

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

In the Matter of)	
)	
Globalstar Licensee LLC)	Call Sign S2115
GUSA Licensee LLC)	File No. SAT-MOD-20080904-00165
)	
Application for Modification of)	
Nongeostationary Mobile Satellite Service)	
System License (S2115) To Launch a)	
Second-Generation System)	

PETITION TO DENY OF IRIDIUM SATELLITE LLC

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SUMMARY

In the instant proceeding, Globalstar Licensee LLC (“Globalstar”) asks the Commission to modify its non-geostationary Big LEO mobile satellite service (“MSS”) license (FCC Call Sign S2115) to authorize the launch and operation of its second-generation satellite constellation. However, Globalstar has admitted that it has violated—and will continue to violate—the current terms of its MSS license by operating in spectrum reassigned exclusively to Iridium Satellite LLC (“Iridium”) by the Commission in an order that became effective on December 14, 2008, and despite a letter from the International Bureau specifically directing Globalstar to comply with the terms of its licenses. Moreover, approximately half of the L Band spectrum to which Globalstar seeks access in its request to modify its application has been assigned exclusively to Iridium.

Globalstar’s intentional violation of the terms of its licenses and its willful disregard of the FCC staff’s specific direction require denial of Globalstar’s application. Indeed, Globalstar’s actions call into question its basic fitness to be a licensee, and, in addition to denying Globalstar’s application, the Commission should immediately bring an enforcement proceeding to secure Globalstar’s compliance with its license requirements and to determine what sanctions are appropriate. The initiation of an enforcement proceeding is particularly justified here given that Globalstar had more than a year’s notice of the spectrum reassignment and has been operating in violation of the terms of its licenses and the Commission’s orders for six months.

In addition, the Commission should deny the application to the extent Globalstar seeks authorization to operate in spectrum assigned exclusively to Iridium. In its application, Globalstar requests access to the 1610-1626.5 MHz spectrum. However, Iridium has held

exclusive rights to the 1621.35-1626.5 MHz band since the initial authorization of MSS services in 1994, and the Commission recently reassigned the 1618.725-1621.35 MHz band from Globalstar to Iridium for its exclusive use. Thus, no basis exists for the Commission to authorize Globalstar access to those bands. In such respects, Globalstar's waiver request to access the 1618.725-1621.35 MHz band is both procedurally improper and without merit, and even if granted, would be temporary in duration.

Finally, in its opposition to Iridium's pending transfer application,¹ Globalstar proposed rigorous Commission financial qualifications standards for next generation satellite applicants. However, Globalstar's own application fails to meet these steep standards and offers no explanation for how it will finance its \$1.52 billion second generation satellite system. The application is also devoid of any explanation of how Globalstar will comply with the Commission's \$5 million bond posting requirement.

¹ See *Iridium Holdings, LLC and Iridium Carrier Holdings LLC, and GHL Acquisition Group*, IB Docket No. 08-232, Petition to Deny of Globalstar Licensee LLC (filed Dec. 29, 2008) ("Globalstar Petition to Deny").

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PETITION TO DENY OF IRIDIUM SATELLITE LLC

Iridium Satellite LLC,² by its attorneys and pursuant to 47 C.F.R. § 25.154, submits this petition to deny the above-captioned application of Globalstar Licensee LLC (“Globalstar”) to modify its non-geostationary Big LEO mobile satellite service (“MSS”) license (FCC Call Sign S2115) to authorize the launch and operation of its second-generation satellite constellation.³

The Commission should deny Globalstar’s application for several reasons. *First*, Globalstar is operating in violation of the terms of its satellite license by using spectrum reassigned to Iridium. This knowing and willful violation, despite a Bureau warning to come

² Iridium is an MSS licensee and competitor of Globalstar, as well as the exclusive licensee of the spectrum to which Globalstar seeks access. Therefore, Iridium is a party in interest to this proceeding. *Cf. Applications of the Trustees of Indiana University Indianapolis, Indiana*, 8 FCC Rcd 5555, 5557 (¶ 11) (1993) (“Upon the filing of its mutually exclusive application, IBEC became a party in interest, the status required of a petitioner by Section 309(d)(1) of the Act.”).

