

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
LightSquared Subsidiary LLC) IB Docket No. 12-296
)
Request for Relief From)
Build-Out Conditions)

ORDER

Adopted: December 20, 2012

Released: December 20, 2012

By the Chiefs, International Bureau, Office of Engineering and Technology, and Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we find it is in the public interest to toll the specific geographic measures and dates of the terrestrial-build-out conditions placed on LightSquared Subsidiary LLC (“LightSquared”) when the Federal Communications Commission consented to Harbinger Capital Partners (Harbinger) acquiring control of LightSquared’s Mobile Satellite Service (MSS) L-Band licenses and related Ancillary Terrestrial Component (ATC) authorization in the 2010 *Harbinger Transfer Order*.¹ We find LightSquared is unable to meet the specific build-out requirements associated with its proposed terrestrial network because its ability to deploy is constrained by unresolved interference concerns with respect to certain Global Positioning Service (GPS) users operating in adjacent bands. Further, LightSquared has proposed modifications of its current authorizations² and filed petitions for rulemaking with the Commission in September and November 2012³ in an attempt to resolve GPS interference concerns. Given these developments, we find that there has been a substantial change in circumstances since the Commission adopted the build-out requirements. As a result, we find that it is in the public interest to toll the specific geographic and timing conditions included in the *Harbinger Transfer Order* until further determinations are made with respect to LightSquared’s ATC authority.

II. BACKGROUND

2. In November 2004, the International Bureau first granted LightSquared’s predecessor-in-interest the authority to operate ATC facilities providing voice and data communication for users

¹ *SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee*, Memorandum Opinion and Order and Declaratory Ruling, IB Docket No. 08-184, 25 FCC Rcd 3059 (Int’l. Bur, OET and WTB, 2010) (“*Harbinger Transfer Order*”). Harbinger changed SkyTerra’s name to LightSquared after the acquisition.

² See Appendix; see also *Federal Communications Commission Invites Comment on LightSquared Request to Modify its ATC Authorization*, DA 12-1863, IB Docket No. 12-340 (rel. Nov. 16, 2012) (“*LightSquared ATC Mod PN*”).

³ See LightSquared Petition for Rulemaking, RM-11683 (filed September 28, 2012) (“*L-Band Rulemaking Petition*”), Public Notice, *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Report No. 2968 (Nov. 16, 2012); LightSquared Petition for Rulemaking, RM-11681 (filed Nov. 2, 2012) (“*1670-1680 MHz Rulemaking Petition*”), Public Notice, *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Report No. 2967 (Nov. 9, 2012).

equipped with dual-mode MSS/ATC devices.⁴ In the *Harbinger Transfer Order*, we adopted a set of conditions, including requiring LightSquared to meet stringent build-out and coverage requirements for a terrestrial network to provide mobile broadband services to the public.⁵ One condition required LightSquared to use MSS L-Band spectrum to provide terrestrial coverage to at least 100 million people in the United States by December 31, 2012.⁶ Another condition required LightSquared to provide terrestrial coverage to at least 145 million people in the United States by December 31, 2013, and to at least 260 million people in the United States by December 31, 2015.⁷ Concurrently, the Bureau modified LightSquared's ATC authority to afford additional flexibility for the technical design of LightSquared's ATC network, with a goal of enabling LightSquared to operate with greater capacity and improved spectrum efficiency.⁸

3. In January 2011, the International Bureau issued an order conditionally waiving the "integrated service" ATC rule for LightSquared's proposed network.⁹ As part of that Order, the Commission discussed potential interference to GPS and established an Interference Resolution Process to address such concerns. On February 15, 2012, the International Bureau issued a Public Notice in response to a letter submitted by NTIA concerning the results of testing of the potential interference of LightSquared's proposed network to GPS.¹⁰ The *February 2012 Public Notice* proposed to vacate the *Conditional Waiver Order* "due to LightSquared's inability to address satisfactorily the legitimate interference concerns surrounding its planned terrestrial operations, and the appearance that the interference resolution process has no realistic prospect of being successfully completed by LightSquared in a reasonable period of time."¹¹ The *February 2012 Public Notice* also proposed to modify "LightSquared's satellite license pursuant to Section 316 of the Communications Act to suspend indefinitely LightSquared's underlying ATC authorization, first granted in 2004, to an extent consistent with the *NTIA Letter*."¹²

