

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

FILED/ACCEPTED

NOV 14 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Globalstar Licensee LLC)	Call Sign S2115
GUSA Licensee LLC)	Call Sign E970381
)	
and)	
)	
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)	

**PETITION FOR RECONSIDERATION
OF GLOBALSTAR LICENSEE LLC AND GUSA LICENSEE LLC**

I. Introduction And Summary.

Globalstar Licensee LLC and GUSA Licensee LLC,^{1/} by their attorneys, and pursuant to section 1.106 of the Commissions Rules, 47 C.F.R. § 1.106, hereby seek reconsideration of the Commission's October 15, 2008, order modifying the licenses and authorizations held by Globalstar and Iridium for the operation of their Big LEO Mobile Satellite Service ("MSS") systems (the *Modification Order*).^{2/} As demonstrated below, the *Modification Order* abruptly

^{1/} Globalstar Licensee LLC is the authorized licensee of the Globalstar satellite constellation (call sign S2115). An affiliated company, GUSA Licensee LLC, holds licenses for Globalstar's earth station gateways located in the United States, holds a blanket license for the operation of Globalstar mobile earth station terminals, and is responsible for the provision of Globalstar MSS services to end users in the United States. For purposes of this petition, Globalstar Licensee LLC and GUSA Licensee LLC are referred to collectively as "Globalstar".

^{2/} See 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

departs from the Commission's longstanding Big LEO MSS licensing policies without any acknowledgement or justification and is based on erroneous assertions regarding the conditions under which the Globalstar and Iridium MSS systems operate outside of the United States. The *Modification Order* also fails properly to consider the substantial harm that enforcement of its terms would have on Globalstar, its customers, and its independent service providers outside of the United States, incorrectly denying Globalstar's request for a hearing under section 316 of the Communications Act. Accordingly, the Commission should rescind the *Modification Order* insofar as it restricts Globalstar's global space station operations and confirm that Globalstar's authority to provide service outside of the United States in conformity with the MSS Big LEO band plans in effect in other countries remains intact.

II. The *Modification Order* Fails To Acknowledge, Much Less Explain, Its Departure from Established Commission Policy and Precedent.

The Commission's sole justification in the *Modification Order* for its decision to prevent Globalstar from providing service in other countries in accordance with the ITU's global MSS allocation and the Big LEO MSS band plans in effect in those countries is its assertion that, as a U.S.-licensed operator, Globalstar may only operate "in a manner consistent with the operating bands specified in [its] U.S. space station spectrum license[]." ^{3/} But that is a tautology that

Mobile Satellite Service System in the 1.6/2.4 GHz Frequency Band – Order of Modifications, FCC 08-248 (rel. Oct. 15, 2008) ("*Modification Order*"). The *Modification Order* was issued in order to give effect to the Commission's *Second Report and Order* revising the Big LEO spectrum sharing plan in the United States by reassigning to Iridium's exclusive use certain spectrum previously assigned to CDMA carriers, such as Globalstar, and shared by Iridium. See 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 and Second Report and Order*, 22 FCC Rcd 19733 (2007) ("*November 9th Order*"). In addition to modifying Globalstar's licenses, the *Modification Order* modified certain licenses held by Iridium Constellation LLC, Iridium Satellite LLC, and Iridium Carrier Services. For purposes of this petition, these entities are referred to collectively as "Iridium."

^{3/} See *Modification Order* at ¶ 14.

provides no basis for the Commission's action. The fact that Globalstar must operate within the limitations in its licenses says nothing about what those limitations should be. Globalstar fully acknowledges the Commission's authority to prescribe the scope of its space station operations.^{4/} The question posed by Globalstar's Protest is what that scope should be – in particular, whether in light of Commission policy and precedents there is any basis for preventing Globalstar from continuing to operate in other countries on frequencies that remain reserved for CDMA operations by the Big LEO MSS band plans in those countries and that have been registered with the ITU for Big LEO MSS operations. The *Modification Order* completely fails to address Globalstar's demonstration that, in establishing the scope of U.S. licensees' operating authority since the inception of the Big LEO MSS service, the Commission has never before acted, as it did here, to prevent a U.S. licensee from operating in conformity with the Big LEO band plans other countries may establish.