³ *See Global Star Licensee LLC, GUSA Licensee LLC, Application for Modification of Nongeostationary Mobile Satellite Service System License (S2115) To Launch a Second-Generation System*, Call Sign S2115, Modification Application of Globalstar Licensee LLC (Filed Aug. 29, 2008) (“Globalstar Modification Application”).

into compliance, raises questions concerning Globalstar's character qualifications and fitness to be an FCC licensee that must be answered before any new applications can be granted. *Second*, Globalstar's application should be denied to the extent that authority is sought for spectrum allocated and licensed for exclusive use by Iridium. The 1621.35-1626.5 MHz frequency band included in Globalstar's application has always been exclusively reserved for Iridium and never licensed for Globalstar. Similarly, Globalstar's request for 1618.725-1621.35 MHz seeks authority for spectrum that is exclusively allocated and licensed to Iridium and for which any waiver sought by Globalstar would be transitional and temporary in nature—assuming grounds for a waiver have been provided (which is not the case). *Finally*, Globalstar, in opposing a pending Iridium transfer application, has argued for rigorous Commission financial qualifications standards to be imposed on next generation satellite applicants. Globalstar, however, fails to meet its own self-erected financial standards, and its application offers no explanation for how it will finance its \$1.52 billion second generation satellite system or comply with the Commission's \$5 million bond posting requirement.

I. BACKGROUND

On August 29, 2008, Globalstar filed the instant application to modify its MSS license (S2115) to authorize the launch and operation of its second-generation replacement satellite constellation in the 1610-1626.5 MHz band. The application states that the new satellites will be “functionally identical” to Globalstar's first-generation satellites, operating on the same frequencies, using the same emission designators, operating at the same power levels, and producing the same service footprint.

The Commission, however, has assigned to Iridium on an exclusive basis approximately half the spectrum Globalstar seeks to access. In 1994, the Commission

adopted a Big LEO band plan that assigned the 1621.35-1626.5 MHz spectrum to Iridium.⁴ And, a year and a half ago, on November 9, 2007, the Commission released the *Reconsideration Order*,⁵ which reallocated the 1618.725-1621.35 MHz band from Globalstar's CDMA MSS system to Iridium's TDMA MSS system.⁶

The *Reconsideration Order* took effect on January 14, 2008. On May 7, 2008, the FCC released an *Order Proposing Modifications* to effectuate, through license modifications, the spectrum reassignment established in the *Reconsideration Order*.⁷ After considering and rejecting a Globalstar protest of the *Order Proposing Modifications*, the Commission released the *Modification Order* on October 15, 2008,⁸ which took effect sixty days later on December 14, 2008. Globalstar appealed the *Reconsideration Order*⁹ and sought

⁴ 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*, Report and Order, 9 FCC Rcd 5936 (1994) (“1994 Big LEO Order”), recon., Memorandum Opinion and Order, 11 FCC Rcd 12861 (1996).

⁵ *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, 22 FCC Rcd 19733 (2007) (“*Reconsideration Order*”).

⁶ *Id.* at 19734 (¶ 1).

⁷ *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, 23 FCC Rcd 7984 (2008) (“*Order Proposing Modifications*”).

⁸ *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 of Modifications, FCC 08-248, 23 FCC Rcd 15207 (¶ 1) (rel. Oct. 15, 2008) (emphasis added) (“*Modification Order*”).

⁹ Petition for Review, No. 08-1046 (filed D.C. Cir. Feb. 5, 2008).

reconsideration of the *Modification Order*,¹⁰ but never sought to stay the effectiveness of either order.¹¹ On May 1, 2009, the D.C. Circuit affirmed the *Reconsideration Order*.¹²

Moreover, while the *Reconsideration Order* and *Modification Order* afforded Globalstar an opportunity to seek a temporary waiver to alleviate operating problems during its transition out of the 1618.725-1621.36 MHz band, Globalstar criticized this process and refrained from making any waiver request before the effective date of the license modifications. In a request filed one day *after* the license modifications took effect, Globalstar sought relief. The company initially asked the Commission for a waiver that would allow it to continue operating its space stations on the reassigned spectrum in *every* international region where Globalstar had been using the now-reassigned spectrum.¹³

¹⁰ See *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, Petition for Reconsideration of Globalstar Licensee LLC and GUSA Licensee LLC (filed Nov. 14, 2008) (“Globalstar Petition for Reconsideration”).