4. On September 24, 2012, LightSquared requested "confirmation" that the build-out conditions no longer apply in light of events that have transpired since the release of the *Harbinger Transfer Order*.¹³ LightSquared argues that its ability to provide terrestrial network coverage using MSS

⁴ Mobile Satellite Ventures Subsidiary LLC Application for Minor Modification of Space Station License for AMSC-1, IBFS File Nos. SAT-MOD-20031118-00333, SAT-MOD-20031118-00332, SES-MOD-20031118-01879, *Order and Authorization*, 19 FCC Rcd 22144 (Int'l Bur. 2004). See *Harbinger Transfer Order*, 25 FCC Rcd 3059, nn. 3, 6 for a description of the license history of AMSC-1.

⁵ *Harbinger Transfer Order*, 25 FCC Rcd at 3088-89, ¶ 72 and Attachment 2.

⁶ *Id.* at Attachment 2, ¶ 5.

⁷ *Id.*

⁸ See SkyTerra Subsidiary LLC Application for Modification Authority for an Ancillary Terrestrial Component, IBFS File No. SAT-MOD-20090429-00047, Call Sign: AMSC-1, File No. SAT-MOD-20090429-00046, Call Sign: S2358, IBFS File No. SES-MOD-20090429-00536, Call Sign: E980179, *Order and Authorization*, 25 FCC Rcd 3043 (Int'l Bur., 2010) ("*2010 SkyTerra ATC Modification Order*").

⁹ LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component, *Order and Authorization*, 26 FCC Rcd 566 (Int'l Bur. 2011) ("*Conditional Waiver Order*").

¹⁰ *International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver*, DA 12-214, IB Docket No. 11-109 (Feb. 15, 2012) ("*February 2012 Public Notice*"); Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Dept. of Commerce, to Julius Genachowski, Chairman, FCC, available at <http://apps.fcc.gov/ecfs/document/view?id=7021860324> (dated Feb. 14, 2012) ("*NTIA Letter*").

¹¹ *February 2012 Public Notice* at 2-4. See also *Conditional Waiver Order*.

¹² *February 2012 Public Notice* at 4 (footnote omitted).

¹³ *Ex Parte* Communication and Request for Action, Letter from Jeffrey J. Carlisle, Executive Vice President, Regulatory Affairs and Public Policy, LightSquared, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-296 (filed Sept. 24, 2012) ("*Build-out Suspension Request*").

L-Band frequencies has been constrained by the need to resolve interference concerns relating to the operations of GPS satellite services in adjacent frequency bands. In particular, LightSquared states that its ability to provide terrestrial coverage using ATC has been rendered uncertain by the Commission's proposal in February 2012 to suspend indefinitely or revoke all of the ATC authorizations on which LightSquared's terrestrial network would rely.¹⁴ LightSquared asks that we conclude that the build-out conditions in the *Harbinger Transfer Order* no longer apply, and that LightSquared is relieved of those conditions until the status of LightSquared's ATC authorizations is clarified.¹⁵

5. On September 28, 2012, LightSquared filed an application seeking to modify the ATC authorization associated with its MSS L-Band licenses in order to allow LightSquared to proceed with deployment of a portion of its proposed terrestrial broadband network and to address interference concerns raised by the GPS industry.¹⁶ The application was placed on Public Notice on November 16, 2012.¹⁷ LightSquared argues that the proposed plan will resolve the GPS compatibility issues and will obviate the need to continue with the *February 2012 Public Notice* proposals.¹⁸ LightSquared also filed related petitions for rulemaking with the Commission in September and November 2012.¹⁹

6. *Comments.* On October 10, 2012, we sought comment on the *Build-out Suspension Request*.²⁰ The comment period closed on November 28, 2012. Four parties filed comments in response to the Application.²¹ Three parties filed reply comments.²²

7. The Competitive Carriers Association (CCA) argues that the Commission should grant LightSquared's requested relief because LightSquared "should be afforded a reasonable opportunity to deploy its service" and realize the "significant public interest benefits of the network."²³ CCA further states that granting the proposed relief would be consistent with Commission precedent in which the Commission provided relief to licensees in response to regulatory uncertainty.²⁴ CCA also points to

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ Modification Application of LightSquared Subsidiary LLC, IBFS File Nos. SAT-MOD-20120928-00160, -00161, SES-MOD-20121001-00872 (filed Sept. 28, 2012 and Oct. 1, 2012 with identical narrative text) ("*ATC Modification Application*").

