

ORIGINAL

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

In the Matter of)
)
GLOBALSTAR LICENSEE LLC) IBFS File No. SAT-MOD
) -20080516-00106
)
Application for Minor Modification)
Of Space Station License)
)

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Federal Communications Commission
Office of the Secretary

PETITION TO DENY OF IRIDIUM SATELLITE LLC

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PETITION TO DENY

Pursuant to Section 25.154 of the Federal Communications Commission’s (“Commission”) rules, 47 C.F.R. § 25.154, Iridium Satellite LLC (“Iridium”) ¹ submits this petition to deny the above-captioned request of mobile satellite service (“MSS”) licensee Globalstar Licensee LLC (“Globalstar”) for modification of its authority to operate an ancillary terrestrial component (“ATC”).² Globalstar seeks ATC authority to lease its satellite spectrum to a third party, Open Range Communications, Inc. (“Open Range”), for a terrestrial broadband service that is totally distinct and completely separate from Globalstar’s satellite service. The Commission should deny this application for failure to comply with the ATC gating requirements.

¹ Iridium is a market competitor of Globalstar and could be harmed financially by the unlawful grant of the instant application. It is therefore a party of interest to this proceeding. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

² *See* GLOBALSTAR LICENSEE LLC, Application for a Minor Modification of Space Station License, IBFS File No. SAT-MOD-20080516-00106 (“Globalstar Application”); Public Notice, Report No. SAT-00525 (May 23, 2008).

I. SUMMARY

Ancillary terrestrial component service is to be – as the name suggests – “ancillary” to a fully operational space-based MSS system. Globalstar aims to turn this principle on its head by proposing to lease spectrum to third parties who will construct, operate, and maintain terrestrial services that are operated in different spectrum from MSS systems with no real device or service integration.

Globalstar’s application should be denied for the following failures to comply with Commission requirements:

Globalstar admits its failure to meet the coverage continuity gating criterion.

Globalstar’s acknowledges that grant of its application would violate the Commission’s requirements in the following respects:

- States that its voice and duplex data service is not sufficient to meet the Commission’s temporal coverage rule;³
- Admits that 100% service availability over the U.S. for voice and duplex data services is impossible because of its dysfunctional system and that “[t]here are periods of time each day during which *no two-way voice and data service is available at any particular location;*”⁴ and,
- Admits that the degradation of its S-band services continues and that “by some time in 2008 substantially all of [its] satellites launched between 1998 and 2000...will cease to be able to support two-way communications.”⁵

³ Globalstar Application, Attachment 1 at 8 (“Globalstar...is temporarily unable to meet the geographic and temporal coverage for the 2.4 GHz downlink band”).

⁴ Globalstar, Inc. SEC 10-Q Form for the Quarter Ending Mar. 31, 2008, at 16 (May 12, 2008)(emphasis added) (“Globalstar May 2008 10-Q”).

⁵ *Id.* at 17.

Globalstar fails to meet the requirement to offer an integrated service. Globalstar's system is not integrated at all. Globalstar's proposed device does not meet the integration safe harbor and Globalstar does not show that its service is otherwise integrated in any meaningful way. In fact, Globalstar's proposed ATC operation:

- Is an entirely different, standalone service from Globalstar's current satellite service offering that will not be able to "hand-off" to or even operate on Globalstar's satellites when out of terrestrial service range;
- Is a two-way, broadband service, while Globalstar's working satellite service is one-way, narrowband, and limited; and,
- Will not use the same spectrum as its satellite operations and will be built, maintained, and operated by a third party operating under a naked spectrum lease.

Globalstar fails to meet the in-orbit spare requirements. Globalstar has no in-orbit spare as required under the Commission's rules. It instead relies on a crippled, L-band-only satellite to act as its "spare."

Globalstar's spectrum lease raises serious legal and factual questions. Globalstar has entered into a spectrum lease with Open Range, but there are no rules permitting leases of MSS spectrum. Nor has Globalstar requested approval of such a lease to the extent permitted. Moreover, the lease with Open Range confirms that the spectrum is being handed over to third parties for independent services and gives rise to *de facto* transfer of control questions.

