

COPY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ADVERTED

JUN 16 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)

Globalstar Licensee LLC)
GUSA Licensee LLC)

Iridium Constellation LLC)

Iridium Satellite LLC)
Iridium Carrier Services)

Modification of Authority to Operate a)
Mobile Satellite System in the 1.6 GHz)
Frequency Band)

Call Sign S2115

Call Sign E970381

Call Sign S2110

Call Sign E960132

Call Sign E960622

OPPOSITION OF IRIDIUM SATELLITE LLC TO LICENSE PROTEST OF
GLOBALSTAR INC.

R. Michael Senkowski
Andrew G. McBride
Jennifer Hindin
Joshua S. Turner
Wiley Rein LLP
1776 K Street N.W.
Washington D.C. 20006
Tel. (202) 719-7000
Fax (202) 719-7049

Donna Bethea-Murphy
Vice President, Regulatory Engineering
Iridium Satellite LLC
6701 Democracy Blvd., Suite 500
Bethesda, MD 20817
(301) 571-6200

Counsel to Iridium Satellite LLC

June 16, 2008

COPY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ACCEPTED

JUN 16 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Globalstar Licensee LLC	)	Call Sign S2115
GUSA Licensee LLC	)	Call Sign E970381
)	
Iridium Constellation LLC	)	Call Sign S2110
)	
Iridium Satellite LLC	)	Call Sign E960132
Iridium Carrier Services	)	Call Sign E960622
)	
Modification of Authority to Operate a)	
Mobile Satellite System in the 1.6 GHz)	
Frequency Band)	

OPPOSITION OF IRIDIUM SATELLITE LLC TO LICENSE PROTEST OF
GLOBALSTAR INC.

R. Michael Senkowski
Andrew G. McBride
Jennifer Hindin
Joshua S. Turner
Wiley Rein LLP
1776 K Street N.W.
Washington D.C. 20006
Tel. (202) 719-7000
Fax (202) 719-7049

Donna Bethea-Murphy
Vice President, Regulatory Engineering
Iridium Satellite LLC
6701 Democracy Blvd., Suite 500
Bethesda, MD 20817
(301) 571-6200

Counsel to Iridium Satellite LLC

June 16, 2008

SUMMARY

On November 9, 2007, the Commission released the *Second Order on Reconsideration* in IB Docket No. 02-364 that established a new bandplan for Big LEO MSS providers. In part, the Commission modified the bandplan because Globalstar had submitted evidence showing that sharing between the two MSS providers (Iridium and Globalstar) was not technically possible. On May 7, 2008, the Commission's *Order Proposing Modifications* initiated this adjudicatory proceeding to effectuate the license modifications resulting from the new MSS bandplan. Disappointed with the new bandplan that flowed from its own position, Globalstar now protests the proposed license changes on the grounds that the Commission misread its legal authority and, in doing so, violated Globalstar's rights under the Administrative Procedure Act. However, as discussed below, Globalstar has misstated the law on both counts and its Protest must be summarily denied.

In its Protest, Globalstar presents only a narrow legal challenge to the proposed license modifications. Specifically, Globalstar contends that the FCC failed to provide adequate notice and opportunity to comment before proposing to restrict Globalstar's space station operations occurring outside the United States. Globalstar also argues that the FCC has no authority to make such a worldwide modification and departed unlawfully from agency precedent.

Globalstar's filing, however, rests on simple but plainly dispositive errors. First, Globalstar's claim that the FCC failed to comply with certain APA provisions that apply exclusively to rulemaking proceedings is frivolous. Despite Globalstar's attempt to elide the fact, this license modification proceeding is an adjudication—not a rulemaking—and therefore the APA provisions on which Globalstar relies simply do not apply.

Second, there is no legal basis to Globalstar's assertion that the FCC has no authority to modify the worldwide operation of Globalstar's satellite space stations. Indeed, Globalstar's characterization of the *Order Proposing Modifications* as unlawfully interfering with foreign countries' authority is misleading at best and a calculated misstatement at worst. Globalstar intentionally tries to conflate the Commission's limited authority over *earth* stations with its broad authority over satellite *space* stations. It is a bedrock principle of international telecommunications law that the FCC, which licenses all of Globalstar's satellite space stations, has exclusive authority to modify the frequencies on which Globalstar may operate those satellites—regardless of wherever those satellites in space are being used.. In contrast, earth station facilities on the ground are regulated by individual countries and the *Order Proposing Modifications* fully recognizes the sovereign role that other nations play in such respects.

Globalstar also claims that its erroneous reading of the law is necessary to ensure an orderly international framework for satellite systems. However, Globalstar's view would in reality lead to chaos. In a world operating under Globalstar's rules, MSS providers could operate their satellite space stations on *any and all* frequencies of their choosing. Indeed, under Globalstar's theory, Iridium would presently be authorized to use its satellites to transmit and receive signals using the L-band spectrum exclusively licensed to Globalstar and the FCC would be powerless to intervene.

As a last gasp attempt to delay license changes, Globalstar claims in the alternative a Section 316 evidentiary hearing is required to resolve substantial and material questions of fact. But this claim does not withstand even the slightest scrutiny. Globalstar is protesting the FCC's legal authority here and not the wisdom of how that authority is exercised. Given its pending court challenge to the bandplan rulemaking decision, Globalstar has steered clear of any attempt

to engage in a further administrative challenge to the policy consequences of the bandplan decision. Consequently, Globalstar's attempt to disguise the legal issues raised in the Protest as factual issues obviously fails to satisfy Section 316's requirements.

Accordingly, Iridium respectfully requests that the Commission expeditiously enter an order denying Globalstar's Protest and modifying Iridium's and Globalstar's authorizations as proposed in the *Order Proposing Modifications*.

TABLE OF CONTENTS

SUMMARY i

I. GLOBALSTAR’S APA ARGUMENTS DO NOT APPLY TO THIS
ADJUDICATORY PROCEEDING 4

II. THE COMMISSION PROVIDED GLOBALSTAR WITH ALL OF THE
PROCESS REQUIRED IN AN ADJUDICATORY PROCEEDING..... 7

III. GLOBALSTAR’S CLAIM THAT THE COMMISSION UNLAWFULLY
DEPARTED FROM FCC PRECEDENT IS MERITLESS 9

 A. In Arguing that the FCC Unlawfully Departed from Precedent, Globalstar
 Conflates the FCC’s Authority Over MSS Providers’ Earth Stations and
 Their Satellite Space Stations 12

 B. The Commission Provided Globalstar with Ample Notice that It May
 Exercise Its Extant Authority and Modify Globalstar’s Satellite Space
 Station Authorization 24

 C. Even Though the Commission Did Not Change Course, Globalstar Argues
 in Error that the FCC Cannot Change Course Through an Adjudication 28

IV. GLOBALSTAR HAS NOT DEMONSTRATED ANY BASIS FOR A
HEARING UNDER SECTION 316 29

V. CONCLUSION 34

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Globalstar Licensee LLC	)	Call Sign S2115
GUSA Licensee LLC	)	Call Sign E970381
)	
Iridium Constellation LLC	)	Call Sign S2110
)	
Iridium Satellite LLC	)	Call Sign E960132
Iridium Carrier Services	)	Call Sign E960622
)	
Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band)	

**OPPOSITION OF IRIDIUM SATELLITE LLC TO LICENSE PROTEST OF
GLOBALSTAR INC.**

Iridium Satellite LLC (“Iridium”), by its attorneys and pursuant to 47 U.S.C. § 309(d), 47 U.S.C. § 316(a)(3), 47 C.F.R. § 1.87(d), and 47 C.F.R. § 1.45(b), files this opposition to the June 6, 2008 protest of Globalstar Licensee LLC and GUSA Licensee LLC.¹ In IB Docket No. 02-364—a rulemaking that preceded this adjudicatory proceeding—the Commission released the *Second Order on Reconsideration*² and established a new bandplan for Big LEO MSS providers by modifying the frequencies on which they may operate their FCC-licensed earth stations and their FCC-licensed satellite space stations. The Commission then initiated this adjudicatory

¹ See *Globalstar Licensee LLC, GUSA Licensee LLC, Iridium Constellation LLC, Iridium Satellite LLC, Iridium Carrier Services, Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band*, Call Sign S2115, Call Sign E970381, Call Sign S2110, Call Sign E960132, Call Sign E960622, Protest of Globalstar Licensee LLC and GUSA Licensee LLC (filed June 6, 2008) (the “Protest”). For purposes of this filing, Globalstar Licensee LLC and GUSA Licensee LLC are referred to collectively as “Globalstar.”

² See *Spectrum and Service Rules for Ancillary Terrestrial Components in the 1.6/2.4 GHz Big LEO Bands, Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Second Order on Reconsideration, Second Report and Order, and Notice of Proposed Rulemaking, 22 FCC Rcd 19733 (2007) (the “*Second Order on Reconsideration*”).

proceeding by releasing the *Order Proposing Modifications*³ and proposed to modify Iridium's and Globalstar's FCC-licensed earth stations and all of their satellite space station (all of which are licensed by the FCC) to conform with the Commission's new Big LEO bandplan.

Iridium and Globalstar are the only MSS providers participating in this proceeding and are the only two providers directly affected by the Commission's decision to modify the bandplan. With respect to Globalstar and Iridium, their MSS systems use three critical components: FCC-licensed earth stations, FCC-licensed satellite space stations, and non-FCC-licensed earth stations. The Globalstar and Iridium MSS satellites are licensed by the FCC and neither company holds satellite space station licenses from any other country. Accordingly, regardless of where on earth Globalstar provides service, it is using an FCC-licensed satellite—a *satellite that only the FCC has authority to regulate*.