In relying solely on the fact (which Globalstar does not challenge) that Globalstar may operate only in accordance with the terms of its space station license, the *Modification Order* fails to reconcile the unprecedented restriction of Globalstar's authority to operate in other countries with the Commission's stated objective since the inception of the Big LEO service to facilitate the provision of global service by U.S. Big LEO licensees. When it created the Big LEO service, the Commission made clear that it expected US-licensed Big LEO MSS carriers to provide service on a global basis, noting that "the inherently global nature of LEO systems may create additional public interest benefits" and that US Big LEO licensees would be "uniquely

^{4/} See Protest of Globalstar Licensee LLC and GUSA Licensee LLC (filed June 6, 2008) ("*Globalstar Protest*") at 18 ("It would be appropriate (although premature in light of Globalstar's appeal) for the Commission to implement the *November 9th Order* by revising Globalstar's and Iridium's authorizations to reflect the revised frequencies on which the two carriers may provide service in the United States.").

positioned to foster social and economic benefits in the United States *and throughout the world.*^{5/} The Commission further stated its intent that the “provision of global service by U.S. companies” would “spur a U.S. presence in the world economy by helping to expand markets for U.S.-produced goods and services” and “significantly enhance[]” this country’s “global competitiveness in telecommunications.”^{6/} Finally, the Commission found that U.S.-licensed Big LEO systems “may offer countries unable to participate in state-of-the-art telecommunications development immediate access to a technologically advanced communications infrastructure” and provide for “revolutionary advances in all areas supported by communications,” including “health care, education, emergency communications from small villages, public safety, routine governmental and civic exchanges, industrial communications and monitoring, and manufacturing.”^{7/}

The Commission’s decision here to restrict Globalstar’s operating rights outside of the United States is completely antithetical to the achievement of these goals. In fact, the real impact of the *Modification Order*, if allowed to stand, will be to force the spectrum at issue to go unused in many countries and regions where MSS services are needed and highly valued. The decision will not encourage or facilitate the provision of service to such areas. For example, in Russia the national regulator has adopted a Big LEO band plan that differs from that adopted by the United States in order to protect the Russian GLONASS global positioning system. Under that plan, in Russia CDMA licensees are not authorized to operate below 1616 MHz as they are in the United

^{5/} See 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, *Notice of Proposed Rulemaking*, 9 FCC Rcd. 1094 (1994) at ¶ 21.

^{6/} *Id.*

^{7/} *Id.*

States. As a consequence, the Commission's decision to limit the frequencies available to Globalstar to those authorized for CDMA use under the revised US band plan (below 1618.725 MHz) leaves only two CDMA channels for Russia, one of which is shared with Iridium.^{8/} At the same time, the *Modification Order* cannot effectively authorize Iridium to operate in the affected spectrum in Russia, where TDMA operations are precluded below 1621.35 MHz. As a result, the *Modification Order* yields the irrational result of preventing *any* U.S. MSS licensee from providing service in Russia on the spectrum at issue, even though Russia has adopted a band plan intended to allow such service. Enforcement of the *Modification Order* would result in similarly irrational results in many other countries and regions. The *Modification Order* thus abandons without acknowledgement or justification the Commission's sound goal of ensuring that US Big LEO licensees will be able to provide service to "citizens of the United States *and all other countries that may choose to participate in rendering these services.*"^{9/}

The *Modification Order* also represents an abrupt departure from the Commission's repeated statements since the very beginning of the Big LEO service that the band plan it establishes for the provision of Big LEO MSS services in the United States does not "purport to

^{8/} Globalstar's Russian independent gateway operator, GlobalTel, must have at minimum the four adjacent channels currently assigned by Russia in the L-band in order to provide MSS voice and data services. *See, e.g.,* Joint Comments of L/Q Licensee, Inc., Globalstar, L.P., and Globalstar USA, L.L.C in IB Docket No. 02-364 (filed Jul. 11, 2003) at 7-8 and attached Globalstar Technical Appendix at Section 1.