Globalstar fails to provide a basis for waiving the ATC rules. Notwithstanding its clear cut violation of the Commission's requirements, Globalstar requests that the Commission waive all these criteria. Globalstar has not shown that its waivers are in the public interest or that there is "good cause" for these waivers, and they should therefore be denied. The requested waivers would eviscerate the gating criteria and invalidate the Commission's MSS ATC policies.

II. COMMISSION POLICY AND RULES ESTABLISH THAT MSS SYSTEMS MUST REMAIN PRIMARILY SATELLITE SYSTEMS.

To “ensure that MSS remains first and foremost a satellite service,” the Commission has established clear gating criteria that MSS providers must meet before offering ATC.⁶ An MSS operator must provide “substantial satellite service”: the operator must be capable of providing continuous satellite service over the entire geographic area of satellite coverage required in the FCC’s rules, must maintain a spare satellite, and must provide commercially available service. In addition, the offer of MSS and ATC services must be “integrated,” which may be demonstrated through a safe-harbor showing of a dual-mode handset. Finally, MSS operators may only offer ATC in the frequency bands in which they are authorized to provide MSS.⁷

These gating criteria “ensure that MSS providers use ATC only where space-station signals are attenuated and will not migrate their service toward terrestrial-only operation.”⁸ “ATC authority is to provide satellite licensees flexibility in providing satellite services that will benefit consumers, not to allow licensees to profit by selling access to their spectrum for a terrestrial-only service.”⁹ Thus, the Commission has noted that, “even if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a

⁶ See *Flexibility for Delivery of Communications By Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 1965-66 (¶ 3) (2003) (“*MSS ATC Order*”).

⁷ See *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*, Mem. Op. & Order & Second Order on Recon., 20 FCC Rcd. 4616, 4623-24 (¶19) (2005) (“*MSS ATC Second Reconsideration Order*”).

⁸ *MSS ATC Order*, 18 FCC Rcd at 2002 (¶ 74).

⁹ *Id.* at 1965, n. 5.

terrestrial licensee, such spectrum could only be used if its usage met the requirements to ensure it remained ancillary to MSS and were used in conjunction with MSS operations.”¹⁰

Indeed, the Commission based its decision to allow ATC “upon the premise that ATC remains ‘ancillary’ to a fully operational space-based MSS system.”¹¹ It envisioned MSS operators applying for limited authority to use terrestrial base stations merely to fill gaps in coverage and improve existing MSS by operating in areas where it is difficult to receive satellite signals, such as urban areas or inside buildings.¹² The FCC understood that the MSS and ATC portions of an integrated system would be capable of seamless handoff between a terrestrial base station and a satellite depending on the subscriber’s location.¹³ There is no doubt that the Commission intended “that MSS remains *first and foremost a satellite service*,”¹⁴ not a standalone terrestrial service using satellite spectrum.

The Commission also cautioned MSS providers that “gaming” of the ATC policies would not be allowed. During the MSS ATC proceeding, opponents of MSS flexibility raised

¹⁰ *Id.*

¹¹ *Id.* at 2000 (¶ 67).

¹² The Commission saw MSS operators “using certain MSS channels or spectrum on a terrestrial basis over a limited geographic area, such as an urban market, that currently may not receive satellite signals due to terrain obstacles or other blockages.” *Id.* at 1974 (¶ 21); *See also id.* at 1973-75 (¶¶ 20-23).

¹³ “In areas away from the terrestrial base station, of course, the signal from the MSS satellite would remain much greater than the signal from the terrestrial transmitter on the same channel, and the user would continue to receive the signal from the MSS satellite. In areas near the terrestrial base station, an MSS ATC subscriber would communicate with the terrestrial base station in a manner that would not interfere with satellite channels that might penetrate the urban terrain.” *Id.* at 1974 (¶ 21).