¹¹ See 28 U.S.C. § 2349(b) (“The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency”); 47 U.S.C. § 405 (providing that a petition for reconsideration shall not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof”).

¹² *Globalstar, Inc. v. FCC*, No. 08-1046, 2009 WL 1162581 (D.C. Cir. 2009).

¹³ Globalstar seeks a waiver for all eight international gateways that it previously identified as the only gateways affected by the spectrum reassignment. Compare *Globalstar Licensee LLC, GUSA Licensee, Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band*, Call Sign S2115, Call Sign E970381, Globalstar Request for Waiver and Request for Special Temporary Authority at 12-15 (filed Dec. 15, 2008) (“Globalstar Waiver Request”), with *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, Reply of Globalstar to Opposition of Iridium, Affidavit of Anthony J. Navarra ¶ 4 (filed June 23, 2008) (“Globalstar Protest Reply”). Globalstar subsequently brought three gateways (in

Globalstar also has a still pending request for special temporary authority to continue operating on Iridium’s frequencies during the pendency of its waiver request.

On December 17, 2008, the International Bureau sent Globalstar a letter reminding it to operate in full compliance with its licenses pending action on its waiver and STA requests.¹⁴ Notwithstanding this warning, however, Globalstar admitted in pleadings related to its waiver request that it has been using—and will continue to use—the spectrum the Commission removed from its license. Globalstar’s continued operation on these frequencies is a direct, knowing, and willful violation of the terms of its license and the specific direction provided by the International Bureau.

II. GLOBALSTAR IS VIOLATING ITS CURRENT SATELLITE LICENSE AND THUS LACKS THE REQUISITE CHARACTER QUALIFICATIONS TO HOLD THE REQUESTED REPLACEMENT AUTHORIZATION.

Globalstar is clearly engaged in unprecedented, intentional violations of its license terms. Indeed, Globalstar has *admitted* to the Commission that since its license was modified in 2008, it has used, is currently using, and will continue to use spectrum explicitly reassigned to Iridium,¹⁵ notwithstanding an International Bureau warning reminding

France and Brazil) into compliance. *Globalstar Licensee LLC, GUSA Licensee LLC, Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band*, Call Sign S2115, Call Sign E970381, File No. SAT-STA-20081215-00231, Opposition of Globalstar Licensee LLC at 6 (filed Feb. 2, 2009) (“Globalstar Opposition”).

¹⁴ Letter from Roderick K. Porter, Deputy Bureau Chief, International Bureau, FCC, to William T. Lake, Counsel to Globalstar LLC, Call Sign S2115 (Dec. 17, 2008) (“Porter Letter”).

¹⁵ Globalstar Opposition at 8 (conceding Globalstar’s “inability to date to achieve full compliance with the *Modification Order*”); *id.* at 9 n.20 (admitting “Globalstar’s difficulties in achieving full compliance with the *Modification Order*”); *id.* at 5-6 (alleging that Globalstar has made “substantial efforts to transition its gateways off of [Iridium’s] spectrum” in all regions “[w]ith the exception of the three gateways located in Russia” where it simply “cannot terminate operations on the affected channels”).

Globalstar to comply with the terms of its revised license.¹⁶ In its waiver request—the filing of which implicitly recognizes the validity of the *Modification Order*¹⁷—Globalstar concedes that it has no plans to alter the operations of its new satellite fleet to comply with the Commission’s recent spectrum reassignments.¹⁸ Rather, it seeks to maintain, grow, and modify its business operations as if nothing has changed since 1994—*i.e.*, as if the Commission’s 2007 *Reconsideration Order* and 2008 *Modification Order* had never been issued. This insistence on living in the past and refusal to come to grips with the evolution of satellite spectrum assignments is simply indefensible. More importantly, Globalstar’s refusal to comply with Commission license requirements and its disregard for an explicit warning to cease illegal operations is perhaps unprecedented in nature in the satellite service.

