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

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

REPLY TO THE CONSOLIDATED OPPOSITION OF NEW AMERICA FOUNDATION, MEDIA ACCESS PROJECT, FREE PRESS, AND PUBLIC KNOWLEDGE

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 FCC’s rules,1 hereby reply to the Consolidated Opposition filed by New America Foundation, Media Access Project, Free Press, and Public Knowledge (collectively referred to herein as “NAF”) in the above-referenced matter.2

Contrary to NAF’s contentions, the Order squarely conflicts with the FCC’s ATC rules, denied the public and interested parties the required procedural protections, and authorized stand-alone terrestrial operations that will cause harmful interference to the installed user base

1 47 C.F.R. §§ 1.115(d) and (f).

2 NAF Consolidated Opposition to Applications for Review and Petition for Reconsideration (filed March 14, 2011) (“NAF Opposition”). The NAF Opposition responded to Applications for Review (including the Council’s and ATA’s Application for Review) and a Petition for Reconsideration of the Order and Authorization adopted by the International Bureau (the “Bureau”) granting LightSquared Subsidiary LLC (“LightSquared”) a waiver of the FCC’s Ancillary Terrestrial Component (“ATC”) rules. See LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component, Order and Authorization, 26 FCC Rcd 566 (Int’l. Bur. 2011) (“Order”). The Council and ATA note that the NAF Opposition was not served on any 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). In the event that the Commission does not dismiss the pleading as defective, the Council and ATA treat the NAF Opposition on the merits.
that relies upon Global Positioning System ("GPS") and associated radionavigation-satellite service ("RNSS") technologies that operate in the adjacent 1559-1610 MHz band.

Consequently, the Commission should reject the NAF Opposition and reverse and vacate the Order. Any consideration of fundamental changes to the Commission’s mobile satellite service ("MSS") ATC rules must proceed via a rulemaking proceeding.

I. THE ORDER AMENDED AND DID NOT APPLY THE ATC RULES

NAF argues that the Bureau applied, and did not amend, the integrated service rule, and that the GPS filers have relied on the “flawed premise” that “the ATC component cannot remain ancillary and complementary to the principal MSS offering if there is any offer of ATC-only devices or subscriptions.”3/ In fact, this premise is not “flawed;” rather, it is the basis for the integrated service rule itself.4/ Consequently, adopting a waiver of the rules which incorporates this premise by allowing LightSquared to offer a stand-alone terrestrial service eviscerates the integrated service rule and contradicts the Commission’s unambiguous and often “reiterate[d] intention not to allow ATC to become a stand-alone system.”5/ Only the Commission can modify its rules,6/ and then only after it conducts a notice-and-comment rulemaking proceeding.

3/ NAF Opposition at 3-7.

4/ See, e.g., 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 and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, ¶ 1 (2003) ("ATC Order"); 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, ¶ 33 (2005) ("ATC Second Reconsideration Order"). Even the Bureau in finding that LightSquared failed to satisfy the integrated service rule stated that such failure resulted because LightSquared’s “customers may well offer ATC-only subscriptions to consumers” and “the Commission was clear that application of the rule was intended to prevent such ATC-only subscriptions.” Order ¶ 24.

5/ ATC Second Reconsideration Order ¶ 33.

Contrary to NAF’s assertions, the Bureau compounded its error by failing to apply the correct standard for granting waivers. In particular, the Bureau made no finding on or mention of the critical element of the waiver standard which specifies that “the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.” As the Council and ATA have repeatedly shown, the waiver allowing terrestrial-only service contradicts the fundamental “no ATC-only service” objective of the ATC rules.

With respect to the public interest, the Bureau did not adequately consider the harmful interference, in the form of receiver overload and desensitization, that the proposed terrestrial-only service will cause to the existing service, particularly the installed GPS user base (which encompasses millions of users and supports critical national interests and key segments of the economy). The Bureau had no basis for concluding, on balance or otherwise, that present and future GPS and RNSS use of the spectrum was assured when it provisionally granted LightSquared’s terrestrial-only application. This fundamental question of technical compatibility needed to be addressed before any grant was issued; it cannot be “balanced” against the broadband access for which NAF advocates.

Finally, NAF is wrong when it argues that the Bureau followed the appropriate procedures in acting on LightSquared’s modification application. Given the Bureau’s own determination that the stand-alone service that LightSquared proposed was not ATC, the

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7/ See, e.g., WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("WAIT Radio").

