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

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MAY 23 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Modification of Licenses held by )  
 )  
**Iridium Constellation, LLC and** )  
**Iridium, US LP** )  
 )  
For a Mobile Satellite System in the 1.6 )  
GHz Frequency Band )

File Nos.

SAT-MS-20030515-00089

SES-MS-20030515-00666

Received

MAY 30 2003

Policy Branch  
International Bureau

**PROTEST OF GLOBALSTAR, L.P.  
AND GLOBALSTAR USA, L.L.C.**

Globalstar, L.P., the global manager of the Globalstar™ Big LEO Mobile-Satellite Service (“MSS”) system and Globalstar USA, L.L.C., the licensee of a Globalstar gateway in the U.S. and the U.S. service provider for the Globalstar system (collectively, “Globalstar”), hereby respond jointly to the Commission’s invitation to protest the modification of Iridium Constellation, LLC’s (“Iridium”) license as proposed in the Commission’s Order to Show Cause.<sup>1</sup>

Globalstar is prepared to accede - reluctantly - to this one-month extension of Iridium’s authority based on the specific terms and conditions outlined in the Order to Show Cause. Globalstar continues, however, to question the statutory basis for the Commission’s intervention, and reserves the right to challenge any grant on this

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<sup>1</sup> Iridium Constellation, LLC and Iridium US, L.P., Order to Show Cause, DA 03-1711 (Int’l Bur. May 16, 2003).

basis, as well as all others set forth in Globalstar's prior pleadings, or any grant that changes the terms and conditions set forth in the Order to Show Cause.

**I. THERE ARE SUBSTANTIAL AND MATERIAL QUESTIONS OF FACT WITH RESPECT TO IRIDIUM'S JUSTIFICATION FOR THE CONTEMPLATED RELIEF.**

Globalstar's technical and legal arguments in opposition to further extensions of Iridium's temporary authority to operate in the CDMA portion of Big LEO MSS L-band spectrum below 1621.35 MHz are a matter of record before the Commission. To reiterate briefly: the system congestion experienced by Iridium in the Middle East Region, and allegedly complained of,<sup>2</sup> is a consequence of unprecedented, temporary demand in a small geographic area coupled with a satellite system design that is unable to cope with such demand; the "congestion" experienced by Iridium may actually have been caused by radio link failures attributable to severe interference into the L-band from high-power military radars and other interferers in the Region; augmenting Iridium's spectrum had only a marginal impact on Iridium's quality of service because of other limitations imposed by the system design; and the Commission's authority to grant extraterritorial special temporary authority ("STA") is dubious. Globalstar observed that it, too, was experiencing unusually high radio link failure in the Region and that Iridium's operating in

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<sup>2</sup> Iridium never submitted for the record any copies of written correspondence or written complaints from its U.S. military or government customers. Globalstar's lack of access to any customer correspondence whatsoever significantly hampers Globalstar's ability to analyze the nature of Iridium's alleged service problem.

Globalstar's spectrum assignment would only exacerbate Globalstar's reduced quality of service. Finally, Globalstar requested that the Commission not insert itself in the competitive global MSS marketplace by offering Iridium relief from service problems of its own creation. By relieving Iridium of the consequences of its own system inefficiencies, the Commission would be interjecting itself into MSS users' purchasing decisions and, thereby, tacitly endorsing Iridium's competitive business objectives in this market segment.

On May 13, 2003, more than a month after Iridium first requested STA and on the very day that Iridium's STA expired, the General Counsel of the Defense Information Systems Agency ("DISA") submitted a letter supporting extension of Iridium's authority to use Globalstar's spectrum.<sup>3</sup> Unfortunately, DISA did not consult Globalstar before sending the letter, so Globalstar was not able to analyze the predicate for DISA's assertion in its letter that the addition of spectrum was the proximate cause for the observed improvement in service quality. Globalstar doubts that that was the case, and Iridium certainly has not demonstrated it to be true. Globalstar reiterates that the Commission has a duty to demand that Iridium demonstrate unequivocally that additional spectrum is absolutely essential to support reasonably good service for DISA.

Globalstar's filings summarized above have clearly shown that there are substantial and material questions of fact with respect to (a) the existence and

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<sup>3</sup> Iridium Order to Show Cause, at ¶ 3.

cause of any alleged congestion experienced by Iridium in the Middle East Region, (b) the affect of the Commission's augmentation of Iridium's spectrum on Iridium's quality of service, and (c) the interference that such a temporary grant creates with respect to Globalstar's operations both within and outside the Middle East Region. The Commission must resolve these material questions of fact prior to extending Iridium's authority to operate under a modified license.

