

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

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

**COMMENTS OF FREE PRESS, MEDIA ACCESS PROJECT,
THE NEW AMERICA FOUNDATION, AND PUBLIC KNOWLEDGE**

Free Press, Media Access Project, The New America Foundation, and Public Knowledge (collectively, “the Public Interest Organizations”) hereby file these reply comments in response to the application by LightSquared Subsidiary LLC (“LightSquared”) to modify its current authorization to offer an integrated MSS/terrestrial service. The present LightSquared application serves as an important step in the process of facilitating the deployment of a new, wholesale-only mobile broadband service, and therefore can deliver significant public interest benefits by increasing competition in a largely broken wireless market, consistent with this Commission’s goal of stimulating innovation, investment, and competition in the wireless industry. Contrary to some initial comments filed in this proceeding, the application by LightSquared does not entail the changing of current rules for integrated services, but rather complies with them, and therefore does not require any further delay. The Public Interest Organizations urge the Commission to approve the present application with all possible haste.

I. This Application May Bring Key Public Interest Benefits.

Comments on the record in this proceeding demonstrate substantial support for LightSquared on the merits, or, at worst, indifference towards the merits of its application. AT&T explicitly “takes no position” on the proposal,¹ targeting primarily the legal interpretive issues related to integrated service criteria (except for references to its own petition for reconsideration of two specific conditions in LightSquared’s proposal²). Similarly, Verizon, although opposed to the application, grounds its opposition on procedural issues, rather than on the merits of LightSquared and its service.³ Only the GPS Council seems opposed to LightSquared’s application on substantive grounds.⁴

As discussed below, each of these objections is insubstantial. Rather than presenting arguments based on a legitimate disagreement as to the interpretation of existing rules, it would appear that the primary purpose of the objections is to create delay and uncertainty. The Commission should not countenance the wireless incumbents’ transparent and anti-competitive efforts to maximize their first-mover advantage. Moreover, the potential public interest benefits offered by this application outweigh any such parochial concerns - particularly in the context of a broken market for mobile broadband services, and when the Commission has recognized these obstacles and made encouraging mobile broadband a central focus of its agenda.

A. This application offers substantial potential public interest benefits due to the current concentrated market structure for mobile broadband services.

For some time now, the Public Interest Organizations and other consumer advocates

¹ Comments of AT&T at i.

² *Id.* at 11-12.

³ See Comments of Verizon Wireless at 3-5 (focusing on current integration criteria).

⁴ See Comments of the U.S. GPS Industry Council at 5-6 (raising concerns of potential spectrum interference problems if LightSquared is permitted to deploy and offer its proposed services).

working in telecommunications have been calling attention to anti-competitive and anti-consumer behavior in the wireless industry.⁵ Fundamental problems with competition in wireless have led to artificially high prices, unnecessarily low service quality, and restrictions on innovation and investment. The market that consumers face today is a shadow of the market we all could have.⁶ This Commission has recognized this, and perhaps acknowledged it implicitly in failing to find effective competition in the industry in its 2010 annual report,⁷ but dominant providers maintain a suite of pervasive obstacles to a truly and effectively competitive market.

Successful deployment by LightSquared of the proposed network and business will not cure all the ills of the mobile broadband market, not by a long shot. But it will provide an opportunity for one more major competitor in a market that otherwise trends inexorably toward a duopoly of vertically integrated service providers using exclusive arrangements for devices and control over essential service inputs to squeeze out competitors.⁸ The Commission has frequently touted the importance and urgency of converting spectrum for greater wireless broadband usage,⁹ and the pending proceeding on relaxing current obligations for the specific type of spectrum at issue here reinforces its importance.¹⁰ Denying or impeding the possible

⁵ See, e.g., Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, WT Docket No. 09-66 (filed June 15, 2009).

⁶ See, e.g., Chris Riley, “The Myth of the Competitive Wireless Market,” Free Press (Nov. 17, 2009), at <http://www.freepress.net/node/74580>.

⁷ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66, *Fourteenth Report*, FCC 10-81 (rel. May 20, 2010).

⁸ See, e.g., Comments of Free Press and Media Access Project, WT Docket No. 10-133 (filed July 30, 2010), at 13-14 (quoting an analyst comment on the wireless market as “not quite a duopoly yet” but “with the vast majority of growth going to two companies, it’s close”).

⁹ See, e.g., Julius Genachowski, “Unleashing America’s Invisible Infrastructure,” Federal Communications Commission (Oct. 21, 2010), at <http://reboot.fcc.gov/blog?entryId=904238>.

¹⁰ *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and*

emergence of a competitor on this spectrum, one which complies with the existing rules and obligations, would create needless delays for potential improvements to a broken market.

