In the Matter of

LightSquared Subsidiary LLC

Request for Modification of its Authority for
an Ancillary Terrestrial Component

To: The Commission

REPLY TO OPPOSITION

The U.S. GPS Industry Council, along with its members Trimble Navigation Limited and Garmin International, Inc. (collectively referred to herein as the “Council”) and the Air Transport Association of America, Inc. (“ATA”), by their attorneys and pursuant to Sections 1.115(d) and (f) of the Commission’s Rules (47 C.F.R. §§ 1.115(d) & (f)), hereby reply to the “Consolidated Opposition of LightSquared Subsidiary LLC,” filed March 14, 2011 (“Opposition”) relating to International Bureau (“Bureau”) grant of LightSquared’s application to modify its L-band Mobile-Satellite Service (“MSS”) Ancillary Terrestrial Component (“ATC”) authorization (“Order”). ¹ The LightSquared Opposition fails to address in any meaningful way the serious procedural and substantive infirmities of the Order, and provides no legal or other support to buttress the Bureau’s flawed actions and conclusions. Accordingly, the Application for Review submitted by the Council and ATA should be granted expeditiously.

LightSquared devotes a substantial portion of its Opposition to revisionist history, seeking to create the false impression that the type of deployment it now proposes is an inevitable

¹ LightSquared Subsidiary LLC, 26 FCC Rcd 566 (IB 2011).
application of the ATC concept. In fact, the modified operations conditionally allowed by the Order represent a paradigm shift, not LightSquared’s claimed “evolution.”

As explained in the Council/ATA Application for Review, the ATC concept contemplated purely ancillary terrestrial operations complementary to MSS. The Commission stated unambiguously that the integrated service requirement “forbids MSS/ATC operators from offering ATC-only subscriptions.” As a complement to MSS, ATC necessarily must protect MSS system operators’ own low-powered satellite signals and therefore cannot also feature highly-concentrated terrestrial use that would block these sensitive signals – use that would also pose a serious desensitization risk to GPS receivers in the adjacent band. LightSquared’s radically revised approach, however, decouples retail terrestrial operations from its satellite service by allowing wholesale provision of service to third-party providers that will market terrestrial-only services, the very type of service that the Commission expressly prohibited when it adopted the integrated service requirement. The fact that some dual-use L-band handsets will remain “available” does not alter this fundamental shift in approach or the real world harmful impact of these new widespread, high-power terrestrial operations on existing service providers and users that depend on the established L-band signal environment. This new business and technical model poses a serious risk of widespread desensitization of GPS devices for the first time.

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2 See Opposition at 3-9 and 19-20.
3 See Opposition at 3.
4 Application for Review at 8-9. See also 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 (Report & Order), 18 FCC Rcd 1962, 2009 (¶ 88) (2003) (“This integrated service requirement and the other rules adopted today will help ensure that MSS remains first and foremost a satellite service and that the terrestrial component remains ancillary to the primary purpose of the MSS system”).
5 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 (Second Reconsideration Order), 20 FCC Rcd 4616, 4628 (¶ 33) (2005), quoted in Application for Review at 8-9.
6 See Ex Parte Notification Letter from Stephen D. Baruch, Counsel to the U.S. GPS Industry Council, to Marlene H. Dortch, Secretary, FCC, and Attached Presentation Slides (dated January 7, 2011). See also Letter from Stephen D.
As demonstrated in the Application for Review, the Bureau lacked authority to alter fundamentally the use of the MSS L-Band spectrum. Nevertheless, LightSquared seems to argue that the Order actually accepted LightSquared’s integrated service showing as consistent with the integrated service rule. LightSquared’s attempt to justify an action distinct from the one the Bureau took is squarely in conflict with the Order, which specifically stated that LightSquared’s proposal to deploy ubiquitous terrestrial-only handsets failed to comply with the integrated service requirement.

More fundamentally, the procedural defects afflicting the Order require that the Commission set it aside. Contrary to the Order, which LightSquared does not justify but merely parrots, the Bureau treated LightSquared’s application from the outset as a modification with an alternative waiver request, and not as a stand-alone request for waiver. The Order itself makes plain that the modification is not minor because it both: (1) raises serious interference issues, 

Baruch, Counsel for the U.S. GPS Industry Council, to Marlene H. Dortch, Secretary, FCC, dated January 20, 2011, at Appendix 2 (interference study performed by Garmin International).

