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

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SEP 29 2004

In the Matter of )  
)  
Iridium Constellation, LLC, )  
Iridium Satellite LLC )  
And, Iridium Carrier Services )  
)  
Modification of Authority to Operate a )  
Mobile Satellite System in the 1.6 GHz )  
Frequency Band )

File Nos.

Federal Communications Commission  
Office of Secretary

SAT-MOD—19990303-00021  
(Call Sign S2110)  
SES-LIC-19960116-01966/01967  
(Call Signs E960132/E960131)

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Policy Branch  
International Bureau

OPPOSITION TO MOTION TO STRIKE

Globalstar LLC hereby opposes the "Motion to Strike" filed by Iridium Satellite LLC, against Globalstar's "Protest" of the Order modifying the licenses held by Iridium Constellation LLC, Iridium Satellite LLC and Iridium Carrier Services (collectively "Iridium"). See Order, DA 04-2869 (released Sept. 3, 2004) ("Modification Order").

Iridium's motion is utterly without merit. The Commission explicitly required the International Bureau to provide 30 days for the filing of oppositions to the Modification Order. Moreover, Globalstar has a statutory right to file a protest against the modification of Iridium's Big LEO license under Section 316 of the Communications Act.

The Bureau does not have the authority to curtail these rights by providing no reasonable time period to respond to the Modification Order. Globalstar's Protest was filed well within the time period permitted under the Commission's

mandate and the Act. Accordingly, the Motion to Strike has no legal basis and must be denied.

*Background.* In the Modification Order, the Commission's International Bureau modified the satellite and earth station licenses referenced above in accordance with direction from the Commission in the Report and Order in IB Docket No. 02-364.<sup>1</sup> The Modification Order was "released" on September 3, 2004, and the Bureau stated that the modifications would become effective as of September 8, 2004, the effective date of the rules adopted in the L-Band Order.

On September 8, 2004, Globalstar filed a "Protest" of the modification of Iridium's licenses, based on its "Petition for Reconsideration" of the L-Band Order also filed on September 8, 2004. Iridium has now moved to strike the Protest because it was not filed "before" September 8, 2004, in accordance with Section 316(b) of the Communications Act and Section 1.87(c) of the Commission's Rules, which state that "[a]ny other licensee . . . who believes its license . . . would be modified by the proposed action may also protest the proposed action before its effective date."

As explained below, Globalstar's Protest must be deemed timely. By operation of law and the Commission's direction, Globalstar had at least 30 days to

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<sup>1</sup> Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 04-134 (released July 16, 2004) ("L-Band Order"), published at 69 Fed. Reg. 48157 (Aug. 9, 2004).

file the Protest or any other objection to the Modification Order on or before October 4, 2004.

*Section 316 of the Communications Act.* The Bureau acted pursuant to express statutory requirements. Specifically, the Bureau stated that it was issuing the Modification Order under Section 316 of the Communications Act of 1934 (Modification Order, ¶ 5): “Accordingly, IT IS ORDERED, pursuant to Section 316 of the Communications Act, 47 U.S.C. § 316.”

Section 316 governs Commission-initiated license modifications. With respect to the modified license, Section 316 requires the Commission to give notice to the licensee *before* the action becomes “final.” Section 316(a) provides for a 30-day time period in which the licensee may file a protest of the modification.<sup>2</sup> However, the Bureau did not indicate otherwise, and so, pursuant to the Commission’s Rules, the Modification Order became a “final” Bureau action for the purpose of seeking reconsideration at the Commission on the date of its release, September 3, 2004.<sup>3</sup>

Section 316 also provides that other licensees affected by the proposed modification have a right to file a protest against the modification “before its effective date,” which the Bureau designated as September 8, 2004.<sup>4</sup>

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<sup>2</sup> Section 1.87(a) of the Commission’s Rules is consistent in requiring a 30-day notice period to the licensee prior to modification of a license. 47 C.F.R. § 1.87(a).

<sup>3</sup> See 47 C.F.R. §§ 1.103(b), 1.106(a).

<sup>4</sup> The “effective date” of Commission action is the date on which the relevant order takes effect. The order becomes “final” for purposes of seeking review or

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Neither the Bureau nor the Commission has the authority to eliminate the notice and protest requirements as set forth in Section 316.<sup>5</sup> The Bureau claims that the Commission decided that the “hearing requirements” of Section 316 do not “apply to this proceeding.” Order, n.8; see L-Band Order, ¶ 85-86. The “hearing requirements” are certainly applicable when there are substantial and material issues of fact to be decided as a result of a proposed modification.<sup>6</sup> Assuming *arguendo* that the Commission’s conclusion was correct,<sup>7</sup> that conclusion does not eliminate the statutory rights to notice and to protest the proposed modification.<sup>8</sup> The Commission specifically recognized that Section 316 governed the modification of Iridium’s license in accordance with the revised L-band rule. L-Band Order, ¶ 88.

