

ORIGINAL

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

FILED/ACCEPTED  
JUL - 1 2008  
Federal Communications Commission  
Office of the Secretary

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

REQUEST TO STRIKE AFFIDAVIT

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Frequency Band	)	

**REQUEST TO STRIKE AFFIDAVIT**

Pursuant to section 1.41 of the Commission’s rules, 47 C.F.R. § 1.41, Iridium Satellite LLC (“Iridium”), by its attorneys, hereby requests that the Commission strike the June 23, 2008 affidavit of Anthony J. Navarra<sup>1</sup> from the record in this proceeding for three reasons: it appears to contain false statements; it contains facts previously submitted in IB Docket No. 02-364; and it was filed out of time.

**BACKGROUND AND SUMMARY**

On November 9, 2007, the Commission released the *Second Order on Reconsideration*<sup>2</sup> in IB Docket No. 02-364 and established a new bandplan for Big LEO MSS providers. On May

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<sup>1</sup> See Reply of Globalstar to Opposition of Iridium at Affidavit of Anthony J. Navarra (filed June 23, 2008) (the “Reply” and the “Navarra Affidavit”). For purposes of this filing, we use the term “Globalstar” to refer to Globalstar, Inc. and its affiliated companies, including Globalstar Licensee LLC and GUSA Licensee LLC. In this filing, Iridium is not providing any further response to the legal arguments presented in Globalstar’s Protest or Reply.

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

7, 2008, the Commission released the *Order Proposing Modifications*<sup>3</sup> and initiated this adjudicatory proceeding to effectuate the license modifications resulting from the new MSS bandplan. Globalstar filed a Protest on June 6, 2008 alleging that the Commission misread its legal authority and, in doing so, violated Globalstar's rights under the Administrative Procedure Act. Iridium filed an Opposition to Globalstar's Protest on June 16, 2008 establishing that Globalstar's Protest is without merit and must be summarily denied. On June 23, 2008, Globalstar filed a Reply and the Navarra Affidavit in support of its Protest. In this filing, Iridium does not offer any further response to the legal arguments raised in Globalstar's Protest or Reply. Rather, Iridium files this pleading in response to statements contained in the Navarra Affidavit.

Apparent False Statements. In an effort to support its claim that Globalstar had no opportunity to address the international implications of the *Order Proposing Modifications*, the Navarra Affidavit states that Globalstar “*never submitted for the record any factual evidence demonstrating the significant and far-reaching impact that such a decision would have on Globalstar’s operations abroad.*”<sup>4</sup> The Navarra Affidavit avers that Globalstar only submitted “*factual information for the record concerning the impact that any such sharing requirements would have on Globalstar’s operations in the United States.*”<sup>5</sup> However, as documented below, Globalstar made numerous factual submissions concerning the effects that Iridium’s use of spectrum licensed to Globalstar would have on Globalstar’s global operations as well as its

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

<sup>4</sup> Navarra Affidavit at ¶ 3 (emphasis added).

<sup>5</sup> Navarra Affidavit at ¶ 3.

operations within specific countries.<sup>6</sup> Regardless of whether the statements in the Navarra Affidavit were made by accident or by design,<sup>7</sup> absent a clarification or correction, the FCC should treat the statements as false and strike the affidavit from the record.<sup>8</sup>

Submission of Facts in the Rulemaking Proceeding. Based on the Navarra Affidavit, Globalstar's Reply states that "[t]he Commission did not collect *one scintilla of evidence* on the impact on Globalstar or Iridium of the purpo[r]ted change in their authorizations."<sup>9</sup> Nor, according to the Navarra Affidavit, did Globalstar have an opportunity to place facts in the record in IB Docket No. 02-364 regarding the impact the Commission's decision could have on its operations abroad.<sup>10</sup> In particular, Globalstar claims that the record contains no information regarding four categories of factual issues.<sup>11</sup> In point of fact, however, not only did Globalstar have every opportunity to submit factual information to the FCC during the rulemaking stage of the proceeding,<sup>12</sup> but Globalstar *itself* already provided the Commission with facts about each of

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<sup>6</sup> See discussion *supra* Part I (identifying numerous filings in which Globalstar (a) acknowledged that a decision in IB Docket No. 02-364 could affect its operations outside the United States, and (b) provided factual information concerning the impact this would have on its global operations).