7 There is no merit to LightSquared’s revisionist arguments that the GPS receiver desensitization issue was somehow settled by past agreements relating to distinct out-of-band emission concerns. The Council has consistently engaged in good faith discussions to resolve on a case-by-case basis past interference issues relating to the introduction of a truly ancillary terrestrial component of MSS; it is wrong for LightSquared to try now to use the Council’s past cooperation with LightSquared’s predecessors in interest as a cudgel to assert incorrectly that the new and distinct issues arising now were implicated by these prior discussions.

8 See Application for Review at 6-10 and 17-18.

9 See Opposition at 14 (arguing that “LightSquared’s showing ... fell squarely within the terms of the present rule”).

10 See Order, 26 FCC Rcd at 579 (¶ 24) (titled “Failure to Satisfy the Rule,” and stating that “LightSquared’s wholesale customers cannot offer terrestrial-only service to their subscribers without violating LightSquared’s obligations under the rules”).

11 See Order, 26 FCC Rcd at 578 (¶ 23) & n.100.

12 Opposition at 12.

13 See FCC Public Notice, “Policy Branch Information: Satellite Space Applications Accepted for Filing,” Report No. SAT-00738, at 1 (released November 18, 2010) (LightSquared “requests modification of its authority for an Ancillary Terrestrial Component (ATC) ... [and] requests that, if the information provided does not establish compliance with the rule, the Commission waive the requirement”).

14 See Order, 26 FCC Rcd at 585 & 586 (¶¶ 39 & 41).
and (2) requires a waiver of the MSS ATC integrated service requirement. Despite these clear findings, LightSquared continues to repeat the discredited contention that all "ATC modification applications are minor modifications." The rule LightSquared cites, however, states unambiguously that such treatment is limited to cases "where the particulars of operations provided by the application comply with the criteria specified in § 25.149," criteria which the Bureau stated LightSquared did not meet.

Because the modification sought by LightSquared was not a minor change under Section 309(c) of the Communications Act (the “Act”), its application was subject to the full public notice and pleading requirements of Sections 309(b) and (d) of the Act, which require a thirty day comment/petition period. Neither the Bureau nor the Commission has the authority to waive a statutory requirement, or find that alternative procedures were sufficient. For this reason alone, the Commission must find that the Bureau acted improperly in issuing the Order.

Finally, LightSquared is simply incorrect in asserting that the Application for Review raises new issues, and is therefore subject to treatment as a petition for reconsideration. The Council has consistently argued that the LightSquared application raised policy issues beyond the Bureau’s authority and should be addressed via rulemaking. The Council made clear during the Bureau’s consideration of the LightSquared application that the Bureau lacked the authority to

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13 See Order, 26 FCC Rcd at 579-585 (¶ 24-38).
16 Opposition at 12.
17 47 C.F.R. § 1.117(f) (emphasis added).
18 See 47 U.S.C. § 309(c)(2)(A) (exempting minor change applications from public notice requirements); §309(b) (requiring that applications subject to public notice not be granted until "thirty days following issuance of public notice"); and §309(d) (requiring that applications placed on public notice under Section 309(b) be subject to a comment/petition period of "no less than thirty days").
19 See, e.g., Kojo Worldwide Corp., et al., 24 FCC Rcd 14890, 14896 (¶ 11) (2009) ("neither the International Bureau nor the Commission ... [has] the authority to waive a statutory requirement").
20 See Opposition at 9-10, citing 47 C.F.R. § 1.115(c).
issue the requested waiver.\textsuperscript{22} To the extent that the Application for Review cites subsidiary legal flaws occasioned by the issuance of the \textit{Order} itself, these points are merely a byproduct of the Bureau’s improper action and do not raise any new “question of fact or law.”\textsuperscript{23} Because the Commission must determine whether the Bureau acted beyond its authority, all of the currently pending pleadings, including the Petition for Reconsideration filed by Deere & Company, should be referred to and acted upon by the Commission as Applications for Review.

For the reasons set forth herein and in the Application for Review, the Council and ATA respectfully request that the Commission vacate the \textit{Order} as improperly and unlawfully granted.