^{9/} 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 (1994) ("*Big LEO Report and Order*") at ¶ 216 (emphasis added). "Delaying [the licensing of Big LEO MSS systems] would delay the improved communications and economic growth that Big LEO services will create. These benefits would be developed both for citizens of the United States and all other countries that may choose to participate in rendering these services. Such a delay would also harm developing countries by limiting their opportunity to improve their communications infrastructure." *Id.*

have any extraterritorial application.”^{10/} To the contrary, “decisions relating to the implementation of Big LEO service within other countries will remain within that country's jurisdiction and control.”^{11/} In particular, the Commission has recognized that its establishment of a band sharing plan in the United States in order to prevent interference between CDMA and TDMA system operations does not prevent other countries from establishing different band plans to achieve the same goal. As the Commission specifically has emphasized, while “adoption by other administrations of our domestic inter-system sharing plan could, in many instances, provide a simple means of assuring a complementary licensing system in other countries, ... any decision on the issue of what, if any, method of inter-system sharing best serves its national interests rests with the particular administration.”^{12/}

The Commission thus repeatedly has confirmed that its Big LEO MSS rules do not establish a global band plan, specifically recognizing that “[i]n the Big LEO proceeding ... we did not require non-Government licensees to operate in accordance with the domestic band plan outside the United States.”^{13/} It follows from these precedents that other countries may choose

^{10/} 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 Band, *Memorandum Opinion and Order*, 11 FCC Rcd 12861 (1996) (“*Big LEO Memorandum Opinion and Order*”) at ¶ 53.

^{11/} See *Big LEO Report and Order* at ¶¶ 211-213.

^{12/} *Big LEO Memorandum Opinion and Order* at ¶ 53. See also Application of Orbital Communications Corporation for Authority to Construct, Launch and Operate a Non-Voice, Non-Geostationary Mobile-Satellite System, *Order and Authorization*, 9 FCC Rcd 6476 (1994) at ¶ 15 (“[W]e do not believe it is appropriate for the United States to impose global band sharing restrictions, which will directly impact the ability of other countries to access these LEO systems, absent indications from these countries regarding their planned use of these frequency bands.”).

^{13/} 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

(as they in fact have) to adopt MSS band plans different from that established in this country, and that as a result the scope of Big LEO licensees' operations inside and outside of the United States may (and does) differ. With this policy as a point of departure, Globalstar, Iridium, and former CDMA licensee Odyssey entered into a voluntary agreement in October 1996 to advocate the original US band plan around the world. The agreement allowed the companies to plan and deploy their services with certainty regarding their spectrum assignments and to avoid the considerable expense of prosecuting a variety of different band plans through the regulatory processes of dozens of countries. Globalstar has continued to honor its commitment to that plan.

The *Modification Order* fails even to acknowledge any of these precedents, let alone to explain its departure from the longstanding policies they represent. The Commission's repeated incantation of its role as the licensing administration for the Globalstar system does nothing to justify the unprecedented step of restricting Globalstar's operations overseas to the frequencies prescribed in the new US band plan. As Globalstar has demonstrated,^{14/} if the Commission modifies Globalstar's space station license to prohibit its space stations from receiving signals from earth stations and mobile earth terminals in another country on the frequencies permitted by that country's band plan, then that local band plan is effectively negated. The *Modification Order* thus punitively restricts Globalstar's authority to continue to operate outside of the United States where it is welcomed by the local administration. The order does not even attempt to explain how this is consistent with the precedents described above.