¹⁴ *Id.* at 1965-66 (¶ 3) (emphasis added).

numerous concerns that granting MSS operators ATC authority would create the incentive for MSS operators to allow their satellite systems to degrade while focusing instead on terrestrial infrastructure.¹⁵ For that reason, the Commission adopted simple and carefully delineated rules to ensure that MSS licensees remain faithful to their MSS responsibilities.

III. GLOBALSTAR'S ATC APPLICATION FAILS TO MEET THE GATING CRITERIA REQUIRED BY THE COMMISSION'S RULES.

Globalstar's application flies in the face of the letter and the intent of the ATC rules. Its application calls for the naked leasing of spectrum to a third party for a purely terrestrial broadband service – which is expressly forbidden. It fails to provide for the integration of the MSS and terrestrial service – which is expressly required. And Globalstar's satellite system has deteriorated to the point where the MSS coverage requirements cannot be met. As detailed below, Globalstar's application fails to meet any of the Commission's key ATC standards.

A. GLOBALSTAR FAILS TO MEET THE GEOGRAPHIC AND TEMPORAL COVERAGE REQUIREMENTS TO OFFER ATC SERVICES.

A minimum threshold showing is that the MSS provider is actually providing reliable MSS to the public. Globalstar itself admits that its MSS system cannot meet the geographic and temporal coverage requirements for providing ATC service.¹⁶ Big LEO operators, like Globalstar, must “provide space-segment service to all locations as far north as 70° North latitude and as far south as 55° South latitude for at least seventy-five percent of every 24-hour period...and on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin

¹⁵ *See id.* at 1981 (¶ 33).

¹⁶ Globalstar Application, Attachment 1 at 8, 13-16 (stating that the company cannot meet the geographic and temporal requirements for the 2.4 GHz downlink band (duplex voice and data services)).

Islands.”¹⁷ As the Commission has been apprised, however, Globalstar’s satellite fleet has experienced massive failures of the S-band antenna amplifiers installed on the satellites. In filings with the FCC and the Securities and Exchange Commission, Globalstar has admitted:

- “[T]here are periods of time each day during which *no two-way voice and data service is available at any particular location*”¹⁸
- “If the degradation of the S-band antenna amplifiers continues at the current rate or further accelerates, and if [Globalstar is] unsuccessful in developing additional technical solutions, interruptions of two-way communications services will increase, and by some time in 2008 substantially all of [Globalstar’s] in-orbit satellites launched prior to 2007 will cease to be able to support two-way communications services.”¹⁹
- Globalstar’s own service quality study submitted in April of 2007 found that *roughly one-third of the calls placed on its system are not successful even after the recent system realignment.*²⁰
- Globalstar anticipates that its voice and two-way data services will become more unreliable, noting that “even with optimized placement in orbit of the eight spare satellites, increasingly larger coverage gaps will occur over areas in which we currently provide two-way communications service. Two-way communications service will continue to be available, but at certain times in any given location it will take substantially longer to establish calls and the average duration of calls will be impacted adversely.”²¹
- The use of Globalstar’s voice and two-way data requires the use of a “tool” located on Globalstar’s website that provides users with the “optimum” times during the day to make voice calls. The “tool” indicates that there are numerous

¹⁷ 47 C.F.R. § 25.149(b)(1) (2007).

¹⁸ Globalstar May 2008 10-Q at 16.

¹⁹ Globalstar Inc. SEC Form 10-K for the Year Ended Dec. 31, 2007, at 22 (Mar. 17, 2008) (“Globalstar March 2008 10-K”).

²⁰ Globalstar admitted that of a 9,979 call sample, only 6,671 of those calls connected on the first try and maintained a connection for more than three minutes. *See* Letter from William T. Lake, Counsel to Globalstar, Inc., to Marlene Dortch, Secretary, FCC, IB Dkt. No. 02-364, at 2 (filed Apr. 26, 2007).

²¹ Globalstar March 2008 10-K at 22.

times in a day during which users can expect coverage gaps of a few minutes to half an hour or more.²²

Globalstar's limited and constantly degrading coverage is hardly the "complete ubiquity of coverage"²³ that the FCC envisioned when it established the geographic and temporal coverage requirements.