<sup>7</sup> As established in Iridium's June 16, 2008 Opposition, Globalstar's legal arguments are meritless. Globalstar would thus gain no headway by attempting to bolster its legal arguments with factually incorrect statements.

<sup>8</sup> Iridium notes that 47 C.F.R. § 1.17(a)(2) provides that no person shall "In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."

<sup>9</sup> Reply at 17 (emphasis added).

<sup>10</sup> See Navarra Affidavit at ¶¶ 3-4; see also Reply at 17-18.

<sup>11</sup> See Navarra Affidavit; see also Reply at 17-18.

<sup>12</sup> See Iridium's Opposition at Part IV (pp. 29-33); see also discussion *infra* Part II.

the four categories of information.<sup>13</sup> Thus, although Globalstar claims that a Section 316 hearing is needed to address facts in the Navarra Affidavit that have never been presented to the FCC,<sup>14</sup> no such need exists. Consequently, Globalstar's claim that a Section 316 hearing is necessary to address factual issues raised in the Navarra Affidavit is meritless.<sup>15</sup>

Untimely Submission of Navarra Affidavit. The Commission also should strike the Navarra Affidavit because it was filed out of time. The Communications Act and the Commission's rules required Globalstar to file the Navarra Affidavit (if at all) at the time it filed its Protest.

**I. THE NAVARRA AFFIDAVIT APPEARS TO CONTAIN MATERIALLY FALSE STATEMENTS**

On its face, the Navarra Affidavit appears to contain materially false statements. In particular, the Navarra Affidavit asserts that Globalstar has only submitted

“factual information for the record concerning the impact that . . . sharing requirements would have on Globalstar's operations in the United States” and that it “has never submitted for the record any factual evidence demonstrating

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<sup>13</sup> See discussion *infra* Part II (collecting quotations from prior Globalstar submissions).

<sup>14</sup> See Reply at 17-18; *see also* Navarra Affidavit.

<sup>15</sup> As noted in Iridium's Opposition, even assuming *arguendo* that the Navarra Affidavit identified new facts (which it does not appear that it did), Globalstar cannot raise those claims at this time because Globalstar's appeal of the *Second Order on Reconsideration* remains pending at the D.C. Circuit and because Globalstar was required to present this information (if at all) during the rulemaking proceeding. See Iridium's Opposition at 31-32 & n.101. Any potential Globalstar claims of surprise by the international ramifications of the Commission's decision is belied by their position in the rulemaking that any domestic change would have global ramifications; their briefing of the legal arguments that the Commission had no authority to give its decision global effects; and their submission of factual information showing the effects of Iridium's use of Globalstar's licensed spectrum on Globalstar's operations globally and in specific countries. See, e.g., Letter from Thomas Gutierrez, Esq., Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 3 (dated June 3, 2004) (“The outcome of this proceeding could have large effects on Globalstar services internationally.”), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516210312](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516210312); *see also* discussion *infra* Part II.

the significant and far-reaching impact that such a decision would have on Globalstar's operations abroad."<sup>16</sup>

The Navarra Affidavit then asserts that

“the record before the FCC contains no factual information concerning the harm that would result not only to Globalstar, but also to its customers and the unaffiliated companies that operate its gateways outside of the United States, if Globalstar were prohibited from operating in the rest of the world on the frequencies that the FCC has now reassigned from Globalstar to Iridium in the United States.”<sup>17</sup>

