In the Matter of LightSquared Subsidiary LLC Request for Modification of Its Authority for an Ancillary Terrestrial Component

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”) hereby files these comments in response to LightSquared Subsidiary LLC’s request seeking to expand its Ancillary Terrestrial Component (“ATC”) authority to include integration based on the offering of an integrated MSS/terrestrial chipset and/or an integrated MSS/terrestrial service offering. While CTIA generally supports policies promoting the flexible use of Mobile Satellite Service (“MSS”) spectrum, the modification proposed by LightSquared appears to implicate a fundamentally new precedent for ATC operations, and such modifications to the Commission’s requirements are best addressed in the Commission’s ongoing rulemaking regarding MSS spectrum, and not as a response to an individual application. The Commission should accelerate that broader MSS rulemaking proceeding. Further, CTIA stresses the importance of protecting existing terrestrial operations

---

1 LightSquared previously was known as SkyTerra Subsidiary LLC and, before that, as Mobile Satellite Ventures Subsidiary LLC. For simplicity’s sake, and consistent with LightSquared’s recent filing, CTIA uses “LightSquared” throughout this filing to refer to the company even if the reference involves a time period when the company was operating under a former name.


3 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 2483.5-2500 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”).
from interference. Whether considered under LightSquared’s original ATC application\textsuperscript{4} or the instant LightSquared Request, CTIA urges the Commission to work with stakeholders to resolve potential interference issues prior to any commencement of operations.

\section{CTIA Generally Supports Flexible Use of MSS Spectrum.}

CTIA has long been an advocate of Commission policies that provide licensees the flexibility to use their spectrum to provide innovative services. Most recently, in the Commission’s ongoing proceeding to explore making MSS spectrum available for terrestrial broadband use, CTIA highlighted the significant benefits that would result from increased flexibility in these bands. That said, LightSquared’s proposed operation implicates a departure from its previous authority and Commission grant of the application would constitute a shift from its previously-articulated policy against permitting ATC-only subscriptions.

Specifically, the LightSquared Request states that LightSquared plans to operate an integrated network and has entered into an agreement to develop a dual-mode chipset.\textsuperscript{5} Customers will have a choice of either satellite-only pricing or an integrated MSS/ATC price.\textsuperscript{6} In its Request, LightSquared proposes for the first time to adopt a wholesale pricing structure under which retailers that purchase services from LightSquared will pay for both satellite and terrestrial air time, regardless of whether they choose to offer dual-mode or terrestrial-only devices and plans to their customers.\textsuperscript{7}

LightSquared first sought ATC authority seven years ago, stating that grant of its application would enable the company to “operate terrestrial facilities to supplement its satellite

\textsuperscript{4} See infra at 2-3.
\textsuperscript{5} Id. at 4.
\textsuperscript{6} Id. at 6.
\textsuperscript{7} Id. at 2-3, 7.
service and for the first time offer a high-quality, integrated service that is truly nationwide.”

The Commission’s grant of this request in 2004 was the first grant of authority for ATC operation. In granting this authority the Commission highlighted its gating criteria for ATC operation and emphasized that an MSS-ATC licensee “must integrate its offering of ATC services with its offering of MSS.” Notably, the Commission adopted a condition seeking to ensure that LightSquared would not offer a dual-mode handset that was only capable of receiving ATC service, demonstrating its commitment to the requirement that ATC services be truly “ancillary to” MSS service.

LightSquared updated the Commission on its business plan in 2010 in connection with the proposed transfer of control of LightSquared to Harbinger Capital Partners Funds. At that time, LightSquared indicated that the company intended to be a wholesale-only network operator, but provided no specific details on the service plans that would be made available to end users through its wholesaling arrangements. Thus, the instant request marks the first time

---


10 When LightSquared initially requested ATC authority, it indicated that as a result of technical limitations involving its first-generation ATC satellites, customers seeking to use dual-mode devices for MSS communication would need to use a “link margin booster” that would plug into the handset. The Commission explicitly found that LightSquared would not be in compliance with the Commission’s ATC gating criteria if handsets requiring the plug-in booster were offered for sale without the booster prior to the commencement of commercial operation using a satellite that handset users could access without the aid of a booster. Id. at ¶¶ 20-21.