In its Protest, Globalstar presents a narrow legal challenge to the *Order Proposing Modifications*. Globalstar has limited its protest to claiming that the FCC unlawfully exercised authority reserved to other countries by proposing to modify all of Globalstar's satellite space stations—space stations that the FCC has exclusive jurisdiction to regulate. Globalstar is not challenging the FCC's *Second Order on Reconsideration*, the facts leading up to the FCC's decision to adopt the modified bandplan, or the legality of the bandplan decision in this proceeding. Rather, Globalstar contends that the FCC violated the APA's notice and comment rulemaking provisions by rejecting Globalstar's claim that the FCC lacks authority to modify its

³ *Globalstar Licensee LLC, GUSA Licensee LLC, Iridium Constellation LLC, Iridium Satellite LLC, Iridium Carrier Services, Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band, Call Sign S2115, Call Sign E970381, Call Sign S2110, Call Sign E960132, Call Sign E960622, Order Proposing Modifications, FCC 08-125 (rel. May 7, 2008) (the "Order Proposing Modifications")*.

satellite space stations. Globalstar also argues that the *Order Proposing Modifications* departed from FCC precedent by proposing to modify Globalstar's satellite space stations.

As discussed below, Globalstar's arguments are deeply flawed. First, the APA notice and comment *rulemaking* provisions upon which Globalstar relies have no application to this *adjudicatory* proceeding. Indeed, Globalstar fails even to recognize that this proceeding is an adjudication, not a rulemaking.

Second, there is no merit to Globalstar's assertions that the Commission has never had the authority to modify the worldwide operation of Globalstar's satellite space stations and that, in so doing, the Commission has departed from precedent. As it has repeatedly done, Globalstar conflates the Commission's more limited authority over Globalstar's *earth* stations with the Commission's broad and exclusive authority over all of Globalstar's satellite *space* stations.

At a minimum, however, Globalstar should recognize that its theory of satellite licensing would lead to untenable chaos. Taking Globalstar's theories to their obvious conclusion, each MSS provider would be free to operate its space stations on any and all frequencies of its choosing—even if such operations resulted in harmful interference.

Perhaps anticipating the weakness of its arguments, Globalstar seeks in the alternative a hearing under Section 316. But Globalstar has not demonstrated any basis for such a hearing, especially when it simultaneously spurns the Commission's waiver process. Globalstar has disguised legal arguments as factual issues in a thinly veiled attempt to satisfy Section 316's requirements. And in any event, Globalstar is barred from raising claims related to the FCC's decision to modify the Big LEO bandplan in this adjudicatory proceeding because the time period for seeking reconsideration of the *Second Order on Reconsideration* has passed and because Globalstar has appealed that order to the D.C. Circuit.

Accordingly, Iridium respectfully requests that the Commission expeditiously enter an order denying Globalstar's Protest and modifying Iridium's and Globalstar's authorizations as proposed in the *Order Proposing Modifications*.⁴

I. GLOBALSTAR'S APA ARGUMENTS DO NOT APPLY TO THIS ADJUDICATORY PROCEEDING

In its Protest, Globalstar alleges that the Commission must rescind the *Order Proposing Modifications* because the FCC failed to comply with certain APA provisions that apply exclusively to rulemaking proceedings.⁵ As set forth below, this license modification proceeding is an adjudication—not a rulemaking. Therefore, the APA provisions on which Globalstar relies do not apply.

The plain language of the APA confirms that this license modification proceeding is an adjudication and not a rulemaking. Under the statute, “‘adjudication’ means agency process for

⁴ In its Protest, Globalstar states that the Commission violated the APA when it adopted the *Second Order on Reconsideration* and references Globalstar's pending D.C. Circuit appeal. See Protest at 3. Globalstar properly does not put its arguments relating to the *Second Order on Reconsideration* before the Commission in this license protest proceeding. First, Globalstar may not use this license protest proceeding to mount an attack on the *Second Order on Reconsideration* because the time for filing petitions for reconsideration of that order has long since passed. See Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, 72 Fed. Reg. 70,807 (Dec. 13, 2007) (to be codified at 47 C.F.R. pt. 25); see also 47 U.S.C. § 405 (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”). Second, Globalstar may not ask the Commission to reconsider the *Second Order on Reconsideration* because it has already petitioned the D.C. Circuit for judicial review of that order. See, e.g., *Tenn. Gas Pipeline Co. v. FERC*, 9 F.3d 980, 980 (D.C. Cir. 1993) (“It is well-established that a party may not simultaneously seek both agency reconsideration and judicial review of an agency's order.”). “Once a petition to review has been filed in court, the FCC has no authority to conduct further proceedings without the court's approval.” *Greater Boston Television Corp. v. FCC*, 463 F.2d 268, 283 (D.C. Cir. 1971). Consequently, Iridium does not respond in this filing to Globalstar's meritless claim that the FCC violated the APA in adopting the *Second Order on Reconsideration*, but reserves its rights to respond fully in the appropriate forum.

⁵ See Protest at 2-8 (arguing that the FCC failed to follow the procedural requirements set forth in 5 U.S.C. § 553).

the formulation of an order.”⁶ In turn, “‘order’ means the whole or a part of a final disposition . . . of an agency in a matter other than rule making but *including licensing*,”⁷ and “‘licensing’ includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, *modification*, or conditioning of a license.”⁸ In short, as several federal courts of appeals have noted, the APA expressly defines “adjudication” to include license modifications.⁹

But even absent such unambiguous statutory language, this license modification would constitute an “adjudication,” and not a “rulemaking,” under the distinction that courts have drawn between those two terms. A rulemaking is a “‘proceeding[] for the purpose of promulgating policy-type rules’ or standards”¹⁰ and “affects the rights of broad classes of unspecified individuals.”¹¹ It “is prospective in operation”¹² and thus “has a definitive effect on

⁶ 5 U.S.C. § 551(7).

⁷ *Id.* § 551(6) (emphasis added).

⁸ *Id.* § 551(9) (emphasis added).

⁹ See, e.g., *Union of Concerned Scientists v. U.S. Nuclear Regulatory Comm’n*, 735 F.2d 1437, 1445 n.12 (D.C. Cir. 1984) (“[L]icensing is adjudication.”); *City of W. Chicago, Ill. v. U.S. Nuclear Regulatory Comm’n*, 701 F.2d 632, 641 n.7 (7th Cir. 1983) (“The parties agree that under the APA, all licensing proceedings are adjudications.”); *ITT World Commc’ns, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979) (noting that “licensing constitutes ‘adjudication’” under the APA).

¹⁰ *Hercules Inc. v. EPA*, 598 F.2d 91, 118 (D.C. Cir. 1978) (quoting *United States v. Fla. E. Coast Ry. Co.*, 410 U.S. 224, 245 (1972)); see also *Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1161 (D.C. Cir. 1979) (explaining that a proceeding was a rulemaking because the agency “was promulgating policy-based standards of general import”).

¹¹ *Yesler Terrace Cmty. Council v. Cisneros*, 37 F.3d 442, 448 (9th Cir. 1994) (citing *Fla. E. Coast Ry.*, 410 U.S. at 244-45).

¹² *Trans-Pacific Freight Conference of Japan/Korea v. Fed. Mar. Comm’n*, 650 F.2d 1235, 1245 (D.C. Cir. 1980).

individuals only after the rule subsequently is applied.”¹³ By contrast, an adjudication is a “proceeding[] designed to adjudicate disputed facts in particular cases”¹⁴ and has “an immediate effect on specific individuals.”¹⁵

This license modification proceeding bears the characteristics of an adjudication rather than a rulemaking. It does not promulgate “policy-type rules or standards” of “general import” that affect “broad classes of unspecified individuals.” Instead, it resolves a matter particular to two specific parties: Globalstar and Iridium. This proceeding is not a rulemaking proceeding in itself because it simply gives effect to the prospective rule articulated by the FCC in the *Second Order on Reconsideration*.¹⁶

Thus, under either the plain language of the APA or existing federal case law, this license modification proceeding is an adjudication and not a rulemaking. The APA therefore does not require the FCC to have provided Globalstar notice and an opportunity to comment. Notice-and-comment requirements only apply to agency rulemakings;¹⁷ they do not apply to agency

¹³ *Yesler Terrace Cmty. Council*, 37 F.3d at 448; see also *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 476 (1988) (Scalia, J., concurring) (“[R]ules have legal consequences *only* for the future.” (emphasis added)).

¹⁴ *Hercules Inc.*, 598 F.2d at 118 (quoting *Fla. E. Coast Ry.*, 410 U.S. at 245).

¹⁵ *Yesler Terrace Cmty. Council*, 37 F.3d at 448.

¹⁶ In any event, “[e]ven assuming that the proceeding was somehow an imperfect exemplar of adjudication, . . . it was not thereby transformed into a rulemaking.” *Goodman v. FCC*, 182 F.3d 987, 994-95 (D.C. Cir. 1999). Even Globalstar effectively concedes, however, that this is an adjudicatory proceeding. In its Protest, Globalstar states that the *Order Proposing Modifications* is an order that gives effect to a rulemaking order (the *Second Order on Reconsideration*) by modifying two particular licenses consistent with the prior rulemaking order. See Protest at 2 & nn. 2-3.

¹⁷ See 5 U.S.C. § 553(b).

adjudications.¹⁸ Accordingly, Globalstar’s demand for notice and comment with respect to this license modification proceeding has no legal basis.