Services, *Third Report and Order*, 12 FCC Rcd 22310 (1997) at ¶ 68 (citing *Big LEO Report and Order* at ¶ 213).

^{14/} See Reply of Globalstar to Opposition of Iridium (filed June 23, 2008) ("*Globalstar Reply*") at 8.

The *Modification Order* also fails to acknowledge that Globalstar's and Iridium's respective space station authorizations have from the outset embodied this clear distinction between the frequencies on which the carriers may provide service in the United States and the frequencies on which their space stations may operate in other countries as permitted by the band plans in those countries.^{15/} Until the *Modification Order*, Globalstar's and Iridium's licenses explicitly distinguished between the scope of their respective authorizations to construct and launch global MSS systems and the scope of their authority to operate their terminals in the United States. Until now, only the latter has been confined by the US band plan. Globalstar's original space station license, issued in 1999, expressly authorized it to launch a global MSS system capable of operating in the entire 1610-1626.5 MHz band, consistent with the global allocation adopted at the 1992 World Administrative Radio Conference.^{16/} At the same time, the Commission authorized Globalstar to provide MSS services in the United States using terminals limited to the 1610-1621.35 MHz band – the frequencies then reserved for use by CDMA carriers under the Big LEO band plan in the United States.^{17/} Globalstar's first-generation terminal manufacturers actually hard-wired filters into the terminals to avoid interfering with Iridium terminals above 1621.35 MHz. Iridium's authorization similarly differentiated between the spectrum on which its satellite system may operate globally (1616 – 1626.5 MHz) and the spectrum on which it may operate terminals in the United States (originally 1621.35–1626.5

^{15/} See *Globalstar Protest* at 11.

^{16/} See *Big LEO Report and Order* at ¶ 8; Loral/Qualcomm Partnership, L.P. Application for Authority to Construct, Launch and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite 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, *Order and Authorization*, 10 FCC Rcd 2333 (1999) at ¶ 25, Erratum, 10 FCC Rcd 3926 (1999) (“*Globalstar Authorization*”).

^{17/} *Globalstar Authorization* at ¶ 26; Globalstar *Ex Parte* Filing in IB Docket No. 02-364 (filed Mar. 24, 2008) (“*Globalstar March 24, 2008 Letter*”) at 4.

MHz before sharing was authorized in 2004).^{18/} Thus, prior to the *Modification Order*, Globalstar's and Iridium's space station authorizations reflected the Commission's longstanding recognition that the space station authorizations issued by the host administration for a global system should accommodate both the global allocation in the ITU's Radio Regulations and the specific subset of frequencies on which MSS providers may provide service *in the host country*. The *Modification Order* provides no basis for abolishing these hitherto fundamental attributes of the global MSS operators' licenses.

The sole precedent cited in the *Modification Order* for the decision to restrict Globalstar's international operating authority in this manner – the International Bureau's temporary modification of Iridium's authorizations to allow Iridium to provide service using Globalstar's spectrum in the Middle East – fails to provide any justification for the Commission's action. Those Bureau actions undeniably confirm the Commission's role as the licensing administration for the Globalstar and Iridium space stations – again, a role that Globalstar has not disputed. But they do not, as the *Modification Order* suggests, provide any basis for the restriction the Commission is placing on Globalstar's operating authority outside of the United States. If they confirm anything, the Bureau's actions make clear that, prior to the *Modification Order*, the Commission has never sought to exert its licensing authority over the Big LEO providers in a manner that fails to respect the band plans other countries have adopted with the ITU allocation as the point of departure everywhere.

In making temporary modifications to Iridium's licenses in the Middle East war zone, the International Bureau stressed that it was taking its action only “after serious consideration of the national interests at stake and the critical communications support Iridium provides to U.S. and

^{18/} See *Globalstar March 24th Letter* at 4-5.

