In the Matter of

LightSquared Subsidiary LLC

Request for Modification of its Authority for an Ancillary Terrestrial Component

File No. SAT-MOD-20101118-00239

To: The Commission

REPLY OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation ("Lockheed Martin"), pursuant to Section 1.115 of the Commission’s Rules (47 C.F.R. § 1.115), hereby replies to the Consolidated Opposition ("Opposition") LightSquared Subsidiary LLC ("LightSquared") filed in response to applications for review (including one filed by Lockheed Martin) of the International Bureau’s January 26, 2011 Order and Authorization ("Order")\(^1\) in the above-captioned proceeding. As Lockheed Martin explains below, LightSquared largely leaves unanswered the serious questions of procedural and substantive errors in the process leading up to the Order and in the Order itself. Where LightSquared does respond to the applications for review, its answers are deficient. The Commission should promptly step in and right the Bureau’s errors by vacating the Bureau’s order and initiating a rulemaking proceeding where the national policy and public interest considerations attendant to the potential reallocation of the 1525-1559 MHz and 1626.5-1660.5 MHz bands should properly be addressed.\(^2\)

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\(^2\) Lockheed Martin limits its Reply to the pleading properly filed by LightSquared. A separate document filed jointly by New America Foundation, Media Access Project, Free Press, and Public Knowledge was not served on Lockheed Martin and other parties to the proceeding in violation of Section 1.115(f), and did not comply with the provisions of Section 1.49(f) as also required by Section 1.115(f). The New America Foundation, et al. document is thus not an opposition to an application for review, and should be dismissed as defective.
At the outset, Lockheed Martin notes that LightSquared devotes a substantial portion of its Opposition to the assertion that the non-integrated terrestrial broadband service that the Bureau authorized by waiver in the Order was a logical outgrowth of all of the rulemaking and licensing actions that went before on the subject of ancillary terrestrial component ("ATC") operations, and thus permissible or defensible on this basis.\(^3\) This position conflicts squarely with the Bureau’s own clear and repeated determination that “LightSquared’s proposal does not comply with the Commission’s integrated service rule.”\(^4\) In any event, LightSquared’s characterizations of the procedural history of what were to have been ancillary terrestrial offerings must be rejected as irrelevant to the new paradigm the Bureau created with its decision to permit high-power, non-integrated terrestrial mobile broadband service in the 1525-1559 MHz band. The Order stands distinct from the proceedings and decisions that went before it on ATC.

Lockheed Martin next disputes LightSquared’s claim that the Bureau’s never had the opportunity to address key points made in the applications for review. The question of the Bureau’s delegated authority to consider a waiver that ignores the ATC gating criteria and associated rules was raised at the Bureau level, as were the details of interference to GPS and other radionavigation-satellite service (“RNSS”) receivers and the need for technical studies to

\(^3\) LightSquared Opposition at 2, 3-9, and 19-20.

\(^4\) Order, DA 11-133, slip op. at ¶ 23. See also id. at ¶ 24. LightSquared’s insistence that the Bureau’s conditional authorization to provide terrestrial-only service (in the spectrum licensed to LightSquared) is consistent with all of the ATC rules and licensing developments that have occurred over the last decade also leaves the Commission with little choice but to treat LightSquared’s Opposition as an application for review or petition for reconsideration, and deem that LightSquared has effectively engaged in a Section 1.110 rejection of the authorization in the Order as conditioned. Cf 47 C.F.R. § 1.110 (requiring the Commission to vacate a grant if the licensee rejects the authorization as granted).
address the threshold question of the compatibility of stand-alone terrestrial mobile service and RNSS operations in adjacent frequency bands.\(^5\)

It appears that LightSquared misconstrues the point about the Congressional Review Act from the USGIC’s Application for Review. As Lockheed Martin understood it, the argument was not that the \textit{Order} needed to be referred to Congress, but instead that the failure of the Bureau to properly treat the \textit{de facto} spectrum reallocation issues by rulemaking deprived Congress of its statutory right to evaluate rule changes with major economic impact.\(^6\)

LightSquared’s defense of the Bureau’s procedural and substantive actions with respect to the waiver fails. Under Bureau precedent, a waiver request such as LightSquared’s, which was not supported by any specific factual or precedential showing, should have led to a dismissal without prejudice of the application. Instead, the Bureau erred twice. It erred by considering the waiver request when it lacked delegated authority to do so, and it erred when it granted the request without applying the relevant waiver standard.