II. THE COMMISSION PROVIDED GLOBALSTAR WITH ALL OF THE PROCESS REQUIRED IN AN ADJUDICATORY PROCEEDING

In its Protest, Globalstar argues exclusively that the Commission did not comply with certain APA requirements that apply solely in rulemaking proceedings. Globalstar does not argue that the FCC failed to comply with the procedural requirements applicable to adjudications like this license modification proceeding and has waived any such argument.¹⁹ Even if Globalstar had raised this claim, however, it would be meritless. The FCC provided Globalstar with all of the process required in adjudicatory proceedings by the Communications Act, the Commission’s rules, and the APA.

First, the FCC has fully complied with the procedural requirements of Section 316 and the Commission’s rules. Section 316 authorizes the FCC to modify an MSS provider’s license if doing so “will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with.”²⁰

Procedurally, the statute requires the FCC to notify the license holder in writing of the reasons

¹⁸ See 5 U.S.C. § 554; see also *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001) (describing “an agency’s power to engage in adjudication or notice-and-comment rulemaking” (emphasis added)); *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745, 754 (D.C. Cir. 2007) (same); see also *R/T 182, LLC v. Fed. Aviation Admin.*, 519 F.3d 307, 310 (6th Cir. 2008) (“We find that this is an adjudication, and therefore not subject to the notice and comment requirements of rule-making under the Administrative Procedure Act.”); *Shell Offshore Inc. v. Babbitt*, 238 F.3d 622, 627 (5th Cir. 2001) (“There is no notice and comment requirement for an agency adjudication.”).

¹⁹ It is well settled that the Commission need not consider an argument or issue that a party has failed to raise in its initial submissions in a proceeding. See, e.g., *Knology, Inc. v. Georgia Power Co.*, 18 FCC Rcd 24615, 24617 n.16 (¶ 5) (2003) (declining to address an argument that the respondent failed to raise in its opening response and collecting cases).

²⁰ 47 U.S.C. § 316(a)(1).

for the modification and allow at least 30 days for the party to protest the proposed modification. Section 316 also provides that no order of modification shall become final until after the 30 day period has expired.²¹ The FCC has adopted a rule that implements Section 316 and mirrors its requirements in substantial part.²²

Here, the Commission has satisfied each of Section 316's procedural requirements. On May 7, 2008, the Commission released the *Order Proposing Modifications*. Consistent with Section 316's procedural requirements, the *Order Proposing Modifications* provided Globalstar with written notice of the reasons for the proposed license modifications and allowed Globalstar 30 days within which to protest the license modification. Moreover, the *Order Proposing Modification* did not become final during the 30 day protest period. Accordingly, the procedural requirements of Section 316 and the Commission's rules have been satisfied.

Second, in addition to complying with the specific procedural requirements imposed by the Communications Act and the Commission's rules, the FCC has fully complied with all applicable APA requirements. Under the APA, this proceeding is classified as an informal adjudication, rather than a formal adjudication. APA § 554 states that federal agencies are only required to apply formal procedures in an "adjudication required by statute to be determined on the record after opportunity for an agency hearing."²³ Here, there is no requirement that this proceeding be "determined on the record."²⁴ Accordingly, this license protest proceeding is an

²¹ *Id.*

²² *See* 47 C.F.R. § 1.87.

²³ *Association of Nat. Advertisers*, 627 F.2d at 1160 (quoting 5 U.S.C. § 554(a)).

²⁴ *Cf. Hong Kong Telecommunications (Pacific) Limited*, 13 FCC Rcd. 20050, 20055 n.22 (IB 1998) (determining that a particular agency "proceeding is classified as an informal adjudicatory proceeding" because "the Communications Act d[id] not require that the Commission consider whether to grant [the] . . . application on the record after full opportunity for a hearing." (quotation marks omitted)).

informal adjudication, and the only procedural requirements of the APA applicable to this type of informal adjudication are codified in 5 U.S.C. § 555.²⁵

APA § 555 specifies a limited number of procedural protections. In particular, Section 555 requires that an agency (1) permit a party to be represented by an attorney, (2) permit a person to obtain a copy of any data or evidence provided, and (3) provide a brief statement of the grounds for denying an application or petition.²⁶ The Commission is proceeding in a manner that satisfies each of these requirements. It released the *Order Proposing Modification* providing Globalstar with notice of the FCC's proposed action, and also permitted Globalstar to be represented by counsel and to obtain copies of any data submitted in the proceeding. And if the Commission ultimately determines that Globalstar's Protest is without merit, the agency has indicated that it will enter an order that contains a concise statement of the reasons for denying Globalstar's submission.²⁷

III. GLOBALSTAR'S CLAIM THAT THE COMMISSION UNLAWFULLY DEPARTED FROM FCC PRECEDENT IS MERITLESS

Notwithstanding the fact that this is an adjudication—and thus not subject to the APA's rulemaking provisions—Globalstar claims that this proceeding should be subject to the APA's notice and comment provisions because the *Order Proposing Modifications* departed from FCC

²⁵ See 5 U.S.C. § 555; see also 1 Richard J. Pierce, Jr., *Administrative Law Treatise* § 8.2 (4th ed. 2002) (describing the “relatively narrow scope of” proceedings that qualify as “formal adjudications”) [hereinafter “Pierce”].

²⁶ See 5 U.S.C. § 555; see also Pierce § 8.2.

²⁷ See *Order Proposing Modifications*, at ¶ 9 (stating that the Commission will proceed consistent with the procedural requirements of Section 316 which, in turn, incorporates the requirements of Section 309); 47 U.S.C. § 309(d)(1) (If the Commission determines that it will grant an application, the Commission “shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition.”).

precedent without providing an adequate justification.²⁸ In particular, Globalstar claims that the FCC reversed course by determining “for the first time” that the Big LEO bandplan will apply “globally.”²⁹ Globalstar’s contention is without merit and is premised on a fundamentally flawed understanding of the *Order Proposing Modifications* and the FCC’s authority over MSS providers.

As a threshold matter, Globalstar’s characterization of the *Order Proposing Modifications* as “establish[ing] a global band plan”³⁰—and thus interfering with foreign sovereigns’ authority—is misleading at best and a calculated misstatement at worst. The *Order Proposing Modifications* does not interfere with any foreign country’s authority to regulate non-FCC-licensed Globalstar earth stations (*i.e.* earth stations located outside the United States) or specify the frequencies on which those earth stations may operate. Rather, the *Order Proposing Modification* prohibits Globalstar from using any of its satellite space stations (all of which are licensed by the FCC) to receive or transmit on frequencies other than those permitted under the *Second Order on Reconsideration*. In doing so, the Commission simply exercised its extant authority over Globalstar’s FCC-licensed satellite space stations in a manner that is wholly consistent with international law, the FCC’s organic authority, and settled Commission precedent. To be sure, the *Order Proposing Modifications* prohibits Globalstar from using any of its satellite space stations to receive or transmit on frequencies other than those permitted by the *Second Order on Reconsideration*—and in this respect it does affect Globalstar’s operations around the world—but this is not the same thing as “establish[ing] a global band plan” since

²⁸ See Protest at 8-18.

²⁹ See Protest at 12.

³⁰ See Protest at 10.

foreign sovereigns remain free to specify the frequencies on which Globalstar earth stations located outside the United States may transmit and receive signals.

It follows that Globalstar's claim that the Commission unlawfully departed from FCC precedent is meritless. Properly understood, the *Order Proposing Modifications* does not break any new ground and simply applies well-settled precedent. Thus, the order does not raise any APA notice and comment concerns,³¹ nor does it require any particular justification or explanation.³² Because the Commission merely followed settled law, a sophisticated regulated entity like Globalstar had ample notice that its operations could be modified in the manner proposed in the *Order Proposing Modifications*. Indeed, the FCC would only have had an obligation to provide additional APA notice if it decided *not* to apply the *Second Order on Reconsideration* to Globalstar's satellite space segment operations.

³¹ Where the Commission has not substantively changed any prior rule or position, no notice-and-comment procedures are required. *See SBC Inc. v. FCC*, 414 F.3d 486, 497 (3d Cir. 2005) ("Legislative rules are subject to the notice and comment requirements of the APA because they work substantive changes in prior regulations or create new law, rights, or duties." (internal quotation marks and citations omitted)); *Paralyzed Veterans of Am. v. West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998) ("[R]ules requiring notice and comment . . . [are] those that effect a change in existing law or policy or which affect individual rights and obligations."); *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1340 (4th Cir. 1995) ("The notice and comment requirement applies only to . . . rules [that] create new rights . . ."); *Nat'l Med. Enters., Inc. v. Shalala*, 43 F.3d 691, 697 (D.C. Cir. 1995) ("[R]ule[s] requiring notice and comment promulgation . . . are those which grant rights, impose obligations, or effect a change in existing policy."). This principle is consistent with the purpose of the APA notice requirements, which is "designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review." *Am. Coke & Coal Chems. Inst. v. EPA*, 452 F.3d 930, 938 (D.C. Cir. 2006). When (as here) there has been no substantive change in agency rules or policies, these concerns are not implicated.

³² It is axiomatic that the FCC need not provide additional notice or opportunity to comment when it is not departing from precedent. *See, e.g., Air Transp. Ass'n of Am. v. Fed. Aviation Admin.*, 291 F.3d 49, 56-58 (D.C. Cir. 2002) (recognizing that notice-and-comment rulemaking is required when the agency acts inconsistent with existing precedent, but finding no procedural defect because agency did not depart from existing precedent); *Ass'n of Am. R.R. v. Dep't of Transp.*, 198 F.3d 944, 947-50 (D.C. Cir. 1999) (same).