Coalition Forces.”^{19/} The Bureau also specifically acknowledged that it was not “specifying a ‘global band plan’” and expressly confirmed that “[o]ther countries continue to retain the discretion as to whether to allow services within their borders in accordance with the frequencies we are authorizing Iridium to use on a temporary basis.”^{20/} For this reason, the Bureau also required that any Iridium operations in the spectrum had to be “on a non-interference basis to other allocated services outside of the Middle East.”^{21/} And the Bureau orders did not in any way restrict Globalstar’s authority to operate on the affected spectrum. Thus, by no stretch of the imagination do they provide a precedent for forbidding Globalstar to operate in other countries on spectrum available to Globalstar under the band plans in place there.

III. The “Interference Prevention” Rationale in the *Modification Order* Is at Odds with the Commission’s Decision To Require Sharing of 0.95 MHz of Spectrum and is Factually and Legally Erroneous.

The *Modification Order* seeks to justify the decision to restrict Globalstar’s operating authority overseas on a purported need to “detect[] and [eliminate] harmful interference” that would otherwise be caused by Globalstar’s CDMA system and Iridium’s TDMA system because “the two technologies remain incompatible.”^{22/} While it is undeniably the case that Globalstar’s

^{19/} Request for Temporary Authority, Iridium Constellation, LL, *Order*, 18 FCC Rcd 25814 (Int’l Bur. 2003) (“*December 2003 Modification Order*”) at ¶ 13.

^{20/} *Id.* (citing Petition To Deny of Globalstar, LP and Globalstar USA LLC (filed Nov. 17, 2003)).

^{21/} *Id.* at ¶¶ 8, 12 (“[I]n areas outside of the Middle East region, the Iridium satellite system must operate in the 1618.85-1621.35 MHz frequency band on a non-harmful interference basis with respect to any other allocated radio service in that band.”). *See also* Modification of Licenses held by Iridium Constellation, LLC and Iridium US LP, *Order*, 18 FCC Rcd 20023 (Int’l Bur. 2003) at ¶¶ 10, 12 (same).

^{22/} *See Modification Order* at ¶¶ 33-35 (citations omitted).

CDMA system and Iridium's TDMA system cannot operate in the same spectrum in the same place, that fact provides no justification for the Commission's action in the *Modification Order*.

First and foremost, the Commission's reliance on the fact that "CDMA and TDMA systems are incompatible with each other and must operate in discrete portions of the spectrum"^{23/} as the basis for its decision to prohibit Globalstar from operating on spectrum outside of the United States that still is reserved for CDMA MSS cannot be reconciled with its concurrent decision to modify Globalstar's and Iridium's space station licenses to require that they *share* 0.95 MHz of spectrum on a global basis. The inability of CDMA and TDMA licensees to operate in the same spectrum at the same time has been known since the inception of the Big LEO service.^{24/} Any sharing requirement, no matter how small the slice of spectrum affected, thus requires the parties to make coordination arrangements and work out the technical challenges presented by such coordination. Consistent with this understanding, Globalstar repeatedly has confirmed that "TDMA and CDMA [MSS] systems can develop spectrum-sharing strategies though coordination" and has demonstrated that it is "willing to work on

^{23/} *Id.* at ¶ 3 (citing *Big LEO Report and Order* at ¶ 43).

^{24/} See, e.g., Report of Motorola on Band Segmentation Sharing to Working Group 1 of the Above 1 GHz Negotiated Rulemaking Committee (Apr. 6, 1993) ("[T]he Iridium system...cannot share spectrum with any of the proposed CDMA...systems on a co-frequency, co-coverage basis All of the members of this working group admit that the Iridium system and the proposed CDMA systems cannot operate on the same frequencies."); *Big LEO Report and Order* at ¶ 7 ("CDMA systems can share the same frequencies when operating under certain technical constraints TDMA...systems must operate on separate dedicated frequencies."); 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, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13386 (2004) at ¶ 13 ("[T]he [Big LEO] applicants all agreed that CDMA systems could share compatibly spectrum with each other but could not operate compatibly in spectrum used for TDMA" operations.).

