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

In the Matter of

LightSquared Subsidiary LLC File No. SAT-MOD-20101118-00239
Request for Modification of its Authority for an Ancillary Terrestrial Component

REPLY OF AVIATION SPECTRUM RESOURCES, INC.

Aviation Spectrum Resources, Inc. (“ASRI”), pursuant to Section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, hereby replies to the Consolidated Opposition of LightSquared Subsidiary LLC in the above-captioned proceeding.1 ASRI respectfully submits that the International Bureau (the “Bureau”) exceeded its delegated authority in granting a waiver of the integrated service requirement2 and that nothing in LightSquared’s Opposition refutes this. Additionally, LightSquared’s Opposition fails to disprove ASRI’s demonstration that the working group process established by the Bureau is inadequate to protect the GPS community from harmful interference caused by LightSquared’s proposed operations.

As explained in ASRI’s Application for Review, ASRI is the communications company of the air transport industry and is owned by the airlines and other airspace users. As the Commission is aware, unimpeded GPS service is increasingly indispensable to safe and efficient airline operations. The Federal Aviation Administration’s NextGen program, a multibillion-


dollar program to shift air traffic management to a satellite-based navigation and communications system, will make interference-free GPS operations even more essential to the aviation industry over the next decade. That is why ASRI is extremely concerned about potential interference to GPS operations from LightSquared’s proposed operations. Moreover, LightSquared’s claim that ASRI failed to participate previously in the proceeding is incorrect.\(^3\)

LightSquared failed to disprove ASRI’s demonstration that the Bureau exceeded its delegated authority and established an inadequate and unprecedented working group framework that is insufficient to protect GPS operations. So, ASRI again urges the Commission to overturn the Bureau’s grant of LightSquared’s waiver request and defer any further decisions regarding waivers of the integrated service requirement until resolution of the ongoing rulemaking or establishment of a separate rulemaking to address this issue.

I. THE BUREAU’S DELEGATED AUTHORITY DOES NOT PERMIT IT TO CONTRAVENE COMMISSION PRECEDENT WHEN GRANTING A WAIVER.

Nothing in LightSquared’s Opposition refutes that the Bureau exceeded its delegated authority in waiving the integrated handset rule. LightSquared essentially argues that because the “language and logic” of the integrated service rule allows ATC applicants to submit “other evidence” of substantial service beyond a dual-mode handset, the Bureau had authority to waive the rule.\(^4\) That dual-mode handsets are a “safe-harbor” and that ATC applicants may make a different showing of substantial satellite service are not facts in dispute. What is in dispute is that the Bureau, which did not find that LightSquared’s proposal met the integrated service


\(^{4}\) LightSquared Opposition at 13-14.
requirement, determined to waive the rule to grant the Application. In doing so, the Bureau addressed an application that presented “new or novel arguments not previously considered by the Commission” and “facts or arguments that appear[ed] to justify a change in Commission policy,” which “could not be resolved under outstanding precedents and guidelines.” As such, by acting on the LightSquared Application the Bureau exceeded its delegated authority.

Rather than explain how its arguments and the facts presented to the Bureau were not “new or novel,” LightSquared proceeds to list these facts anew. As ASRI previously noted, LightSquared proposed for the first time to adopt a wholesale pricing structure under which retailers that purchase services from it would pay for both satellite and terrestrial air time, regardless of whether they chose to offer dual-mode or terrestrial-only devices and plans to their customers. As such, LightSquared asked the Commission to approve the offering of ancillary terrestrial component (“ATC”)–only subscriptions for the first time. Not only is this novel, it directly contradicts existing Commission policy. When the FCC adopted its Mobile Satellite Service (“MSS”)/ATC gating criteria, it made clear, “[w]e do not intend, nor will we permit, the

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5 LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, SAT-MOD-20101118-00239 (filed Nov. 18, 2010) (“LightSquared Application” or the “Application”).
6 47 C.F.R. § 0.261(b)(1)(i)-(ii).
7 Id. § 0.261(b)(iii).
8 Id. (stating that the Bureau “shall not have authority” to act on such applications).
9 LightSquared Opposition at 15.
10 ASRI Application for Review at 3.
11 LightSquared Application at 2-3, 7.
terrestrial component to become a stand-alone service.” Later, the Commission further clarified that its gating criteria require that any MSS/ATC handset must be in “constant communication” with both the MSS and ATC networks and that MSS/ATC operators may not offer ATC-only subscriptions. Accordingly, the Bureau’s waiver grant ignores clear Commission policy.

