

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

FILED/ACCEPTED

DEC - 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
	)	
and	)	
	)	
Iridium Constellation LLC	)	Call Sign S2110
Iridium Satellite LLC	)	Call Sign E960132
Iridium Carrier Services	)	Call Sign E960622
	)	
Modification of Authority to	)	<b>S2115          SAT-MOD-20080516-00106          IB2008001202</b>
Operate a Mobile Satellite System in the	)	Globalstar Licensee LLC
1.6 GHz Frequency Band	)	<b>S2110          SAT-MOD-19990303-00021          IB1999000033</b>
	)	Iridium Satellite LLC

**REPLY OF GLOBALSTAR TO OPPOSITION OF IRIDIUM**

Globalstar Licensee LLC and GUSA Licensee LLC (collectively “Globalstar”) by their attorneys, and pursuant to section 1.106(h) of the Commissions Rules, 47 C.F.R. § 1.106(h), submit this reply to the opposition of Iridium Satellite LLC (“Iridium”) to Globalstar’s Petition for Reconsideration<sup>1/</sup> of the Commission’s October 15, 2008, *Modification Order* modifying the licenses and authorizations held by Globalstar and Iridium for the operation of their Big LEO Mobile Satellite Service (“MSS”) systems.<sup>2/</sup>

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<sup>1/</sup> See Petition for Reconsideration of Globalstar Licensee LLC and GUSA Licensee LLC (filed Dec. 14, 2008) (“*Globalstar Petition*”). See also Opposition of Iridium Satellite LLC To Petition for Reconsideration of Globalstar, Inc. (filed November 24, 2008) (“*Iridium Opposition*”).

<sup>2/</sup> See Globalstar Licensee LLC, Call Sign S2115; GUSA Licensee LLC, Call Sign E970381; Iridium Constellation LLC, Call Sign S2110; Iridium Satellite LLC, Call Sign E960132; Iridium Carrier Services, Call Sign E960622, Modification of Authority To Operate a Mobile Satellite Service System in the 1.6/2.4 GHz Frequency Band, *Order of Modifications*, FCC 08-248 (rel. Oct. 15, 2008) (“*Modification Order*”).

Iridium's Opposition conjures imaginary procedural defects in Globalstar's petition in an attempt to keep the Commission from considering the serious deficiencies in the *Modification Order*. That tactic is unavailing, as Iridium's procedural arguments are frivolous. On the merits, Iridium's selective recitation of prior satellite licensing decisions cannot cure the failure of the *Modification Order* even to mention, let alone distinguish, the longstanding precedents from which it departs. Iridium's response also misstates the factual circumstances under which the Globalstar and Iridium MSS systems operate outside of the United States. Finally, Iridium fails to refute Globalstar's showing that the Commission's waiver procedure is no substitute for the hearing required under section 316 of the Communications Act and is insufficient to cure the harm that enforcement of the *Modification Order* would cause to Globalstar, its independent service providers, and its customers outside of the United States.

#### **I. GLOBALSTAR'S PETITION IS PROCEDURALLY PROPER.**

Iridium asserts that Globalstar's petition is procedurally improper because it is untimely and presents no new arguments. Both assertions are demonstrably wrong.

Iridium characterizes Globalstar's petition for reconsideration as an untimely challenge to the *Reassignment Order*, which revised the US Big LEO spectrum sharing plan by reassigning to Iridium's exclusive use some of the spectrum previously assigned to CDMA carriers.<sup>3/</sup> But the *Modification Order* that is the subject of Globalstar's petition is plainly an independent action by the Commission, distinct from the rulemaking decision effected by the *Reassignment Order* and containing legal defects independent from those in the *Reassignment Order*.

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<sup>3/</sup> See Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Second Order on Reconsideration and Second Report and Order*, 22 FCC Rcd 19733 (2007) ("Reassignment Order").

Globalstar here seeks reconsideration of the Commission's decision to apply the revised US Big LEO band plan outside the United States.<sup>4/</sup> The first public indication that the Commission might do so was an *ex parte* submission filed by Iridium in March 2008,<sup>5/</sup> four months *after* the *Reassignment Order* was released and after Globalstar had sought judicial review, not reconsideration, of that order.<sup>6/</sup> The Commission took an action in the *Modification Order* that was separate from its rulemaking decision in the earlier order – it reversed a longstanding policy by giving the revised US Big LEO band plan extraterritorial effect and forbidding Globalstar to provide service in other countries on frequencies permitted by those countries' band plans. Globalstar here seeks reconsideration of that separate action, as it is entitled to do.