First, contrary to the averments in the Navarra Affidavit, the following quotations from a variety of Globalstar filings establish that Globalstar repeatedly submitted “factual evidence demonstrating ” the impact a decision requiring Globalstar to “operate throughout the rest of the world in conformance with the Big LEO band plan” “would have on Globalstar’s operations abroad.”<sup>18</sup>

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<sup>16</sup> Navarra Affidavit at ¶ 3; *see also* Globalstar’s Reply at 17 (“The Commission did not collect one scintilla of evidence on the impact on Globalstar or Iridium of the proposed change in their authorizations.”); *id.* at 18 (“[T]he Commission and the parties focused exclusively in the *Big LEO Spectrum Sharing Proceeding* on the US band plan and the carriers’ domestic operations . . .”).

<sup>17</sup> Navarra Affidavit at ¶ 3. Globalstar’s Reply contains similar assertions as the Navarra Affidavit. *See, e.g.*, Reply at 18 (“[T]he Commission and the parties focused exclusively in the *Big LEO Spectrum Sharing Proceeding* on the US band plan and the carriers’ domestic operations until Iridium injected the issue of possible extraterritorial impact into the proceeding . . . [on] March 7, 2008.”).

<sup>18</sup> Navarra Affidavit at ¶ 3, sentence 2. Based on the plain language used in Globalstar’s submission, the Navarra Affidavit does not appear to be amenable to a narrow construction. For example, it cannot be argued that the Navarra Affidavit says Globalstar only submitted factual information concerning the harms it would experience abroad if the FCC granted Iridium additional “sharing” rights—as opposed to reassigning spectrum to Iridium. Rather, the Navarra Affidavit broadly asserts that Globalstar never submitted information regarding how application of the “Big LEO band plan” would affect it operations abroad. The breadth of this statement is unmistakably clear: it asserts that Globalstar “*never*” placed information in the record about how increased sharing *or* a spectrum reassignment would affect its operations aboard. Nor can Globalstar justify its assertion by claiming that the record focused exclusively on sharing prior to the *Order on Modification*. As even Globalstar has conceded, the issues covered in the record in IB Docket No. 02-364 “include[ed] possible *reassignment* of a portion of the Big LEO MSS spectrum.” *See* Letter from William T. Lake, Counsel to Globalstar, to Marlene H. Dortch, IB

- “The outcome of this proceeding could have large effects on Globalstar services internationally.”<sup>19</sup>
- “[N]on-geostationary MSS systems are inherently global systems.”<sup>20</sup>
- “Iridium is now soliciting regulators in Europe and elsewhere to conform their authorizations to the FCC’s (to allow Iridium to use the 1616-1618.25 MHz band which is allocated to Globalstar on a global basis).”<sup>21</sup>
- “[A]ny decision by the Commission to grant Iridium the use of additional channels would have the effect, due to Iridium’s technical limitations, of permitting Iridium to operate in those channels anywhere in the world that Iridium subscribers may find themselves, including in Canada.”<sup>22</sup>
- “The Record Before the FCC Does Not Support Any Spectrum Sharing . . . . Because Iridium cannot assign channels nationally or regionally, the adverse impact on Globalstar is global.”<sup>23</sup>
- “A reduction in the number of channels available to Globalstar at either L-band or S-band may impact Globalstar services internationally, if other countries attempt to follow the Commission’s action.”<sup>24</sup>

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Docket No. 02-364, at 1 (dated Nov. 7, 2007) (emphasis added), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6519810388](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519810388).

<sup>19</sup> Letter from Thomas Gutierrez, Esq., Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 3 (dated June 3, 2004) *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516210312](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516210312).

<sup>20</sup> Joint Reply Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 11, 26-27 (filed July 25, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514287369](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514287369).

<sup>21</sup> Letter from Josh Roland, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 3 (dated Feb. 6, 2007), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518725241](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518725241).

<sup>22</sup> Comments of Globalstar Canada Co., IB Docket No. 02-364, at 2 (filed July 11, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285545](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285545).

