

DEC 11 2008

Federal Communications Commission
Office of the Secretary

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

In the Matter of)	
)	
Globalstar Licensee LLC)	File No. SAT-MOD-20080516-00106
)	Call Sign S2115
Application for Modification of License)	
For Operation of Ancillary Terrestrial)	
Component Facilities)	

**OPPOSITION OF GLOBALSTAR TO
PETITION FOR RECONSIDERATION OF CTIA**

I. INTRODUCTION AND SUMMARY.

Pursuant to section 1.106(g) of the Commission's Rules, Globalstar Licensee LLC ("Globalstar") submits this opposition to the Petition for Reconsideration filed by CTIA – The Wireless Association ("CTIA") in this proceeding, in which the Commission modified Globalstar's ancillary terrestrial component ("ATC") authority to permit Globalstar to offer ATC services using the WiMAX air interface protocol.^{1/} As shown below, CTIA's petition fails to provide any ground for reconsideration of the Commission's ruling that the grant of Globalstar's modification request – including the limited waivers sought therein – would serve the public interest and is fully consistent with the Commission's ATC rules and policies.^{2/} CTIA's petition

^{1/} See Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, *Order and Authorization*, 23 FCC Rcd 15975 (2008) ("*Globalstar ATC Order*"). See also Globalstar Licensee LLC, Application for Minor Modification of Space Station License, FCC File No. SAT-MOD-20080516-00106 (filed May 16, 2008) ("*Globalstar Application*").

^{2/} The Commission should note that CTIA chose not to file a timely petition to deny the Globalstar Application in June 2008. Rather, CTIA filed a detailed *ex parte* letter at the last possible minute when timely Commission action was necessary to meet RUS requirements. See CTIA, *Ex Parte Letter* (filed Oct. 28, 2008). The Commission should not countenance such

also provides no basis to reverse the Commission's well-supported conclusion that Globalstar's ATC leasing arrangement with Open Range Communications, Inc. ("Open Range"), and the parties' disclosure of the terms of that arrangement, fully comply with the Commission's satellite licensing policies. For these reasons, CTIA's petition should be denied.

II. THE GLOBALSTAR ATC ORDER IS CONSISTENT WITH THE COMMISSION'S ATC RULES AND POLICIES AND SERVES THE PUBLIC INTEREST.

In the *Globalstar ATC Order*, the Commission determined that, solely because of the effects of the unanticipated degradation of Globalstar's S-band satellite transmitters, Globalstar does not currently comply with certain of the ATC gating criteria.^{3/} Nevertheless, because it found that there were "unique facts presented in this case," the Commission concluded that "an interim waiver of these" requirements "is appropriate with respect to [Globalstar's] proposed WiMAX service."^{4/} CTIA asserts in its pleading that "Globalstar does not meet the [Commission's] waiver standard,"^{5/} for the reason that, "[u]nder the Commission's own findings, Globalstar does not meet several of the gating criteria."^{6/} That is reasoning in a circle. The Commission's conclusion that Globalstar currently does not meet certain gating criteria is the reason why the Commission went on to consider Globalstar's waiver request. But the fact that a waiver is necessary says nothing about whether the standard for a waiver is met.

disregard for its rules of Practice and Procedure and basic fairness to applicants in its proceedings.

^{3/} See *Globalstar ATC Order* at ¶ 13.

^{4/} *Id.*

^{5/} *CTIA Petition* at 3.

^{6/} *Id.*

As the Commission found, Globalstar met the standard. The Commission has broad authority to waive its rules when it determines that good cause exists and that a waiver would serve the public interest. The Commission appropriately concluded that in this case there was “a stronger public interest benefit in granting the waiver than in applying the rule.”^{7/} In reaching this conclusion, the Commission carefully weighed the merits of Globalstar’s waiver request and found specifically that the grant of an interim waiver “would serve the public interest because it would facilitate broadband deployment consistent with a \$267 million loan commitment from the Department of Agriculture’s Rural Development Utilities Program” and would make possible the “provision of broadband service to rural areas of the country.”^{8/} The Commission also specifically acknowledged that the relief granted was consistent with its “stated policy objective ... to ‘harmonize its rules, regulations, and processes whenever possible’ to maximize the benefits of USDA loans granted to promote development of telecommunications infrastructure in rural America.”^{9/} CTIA’s petition provides no basis for reversing the Commission’s sound judgment.