The applications for review argue that the Bureau’s actions squarely contradict a clear Commission regulatory scheme that, for sound and well-articulated technical reasons, precludes non-integrated mobile broadband in the mobile-satellite service spectrum, and thus were inappropriate for delegated authority.\(^7\) LightSquared ignored this argument (as well as the arguments that the waiver request required dismissal and that the Bureau failed to follow Commission standards for consideration of waiver requests).\(^8\) The bottom line here is that the

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\(^5\) See, \textit{e.g.}, Letter from F. Michael Swiek, Executive Director, U.S. GPS Industry Council, to Julius Genachowski, Chairman, FCC, \textit{et al.}, at 3 (filed January 25, 2011) ("USGIC January 25 Letter") (addressing the delegated authority point, and summarizing material in numerous presentations to Commission staff over the preceding three-week period). The USGIC January 25 Letter was cited in the \textit{Order}. \textit{Order}, DA 11-133, slip op. at ¶ 20 n.90.

\(^6\) USGIC Application for Review at 10.

\(^7\) \textit{Id.} at 17-18, and 11-14.

\(^8\) See USGIC Application for Review at 12-13.
Commission stated affirmatively during its ATC deliberations that it would not permit non-integrated ATC. ⁹ Neither the Bureau, in waiving that rule and policy to permit non-integrated ATC, nor LightSquared have been able to explain how this waiver did not undermine the existing Commission rules and policy. The Commission needs to ensure regulatory certainty of its processes, and commence a rulemaking proceeding to consider the threshold technical compatibility question between high-power terrestrial transmitters in one band and low-power, sensitive, extremely critical RNSS services in the adjacent band in an administratively-sound way.

Finally, Lockheed Martin takes serious issue with LightSquared’s assertion that the GPS interference concerns are being appropriately addressed. ¹⁰ Even if it had delegated authority, the Bureau should never have granted LightSquared’s application, before it had determined the technical feasibility of the non-interference-basis operation it was permitting, even on a conditional basis, under that license. The novel establishment of an expedited technical process that is not under Commission supervision – indeed, the Commission has no one participating in the studies it directed – is no substitute for the duties ascribed to the Commission in the Communications Act. The Bureau’s “working group” process – especially its compressed timetable and its decision to designated LightSquared alone to submit a report that “includes the working group’s analyses”¹¹ – is an inappropriate delegation of core agency responsibilities.

The scope of the interference threat to RNSS from the overload/desensitization interference that LightSquared’s newest non-integrated application poses is unprecedented at the Commission. ¹²

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⁹ *Id.* at 9-10.

¹⁰ LightSquared Opposition at 16-20. Here again, LightSquared relies on its claims of prior ATC actions as if the Bureau had not expressly rejected the claim that the ATC rules permit non-integrated mobile service.

¹¹ *Order*, DA 11-133, slip op. at ¶ 43.

¹² As Lockheed Martin asserted in its Application for Review, LightSquared transmitters designed to provide high-power service on a ubiquitous basis throughout population centers present a prospect of overload and
If established Commission processes for pursuing a spectrum reallocation of the type proposed by LightSquared had been followed, there would be no need for hasty decisions that may fail to take account of important considerations or follow appropriate processes that adhere to sound regulatory principles.

Now, the Commission is left facing a potentially intractable problem. The Commission needs to determine, as Lockheed Martin (as the FCC’s only RNSS licensee) has urged, that all authority for non-integrated terrestrial service be withheld from LightSquared until such time as the Commission is able to determine through a proper notice-and-comment rulemaking proceeding that such a service can be provided compatibly with RNSS services in the 1559-1610 MHz band, and under what specific conditions.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

By: [Signature]
Jennifer Warren
Vice President, Technology Policy & Regulation
Lockheed Martin Corporation
2121 Crystal Drive, Ste. 100
Arlington VA, 22202

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desensitization interference that poses a novel threat to the very ability of Lockheed Martin’s Regional Positioning System ("RPS") to provide error-free service to aviation in the National Airspace System that an ATC component that is truly ancillary (in the meaning of the FCC’s rules) would not.
CERTIFICATE OF SERVICE

I, Giselle Creese, hereby certify that on this 29th day of March, 2011, a copy of the foregoing Application for Review 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

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

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

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

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

Raul R. Rodriguez, Esq.  
Stephen D. Baruch, Esq.  
David S. Keir, Esq.  
Lerman Senter PLLC  
2000 K Street, NW  
Suite 600  
Washington, DC 20006

James L. Casey, Esq.  
Deputy General Counsel  
Air Transport Association of America, Inc.  
1301 Pennsylvania Ave., NW  
Washington, DC 20004

M. Anne Swanson, Esq.  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20008

Russell H. Fox  
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004

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

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

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

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

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

*Via Hand-Delivery*

Giselle Creeser