Pursuant to Commission precedent, Globalstar’s blatant disregard for the Commission’s regulatory authority must result in a finding that Globalstar is unfit for the requested authorization. The Commission “has traditionally dealt harshly with parties [like Globalstar] that provide unauthorized radio services to the public,” taking into account such prior FCC violations when considering an entity’s legal qualifications.¹⁹ Under the Commission’s *Character Policy Statements*, Globalstar’s willingness to violate the law signals its proclivity to violate other laws and reflects adversely upon its character and fitness

¹⁶ See Porter Letter.

¹⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969) (“The very essence of waiver is the assumed validity of the general rule.”).

¹⁸ Globalstar Opposition at 19-20.

¹⁹ *Applications of SatCom Systems, Inc.*, Order and Authorization, 14 FCC Rcd 20798, 20817 (¶ 42) (1999).

to hold an FCC license.²⁰ Indeed, if Globalstar “is unwilling to obey the law with respect to” its own license and the *Modification Order*, it is “hardly irrational to conclude that” Globalstar “will be equally unwilling to obey FCC rules that require openness and honesty with the Commission.”²¹ Accordingly, the Commission should deny Globalstar’s application and investigate and resolve any enforcement issues associated with Globalstar’s admitted violation of its current license.²²

A grant of Globalstar’s application would, perversely, facilitate and condone Globalstar’s continued violation of Sections 301 and 302 of the Communications Act and Section 25.102 of the Commission’s rules. In its application, Globalstar requests permission to launch and operate new satellites “functionally identical” to its current satellites.²³ In

²⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (¶ 23) (1986) (focusing on “misconduct which violates the Communications Act or a Commission rule or policy, and . . . certain specified non-FCC misconduct which demonstrate[s] the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies”); *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252, 3252 (¶ 3) (1990) (“[A] propensity to comply with the law generally is relevant to the Commission’s public interest analysis, and that an applicant’s or licensee’s willingness to violate other laws, and, in particular, to commit felonies, also bears on our confidence that an applicant or licensee will conform to FCC rules and policies.”); *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 515 n.14 (1988) (stating that “[a]lthough not directly applicable to common carriers, the character qualifications standards adopted in the broadcast context can provide guidance in the common carrier area as well”).

²¹ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

²² *Cf. Request for a Limited Waiver of United States Cellular Corporation*, 22 FCC Rcd 360 (2007) (denying a waiver request and referring the matter to the Enforcement Bureau where the company had been on notice of a deadline for several years and then filed its waiver request only two days before the deadline); *see also United States Cellular Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16424 (2007).

²³ Globalstar Modification Application at 4.

other words, Globalstar seeks authorization to continue using Iridium’s spectrum in violation of its space station license.

Section 301 of the Communications Act, however, prohibits such activity. The statute provides that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”²⁴ Similarly, Section 25.102 of the Commission’s rules prohibits the use of spectrum by space stations without the appropriate FCC license.²⁵ Moreover, Section 302 authorizes the Commission to implement regulations governing interference between services and devices.²⁶ Pursuant to this authority, the Commission concluded in the *Reconsideration Order* that Globalstar’s use of the 1618.725-16.21.35 MHz band would cause harmful interference to Iridium and thus rejected Globalstar’s attempt to occupy that spectrum.²⁷ Accordingly, if the Commission grants the instant application, it will enable—and in fact encourage—Globalstar to continue to act contrary to the intent of both the Commission and Congress. Therefore, the application must be denied.

III. GLOBALSTAR’S APPLICATION SHOULD BE DENIED TO THE EXTENT IT SEEKS SPECTRUM ASSIGNED TO IRIDIUM.

In its Modification Application, Globalstar states that its “replacement satellites will operate in the same service links authorized for the first-generation satellites in the band[]

²⁴ 47 U.S.C. § 301.

²⁵ 47 C.F.R. § 25.102.