CTIA also significantly overstates the scope of the waivers granted by the Commission. It asserts that Globalstar and Open Range will offer “what is essentially a terrestrial broadband service from the first half of 2009 until July 2011 without the deployment of a comparable MSS

^{7/} See *Globalstar ATC Order* at ¶¶ 20-21 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) and *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

^{8/} See *Globalstar ATC Order* at ¶ 21.

^{9/} *Id.* (citing *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078 (2004) at ¶ 44).

data service.”^{10/} That is not correct. As Globalstar and Open Range have demonstrated, the deployment of Globalstar’s second-generation constellation will occur contemporaneously with the rollout of Globalstar/Open Range MSS/ATC service.^{11/} The short-term relief the Commission has granted will enable Open Range to begin to deploy its facilities in accordance with the terms of the RUS loan, and service will be deployed beginning in 2009 to approximately 2,500 customers located in five “proof of concept” test markets. But the full-scale rollout of MSS/ATC service will not begin until 2010 and will extend over the subsequent four years, between 2010 and 2014, well after Globalstar’s second-generation satellites have been launched and become operational.^{12/} Therefore, the waivers will affect only a small percentage of the customers and markets that Globalstar and Open Range will serve, and for only a limited time. The waivers can hardly be viewed as “eviscerating” the gating criteria, as CTIA argues.^{13/}

III. THE *GLOBALSTAR ATC ORDER* DOES NOT VIOLATE THE COMMISSION’S COMPETITIVE BIDDING RULES.

CTIA’s contention that the *Globalstar ATC Order* violates the competitive bidding requirements of section 309(j) recycles an argument the Commission rightly rejected years ago. Contrary to CTIA’s assertion, the Commission has not granted Globalstar an “initial license” in authorizing the MSS/ATC operations that Globalstar and Open Range have proposed.^{14/} Instead, by its express terms the *ATC Order* modified “Globalstar’s [existing space station] license to

^{10/} See *CTIA Petition* at 4.

^{11/} See *Opposition of Globalstar To Petitions To Deny* (filed July 9, 2008) (“*Globalstar Opposition*”) at 5 (“Globalstar and Open Range have a complimentary rollout schedule for their combined MSS/ATC service offerings.”).

^{12/} See *Globalstar, Inc. Ex Parte Notification* (filed Oct. 15., 2008) at attachment 1 (“Proposed Short-Term Waiver of MSS/ATC Integration Requirement”).

^{13/} See *CTIA Petition* at 1.

^{14/} *Id.* at 4.

permit the use of the WiMAX air interface protocol.”^{15/} CTIA’s sole basis for its assertion – that it disagrees with the Commission’s decision to grant Globalstar’s interim waiver request – provides no basis for concluding that section 309(j) is implicated.

CTIA’s argument is simply an attack on the Commission’s conclusion half a decade ago that “permit[ting] MSS operators to acquire ATC authority does not establish the requisite conditions for assigning terrestrial licenses in the MSS bands through competitive bidding ... pursuant to section 309(j).”^{16/} As the Commission made clear in explaining that decision, “because the terrestrial rights associated with a grant of ATC authority to MSS operators will be directly linked to existing MSS authorizations, there will be no separate ‘initial’ authorizations and therefore no requirement to use competitive bidding to assign such rights.”^{17/} The Commission here has granted ATC authority that is “directly linked” to Globalstar’s “existing MSS authorizations,” and therefore there is no separate initial authorization.

The Commission’s decision granting Globalstar’s ATC application will in no way “unjustly enrich” Globalstar, as CTIA suggests.^{18/} In its ATC rulemaking proceeding, the Commission specifically rejected the notion that “allowing MSS operators to incorporate ATCs without going through a competitive bidding process... will unjustly enrich those MSS operators.”^{19/} The Commission instead concluded that, particularly given “the significant costs

^{15/} See *Globalstar ATC Order* at ¶ 1.