What is more, the mere fact that the Bureau utilized the waiver process does not somehow shield the Bureau’s decision from scrutiny. Indeed, the Commission has found that a Bureau has authority to grant waivers when: (i) the Commission itself has granted similar waivers; (ii) the Bureau has adequately limited and conditioned the waiver in circumstances that raise novel questions of law, fact or policy; and (iii) the Bureau has properly addressed the

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13 *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.").

14 *Id.* ¶ 33 ("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. 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.").

15 *Nevada Bell*, Opinion, 5 FCC Rcd 5661, ¶ 7 (1990) (upholding waiver granted by the Common Carrier and Media Bureaus because the request was “neither novel nor unprecedented” and because the Bureaus followed “clear precedent articulated by the Commission” that established a standard by which to grant requests for waivers to use frequencies for purposes other than for those which they were allocated).

16 *American Satellite Corp.*, Memorandum Opinion and Order, 40 RR 2d 1239, ¶ 4 (1977) (upholding the Bureau’s grant of a limited waiver that addressed an unresolved question before the Commission because the waiver was so conditioned “as to insure that Commission consideration of any questions of law, fact, or policy presented by the underlying application will not be prejudiced in any way.”)
public interest considerations involved and ensured that the waiver does not undermine Commission policy. None of these circumstances applies here.

First, the LightSquared request for waiver is unprecedented for MSS. The Commission has only addressed Globalstar, Inc.’s request for a temporary waiver of the integrated service requirement, which unlike LightSquared’s proposal, did not include ATC-only subscriptions. Second, in its only grant of a waiver of the integrated service requirement, the Commission made clear that Globalstar’s waiver was temporary and limited. The Commission noted its concern at the possibility that the “interim waivers might evolve into a long-term exemption with repeated extensions” but ultimately granted the waiver because it was “subject to conditions that set firm dates by which Globalstar must comply with the gating requirements.” And when Globalstar could not meet those deadlines, in keeping with the Commission’s statements in the Globalstar Waiver Order, the Bureau denied an extension of the waiver and suspended Globalstar’s ATC authorization. The Order contains no such limitations to address the Commission’s stated concerns. And third, the Bureau failed to weigh fully whether the waiver undermined the purposes of the integrated service rule. Generally, to make a public interest finding in favor of

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17 See, e.g., Pan American Satellite Corp., Memorandum Opinion, Order and Authorization 60 RR 2d 398, ¶ 54 (1986) (“Accordingly, in view of the fact that the Bureau’s waiver is limited, does not undermine our financial standards policy, and is supported by cogent public interest considerations, we find that the Bureau acted properly” pursuant to its delegated authority.).


19 Globalstar Waiver Order, ¶ 23.

20 Id. (emphasis added).


22 See Order, ¶ 26.
granting a waiver, “the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.”23 Here, by disregarding the Commission’s cautious and limited approach to waivers of the gating criteria, the Bureau has created new precedent that generally undermines those criteria.24

In sum, LightSquared’s assertions that “good cause” existed to grant the waiver25 do not address the underlying issue that the Bureau did not have authority to grant a waiver that directly contradicted Commission precedent in the first place. If allowed to stand, the Order sets a new precedent for such waivers in the future and impermissibly prejudices the Commission’s broader rulemaking on MSS spectrum policy by weighting the balance in favor of broader relaxation of the gating criteria before the Commission has had the opportunity to resolve these issues with the input of a wide range of participants.26

23 Globalstar Waiver Order, ¶ 20 (citing WAIT Radio v. FCC, 418 F.2d 1153,1157 (D.C. Cir. 1969)).

24 In the Order, the Bureau failed to address the Commission’s typical waiver standard in its full form. See Order, ¶ 26. Generally, “[t]o make this public interest finding, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.” Globalstar Waiver Order, ¶ 20 (citing WAIT Radio v. FCC, 418 F.2d 1153,1157 (D.C. Cir. 1969)). However, the Bureau provides no analysis as to whether the waiver will undermine the purpose of the Commission’s gating criteria.