Globalstar, recognizing its inability to meet the coverage requirements, attempts to rely upon its 1.6 GHz simplex one-way data service to satisfy the coverage gating criteria even though its plans propose to only use the 2.4 GHz band for ATC.²⁴ The Commission, however, requires that the coverage continuity requirement be met for *each band* in which an MSS provider plans to offer an ancillary terrestrial service.²⁵ Should the Commission countenance such a reading of its ATC gating criteria, parties would be free to apply for ATC authority for any spectrum band, regardless of whether or not they are providing real-world service in that spectrum. Accordingly, the Commission must reject Globalstar's application on continuity of coverage grounds alone.

²² Ironically, this tool is apparently available only online – meaning that Globalstar satellite users need another working two-way data connection in order to determine whether their Globalstar satellite phone will work.

²³ The Commission allowed MSS providers to seek authority to offer ATC services because there was "no basis in the record to conclude that MSS/ATC operators would surrender their single most valuable system feature, complete ubiquity of coverage, in order to compete with the already well developed and heavily financed terrestrial mobile systems." *MSS ATC Second Reconsideration Order*, 20 FCC Rcd at 4625 (¶ 23).

²⁴ See Globalstar Application, Attachment 1 at 8.

²⁵ The Commission requires that MSS operators "meet the gating criteria for each spectrum band in which it wishes to provide ATC." *MSS ATC Second Reconsideration Order*, 20 FCC Rcd at 4628 (¶ 34).

B. GLOBALSTAR FAILS TO MEET THE INTEGRATED SERVICE REQUIREMENT.

Globalstar also fails the requirement that MSS operators seeking to offer ATC service must provide an “integrated service.”²⁶ Globalstar’s proposed user device does not meet the Commission’s safe harbor, and the facts of Globalstar’s proposed operations belie any claim that the MSS and ATC service will be integrated in any sense of the term. As discussed below, neither the user device nor the services being offered are integrated within the meaning of the Commission’s ATC gating requirements.

First, Globalstar’s proposed user device does not meet the Commission’s safe harbor for integrated service. The safe harbor requires that an operator “use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component.”²⁷ Globalstar’s device does not allow for dual-mode communication in either the L-band or S-band. Under Globalstar’s proposal, the satellite paging service operates in the L-band while the primary terrestrial broadband service operates in the S-band.

Even if the Commission somehow found that the safe harbor could be met by operation of the ATC and MSS in different bands, however, Globalstar’s proposed device still is not an integrated “dual-mode handset.” Instead, it is simply the separate equipment necessary to access two different services housed in one casing. In fact, customers would not even be able to switch easily between the two services. A customer has to either use the device for a limited one-way paging service on the MSS system or take added steps to plug the device into a laptop to use the

²⁶ 47 C.F.R. § 25.149(b)(4).

²⁷ *Id.* § 25.149(b)(4)(i); *see also MSS ATC Order*, 18 FCC Rcd at 2008-09 (¶ 87).

entirely different WiMAX mobile broadband terrestrial service provided and operated by a non-satellite operator, Open Range.²⁸

Moreover, the device is not capable of “handing off” from one service to the other.²⁹ If a user crosses the “boundary” between ATC and MSS coverage, a call in progress could be dropped.³⁰ And according to Globalstar, the only indication to the user will be an indicator on the handset display advising the user of a mode change.³¹ This device is really two devices crudely fashioned together to provide two unique, bifurcated services.

In fact, Globalstar’s device cannot really be construed as a “handset” at all. It is a low-speed data device (the SPOT product) and a separate computer accessory for broadband service (the terrestrial modem device). Neither of these functions are capable of being categorized as a “handset” under any understanding of the term.³²

²⁸ Globalstar Application, Attachment 2 at 15 (“Technical Appendix”). Such a proposal pales in comparison even to Globalstar’s initially proposed ATC handset, which at least would have allowed users to “select either ATC or MSS as the preferred mode of operation on power-up,” would switch modes automatically if a signal was not received from the preferred network, and would allow users to make voice calls on either network using a single telephone number. *See Globalstar LLC Request for Authority to Implement an Ancillary Terrestrial Component for the Globalstar Big LEO Mobile Satellite Service (MSS) System*, Order and Authorization, 21 FCC Rcd 398, 400-01 (¶¶ 7-8) (2006) (“*Globalstar ATC Order*”).

