

August 26, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services To Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems - ET Docket No. 00-258

Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands - IB Docket No. 02-364

Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands - WT Docket No. 03-66

Application of Globalstar LLC for Authority to Implement an Ancillary Terrestrial Component for the Globalstar above 1 GHz, or Big LEO, Mobile Satellite Service (MSS) System (Call Sign ES2115) - File No. SAT-MOD-20050301-00054

Application of Globalstar USA, LLC for Modification of Blanket License Authorization for Mobile Earth Station Terminals (Call Sign E970381) - File No. SES-MOD-20050301-00261

Dear Ms. Dortch:

On behalf of the Wireless Communications Association International, Inc. ("WCA"), we submit this letter in response to the August 18, 2005 *ex parte* notice filed by Globalstar LLC ("Globalstar"), reporting on Globalstar's August 17 meeting with representatives of the International Bureau, Wireless Telecommunications Bureau and Office of Engineering and Technology regarding Globalstar's above-referenced applications for an Ancillary Terrestrial

Marlene H. Dortch

August 26, 2005

Page 2

Component (“ATC”).¹ The notice confirms that Globalstar continues to push for a grant of its ATC applications before the Commission has resolved the serious and essentially uncontested interference issues raised in the petitions for reconsideration filed in IB Docket No. 02-364 by WCA on behalf of Broadband Radio Service (“BRS”) channel 1 licensees who are being relocated to the 2496-2502 MHz band and by the Society of Broadcast Engineers, Inc. (“SBE”) on behalf of grandfathered co-channel Broadcast Auxiliary Service (“BAS”) channel A10 licensees in the 2483.5-2500 MHz band.² Predictably, however, Globalstar’s position remains highly disingenuous and, even worse, blatantly mischaracterizes Globalstar’s own filings before the Commission.

As an initial matter, Globalstar virtually concedes that it will not be offering ATC service anytime soon, thus undermining its own effort to rush the Commission towards a premature grant of its ATC applications. According to Globalstar’s own *ex parte* notice, Qualcomm is only in the initial stages of ATC phone design, and “[Globalstar’s] exact deployment schedule depends on availability of funding” which Globalstar apparently has yet to secure.³ Hence, if Globalstar is to be taken at its word, there is no immediate need for the Commission to grant Globalstar’s ATC applications – the Commission thus may hold the applications in abeyance without risking any material loss of service to the public.

Furthermore, the crux of Globalstar’s argument has not changed: although the interference issues raised both here and in IB Docket No. 02-364 are essentially undisputed, Globalstar continues to contend that they should have no bearing on the Commission’s disposition of Globalstar’s ATC applications because IB Docket No. 02-364 is, in Globalstar’s words, an “entirely separate proceeding.”⁴ WCA has already shown that this claim borders on frivolous – the mere fact that the interference issues were raised both in opposition to the ATC applications and in a parallel rulemaking plainly does not trump the Commission’s overriding obligation to ensure that a grant of Globalstar’s ATC applications does not cause harmful

¹ See Letter by Josh L. Roland, Counsel to Globalstar LLC, to Marlene H. Dortch, Secretary, IB Docket No. 02-364 (filed Aug. 18, 2005) [“Globalstar *Ex Parte* Notice”].

² See Petition of Wireless Communications Ass’n Int’l, Inc. for Reconsideration, IB Docket No. 02-364 (filed Sept. 8, 2004) [“WCA Petition”]; Petition of Society of Broadcast Engineers, Inc. for Reconsideration, IB Docket No. 02-364 (filed Sept. 8, 2004) [“SBE Petition”]. See also Petition of Sprint Corporation for Reconsideration, IB Docket No. 02-364 (filed Sept. 8, 2004); Petition of Nextel Communications for Reconsideration, IB Docket No. 02-364 (filed Sept. 8, 2004).

³ Globalstar *Ex Parte* Notice, Attachment A at 2. The latter concession is somewhat difficult to square with Globalstar’s simultaneous assertions that it is a “vibrant business” whose ATC offering is “viewed by [the] investment community as [an] essential augmentation of [Globalstar’s] service.” *Id.*, Attachment A at 1, 8.

⁴ See *id.*, Attachment A at 3.

Marlene H. Dortch

August 26, 2005

Page 3

interference to licensees in other services occupying the same or proximate spectrum.⁵ Equally absurd is Globalstar's suggestion that the reconsideration phase of IB Docket No. 02-364 is "unrelated" to the processing of its applications.⁶ To the contrary, the serious technical concerns raised by WCA and SBE in their petitions for reconsideration exist precisely *because* Globalstar is proceeding full speed ahead with its ATC deployment regardless of its impact on other spectrum users. However it may try, Globalstar cannot escape the fact that the interference issues raised in IB Docket No. 02-364 are inextricably linked to Globalstar's ATC applications – they can and should be resolved in tandem or not at all.