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reconsideration at the Commission or in court on the date of public notice, as defined in Section 1.4 of the Commission’s Rules. See Addition of New Section 1.103 to the Commission’s Rules of Practice and Procedures; Amendments to Section 1.4(b) of Those Rules, 85 FCC 2d 618 (1981).

<sup>5</sup> See Sierra Club v. EPA, 294 F.3d 155, 161 (D.C. Cir. 2002); Reuters Ltd. v. FCC, 781 F.2d 946, 951-52 (D.C. Cir. 1986).

<sup>6</sup> See Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act, 2 FCC Rcd 3327 (1987).

<sup>7</sup> The Commission’s conclusion was in error with respect to the modification of Globalstar’s license, as explained in its “Petition for Reconsideration” of the L-Band Order filed on September 8, 2004.

<sup>8</sup> See 47 C.F.R. § 1.87(g) (discussing “the right to file a protest or have a hearing”) (emphasis supplied).

Given that Section 316 applies, neither the Commission nor the Bureau can simply pick and choose which statutory requirements are applicable.<sup>9</sup>

Globalstar, as a licensee affected by the modification, has a statutory right to protest the proposed modification.<sup>10</sup> Reading the Bureau's decision to make it impossible for Globalstar to file a protest, as Iridium suggests in its motion, violates Section 316, and, as explained below, also violates due process and the Commission's mandate in the L-Band Order.

*Due Process.* Although publication of the L-Band Order occurred in the Federal Register on August 9, 2004, the Bureau did not comply with the Commission's direction to issue an order modifying Iridium's license until September 3, 2004. Because it was "released" late on September 3, 2004, the Friday before the three-day Labor Day weekend, the Modification Order did not appear in

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<sup>9</sup> See Western Broadcasting Co. v. FCC, 674 F.2d 44, 51 (D.C. Cir. 1982) (FCC cannot apply standards not stated in Section 316); American Broadcasting-Paramount Theatres, Inc. v FCC, 303 F.2d 766, 771 (D.C. Cir. 1962) (FCC cannot use its discretionary authority to define what constitutes a modification so as "to read Section 316 right of the Act").

<sup>10</sup> In the L-Band Order (¶¶ 85-87), the Commission concluded that adoption of the revised L-band sharing rule did not constitute a modification of Globalstar's license. On the other hand, it determined that modifying Iridium's license so as to permit operation in accordance with the new band plan did constitute a modification subject to Section 316. L-Band Order, ¶ 88. As a licensee affected by the Modification Order, Globalstar has a right to protest under Section 316(b), independent of any right to notice of modification under Section 316(a). The imposition on Globalstar's operations of spectrum-sharing and new interference resulting from the modification of Iridium's licensed operations clearly constitute an impact on Globalstar's license within the meaning of Section 316. See Western Broadcasting Co. v. FCC, 674 F.2d at 53-54.

the Commission's Daily Digest for that date. Therefore, the Modification Order did not appear in the Commission's official register of releases until Tuesday, September 7, the day before the purported "effective date."

The Bureau had an obligation to issue the order of modification in accordance with Section 316, but ignored the requirements of that statute by not providing a reasonable notice period before its effective date for other interested licensees to file a protest. Under the circumstances, striking Globalstar's Protest would not only be inconsistent with Section 316, it would also be unfair and contrary to the principles of due process upon which the Commission's actions are premised.<sup>11</sup>

At minimum, interested parties must have notice and a reasonable opportunity to participate in the proceeding.<sup>12</sup> The notice offered to interested parties "must afford a reasonable time for those interested to make their appearance."<sup>13</sup> Section 316 indicates that a "reasonable" opportunity to respond to "notice" in this context is 30 days.<sup>14</sup> Pursuant to the requirements of due process,

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<sup>11</sup> See, e.g., Anchustegui v. Department of Agriculture, 257 F.3d 1124, 1129 (9th Cir. 2001) (reversing license revocation for failure of agency to meet APA's requirement of adequate notice and hearing prior to action on license).

<sup>12</sup> See, e.g., Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950) ("when notice is a person's due, process which is a mere gesture is not due process"); Bell Tel. Cos. of Pa. v. FCC, 503 F.2d 1250, 1268 (3d Cir. 1974) (whatever procedures are adopted by agency, interested parties must have an opportunity to participate).

<sup>13</sup> Mullane, 339 U.S. at 314.

<sup>14</sup> Section 316 permits a shorter period to protect safety of life or property. 47 U.S.C. § 316(a). However, neither the Bureau in the Modification Order, nor the  
(continued...)

the Commission cannot eliminate access to its proceedings by precluding any opportunity to participate.

*The Commission's Mandate to the Bureau.* Clearly recognizing the requirements in Section 316, and the process that is due other affected licensees, the Commission in the L-Band Order (¶ 88) stated expressly: "Oppositions to the modification must be filed with the Commission within thirty days from the International Bureau's *release* of its order modifying Iridium's license." While the Commission delegated authority to the International Bureau to modify Iridium's license in accordance with the L-Band Order, it did not grant the Bureau authority to shorten the time period for oppositions set forth in the L-Band Order.