²⁹ *See* Technical Appendix at 16 (“At the moment, the Globalstar ATC system does not contemplate in-call hand off between the MSS mode and the ATC mode.”).

³⁰ *Id.*

³¹ *Id.*

³² The Merriam-Webster online dictionary defines a handset as follows: “a combined telephone transmitter and receiver mounted on a handheld device.” *See* <http://www.merriam-webster.com/dictionary/handset> (last visited June 16, 2008).

Second, beyond the handset shortcomings, Globalstar fails to demonstrate through any other factual showing that its proposed ATC offering and its MSS operations are integrated.³³ This failure is not surprising, however, because such a demonstration is impossible given the facts of the proposed deployment. As noted above, the service being provided via the terrestrial component of the proposed system is diametrically different from the satellite service. The former is a two-way, high-speed broadband service intended to compete with other broadband Internet access offerings. The latter is a one-way, narrowband service that has very limited functionality.

Far from extending the coverage of Globalstar's satellite system or providing any seamless hand-off between the two systems, the two services presented as an "integrated service" are not even *compatible* – the satellite system is not capable of providing two-way broadband and the WiMAX terrestrial system does not assist in provision of the one-way paging system. Indeed, the two services will not operate in the same spectrum band and will not even be operated by the same entity. While Globalstar will continue to operate its satellite system, Open Range will build, operate, and maintain the terrestrial system. Thus, Globalstar's MSS spectrum will offer two different services from two different companies – Open Range's terrestrial broadband service and Globalstar's one-way satellite low data rate system – crudely and superficially bundled together to engage in the very type of gaming that the Commission has sought to foreclose.

³³ If MSS providers do not qualify for the safe harbor, they can instead offer "[o]ther evidence establishing that the MSS ATC operator will provide an integrated service to the public." 47 C.F.R. § 25.149(b)(4)(ii); *see also MSS ATC Order*, 18 FCC Rcd at 2009 (¶ 88).

C. GLOBALSTAR FAILS TO MEET THE IN-ORBIT SPARE REQUIREMENT.

Finally, Globalstar fails even to meet the simplest of the gating criteria: the requirement to launch and maintain an in-orbit spare satellite. The Commission requires that operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite to ensure continuous coverage.³⁴ Globalstar notes that it has 48 operational satellites and “one spare satellite capable of providing L-band simplex services should one of the L-band satellites fail.”³⁵ The “spare” satellite proposed to be used by Globalstar, however, is not a true spare in any sense of the word. By Globalstar’s own admission, the satellite will not ensure continuity of coverage when a currently functional S-band satellite fails.

Moreover, the purpose behind the in-orbit spare requirement is to ensure that MSS providers continue to invest in their satellite infrastructure and ensure continuous coverage of MSS.³⁶ But Globalstar admits that its satellite system supporting its voice services has deteriorated over time, and that its second generation satellites will not be launched until the third quarter of 2009.³⁷ The Commission should therefore reject Globalstar’s offering of ATC services until the company invests in ensuring continuous, robust, two-way coverage in its MSS system, including through the acquisition of an in-orbit spare.

³⁴ 47 C.F.R. § 25.149(b)(2).

³⁵ Globalstar Application, Attachment 1 at 15-16.

³⁶ *See MSS ATC Order*, 18 FCC Rcd at 2006 (¶ 81).

³⁷ *See* Globalstar Application, Attachment 1 at 15.

