

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

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

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) submits these reply comments in response to the public notice announcing the filing by LightSquared Subsidiary LLC (“LightSquared”) of an application for modification of its Ancillary Terrestrial Component Authority (“ATC”).¹ As described below, T-Mobile agrees with commenters urging the Commission to act expeditiously to resolve the pending Mobile Satellite Service (“MSS”) proceeding, which has the potential to make additional spectrum available for mobile broadband services. However, the Commission need not and should not wait for the resolution of that proceeding before processing LightSquared’s application. The explicit structure of the ATC rules contemplates that the Commission will make case-by-case adjudicatory determinations on integrated service showings, without the need for a rulemaking each time such a showing is submitted.

¹ *Satellite Space Applications Accepted for Filing*, Public Notice, Report No. SAT-00738 (rel. Nov. 19, 2010); *see also* Letter from Jeffrey J. Carlisle, Exec. V.P., LightSquared Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, *available in* File No. SAT-MOD-20101118-00239 (Nov. 18, 2010) (“LightSquared Showing”).

I. THE COMMISSION SHOULD ACT QUICKLY TO RESOLVE THE PENDING MSS PROCEEDING, BUT SHOULD NOT DEFER CONSIDERATION OF THE LIGHTSQUARED APPLICATION

T-Mobile agrees with commenters² that the Commission should expeditiously implement the proposals made in the MSS Notice of Proposed Rulemaking (“MSS NPRM”) and promptly address the issues raised in the companion MSS Notice of Inquiry (“MSS NOI”).³ The Commission’s proposals to add new, co-primary mobile and fixed spectrum allocations in the 2 GHz MSS band, and subject terrestrial use rights in the MSS bands to the secondary market leasing rules, would, if enacted, facilitate more extensive use of the MSS bands for mobile broadband, consistent with the Commission’s goals in the National Broadband Plan (“NBP”)⁴ and MSS proceeding.⁵ Many of the proposals raised in response to the MSS NOI, especially the suggestions for encouraging the voluntary return of MSS spectrum for Commission auction,⁶ could be similarly beneficial.

² See, e.g., CTIA – The Wireless Association Comments at 8 (“CTIA Comments”); AT&T Comments at 9-10.

³ See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, ET Docket No. 10-142, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010) (“MSS Proceeding”).

⁴ See *Connecting America: The National Broadband Plan*, Recommendation 5.8.4, p. 87 (2010) (“NBP”).

⁵ In implementing its MSS proposals, T-Mobile urges the Commission to allow both *de facto* transfer and spectrum manager leases in the MSS bands, see T-Mobile Reply Comments in ET Docket No. 10-142 (Sept. 30, 2010) at 9-10 (“T-Mobile MSS Reply Comments”), and to extend the availability of the secondary markets immediate processing/approval procedures to prospective spectrum lessees with indirect foreign ownership exceeding 25 percent, if that ownership has been previously approved by the Commission. See T-Mobile Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 5-7 (“T-Mobile MSS Comments”).

⁶ See, e.g., T-Mobile MSS Reply Comments at 2-6 (suggesting a variety of possible incentives, including incentive auctions and bidding credits, for convincing MSS licensees to voluntarily return a portion of their spectrum to the Commission for assignment in support of mobile broadband use).

As the NBP, Chairman Genachowski, and others have recognized, the explosion in mobile data usage⁷ and looming spectrum crisis⁸ make it essential that the Commission act quickly to identify and make available additional spectrum for mobile broadband services. T-Mobile agrees with AT&T that “current spectrum resources will be insufficient to support the projected growth in mobile broadband demand.”⁹ Moreover, commenters in the MSS proceeding contend that the Commission must act quickly in the face of this crisis, and that the MSS bands are well-suited for mobile broadband use.¹⁰ There was also wide-spread support in the proceeding for the Commission’s MSS NPRM proposals,¹¹ as well as support for other reforms not specifically identified in the proceeding that could help to rapidly make the MSS bands available for terrestrial mobile broadband services.¹² Therefore, regardless of how the Commission resolves LightSquared’s ATC modification application, the Commission should make implementation of the positive reforms proposed and placed into the record in the pending MSS proceeding among its highest priorities.

⁷ See Remarks of FCC Chairman Julius Genachowski, FCC Spectrum Summit (Oct. 21, 2010) at 3 (predicting that “we are likely to see a 35X increase in mobile broadband traffic over the next [five] years”).