A. In Arguing that the FCC Unlawfully Departed from Precedent, Globalstar Conflates the FCC’s Authority Over MSS Providers’ Earth Stations and Their Satellite Space Stations

As the full Commission correctly determined,³³ the FCC has long had the authority to modify Globalstar’s FCC-licensed earth stations and all of its satellite space station authorizations in the manner proposed in the *Order Proposing Modifications*. The Commission’s authority to take this action flows from two primary sources: (1) international treaties,³⁴ and (2) the Communications Act.³⁵ The FCC’s assertion of jurisdiction is also consistent with long settled agency precedent.³⁶ Indeed, the agency has addressed this specific issue with respect to Globalstar on at least four occasions in the past, and disagreed with Globalstar each time. But as it has done time and again, Globalstar blurs the clear and significant distinction between the Commission’s authority over MSS providers’ *earth* stations and their satellite *space* stations. This Protest is just the latest salvo from Globalstar that falls well short of the mark..

It is a bedrock principle of international telecommunications law that a commercial entity, like Globalstar, that seeks to launch and operate a satellite-based communications system

³³ See *Order Proposing Modifications*, ¶ 3.

³⁴ See, e.g., International Telecommunications Union, Radio Regulation 18-1.

³⁵ See, e.g., 47 U.S.C. §§ 151, 152, 301, 303(r) and 316.

³⁶ See, e.g., *Establishment of Domestic Communication-Satellite Facilities by Non-Governmental Entities*, Appendix C—Memorandum of Legal Issues, 22 FCC 2d 86 (1970) (“1970 Communication-Satellite Decision”); *Amendment to the Commission’s Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, Report and Order, 11 FCC Rcd 2429 (1996) (“DISCO I”); *Modification of Licenses Held by Iridium Constellation, LLC And Iridium, US LP for a Mobile Satellite System in the 1.6 GHz Frequency Band*, 18 FCC Rcd. 11480 (IB, SD 2003) (the “June 2003 Modification Order”); *Modification of Licenses Held By Iridium Constellation, LLC and Iridium, US LP for a Mobile Satellite System in the 1.6 GHz Frequency Band*, 18 FCC Rcd 20023 (IB, SD 2003) (the “October 2003 Modification Order”); *Request for Special Temporary Authority Iridium Constellation, LLC*, 18 FCC Rcd 25814 (IB, SD 2003) (the “December 2003 Modification Order”).

must obtain two types of authorizations: (1) authorizations from various sovereign nations to operate *earth stations* on certain frequencies; and (2) an authorization from the MSS provider's licensing administration to operate satellite *space stations* on certain frequencies.³⁷ In this case, each sovereign nation where Globalstar operates an earth station has jurisdiction to determine whether Globalstar may operate an earth station and may specify (or modify) the frequencies on which Globalstar's earth stations may operate. When those earth stations are located within the United States, Globalstar's authority to operate those earth stations is derived from and regulated by the FCC. In turn, when Globalstar's earth stations are located outside the United States, Globalstar's authority to operate those particular earth stations is neither derived from nor regulated by the FCC.

In contrast to the multilateral regulatory regime governing the operation of Globalstar's *earth stations*, however, the FCC has exclusive jurisdiction to authorize Globalstar to operate its *satellite space stations* on certain frequencies, even though those satellites are not located within the territory of the United States (or any other sovereign territory), because the United States is the national administration responsible for Globalstar's satellites. The FCC also has exclusive jurisdiction to alter the frequencies on which Globalstar may operate its satellite space stations, even when Globalstar's transmissions are destined for or received from a non-FCC-licensed

³⁷ Stated differently, commercial MSS providers (like Globalstar) must receive authority (1) to transmit from (and receive signals at) earth stations and must obtain this authority from the sovereign that controls the territory where the earth station is transmitting; and (2) to transmit from (and receive signals at) space stations and must obtain this authority from the MSS operator's licensing administration. *See, e.g., KaStarCom. World Satellite, LLC; Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite Sys. in the Fixed-Satellite Serv.*, 16 FCC Rcd 14322, 14330 (¶ 27) (IB 2001) (specifying both transmit and receive frequencies for satellite operations) *see also e.g.,* ITU Radio Regulation 18.1 (noting that “[n]o transmitting station may be established or operated by a private person or by any enterprise without a license issued in an appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject”).

earth station. Except for authorizations received from the FCC—authorizations which may be modified by the Commission—Globalstar has no authority to operate its satellite space stations anywhere in the world. This makes sense as a practical matter because, with respect to their satellite space stations, MSS operators would be unable to comply with conflicting license conditions imposed by multiple licensing authorities.

Despite the clear distinction between Globalstar’s authority to operate *earth stations* and its authority to operate *satellite space stations*, Globalstar has willfully and repeatedly confused the two different types of authority. In its Protest, Globalstar once again conflates the regulation of Globalstar’s *space station* operations with the regulation of Globalstar’s *earth stations* located outside the United States.³⁸ Unlike Globalstar, however, the Commission’s *Order Proposing Modifications* merely recognizes the FCC’s and foreign governments’ longstanding and proper roles in regulating Globalstar’s earth stations and satellite space stations. As explained below, the *Order Proposing Modifications* proposes to modify Globalstar’s FCC-licensed earth stations and all of its satellite space stations (all of which are licensed by the FCC) in a manner that is wholly consistent with international law, the FCC’s enabling act, and settled Commission precedent.

The License Modifications for Globalstar’s Earth Stations Are Limited to Earth Stations Located in the United States. Under established law, every sovereign nation generally has authority to determine whether it will allow a provider to operate an earth station within its territorial borders and to determine the frequencies upon which it may operate those earth stations. The FCC has consistently recognized this fundamental principle of international

³⁸ See Protest at 8-19.

telecommunications law,³⁹ and no party to this proceeding—neither Globalstar nor Iridium—disputes this legal conclusion.⁴⁰ Moreover, notwithstanding Globalstar’s claims to the contrary,⁴¹ the Commission’s *Order Proposing Modifications* respects the important and sovereign roles that foreign nations play in regulating Globalstar’s earth stations.⁴² The *Order Proposing Modifications* does not purport to augment or interfere with any foreign government’s established authority to regulate earth stations that are located within a foreign government’s territory. Rather, the *Order Proposing Modifications* expressly notes that the Commission is only “propos[ing] to modify the two systems’ mobile earth terminal authorizations for U.S.

³⁹ See, e.g., *October 2003 Modification Order*, 18 FCC Rcd at 20027 (¶ 11) (“As to authorizations for transmissions by earth stations, the Administration having jurisdiction with respect to the earth stations is typically the one in which the earth stations are physically located.”); see also *December 2003 Modification Order*, 18 FCC Rcd at 25819 (¶ 13) (“[T]he Administration having jurisdiction with respect to the earth stations is typically the one in which earth stations are physically located.”); *id.* 25819-20 (¶ 14) (“[W]e previously acknowledged [that earth station authorization] typically lies within the jurisdiction of the territory in which the earth stations are located.”).

⁴⁰ See, e.g., Letter from William T. Lake to Marlene H. Dortch dated April 24, 2008, in IB Docket No. 02-364 at 3 (“Each national administration retains the authority to establish the band plan for provision of MSS services within its borders.”); see also Letter from R. Michael Senkowski to Marlene H. Dortch dated March 7, 2008, in IB Docket No. 02-364 (recognizing that MSS operators must obtain both earth station authorizations and an authorization to operate satellite space stations). In its Protest, Globalstar claims that Iridium’s position in this proceeding is inconsistent with Iridium’s prior actions and statements because “Iridium has made clear its recognition that each country determines the MSS band plan within the country’s borders.” See Protest at 12. Contrary to Globalstar’s characterization, however, Iridium’s prior conduct is entirely consistent with its position in this proceeding. Iridium recognizes that each sovereign nation generally has authority to regulate earth stations located within its borders. Iridium’s position is that only the United States has authority to regulate Iridium’s and Globalstar’s satellite space station authorizations. Accordingly, Iridium is not asking any sovereign other than the United States for authority to modify its satellite space station authorization.

⁴¹ See Protest at 9 (charging that the Commission has violated principles of “international comity”).

⁴² See *Order Proposing Modifications*, ¶ 4 (limiting the order’s affect on earth station authorizations to the United States, thus recognizing the role that foreign nations play in regulating MSS providers’ earth stations).

operations”⁴³ There is thus no merit whatever to Globalstar’s claim that the FCC has acted unlawfully by proposing to regulate Globalstar’s earth stations.

The License Modifications for Globalstar’s Satellite Space Stations Apply to All Globalstar’s Space Stations Because All of Its Space Stations Are Authorized by the FCC.

In contrast to the regulation of an MSS provider’s earth stations, it is settled law that an MSS operator’s licensing administration (such as the United States) has full and exclusive authority to regulate the provider’s space station operations, regardless of whether those stations are communicating with an earth station located within that administration’s territory or a foreign nation. As the FCC has recognized, the agency’s established authority to modify Globalstar’s space station allocation flows from two primary sources: controlling treaties and international telecommunications law,⁴⁴ and the Communications Act.⁴⁵ FCC decisional law confirms the Commission’s authority over FCC-licensed MSS providers’ space station allocations.⁴⁶ Contrary to Globalstar’s assertion,⁴⁷ the *Order Proposing Modifications* does not alter any of this.

Under applicable treaties and international telecommunications law, MSS operators (like Globalstar) that seek to launch and operate a satellite-based communications system must obtain a satellite space station authorization from an appropriate licensing administration.⁴⁸ In

⁴³ *Id.*, ¶ 4 (emphasis added).

⁴⁴ *See, e.g.*, ITU Radio Regulation 18.1.

⁴⁵ *See, e.g.*, 47 U.S.C. §§ 151, 152, 301, 303(r), and 316.