IV. GLOBALSTAR'S PROPOSED NAKED SPECTRUM LEASE WITH OPEN RANGE RAISES SIGNIFICANT LEGAL AND FACTUAL QUESTIONS.

Globalstar's proposed spectrum lease with Open Range not only belies Globalstar's claim of service integration, but also raises serious legal and factual questions. The Commission's rules do not provide for MSS operators to act like band managers leasing out spectrum to other operators. Moreover, prior Commission approval under Section 310(d) of the Communications Act of such leases would be required. And, as discussed below, leases would have to ensure that a *de facto* transfer of control was not occurring.

As Globalstar knows, the authority to provide ATC service is granted by modifying "MSS operators' rights under their existing authorizations."³⁸ Thus, Globalstar cannot unilaterally bestow the authority on a third party to build and operate a terrestrial system that operates in conjunction with its satellite system. Indeed, in the secondary markets proceeding the Commission specifically "[did] not extend [its] spectrum leasing policies" to satellite services, including MSS, and there is no provision in the rules for such a lease.³⁹ Moreover, if the Commission were to modify its policies to allow MSS operators to lease spectrum, such a transaction would require prior Commission consent. As Commissioner Copps has noted,⁴⁰

³⁸ See *MSS ATC Order*, 18 FCC Rcd at 2068-69 (¶ 221).

³⁹ See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, 19 FCC Rcd 17503, 17536 (¶ 66) (2004) (declining to include MSS in the list of services eligible for spectrum leasing); see also 47 C.F.R. § 1.9005 (excluding MSS operators from the list of providers eligible to lease spectrum). In addition, the Commission specifically spoke to such arrangements in its ATC Order, in which it "decline[d] to allow terrestrial operations separate from MSS operations in bands used by MSS operators." *MSS ATC Order*, 18 FCC Rcd at 2068-69 (¶ 221).

⁴⁰ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets; Report and Order and Further Notice of Proposed Rulemaking* (WT Docket No. 00-230), Dissenting Statement of Commissioner Michael J. Copps (Oct. 6, 2003) (noting that he did "not see how the law allows us to effectuate these [secondary

Section 310(d) of the Communications Act provides that no “station license, *or any rights thereunder*, shall be transferred, assigned or disposed of in any manner . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”⁴¹

Nevertheless, Globalstar has entered into a thirty-year band manager spectrum lease that grants Open Range significant control over Globalstar’s ATC spectrum so that Open Range may “construct and operate” a terrestrial broadband network.⁴² The lease shows that Open Range will essentially operate the terrestrial system as a free agent, with control over where and how facilities are built, control over the day-to-day management of the system, responsibility for the financial obligations connected to the terrestrial system, and control over the majority of employee hiring decisions.⁴³ Open Range will “receive all monies and profits from the operation of the System” other than lease payments to Globalstar.⁴⁴ This arrangement plainly contravenes the Commission’s ATC policies.

Aside from the general limits on MSS spectrum leasing, the relationship between Globalstar and Open Range could be a *de facto* transfer of control under the *Intermountain*

markets] policies” and indicating his belief that “the right to control the spectrum on a day-to-day basis” is a right that can only be transferred with Commission consent).

⁴¹ 47 U.S.C. § 310(d) (2006) (emphasis added). Much of this lease has been revealed in a recent SEC filing.

⁴² Globalstar Application, Attachment 1 at 4. *See* Globalstar May 2008 10-Q, Exhibit 10.3, Spectrum Manager Lease Agreement at Section 7(A) (“Spectrum Manager Lease Agreement”).

⁴³ *See* Spectrum Manager Lease Agreement at 2-3 (“[T]he Spectrum Usage Rights granted hereunder convey to the Lessee the right and obligation to use the Leased Spectrum to purchase, construct and operate the System to provide [broadband] Services within the Leased Territories.”).

⁴⁴ *Id.* at 3.