11 Letter from Henry Goldberg and Joseph A. Godles, Counsel for the Harbinger Capital Partners Funds to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 08-184 (Mar. 26, 2010).

12 Id. (“The company intends to be a wholesale-only, data only network operator, providing a competitively-priced 4G option, including network, operations and spectrum. A three-tiered pricing plan (tiered, flat rate and advanced) will be offered. Potential retail distribution
that LightSquared has announced to the Commission a business plan under which
LightSquared’s retail partners are empowered to offer to end users a terrestrial-only service plan
using LightSquared’s MSS/ATC network.13

For its part, the Commission has made clear its stance on the offering of ATC-only
subscriptions under MSS/ATC authority and has consistently found that such an offering would be in violation of its rules. When the Commission first adopted its ATC rules, it stated that “[w]e do not intend, nor will we permit, the terrestrial component to become a stand-alone service.”14 To ensure that ATC service would remain ancillary to MSS, the Commission “established a number of gating requirements to ensure that ATC may only operate after the provision of MSS has commenced and during the period in which MSS continues to operate.”15 Indeed, the Commission explicitly alerted licensees to its intent not to allow “gaming” of its ATC rules.16 In subsequent proceedings, the Commission clarified that for an MSS/ATC system to be compliant with its rules, any MSS/ATC handset must be in “constant communication” with both the MSS customers would include PC manufacturers, national retailers, service providers without wireless
capacity, CE manufacturers and mobile providers. Unrestricted access will allow retail
distribution customers to completely own the relationship with the end user. ATC devices will
be subsidized to enable retail distribution customers to sell devices at conventional prices.”

13 LightSquared Request at 2-3, 7.


15 Id. at n. 5.

16 Id. (“While it is impossible to anticipate or imagine every possible way in which it might be possible to ‘game’ our rules by providing ATC without also simultaneously providing MSS and while we do not expect our licensees to make such attempts, we do not intend to allow such ‘gaming.’ For example, even if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a terrestrial licensee, such spectrum could only be used if its usage met the requirements to ensure it remained ancillary to MSS and were used in conjunction with MSS operations, i.e., that it met all of our gating requirements. The purpose of our grant of ATC authority is to provide satellite licensees flexibility in providing satellite services that will benefit consumers, not to allow licensees to profit by selling access to their spectrum for a terrestrial-only service.”).
and ATC networks, MSS/ATC operators may not offer ATC-only subscriptions, and there needs to be parity between the services offered over the MSS and ATC networks.

In spite of the gating requirements imposed by the Commission with respect to MSS/ATC operation, CTIA has been and continues to be a supporter of policies and rules designed to further flexible use of MSS spectrum. While CTIA has consistently advocated for flexible use of spectrum, such flexibility has become increasingly critical in recent years with the surge in mobile broadband usage and the looming spectrum crunch faced by wireless broadband providers. The Commission’s National Broadband Plan cautioned that if significant amounts of spectrum are not made available for wireless broadband, the result could be “higher prices, poorer service, lost productivity, loss of competitive advantage and untapped innovation.”

A recent FCC Staff Technical Paper found that a spectrum deficit approaching 300 MHz is likely

---

17 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, Memorandum Opinion and Order and Second Order on Reconsideration, 20 FCC Rcd 4616, ¶ 27 (2005) ("[W]e presume that an MSS/ATC handset will be in constant communication with the MSS/ATC network and will choose the best communication path available to it, whether MSS or ATC.").

18 Id. at ¶ 33 ("We clarify that ‘integrated service’ as used in this proceeding and required by 47 CFR § 25.149(b)(4) forbids MSS/ATC operators from offering ATC-only subscriptions. We reiterate our intention not to allow ATC to become a stand-alone system. . . . We will not permit MSS/ATC operators to offer ATC-only subscriptions, because ATC systems would then be terrestrial mobile systems separate from their MSS systems.").

19 See Globalstar Licensee LLC Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, Order and Authorization, 23 FCC Rcd 15975, ¶ 16 (2008) ("In addition, we conclude that continuous coverage of a transmit-only, low-speed mobile tracking/messaging/emergency assistance service is not sufficient to support an ancillary terrestrial component that would provide a two-way, high-speed, wideband mobile data service.").