²⁶ *Id.* § 302.

²⁷ *Reconsideration Order* at 19753 (¶ 44).

1610-1626.5 MHz earth to space.”²⁸ However, the Commission has assigned approximately half of this spectrum for exclusive use by Iridium. Thus, to the extent Globalstar seeks authority to launch and operate satellites in Iridium’s exclusive spectrum, the application must be denied.

A. 1621.35-1626.5 MHz Band

First, the Commission unequivocally should deny Globalstar authority to launch and operate satellites using Iridium’s 5.15 MHz of exclusive spectrum in the 1621.35-1626.5 MHz band. In 1994, the Commission adopted a Big LEO band plan that assigned the 1621.35-1626.5 MHz spectrum to Iridium,²⁹ and this band has remained unchanged and unaffected by recent modifications to the plan. In 1995, the Commission granted Globalstar a license to construct satellites capable of operating in the 1610-1626.5 MHz band and to operate those satellites in the 1610-1621.35 MHz band.³⁰

Today, the Commission no longer includes construction authority in satellite authorizations.³¹ The FCC only grants licenses for launch and operation. Satellite operators are permitted to build satellites capable of operating across any frequencies without an FCC license. Accordingly, there is no conceivable reason to include the 1621.35-1626.5 MHz used exclusively by Iridium in Globalstar’s second-generation authorization to launch and

²⁸ Globalstar Modification Application at 4.

²⁹ See 1994 Big LEO Order.

³⁰ *Loral/Qualcomm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, Order and Authorization, 10 FCC Rcd 2333 (¶¶ 24-25) (1995).

³¹ 47 C.F.R. §25.113 (“Construction permits are not required for U.S.-licensed space stations.”) The Commission eliminated the construction permit requirement in 1996. *Streamlining the Commission’s Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581, 21584-85, 21590-91 ¶¶ 8, 23 (1996).

operate satellites. At a minimum, therefore, the Commission should deny Globalstar's request to include the 1621.35-1626.5 MHz band in its authorization.

B. 1618.725-1621.35 MHz Band

Globalstar should also be denied authority to launch and operate satellites using the 1618.725-1621.35 MHz band, which, although previously shared, has now been explicitly assigned to Iridium. More than a year-and-a-half ago, on November 9, 2007, the FCC adopted the *Reconsideration Order* in IB Docket No. 02-364, concluding that “the public interest would be better served by reassigning spectrum in the L-band.”³² In this order, the Commission reallocated the 1618.725-1621-35 MHz band from Globalstar's CDMA MSS system to Iridium's TDMA MSS system “in order to provide long term certainty and stability in the Big LEO market and to avoid harmful interference.”³³ The spectrum reassignment went into effect on January 14, 2009, and Globalstar's and Iridium's licenses were subsequently modified to reflect the new assignments.³⁴ Earlier this month, the D.C. Circuit affirmed the *Reconsideration Order*.³⁵ As a result of these orders and the D.C. Circuit's ruling, Globalstar unequivocally lacks authority to operate in the 1618.725-1621.35 MHz band.

³² *Reconsideration Order* at 19739-40 (¶ 14).

³³ *Id.* at 19741 (¶ 17).

³⁴ *Modification Order* at (¶ 1). Although Globalstar appealed the *Reconsideration Order* and has also sought reconsideration of the *Modification Order*, it never sought to stay the effectiveness of either order. See 28 U.S.C. § 2349(b) (“The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency”); 47 U.S.C. § 405 (providing that a petition for reconsideration shall not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof”).

³⁵ See *Globalstar*, 2009 WL 1162581.