Having no meaningful remedy for the interference that will be caused by its proposed ATC deployment, Globalstar tries to take cover behind the International Bureau's decision to grant Mobile Satellite Ventures ("MSV") various waivers of its ATC licensing rules to permit MSV to deploy ATC during the Commission's reconsideration of those rules in IB Docket No. 01-185.⁷ Globalstar apparently views the Bureau's decision as proof that "[t]he Commission routinely grants applications for authority to provide service where certain technical and other rules are subject to reconsideration."⁸ Ironically, the Bureau said no such thing in the MSV case – rather, it said the following:

We grant waivers, in this decision, where we are certain that relaxation of the rule restriction will not significantly increase interference or otherwise disserve the Commission's policy objectives and will promote the public interest by facilitating more efficient spectrum use and enhanced competition. *We generally decline, however, to rule on the merits of contested waiver requests that turn on*

⁵ See Reply Comments of Wireless Communications Ass'n Int'l, Inc., File Nos. SAT-MOD-20050301-00054 and SES-MOD-20050301-00261, at 2-3 (filed June 8, 2005).

⁶ See Globalstar *Ex Parte* Notice, Attachment A at 3. Also wrong is Globalstar's suggestion that WCA's interference concerns are moot because ATC and relocated BRS channel 1 licensees will not be co-channel to each other. *Id.*, Attachment A at 6. Globalstar is well aware that WCA in fact is concerned about the potentially devastating interference that will occur if relocated BRS channel 1 licensees are forced to operate co-channel with Globalstar's downstream non-ATC transmissions at 2496-2500 MHz. See WCA Petition at 5-23. Thus, in its petition for reconsideration WCA asked the Commission to, among other things, eliminate MSS's primary allocation in the 2496-2500 MHz band. *Id.* Were the Commission to grant Globalstar's ATC applications now, WCA fears that Globalstar could deploy ATC facilities and then contend that it cannot reasonably modify those facilities to comport with the Commission's decision on reconsideration in IB Docket No. 02-364. See Comments of Wireless Communications Ass'n Int'l, Inc., File Nos. SAT-MOD-20050301-00054 and SES-MOD-20050301-00261, at 3-4 (filed May 16, 2005). Put another way, WCA believes the Commission should not permit Globalstar to eliminate the options advanced by WCA and others on reconsideration by deploying ATC prior to resolution of the serious interference concerns in IB Docket No. 02-364. *Id.* at 4.

⁷ See Globalstar *Ex Parte* Notice, Attachment A at 5.

⁸ *Id.*

Marlene H. Dortch
August 26, 2005
Page 4

*resolution of issues that are also raised before the Commission in the ATC rulemaking proceeding and require a re-balancing of competing interests or deviation from an established Commission policy. **Resolution of such issues is best left to the Commission based on the record in the rulemaking proceeding.***⁹

Hence, the Bureau's decision is more fairly read as supporting what WCA is advocating here. That is, the Commission should not (and is certainly under no obligation to) permit an ATC applicant to forge ahead with its ATC deployment where such action would create conflicts with other spectrum users that the Commission is attempting to resolve in a parallel rulemaking proceeding.¹⁰ That process is already underway in IB Docket No. 02-364 – if adopted, the proposals put forth in the reconsideration petitions filed by WCA *et al.* and SBE will eliminate (or at least substantially mitigate) the interference that is sure to occur if Globalstar is permitted to deploy ATC now. Again, WCA must emphasize that it is *not* opposed to Globalstar's ATC operations in principle. Rather, WCA is only asking that the Commission address Globalstar's ATC applications in a time sequence which assures that relocated BRS channel 1 licensees and grandfathered co-channel BAS channel A10 licensees are protected from interference *before* it occurs.

In addition, Globalstar stubbornly refuses to acknowledge that it cannot protect co-channel BAS licensees from harmful ATC interference simply by relying on frequency coordination.¹¹ SBE has previously explained at length why grandfathered BAS channel A10 licensees cannot co-exist with Globalstar's ATC operations in the spectrum designated for ATC in IB Docket No. 02-364 (the 2487.5-2493 MHz band), and thus WCA need not reiterate those showings here.¹² Most important, the record establishes that the transient, portable nature of

⁹ *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 22144, 22149 (IB, rel. Nov. 8, 2004) (emphasis added).