<sup>23</sup> Letter from Nathan Michler, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 6 (dated April 28, 2006), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518334683](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518334683)

<sup>24</sup> Letter from William Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 2 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516200238](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516200238).



- “Iridium fails to take into account the fact that the secondary downlink from multiple Iridium satellites will interfere into a given Globalstar satellite, as shown in Figure 1 [which shows interference to a Globalstar satellite *located over the Indian Ocean*], because of the sidelobes and backlobes of the Iridium satellite antenna.”<sup>25</sup>
- “Globalstar reminds the Commission that Iridium has no ability at present to control the use of these channels locally or regionally. If the Commission authorizes Iridium to use the band 1616-1618.25 MHz in the U.S., which is the limit of the Commission’s authority, it will effectively be preempting every other regulatory administration around the world. Such a step is inconsistent with the U.S. Government’s obligation to respect national borders in its licensing decisions. In this regard, Globalstar notes that the German government recently has complained to the Commission about interference from Iridium’s system into Germany’s radio astronomy operations.”<sup>26</sup>
- “Iridium has made no showing that any change to the Big LEO MSS band plan would be consistent with its authorizations in all other countries where the operations of Globalstar and Iridium would be affected.”<sup>27</sup>
- “[T]here is no reason for the Commission to change the existing Big LEO spectrum assignments or to take spectrum away from Big LEO MSS. Re-allocating spectrum to another service would adversely affect the business of Globalstar and the services available to unserved and underserved populations globally . . . .”<sup>28</sup>

Second, and also contrary to averments in the Navarra Affidavit, Globalstar repeatedly submitted “factual information concerning the harm that would result not only to Globalstar, but also to its customers and the unaffiliated companies that operate its gateways outside of the

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<sup>25</sup> Letter from William Lake, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 2 (dated March 9, 2007), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518911524](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518911524).

<sup>26</sup> Letter from William Lake, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-362, at n.10 (dated Sept. 21, 2006) (providing information about the limitations affecting Globalstar’s operations around the world), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518506548](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518506548).

<sup>27</sup> Joint Reply Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 26-27 (filed July 25, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514287369](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514287369).

<sup>28</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 2 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516214368](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516214368).

United States, if Globalstar were prohibited from operating in the rest of the world on the frequencies that the FCC has now reassigned from Globalstar to Iridium in the United States.”<sup>29</sup>

- “[I]f the FCC is going to take international affairs into account in this proceeding, Globalstar offers the following:
  1. Globalstar Canada has gone to Industry Canada (IC) to apply for channel 7 (up to 1618.725 MHz) for aviation services. IC told Globalstar Canada that [it] is awaiting the outcome of the US proceeding.
  2. Globalstar’s French license starts at 1615 MHz (channels 5-9)
  3. Globalstar’s Italian license starts at 1616 MHz (channels 6-9)
  4. Globalstar’s Russian license starts at 1616 MHz (channels 6-9).”<sup>30</sup>
- “[W]e believe any action by the Commission to reallocate spectrum used by the Globalstar MSS system in the U.S. to the operator of the Iridium MSS system would have a very serious and prejudicial impact on the ability of Industry Canada to manage Big LEO MSS spectrum in Canada.”<sup>31</sup>
- “Globalstar requires access to unencumbered spectrum in the CDMA band segment in order to provide aviation and other non-voice services and to maintain the quality and level of service generally. . . . In some countries, e.g., France and Russia, Globalstar has access to spectrum only above 1613.8 MHz. If these countries were to follow the Commission’s lead in requiring spectrum-sharing between Globalstar and

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<sup>29</sup> Navarra Affidavit at ¶ 3, sentence 3.