20 Comments of CTIA – The Wireless Association®, ET Docket No. 10-142 (Sept. 15, 2010 ("CTIA MSS Comments").

by 2014, and that “freeing spectrum for mobile broadband use over the next five years will entail significant economic benefits.”

As CTIA noted in its comments in the Commission’s pending MSS proceeding, MSS spectrum is ideally suited for terrestrial mobile broadband services. CTIA supports efforts to make this spectrum available for mobile broadband and once again urges the Commission to continue its successful policies of flexible service rules for wireless spectrum. As CTIA and the Commission have previously observed, providing flexibility to spectrum licensees promotes innovation, speed of deployment, competition, and investment. Such an outcome is clearly in the public interest.

II. MODIFICATION OF THE COMMISSION’S ATC REQUIREMENTS SHOULD BE ADDRESSED THROUGH A RULEMAKING PROCESS.

CTIA does agree that the LightSquared Request has merit and should be fully explored by the Commission. However, CTIA does not believe that an individual application for modification is the appropriate procedural vehicle for adopting such a policy change that could and should have broad effect. Indeed, the Commission’s recent Notice of Proposed Rulemaking and Notice of Inquiry regarding MSS spectrum recognized that promoting more flexible use of MSS spectrum would enable investment in mobile broadband networks and promote


---


23 CTIA MSS Comments at 8.

24 CTIA MSS Comments at 9. See also New Personal Communications Services, Second Report and Order, 8 FCC Rcd 7700, 7712 at ¶ 23 (1993) (finding that providing licensees the flexibility to provide virtually any service “will provide the most effective approach for meeting [the Commission’s] four objectives of universality, speed of deployment, diversity of services and competitive delivery.”
innovation. As such, CTIA believes that LightSquared’s proposed modification to ATC authority could more appropriately be addressed in that proceeding to ensure a full public record is gathered and allow for more broad applicability of any such changes for the MSS spectrum.

As stated above, LightSquared’s proposed modification represents a significant departure from the Commission’s ATC regime, as grant of LightSquared’s application would enable the provision of ATC-only subscriptions. Because the Commission’s rules and cases regarding MSS/ATC operations have made clear that ATC-only subscriptions run afoul of its ATC rules, by granting LightSquared’s application the Commission would fundamentally implicate new precedent for ATC operations. In particular, several commenters in the Commission’s MSS proceeding – including LightSquared – supported relaxation of the ATC gating requirements. As such, LightSquared’s modification request is directly relevant to the larger MSS proceeding, merits careful deliberation in that proceeding, and therefore should be subsumed into that process to ensure the development of a full and informed record. This would enable all similarly situated

25 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 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 10-126 (July 15, 2010).

26 Comments of LightSquared Subsidiary LLC, ET Docket No. 10-142 (Sept. 15, 2010) (“LightSquared MSS Comments”) (arguing that the Commission should eliminate the requirement for a satellite ground spare). See also, e.g., Comments of Inmarsat, Inc., ET Docket No. 10-142, at 31-32 (Sept. 15, 2010) (suggesting the FCC relax its ATC gating criteria, including the integrated service requirement); Comments of Globalstar, Inc., ET Docket No. 10-142, at 16-18 (Sept. 15, 2010) (same); Reply Comments of T-Mobile USA, Inc., ET Docket No. 10-142, at 6-8 (Sept. 30, 2010) (stating that the Commission should consider proposals to ease the existing ATC gating requirements, including options to expand the dual-mode safe harbor); Comments of Cricket Communications, Inc., ET Docket No. 10-142, at 9-13 (Sept. 15, 2010) (“Cricket MSS Comments”) (arguing that re-evaluating the gating criteria can promote the use of and innovation in the MSS bands).
entities an opportunity to comment on the regulatory relief sought by LightSquared, in light of the potential benefits associated with the added flexibility sought by LightSquared.