¹⁰ Thus, for example, the Bureau declined to act on MSV's request that the Commission waive its rules to adjust the limit on the number of U.S. base stations per channel, instead deferring consideration of that issue to the reconsideration phase of the ATC rules docket (IB Docket No. 01-185). *See id.* at 22160-61. Inmarsat had opposed MSV's waiver request, stating, *inter alia*, that it would increase the noise floor of Inmarsat's satellites to an unacceptable extent. In deferring review to its parallel reconsideration in IB Docket No. 01-185, the Bureau noted that it had not yet determined the maximum acceptable level of interference to Inmarsat's satellites, and that in any case the same issue was already before it in the rulemaking proceeding. Interestingly, the Bureau also noted that deferral would give the parties an opportunity to arrive at a negotiated settlement on the issue, something Globalstar has shown no willingness to do here.

¹¹ *See* Globalstar *Ex Parte* Notice, Attachment A at 5.

¹² *See, e.g.*, Informal Objection of the Society of Broadcast Engineers, Inc., File Nos. SAT-MOD-20050301-00054 and SES-MOD-20050301-00261 (filed May 16, 2005) ["SBE Informal Objection"]. Certainly, however, SBE would take issue with Globalstar's assertion that "[a]ny potential interference to BAS channel A10 would be limited and confined to a small geographic region." *See* Globalstar *Ex Parte* Notice, Attachment A at 6; *compare, e.g.*, Response of the Society of Broadcast Engineers, Inc. to Reply to Informal Objection, File Nos. SAT-MOD-20050301-00054 and SES-MOD-20050301-00261, at 1 (filed July 11, 2005) ("Globalstar asks the Commission to

Marlene H. Dortch

August 26, 2005

Page 5

BAS renders frequency coordination impractical and ineffective here. WCA thus continues to endorse SBE's "refarming" proposal, under which grandfathered BAS channel A10 operations ultimately would be moved down to the 2474-2486 MHz band, thereby eliminating any co-channel interference by and among Globalstar's ATC operations and BAS channel A10, and by and among BAS channel A10 and BRS channel 1.¹³

Finally, Globalstar grossly mischaracterizes the record when it claims that it "has only requested modest adjustments to the [MSS/BRS] sharing plan [for the 2496-2500 MHz band]."¹⁴ Of course, Globalstar has stated in no uncertain terms, and WCA agrees, that "Globalstar and BRS stations cannot operate co-frequency, co-coverage."¹⁵ However, Globalstar's so-called "sharing" proposal is nothing of the sort – it would absolutely prohibit any use of BRS channel 1 at 2496-2500 MHz outside the top 35 Metropolitan Statistical Areas ("MSAs") and, by virtue of draconian technical limitations Globalstar seeks to impose on BRS licensees, would effectively preclude most meaningful BRS operations at 2496-2500 MHz within the top 35 MSAs.¹⁶ Yet, Globalstar ignores that BRS channel 1 is licensed in virtually every Basic Trading Area in the country and used extensively, primarily for customer-to-base transmissions in frequency division duplex broadband systems. Globalstar's proposal would effectively deny BRS channel 1 licensees of relocation spectrum, solely to permit Globalstar to use S-band spectrum it has no legitimate entitlement to in the first place.¹⁷ That Globalstar would attempt to pass its proposal off as "modest" exemplifies its lack of good faith in this matter, and is further reason for the Commission not to permit early deployment of Globalstar's ATC facilities at the expense of BRS channel 1 and BAS licensees in the 2483.5-2500 MHz band.

ignore the obvious mutual exclusivity of grandfathered Channel A10 (2483.5-2500 MHz) TV Broadcast Auxiliary Service (BAS) operations in at least seven of the top-ten U.S. cities in which Globalstar proposes to first deploy its system of Mobile Satellite Service (MSS) Ancillary Terrestrial Component (ATC) base stations."); SBE Informal Objection at 2-3.

¹³ See, e.g., Letter from Paul J. Sinderbrand, Esq., Counsel to WCA, to Marlene H. Dortch, Secretary, ET Docket No. 00-258, at 2 (filed July 27, 2005); SBE Petition. However, as is a matter of record in IB Docket No. 02-364, WCA opposes SBE's suggestion that the BRS channel 1 licensees being involuntarily relocated to the 2496-2500 MHz should bear their own relocation costs.

¹⁴ See Globalstar *Ex Parte* Notice, Attachment A at 3.

¹⁵ Petition of Globalstar LLC for Reconsideration, IB Docket No. 02-364, at 15 (filed Sept. 8, 2004).

¹⁶ See, e.g., Consolidated Opposition to Petitions for Reconsideration of Wireless Communications Ass'n Int'l, Inc., IB Docket No. 02-364, at 11-15 (filed Oct. 27, 2004).

¹⁷ See WCA Petition at 12-14; Consolidated Reply of Wireless Communications Ass'n Int'l, Inc., IB Docket No. 02-364, at 4-8 (filed Nov. 8, 2004).

Marlene H. Dortch
August 26, 2005
Page 6

Should there be any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

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