<sup>30</sup> Letter from Thomas Gutierrez, Esq., Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 3 (dated June 3, 2004), *available at* [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516210312](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516210312); *see also id.* (discussing the impact an FCC decision in IB Docket No. 02-364 would have on Globalstar’s use of the GLONASS system in Russia); *see also* Letter from William Lake, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-362, at 2 (dated Sept. 21, 2006) (providing information about the limitations affecting Globalstar’s operations around the world), *available at* [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518506548](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518506548); *see also* Joint Reply Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at Part II.D & Part III (filed July 25, 2003) (cataloguing the various world-wide affects a decision to modify the Big LEO band plan would have on Globalstar’s operations), *available at* [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514287369](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514287369).

<sup>31</sup> Comments of Globalstar Canada Co., IB Docket No. 02-364, at 2 (filed July 11, 2003), *available at* [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285545](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285545).

Iridium, Globalstar would have even more difficulty providing services, such as aviation services, that inherently cross international boundaries.”<sup>32</sup>

- “Globalstar’s use of channels above 1616 MHz is necessary for its current service . . . . The FCC must continue the Globalstar allocation with at least two channels above 1616 MHz. A FCC reallocation would effectively prohibit Globalstar from continuing to offer services to its current aviation customers, and to a large aviation market.”<sup>33</sup>
- “In other parts of the world, Globalstar is even further restricted in channel usage because of GNSS protection requirements, specifically to channels 6 and above in Russia and Italy and channels 5 and above in France. The worldwide (including US) restrictions are also more stringent for aeronautical terminals, which are built to operate only on Globalstar’s channel 6 and above. The coordination with Radio Astronomy requires that when an airborne mobile earth station is within  $4.1\sqrt{h}$  (h) km (where h is the aircraft altitude in meters) of a RAS that is making observations, the average emission level in the 1610.6 to 1613.8 MHz band shall not exceed –65 dBW/MHz. Since 1610.6 to 1613.8 MHz falls directly in the lower part of Globalstar’s allocated bandwidth for the return link, these lower channels cannot be used for aeronautical services, which are a very important segment of our projected market.”<sup>34</sup>
- “CDMA systems were assigned more spectrum in part due to restrictions on use of lower L-band – 1610.6-1613.8 MHz: Radio Astronomy – Below 1610 MHz: GPS/GLONASS – 1610-1616 MHz: FAA/RTCA regulations require channels above 1616 MHz for aviation products.”<sup>35</sup>
- “Globalstar’s S-band authorization extends only up to 2498 MHz in all of Europe (with the exception of Iceland where Globalstar has a license for the full 16.5 MHz)

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<sup>32</sup> Comments of Globalstar, IB Docket No. 02-364, at 7 & n.12 (filed Sept. 8, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516483279](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516483279).

<sup>33</sup> Letter from Thomas Gutierrez, Esq., Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 2 (dated June 3, 2004) *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516210312](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516210312).

<sup>34</sup> Joint Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at Technical Appendix § 2.3 (filed July 11, 2003) (providing record evidence relating to the “Global Restrictions” on Globalstar’s operations), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285570](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285570).

<sup>35</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 7 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516200238](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516200238).

and only up to 2495 MHz in the Russian Republic. The only other international restriction is the PFD limit in the ITU's Radio Regulations."<sup>36</sup>

- “The Commission may have no desire to give extra-territorial effect to its regulatory decisions, but in view of the technical limitations of the Iridium system, a decision to grant Iridium additional spectrum in channels 9 and below will definitely have such effect. It will permit unlicensed and unlawful operations in Canada and will constrain the ability of Industry Canada to effectively plan the use of MSS L-band spectrum in Canada. We urge the Commission accordingly to consider seriously the unintended effect such regulatory action would have in Canada, and likely in other jurisdictions as well.”<sup>37</sup>
- “Interference from Iridium’s operation in Channels 8 and 9 has also been experienced by Globalstar’s local service provider in Australia . . . .”<sup>38</sup>
- In another submission, Globalstar submitted evidence about the impact the FCC’s decision could have on all of Globalstar’s customers around the world, stating that “Iridium disregards the very real harm to Globalstar’s 250,000 subscribers that would result if Globalstar’s service quality were diminished by additional use of its spectrum by Iridium.”<sup>39</sup> Globalstar discusses those “harms” in its filing.

