

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

FILED/ACCEPTED

DEC 1 12008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
GLOBALSTAR LICENSEE LLC)
)
Application for Minor Modification of License for) File No. SAT-MOD-20080516-00106
Operation of Ancillary Terrestrial)
Component Facilities)

OPPOSITION TO PETITION FOR RECONSIDERATION

Open Range Communications Inc. (“Open Range”), by its attorney, and pursuant to Section 1.106(g) of the FCC Rules and Regulations, (47 C.F.R. § 1.106(g)) hereby opposes the Petition for Reconsideration filed by CTIA-The Wireless Association (“CTIA”) in the above-captioned proceeding (“CTIA Petition”). Open Range believes that the CTIA Petition is meritless and should be denied.¹

I. INTRODUCTION

CITA challenges the FCC’s decision to modify the Globalstar ATC authority and grant a short-term waiver of certain ATC gating criteria.² The Commission’s *Globalstar ATC Order*

¹ CTIA lacks standing to challenge the Commission’s grant of the Globalstar Application. CTIA asserts standing based upon the following claim: “The waiver request allows Globalstar to use its MSS spectrum for terrestrial broadband services without requiring Globalstar to bid for this spectrum at auction as CTIA’s members have”. CTIA Petition at 2n.6. This assertion, without any explanation as to why CTIA members are disadvantaged, is inadequate to confer standing. The mere claim that the Commission’s waiver does not incorporate a bidding requirement does not explain how such a bidding requirement would benefit CTIA members or how the lack of a bidding requirement would directly injure them. Moreover, CTIA’s claim ignores that CTIA members themselves have received numerous licenses for valuable spectrum without competitive bidding. Indeed, all of the hundreds of MSA and RSA cellular licenses awarded by the FCC to CTIA members were awarded either through comparative hearing or lottery. There is no suggestion on CTIA’s part that the Commission should re-license this spectrum using a lottery approach.
² 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*”)

will enable Open Range to proceed with the construction of a rural broadband network serving 546 communities and six million people. The construction of this network will require five years and Open Range will deploy more than \$360 million in improving the lives of rural Americans. This network, together with the Globalstar MSS system, will make ubiquitous rural broadband a reality.

CTIA objects to the temporary waiver granted by the Commission that permits the Open Range deployment to begin and it also objects to the FCC's acceptance of a Spectrum Manager Lease Agreement ("Spectrum Lease") between Globalstar and Open Range. For the reasons set forth below, Open Range urges the Commission to deny the CTIA Petition.

II. THE FCC'S GRANT OF THE GLOBALSTAR WAIVER REQUEST DOES NOT UNDERMINE THE PURPOSE OF THE ATC RULES.

CTIA claims that the FCC's grant of the limited Globalstar waiver undermines the purpose of the FCC's ATC rules. To a large extent, this argument is merely a rehash of objections made to the establishment of the ATC service that were rejected by the FCC in 2003.³ In the *ATC Report and Order* terrestrial interests (including CTIA) argued that the terrestrial component of MSS services should be separately licensed. The FCC refused to do this in part because of its determination that ATC services would be ancillary and also because separately licensing a variety of unrelated terrestrial users would be impractical.⁴

CTIA also makes the unremarkable claim that the Commission found that Globalstar does not currently meet the gating criteria. This is a correct reading of the FCC order and is the reason why the FCC proceeded to grant a limited, short-term waiver of those criteria. While

³ 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*").

⁴ "We conclude that same-band, separate operator sharing is impractical and ill-advised." *Id.* at 1991.

CTIA believes that the waiver undermines the gating criteria, CTIA ignores that the waiver is extremely limited in time and that, if its terms are not met, terrestrial use of the spectrum lapses until they are met. Moreover, given that the first trial markets will not begin operation until mid-2009, the first waiver milestone will be met within months of the initiation of the Open Range trial. Thus, far from undermining the gating criteria, the waiver grant reinforces those criteria and insures that they will be met.

III. THE FCC'S ACCEPTANCE OF THE SPECTRUM LEASE WAS APPROPRIATE.

In the *Globalstar ATC Order*, the FCC confirmed that spectrum leasing in the satellite services long pre-dated leasing in the terrestrial services and that it was not necessary to apply the terrestrial leasing rules to MSS services.⁵ CTIA objects to the Commission's reference to the secondary markets control standard in considering the Globalstar/Open Range lease. CTIA fails to explain why the FCC should not do so. Plainly, there is no reason in principle why the satellite services, where leasing has long been permitted, should be burdened with greater strictures than the terrestrial wireless services, and CTIA has pointed to no such reason.

Finally, and inconsistently, CTIA complains that the same filing procedures should apply to the Spectrum Lease that are applied to terrestrial spectrum leases today. CTIA ignores that Globalstar did submit the Spectrum Lease to the FCC on November 14, 2007 in a submission which complied with the FCC's spectrum manager leasing model. Not only did that filing comply with the Commission's rules but parties have been free to submit comments to the Commission regarding the lease. Taking those comments into account, the Commission accepted the Globalstar/Open Range Spectrum Lease. The processes and procedures applied in

⁵ Globalstar/ATC Order at ¶ 25.

the consideration of the Globalstar/Open Range Spectrum Lease are, if anything, more extensive than the procedures typically applied to terrestrial wireless leasing arrangements.

CONCLUSION

The Commission's *Globalstar ATC Order* will open the way for rural broadband services in hundreds of small markets across the U.S. The temporary waiver of the gating requirements granted by the Commission will advance the Commission's policies regarding ATC services and indeed those policies will soon lead to a situation where broadband services are available throughout rural America. Grant of the waiver furthers the Commission's policies, not only with regard to the satellite services, but with regard to the deployment of broadband services as well. CTIA has provided no reason why the Commission should reconsider or overturn its grant of the waiver and CTIA's Petition should be denied.

Respectfully submitted,

Open Range Communications, Inc.

by its attorney

/s/ Jon L. Christensen

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CERTIFICATE OF SERVICE

I, Jon L. Christensen, do hereby certify that a copy of the foregoing Open Range Communications Inc. was served by hand this 11th day of December, 2008, on the following parties, unless otherwise noted:

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