B. The public interest benefits associated with this transaction are central to this Commission’s overall broadband policy goals.

The central role of mobile broadband services in this Commission’s policy agenda is indisputable. The mobile broadband focus is articulated in the National Broadband Plan, which discusses making more spectrum available for wireless broadband among other initiatives;¹¹ in the Commission’s recent advancements of its proceeding on unlicensed use of “white spaces” spectrum;¹² continued Commission work on the Spectrum Dashboard;¹³ work on a “mobility fund” component of future universal service efforts;¹⁴ and the entire slate of items on the Commission’s November agenda,¹⁵ among other activities. Throughout these initiatives, the Commission has acted with a goal of promoting innovation, investment, and competition in mobile broadband services, and ensuring that consumers have access to and can use such services.

Consistent with this agenda, the present application advances a transaction that purports

1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz, and 2180-2200 MHz, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 10-126 (July 15, 2010) (“MSS Notice”).

¹¹ *Connecting America: The National Broadband Plan*, FCC, at 73-107 (Chapter 5) (rel. Mar. 16, 2010).

¹² *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, Second Memorandum Opinion and Order, ET Docket Nos. 04-186, 02-380, FCC 10-174 (Sep. 23, 2010).

¹³ *Public Notice, Enhancements to Spectrum Dashboard Launched*, DA 10-2198 (Nov. 18, 2010).

¹⁴ *Universal Service Reform, Mobility Fund*, Notice of Proposed Rulemaking, WT Docket No. 10-208, FCC 10-182 (Oct. 14, 2010).

¹⁵ *E.g.* Eliza Krugman, “FCC November Agenda Is All About Spectrum,” *National Journal* (Nov. 4, 2010), available at <http://techdailydose.nationaljournal.com/2010/11/fcc-november-agenda-is-all-abo.php>.

to facilitate the emergence of additional competition in the mobile broadband market.¹⁶ A new entrant, bringing substantial investment, promises new business models based on wholesale network operation to be made available to distinct, competing retail outlets. The most likely outcome of Commission grant of LightSquared's application and recognition of its compliance with regulatory requirements is an increase in competition, which will then lead to further investment - not just by LightSquared, but also by AT&T, Verizon Wireless, and other carriers who will face greater competition. Greater competition and investment will produce higher quality and lower priced mobile broadband services, increasing access to such services for a greater number of citizens, and opening the door to greater innovation at the edges of the network. These results would be welcome in a mobile broadband environment that of late seems to grow more consolidated, concentrated, and closed, and more resistant to innovation, investment, and competition, with each passing day.

II. The Stated Opposition to this Application is Misguided and Misdirected.

A. This application does not seek a modification of the integration gating criteria, but rather seeks an application of the existing rules.

Opponents in this proceeding center many of their arguments on the assumption that LightSquared is attempting to modify the existing integration gating criteria. This assumption is invalid under a plain reading of the rule. The language of the relevant rule reads:

MSS ATC licensees shall offer an integrated service of MSS and MSS ATC. Applicants for MSS ATC may establish an integrated service offering by affirmatively demonstrating that:

- (i) The MSS ATC operator will use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component to provide the proposed ATC service; or
- (ii) Other evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.¹⁷

¹⁶ See Chris Riley, "Baby Steps on the Road to Wireless Competition," Free Press (Mar. 30, 2010), at <http://www.freepress.net/node/78235>.

¹⁷ 47 C.F.R. § 25.149(b)(4).

Clearly, LightSquared’s application complies with this rule. For example, LightSquared has demonstrated that its wholesale service offerings will include both satellite and terrestrial capacity.¹⁸ Additionally, LightSquared has invested in the development of integrated chips to ensure that dual-mode devices are available to be offered by LightSquared’s retail customers.¹⁹ AT&T even seems to acknowledge that the application complies with the current rule, as its most direct argument is that LightSquared’s petition contravenes “the spirit and purpose” of the rule,²⁰ implicitly acknowledging that the application does not violate its text.

Furthermore, because LightSquared is complying with existing rules, granting the pending application would not represent any form of “preferential treatment,” as AT&T alleges.²¹ Other holders of MSS spectrum may similarly deploy ATC networks in a manner that complies with existing rules, whether under a business model identical to LightSquared’s or some other compliant business model.

Although no particular flexibility is needed for LightSquared to comply with the current rules, flexibility in interpretation may have value in future circumstances. TerreStar argues that the Commission should provide “substantial flexibility” in its oversight of the increased deployment of ATC networks.²² According to TerreStar, such flexibility will speed deployment of ATC networks, create competitive pressure, and reduce costs for service providers.²³ While the Commission may choose to pursue such goals by increasing MSS/ATC flexibility, no such increase is needed to conclude that LightSquared already complies with the rules in place today.