The Commission and Iridium have both acknowledged the distinction between the action taken here and the rulemaking decision in the *Reassignment Order*. The Commission stated in the *Modification Order* that it “initiated this informal *adjudicatory* proceeding with its Order Proposing Modifications,” which was issued after the *Reassignment Order*.<sup>7/</sup> The agency thus

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<sup>4/</sup> Iridium repeatedly suggests that Globalstar is seeking reconsideration of the Commission's decision to require the sharing of 0.95 MHz of spectrum. *Iridium Opposition* at 7-9, 19-20. Globalstar is doing no such thing. To the contrary, as noted below, Globalstar has pointed out that the interference-prevention rationale put forward in the *Modification Order* is at odds with the Commission's decision to require sharing of 0.95 MHz in the *Reassignment Order*. Globalstar has not argued that such sharing is unworkable, as Iridium suggests. *Compare Iridium Opposition* at 19-20 with *Globalstar Petition* at 11-12 and n. 25. Indeed, *Iridium's* suggestion that the Commission should now eliminate sharing would require untimely and improper reconsideration of the *Reassignment Order*. *See Iridium Opposition* at 20.

<sup>5/</sup> *See Iridium Satellite LLC Ex Parte Letter* in IB Docket No. 02-364 (filed Mar. 7, 2008) (asserting that “the FCC's decision to change the spectrum amount authorized for operation on Globalstar's satellites applies to its use of frequencies globally.”).

<sup>6/</sup> *See Globalstar, Inc. v. FCC*, D.C. Cir. Case No. 08-1046 (Petition for Review filed Feb. 5, 2008).

<sup>7/</sup> *See Modification Order* at ¶ 24 (emphasis added).

distinguished this newly initiated “adjudicatory proceeding” from that prior rulemaking proceeding. Iridium has done likewise, asserting that “this license modification is an adjudication and not a rulemaking,”<sup>8/</sup> which stands as an independent action by the Commission of which reconsideration may be sought.

Iridium’s present assertion that the *Modification Order* is “little more than a ministerial action,” *Iridium Opposition* at 3, is belied by the Commission’s own actions. Although the *Reassignment Order* “delegate[d] authority to the International Bureau to modify Iridium’s and Globalstar’s licenses” in accordance with that decision,<sup>9/</sup> the agency issued both the *Order Proposing Modifications*<sup>10/</sup> and the *Modification Order* at the full Commission level – unequivocally demonstrating the *nonministerial* nature of its action. That understanding was clearly right – the two orders decided separate issues. Simply put, the revised US band plan adopted in the *Reassignment Order* could stand even if the global application of that band plan in the *Modification Order* is rescinded.

Iridium’s assertion that Globalstar’s petition should be denied because it allegedly fails to present any new arguments is equally infirm. Far from “rehash[ing]” its prior position,<sup>11/</sup> Globalstar’s petition challenges the *Modification Order* on grounds that did not exist until that

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<sup>8/</sup> See *Opposition of Iridium Satellite LLC To License Protest of Globalstar, Inc.* (filed June 16, 2008) at 4.

<sup>9/</sup> *Reassignment Order* at ¶ 45.

<sup>10/</sup> 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, *Order Proposing Modifications*, 23 FCC Rcd 7984 (2008) (“*Order Proposing Modifications*”).

<sup>11/</sup> See *Iridium Opposition* at 10.

order was issued – that the policy rationale in the order is a truism (*i.e.*, that Globalstar may operate only in accordance with its space station license), and that the interference-prevention reasoning presented for the first time in that order is invalid. Neither aspect of the *Modification Order* is presaged in the Commission’s sparse, three page *Order Proposing Modifications*, and thus Globalstar had no occasion to challenge them until now. To the contrary, the *Order Proposing Modifications* relied *exclusively* on the Commission’s decision in *DISCO I*,<sup>12/</sup> which the *Modification Order* relegates to a footnote and acknowledges, as Globalstar pointed out in its protest, does not even “apply by its terms to the Big LEO service.”<sup>13/</sup> The Commission shifted its ground in the *Modification Order*, and Globalstar’s challenges to that order have not been made before.

## **II. IRIDIUM’S OPPOSITION FAILS TO COME TO GRIPS WITH THE DEFICIENCIES IN THE MODIFICATION ORDER.**

Iridium’s Opposition largely parrots the tautology that appears in the *Modification Order* – that Globalstar, as a US licensee, must abide by the limits in its US space station license.<sup>14/</sup> But that tautology, however often it is reiterated, provides no basis for deciding *what* limits

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<sup>12/</sup> See *Order Proposing Modifications* at ¶ 3 (citing Amendment to the Commission’s Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996) (“*DISCO I*”).

<sup>13/</sup> See Protest of Globalstar Licensee LLC and GUSA Licensee LLC (filed June 6, 2008) at 14-16; *Modification Order* at ¶ 24 n.61.