⁸ See NBP at 76-78.

⁹ AT&T Comments at 3.

¹⁰ See, e.g., CTIA Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 7-8, 14-15 (“CTIA MSS Comments”).

¹¹ See, e.g., CTIA MSS Comments 1-4; TIA Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 2-5; AT&T Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 5-8; Verizon Wireless Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 3-7.

¹² See Cricket Comments in ET Docket No. 10-142 (Sept. 15, 2010) at 9-11 (urging expansion of the MSS ATC dual-mode device safe harbor); T-Mobile MSS Reply Comments at 6-9 (supporting the Cricket proposal and urging the Commission to re-evaluate its 2005 decision that to qualify as a dual-mode device all hardware and software needed to access both satellite and terrestrial signals must be combined into one device).

II. THE ATC RULES MAKE CLEAR THAT THE COMMISSION CAN CONSIDER PROPOSALS FOR COMPLIANCE WITH THE INTEGRATED SERVICE REQUIREMENT OTHER THAN USE OF A DUAL-MODE HANDSET WITHOUT COMMENCING A NEW RULEMAKING PROCEEDING

Although T-Mobile agrees with many commenters regarding the need to complete the pending MSS proceeding, it disagrees with those commenters who suggest that a decision on LightSquared's ATC modification application should be delayed until the Commission resolves the MSS proceeding.¹³ The Commission's ATC rules make clear that the use of dual-mode handsets is only one means of satisfying the "integrated services" component of the ATC gating criteria, as T-Mobile stated in its MSS proceeding reply comments.¹⁴ As an alternative to using dual-mode handsets, the rules allow an applicant to provide "other evidence establishing that the MSS ATC operator will provide an integrated service."¹⁵ In commenting on LightSquared's application, however, certain parties suggest that an applicant should not be permitted to demonstrate its compliance with the requirement through this alternative showing – as LightSquared seeks to do. Instead, they argue that it would be inappropriate for the Commission even to substantively consider LightSquared's Section 25.149(b)(4)(ii) showing outside of a rulemaking proceeding.¹⁶ These commenters ignore the fact that the service rules contemplate that applicants may file showings to demonstrate compliance with the integrated services criterion without requiring every end user customer to purchase a dual-mode handset. As the Commission stated in the *ATC Order*, "MSS licensees that choose not to rely on [the] safe harbor

¹³ See, e.g., AT&T Comments at 7-10; Verizon Comments at 1, 8-9; CTIA Comments at 1, 6-8.

¹⁴ See T-Mobile MSS Reply Comments at 7; TerreStar Comments at 4.

¹⁵ 47 C.F.R. § 25.149(b)(4)(ii).

¹⁶ AT&T Comments at 10; Verizon Wireless Comments at 8; CTIA Comments at 7. Indeed, WCAI goes so far as to opine that LightSquared's application seeks to "rewrite the service rules for MSS ATC." Wireless Communications Association International ("WCAI") Petition to Deny at 11. Of course, LightSquared is making no request for a rule change, but is merely submitting its integrated service showing for approval.

will have to submit for Commission review evidence demonstrating that the service they propose to offer will be integrated.”¹⁷ That is precisely what LightSquared has done here.

The procedure established by Section 25.149(b)(4)(ii) is analogous to the procedure the Wireless Telecommunications Bureau (“WTB”) uses to review the substantial service showings of wireless licensees, which has been in place for many years. For example, in many wireless services the Commission has established one or more “safe harbors” that provide licensees with clear guidance on how to meet their construction obligations. However, as an alternative, licensees may opt to provide showings explaining how they have provided “substantial service” without relying on the safe harbor.¹⁸ In reviewing such showings, the WTB does not commence a new rulemaking, but instead makes case-by-case determinations of whether the specific facts presented satisfy the substantial service requirement.¹⁹ In fact, most substantial service showings are approved without the adoption of an order, although in some cases the WTB chooses to issue an order so that other licensees can benefit from the additional guidance on what service offerings are (or are not) considered acceptable to satisfy the substantial service requirement.²⁰ There is nothing improper about this type of case-by-case review of individual showings of compliance with the rules – even where they may ultimately serve as precedent for other licensees – and there is no reason to believe the Commission did not intend for the International

¹⁷ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz, the L-Band, and the 1.6/2.4 GHz Bands; Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by Mobile Satellite Service*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 ¶ 88 (2003) (“ATC Order”).