Globalstar’s pending waiver request does nothing to reinstate its authority to operate within this spectrum or otherwise justify authorization of a satellite system capable of operating indefinitely in the spectrum. As an initial matter, the FCC has not granted Globalstar’s untimely waiver request to use the 1618.725 MHz-1621.35 MHz band.³⁶ In fact, as Iridium demonstrated in its Petition to Deny,³⁷ Globalstar’s request must be dismissed. That is, the petition completely lacks merit. Globalstar’s allegations of harm in its petition are unsubstantiated and inconsistent with the facts,³⁸ and the substance of its request—*i.e.*, the expansion of its services on the reassigned spectrum for indefinite use—is fundamentally at odds with the limited transitional relief contemplated by the Commission in the *Modification Order*.³⁹ Moreover, given its breadth and scope, Globalstar’s request plainly constitutes a not-so-subtle attempt to circumvent the *Reconsideration Order* and *Modification Order* to reverse the Commission’s reassignment of this spectrum to Iridium.⁴⁰ Accordingly, authorizing Globalstar to launch and operate a satellite system in the 1618.725-

³⁶ While the *Reconsideration Order* and *Modification Order* afforded Globalstar an opportunity to seek market specific waivers to prevent transitional harms, Globalstar criticized this process as inadequate and illusory and refrained from making any waiver request before the effective date of the license modifications. Only *after* the license modifications took effect did Globalstar seek relief from the spectrum reassignment effectuated by the *Modification Order*.

³⁷ See *Globalstar Licensee LLC, GUSA Licensee LLC, Modification of Authority to Operate a Mobile Satellite System in the 1.6 GHz Frequency Band*, Call Sign S2115, Call Sign E970381, Petition to Deny of Iridium Satellite LC (filed Jan. 21, 2009) (“Iridium Petition to Deny”).

³⁸ See *id.* at 9-14.

³⁹ See *id.* at 14-16.

⁴⁰ See *id.* at 16-18.

1621-35 MHz band would merely encourage Globalstar to continue to flaunt the Commission's authority and violate its orders.

Even if the Commission ultimately grants Globalstar's waiver request, denial of Globalstar's request to launch and operate a new satellite system using this spectrum is still appropriate. Contrary to Globalstar's request, the *Modification Order* requires that any waiver be temporary in nature and designed only to alleviate operating problems that occur while Globalstar transitions permanently out of the 1618.725-1621.36 MHz band.⁴¹ Thus, such a waiver could not justify inclusion of this spectrum in an operating license with a fifteen year term, especially in light of Globalstar's demonstrated proclivity for violating the Commission's orders.

C. 1610-1618.725 MHz Band

Iridium does not oppose Globalstar's application to the extent it seeks to launch and operate satellites using the 1610-1618.725 MHz spectrum. Globalstar is currently licensed to operate within this spectrum. Where spectrum is allocated and licensed for shared use, other licensees should be permitted to file applications consistent with the Commission's qualification showings and rule requirements.

IV. GLOBALSTAR'S FINANCIAL QUALIFICATION SHOWING IS AT ODDS WITH ITS OWN CLAIMED STANDARD RAISED IN OBJECTIONS TO IRIDIUM'S PENDING TRANSFER APPLICATION.

In an unrelated proceeding involving Iridium's application to deploy a next-generation satellite system, Globalstar argued that Iridium must submit "pro forma financial statements or firm contracts with secondary payload providers" demonstrating that it possesses the "internally generated cash and secondary payloads" sufficient to finance the

⁴¹ *Modification Order* at (¶ 41) (stating that the Commission would entertain waivers for "limited relief" in "certain parts of the world" in the event of "undue costs").

venture.⁴² Yet, Globalstar’s own application for authority to launch and operate its second-generation satellite system is completely devoid of such information. In other words, Globalstar appears to believe that what is good for the goose is *not* good for the gander. Moreover, Globalstar has also failed to demonstrate compliance with the FCC’s \$5 million bond requirement.