8/ See, e.g., DIRECTV Enterprises, LLC, 24 FCC Rcd 9408, 9413-14 (¶ 14) (IB 2009), citing WAIT Radio, 418 F.2d at 1157 (emphasis added). It was not enough for the Bureau to state only that waivers may be granted "where the particular facts make strict compliance inconsistent with the public interest," and "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." 8

9/ NAF Opposition at 7-8.
substantial expansion of LightSquared’s operations, and the documented potential for increased interference to GPS operations, the Bureau’s truncated comment cycle did not provide adequate opportunity for interested parties to address the issues raised by the application. This failure to accord due process was also fundamentally inconsistent with the Commission’s responsibilities under, among others, the Administrative Procedure Act and the Communications Act. The extraordinarily expedited timing eliminated the possibility of creating a complete record regarding the important issues raised by LightSquared’s request.

II. THE BUREAU ERRED IN FAILING ADEQUATELY TO PROTECT GPS.

NAF contends that the Order struck the appropriate balance in protecting GPS operations.\textsuperscript{10/} Nevertheless, as it recognized, “potential disruption of GPS is a serious concern, particularly as it relates to air traffic control and other critical public safety applications.”\textsuperscript{11/} Indeed, the interference that LightSquared’s proposed terrestrial-only operations will cause to GPS has been well-documented in these proceedings,\textsuperscript{12/} and the Bureau’s decision to cede responsibility for addressing these important issues to a time-constrained working group headed by LightSquared is unprecedented and improper.

The Council and ATA strongly object to NAF’s claims that the GPS filers should have designed their systems “around the rights and known potential uses of neighboring spectrum bands.”\textsuperscript{13/} GPS and RNSS, which use the 1559-1610 MHz band, were designed to operate (and have successfully operated) for nearly 30 years when there were no terrestrial mobile allocations in the adjacent 1525-1559 MHz band. Even if it were possible to design GPS receivers that

\textsuperscript{10/} NAF Opposition at 9.
\textsuperscript{11/} NAF Opposition at 8.
\textsuperscript{12/} See, e.g., General Aviation Manufacturers Association (“GAMA”) at 1; Lockheed Martin Corporation at 3; Tom Stansell Application for Review at 1; Aircraft Owners and Pilots Association Application for Review (“AOPA”) at 1.
\textsuperscript{13/} NAF Opposition at 9.
could accommodate a high-power, ubiquitous-coverage terrestrial neighbor, something the Council and ATA question, it would not have been rational to do so, given the allocation tables codified in Section 2.106 of the Commission’s rules.\footnote{Filtering alone would have had substantial size and cost penalties on GPS receivers that would threaten the very viability of nearly all of the GPS applications in use today.}

Further, and contrary, to NAF’s assertions, the Council and ATA were not “on notice” regarding the widespread deployment of non-integrated ATC technologies;\footnote{NAF Opposition at 10-11.} rather, past Council filings demonstrate the Council’s long-standing concerns and strong interest in finding the appropriate balance between LightSquared’s service and existing GPS operations – a balance that the Bureau upset with the unexpected evisceration of the integrated service rule.\footnote{Moreover, the Bureau’s actions in the Order represent a significant departure from the Commission’s past approach to resolving ATC interference issues. In particular, the Commission unequivocally placed the responsibility on ATC operators to resolve interference concerns, finding that in the event “an adjacent MSS or other operator does receive harmful interference from ATC operations, either from ATC base stations or mobile terminals, the ATC operator must resolve such interference.” \textit{ATC Order} ¶ 104; see also id. ¶ 104, n.273.}

While the Order should be overturned for the reasons stated above and in the Application for Review, the Council will continue to participate in good faith in the technical working group established pursuant to the Order. Consistent with Commission precedent, however, the burden of proof remains on LightSquared to demonstrate conclusively that it has resolved the GPS interference issues before it can be allowed to proceed with service deployment.\footnote{As a general matter, the burden of proof is on an applicant to make the public interest case for the authority it requests. See, e.g., \textit{Deep South Broadcasting Co. v. FCC}, 347 F.2d 459, 465 (D.C. Cir. 1965).}

\section{CONCLUSION}

For the reasons set forth herein and in their Application for Review, the Council and ATA respectfully request that the Commission dismiss or deny the NAF Opposition and reverse and vacate the Order.
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March 29, 2011
CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that on this 29th day of March, 2011, a copy of the foregoing Reply to the Consolidated Opposition of New America Foundation, Media Access Project, Free Press and Public Knowledge is being sent via first class, U.S. Mail, postage prepaid, to the following:

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