

**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)
)

FILED/ACCEPTED
JUL - 9 2008
Federal Communications Commission
Office of the Secretary

**OPEN RANGE COMMUNICATIONS INC.
OPPOSITION TO PETITIONS TO DENY**

July 9, 2008

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AFFIDAVIT OF WILLIAM S. BEANS	1

SUMMARY

Open Range Communications, Inc. (“Open Range”) opposes the petitions to deny the Globalstar application for modification of license filed by Iridium and Sprint. Iridium lacks standing to prosecute its Petition to Deny because it does not compete with Globalstar in the market for services which are covered by the application. Sprint similarly lacks standing as a competitor and its potential interference concerns have been resolved in a separate proceeding which is now final.

The Globalstar/Open Range (“GSOR”) network will bridge the digital divide which exists today between urban and rural areas and bring to rural areas services which are more advanced than those offered in most urban areas today. Parties such as Iridium and Sprint have so far declined to serve these rural areas with wireless broadband services and apparently have no intention to do so in the foreseeable future.

Contrary to the claims of Iridium and Sprint, the GSOR network deployment will conform to the FCC’s gating requirements for ATC services including the requirement to provide integrated services. To the extent that the Commission determines that they do not presently conform to those requirements, they will do so in the near future and Globalstar’s request for a temporary waiver should be granted. Absent a grant of Globalstar’s application, many rural Americans will wait at least an additional two years for wireless broadband services that could be available beginning as early as the fourth quarter of this year.

The spectrum lease under which the GSOR network will be deployed conforms to the Commission’s policies regarding leasing in the satellite services and does not require separate Commission approval. Finally, the Department of Agriculture Rural Utility Service loan to

Open Range, which will support the construction of ATC facilities, is not relevant to this proceeding. For the reasons stated more fully in the Open Range opposition, Open Range respectfully requests that the petitions to deny filed by Iridium and Sprint be denied.

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**OPEN RANGE COMMUNICATIONS INC.
OPPOSITION TO PETITIONS TO DENY**

Open Range Communications Inc. (“Open Range”) hereby opposes the Petitions to Deny the above captioned application of Globalstar Licensee LLC (“Globalstar”)¹ filed by Iridium Satellite LLC (“Iridium”)² and Sprint Nextel Corporation (“Sprint”).³ For the reasons set forth below, Open Range urges the Commission to deny the petitions and expeditiously grant the application.⁴

I. Introduction

Open Range was formed to bring mobile and portable broadband wireless communications to rural America. Open Range has entered into a partnership with Globalstar

¹ Globalstar Licensee, LLC, Application for a Minor Modification of Space Station License, IBFS File No. SAT-MOD-20080516-00106 (May 16, 2008) (*Application*); Public Notice, Report No. SAT-00525 (rel. May 23, 2008) (*Globalstar Application*).

² Petition to Deny of Iridium Satellite, LLC, filed June 23, 2008 (*Iridium Petition*).

³ Petition to Deny of Sprint Nextel Corporation filed June 23, 2008 (*Sprint Petition*).

⁴ Iridium asserts standing as a “competitor” relying on *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940). Not only is such a bare assertion inadequate to convey standing but Iridium does not appear to compete in the market for ATC services that is the subject of the application at issue here. Iridium’s petition should be dismissed on this ground alone. Similarly, Sprint lacks standing because it does not propose to compete in the markets to be served by the GSOR network and because its interference concerns have been addressed in a separate proceeding which is now final.

(together, "GSOR") that will enable customers to receive not only terrestrial broadband and satellite services in the communities Open Range will serve but also satellite services in areas beyond those communities throughout North America and most of the world. Open Range plans to commence construction of a rural broadband network in the fourth quarter of 2008. Over the ensuing five years Open Range will extend terrestrial broadband services to 546 rural communities. Today, many of these communities are either unserved or underserved by existing broadband providers. Where broadband service is available, it is generally provided by fixed line telephone or cable television companies. The service that Open Range will provide will be portable and mobile and will incorporate the ability for users to move about the community served by the Open Range network. Moreover, using the satellite capability provided by Globalstar, those same users will be able to access the satellite network both within and outside the 546 Open Range communities. With the commencement of service in the fourth quarter of this year, these users will enjoy not only mobile and portable broadband but also the safety-of-life services available through the Globalstar SPOT system. As the Open Range network is built out and the Globalstar satellite constellation replaced, the service mix will evolve so that well before the Open Range network is completed users will be able to access two-way broadband services and life-saving emergency services not only within the Open Range communities, but everywhere the Globalstar satellite system reaches.