⁴⁶ *See, e.g.*, *1970 Communication-Satellite Decision*, Appendix C, 22 FCC 2d at 128-133; *DISCO I*, 11 FCC Rcd at 2430 (¶ 9), 2440 (¶ 73); *June 2003 Modification Order*, 18 FCC Rcd at 11482 n.18; *October 2003 Modification Order*, 18 FCC Rcd at 20027-20028 (¶¶ 11-12); *December 2003 Modification Order*, 18 FCC Rcd at 25819-25820 (¶¶ 13-14).

⁴⁷ *See* Protest at Part II (pp. 8-19).

⁴⁸ *See, e.g.*, ITU Radio Regulation 18.1 (noting that “[n]o transmitting station may be established or operated by a private person or by any enterprise without a license issued in an

this case, Globalstar chose the United States as its licensing administration and, in turn, received a space station authorization from the FCC.⁴⁹ Globalstar's initial authorization allowed it to "construct a mobile satellite service system capable of operating in the 1610-1626.5/2483.5-2500 MHz frequency bands,"⁵⁰ but "to launch and operate 48 low-Earth orbiting space stations and eight in-orbit spares during the license term for the purpose of providing a mobile satellite service in the United States in the 1610-1621.35/2483.5-2500 MHz frequency bands."⁵¹ The Commission's *Order Proposing Modifications* now proposes to modify Globalstar's FCC-issued license to prohibit Globalstar from operating any of its satellites on the 1618.725-1621.35 MHz band and to require shared operations at 1617.775-1618.725.⁵² Upon modification of Globalstar's license to conform to the new bandplan,⁵³ Globalstar will have no authority from any licensing administration in the world to operate any of its satellites in a manner inconsistent with the terms of its FCC-issued license and the bandplan adopted in the *Second Order on Reconsideration*. Moreover, as the Commission has long recognized, the FCC has an affirmative international duty as a sponsoring administration to police its satellite licensees and ensure that they conduct their global operations in accordance with governing law.⁵⁴

appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject").

⁴⁹ See *Loral/Qualcomm Partnership, L.P. for Authority to Construction, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, File Nos. 19-DSS-P-91(48), CSS-91-014, and 21-SAT-MISC-95, 10 FCC Rcd 2333 (IB 1995), *aff'd*, 11 FCC Rcd 18502 (the "Globalstar Authorization Order").

⁵⁰ See *Globalstar Authorization Order*, 10 FCC Rcd at 2336 (¶ 25) (emphasis added).

⁵¹ *Id.*, ¶ 26 (emphasis added).

⁵² See *Order Proposing Modifications*, ¶¶ 1, 6.

⁵³ See *Second Order on Reconsideration*, 22 FCC Rcd at 19742 (¶ 20).

⁵⁴ See *October 2003 Modification Order*, 18 FCC Rcd at 20027 (¶ 12) ("The United States, as the licensing administration for Iridium, is responsible for its global operations in accordance with International Telecommunication Union treaty obligations.").

Numerous provisions of the Communications Act also provide the FCC with ample authority to regulate communications outside the United States and thus modify Globalstar's space segment operations. Under Section 151 of the Communications Act, Congress broadly authorized the FCC to regulate both "interstate and *foreign* commerce in communication by wire and radio."⁵⁵ Also under Section 151, Congress authorized the FCC "to make available . . . Nationwide, and *world-wide* wire and radio communication service."⁵⁶ In addition, Section 152 provides that "[t]he provisions of this [act] shall apply to all interstate and *foreign communication* by wire or radio."⁵⁷ Furthermore, Section 301 authorizes the FCC to regulate international communications.⁵⁸ Section 303(r) similarly provides that the FCC shall "[m]ake such rules and regulations . . . as may be necessary to carry out the provisions of this [Act], or any *international radio or wire communications treaty* or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party."⁵⁹ Finally, Section 316 states that "[a]ny station license or construction permit may be modified by the Commission . . . [if] such action will promote the public interest convenience and authority."⁶⁰ Accordingly, under these and other provisions of the Communications Act, Congress lawfully vested the FCC with authority to

⁵⁵ 47 U.S.C. § 151 (emphasis added). Transmissions both to and from satellite space stations are communications by radio within the meaning of the Communications Act. *See, e.g., 1970 Communication-Satellite Decision*, Appendix C, 22 FCC 2d at 128-133.

⁵⁶ 47 U.S.C. § 151 (emphasis added).

⁵⁷ 47 U.S.C. § 152(a) (emphasis added).

⁵⁸ 47 U.S.C. § 301 ("No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio. . . from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any *foreign country* or to any vessel" (emphasis added)).

⁵⁹ 47 U.S.C. § 303(r) (emphasis added).

⁶⁰ 47 U.S.C. § 316(a)(1).

modify MSS providers' satellite space station authorizations, regardless of whether the space station is communicating with an earth station located outside the United States.

FCC decisional law confirms that the FCC has long possessed the authority to modify Globalstar's space station operations. Agency precedent establishes that, with respect to satellite space station operations, a satellite operator must have explicit operating authority from its licensing administration to use spectrum outside the United States that it is not authorized to use in the United States. In 2001, for example, Hughes Communications Galaxy, Inc. ("Hughes") requested "explicit [FCC] authority . . . to use spectrum for service links with earth stations in foreign countries."⁶¹ Recognizing that Hughes required satellite authority to use this additional spectrum outside the United States, the Commission ordered the International Bureau to modify Hughes' space station license.⁶² The order released by the International Bureau carrying out this instruction stated that Hughes' authorization "IS MODIFIED to include authority for transmission in the frequency bands 17.7-18.8 GHz and 19.7-20.2 GHz *to earth stations in foreign countries* and *reception of transmissions from such earth stations* in the 27.5-28.6 GHz

⁶¹ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 16 FCC Rcd 11464, 11469 (¶ 13) (2001) (the "*Hughes Modification Order*"). In the *Hughes Modification Order*, the full Commission—as it did in this proceeding—recognizes the distinction between earth stations and satellite space stations and the proper role foreign sovereigns play in regulating earth stations located outside the United States. *Id.* at 11469-70 (¶ 14) ("Spectrum rights for FCC-licensed systems to provide service in foreign countries will depend on the outcome of international coordination and foreign earth-station licensing procedures. The Commission routinely issues FSS licenses, however, that include authority to use specified frequencies to transmit from a satellite to earth stations that may be located in foreign countries, subject to international coordination.").

⁶² *Hughes Modification Order*, 16 FCC Rcd at 11464 (¶ 1).

and 29.25-30.0 GHz bands.”⁶³ Clearly, then, FCC authority is required for U.S. space station licensees to communicate with foreign earth stations, and, by extension, the Commission can limit communication frequencies between the space station segment and these earth stations in order to implement the Commission’s spectrum management goals.

Moreover, on at least four occasions, the International Bureau has expressly and consistently rejected Globalstar’s claim that the FCC has no authority over the transmissions of MSS satellites outside the United States. Globalstar first claimed that the FCC lacked jurisdiction to authorize satellite operations outside the United States in the context of Iridium’s request for special temporary authority for additional spectrum to provide service to U.S. military forces operating in the Middle East.⁶⁴ The Bureau directly refuted this argument, stating that “Iridium is authorized to operate satellites on frequencies specified in its authorization” and finding that “[t]he Commission has jurisdiction with respect to [Iridium’s FCC-licensed] satellites pursuant to, *inter alia*, 47 U.S.C. §§ 151, 152, 301, 303(r).”⁶⁵

Globalstar repeated its “assertion that the Commission does not have authority to dictate the terms and conditions of Iridium’s authorization to provide service in the Middle East region”⁶⁶ when the Bureau later proposed to modify Iridium’s licenses to permit continued use of Globalstar Channel 9 in support of US military efforts abroad. The Bureau again rejected Globalstar’s claims:

⁶³ *Application by Hughes Communications Galaxy, Inc. for authority to construct, launch, and operate a Ka-Band satellite system in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 12627 (¶ 3) (IB 2001) (emphasis added).

⁶⁴ *June 2003 Modification Order*, 18 FCC Rcd. at 11481-42 (¶ 5).

⁶⁵ *June 2003 Modification Order*, 18 FCC Rcd at 11482-43 n.18 (citations omitted). The Commission also cited Section 25.102 of its rules, International Telecommunication Union Radio Regulation 18.1, and the *1970 Communication-Satellite Decision*.

⁶⁶ *October 2003 Modification Order*, 18 FCC Rcd at 20027 (¶ 11).

We disagree with Globalstar's assertion that the Communications Act does not authorize the Commission to condition a satellite *space* station authorization as we do here. The fact that a satellite is located in space, and thus outside of U.S. territory, does not alter our statutory authority to prescribe restrictions and conditions concerning its operations that are in the public interest. The Communications Act gives the Commission the authority to regulate ". . . communication by wire and radio so as to make available [a] . . . Nation-wide, and world-wide wire and radio communication service with adequate facilities . . . for the purpose of the national defense [and] promoting safety of life and property" The Communications Act also clearly contemplates that radio stations authorized by the Commission may be used for international communications, and does not limit the Commission's authority to condition the operations of such stations. Further, the Communications Act provides the Commission greater discretion where international radio-frequency issues, particularly those involving treaty obligations, are involved.⁶⁷

Globalstar presented the same argument a third time when it objected to Iridium's request for a further extension of its STA to operate in the Middle East.⁶⁸ As the Bureau noted, "[a]s with previous oppositions, Globalstar's opposition is premised on" the argument that "the Communication's Act does not authorize the Commission to grant Iridium's STA request."⁶⁹ In response, the Bureau reiterated the distinction between earth station and space station authority, rejected Globalstar's claims, and granted the requested STA.⁷⁰

⁶⁷ *October 2003 Modification Order*, 18 FCC Rcd at 20027-28 (¶ 12) (citations omitted).