As this sampling of Globalstar filings makes plain, Globalstar did not—contrary to the averments in the Navarra Affidavit—limit its factual presentation in IB Docket No. 02-364 to information relating to Globalstar’s operations within the United States. To the contrary, the record is replete with Globalstar submissions detailing the impact that any decision in IB Docket

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<sup>36</sup> Letter from William Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 4 (dated Feb. 26, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6515783589](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515783589)

<sup>37</sup> Comments of Globalstar Canada Co., IB Docket No. 02-364, at 2 (filed July 11, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285545](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285545).

<sup>38</sup> Joint Reply Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 27 (filed July 25, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514287369](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514287369).

<sup>39</sup> Letter from William Lake, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-362, at 2 (dated Sept. 21, 2006) (providing information about the limitations affecting Globalstar’s operations around the world), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518506548](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518506548).

No. 02-364 could have on Globalstar's operations around the world. Accordingly, the Commission should strike the Navarra Affidavit from the record.

## **II. THE NAVARRA AFFIDAVIT CONTAINS FACTS PREVIOUSLY SUBMITTED IN THE RULEMAKING RECORD BY GLOBALSTAR**

Though Iridium's Opposition establishes that, as a legal matter, Globalstar is not entitled to a hearing under Section 316,<sup>40</sup> Globalstar filed the Navarra Affidavit in an effort to show new facts regarding the impact the Commission's decision could have on its operations abroad—facts which Globalstar claims the Commission has never had an opportunity to consider.<sup>41</sup> In particular, Globalstar claims that the record contains no information regarding the following four categories of factual issues: (1) restrictions imposed on Globalstar's operations to protect GLONASS and the Radio Astronomy Service; (2) Globalstar's need to avoid self-interference and its ability to provide service around the world; (3) restrictions imposed by foreign countries on Globalstar earth stations located outside the United States; and (4) Globalstar's ability to offer simplex data service.<sup>42</sup>

As shown in Part I above, however, Globalstar's submissions in IB Docket No. 02-364 did not “focus[] exclusively . . . on the US band plan and the carriers' domestic operations.”<sup>43</sup> Rather, Globalstar's submissions focused on both the domestic and international affects of an FCC decision in IB Docket No. 02-364. In fact, as the following quotations from prior

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<sup>40</sup> See Opposition at Part IV (pp. 29-34) (identifying numerous independent reasons why Globalstar is not entitled to a Section 316 hearing).

<sup>41</sup> See Reply at 17-18; see also Protest at Part III (pp. 19-22); see also Navarra Affidavit.

<sup>42</sup> See Navarra Affidavit; see also Reply at 18 (identifying four categories of factual issues Globalstar wants the Commission to consider).

<sup>43</sup> But see Reply at 18 (“[T]he Commission and the parties focused exclusively in the *Big LEO Spectrum Sharing Proceeding* on the US band plan and the carrier's domestic operations until Iridium injected the issues of possible extraterritorial impact into this proceeding [on] . . . March 7, 2008.”).

Globalstar submissions establish, Globalstar has already provided the Commission with information about the four categories of information identified above:

**1. GLONASS, RAS, and Other Restrictions**

- “Globalstar also had to design a system to accommodate other services that share spectrum and affect usability of L-band and S-band . . . Radio Astronomy Service holds primary allocation at 1610.6-1613.8 MHz . . . Global Navigation Satellite System (GPS and GLONASS) operates from 1574-1610 MHz . . . ISM Allocation in Big LEO S-band (down link).”<sup>44</sup>
- “CDMA systems were assigned more spectrum in part due to restrictions on use of lower L-band – 1610.6-1613.8 MHz: Radio Astronomy – Below 1610 MHz: GPS/GLONASS – 1610-1616 MHz: FAA/RTCA regulations require channels above 1616 MHz for aviation products.”<sup>45</sup>
- “Globalstar must limit its operations to avoid interference with radioastronomy observations in its spectrum assignment and with radionavigation satellite services, such as GPS adjacent to its spectrum assignment.”<sup>46</sup>
- “Globalstar has developed a substantial market for its services, the continuing vitality of which depends, in large part, upon Globalstar’s having access to 11.35 MHz of L-band spectrum. Iridium’s proposals, if effectuated, would hamstring deployment of the products and services that Globalstar has developed . . . .”<sup>47</sup>
- “[A]ny requirement that Globalstar grant Iridium access to additional portions of its spectrum would impair Globalstar’s ability not only to serve its aviation