The GSOR network responds to the longstanding unmet need for rural broadband services. Rural broadband services have been the focus of enormous effort for a number of years by the Commission, the executive branch, the Congress, federal agencies such as the Department of Agriculture Rural Utilities Service, and state agencies as well. Despite all of these efforts, broadband services have been slow to develop in rural areas and a digital divide persists between

the rural and urban areas of the country. The GSOR network will leap frog the technologies that are now available in urban areas. Rural users who have no broadband services today or who are underserved will be able to purchase portable and mobile broadband services for the first time from GSOR.

The ubiquitous safety-of-life services that will be provided through the initial network will respond to rural communications needs as well. While urban dwellers rely upon cellular telephone service in case of emergencies, cellular coverage in many rural areas is spotty or nonexistent. In contrast users of the GSOR network will be able to access emergency services throughout the U.S and beyond.

These broadband and safety-of-life services can be available to rural consumers beginning in the fourth quarter of this year. There is no legal or public policy justification for continuing to deny rural Americans the benefits of these services. Existing cellular and broadband providers have not extended their networks to many of the areas that GSOR will serve. Rather than seeking to block the innovative services developed by GSOR, Iridium and Sprint should re-double their own efforts to extend their networks to rural areas of the U.S. which they thus far have failed to serve.

II. The GSOR Services Will Address The Unmet Need For Mobile And Portable Rural Broadband Services

The Commission has frequently noted the existence of a rural/urban broadband divide. This digital divide has led the FCC to develop a number of policy initiatives. Congress has recognized the digital divide as well. Responding to the need for rural broadband services,

Congress created the Rural Broadband Loan Program in 2002.⁵ That program is designed to bring broadband services to smaller communities throughout the United States. Though the FCC's efforts have been underway for a number of years, and though the Rural Broadband Loan Program has been in existence for six years, the digital divide stubbornly persists. There are many areas of the United States which still receive no broadband service at all. There are additional areas which receive broadband service from only one or two fixed line providers. Essentially no rural areas of the United States receive mobile and portable broadband services of the kind that GSOR will provide. The GSOR network will be the first large scale deployment that addresses this continuing unmet need. By paving the way for service to 546 rural communities, and to the areas between these communities as well, the GSOR network will provide a model for the development of rural broadband service nationwide.

The GSOR partnership provides an ideal way to deliver rural broadband services. The digital divide persists because rural areas of the country are difficult to serve with fixed line broadband services. Distances between customers are often great and the capital costs of deploying wire or fiber based networks are prohibitive in many cases. Wireless broadband delivered terrestrially and by satellite provides a way to overcome these practical limitations and to deliver service to rural areas at costs that are feasible. The combination of terrestrial wireless and satellite service delivered to small towns and satellite-based services delivered to less populated areas between these towns represents a service model that could be used to extend broadband services to all rural areas of the country. The approach developed by the GSOR partnership provides a means whereby the capital needed to fund large scale networks can be

⁵ *Farm Security and Rural Investment Act of 2002*, PL 107-171, 7 U.S.C. 901, et seq.

made available and coverage can be extended without placing the entire burden of constructing a nationwide rural broadband network on the shoulders of a single entity.

