

**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)	

REPLY OF IRIDIUM SATELLITE LLC

Iridium Satellite LLC, by its attorneys and pursuant to 47 C.F.R. § 25.154, submits this Reply to the Opposition of Globalstar Licensee LLC¹ (“Globalstar”) regarding Globalstar’s application to modify its non-geostationary Big LEO mobile satellite service (“MSS”) license (Call Sign S2115) to authorize the launch and operation of its second-generation satellite constellation.²

I. INTRODUCTION AND SUMMARY

Contrary to Globalstar’s allegations, Iridium’s Petition to Deny is not based on competitive concerns. Rather, Iridium seeks only to protect its own legitimate interest as a licensee in preventing unauthorized and potentially injurious operations in its exclusive

¹ See *Globalstar 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, Opposition of Globalstar Licensee LLC (Filed May 28, 2009) (“Globalstar Opposition”).

² See *Globalstar 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”).

spectrum by a third party. Globalstar concedes in its Opposition that it has been operating on spectrum explicitly reassigned to Iridium by the Federal Communications Commission (“FCC” or “Commission”), and it is eminently reasonable for Iridium to object to Globalstar’s unlawful behavior to protect its service from harmful interference. Likewise, it is reasonable for Iridium to seek denial of Globalstar’s application for a permanent license to continue using Iridium’s exclusive spectrum. Iridium does not oppose Globalstar’s deployment of its second-generation satellite constellation so long as it only operates in spectrum assigned to Globalstar (*i.e.*, 1610-1618.725 MHz).

In its Opposition, Globalstar asserts that its intentional and continuing violations of its license limitations do not call its qualifications into question because of its candor with the Commission. Simply stated, Globalstar is espousing the view that violations of Commission rules are acceptable so long as one tells the agency that it is not going to comply and supplies a business reason for not doing so. Moreover, Globalstar does not even acknowledge, let alone address, the International Bureau’s explicit warning that compliance is required pending action on its waiver and STA requests.

II. GLOBALSTAR’S SELF-DESCRIBED CANDOR DOES NOT EXCUSE ITS CONTINUED UNLAWFUL OPERATION ON IRIDIUM’S EXCLUSIVE SPECTRUM.

Globalstar’s Opposition concedes that it is unlawfully operating on spectrum assigned exclusively to Iridium by the Commission. As a result of the *Reconsideration Order*³ and the *Modification Order*,⁴ only Iridium may operate in the 1618.725-1621.35

³ *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, Second Report and Order, and Notice of Proposed Rulemaking, 22 FCC Rcd 19733 (2007) (“*Reconsideration Order*”).

MHz band. Yet, Globalstar has acknowledged that since its license was modified in 2008, it has used, is currently using, and intends to continue to use Iridium's spectrum⁵ despite an express warning from the International Bureau not to do so.⁶ This willful and on-going violation of its license plainly raises questions about Globalstar's fitness to hold the requested modified license.⁷

Globalstar's "candor" with the Commission does not excuse its license violation. Indeed, to the extent that Globalstar suggests that its fitness to be a license-holder cannot

⁴ *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) (2008) ("*Modification Order*").

⁵ Globalstar Opposition at 4 ("[I]n certain countries outside of the United States, Globalstar and the IGOs have faced significant technical as well as regulatory constraints in attempting to comply with the terms of the *Modification Order*"); *id.* at 5 (stating that necessary "system modifications on a global scale could not be accomplished quickly, and certainly not within the sixty days before the effective date of the *Modification Order*"); *id.* at 5 (stating that "complying fully with the *Modification Order* would not be possible at all in certain countries without substantially harming Globalstar's services"); *id.* at 7 (referring to "Globalstar's limited operations on the spectrum at issue").

⁶ 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").

⁷ *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").

be questioned because it has been forthright with the Commission about its intentional license violations, that argument is absurd. A license violation is no less a license violation because a licensee announces its intention to engage in the violation. The International Bureau expressly warned Globalstar to abide by its license pending action on its waiver request, and Globalstar simply ignored the Bureau's warning. This decision to flaunt both the International Bureau's explicit instructions and the Order itself plainly raises questions about Globalstar's fitness to be a licensee.

Nor do Globalstar's proclamations of illegality or business expense provide a basis for Globalstar to ignore license requirements and agency demands for compliance. The Commission's recognition that Globalstar might face difficulties moving away from the reassigned spectrum and offer to consider a waiver request did not authorize Globalstar to act contrary to its license.⁸ Moreover, the fact that Globalstar's "extensive measures" to comply with the Modification Order have been insufficient to "comply[] fully" with its requirements likewise does not justify Globalstar's actions—the fact remains that Globalstar is violating the order.

III. GLOBALSTAR'S APPLICATION SHOULD BE DENIED TO THE EXTENT IT SEEKS AUTHORIZATION TO OPERATE IN THE 1618.725-1621.35 MHZ BAND.