¹⁷ *LightSquared ATC Mod PN*. The comment cycle closes on January 11, 2013. *Id.* at 1.

¹⁸ LightSquared Inc., LightSquared Subsidiary LLC, and One Dot Six Corp., Reply Comments, IB Docket No. 12-296, at 3 (filed Nov. 19, 2012) ("*LightSquared Reply*").

¹⁹ See *L-Band Rulemaking Petition* and *1670-1680 MHz Rulemaking Petition*.

²⁰ *Federal Communications Commission Invites Comment on LightSquared Request for Relief from Build-Out Conditions*, DA 12-1604, IB Docket No. 12-296 (Oct. 10, 2012).

²¹ Alan Lezak, Comments, IB Docket No. 12-296 (filed Oct. 15, 2012); the Competitive Carriers Association, Comments, IB Docket No. 12-296 (filed Nov. 9, 2012) ("*CCA Comments*"); the Coalition to Save Our GPS, Comments, IB Docket No. 12-296 (filed Nov. 9, 2012) ("*GPS Coalition Comments*"); the National Society of Professional Surveyors, Comments, IB Docket No. 12-296 (filed Nov. 19, 2012) ("*NSPS Comments*").

²² The National Society of Professional Surveyors, Reply Comments, IB Docket No. 12-296 (filed Nov. 28, 2012) ("*NSPS Reply Comments*"); LightSquared Reply Inc.; Garmin International, Inc., Reply Comments, IB Docket No. 12-296 (filed Nov. 19, 2012) ("*Garmin Reply*"). See also Alan Lezak Comments at 1 arguing that LightSquared's request should be denied.

²³ CCA Comments at 1.

²⁴ CCA Comments at 5-6 citing *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Order on Reconsideration, WT Docket No. 07-293

precedent in which the Commission provided relief in the wireless service and satellite service contexts.²⁵

8. The Coalition to Save Our GPS (GPS Coalition) and the National Society of Professional Surveyors (NSPS) argue that the public interest would be served if the Commission resolved the issues raised in the *February 2012 Public Notice* regarding LightSquared's continued ability to provide terrestrial services using L-Band MSS spectrum.²⁶ NSPS argues that the Commission should deny LightSquared's request until the FCC finalizes the proposals developed in the *February 2012 Public Notice*.²⁷ Garmin concurs in its reply comments, stating that relaxing the build-out conditions without first resolving the issues presented in the *February 2012 Public Notice* will only increase uncertainty for both LightSquared and the GPS community.²⁸ The GPS Coalition also states that the conditions adopted in the *Harbinger Transfer Order* "were not specifically tied to use of LightSquared's L-Band MSS spectrum" and requests that LightSquared should be asked to provide a "detailed accounting of its available spectrum resources" to support the Commission's consideration of any modification of these conditions.²⁹

9. In its reply comments, LightSquared restates its argument that the *February 2012 Public Notice* has made it a practical impossibility to meet the build-out conditions set in the *Harbinger Transfer Order*.³⁰ It also states that the Commission no longer needs to address the *February 2012 Public Notice* because the proposal LightSquared made in its *ATC Modification Application, L-Band Rulemaking Petition* and *1670-1680 MHz Rulemaking Petition* "proposed a comprehensive and constructive solution that would resolve the GPS compatibility questions underlying that public notice while still allowing LightSquared to implement its network."³¹ LightSquared argues that a Commission grant of its request would facilitate it moving forward with its proposed solution and allow LightSquared to implement its network.³² In response to the GPS Coalition's argument that LightSquared could deploy its network in non-L-Band spectrum and still adhere to the build-out condition, LightSquared argues that the *Harbinger Transfer Order* build-out conditions are "based on the premise that LightSquared has continued access to L-Band spectrum sufficient to implement a 4G network ... [and] any non-L-Band spectrum available to LightSquared would be used in addition to, and not as a substitute for, that L-Band spectrum."³³

10. In response to LightSquared's reply comments, NSPS argues that LightSquared's build-out conditions are still applicable until the Commission finalizes the proposals from its *February 2012*

and IB Docket No. 95-91, FCC 12-130, ¶ 121 (rel. Oct. 17, 2012) (extending deadlines in the Wireless Communications Service band to allow licensees to respond to revisions made to technical standards in that band).

