the interiors of buildings and high-traffic-density urban areas."⁷⁵ Although the Commission has stated on occasion that this is how it believed ATC would be used, it notably declined to adopt rules requiring that ATC be limited to these purposes.

In 2005, the Commission rejected a proposed requirement that any MSS/ATC handset first attempt to place a call through the satellite portion of the network and only transmit via ATC if the satellite signal is unavailable or unreliable.⁷⁶ The Commission disagreed with the suggestion by Cingular and CTIA that "that such a

⁷³ Verizon Comments at 4-5

⁷⁴ See Verizon Comments at 4-5.

⁷⁵ Verizon Comments at 7-8, quoting *Globalstar Order* at ¶ 5.

⁷⁶ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Memorandum Opinion and Order and Second Order on Reconsideration, 20 FCC Rcd 4616 (2005) ("2005 ATC Reconsideration Order"), ¶ 24.

requirement is the only way to ensure integrated service.”⁷⁷ It found that “requiring satellite-first routing would defeat most of the benefits of authorizing ATC in the first instance,”⁷⁸ and it characterized the proposal for a satellite-first regime as “artificial and spectrally inefficient.”⁷⁹ Accordingly, LightSquared may, consistent with the integrated service requirement, route its traffic as necessary for network management to either the satellite or the terrestrial portion of its network.

Ratio between terrestrial service and satellite service. LightSquared has stated that for each GB of terrestrial usage, the customer will receive 500 kB of satellite usage. Verizon attacks the *bona fides* of this integrated pricing plan based on the ratio between the terrestrial service and the satellite service, which according to Verizon should not be as weighted toward terrestrial.⁸⁰

Verizon’s argument is inconsistent with Commission precedent. When the Commission first adopted ATC rules in 2003, it rejected proposals to define “substantial” satellite service based on the ratio of usage between the satellite and terrestrial components of a network.⁸¹

⁷⁷ 2005 ATC Reconsideration Order, ¶ 24.

⁷⁸ 2005 ATC Reconsideration Order, ¶ 25, quoting 2003 ATC Order.

⁷⁹ 2005 ATC Reconsideration Order, ¶ 27.

⁸⁰ See Verizon Comments at 6.

⁸¹ 2003 ATC Order, at ¶ 99 (rejecting as spectrally inefficient the proposed requirement that satellite services be “predominant” or “primary,” whether measured in minutes of use, number of channels used, number of customers, revenue from calls or coverage area).

The ratio employed by LightSquared, moreover, is a function of physics, not economics. Verizon overlooks the fact that this ratio is commensurate with the relative capacities of the satellite and terrestrial networks. As stated in LightSquared's application, it is estimated that the capacity of its fully deployed terrestrial network across all base stations will be tens of thousands of times the capacity of either of the SkyTerra satellites.⁸² The ratio employed by LightSquared, therefore, is a practical necessity.

In any event, the ratio is a false issue when it comes to integrated service. LightSquared would have to employ a similar ratio even if every customer were equipped with a dual-mode handset and LightSquared therefore were deemed to be providing integrated service under the safe harbor of Section 25.149(b)(4)(i).

Verizon's real issue may be with the significant capabilities of LightSquared's terrestrial network. But any issues concerning those capabilities were resolved when the Commission granted the Harbinger-SkyTerra transfer of control application and made it a condition of the grant that LightSquared construct a terrestrial network having those capabilities.⁸³

Qualcomm chipset. Verizon questions whether "LightSquared's efforts regarding chipsets will result in the sale to end users of dual-mode devices that have

⁸² LightSquared Application Narrative, p. 7 n. 7.

⁸³ See LightSquared MO&O, ¶¶ 70, 72 and Appendix B, Attachment 2.

the capability of communicating via MSS and ATC.”⁸⁴ It asserts that LightSquared’s application “does not address whether the dual-mode chipset produced by Qualcomm contains ‘all the hardware and software necessary to acquire and communicate via both the operator’s MSS system’s signal and its ATC system’s signal.’”⁸⁵

LightSquared disagrees with Verizon’s characterization of LightSquared’s application. LightSquared stated in the application that it has made investments not only to ensure the availability of chipsets, but also to facilitate the availability of the RF components device manufacturers need to develop mainstream, dual-capable handsets supporting both MSS and ATC.⁸⁶ For the avoidance of doubt, however, LightSquared hereby confirms that the chipset and RF front end components described in LightSquared’s filing are all of the components that are required to communicate with the satellite and terrestrial portions of LightSquared’s network.

For the above reasons, Verizon’s objections to LightSquared’s integrated service showing under Section 25.149(b)(4) should be rejected. In light of the fact that LightSquared has satisfied Section 25.149(b)(4), moreover, there is no basis for imposing the conditions requested by AT&T.⁸⁷

⁸⁴ Verizon Comments at 6.

⁸⁵ Verizon Comments at 6, quoting from *Flexibility for Delivery of Communications by Mobile Satellite Service Providers, Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616 (2005) at ¶ 29.

⁸⁶ LightSquared Application Narrative, p. 6.

⁸⁷ See AT&T Comments at 11-13.

V. THE PARTIES' COMMENTS PROVIDE ADDITIONAL REASONS FOR GRANTING LIGHTSQUARED'S MINOR MODIFICATION APPLICATION

Open Range and TerreStar filed comments in support of LightSquared. Each of these parties identifies public interests benefits associated with authorizing LightSquared to proceed as it has proposed.

Open Range focuses on the benefits of LightSquared's network to the deployment of wireless broadband services in rural areas. It states that "the deployment of rural broadband services in the context of the LightSquared wholesale model will bring to rural areas, in many cases for the first time, wireless broadband services that are fully comparable to those available in urban areas."⁸⁸ In addition to expanding the breadth of wireless broadband services that are available in rural areas, Open Range observes, this deployment will drive down the cost of such services.⁸⁹

TerreStar emphasizes the benefits of ensuring that MSS licensees can demonstrate compliance with the integrated service requirement on a case-by-case basis. The flexibility allowed by an adjudicatory process, rather than rulemaking, will enable MSS licensees "to optimize the speed at which MSS/ ATC systems are deployed" and will "ensure that competitive pressures cause such integrated MSS/ ATC systems to best satisfy the needs of the marketplace."⁹⁰ Flexibility also "will enable the

⁸⁸ Open Range Comments at 4.

⁸⁹ Open Range Comments at 4.

⁹⁰ TerreStar Comments at 5-6.

Commission and MSS/ATC licensees to learn from, and react to, the successes and failures of participants and technology evolution in the MSS and terrestrial wireless markets”⁹¹ and “will go far to ensuring that licensing and technical rules do not inadvertently impose barriers to deployment” of MSS/ATC services, thus allowing next generation technology to take root.⁹²

CONCLUSION

For the reasons stated herein, LightSquared’s minor modification application should be granted expeditiously.

Respectfully submitted,

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⁹¹ TerreStar Comments at 8 (citations omitted).

⁹² TerreStar Comments at 9.

CERTIFICATE OF SERVICE

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