BEFORE THE  
Federal Communications Commission  
WASHINGTON, DC 20554

In the Matter of

LightSquared Subsidiary LLC

Request for Modification of its Authority for an Ancillary Terrestrial Component

To: The Commission

File No. SAT-MOD-20101118-00239

REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW

Pursuant to section § 1.115(d) and (f) of the Commission’s rules, the General Aviation Manufacturers Association ("GAMA") hereby files this reply to the oppositions filed by LightSquared Subsidiary LLC ("LightSquared") and a group including New America Foundation ("NAF") in the above-captioned proceeding.¹

I. Contrary to Lightsquared’s Claims, the Waiver Order Dramatically Departs from Commission Precedent Without Requisite Process or Justification.

LightSquared’s efforts to portray the relief granted in the Waiver Order² as an ordinary Bureau action consistent with Commission precedent³ fail to mask the Bureau’s substantial departure from established Commission rules and procedures. The Bureau already has rejected LightSquared’s argument that the Bureau possessed authority to grant the requested operating authority “pursuant to Part 25” of the rules.⁴ The Bureau expressly allowed LightSquared to operate outside the scope of Part 25’s alternative terrestrial component (“ATC”) rule;⁵ it eviscerated the rule by permitting those operations beyond the established waiver standards.

¹ See 47 C.F.R. § 1.115(d) and (f). See also Consolidated Opposition of LightSquared Subsidiary LLC, filed March 14, 2011 (“LightSquared Opposition”); Consolidated Opposition to Applications for Review and Petitions for Reconsideration, New America Foundation, et al., filed March 14, 2011 (“NAF Opposition”).
³ LightSquared Opposition at 11-16.
⁴ LightSquared Opposition at 13-14.
⁵ See Waiver Order at ¶ 24 (emphasizing LightSquared’s non-compliance with 47 C.F.R. § 25.149(b)(4)).
LightSquared is incorrect that the Bureau’s authority to grant ATC modifications includes the authority to change the rule by waiver in contravention of Commission precedent.6

LightSquared’s claim that the waiver does not constitute a change in a rule7 fails because it ignores the fact that the waiver grant is predicated on little more than the public benefit to be gained by LightSquared’s initiation of terrestrial-only service – a benefit that would be offered by any prospective MSS operator seeking to offer such service.8 Such action effectively opens the L-Band to unlimited terrestrial-only operations, a result directly contrary to Commission precedent and not one within the Bureau’s authority to adopt.9

LightSquared’s argument that the waiver is justified because the ATC rule itself contemplates terrestrial use of the MSS bands10 likewise fails because even the Bureau found that the Commission never contemplated terrestrial-only operations like those LightSquared

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6 See WITN-TV, Inc. v. FCC, 849 F.2d 1521 (D.C. Cir. 1988) (“The waiver concept does not serve in this context, for the petitioner’s plea ... is in essence one for agency reconsideration of existing policy”); Am. Trucking Ass’n v. FHA, 51 F.3d 405, 414 (4th Cir. 1995) (“administrative waivers are a mechanism to seek out the public interest in particular, individualized cases [and] they are not a device for repealing a general statutory directive”). LightSquared also wrongly contends that GAMA’s arguments against Bureau authority must first be raised in a petition for reconsideration to the Bureau. LightSquared Opposition at 9-10. The unprecedented nature of LightSquared’s requested waiver and the procedural irregularities in its processing were raised by several parties, including GAMA, before the Waiver Order was issued. See, e.g., Letter from Stephen Baruch, Counsel for United States GPS Industry Council, to Marlene Dortch, Secretary, FCC, January 14, 2011, Appendix 2 at 17 (“January 14 Ex Parte”) (documenting participation by GAMA representative). It would be futile to ask the Bureau again whether the Waiver Order or the subsequent clarification letter are within its authority. Letter from Mindel De La Torre, Chief, Media Bureau, and Julius P. Knapp, Chief, OET, to Jeffrey J. Carlisle, LightSquared, DA 11-367 (Feb. 25, 2011) (“Clarification Letter”). No reason exists to delay the Commission’s ultimate determination of the Bureau’s authority, particularly given the build-out deadlines LightSquared itself faces. SkyTerra Communications, Inc., Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059, 3085 ¶56 (2010).

7 LightSquared Opposition at 14-16; see also NAF Opposition at 3-4.

8 The only attribute that distinguishes LightSquared from potential future waiver applicants is that the Bureau has found that LightSquared has made significant efforts to “rationalize” use of the L-Band. LightSquared Opposition at 14 (citing Waiver Order at ¶31). The Waiver Order does not suggest that similar efforts would or could be required of future waiver applicants.

9 See Melody Music v. FCC, 345 F.2d 730 (D.C. Cir. 1965)(Commission policies must be uniformly available to all parties and uniformly enforced).

10 LightSquared Opposition at 16-17.
proposed. Even assuming, arguendo, that the Bureau possesses the authority to waive the rule for such non-conforming service, the Bureau still was required by Section 1.3 of the rules to find that the potential benefits of LightSquared’s proposal outweigh the harms of interference to GPS operations in the adjacent band based on legitimate and long-standing expectations derived from the ATC rule and Commission precedent. The Bureau, however, did not perform that balance in the Waiver Order and instead delegated to LightSquared, post- Waiver Order, the task of assessing the interference risk. Contrary to LightSquared, this extreme and unsupported departure from Commission policy is not in the least supported by the ATC rule.