developing such strategies.”^{25/} Globalstar has submitted proposed “Coordination Principles” to facilitate spectrum coordination on a channel-by-channel basis,^{26/} and Iridium has done the same.^{27/}

The *Modification Order* fails to take account of these showings or their inconsistency with its conclusions. The order asserts without explanation that the only means of addressing potential interference is to “impose a solution requiring [Globalstar and Iridium] to operate on different frequency bands internationally.”^{28/} It restricts Globalstar’s operating authority worldwide in order to avoid “inevitable interference disputes.”^{29/} Yet at the same time it orders

^{25/} See, e.g., Petition for Reconsideration of Globalstar LLC (filed Sept. 8, 2008) (“*Globalstar Petition for Reconsideration*”) at 5-6 and attached Technical Appendix at § 2 (While Globalstar and Iridium “cannot *share* spectrum co-frequency, co-coverage in the same way that, for example, two systems using Code Division Multiple Access technology can share frequencies” because “[a]t some point, access by one system to the “jointly used” spectrum requires the other to cede access,” the two “can *coordinate usage* of spectrum.”); Globalstar, Inc. *Ex Parte* Letter in IB Docket No. 02-364 (filed Feb. 7, 2007) at 2 and Attachment A (While CDMA and TDMA systems cannot “share spectrum co-frequency, co-coverage,” they can “coordinate the use of the spectrum on a channel-by-channel basis.”).

^{26/} See Globalstar, Inc., *Ex Parte* Letter in IB Docket No. 02-364 (filed Sept. 21, 2006) at 4 and attached “Coordination Principles.”

^{27/} See Iridium Satellite LLC *Ex Parte* Letter in IB Docket No. 02-364 (filed Jan. 22, 2007) and attached “Draft Coordination Agreement Between Iridium Satellite, LLC and Globalstar Inc.”

^{28/} See *Modification Order* at ¶ 36.

^{29/} *Id.* at ¶ 38. Although the Commission bases its decision in the *Modification Order* on a need to prevent interference between the Globalstar and Iridium systems outside of the United States, it completely fails to address the very real threat of interference that Iridium’s operations in the expanded spectrum would have on the radio astronomy service. See, e.g., 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, Fourth Report and Order, and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13356 (2004) at ¶¶ 51-52 (“We are aware that the radio astronomy community is concerned that Iridium’s operations in [the expanded spectrum] could potentially cause interference to radio astronomy observations.”).

the companies to share 0.95 MHz worldwide, which they can do only by coordinating their operations. The order fails to explain why coordination is possible for that 0.95 MHz – as it also presumably was when the Commission ordered the companies to share 3.1 MHz of the band in 2004 – but is not possible to accommodate differences in national Big LEO band plans.

The interference rationale in the *Modification Order* also ignores the real world operations of Globalstar and Iridium, which do not and cannot operate in the same spectrum outside of the United States as a matter of law. Although the *November 9th Order* revised the US Big LEO MSS band plan by reassigning to Iridium's exclusive use certain frequencies on which Globalstar has been authorized to operate, no other countries have adopted a similar band plan within their borders. Instead, most other licensing administrations still adhere to Big LEO band plans that are substantially similar to the original band plan the Commission adopted in 1994,^{30/} and that Globalstar and Iridium both supported from 1996 to 2004. Under those plans, CDMA operations are permitted, and TDMA operations are prohibited, in the spectrum that the Commission now has reassigned to Iridium (between 1617.775 and 1621.35 MHz). As a result, the *Modification Order* is simply wrong in asserting that Globalstar's authority to operate outside of the United States must be restricted in order to prevent interference between Globalstar's and

^{30/} See 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 (1994) (adopting the original Big LEO spectrum sharing plan for the United States). See also, e.g., European Radiocommunications Committee, ERC Decision of 30 June, 1997 on the Harmonized Use of Spectrum For Satellite Personal Communications Services (S-PCS) Operating within the bands 1610-1626.5 MHz, 2485.5-2500 MHz, 1980-21010 MHz and 2170-2200 MHz (adopting a spectrum plan in Europe that is substantially similar to the original U.S. Big LEO spectrum sharing plan).