The Open Range deployment will take place over a five-year period commencing in the fourth quarter of 2008. The initial services provided by GSOR will take advantage of the robust L-band capability available today on the Globalstar satellite constellation. Following the initial deployment in late 2008, Open Range will deploy the backhaul, customer care, billing and other functionalities required for its network. Large scale construction of the Open Range markets will accelerate beginning in September 2009. By the end of 2009, 35 markets will have been constructed. An additional 176 markets will be constructed in 2010, and about one-third of the Open Range markets will be constructed at the time the Globalstar satellite constellation replacement is expected to be completed in mid-2010. Delaying the commencement of the Open Range construction cycle would needlessly deprive rural residents of portable and mobile broadband services. Rural America is waiting for broadband service and petitions to deny and other service blocking initiatives by parties who themselves have failed to meet these needs in the past will do nothing to bring state-of-the-art communications services to the rural areas of the country.

III. The GSOR Network Will Provide Integrated Services

The Globalstar application describes how the GSOR partnership will provide integrated MSS/ATC services.⁶ GSOR customers will have both terrestrial broadband and satellite services available in a single user terminal.⁷ The initial user terminal will incorporate WiMAX

⁶ *Globalstar Application* at 16-21.

⁷ *Id.* at 19. Globalstar will continue to market its stand-alone SPOT services, but the availability of these MSS-only services has no bearing on the integration of the ATC services which will be offered together with MSS services.

broadband capability into the existing Globalstar SPOT user device.⁸ The Globalstar SPOT capability will function everywhere both within and outside the Open Range communities.⁹ WiMAX service will be available within the coverage radius of the terrestrial ATC facilities.

The first generation user terminal will incorporate an external connector which will enable the user to connect the terminal to a laptop computer or a VOIP telephone. Although Iridium has suggested that such a terminal is not dual mode¹⁰, that is not the case. A complete dual mode radio terminal for both satellite and terrestrial broadband service will be incorporated in a single device.¹¹ Given the current state of development¹¹ of broadband terminal devices, the best way for a consumer to take full advantage of the broadband service capability will be to connect the terminal to a computer which may be used to access the Internet. It may also be connected to a VOIP phone for voice communication. As terminal technology evolves, smaller terminals will be introduced which will take fuller advantage of the high-speed services that will be available.¹² The L and S band frequencies included in the spectrum lease will enable new types of terminal devices that take full advantage of the satellite and terrestrial networks.

Rural users will depend upon both the safety-of-life capability offered through the Globalstar SPOT service as well as the broadband wireless service offered through the terrestrial network. While cellular coverage is generally provided along major highways, coverage can be poor or non-existent only a few miles outside these major corridors. The first generation ATC

⁸ *Globalstar Application* at 17.

⁹ *Id.*

¹⁰ *Iridium Petition* at 9.

¹¹ *Globalstar Application* at 17.

¹² Iridium suggests that “seamless” handoff is required between the terrestrial and satellite based systems in order to meet the requirement for a dual mode terminal (*Iridium Petition* at 5). Nothing in the FCC rules or the decisions concerning integrated service suggests that this is the case.

terminal will be based on Globalstar's SPOT service which will provide safety-of-life messaging and tracking capability throughout North America and most of the world.¹³ Thus the GSOR subscriber will be able to deliver an emergency message to public safety personnel or invoke tracking capability outside the coverage of existing cellular networks.¹⁴ This SPOT capability has already proved invaluable and has saved numerous lives. Since it was introduced in November 2007, the SPOT device has been credited with saving over 40 lives and has won a number of awards, including the Consumer Electronics Association's 2008 Innovations Design and Engineering Award.¹⁵ When the Globalstar constellation is upgraded, the SPOT capability will be augmented with two-way data service.¹⁶ At that time, subscribers to the GSOR network will be able to enjoy two-way connectivity, not only in the communities served by the terrestrial ATC network, but throughout America's rural areas as well.¹⁷ While Sprint terms the SPOT capability a "low function, one-way MSS paging service"¹⁸, the people whose lives have been saved by the SPOT service have a far different view. The GSOR network will be targeted to serve rural areas. The agricultural industries found in these areas experience among the highest injury rates of any major industry in the U.S. Poor or non-existent cellular services cannot be counted on to ensure that those who are injured receive medical care as quickly as possible. The GSOR network will respond directly to this unmet need for safety-of-life services.

¹³ *Globalstar Application* at 17.

¹⁴ *Id.*

¹⁵ More information about the rescues that SPOT has facilitated and the additional awards it has won is available at www.findmespot.com.