<sup>14/</sup> Compare *Iridium Opposition* at 13 (“the spectral transmission authority of any U.S.-licensed *space* stations is ‘routinely’ a matter determined by the FCC”) (emphasis in original), *and id.* (Commission has authority to require “U.S.-licensed space stations to obtain spectrum-specific operating authority from the FCC”), with *Modification Order* at ¶ 14 (Globalstar may operate only “in a manner consistent with the operating bands specified in [its] U.S. space station spectrum license[ ]”).

should be imposed in a US space station license.<sup>15/</sup> It leaves entirely unanswered whether the public interest, convenience, and necessity require denying a US licensee the authority to operate in another country on frequencies authorized by the local band plan merely for the sake of consistency with the US band plan.

The Commission has previously answered that question in the negative in a line of decisions that the *Modification Order* simply ignores. The Commission repeatedly has ruled that it will not seek to require Big LEO MSS licensees to “operate in accordance with the domestic band plan outside of the United States,”<sup>16/</sup> out of respect for the rights of other countries to access US-licensed Big LEO services. That practice serves the Commission’s longstanding policy to encourage US-licensed Big LEO MSS carriers to provide global services, because they are “uniquely positioned to foster social and economic benefits in the United States *and throughout the world.*”<sup>17/</sup> By ignoring the Commission’s prior decisions limiting the applicability of the US Big LEO band plan to the United States, the *Modification Order* does not render those decisions irrelevant. The agency has an obligation under the Administrative Procedure Act to

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<sup>15/</sup> See *Globalstar Petition* at 2-10.

<sup>16/</sup> Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz frequency band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order*, 12 FCC Rcd 22310 (1997) at ¶ 68); see *Globalstar Petition* at 4-10.

<sup>17/</sup> See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Notice of Proposed Rulemaking*, 9 FCC Rcd. 1094 (1994) at ¶ 21.

acknowledge and justify its departure from its prior practice. Iridium's Opposition does not and cannot justify the Commission's failure to do so.<sup>18/</sup>

Iridium cites submissions made by Globalstar to the European Electronic Communications Committee ("ECC") following adoption of the *Reassignment Order* for the proposition that the Commission's revision of the US Big LEO band plan has global application.<sup>19/</sup> To the contrary, those submissions reiterate Globalstar's consistent position that regulatory authorities in Europe (and throughout the rest of the world) continue to have the right to define and enforce their own Big LEO band plans, which currently permit CDMA operations – and prohibit TDMA operations – in the spectrum between 1618.725-1621.35 that has been reassigned to Iridium in the United States. The Globalstar submissions recite that Iridium had made "*proposals* for changes in the TDMA/CDMA band segmentation plan for the 1.6 GHz band ... to extend the spectrum designations for TDMA systems in Europe to fully encompass the spectrum assignments that Iridium is authorized to use in the USA."<sup>20/</sup> Globalstar declared that

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<sup>18/</sup> For example, Iridium insists that the International Bureau's decision granting it temporary authority to use Globalstar's spectrum to provide service in the Middle East demonstrates that the Commission has authority to regulate the spectrum used by U.S.-licensed space stations. *Iridium Opposition* at 15-16. Again, that truism is not challenged here. That decision (which was in any event based on unique circumstances that do not exist here) did not restrict the spectrum on which Globalstar could provide service outside the United States and thus provides no precedent for doing so here.

<sup>19/</sup> See *Iridium Opposition* at 7 & n.15 (citing Globalstar, Requirements for a TDMA/CDMA Band Segmentation Plan and Provision for Implementation of a Complementary Ground Component in the New ECC Decision for the 1.6/2.4 GHz Bands (Nov. 29, 2007) and Globalstar, Outcome of Consultations Between Iridium and Globalstar on Band Segmentation in the 1.6/2.4 Band as Requested by WGFM (Nov. 29, 2007)).

<sup>20/</sup> See Globalstar, Requirements for a TDMA/CDMA Band Segmentation Plan and Provision for Implementation of a Complementary Ground Component in the New ECC Decision for the 1.6/2.4 GHz Bands (Nov. 29, 2007) at 1 (emphasis added).