⁶⁸ The fact that Globalstar partially consented to one of the authorizations to operate requested by Iridium for its operations in the Middle East does not change the precedential value of the statements in the authorizing orders. Moreover, it is grossly misleading to suggest that Globalstar consented to Iridium's operations under Special Temporary Authority ("STA"), as Globalstar filed a petition to deny in nearly every proceeding related to Iridium's STA requests and invariably made the same jurisdictional arguments. *See e.g.*, Petition to Deny of New Operating Globalstar LLC, File No. SAT-STA-20040319-00056, 4-7 (filed Apr. 26, 2004) (petitioning the Commission to deny Iridium's request for an extension of its STA to operate on Channel 9 and arguing that the Commission lacked authority to grant the STA).

⁶⁹ *December 2003 Modification Order*, 18 FCC Rcd at 25816-17 (¶ 5).

⁷⁰ *Id.* at 25819-20 (¶¶ 13-14).

Most recently, the full Commission rejected Globalstar's claim that the FCC cannot regulate Globalstar's space station allocation in the *Order Proposing Modifications*, consistent with the three prior Bureau decisions. The Commission noted that "Globalstar asserts that the decisions in the *Big LEO Spectrum Sharing Second Order* do not alter its ability to use Big LEO spectrum outside the United States."⁷¹ However, the Commission "reject[ed] this assertion" based on the FCC's authority under international treaties and various provisions of the Communications Act.⁷² For the reasons established above, the Commission's *Order Proposing Modification* properly relied on international treaties and the Communications Act.

In addition to relying on the FCC's authority under international treaties and the Communications Act, the FCC supported its decision by relying on the Commission's 1996 *DISCO I* order. As the Commission explained in the *Order Proposing Modifications*, *DISCO I* eliminated the FCC's distinction between domestic and international satellite systems.⁷³ Under the regulatory regime established in *DISCO I*, then, FCC-licensed satellite providers were authorized to provide both domestic and international service under a single, modified Commission policy. To that end, the Commission automatically modified the licenses of all U.S. MSS operators to allow them to offer both domestic and international services. In so modifying the satellite operators' authorizations, the FCC exercised its organic authority to regulate MSS providers' satellite space segment operations for communications to points outside the United States.

⁷¹ *Order Proposing Modifications*, ¶¶ 3, 6-7.

⁷² See *Order Proposing Modifications*, ¶ 3 (citing, *inter alia*, ITU Radio Regulation 18.1 and 47 U.S.C. § 316).

⁷³ *DISCO I*, 11 FCC Rcd at 2430 (¶ 9).

Globalstar's efforts to distinguish *DISCO I* are unpersuasive.⁷⁴ Globalstar claims that *DISCO I* "is at war with" the *Order Proposing Modifications* because *DISCO I* "was expressly limited to *geostationary* systems" and the *Order Proposing Modifications* involves *non-geostationary satellites*.⁷⁵ Globalstar has seized on a distinction without a difference. With respect to the question of the FCC's authority over an MSS provider's space station operations, it makes no difference that the satellite is geostationary or non-geostationary.

Most strikingly, in attempting to distinguish *DISCO I*, Globalstar effectively concedes that the Commission does have authority to regulate an MSS provider's space station operations. In particular, Globalstar asserts that at the time the Commission adopted *DISCO I*, the FCC "already permitted – indeed, required – [LEO systems] to provide global coverage."⁷⁶ If, as Globalstar states, the FCC had—and has—authority to permit and require an MSS operator to provide global coverage, then the Commission necessarily has authority to modify that authorization. Moreover, in its own real world actions, Globalstar has operated globally within the confines of its space station license and in conformity with the FCC's original band plan, including by not operating globally in the 1621.35-1625 MHz portion of L-band spectrum assigned to Iridium in the original Big LEO band plan.

As a policy matter, adoption of Globalstar's theory of satellite licensing would lead to untenable chaos. Taking Globalstar's theories to their obvious conclusion, Iridium already has the authority to operate across the entire L-band, as long as it obtains an earth station

⁷⁴ See Protest at Part II.C (pp. 14-16). As established above, the FCC's authority over Globalstar's satellite operations flows from international treaties and the Communications Act. Globalstar gains no headway, then, by attempting to distinguish *DISCO I*. In attempting to distinguish *DISCO I*, Globalstar offers no response to the Commission's organic authority over Globalstar's satellite space stations.

⁷⁵ See Protest at 14-16.

⁷⁶ Protest at 15.

authorization from the foreign administration that it seeks to serve.⁷⁷ Conversely, Globalstar would be free to operate its space stations on any and all frequencies of its choosing—even if such operations resulted in harmful interference.

Obviously, the outcome advocated by Globalstar is not permitted under international treaties or the Communications Act. In the event that an FCC-licensed satellite wrongly interferes with the operations of another satellite, the FCC has the authority to instruct its licensee to cease the interfering operations. Under Globalstar's theory, *no* administration would have the authority to police Globalstar's satellite operations whenever its satellites communicate with an earth station located outside the United States—a result that is clearly contrary both to law and policy. Indeed, it is unclear exactly where Globalstar believes that it derives its own authority to operate its satellites in the L-band if not from the FCC.

At bottom, then, the Commission's proposal to modify all Globalstar's authority to operate all of its space stations does not represent a departure from FCC precedent. Rather, it is entirely consistent with the FCC's existing authority under international law and the Communications Act. Moreover, it is entirely consistent with FCC precedent, including Bureau-level decisions involving Globalstar and the types of claims raised by Globalstar here.

B. The Commission Provided Globalstar with Ample Notice that It May Exercise Its Extant Authority and Modify Globalstar's Satellite Space Station Authorization

In light of the foregoing, Globalstar's ostrich-like claim that the FCC failed to provide notice that an MSS licensing decision could affect Globalstar's satellite space station authorization is specious. As indicated above, whenever the FCC proposes to modify the Big

⁷⁷ And, by extension, Globalstar's objections to the STA grants authorizing Iridium to operate in the Middle East would have been completely meaningless, since Iridium would not have required any FCC authority to undertake its satellite operations there.

LEO band plan, it is necessarily proposing to modify Globalstar's and Iridium's FCC-licensed earth stations and all of their satellite space stations. Therefore, the FCC provided Globalstar more than adequate notice that its satellite space station authorization could be affected by the *Second Order on Reconsideration*. A quick review of the proceedings leading up to the FCC's decision to adopt the *Second Order on Reconsideration* confirms this point.

In the 2003 *Big LEO Spectrum Sharing Notice*,⁷⁸ the Commission initiated the rulemaking proceeding that ultimately resulted in the FCC's decision to adopt the *Second Order on Reconsideration*.⁷⁹ In particular, the FCC stated in the *Big LEO Spectrum Sharing Notice* that "we initiate IB Docket No. 02-364 to seek comment on reassigning or reallocating a portion of spectrum in the Big LEO MSS frequency bands."⁸⁰ Significantly, the FCC did not adopt the *Big LEO Spectrum Sharing Notice* for the limited purpose of modifying Big LEO MSS providers' FCC-licensed earth stations. Rather, the *Big LEO Spectrum Sharing Notice* provided all interested persons with notice that the Commission would consider modifying the "Big LEO spectrum sharing plan."⁸¹ With respect to FCC-licensed MSS providers (like Globalstar) the "Big LEO spectrum sharing plan" includes earth station and satellite space station authorizations. Therefore, when the FCC spoke of modifying the "Big LEO spectrum sharing plan," it provided

⁷⁸ *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; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003) (the "*Big LEO Spectrum Sharing Notice*").

⁷⁹ *See id.*, ¶ 261.

⁸⁰ *Id.*

⁸¹ *Id.*, ¶ 266.

all interested persons with notice that it may modify Globalstar's and Iridium's FCC-licensed earth stations and all of their satellite space stations.⁸²

The FCC's 2004 *Big LEO Spectrum Sharing Order* confirms that IB Docket No. 02-364 was initiated to consider altering MSS providers' earth station and satellite space station authorizations.⁸³ In 2004, after considering the comments and filings submitted in response to the *Big LEO Spectrum Sharing Notice*, the Commission adopted an order in IB Docket No. 02-364—the *Big LEO Spectrum Sharing Order*. As contemplated by the *Big LEO Spectrum Sharing Notice*, the 2004 *Big LEO Spectrum Sharing Order* adopted a new “spectrum sharing plan in the . . . Big LEO bands.”⁸⁴ Like the *Big LEO Spectrum Sharing Notice*, the *Big LEO Spectrum Sharing Order* spoke of the Big LEO band generally—it did not distinguish between earth station authorizations and satellite space station authorizations because doing so was unnecessary. When it spoke about the Big LEO band plan, the Commission was speaking about MSS providers' FCC-licensed earth stations and FCC-licensed satellite space stations. It was no surprise, then, that when the International Bureau released an order modifying Iridium's

⁸² Indeed, it would have been arbitrary for the Commission to initiate IB Docket No. 02-364 for the limited purpose of modifying an FCC-licensed MSS provider's earth station authorizations because doing so would have had the effect of preventing the operator's satellite phones from operating on the same frequencies as its satellites. Moreover, the FCC's decision to adopt a modified bandplan was based on the FCC's decision that it would be “impracticab[le]” for Globalstar and Iridium to continue to share spectrum. *Second Order on Reconsideration*, 22 FCC Rcd at 19739-40 (¶ 14). The FCC's conclusion was supported (in part) by evidence Globalstar itself submitted in the record. See, e.g., *id.*, ¶ 15 (citing Globalstar LLC, Petition for Reconsideration, IB Docket 02-364 at 5-6 & Technical Appx § 2 (filed Sep. 8, 2004)). The FCC's decision must have global affect, then, or else it could not address Globalstar's claim that the two providers are unable to share spectrum.