²⁵ *Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, 25 FCC Rcd 10097, 10100, 10102, ¶¶ 5, 12 (2010) (granted licensees a five year extension of their construction period because they did not have access to affordable equipment manufacturers); *Teledesic Corporation Application for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the Domestic and International Fixed Satellite Service*, Order and Authorization, 12 FCC Rcd 3154, 3163-64, ¶¶ 20-21 (1997) (the Commission did not impose system implementation milestones because Teledesic would not be able to proceed beyond the initial phases of construction until the inter-satellite link issues were resolved).

²⁶ GPS Coalition Comments at 2, 3-4; NSPS Comments at 2; NSPS Reply at 1.

²⁷ NSPS Comments at 1-2; NSPS Reply at 3.

²⁸ Garmin Reply at 3.

²⁹ GPS Coalition Comments at 2, 4-5.

³⁰ LightSquared Reply at 2.

³¹ *Id.* at 3-4.

³² *Id.* at 5.

³³ *Id.* at 4.

Public Notice.³⁴ NSPS does not believe the Commission should remove the build-out conditions just because LightSquared presented a new proposal in its *ATC Modification Application*.³⁵ NSPS argues that, if the Commission does not address the proposals in the *February 2012 Public Notice* first, “NSPS members and other high precision GPS users [will] continue to be harmed by ongoing uncertainty.”³⁶ Garmin also argues that “regardless of the merits of LightSquared’s new proposal, the extensive evidence produced in the reports from several federal departments and agencies...demonstrated serious concerns about whether several variations of LightSquared’s proposed ATC service can coexist with GPS.”³⁷

III. DISCUSSION

11. As an initial matter, we note that the build-out deadlines at issue here are conditions placed on the grant of a transfer-of-control application involving L-Band MSS and ATC authorizations. Therefore, we consider LightSquared’s request to relax those conditions in the context of the public interest legal determination in the *Harbinger Transfer Order*.³⁸

12. The record before us shows that circumstances have changed significantly since the release of the *Harbinger Transfer Order*. Unresolved interference concerns with respect to GPS constrain LightSquared’s ability to deploy the terrestrial facilities necessary to meet the build-out requirements adopted in the *Harbinger Transfer Order*, the earliest of which requires LightSquared to provide terrestrial coverage to at least 100 million people in the United States by December 31, 2012.³⁹ LightSquared’s *ATC Modification Application*, seeking to modify its ATC authorization associated with its MSS L-Band licenses, and the related rulemaking petitions, currently are pending before the Commission. According to LightSquared, this application and related rulemaking petitions are intended to address interference concerns raised by the GPS industry and others and to allow LightSquared to proceed with deployment of its proposed terrestrial broadband network.

13. Interference concerns involving LightSquared’s L-Band operations and current GPS use will not be resolved in a timeframe that would permit LightSquared to meet its construction requirements. LightSquared’s recent proposal to resolve the GPS industry’s concerns is under consideration but is not ripe for action, pending completion of comment cycles and any necessary further proceedings. Without prejudging any of the matters raised in pending proceedings, we find that it is in the public interest to provide for an orderly deliberative process in which LightSquared will have the opportunity to explore solutions to GPS interference concerns. Thus, given the changes in circumstances, including the ongoing proceedings concerning LightSquared’s service, we find it is in the public interest to toll the dates and specific coverage metrics associated with the *Harbinger Transfer Order* build-out requirements. The action we take today is without prejudice to the pending modification requests and petitions for rulemaking filed by LightSquared,⁴⁰ and do not prejudice any action the Commission may take in response to the record of the *February 2012 Public Notice*. Such actions may include, as appropriate, the adoption of build-out and coverage requirements and associated deadlines.