The Bureau does not have delegated authority to change a specific mandate of the Commission. See 47 C.F.R. § 0.261(b). The Commission required a 30-day timetable, and granted no basis for the Bureau to change it. Therefore, pursuant to the L-Band Order, any opposition to the modification of Iridium's licenses is due on or before October 4, 2004. Reading Section 316 and the L-Band Order together indicates that, at the least, Globalstar had the right to file a protest or opposition to the proposed modification on or before October 4, 2004. Therefore, the Protest cannot be stricken as Iridium requests.

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Commission in the L-Band Order made a finding that safety of life or property was at issue with respect to this modification of Iridium's licenses.

*Section 1.103 of the Commission's Rules.* Even if the Bureau could establish an early "effective date" of the modifications set forth in the Modification Order,<sup>15</sup> it cannot change the time period for filing pleadings. Section 1.103(a) of the Commission's rules specifies that, even if the Commission varies the effective date of an order, "[t]he designation of an earlier or later effective date shall have no affect on any pleading periods." 47 C.F.R. § 1.103(a).

Section 316 of the Act and the Commission in the L-Band Order provide a specific pleading period for filing an objection to the action of modifying the terms of Iridium's licenses. Accordingly, Globalstar has the right to protest or object to the Modification Order at least on or before October 4, 2004.

*The Bureau's Error.* Granting Iridium's motion would unfairly deny Globalstar's right to file a protest because of the Bureau's error. The Bureau erred in equating the effective date of the L-Band Order with the effective date of Iridium's license modification. The Bureau noted that it was modifying Iridium's licenses effective on September 8, 2004, because the L-Band Order became effective on September 8. See Modification Order, ¶ 4. The two are not necessarily connected. The L-Band Order is an order in a rulemaking proceeding, conducted under the Administrative Procedure Act (5 U.S.C. § 553). The modification of Iridium's license is adjudicatory licensing proceeding, conducted pursuant to Title

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<sup>15</sup> See 47 C.F.R. § 1.102(b).



III of the Communications Act, in which the rules governing Big LEO MSS systems are applied to a license application (in this case initiated by the Commission itself).

The frequencies in which Iridium operates must be designated by license in accordance with a rule adopted through a rulemaking. The Commission adopted a rule governing the use of L-band. But, as it recognized in the L-Band Order, that rule did not automatically give Iridium the right or obligation to operate in accordance with the rule.<sup>16</sup>

Just as Iridium's initial license was not granted until over three months after adoption of the original L-band assignment plan,<sup>17</sup> so too the order modifying Iridium's licenses could have been made effective after the rules adopted in the L-Band Order went into effect. The Bureau apparently thought the two actions were necessarily connected, requiring the same effective date. That is not a necessary conclusion within the statutory scheme governing the Commission's licensing proceeding. In any event, the Bureau's effort to synchronize the L-band rule and the Modification Order cannot be used to deny Globalstar's right to object to the

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<sup>16</sup> The L-band sharing rule affects the spectrum rights of each Big LEO licensee differently. Therefore, for this and other reasons, it is distinct from the generic service rules affecting the class of amateur radio licensees that were found not to be modifications triggering Section 316 in California Citizens Band Assoc. v. FCC, 375 F.2d 43, 50-52 (9<sup>th</sup> Cir. 1967).

<sup>17</sup> Compare Motorola Satellite Communications, Inc., Order and Authorization, 10 FCC Rcd 2268 (Int'l Bur. released Jan. 31, 1995) (initial Iridium authorization) with Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936 (released Oct. 14, 1994) (Big LEO rulemaking adopting initial L-band segmentation plan).

Modification Order pursuant to Section 316 of the Act and the Commission's mandate.

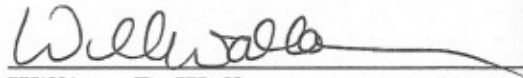
*Conclusion.* Under the Communications Act, the Commission's Rules, the Commission's mandate in the L-Band Order, and the requirements of due process, Globalstar had a right to file a protest of the Modification Order, and had a right to file a protest or objection at least on or before October 4, 2004. Therefore, its Protest was timely filed. Accordingly, Iridium's Motion to Strike must be denied, and Globalstar's Protest must be considered.

Respectfully submitted,

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Date: September 29, 2004

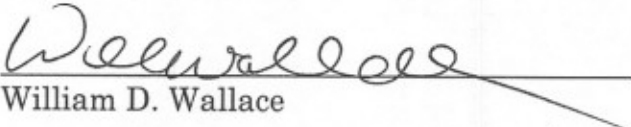
CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 29th day of September 2004, caused to be served true and correct copies of the foregoing "Opposition to Motion to Strike" of Globalstar LLC upon the following persons via hand delivery (marked with an \*) or first-class, United States mail, postage prepaid:

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