“[i]t is not ... necessary for the CEPT/ECC to adopt the same spectrum band plan in Europe as the FCC has done for the USA.”<sup>21/</sup>

Finally, Iridium’s Opposition fails to breathe life into the interference-prevention theory that appeared for the first time in the *Modification Order*. Like the Commission, Iridium fails to confront the fact that it still lacks the authority to provide service on the affected spectrum in the many countries that prohibit TDMA operations on that spectrum.<sup>22/</sup> Without Iridium operations, there simply can be no harmful interference into Iridium operations.<sup>23/</sup> Moreover, the interference-prevention justification in the *Modification Order* is completely at odds with the Commission’s determination in the *Reassignment Order* that Globalstar and Iridium can share the spectrum between 1617.775 and 1618.725 MHz. The *Modification Order* does not confront

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<sup>21/</sup> *Id.* at 2. As Globalstar showed in its petition (at 5), even if the Commission has the power by virtue of its role as the licensing administration for the Globalstar system to prohibit Globalstar globally from operating in the spectrum at issue, it cannot effectively authorize Iridium to operate on the spectrum in another country unless and until that country revises its own band plan to permit TDMA operations. Even when the International Bureau authorized Iridium temporarily to use some of Globalstar’s spectrum to provide service in the Middle East in the extraordinary circumstances of an ongoing war, it expressly confirmed that “other countries continue to retain the discretion as to whether to allow services within their borders in accordance with the frequencies we are authorizing Iridium to use on a temporary basis.” See Request for Temporary Authority, Iridium Constellation, LLC, *Order*, 18 FCC Rcd 25814 (Int’l Bur. 2003) at ¶ 13.

<sup>22/</sup> See *Iridium Opposition* at 3-4; *Modification Order* at ¶ 2.

<sup>23/</sup> This shows the fallacy in Iridium’s suggestion that the Commission’s action in the *Modification Order* is defensible because the inability of Iridium to turn its satellite channels on and off on a geographic basis means that “any change in spectrum use by or assignment to Iridium would, as a practical and inevitable matter, occur worldwide.” See *Iridium Opposition* at 6. This technical limitation of Iridium’s system – not shared by Globalstar’s – has no bearing on whether Iridium will be authorized to provide service on the affected spectrum by the local regulator in another country. And if Iridium is not authorized to provide service in a country, then its system will not be fully loaded there, and the interference that the Commission says is possible when both systems are fully loaded obviously will not occur.



this inconsistency between its primary rationale and a key element of the *Reassignment Order* that it purports to be implementing.

**III. IRIDIUM'S OPPOSITION FAILS TO JUSTIFY THE *MODIFICATION ORDER*'S SUBSTITUTION OF A POST-DECISION WAIVER PROCESS FOR THE PRE-DECISION PUBLIC INTEREST ANALYSIS REQUIRED BY SECTION 316.**

Globalstar showed in its petition that the *Modification Order*'s reference to the possibility of waivers is not an adequate substitute for the substantive public interest analysis required before the Commission may deny Globalstar's request for a hearing under section 316.<sup>24/</sup> Nothing in the single paragraph Iridium devotes to this issue refutes Globalstar's demonstration or even addresses the fact that, by deferring to a *post hoc* waiver process any consideration of the impact that enforcement of the order would have on Globalstar, its customers, and its independent gateway operators, the Commission failed to conduct the substantive public interest analysis required by section 316.

Contrary to Iridium's assertion, the order's statement that it "assumed Globalstar's factual assertions to be true" did not "balance" any facts as the statute requires.<sup>25/</sup> The *Modification Order* merely asserts – without acknowledging or evaluating any of Globalstar's specific showings of harm – that the Commission had "a sufficient record to conclude that the license modification ... would serve the public interest, convenience, and necessity."<sup>26/</sup> The order contains no evaluation of the nature or extent of the harms that will stem from the decision to restrict Globalstar's international operating authority in countries in which its services still are

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<sup>24/</sup> *Globalstar Petition* at 14-17.

<sup>25/</sup> *See Iridium Opposition* at 21.

<sup>26/</sup> *Id.* at ¶ 30.

welcomed, or any explanation of why inflicting those harms would further any Commission goal or policy. Iridium's pleading does nothing other than confirm that the Commission has undertaken no consideration of the factual issues Globalstar has identified, or of how, in light of those issues, its decision can serve the public interest.

### CONCLUSION

For these reasons, the Commission should deny Iridium's Opposition and reconsider its decision in the *Modification Order* to apply the revised US Big LEO band plan adopted in the *Reassignment Order* to restrict Globalstar's operations outside of the United States.

Respectfully submitted,

*/s/ William T. Lake*

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December 1, 2008

**CERTIFICATE OF SERVICE**

I, Josh L. Roland, do hereby certify that a copy of the foregoing Reply of Globalstar to Opposition of Iridium was served by hand this 1<sup>st</sup> day of December, 2008, on the following parties, unless otherwise noted:

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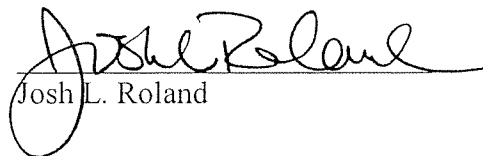
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