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<sup>44</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 3-4 (dated March 4, 2004) *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6515784675](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515784675).

<sup>45</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 7 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516200238](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516200238).

<sup>46</sup> Letter from Josh Roland, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 3 (dated Feb. 6, 2007), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518725241](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518725241).

<sup>47</sup> Joint Comments of L/Q Licensee, Inc., Globalstar L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 29 (filed July 11, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285570](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285570).

customers, but also to provide reliable communications to its public safety and other customers during times of emergency.”<sup>48</sup>

- “Globalstar’s aviation service is the primary reason why it needs unencumbered channels above 1616 MHz. Aeronautical MSS is subject to several restrictions on channel usage. The aviation equipment must be built to meet standards set . . . for the protection of GPS and GLONASS (collectively, the GNSS) operating in the 1574-1610 MHz band.”<sup>49</sup>

## 2. Self-Interference and Ability to Provide Service Around the World

- “An actual reduction in the number of channels available for Globalstar services in either the Big LEO CDMA L-band uplink or S-band downlink, or both, can have an impact on the specific services that Globalstar provides and is providing right now because of the channel requirements of various services, as described in Globalstar pleadings in this docket.”<sup>50</sup>
- “The Globalstar system transmits and receives on 1.23 MHz CDMA channels. The Commission licensed LQL and GUSA for nine channels on the return link (uplink) at L-band and thirteen channels on the forward link (downlink) at S-band. Globalstar’s spectrum usage plan requires access to all these channels, based on the need for channel diversity, the regulatory restrictions on the specific frequencies, and anticipated capacity requirements.”<sup>51</sup>
- “Globalstar has demonstrated in its submissions that it needs access to all nine L-band CDMA channels in order to meet current and immediately future service needs.”<sup>52</sup>

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<sup>48</sup> Letter from William Lake, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 3 (dated Sept. 21, 2006), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518506548](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518506548).

<sup>49</sup> Comments of Globalstar, IB Docket No. 02-364, at 8-9 (filed Sept. 8, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516483279](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516483279).

<sup>50</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 2 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516200238](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516200238).

<sup>51</sup> Joint Comments of L/Q Licensee, Inc., Globalstar L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 6 (filed July 11, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285570](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285570).

<sup>52</sup> Petition for Reconsideration of Globalstar, IB Docket No. 02-364, at 6 (filed Sept. 8, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516483277](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516483277).

- “Reducing the spectrum available to Globalstar would have a serious impact on its ability to provide the existing services and to compete in the market for MSS, which would, in turn, adversely impact Globalstar’s subscribers.”<sup>53</sup>
- “A reduction in the number of channels available to Globalstar at either L-band or S-band may impact Globalstar services internationally, if other countries attempt to follow the Commission’s action.”<sup>54</sup>

### 3. Restrictions Imposed by Foreign Countries on Globalstar Earth Stations

- “[I]f the FCC is going to take international affairs into account in this proceeding, Globalstar offers the following:
  1. Globalstar Canada has gone to Industry Canada (IC) to apply for channel 7 (up to 1618.725 MHz) for aviation services. IC told Globalstar Canada that [it] is awaiting the outcome of the US proceeding.
  2. Globalstar’s French license starts at 1615 MHz (channels 5-9)
  3. Globalstar’s Italian license starts at 1616 MHz (channels 6-9)
  4. Globalstar’s Russian license starts at 1616 MHz (channels 6-9).”<sup>55</sup>
- Globalstar filed a chart in IB Docket No. 02-364 identifying the restrictions placed on Globalstar’s spectrum around the world.<sup>56</sup>