⁸³ *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; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003) (the “*Big LEO Spectrum Sharing Order*” or “*Big LEO Spectrum Sharing Notice*”).

⁸⁴ *Big LEO Spectrum Sharing Order*, 18 FCC Rcd at 1964 (¶ 1).

authorizations to conform them to the Big LEO band plan adopted in the *Big LEO Spectrum Sharing Order*, the Bureau made plain that it was modifying Iridium’s earth station as well as all of its satellite space stations.⁸⁵ Therefore, because Globalstar has been on notice that the Commission was using IB Docket No. 02-364 to consider modifying the Big LEO band plan, Globalstar has been on notice that the Commission could alter both its FCC-licensed earth stations and all of its satellite space stations (all of which are licensed by the FCC) and has had ample opportunities to comment on this issue.⁸⁶

Even setting all of the foregoing aside, however, the FCC’s decision to modify Globalstar’s FCC-licensed earth stations and all of its satellite space stations satisfies the “logical outgrowth” doctrine. As established by the courts of appeal, the “key question” for the “logical outgrowth” test is whether Globalstar “should have anticipated” that the FCC “might issue the

⁸⁵ See *Iridium Constellation LLC Iridium Satellite LLC Iridium Carrier Services Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band*, 19 FCC Red 17474, 17474 (¶ 1) (IB 2004) (“By this Order we modify the authorizations of Iridium Constellation LLC, Iridium Satellite LLC, and Iridium Carrier Services (collectively Iridium) to operate *space* and *earth* stations in the ‘Big LEO’ mobile-satellite service (MSS).” (emphasis added)); see also *id.*, ¶ 5 (“Accordingly, IT IS ORDERED, pursuant to Section 316 of the Communications Act, 47 USC §316, that the *space station license* held by Iridium Constellation LLC, and the associated blanket *mobile earth terminal licenses* held by Iridium Carrier Services and Iridium Satellite LLC, ARE MODIFIED” (emphasis added)).

⁸⁶ In addition to the notice and opportunity to comment provided by the *Big LEO Spectrum Sharing Further Notice*, the FCC provided Globalstar with sufficient notice and opportunity to comment on the issues ultimately decided in the *Second Order on Reconsideration* when it placed Globalstar’s own 2004 petition for reconsideration on public notice. See FCC, Public Notice, Report No. 2675 (Oct. 5, 2004) (announcing that Globalstar had filed a petition for reconsideration of the *Big LEO Spectrum Sharing Order* and stating that oppositions could be filed within fifteen days of public notice of the petition in the Federal Register and replies to any oppositions could be filed ten days later); FCC Notices, 69 Fed. Reg. 60,626 (Oct. 12, 2004) (notice of Globalstar’s petition for reconsideration published in the Federal Register); cf. *U.S. Telecom Ass’n v. FCC*, 400 F.3d 29, 36 (D.C. Cir. 2005) (rejecting argument that labeling a published notice as a request for comment on “Petition Declaratory Ruling,” rather than “Notice of Proposed Rulemaking,” constitutes ineffective notice).

final rule it did.”⁸⁷ Put another way, the “crux” of the test is whether the final rule was “reasonably foreseeable.”⁸⁸ There is no doubt that based on either the *Big LEO Spectrum Sharing Notice*, the *Big LEO Spectrum Sharing Further Notice*, and/or Globalstar’s own petition for reconsideration,⁸⁹ that Globalstar should have anticipated that the FCC might modify its FCC-licensed earth stations and all of its satellite space stations.

C. Even Though the Commission Did Not Change Course, Globalstar Argues in Error that the FCC Cannot Change Course Through an Adjudication

As established above, the Commission’s *Order Proposing Modifications* is entirely consistent with existing agency precedent. Therefore the Commission was not required to provide Globalstar with any additional notice or offer any particular justification or explanation. Nonetheless, Globalstar’s Protest is premised on the flawed assumption that the Commission can only depart from agency precedent through a notice and comment rulemaking proceeding.⁹⁰ As the appellate courts have made plain, however, “[i]t is well settled that an agency ‘is not precluded from announcing new principles in an adjudicative proceeding’”⁹¹ Moreover, the

⁸⁷ *City of Portland, Oregon v. EPA*, 507 F.3d 706, 715 (D.C. Cir. 2007) (internal quotation marks omitted).

⁸⁸ *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 210 n.7 (D.C. Cir. 2007) (internal quotation marks omitted).

⁸⁹ See Petition for Reconsideration of Globalstar LLC, *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, IB Dkt. No. 02-364; ET Dkt. No. 00-258 (filed Sept. 8, 2004).

⁹⁰ See Protest at 2 (arguing that the APA “requests that the Commission give notice and an opportunity for comment before substantially changing or reversing a longstanding policy”).

⁹¹ *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998) (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)); see also *Gen. Am. Transp. Co. v. ICC*, 883 F.2d 1029, 1030-31 (D.C. Cir. 1989) (rejecting the argument that the ICC was precluded from changing its rules in an adjudicatory proceeding).

Commission may “revers[e] precedent which has been followed for more than a decade via adjudication, rather than through notice and comment rulemaking” because the “choice whether to proceed by rulemaking or adjudication is primarily one for the agency.”⁹² Even assuming *arguendo*, then, that the *Order Proposing Modifications* departed from FCC precedent, Globalstar’s claim that the FCC erred by not making this change in a notice and comment rulemaking proceeding is inconsistent with settled principles of administrative law. The FCC can change course in an adjudication and has provided Globalstar all of the process necessary to do so.

IV. GLOBALSTAR HAS NOT DEMONSTRATED ANY BASIS FOR A HEARING UNDER SECTION 316

Even though the Commission has afforded Globalstar all of the process it is due, Globalstar nevertheless contends that Section 316 and Rule 1.87 require the Commission to hold a hearing to consider “[c]ritical issues of fact” before modifying its license.⁹³ Yet, nothing in Section 316 or Rule 1.87 require the FCC to automatically hold a hearing in this case.⁹⁴ Section

⁹² *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976). “An agency may, within the realm of its statutory authority, change the established law and apply newly created rules. Such changes may occur in the course of an adjudication, so long as the agency acts pursuant to delegated authority, adopts a permissible construction of the statute, and adopts a rule that is not arbitrary and capricious.” *Consol. Edison Co. of N.Y., Inc. v. FERC*, 315 F.3d 316, 323 (D.C. Cir. 2003) (citations omitted).

⁹³ *See* Protest at 20.

⁹⁴ *National Science and Technology Network, Inc.*, 23 FCC Rcd 3214, 3219-20 (¶ 12) (2008) (the “NSTN Order”) (“Contrary to NSTN’s assertions, Section 316 does not provide for an automatic right to a formal hearing prior to license modification, and PSPWD was not required to offer to hold one.” (footnote omitted)). Prior to its amendment in 1983, Section 316 required the FCC to hold a hearing before modifying a license. The 1983 amendment, however, eliminated the requirement that the FCC automatically conduct a hearing whenever a Section 316 protest is filed. H.R. Rep. 98-356, 1 (1983), reprinted in 1983 U.S.C.C.A.N. 2219, 2232 (“The Committee intention is to make clear that parties requesting hearings under Section 316 must alleged ‘specific allegations’ raising a ‘substantial and material question of fact’ as to the Commission’s proposed modification, in order to be entitled to a hearing. That is, the FCC

316 provides that a protest is subject to the substantive and further procedural requirements governing petitions to deny under Section 309.⁹⁵ In turn, Section 309 states that a hearing is required only if “a substantial and material question of fact is presented.”⁹⁶ Unless the protester makes this showing, the FCC will enter an order denying the protest if it determines that the modification will be in the public interest.⁹⁷

would not have to grant a hearing in such a proceeding if the pleadings did not raise any material question of fact on which to hold a hearings [sic].”).

⁹⁵ 47 USC § 316(a)(3) (“A protest filed pursuant to this subsection shall be subject to the requirements of section 309 of this title for petitions to deny.”).

⁹⁶ 47 USC § 309(e) (“If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally.”).

⁹⁷ *Modification of Licenses Held by Iridium Constellation, LLC and Iridium US LP*, 18 FCC Rcd 14498, 14502 (¶ 16) (IB 2003) (“If the licensee or any other party raises a substantial and material question of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Commission’s rules, 47 C.F.R. § 1.87(a.”); *Modification of Licenses Held by Iridium Constellation, LLC and Iridium US LP*, 18 FCC Rcd 10441, 10443-44 (¶ 10) (2003) (same); *Peninsula Communications Inc.*, 18 FCC Rcd 4027, 4032 (¶ 12) (2003) (“Peninsula’s protest to our proposed modification of the Seward translators’ licenses is subject to the requirements of Section 309 of the Act for petitions to deny. Therefore, Peninsula is entitled to a hearing only if it presents a substantial and material question of fact as to whether the proposed modification serves the public interest. . . . We conclude that Peninsula has failed to raise a substantial and material question of fact regarding whether the proposed modification of the Seward Translator Stations’ licenses is in the public interest. Accordingly, we deny Peninsula’s request for a hearing.”); *Applications of Achernar Broadcasting Company*, 15 FCC Rcd 7808, 7819 (¶ 22) (2000) (“Nor have they raised a substantial and material question of fact requiring a hearing to determine whether the proposed modification would serve the public interest. Such modification, therefore, does not necessitate the institution of further proceedings to explore the objections raised by Viacom and Shenandoah.”); *Tampa Bay Broadcasting, Inc.*, 4 FCC Rcd 2294 n.1 (¶ 2) (1989) (“While grant of Tampa Bay’s application may have indirectly modified the WKLG(FM) license, a hearing is not required in this case pursuant to 47 U.S.C. § 316 because there is no substantial and material question of fact and grant of Tampa Bay’s application is consistent with the public interest.”).