^{16/} See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz, the L-Band, and the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003) (“*ATC Report and Order*”) at ¶ 219.

^{17/} *Id.* at ¶ 224.

^{18/} See *CTIA Petition* at 5.

^{19/} See *ATC Report and Order* at ¶ 226.

of launching and maintaining satellite operations,” the grant of ATC authority does not “rise to a level that constitutes unjust enrichment.”^{20/}

That conclusion is dispositive here. In support of its application, Globalstar demonstrated that it has invested and continues to invest substantially in its MSS system, having committed \$1.2 billion to its second-generation network, with payments under contracts to its vendors as of September 30, 2008 totaling more than \$450 million.^{21/} Globalstar also pointed out that the maximum annual payment that it can expect to receive from Open Range during the first six years of their lease agreement is \$10.3 million, less than *one-thirteenth* of its MSS-related revenue in 2006 (when the constellation was healthy) of \$137 million.^{22/} Given the significant financial commitments Globalstar has made toward the design, construction, and launch of both its first- and second-generation systems – and the comparatively small revenues that will be generated through its partnership with Open Range – Globalstar can hardly be viewed as being unjustly enriched by the *Globalstar ATC Order*. On the contrary, this kind of partnership was expressly envisioned by the Commission – and hoped for by Congress – to bring new services to the American public, in this case rural broadband.

IV. THE GLOBALSTAR/OPEN RANGE SPECTRUM LEASE NOTIFICATION COMPLIES WITH THE COMMISSION’S SATELLITE LICENSING POLICIES.

CTIA’s assertions that the Globalstar/Open Range spectrum leasing arrangement is in some way improper are both contradictory and based on a distortion of the *Globalstar ATC*

^{20/} *Id.*

^{21/} See *Globalstar Opposition* at 6-7 (citing Globalstar, Inc., Quarterly Report (SEC Form 10-Q), filed May 12, 2008, *Capital Expenditures* at 30-32, available at <http://www.sec.gov/Archives/edgar/data/1366868/000110465908032046/0001104659-08-032046-index.htm>).

^{22/} *Id.*

Order. On the one hand, CTIA suggests that the Commission erred in applying “the Commission’s terrestrial wireless secondary market leasing rules to the Globalstar/Open Range lease.”^{23/} At the same time, however, CTIA also states that the Globalstar/Open Range lease is improper because the parties failed to comply with the “filing procedures” that those rules establish.^{24/} Contrary to both assertions, the Commission rightly concluded that the wireless secondary market rules do not apply here and that Globalstar’s leasing agreement with Open Range was appropriate.

The Commission did not apply the wireless secondary market leasing rules here. As the *Globalstar ATC Order* explains, “in the *Secondary Markets Report and Order*, the Commission simply left the established satellite-capacity leasing policy intact.”^{25/} Under that policy, the Commission has long held that satellite licensees can “lease or sell space segment capacity” without prior approval by the Commission without effecting a transfer of either *de jure* or *de facto* control.^{26/} The *ATC Order* accordingly confirms the Commission’s prior conclusion that MSS providers may “lease[] access to MSS spectrum to a third-party ATC provider.”^{27/} In addition, after reviewing the disclosures and certifications regarding the lease that Globalstar and

^{23/} See *CTIA Petition* at 7.

^{24/} *Id.* at 8.

^{25/} *Globalstar ATC Order* at ¶ 25 (citing Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking, Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) at ¶ 209 and n.397)

^{26/} *Globalstar ATC Order* at ¶ 25 n.66.

^{27/} *Id.* at ¶ 25 (citing *ATC Report and Order* at ¶ 3, n. 5).

Open Range submitted, the Commission specifically determined that the Globalstar/Open Range lease “is consistent with Commission policy.”^{28/}

CTIA’s argument that the Commission inappropriately applied the *de facto* control standard when analyzing the Globalstar/Open Range lease is equally misplaced.^{29/} Since, as noted above, the Commission originally concluded that it was not necessary to apply the terrestrial wireless secondary markets leasing rules to satellite providers because such providers *already* had been granted the flexibility to lease their spectrum, it committed no error by not applying a stricter *de facto* control standard as CTIA proposes. To do so would be to give satellite providers less flexibility in leasing than terrestrial wireless providers – something the Commission specifically has chosen not to do.