### 4. Globalstar’s Ability to Provide Simplex Data Service

- “[Globalstar’s] simplex telemetry service . . . [r]equires assignment of two channels (2.5 MHz channelization) for commercially-acceptable quality of service . . . [a] reduction in usable spectrum would compromise this new

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<sup>53</sup> Joint Comments of L/Q Licensee, Inc., Globalstar L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 6 (filed July 11, 2003), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6514285570](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514285570).

<sup>54</sup> Letter from William Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 2 (dated May 28, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516200238](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516200238).

<sup>55</sup> Letter from Thomas Gutierrez, Esq., Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, at 3 (dated June 3, 2004), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516210312](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516210312).

<sup>56</sup> Letter from Josh Roland, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 5 (dated Feb. 6, 2007), *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518725356](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518725356).



service, for which there is high demand by the U.S. government in the Middle East.”<sup>57</sup>

As the foregoing quotations from prior Globalstar filings establish, the Navarra Affidavit adds nothing of value to this proceeding and serves no purpose. The Navarra Affidavit contains facts previously submitted in the rulemaking record and considered by the Commission. Consequently, there remains no basis in law or equity for providing Globalstar a hearing under Section 316.

### **III. THE NAVARRA AFFIDAVIT WAS FILED OUT OF TIME**

By failing to file the Navarra Affidavit with its June 6, 2008 Protest, Globalstar ignored express requirements of the Communications Act and the Commission’s rules. Section 316 of the Communications Act states that a protest—like the Protest Globalstar filed on June 6, 2008—“shall be subject to the requirements of section 309 for petitions to deny.”<sup>58</sup> In turn, Section 309 states that a protest “shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that . . . [s]uch allegations of fact *shall* . . . be supported by affidavit of a person or persons with personal knowledge of thereof.”<sup>59</sup> The Commission’s rules also provide that protests subject to the procedural requirements of Section 309 “must contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity.”<sup>60</sup> In addition, section 1.45 of the Commission’s rules prohibits a

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<sup>57</sup> Letter from William D. Wallace, Counsel to Globalstar, to Marlene H. Dortch, IB Docket No. 02-364, Attach. at 6 (dated March 4, 2004) *available at* [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6515784675](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515784675).

<sup>58</sup> 47 U.S.C. § 316(a)(3).

<sup>59</sup> 47 U.S.C. § 309(d)(1).

<sup>60</sup> 47 C.F.R. § 1.939(d).

party from including information in a reply that exceeds the scope of an opposition.<sup>61</sup> And as Iridium noted in its Opposition, “[i]t is well settled that the Commission need not consider an argument or issue that a party has failed to raise in its initial submissions in a proceeding.”<sup>62</sup> Indeed, as a practical matter, it makes no sense to permit a party to slip an affidavit into a proceeding behind a reply because doing so would usually prevent interested persons from responding to the submission. Accordingly, the Commission should strike the Navarra Affidavit as untimely filed.

#### IV. CONCLUSION

For the foregoing reasons, Iridium respectfully requests that the Commission strike the Navarra Affidavit from the record because it appears to contain false statements of fact; it contains facts previously submitted by Globalstar in IB Docket No. 02-364; and, it was filed out of time.

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<sup>61</sup> 47 C.F.R. § 1.45(c) (“The reply shall be limited to matters raised in the oppositions . . .”).

<sup>62</sup> Opposition at 7 n.19 (citing *Knology, Inc. v. Georgia Power Co.*, 18 FCC Rcd 24615, 24617 n.16 (¶ 5) (2003)).

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July 1, 2008

## CERTIFICATE OF SERVICE

I hereby certify that on July 1, 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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