14. Some commenters argue that not addressing issues contained in the *February 2012*

³⁴ NSPS Reply at 1-2.

³⁵ *Id.* at 2-3.

³⁶ *Id.* at 2.

³⁷ Garmin Reply at 2.

³⁸ *Harbinger Transfer Order*, 25 FCC Rcd at 3089, ¶ 73. We further note that these build-out deadlines are not milestones of the kind imposed on satellite licenses, and, therefore, the legal standard applicable to requests to extend such milestones does not apply here.

³⁹ *Harbinger Transfer Order*, Attachment 2, ¶ 5.

⁴⁰ See *L-Band Rulemaking Petition* and *1670-1680 MHz Rulemaking Petition*.

Public Notice issue before addressing the build-out limits would cause continued uncertainty.⁴¹ We find that addressing the build-out requirements will maintain the *status quo* while the Commission considers the *February 2012 Public Notice* issues in light of LightSquared's *ATC Modification Application*. In this case, we find that it would further the public interest to maintain the *status quo* while considering the proposals in the record developed pursuant to the *February 2012 Public Notice*, as well as the *ATC Modification Application*. In addition, we conclude that the public interest in this case is better served by maintaining the *status quo* by tolling the build-out requirements than by acting first on the *February 2012 Public Notice*, as proposed by commenters, without considering the proposals in LightSquared's *ATC Modification Application* and petitions for rulemaking.⁴² Moreover, because pursuant to the *Conditional Waiver Order* LightSquared currently is prohibited from operating terrestrial facilities, we find that there is no substantial prejudice to GPS operations from this approach.

15. We find that the build-out conditions specified in the *Harbinger Transfer Order* were prefaced on the assumption that LightSquared would be able to operate using MSS L-Band spectrum.⁴³ Thus, although LightSquared contemplated using other spectrum as part of its terrestrial network, we do not find it necessary to follow the GPS Coalition's suggestion that LightSquared be required to provide a "detailed accounting" of this other spectrum, prior to any tolling of the build-out requirements.⁴⁴

16. At this time, we do not find it necessary to respond to comments stating that LightSquared cannot provide service without causing harmful interference. LightSquared's *ATC Modification Application*, which LightSquared states will address the GPS industry's interference concerns, is currently pending before the Commission.⁴⁵ The Commission has not yet considered the proposals contained in the *ATC Modification Application*. We believe that it is in the public interest to maintain the *status quo* while the Commission considers LightSquared's most recent proposal before rendering a decision about whether LightSquared is able to provide service without causing harmful interference to the GPS industry.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Section 303(r) of the Communications Act, 47 U.S.C. §303(r), that the above-captioned request for relief is GRANTED, and the build-out requirements specified in the *Harbinger Transfer Order* at Attachment 2, ¶ 5, ARE TOLLED, pending further action in other proceedings.

⁴¹ See *supra* ¶¶ 8, 10.

⁴² See *L-Band Rulemaking Petition* and *1670-1680 MHz Rulemaking Petition*.

⁴³ *Harbinger Transfer Order*, 25 FCC Rcd at 3088, ¶ 71.

⁴⁴ See GPS Coalition Comments at 2, 4-5.

⁴⁵ See *ATC Modification Application*; LightSquared Reply at 3.

18. This Order is issued under Sections 0.241, 0.261, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.241, 0.261, and 0.331, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.114, may be filed within 30 days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

Julius Knapp
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APPENDIX

LightSquared's request is submitted as part of the following applications (collectively, the "Applications"):

<u>File Number</u>	<u>Call Sign/Lease ID</u>
SAT-MOD-20120927-00158	AMSC-1
SAT-MOD-20120927-00159	S2358
SES-MOD-20121001-00888	E930367
SES-MOD-20121001-00889	E980179
SES-MOD-20121001-00890	E100051
SES-MOD-20121001-00891	E930124
SES-MOD-20121001-00892	E080031
SES-MOD-20121001-00893	E080030
ITC-MOD-20120927-00246	
0005424201	L000007295
0005424221	WQMN726
0005424280	WQHL596
0166-EX-ML-2012	WF2XSA