In opposing GHL Acquisition’s acquisition of Iridium, Globalstar argued that Iridium must demonstrate the financial capability to undertake the construction of a new constellation before the Commission may approve the transaction. For example, Globalstar stated that the FCC should deny Iridium’s application because it “offers no basis to conclude that Iridium will have the financial means after the transaction closes even to make a minimal down payment on the cost of a second-generation system.”⁴³ Globalstar also claimed that GHQ’s proxy materials were insufficient as they “state only that Iridium anticipates funding ‘a large part’ of the costs of the new constellation ‘from internally generated cash flows and secondary payloads, with the remainder from outside financing.’”⁴⁴

Iridium has fully met the Commission’s requirements, but, ironically, Globalstar now fails to make the financial showing it demands of Iridium in the context of its own application to launch and operate satellites. Indeed, Globalstar has not even attempted to explain how it will finance the construction and launch of its 48 new satellites, which it

⁴² Globalstar Petition to Deny at 6-7 (“Iridium has not made even the most superficial case, through the submission of pro forma financial statements or firm contracts with secondary payload providers, that ‘internally generated cash flows and secondary payloads’ will constitute a ‘large part’ of the funding for its next generation.”).

⁴³ *Id.*; see also *id.* at 4-5 (“[N]either the narrative information accompanying the Application nor GHQ’s filings with the SEC provides any concrete assurance that Iridium has the intent, let alone the financial ability, to undertake the construction of a new constellation.”).

⁴⁴ *Id.* at 6-7.

estimates will require \$1.52 billion. Globalstar has provided no information on its own cash flow or its attempts to obtain third party funding.

To the contrary, Globalstar has provided information that indicates its *inability* to finance the project. That is, Globalstar notes that its cash flow has “dropped significantly” over the last 18 months⁴⁵ and that it deferred the launch of 24 satellites pending an improvement to its cash flow.⁴⁶ These statements—particularly when combined with the dearth of financial information in Globalstar’s application—raise significant questions regarding the viability of Globalstar’s proposal.

Globalstar’s application also fails to demonstrate compliance with the Commission’s \$5 million bond posting requirement. Section 25.165 of the Commission’s rules requires all NGSO licensees to post a \$5 million bond within 30 days of the license grant unless the license is for a replacement satellite.⁴⁷ A “replacement satellite is one that is (1) [a]uthorized to be operated at the same orbit location, in the same frequency bands, and with the same coverage area as one of the licensee’s existing satellites, and (2) [s]cheduled to be launched so that it will be brought into use at approximately the same time as, but no later than, the existing satellite is retired.”⁴⁸ In this case, Globalstar seeks to replace multiple satellites that

⁴⁵ Globalstar Modification Application at n. 5 (“Globalstar’s cash flow has dropped significantly since its S-band service began to deteriorate about 18 months ago because few customers are using the voice service.”).

⁴⁶ *Id.* at 4 (noting that “it costs in the range of \$50 million to launch six satellites” and that “[d]eferring the four launches of the second 24 satellites that have been ordered until cash flow is sufficient makes good business sense”).

⁴⁷ 47 C.F.R. § 25.165 (“For all satellite licenses issued after September 20, 2004, other than . . . replacement satellite licenses as defined in paragraph (e), the licensee is required to post a bond within 30 days of the grant of its license. . . . NGSO licensees are required to post a bond in the amount of \$5 million.”).

⁴⁸ *Id.* § 25.165(e).

have already failed. Indeed, Globalstar’s so-called replacement application actually seeks to expand “the coverage area” of its existing constellation by filling in the gaps in service. Thus, Globalstar’s proposed second-generation satellite system is plainly not a “replacement” system, and it must post a \$5 million bond should the FCC grant the instant application.

V. CONCLUSION

For the foregoing reasons, Iridium respectfully requests that the Commission expeditiously deny Globalstar’s application to modify its MSS license. The Commission should also initiate an enforcement proceeding to determine the full extent of Globalstar’s license violations, require immediate compliance and impose appropriate sanctions.

Respectfully submitted,

/s/ R. Michael Senkowski

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May 18, 2009

AFFIDAVIT OF DONNA BETHEA MURPHY

I, Donna Bethea Murphy, am the Vice President, Regulatory Engineering, of Iridium Satellite LLC ("Iridium"). I hereby declare under penalty of perjury that I am qualified to speak on behalf of Iridium. I have reviewed the preceding Petition to Deny submitted on behalf of Iridium, and the factual statements therein are complete and accurate to the best of my knowledge, information, and belief.



Donna Bethea Murphy
Vice President, Regulatory Engineering
Iridium Satellite LLC

Dated: May 18, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2009, 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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