LightSquared’s efforts to defend the unlawfully truncated comment cycle employed in the Bureau proceeding also fail. First, LightSquared’s reliance on the Bureau’s finding that there is no specified pleading cycle for waiver requests is misplaced. As several parties have demonstrated, the waiver amounts to – at a minimum – a major modification of LightSquared’s license. Even LightSquared does not deny that the Communications Act and the Commission’s rules establish a required 30-day pleading cycle for comments on major modifications. Second, the Bureau’s rejection of Lightsquared’s argument that its request was merely an “ATC modification application” forecloses LightSquared’s claim that the Waiver Order is procedurally sound because there is no 30-day pleading cycle requirement for such “minor”

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11 See Waiver Order at ¶24 (citing Flexibility for Delivery of Communications by Mobile Satellite Service Providers, Memorandum Opinion and Order and Second Order on Reconsideration Order, 20 FCC Red 4616, 4628 (“We clarify that ‘integrated service’ as used in this proceeding and required by 47 C.F.R. § 25.149(b)(4) forbids MSS/ATC operators from offering ATC-only subscriptions”).
13 Waiver Order at ¶ 36.
14 LightSquared Opposition at 11-13; see also NAF Opposition at 7-8.
15 See id. (citing Waiver Order at ¶23).
18 Waiver Order at ¶24.
modifications. Third, contrary to Lightsquared’s claim, these bedrock statutory and regulatory pleading cycle requirements were not annulled merely because some parties failed to seek extensions of time in the non-compliant process. The Bureau is required to follow the Act and the Commission’s rules in all cases, not just in those in which parties insist on it. Fourth, LightSquared is simply incorrect to suggest that GAMA forfeited its right to object to procedural irregularities by failing to participate in the proceeding before the Bureau. The record shows that GAMA did participate prior to the Bureau’s decision, and, in any case, the abbreviated timing was contrary to law and deprived all parties of a full and fair opportunity to be heard.

Finally, LightSquared’s citation to the ultra-wideband proceeding does not absolve the Bureau of its evasion of the Congressional Review Act. In that case, the Commission demonstrated why the substantive effect of its ruling was appropriate for a waiver and did not represent a rule change. LightSquared does not and cannot make the same showing here.

II. LightSquared’s Defense of the Post-Decision Process Does Not Address Its Significant Legal Deficiencies.

Contrary to LightSquared’s argument, the Waiver Order and the Bureau’s subsequent Clarification Letter do not resolve the substantial legal infirmities inherent in the Bureau’s delegation to LightSquared of investigating interference issues that are the Bureau’s

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19 LightSquared Opposition at 12.
20 Id.
21 See Reuters Ltd. v. FCC, 781 F.2d 946 (1986) (“it is elementary that an agency must adhere to its own rules and regulations. Ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned”); see also Iglesia Pentecostal Cristo Missionera, 23 FCC 2230 ¶ 4 & n.11 (“Congressional statutes give the Commission the authority to take actions and promulgate regulations consistent with those statutes, and they define the scope of this authority”).
22 LightSquared Opposition at 9.
23 GAMA Application for Review at 1 & n.3 (citing Letter from Peter Bunce, GAMA, to FCC Chairman Julius Genachowski, dated Jan. 13, 2011). See also January 14 Ex Parte at Appendix 1; Appendix 2 at 17.
24 LightSquared Opposition at 11.
responsibility. LightSquared claims the Bureau has not ceded "decision-making authority,"
but that is not clear from the Waiver Order or the Clarification Letter, which leave unanswered
the ultimate question of when "the process addressing interference concerns relating to GPS" is
"complete[e]" and the circumstances under which LightSquared will be allowed to operate. 

No matter how "open, transparent, and fair" the process is, the Bureau abdicated its
responsibility to determine the extent of interference that LightSquared's proposed operations
will cause. The Bureau's delegation of that function to an interested party is unlawful no matter
how fairly LightSquared may conduct the process.

For all these reasons, the Commission should reject LightSquared's Opposition, reverse
the Waiver Order, and rescind the conditional grant of LightSquared's application.

Respectfully submitted,

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March 29, 2011

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26 LightSquared Opposition at 18-19 (citing Clarification Letter, supra, n.2); NAF
Opposition at 8-11.
27 LightSquared Opposition at 19.
28 Waiver Order at ¶48.
29 LightSquared Opposition at 18.
Responsibility & Mgmt. Assistance Auth., 132 F.3d 775, 783-84 & n.6 (D.C.Cir.1998))
(subdelegations "are assumed improper absent an affirmative showing of congressional
authorization"). See also Nat'l Ass'n of Reg. Util. Comm'r's v. FCC, 737 F.2d 1095, 1143-44 &
n.41 (D.C. Cir. 1984); Nat'l Park and Conservation Ass'n v. Stanton, 54 F.Supp.2d 7, 18-20
CERTIFICATE OF SERVICE

I, Jens Hennig, Vice President, Operations, for the General Aviation Manufacturers Association, do hereby certify that a true and correct copy of the foregoing “Reply to Oppositions to Application for Review” was served by U.S. mail, first class, postage-prepaid, on the 29th day of March, 2011, except where indicated by an asterisk, on the following:

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