¹⁶ *Id.* at 19.

¹⁷ *Id.*

¹⁸ *Sprint Petition* at 3.

IV. The GSOR Partnership Provides an Ideal Means for Deploying ATC Services

The GSOR partnership for rural services is embodied in a spectrum lease which provides for the deployment of an ATC terrestrial network in designated rural areas of the country¹⁹. The spectrum lease does not target New York, Los Angeles, or Chicago, but instead focuses on 546 rural communities across the U.S. that have been left unserved by other potential wireless providers. Without the spectrum lease and the unique GSOR partnership, these rural communities will continue to struggle to obtain the kind of broadband and safety-of-life services that urban residents take for granted. The spectrum lease furthers the public interest by advancing the goals of Congress and the Commission for bridging the digital divide and complies with all applicable FCC rules and policies.

While Iridium suggests that a spectrum lease is not permitted in the satellite services,²⁰ this is plainly wrong. Leasing in the satellite services began in 1982²¹, more than 20 years before the FCC adopted its spectrum leasing rules for the terrestrial services.²² Initially, the Commission required that these arrangements be submitted for Commission review. However, that is no longer the case and parties are now permitted to enter into leases in the satellite services without submission to or approval by the FCC.²³

¹⁹ See *Globalstar, Inc., SEC 10-Q Form for the Quarter Ending March 31, 2008*.

²⁰ *Iridium Petition* at 3.

²¹ Domestic Fixed Satellite Transponder Sales, 90 FCC 2nd 1238 (1982). See also Application of Satellite Business Systems, 95 FCC 2nd 866 (1983)

²² Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, 19 FCC Rcd 17503 (2004).

²³ See Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, 15 FCC Rcd 24203 (2000) at ¶ 66 (citations omitted).

In this regard, Iridium faults Globalstar for delay in disclosing the spectrum lease to the Commission.²⁴ First, as noted above, Globalstar is under no legal obligation to disclose the terms of the spectrum lease to the Commission. Notwithstanding that the terms of the lease were submitted to the Commission shortly after it was executed by the parties and long before any operations were to be conducted under those terms. The spectrum lease was executed by the parties on October 31, 2007. The terms of the lease were submitted to the Commission two weeks later on November 14, 2007. Thus, even if Globalstar were required to submit the lease to the FCC – which it is not – it did so in what can only be described as a timely fashion.

Iridium further ignores that the Commission specifically contemplated the leasing of ATC spectrum. The Commission noted the possibility that an MSS licensee might lease “some or all” of its ATC spectrum to a terrestrial licensee in the context of a discussion of its gating criteria.²⁵ There was plainly no suggestion by the Commission that the leasing of ATC spectrum in and of itself would be improper.

In short, the Commission’s views on leasing of MSS/ATC spectrum are clear and represent a continuation of the leasing policies that have long applied to the satellite services. So long as the gating criteria continue to be satisfied, MSS licensees are free to lease their spectrum to third parties. And as shown above in Section III and throughout the Globalstar Consolidated Opposition to Petitions to Deny, the GSOR partnership represents a fully integrated service offering that satisfies the FCC’s gating criteria (either directly or through a short-term waiver). Contrary to the claims of Iridium and Sprint, the GSOR partnership embodies the fulfillment of

²⁴ *Iridium Petition* at 16.

²⁵ 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, (2003) ¶ 3 n.5.

the FCC's vision for MSS by providing broadband service to rural and underserved communities in the U.S. over an integrated MSS/ATC network which remains under the ultimate control of Globalstar. The time to bridge the digital divide is now and the GSOR partnership stands ready to do so just as soon as the FCC grants the Globalstar modification application.