Additionally, CTIA supports accelerated resolution of the MSS proceeding. In response to the Commission’s MSS NPRM, commenters gave overwhelming support to the Commission’s efforts to identify MSS spectrum for terrestrial mobile broadband use, and they also encouraged the FCC to continue its policies of exclusive-use licensing and flexible service rules. Similarly, the two proposals in the Commission’s NPRM – to add primary Fixed and Mobile allocations for the 2 GHz MSS band and to adopt secondary market rules for the leases of terrestrial rights to MSS spectrum – received widespread support from commenters representing a broad cross-section of the industry. Therefore, while the Commission should integrate the LightSquared proposal into its ongoing rulemaking, it should accelerate that proceeding by: (1) promptly adopting its NPRM proposals and (2) expeditiously promulgating a further rulemaking proposal seeking comment on whether and how to relax gating criteria and other rule changes necessary to allow for flexible use of the MSS spectrum for mobile broadband services.

III. THE COMMISSION MUST RESOLVE ONGOING INTERFERENCE CONCERNS PRIOR TO ANY COMMENCEMENT OF SERVICE BY LIGHTSQUARED.

Regardless of how the Commission resolves LightSquared’s application, it must address concerns regarding interference from terrestrial L-Band operations to GPS receivers used by Public Safety and commercial licensees for their wireless networks. CTIA asks that the

\footnote{See, e.g., Comments of AT&T Inc., ET Docket No. 10-142, at 5-8 (Sept. 15, 2010); Cricket MSS Comments at 4-9; Comments of the CDMA Development Group, ET Docket No. 10-142, at 3-6 (Sept. 15, 2010); Comments of New DBSD Satellite Services G.P., ET Docket No. 10-142, at 8-13 (Sept. 15, 2010); Comments of EchoStar Satellite Services L.L.C., ET Docket No. 10-142, at 4-5 (Sept. 15, 2010); LightSquared MSS Comments at 8-12.}
Commission engage parties on this issue and work to resolve these interference concerns, and that it do so prior to any commencement of service by LightSquared.

When the Commission adopted its ATC rules in 2003, it acknowledged that unwanted emissions from terrestrial stations “will have to be carefully controlled in order to avoid interfering with GPS receivers.” Consistent with this finding, the Commission adopted rules protecting GPS receivers from interference. Section 25.253(c)(2) of the Rules requires ATC applicants to coordinate with terrestrial CMRS operators prior to initiating ATC transmissions when co-locating ATC base stations with terrestrial CMRS base stations that make use of GPS time-based receivers. The Commission further requires that if harmful interference is caused to other services by ancillary MSS/ATC operations, the MSS/ATC operator must resolve any such interference. In the event of a disagreement, the parties to an interference dispute may petition the Commission for a resolution of their claims.

Because interference from L-Band MSS/ATC operations poses a substantial threat of harmful interference to Public Safety and commercial wireless operations, CTIA urges the Commission to engage interested parties and work to address these concerns before any commencement of service by LightSquared. While the Commission’s rules provide for procedural remedies in the event of an interference incident, the public interest and efficiency would best be served by resolving such issues now, regardless of the Commission’s decision with regard to LightSquared’s pending request.

---

28 *MSS Flexibility Report and Order* at ¶ 124.
29 47 C.F.R. § 25.253(c)(2).
30 47 C.F.R. § 25.255.
31 *Id.*
IV. CONCLUSION

While CTIA remains an avid supporter of promoting innovative uses of spectrum for wireless broadband through increased flexibility, the Commission’s decision in this proceeding could have long-range implications for MSS policy generally and for ongoing interference issues. CTIA believes that the issues raised by the LightSquared Request should instead be addressed in its ongoing MSS rulemaking to allow interested parties to further develop the record. CTIA further stresses the importance of interference prevention and of resolving ongoing concerns regarding ATC interference prior to the commencement of ATC operations in the L-Band.

Respectfully submitted,

By: /s/ Brian M. Josef

Brian M. Josef
Director, Regulatory Affairs

Michael F. Altschul
Senior Vice President & General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

CTIA – The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

December 2, 2010
CERTIFICATE OF SERVICE

I, Shanee Meeks, do hereby certify that on this 2nd day of December, 2010, I caused a copy of the foregoing “Comments of CTIA – The Wireless Association®” to be served on the following, First-Class Mail, postage pre-paid:

Mr. Jeffrey Carlisle*
Executive Vice President
Regulatory Affairs & Public Policy
LightSquared
10802 Parkridge Boulevard
Reston, VA 20191

By: /s/ Shanee Meeks

* Copy also sent via email.