Iridium's operations. Iridium continues to have no authority to operate in the affected spectrum anywhere but in the United States.^{31/}

Finally, the Commission's assertion that the likelihood of interference between Globalstar's and Iridium's systems will increase in instances where the two systems are "at maximum system loading," while correct as a technical matter, is inapposite. Because Iridium presently lacks authority to operate on the expanded spectrum in any country other than the United States, there is no likely scenario under which both the Globalstar and Iridium systems will experience full loading in the same spectrum in the same geographic area in the foreseeable future, and therefore no real world threat of interference.

In short, the Commission's only asserted factual support for its decision to restrict Globalstar's operations outside of the United States is contradicted by the real world conditions under which the Globalstar and Iridium systems currently operate, and must be reconsidered.

IV. The Commission Wrongly Denied Globalstar's Request for a Hearing under Section 316 and Relegated Globalstar to Seeking Waivers Covering a Substantial Part of Globalstar's Global Operations.

In the *Modification Order*, the Commission "recognize[s] that Globalstar has built and marketed, and is operating its system; on frequency bands contained in its 1995 license" and that "requiring Globalstar to terminate transmissions in certain parts of the world on frequencies in

^{31/} The *Modification Order* declares that "space station beams for current Big LEO systems cannot be shaped to track geographical boundaries." *Modification Order* at ¶ 35. That statement also is wrong. Globalstar has shown on numerous occasions that its MSS system is capable of controlling the emissions from its satellites on a geographic basis, so that it can deny a communications channel in any area that it is not allowed to serve on that frequency. Iridium led the Commission to believe the same was true of its system until 2003. *See, e.g., December 2003 Modification Order* at ¶ 13 (citing Iridium Constellation LLC, Request for Special Temporary Authority to Provide Mobile Satellite Service in the 1618.85-1620.10 MHz Frequency Band (filed Apr. 25, 2003)); *Ex Parte* Filing of Globalstar, Inc. in IB Docket No. 02-364 (filed Feb. 6, 2007), Attachment at 3 ("Soon after Iridium received access to Globalstar's spectrum, Iridium admitted to the FCC that, unlike Globalstar, it was unable to turn its satellite channels on and off on a national or regional basis.").

which it has existing operating agreements may impose undue costs on both Globalstar and the countries accessing the Globalstar space stations.”^{32/} Accordingly, the *Modification Order* indicates that the Commission will “entertain a waiver or modification of the limitation of space station frequencies below 1618.725 MHz.”^{33/} The Commission should instead have granted Globalstar’s request for a hearing under section 316 to address the substantial harms that the new restriction on Globalstar’s global operations will cause to Globalstar, its customers, and its independent gateway operators. The proffered waiver process is not a legally sufficient substitute for the hearing guaranteed by section 316.

The *Modification Order* justifies the denial of Globalstar’s request for a hearing under section 316 by purporting to assume the truth of Globalstar’s factual assertions of harm and then dismissing their significance. It declares that, “under Globalstar’s worst-case factual scenario (*i.e.*, that Globalstar’s operations outside of the United States will have to be curtailed and that this could work a hardship on Globalstar), the modification of its license as proposed would still not be inconsistent with the public interest.”^{34/} The order also states that the Commission “[has] a sufficient record to conclude that the license modification [restricting Globalstar’s operations abroad] would serve the public interest, convenience, and necessity” and that “Globalstar’s protest contains neither substantial or material questions of fact that are in dispute nor raises issues that make us unable to make the requisite public interest determination on the record before us.”^{35/}

^{32/} See *Modification Order* at ¶ 41.

^{33/} *Id.*

^{34/} *Id.*

^{35/} *Id.* at ¶ 30.