Globalstar's pending petition for reconsideration of the International Bureau's decision to reassign the 1618.725-1621.35 MHz spectrum to Iridium does not support

⁸ See *AT&T Wireless Servs., Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 9903, 9908 (¶ 13) (2002) ("[T]he mere filing of a waiver request obviously does not excuse a company from noncompliance.").

granting Globalstar a permanent license to continue using this spectrum.⁹ The time to seek permanent authorization to use this reassigned spectrum is only after, if ever, the Commission or a court reverses the *Modification Order*.¹⁰ As such, Globalstar's request for a permanent license authorizing its yet-to-be-launched satellites to operate on Iridium's exclusive spectrum is premature and should be denied.

IV. GLOBALSTAR'S RESPONSE CONFIRMS THAT THE FINANCIAL STANDARD IT PROFFERED FOR IRIDIUM'S TRANSFER OF CONTROL APPLICATION WAS FILED FOR ANTICOMPETITIVE PURPOSES.

It is beyond cavil that having the financial resources to build a second generation system is more appropriately considered as part of the public interest analysis for an application to launch and operate a second generation system than for an application to transfer control of an existing operational satellite system. Nevertheless, Globalstar argued in the GHL transfer proceedings that Iridium must demonstrate the financial capability to undertake the construction of a new constellation before the Commission may approve the transaction.¹¹ At the same time, in its application to construct and

⁹ Iridium hereby accepts Globalstar's concession that it "no longer seeks authority from the Commission to operate its replacement satellites in the [1621.35-1626.5 MHz] spectrum." Globalstar Opposition at 9.

¹⁰ To the extent the reconsideration is still pending following launch of the next generation satellites, Globalstar also has the option of filing a request for special temporary authority, thus ensuring that denial of a permanent license now will cause no harm to Globalstar even in the unlikely event that Globalstar prevails on review.

¹¹ 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 at 6-7 (filed Dec. 29, 2008) ("Globalstar Petition to Deny") ("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."); 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

launch a new satellite system, Globalstar itself has made no attempt to explain how it will finance that new system, which will require upwards of \$1.52 billion. Nor has Globalstar provided any information on its cash flow or attempts to obtain third-party funding.

Globalstar's new position with respect to financial qualifications in its own license modification proceeding exposes its opposition to Iridium's transfer proceeding for what it is really is—a transparent attempt to undermine Iridium's transfer application for purely competitive reasons. Indeed, Globalstar's unwillingness to abide by its own proffered financial standards in this proceeding requires withdrawal of Globalstar's attempt to impose them on Iridium in the GHF transfer proceeding. Absent withdrawal, the Commission should find that Globalstar made an anticompetitive strike filing in the Iridium-GHF proceeding.

V. CONCLUSION

For the foregoing reasons and the reasons stated in its Petition to Deny, Iridium respectfully requests that the Commission expeditiously deny Globalstar's application to modify its MSS license. The Commission should also initiate an enforcement proceeding

constellation.”). Globalstar states that Iridium claimed it had filed an application for its own next generation system. Opposition at 13. This statement in Iridium's Petition to Deny was merely a wording error. As the rest of that section clearly indicates, Globalstar argued that Iridium needed to make a financial showing regarding its ability to deploy a next-generation satellite system in its application requesting authorization to transfer control of its licenses to GHF Acquisition Corp. *Globalstar 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, Petition to Deny of Iridium Satellite LLC (filed May 18, 2009) at 13 (“In opposing GHF Acquisition's acquisition of Iridium, Globalstar argued that Iridium must demonstrate financial capability to undertake the construction of a new constellation before the Commission may approve the transaction.”).

to determine the full extent of Globalstar's license violations, require immediate compliance, and impose appropriate sanctions.

Respectfully submitted,

/s/ R. Michael Senkowski

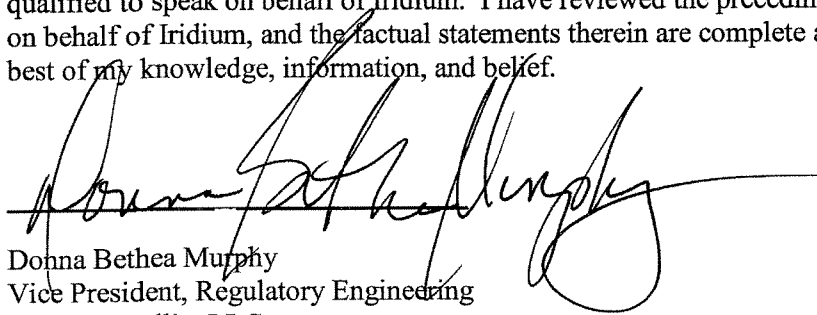
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June 4, 2009

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 Reply submitted on behalf of Iridium, and the factual statements therein are complete and accurate to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Donna Bethea Murphy", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Donna Bethea Murphy
Vice President, Regulatory Engineering
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Dated: June 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 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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