Microwave standard.⁴⁵ In determining who has *de facto* control of a license, the Commission considers the totality of the circumstances, focusing specifically on six factors, considering whether the licensee “(1) has unfettered use of all station facilities and equipment; (2) controls daily operations; (3) determines and carries out the policy decisions (including preparation and filing of applications with the Commission); (4) is in charge of employment, supervision and dismissal of personnel operating the facilities; (5) is in charge of the payment of financial obligations, including expenses arising out of operations; and (6) receives the monies and profits from the operation of the facilities.”⁴⁶ As the Commission has noted, “[u]nder *Intermountain Microwave*, the Commission has interpreted Section 310(d) *de facto* control to require that the licensees exercise close working control of both the actual facilities/equipment operating the radiofrequency (RF) energy and the policy decisions, e.g., business decisions, regarding use of the spectrum.”⁴⁷

Finally, the ATC application does not include disclosure of lease terms, the Open Range financing terms under its \$267 million Department of Agriculture loan to provide broadband in rural areas, or details concerning the business relationship between the two companies. Absent public disclosure of this information, there is no way for informed comment to occur.

⁴⁵ See *Intermountain Microwave*, 24 R.R. 31401 (1963).

⁴⁶ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19137-38 (¶ 108).

⁴⁷ *Id.*

Accordingly, the Commission should require the submission and disclosure of such relevant information and permit public comment before considering Globalstar's ATC application. In such respect, the Globalstar and Open Range spectrum lease appears to have been executed over half a year ago and only now is being revealed to the Commission.⁴⁸

V. THE WAIVERS REQUESTED BY GLOBALSTAR SHOULD BE DENIED.

Recognizing that its proposed first generation service fails the Commission's gating criteria, Globalstar requests that the Commission waive the geographic coverage requirement, the integrated service rule, and the in-orbit spare requirement.⁴⁹ Although the Commission may waive its rules "for good cause shown,"⁵⁰ good cause has not been shown here and the Commission should reject these requests.

Typically, the Commission will grant waivers if "allowing deviation from a rule requirement would not disserve the rule's underlying purpose and would better serve the public interest than requiring strict compliance."⁵¹ But, in this case, Globalstar's requested waivers would significantly *disserve* the purpose of the underlying rules. The gating criteria from which Globalstar requests relief are intended to implement the Commission's primary ATC policy –

⁴⁸ Iridium also reserves the right to provide the Commission additional information regarding the documents and statements that support Open Range's application for a government loan issued by the U.S. Department of Agriculture. These documents are currently subject to a FOIA request and have not yet been released to the public. These documents are clearly relevant to whether or not Globalstar's ATC plans are intended to offer an integrated service or simply a ruse to lease out MSS spectrum for unrelated third party terrestrial uses.

⁴⁹ Globalstar Application, Attachment 1 at 16, 20-26.

⁵⁰ 47 C.F.R. § 1.3.

⁵¹ *Mobile Satellite Ventures Subsidiary LLC*, Order and Authorization, 19 FCC Rcd 22144, 22149 (¶ 4) (Int'l Bur. 2004) ("*MSV ATC Order*"); see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

ensuring that MSS operations remain primarily satellite services. A grant of Globalstar's waivers would permit the provision of a standalone terrestrial broadband service using MSS spectrum absent (1) a fully-operational satellite system, (2) the necessary geographic satellite coverage, (3) a truly integrated service, and (4) sufficient in-orbit satellite spares. It is hard to imagine a waiver request that more completely eviscerates the very purpose of the rules from which it seeks relief.

Moreover, Globalstar's reliance on the waiver of the integrated service requirement previously granted to Mobile Satellite Ventures Subsidiary LLC ("MSV") is inapt and in fact highlights the deficiencies of Globalstar's proposal. MSV required a waiver of the integrated service requirement because its first generation handsets required a "link margin booster" in order to communicate with its existing satellite network.⁵² With that minor exception, MSV's MSS ATC service was found to be integrated with its satellite service because in MSV's handsets "protocols enabling ATC and MSS modes of operation...reside[d] in a single baseband chipset in the handsets, and a common set of internal amplifiers and a single integral antenna [served] both modes."⁵³ MSV also demonstrated that once its second generation satellite fleet was operational, the existing handsets would access both MSS and ATC services without the link margin booster.⁵⁴ The same cannot be said of Globalstar's proposed equipment. The two services proposed by Globalstar are not integrated to the same degree as MSV's service, and

⁵² *MSV ATC Order*, 19 FCC Rcd at 22150-51 (¶ 20).