Respectfully submitted,

\textbf{AIR TRANSPORT ASSOCIATION OF AMERICA, INC.} \hspace{2cm} \textbf{THE U.S. GPS INDUSTRY COUNCIL}

By: \textit{\underline{James S. Casey}} \hspace{2cm} By: \textit{\underline{David S. Keir}}

James L. Casey
Deputy General Counsel
Air Transport Association of America, Inc.
1301 Pennsylvania Ave., NW
Washington, DC 20004
(202) 626-4000

Raul R. Rodriguez
Stephen D. Baruch
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006
(202) 429-8970

\textsuperscript{22} Letter from F. Michael Swiek, Executive Director, U.S. GPS Industry Council, to FCC Commissioners at 4 (filed January 25, 2011) (“LightSquared’s proposal for terrestrial-only operations offered on a wholesale basis is diametrically contrary to the purposes of the gating rules, and thus a grant of the waiver would effectively nullify the rules being waived. No bureau has the delegated authority to change completely or nullify a rule duly adopted by the full Commission”).

\textsuperscript{23} See Application for Review at 10 (\textit{Order} evades the Congressional Review Act) and 20-22 (Bureau should have noted that any LightSquared expenditures under a conditional license would be “at its own risk”). As a practical matter, the Council could not reasonably have anticipated that the Bureau would agree that LightSquared failed to satisfy the integrated service requirement, but nonetheless overlook the limits of its delegated authority to grant an \textit{ultra vires} waiver of the rule. See, \textit{e.g.}, \textit{PanAmSat Corp.}, 19 FCC Rcd 18495, 18598 n.11 (2004) (waiving Section 1.115(c) where applicant for review could not reasonably have anticipated relevance of new information prior to the initial decision). If the Commission grants relief with respect to the Council’s core procedural and substantive concerns, these subsidiary issues will become moot in any case.
GARMIN INTERNATIONAL, INC.

By: M. Anne Swanson
    Jason Rademacher

Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20008
(202) 776-2000

March 29, 2011

TRIMBLE NAVIGATION LIMITED

By: Russell H. Fox
    Howard J. Symons
    Russell H. Fox
    Jennifer A. Cukier

Mintz Levin Cohn Ferris
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
(202) 434-7300
CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that on this 29th day of March, 2011, a copy of the foregoing Reply to Opposition is being sent via first class, U.S. Mail, postage prepaid, to the following:

Jeffrey J. Carlisle
Executive Vice President
Regulatory Affairs & Public Policy
LightSquared
10802 Parkridge Boulevard
Reston, VA 20191-4334

*Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Commissioner Robert McDowell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Julius Knapp
Office of Engineering & Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Robert G. Nelson
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Mindel De La Torre
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lawrence E. Strickling
Department of Commerce
NTIA
1401 Constitution Avenue, NW
Washington, DC 20230

Brian M. Josef
Director, Regulatory Affairs
CTIA
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036

Barry Lambergman
Director, Government Affairs
Motorola, Inc.
1455 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20004

Chris Riley, Esq.
Free Press
501 Third Street, NW, Suite 875
Washington, DC 20001

Michael Calabrese
Wireless Future Project/
Open Technology Initiative
New America Foundation
1899 L Street, NW 4th Floor
Washington, DC 20036
Curtis W. Sumner, LS  
Executive Director  
American Congress on Surveying and Mapping  
6 Montgomery Village Avenue, Suite #403  
Gaithersburg, MD 20879

Matthew F. Wood  
Media Access Project  
1625 K Street, NW Suite 1000  
Washington, DC 20006

Jennifer Warren, Vice President  
Technology Policy & Regulation  
Lockheed Martin Corporation  
2121 Crystal Drive, Suite 100  
Arlington, VA 22202

Kris Hutchison, President  
Aviation Spectrum Resources  
2551 Riva Road  
Annapolis, MD 21401

Jens Hennig  
Vice President, Operations  
General Aviation Manufacturers Ass’n  
1400 K Street, NW, Suite 801  
Washington, DC 20005-2485

Melissa Rudinger, Senior Vice President  
Government Affairs  
Aircraft Owners & Pilots Association  
421 Aviation Way  
Frederick, MD 21701

Thomas A. Stansell, Jr.  
Stansell Consulting  
30110 Via Rivera  
Rancho Palos Verdes, CA 90275-4456

Catherine Wang, Esq.  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006

Edward Saade, President  
Fugro EarthData  
7320 Executive Way  
Frederick, MD 21704

John A. Prendergast, Esq.  
Salvatore Taillefer, Jr., Esq.  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP  
2120 L Street, N.W., Suite 300  
Washington, DC 20037

Mark E. Crosby  
President/CEO  
Enterprise Wireless Alliance  
8484 Westpark Drive, Suite 630  
McLean, Virginia 22102

*Via Hand-Delivery

Genevieve F. Edmonds