25 LightSquared Opposition at 15-16.

26 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 and 2180-2200 MHz, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010). In this proceeding the Commission broadly sought comment on the terrestrial use of spectrum in MSS bands. Id. ¶ 31.
II. NOTHING IN THE OPPOSITION REFUTES THE FACT THAT THE PROCEDURES ESTABLISHED TO OVERCOME HARMFUL INTERFERENCE BY LIGHTSQUARED’S OPERATIONS ARE INADEQUATE TO PROTECT GPS OPERATIONS.

ASRI demonstrated in its Application for Review that the procedures adopted by the Bureau to resolve interference concerns are in conflict with established Commission policy and will not provide GPS users with protection from the harmful interference caused by LightSquared’s operations. Specifically, the Bureau does not require LightSquared to coordinate its operations with incumbent GPS operations, but instead permits LightSquared to organize and control an information-sharing working group that provides the GPS users with no ability to stop LightSquared from causing harmful interference.

LightSquared responded to ASRI’s argument demonstrating the inadequacy of the process by claiming that GPS services are provided more protection than is typically provided under FCC procedures.27 In support of this contention that the GPS community has been provided with extra protection, LightSquared cites the GPS industry’s involvement in the ATC rulemaking, which was concluded over five years ago, and a coordination agreement between LightSquared and the U.S. GPS Industry Council that addressed a fundamentally different interference environment and was approved nine years ago.28 Participation in proceedings that occurred years ago and addressed interference arising from a markedly different deployment scenario, however, does not resolve concerns that arise from the current interference environment between more sophisticated and extensive GPS and ATC operations.


28 Id. at 16-17. See Letter from Stephen D. Baruch, Counsel for the United States GPS Industry Council to Marlene H. Dortch, FCC, File No. SAT-MOD-20101118-00239 (filed Jan. 7, 2011) (providing ex parte presentation demonstrating the new interference concerns created by LightSquared’s ATC proposals that have not been addressed by prior agreements relating to out-of-band emission limits).
Moreover, LightSquared’s argument that GPS users are adequately protected from harmful interference potentially caused by LightSquared’s ATC operations is undermined by the large number of Applications for Review filed by members of the GPS community in the instant proceeding who are gravely concerned that GPS operations will receive harmful interference from LightSquared’s proposed operations. Moreover, the Bureau’s Order explicitly acknowledged that interference to GPS remains a significant concern, and even noted that the Commission recently established an internal working group dedicated solely to examining the issue of harmful interference to GPS operations.

As ASRI’s Application for Review demonstrated, the working group process adopted by the Bureau is not adequate to protect GPS operations from potential harmful interference and therefore does not meet the Commission’s statutory obligation to minimize interference for licensees. LightSquared claims that the Bureau created an “open, transparent, and fair working group process,” and claims that any “issues” raised regarding the working group process are resolved by the February 25, 2011, letter issued by the Bureau and the Office of Engineering and Technology purporting to provide additional guidance for the implementation of the working group process.

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30 Order, ¶ 39.


32 Opposition at 18-19.
group process. However, as ASRI explained in its Application for Review, this letter only clarifies the inadequacy of the process itself. Specifically, the letter makes clear that LightSquared is solely responsible for selecting “appropriate participants.” Although the Bureau found that “a broad cross-section of technical experts is desirable,” LightSquared has no requirements to select any technical experts whose interference concerns will clearly create problems for LightSquared’s proposed service. In short, it is difficult to envision how this process will address all of the interference concerns of the GPS community when LightSquared is able to select the specific members of the community that will create interference reports. As such, this working group process, even as clarified, is clearly not sufficient to protect the interference concerns of all GPS users.


Working Group Process Letter at 1. The LightSquared-selected participants may provide conflicting interference analyses to the Commission, and the Commission will determine whether harmful interference concerns have been resolved.
III. CONCLUSION

For the foregoing reasons, the FCC should grant ASRI’s Application for Review and overturn the Bureau’s decision to grant the LightSquared Application. The FCC should defer consideration of any waiver request of the integrated handset requirement until it resolves its pending MSS Spectrum proceeding or institutes a separate proceeding to receive broad comment on this issue.

Respectfully submitted,

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March 29, 2011
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