First, the “[c]ritical issues of fact” discussed in Globalstar’s protest are actually legal arguments couched as factual issues in a thinly veiled attempt to satisfy Section 316’s requirements. Consideration of its “[c]ritical issues of fact,” Globalstar contends, would show that modification is not in the public interest because “[e]xtraterritorial application of the US band” would negatively affect Globalstar’s global services and operations.⁹⁸ Yet, as the Commission has explained, “[i]f the facts are not disputed, but disposition turns on inferences and legal conclusions to be drawn from facts already known, a hearing is unnecessary.”⁹⁹ Indeed, primarily legal and economic conclusions such as those put forth by Globalstar are insufficient to raise a substantial and material question of fact.¹⁰⁰ The license modification may indeed affect Globalstar’s operations, but without more, simply asserting that the FCC should have struck a different balance is not sufficient to trigger a hearing under Section 316.

Second, the Commission should not consider Globalstar’s self-described “[c]ritical issues of fact” at this late stage because Globalstar could have—and should have—raised these same concerns during the rulemaking proceeding.¹⁰¹ As discussed above, the Commission provided

⁹⁸ Protest at 21-22.

⁹⁹ *Davis Television Clarksburg, LLC and Withers Broadcasting Company, LLC*, 23 FCC Rcd 5472, (¶ 16) (MB, VD, 2008); *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1972) (“And, where the facts required to resolve a question are not disputed and the ‘disposition of [an appellant’s] claims [turn] not on determination of facts but inferences to be drawn from facts already known and the legal conclusions to be drawn from those facts,’ the Commission need not hold a hearing. Finally, a hearing is not required to resolve issues which the Commission finds are either not ‘substantial’ or ‘material,’ regardless of whether the facts involved are in dispute.”).

¹⁰⁰ *Bell Atlantic New Zealand Holdings, Inc.*, 18 FCC Rcd 23140, 23162 (¶ 48) (IB, WCB, WTB 2003) (finding that “legal and economic conclusions concerning market structure, competitive effect, and the public interest, including the potential impact of the proposed transfers of control on national security and law enforcement” did not constitute “a substantial and material question of fact that would require an evidentiary hearing under section 309(d)”).

¹⁰¹ To the extent Globalstar is asserting that there are material and disputed questions of fact that the Commission should have considered before adopting the *Second Order on*

Globalstar with more than adequate notice and an opportunity to comment on whether the FCC should modify Globalstar's satellite space station authorization.¹⁰² Instead of raising its concerns during the rulemaking proceeding, Globalstar waited until after it received an adverse decision to raise a number of issues allegedly related to the extraterritorial application of the Commission's bandplan on its services and operations. In these circumstances, the Commission has criticized parties for delaying until the last minute to raise factual issues that allegedly require a hearing under Section 316, stating that "a party may not 'sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence.'"¹⁰³ Indeed, the FCC's "processes operate inefficiently at best when, as here, facts are presented piecemeal. . . . [A]n applicant must either take the initiative to present its case fully and completely at the outset, or bear fully the risk that its showing will be found inadequate."¹⁰⁴

Third, the issues raised by Globalstar do not warrant a hearing because they are neither substantial nor material. Globalstar complains that the license modification severely impacts its operations and, in support, identifies several factual issues allegedly left unconsidered that may support its contention.¹⁰⁵ However, the factual issues identified by Globalstar—including the

Reconsideration, Globalstar has waived its ability to raise this claim. The time for filing petitions for reconsideration of the *Second Order on Reconsideration* has long since passed and Globalstar's appeal of the *Second Order on Reconsideration* is now pending in the D.C. Circuit. *See supra* note 4; *see also* 47 U.S.C. 405(a).

¹⁰² *See* discussion *supra* Part II.

¹⁰³ *Improving Public Safety Communications in the 800 MHz Band*, 20 FCC Rcd 1560, 1562 n.21 (2005) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)); *NSTN Order*, 23 FCC Rcd at 3220 (¶ 13) (finding that issues raised for the first time in an application for review that the party believed merited a hearing were waived).

¹⁰⁴ *In re Applications of Carolyn S. Hagedorn*, 11 FCC Rcd. 1695 (¶¶ 12, 15) (1996) (citation omitted).

¹⁰⁵ Protest at 21.

number, location, and identity of its international customers¹⁰⁶—are irrelevant to this proceeding. In fact, Globalstar makes no effort to explain why these issues are material to the Commission’s decision.¹⁰⁷ Not only does Globalstar fail to explain the relevance of these issues, but it also fails to cite record evidence in support of its assertions of harm. Globalstar instead merely speculates about the “negative impact” of the modification on its global operations and services.¹⁰⁸ The FCC has found, however, that “purely speculative” assertions “unsupported by any evidence” such as those made by Globalstar here do not raise a substantial and material question of fact.¹⁰⁹

Finally, Globalstar has offered no persuasive reason why it cannot use the Commission’s waiver process to remedy any concrete harm that may actually arise if the Commission modifies its authorizations as proposed. Rule 1.3 allows the Commission to waive any of its rules for “good cause shown.”¹¹⁰ Indeed, “[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹¹¹

¹⁰⁶ *Id.*

¹⁰⁷ “Facts that are ‘material’ are those that the Commission considers relevant to making its public interest determination.” *Application of WGPR, Inc.*, 10 FCC Rcd 8140 (¶ 37) (1995), *vacated on other grounds sub nom., Serafyn v. FCC*, 149 F.3d 1213 (1998).

¹⁰⁸ Protest at 21.

¹⁰⁹ *Applications of Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867, ¶ 19 (MMB 1999); *See Mr. Lawrence E. Steelman, Capstar TX Limited Partnership, Mr. Stanley Daniels, Letter*, 22 FCC Rcd 4866, 4869 (MB 2007) (petition for reconsideration “was an amalgam of conclusion, speculation, supposition, trade press articles, and other material that did not raise a substantial and material question of fact,” thus no evidentiary hearing was required); *Application of Secret Communications II*, 18 FCC Rcd 9139, 9148-49 (¶ 24) (2003) (finding that “allegations based on internet website idiom are speculative and inadequate to raise a substantial and material question of fact”); *Solar Broadcasting Company, Inc.*, 17 FCC Rcd 5467, 5482 (¶ 55) (2002) (“Given the highly speculative nature of the allegations, the evidence in the record is insufficient to raise a substantial and material question of fact regarding the potential harms associated with vertical arrangements in the radio industry.”), *aff’d sub nom., Davis Broadcasting Inc. v. FCC*, 13 Fed Appx 526 (D.C. Cir. 2003).

¹¹⁰ 47 C.F.R. § 1.3.

¹¹¹ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

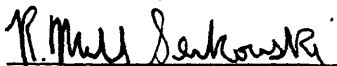
Moreover, in the *Order Proposing Modifications*, the Commission explicitly stated that it will “entertain a waiver or modification” because Globalstar may have difficulty ceasing its space operations in some countries.¹¹² At this point, the speculative nature of the harm raised by Globalstar does not justify relief. Should any of the abstract and unsupported allegations of harm actually arise, Globalstar is not without recourse.

In sum, Globalstar has failed to identify a substantial and material question of fact warranting a hearing under Section 316. Globalstar’s failure to make this showing allows the Commission to modify its license without a hearing.

V. CONCLUSION

For the foregoing reasons, Iridium respectfully requests that the Commission expeditiously enter an order denying Globalstar’s Protest and modifying Globalstar’s and Iridium’s FCC-licensed earth stations and all of their satellite space stations as proposed in the *Order Proposing Modifications*.

Respectfully submitted,



R. Michael Senkowski
Andrew G. McBride
Jennifer Hindin
Joshua S. Turner
Wiley Rein LLP
1776 K Street N.W.
Washington D.C. 20006
Tel. (202) 719-7000
Fax (202) 719-7049

Donna Bethea-Murphy
Vice President, Regulatory Engineering
Iridium Satellite LLC
6701 Democracy Blvd., Suite 500
Bethesda, MD 20817
301.571.6200

Counsel to Iridium Satellite LLC

June 16, 2008

¹¹² *Order Proposing Modifications*, ¶ 5.

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2008, I caused a true and correct copy of the foregoing to be served by first-class mail, unless noted otherwise, on the following:

Anthony J. Navarro
461 S. Milpitas Blvd
Milpitas CA 95035

Mathew Berry, General Counsel*
Federal Communications Commission
445 12th St., S.W.
Washington D.C. 20554

William T. Lake
Josh L. Roland
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave N.W.
Washington D.C. 20006
Counsel to Globalstar Inc.

Best Copy and Printing, Inc.**
fcc@bcpiweb.com

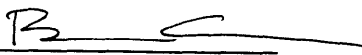
Helen Domenici, Chief*
International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington D.C. 20554

Jim Ball, Chief*
Policy Division, International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington D.C. 20554

Robert Nelson, Chief*
Satellite Division, International Bureau
Federal Communications Commission
445 12th St., S.W.
Washington D.C. 20554

* By first-class mail and electronic mail

** By electronic mail only


Brendan T. Carr