¹⁸ *See, e.g., Nextlink Wireless, Inc.* Memorandum Opinion and Order, 24 FCC Rcd 8585 ¶ 7 (BD, WTB 2009) (“the Commission’s ‘safe harbors’ only serve as examples of what may constitute substantial service, and the Commission reviews licensees’ showings on a case-by-case basis”).

¹⁹ *Id.* at ¶ 10 (“Our conclusion that Nextlink has demonstrated substantial service is not based on any single factor. It is based on our review of the record as a whole”).

²⁰ *See id.* *See also, Chasetel Licensee Corp.*, Order, 17 FCC Rcd 9351 (2002).

Bureau to apply the same process to Section 25.149(b)(4)(ii) showings, without requiring a rulemaking. Indeed, commencing a rulemaking proceeding for every such showing would render the rule virtually meaningless.

Moreover, the language from the *M2Z Licensing Order* cited by WCAI is inapposite and does not change the conclusion that no rulemaking is required here.²¹ The Commission's dismissal of M2Z's license application in that order was based on the fact that service and licensing rules for the spectrum sought by M2Z had not been established.²² By contrast, the service and licensing rules governing LightSquared's application, including the "integrated service" rule, have been on the books for several years. An additional rulemaking (especially one that would substantially delay the timeframe for deploying the L-Band spectrum in support of mobile broadband) is not warranted.

III. LIGHTSQUARED'S INTEGRATED SERVICE SHOWING MAY PROPERLY BE CONSIDERED UNDER THE ATC RULES

As the *ATC Order* confirmed, an MSS licensee's demonstration of compliance with the integrated service requirement "can be accomplished through technical, economic or any other substantive showings."²³ Beyond the dual-mode device safe harbor, however, the Commission has provided little indication as to what arrangements would be deemed acceptable. Despite this limited guidance, however, T-Mobile believes that LightSquared has made a credible showing that it plans to offer an integrated service.

²¹ WCAI Petition to Deny at 11 (citing *Applications for License and Authority to Operate in the 2155-2175 MHz Band*, 22 FCC Rcd 16563, 16581 ¶ 28 (rel. Aug. 31, 2007) ("*M2Z Licensing Order*").

²² *M2Z Licensing Order*, 22 FCC Rcd at 16581 ¶ 28 ("[W]e are not persuaded that assignment of this spectrum without first conducting a rulemaking proceeding to consider service and licensing rules would serve the public interest.").

²³ *ATC Order* ¶ 88.

LightSquared's service will be both technically and economically integrated. All traffic will be processed by the same "core network and business/operations support systems," and "a single set of Regional Aggregation Centers and National Data Centers" will be used for both satellite and terrestrial traffic.²⁴ Although retail customers will not be required to purchase dual-mode handsets, LightSquared does commit to ensure that dual-mode equipment will be available.²⁵ Except for MSS-only offerings, LightSquared will only offer its customers a fully integrated pricing structure that includes both terrestrial and satellite service.²⁶ Moreover, LightSquared's commitment to satellite service will remain substantial based on a number of indicia: LightSquared will allocate 6 MHz of spectrum nationwide exclusively for MSS; will ensure that all L-band MSS frequencies authorized to it can enable satellite communications at all times and places; will actively market its satellite services at competitive rates; and will file reports every six months detailing the number and type of terminals in service.²⁷ In sum, T-Mobile believes that LightSquared has provided sufficient information for the Commission to assess whether LightSquared's service offering will be integrated.

²⁴ LightSquared Showing at 4. Under LightSquared's proposal, dual-mode data cards will be available by 3Q 2011, and dual-mode smartphones will be available by 2Q 2012.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6-7.

²⁷ *Id.* at 9

IV. CONCLUSION

For the reasons discussed above, the Commission should proceed expeditiously to resolve the pending MSS proceeding, but should consider LightSquared's ATC modification application without waiting on the conclusion of that proceeding.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

Ari Q. Fitzgerald
David L. Martin

HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Attorneys for T-Mobile USA, Inc.

Kathleen O'Brien Ham
Steve B. Sharkey
Josh Roland

T-MOBILE USA, INC.
401 Ninth Street, NW Suite 550
Washington, DC 20005
(202) 654-5900

December 9, 2010