V. The Open Range RUS Loan is Not Relevant to This Proceeding

Open Range will rely in part on a rural broadband loan from the Department of Agriculture Rural Utilities Service in constructing the proposed terrestrial network. The loan has been granted to Open Range, not Globalstar. The loan is irrelevant to any aspect of the Globalstar application and is merely a means of financing the construction of rural broadband facilities. In this sense, the Rural Utilities Service functions as a bank having lending policies oriented toward the financing of certain types of facilities. Had Open Range obtained its financing from a commercial bank it is unlikely that Iridium would have sought to make the Open Range financing an issue in this proceeding. It is only because Iridium is in a position to abuse the FOIA information request process²⁶ that it is now suggesting that the terms of the financing used by Open Range are somehow relevant to Globalstar's application to modify its ATC authority. The Commission should decline to condone Iridium's abuse of the FOIA information request process.

VI. Conclusion

The GSOR partnership has developed a unique and promising means for delivering broadband services throughout rural America. When the Open Range network is complete, rural residents will have broadband services in 546 rural communities through the terrestrial ATC network. They will also have two-way broadband services by satellite throughout North

²⁶ *Iridium Petition* at 16 n.48.

America and much of the world. Iridium and Sprint oppose the deployment of this network. It is telling that neither of these companies has undertaken meaningful efforts to address the rural broadband divide that exists today. Iridium could deploy a broadband satellite network to address these needs but apparently has chosen not to do so and instead merely seeks to obstruct the deployment of such a network by any other company. Sprint is planning to deploy wireless broadband services in such areas as Washington, DC, Chicago and Baltimore. It is likely to be many years, if ever, before Sprint deploys wireless broadband facilities in markets of the kind to be served by the GSOR network. While Sprint may have legitimate concerns regarding the potential for interference between broadband wireless systems, the Commission has already addressed Sprint's interference concerns in the context of the recently concluded rulemaking²⁷ and has placed the burden on GSOR to resolve these interference concerns. The remaining Sprint arguments boil down to an insistence that GSOR should not be allowed to serve rural markets that Sprint has not served and apparently never intends to serve. The public interest demands - and Open Range respectfully urges - that the Commission deny the petitions to deny filed by Iridium and Sprint.

Respectfully submitted,

Open Range Communications, Inc.

by its attorney



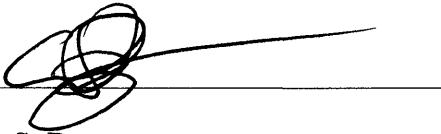
Jon L. Christensen, Esq.
6561 Eudaily Covington Rd
College Grove, TN 37046
Phone: (615) 477-3195

²⁷ Spectrum and Service Rules for Ancillary Terrestrial Components in the 1.6 (2.4 GHz Big LEO Bands) *Report and Order Proposing Modifications*, FCC 08-98, released April 10, 2008. No party appealed the rule changes and they are now final.

AFFIDAVIT OF WILLIAM S. BEANS

I, William S. Beans, am the Chief Executive Officer of Open Range Communications, Inc. ("Open Range").

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.

William S. Beans *Sr.*
Chief Executive Officer
Open Range Communications, Inc.

Dated: 7/9/08

CERTIFICATE OF SERVICE

I, Jon L. Christensen, do hereby certify that a copy of the foregoing Open Range Communications Inc. Opposition to Petitions to Deny was served by hand this 9th day of July, 2008, on the following parties, unless otherwise noted:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Jim Ball, Chief*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Helen Domenici, Chief*
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

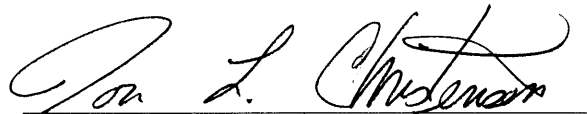
Howard Griboff*
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Robert Nelson, Chief*
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael Senkowski*
Peter Shields
Jennifer D. Hindin
Wiley Rein LLP
1776 K Street, NW
Washington DC 20006
Counsel to Iridium Satellite LLC

Regina Keeney*
Charles Logan
Stephen Berman
Lawler, Metzger, Milkman
& Keeney, LLC
2001 K Street, NW
Suite 802
Washington, DC 20006
Counsel to Sprint Corporation

Stephen Baruch*
Philip Bonomo
Leventhal Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006
*Counsel to the U.S. GPS Industry
Council*



Jon L. Christensen, Esq.

*By United State Postal Service, First Class postage prepaid, and electronic mail.