¹⁸ LightSquared Letter Narrative at 2-3, 6-7. LightSquared will also offer some satellite-only plans. *Id.* at 4.

¹⁹ *Id.* at 4-6.

²⁰ Comments of AT&T at 2.

²¹ *Id.* at 4, 9-10.

²² Comments of TerreStar at 5-6.

B. Retail users of the forthcoming LightSquared network will not be lessees of spectrum, but purchasers of an integrated offering of MSS and ATC network capacity.

One particular argument raised by opponents in this proceeding relates to the nature of the potential relationships between LightSquared and its retail service providers customers. For example, AT&T characterizes LightSquared's customers as purchasing access to spectrum in order to offer terrestrial-only service offerings.²⁴ Such a characterization is inaccurate. Under LightSquared's proposal, the spectrum and facilities using the spectrum will be (and will remain) implemented, managed, and maintained by LightSquared; its customers will lease capacity from LightSquared to offer their own branded retail services.²⁵ These customers will have no spectrum rights whatsoever as a result of this application.

Given this understanding, many other related arguments raised by opponents fall apart. For example, Verizon cites to the *Globalstar* precedent and "basic secondary market principles" in contending that sub-licensees of spectrum cannot have rights exceeding those of the licensee.²⁶ However, as LightSquared has not proposed subleasing spectrum rights, Verizon's argument is not relevant. Similarly, CTIA argues that LightSquared is ultimately proposing to offer ATC-only subscriptions.²⁷ LightSquared has stated its intention to offer only integrated capacity on a wholesale basis; the actions of its retail customers in their offerings are not yet determined, but in any event have no legal relevance to LightSquared and the gating criteria associated with the spectrum license. Contrary to these commenters' assertions, the existing rules do not in any way prevent retail providers who lease network capacity from a wholesale network operator from offering terrestrial-only devices and services.

²³ *Id.*

²⁴ Comments of AT&T at 6.

²⁵ *E.g.* LightSquared Letter Narrative at 2-3.

²⁶ Comments of Verizon Wireless at 4-5.

C. Opponents' efforts to delay the application through flawed procedural arguments are nothing but attempts to stifle competition with red tape and delays.

The opponents' flawed substantive arguments lead them to make two additional but similarly inaccurate procedural arguments. The incumbent wireless broadband duopolists conjure these procedural arguments and ask this Commission to delay the emergence of a potential competitor. As AT&T and Verizon deploy their own LTE networks, they are maneuvering to get as great a first-mover advantage as possible, by tying up a potential future competitor in regulatory red tape. The Commission should not allow a transactional proceeding to be abused in such a fashion because the process arguments raised have no merit.

First, AT&T argues that the pending application does not constitute a "minor modification" and therefore requires 30 days to comment,²⁸ and that LightSquared requires a waiver of the existing integration gating criteria which entails additional procedural hurdles.²⁹ AT&T's argument is circular and premised on the success of its substantive claim that the application requests changes to the existing rules. Contrary to AT&T's circular assumptions, the application does not in fact request changes to the existing rules, and it does not constitute a major modification which would require greater notice.

Second, Verizon and CTIA argue that the present application should be addressed in the Commission's pending rulemaking proceeding on changing the current MSS/ATC rules.³⁰ As with AT&T's objection, these arguments are premised on the assumption that the pending application does not comply with existing rules. The open proceedings involve various changes to the current rules not relevant here. The Notice of Proposed Rulemaking concerns changes to

²⁷ Comments of CTIA at 5.

²⁸ Comments of AT&T at 8.

²⁹ *Id.* at 11-12.

³⁰ Comments of Verizon at 8-9; Comments of CTIA at 1, 6-8.

rules on subleasing spectrum;³¹ LightSquared's application does not propose to sublease spectrum. The Notice of Inquiry concerns ways to change the current integration rules to allow for greater terrestrial-only use of the spectrum;³² LightSquared's application is for an integrated service under the current rules. Certainly, the open proceeding is valuable and should be continued and even accelerated, as parties acknowledge³³ - but, that rulemaking proceeding is distinct from the application at hand, and its pending status should not be used as an excuse for delay.

The Public Interest Organizations urge the Commission to avoid unnecessary delays in granting this application, as consumers in the mobile broadband market continue to suffer the effects of poor competition, and any actions to facilitate market developments that could remedy these harms should be undertaken with all possible haste.

Respectfully submitted,
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³¹ *MSS Notice* at para. 2.

³² *Id.* at para. 3.

³³ *E.g.* Comments of CTIA at 8.