The Commission's legal obligations under section 316 cannot be brushed aside so easily. Nowhere does the *Modification Order* evaluate the nature or the extent of the harm to Globalstar, its customers, or its independent gateway operators that will be caused by the challenged restriction on Globalstar's global operations. Accordingly, nowhere does the order even attempt to reconcile that damage with the Commission's longstanding policy to encourage US-licensed Big LEO operators to provide truly global service. Instead, the only "public interest" finding in the order is the assertion that "requiring a U.S. licensee to comply with the limits of the authorization that it has received from the Commission is essential to maintaining the global system of spectrum usage."^{36/} In short, the rationale of the order boils down to: "We recognize that our order will cause harm, but we won't look into how much, because it is important that our orders be obeyed." Again, the tautology that carriers must abide by the limits on their operating authority provides no rationale for imposing any particular limit. It certainly does not provide the substantive public interest analysis required before the Commission may deny Globalstar's request for a hearing.

The Commission itself implicitly recognizes this failure. The *Modification Order* suggests that a waiver procedure will provide an appropriate forum for the necessary analysis, noting that "Globalstar is not without recourse under this regime" because it "may obtain relief as appropriate through the Commission's waiver processes."^{37/} But the Commission cannot defer its statutorily required analysis of the factual issues in a proceeding such as this to a *post hoc* waiver process. The courts have made clear that the opportunity to seek a waiver cannot

^{36/} *Id.* at ¶ 28.

^{37/} *Id.*

salvage an unlawful order.^{38/} Nor can a waiver process excuse the lack of a factual foundation for the order's conclusion.

The extensive scope of the waiver applications that Globalstar must undertake to mitigate the damage inflicted by the *Modification Order* highlights the untenability of the Commission's "order now, analyze later" approach. In its Protest filings,^{39/} Globalstar demonstrated that enforcement of the new restriction on Globalstar's provision of service on the spectrum between 1618.725 and 1621.35 MHz outside of the United States would greatly hinder – and in some cases completely disrupt – Globalstar's provision of service to more than 60 countries and regions. These countries and regions comprise more than half of the world. Therefore, if the Commission were to grant waivers to the extent necessary to address the harms that Globalstar has identified, then Globalstar would be operating in more locations under a waiver than under the *Modification Order* itself. Given the enormous scale of such waivers, a *post hoc* waiver process cannot possibly cure the defects in the *Modification Order*.

^{38/} See, e.g., *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 571 (D.C. Cir. 2004) ("While a rational rule... may be saved by "safety-valve" waiver or exception procedures, the mere existence of a safety-valve does not cure an irrational rule."); *ALLTEL Corp. v. FCC*, 838 F.2d 551, 561-62 (D.C. Cir. 1988) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969)) ("The FCC cannot save an irrational rule by tacking on a waiver procedure ... the deference that we accord administrative action on waiver applications depends upon this assumption.").

^{39/} See Reply of Globalstar To Opposition of Iridium (filed June 23, 2008) and attached Affidavit of Anthony J. Navarra at Attachment 1 – Non-US Territories (Land and Ocean) Affected by the FCC's Modification Order.

Conclusion

For these reasons, Globalstar requests that the Commission reconsider its decision in the *Modification Order* to apply the revised US Big LEO band plan adopted in the *November 9th Order* to restrict Globalstar's operations outside of the United States.

Respectfully submitted,

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November 14, 2008

CERTIFICATE OF SERVICE

I, Josh L. Roland, do hereby certify that a copy of the foregoing Petition for Reconsideration of Globalstar Licensee LLC and GUSA Licensee LLC was served by hand this 14th day of November, 2008, on the following parties, unless otherwise noted:

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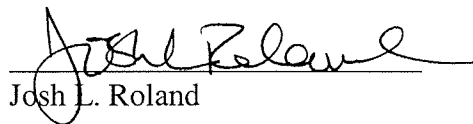
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