⁵³ *Id.*

⁵⁴ *Id.*

Globalstar will require users to purchase entirely new equipment to access its second generation satellite system.

Finally, the Commission should not grant Globalstar's requests for waiver given the muddled and seemingly contradictory statements that Globalstar makes about the period for which these waivers are necessary. Globalstar first notes that it plans to launch and bring into operation a number of fully-operational satellites by June 30, 2010 and that "[o]nce Globalstar's replacement constellation and upgraded ground stations become operational...Globalstar and Open Range have committed to deploying a dual-mode MSS/ATC device capable of providing voice and two-way data services as well as mobile broadband service."⁵⁵ However, Globalstar later notes that it will not even begin to offer first generation Globalstar/Open Range equipment until the first half of 2009 and that its second generation ground system will be complete by 2011.

Based on these statements, Globalstar requests a near-total waiver of the gating criteria so it can bring its substandard, noncompliant first generation service to market for 18-24 months while it prepares to offer a truly integrated service. And at the end of this period, customers wishing to use the second generation system will be required to buy new equipment to access the two-way satellite functions of Globalstar's system. If, on the other hand, Globalstar cannot meet its ambitious timelines, the Commission will have been duped into granting long-term waivers of essential gating criteria with the prospect of waiver extensions to avoid service disruption to an embedded base of Globalstar/Open Range subscribers.

⁵⁵ Globalstar Application, Attachment 1 at 21.

There is good reason to question the reliability of Globalstar's statements. For example, Globalstar has stated that it will launch dozens of satellites in 2009 and 2010, but has yet to file a single application with the Commission to launch those satellites. By comparison, at the time MSV filed its ATC application and requested waivers, it had already applied for authority to launch and operate its next-generation L-band satellite.⁵⁶ Globalstar also makes conditional statements about when it will bring its second generation service to market, but commits to no specific date.⁵⁷ On the face of this record, the Commission should deny Globalstar's waiver requests.

⁵⁶ *MSV ATC Order*, 19 FCC Rcd at 22146 (¶ 6).

⁵⁷ *See* Globalstar Application, Attachment 1 at 18 (noting that the availability of the second generation devices will occur "approximately in the first half of 2011").

VI. CONCLUSION

Globalstar's proposed ATC operation flies in the face of the Commission's ATC policies and the gating criteria established to ensure substantial satellite service. Globalstar's failing satellite system can no longer support two-way communications, much less act as the principal service for the purported ancillary WiMAX broadband service. Globalstar is engaged in a naked and highly suspect spectrum lease in an effort to game the Commission's ATC rules. Neither Globalstar's MSS service (reduced to one way data/paging services) nor its proposed device are integrated in any meaningful way with the ATC service (third party provided broadband WiMax). Not surprisingly, Globalstar has also failed to meet the heavy burden required to justify its requested waivers. Consequently, the Commission should reject Globalstar's Application and deny its alternative request for waivers of the rules to operate in violation of the letter and intent of the ATC gating requirements.

Respectfully submitted,



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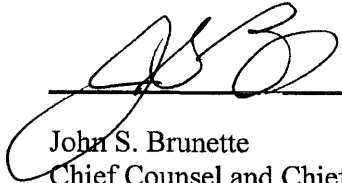
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June 23, 2008

AFFIDAVIT OF JOHN S. BRUNETTE

I, John S. Brunette, am the Chief Counsel and Chief Administrative Officer of Iridium Satellite LLC ("Iridium"). I hold an B.A. degree and a Juris Doctorate from the Catholic University of America.

I hereby declare under penalty of perjury that I am qualified to speak on behalf of Iridium. I have reviewed the preceding Petition to Deny submitted on behalf of Iridium, and the factual statements therein are complete and accurate to the best of my knowledge, information, and belief.



John S. Brunette
Chief Counsel and Chief Administrative Officer
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Dated: 6/28/08

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2008, I caused a true and correct copy of the foregoing to be served by first-class mail, unless noted otherwise, on the following:

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