Finally, CTIA is wrong in claiming that the Commission should reject the lease because the parties to the lease failed to comply with the filing requirements in the terrestrial wireless leasing rules. As explained above (and as CTIA seems to acknowledge elsewhere in its petition), the terrestrial wireless leasing rules do not apply to satellite providers. Indeed, the Commission’s Universal Licensing System (“ULS”) and related FCC Form 608 are not even programmed to accept notifications of spectrum leasing arrangements filed by satellite providers. Globalstar and Open Range accordingly could not have filed their lease notification in the specific manner that terrestrial wireless providers do.

^{28/} See *Globalstar ATC Order* at ¶ 24. CTIA suggests that this is not the case because Globalstar did not meet the gating criteria. *CTIA Petition* at 7. But this assertion is nothing more than a rehash of its position that the Commission erred by granting a limited waiver of those criteria.

^{29/} *CTIA Petition* at 7.

Instead, Globalstar and Open Range provided notice of the existence and terms of their leasing arrangement far *sooner* than is required for terrestrial wireless providers. As CTIA recognizes, the Commission's terrestrial wireless leasing rules require licensees to disclose the terms of their spectrum leases "at least 21 days before operations commence."^{30/} Globalstar and Open Range notified the Commission of the terms of their spectrum lease on November 14, 2007 – approximately *one-and-a-half* years before they plan to begin operations under the lease in mid-2009. Globalstar's *Modification Application* disclosed the existence of the lease and described its terms in detail, and Globalstar filed a copy of the lease itself with the SEC.^{31/}

Thus, the public has been afforded ample notice of the leasing arrangement. This is confirmed by the fact that the pleadings in response to the *Modification Application* addressed the lease at great length.^{32/} It is not plausible for CTIA to contend that Globalstar failed to provide adequate notice of the lease and its terms, or that the public had an insufficient opportunity to comment on it.

^{30/} *CTIA Petition* at 8 n.31.

^{31/} *See Globalstar ATC Order* at ¶ 11.

^{32/} *See, e.g.,* Petition To Deny of Iridium Satellite LLC, IBFS File No. SAT-MOD-20080516-00106 (filed June 23, 2008) at 13-16.

CONCLUSION

For these reasons, the Commission should deny CTIA's petition for reconsideration and affirm its decision in the *Globalstar ATC Order*.

Respectfully submitted,

/s/ William T. Lake

William F. Adler
Vice President – Legal and
Regulatory Affairs
GLOBALSTAR, INC.
461 S. Milpitas Blvd.
Milpitas, CA 95035
(408) 933-4401

William T. Lake
Samir Jain
Josh L. Roland
WILMER CUTLER PICKERING HALE
AND DORR L.L.P.
1875 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 663-6000

Counsel for Globalstar Licensee LLC

December 11, 2008

CERTIFICATE OF SERVICE

I, Josh L. Roland, do hereby certify that a copy of the foregoing Opposition of Globalstar to Petition for Reconsideration of CTIA was served by United States Postal Service, First Class postage prepaid, this 11th day of December, 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

Matthew Berry, General Counsel**
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Helen Domenici, Chief**
International Bureau
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
Room CY-B402
Washington, DC 20554

Robert Nelson, Chief**
Satellite Division, International Bureau
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Christopher Guttman-McCabe**
Michael F. Altschul
Brian M. Josef
CTIA – The Wireless Association
1400 16th Street, N.W., Suite 600
Washington, DC 200036


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

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

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

Jon L. Christensen
6561 Eudaily Covington Rd
College Grove, TN 37046
*Counsel to Open Range Communications,
Inc.*

Michael F. Mies
Main Street Broadband LLC
945 E. Paces Ferry Rd. NE
Suite 2200
Atlanta, GA 30326


Josh L. Roland

*By Hand

**By United States Postal Service, First Class postage prepaid, and by email.

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