**II. IRIDIUM MUST BE REQUIRED TO OPERATE ON A NON-HARMFUL INTERFERENCE BASIS WITH THE GLOBALSTAR SYSTEM IN THE MIDDLE EAST REGION.**

Globalstar, which also now has many military and non-military customers in the Middle East Region, does not wish to compromise "essential communications services to support vital U.S. government operations in this Region."<sup>4</sup> However, Globalstar must ensure that its own essential services in the Region are not compromised. Should the Commission choose to extend Iridium's temporary authority as proposed, the Commission must require Iridium to operate on a non-harmful interference basis with Globalstar's system not only outside the Middle East Region, but also within the Middle East Region. Such a condition will prevent Iridium's operation from degrading Globalstar's service to its critical U.S. and Coalition military and humanitarian assistance customers.

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<sup>4</sup> Iridium Order to Show Cause, at ¶ 4.

### III. THE COMMUNICATIONS ACT DOES NOT AUTHORIZE THE COMMISSION TO MODIFY IRIDIUM'S LICENSE IN THE MANNER PROPOSED.

In the Order to Show Cause, the International Bureau proposes to authorize Iridium to operate both its satellites and handsets for communications “within the Middle East Region” on frequencies from 1618.85 MHz to 1626.5 MHz pursuant to Section 316 of the Communications Act. The Commission has previously found that issuance of an authorization for operations on foreign territory is forbidden by the Communications Act.

Nothing in the jurisdiction provisions of the Communications Act explicitly gives the Commission authority to issue licenses for radio operations on foreign territory and on foreign ships, regardless of whether the operators of those radio stations voluntarily request a license from the Commission. The Supreme Court has recognized that there is a presumption against extraterritorial application of statutes in the canons of legislative interpretation. . . .<sup>5</sup>

Thus, as the Commission recognizes, the Communications Act generally does not permit such a proposed authorization for Iridium operations in non-U.S. territories.

Even if the Commission has authority over transmissions within or near Iraq by virtue of the current U.S. operations in that country, the proposed authorization would be unlawful. The Order to Show Cause does not purport to restrict Iridium's operations in the 1618.85-1621.35 MHz band to the borders of Iraq or nearby. (In

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<sup>5</sup> Maritime Telecommunications Network, Inc., 16 FCC Rcd 11615, ¶ 18 (Int'l Bur. 2001) (footnotes omitted) (citing EEOC v. Arabian American Oil Co., 499 U.S. 244, 248 (1991) and Foley Brothers v. Filardo, 336 U.S. 281, 285 (1949)).

fact, Iridium belatedly admitted that its system was not capable of implementing such a limitation.<sup>6</sup>) Rather, it purports to authorize Iridium to operate in those frequencies on equal status with Globalstar within “the Middle East Region” (which is not defined in the Order to Show Cause) and to use those frequencies outside the Middle East Region on a non-harmful interference basis as to the Globalstar system. Thus, the Commission is proposing to authorize Iridium for global use of the 1618.85-1621.35 MHz band.

As the Commission has recognized, MSS systems, such as Globalstar and Iridium, must obtain specific authorization (“landing rights”) from each country in which they desire to provide service for transmissions within and from such countries.<sup>7</sup> Iridium has made no showing that the proposed frequency plan is consistent with its authorizations in all other countries where the operations of Globalstar and Iridium would be affected. The Order to Show Cause does not

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<sup>6</sup> On April 14, 2003, counsel for Iridium submitted a letter of clarification stating: “the Iridium system is not currently able to assign frequencies based on geographic location.” Letter from Jennifer D. Hindin to Thomas S. Tycz (filed April 14, 2003). This was certainly news to Globalstar, and it must have been news to the Commission as well. In contrast, Globalstar can assign frequencies based on geographic location and is fully capable of augmenting capacity on short notice in areas of temporary shortage. See also Letter from Peter D. Shields to Thomas S. Tycz, at 3 (filed May 8, 2003).

<sup>7</sup> 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, 11 FCC Rcd 12861, ¶ 53 (1996) (“The Commission’s Rules do not . . . purport to have any extraterritorial application. . . . any decision on the issue of what, if any, method of inter-system sharing best serves its national interests rests with the particular [foreign] administration”).

explain how the Commission can extend its regulations into other administrations globally and authorize the terms and conditions under which Iridium can operate in foreign countries, even on a secondary basis.

#### IV. CONCLUSION


For the reasons set forth above, and assuming that the Commission determines that it has the authority to take its proposed action, Globalstar urges the Commission to modify any interim grant of authority to Iridium as discussed above and not to entertain any further requests for temporary authority to use spectrum below 1621.35 MHz in the Middle East Region or elsewhere.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 23rd day of May, 2003, caused to be served true and correct copies of the foregoing "Protest of Globalstar, L.P. and Globalstar USA, L.L.C." upon the following persons via hand delivery (marked with an \*) or first-class, United States mail, postage prepaid:

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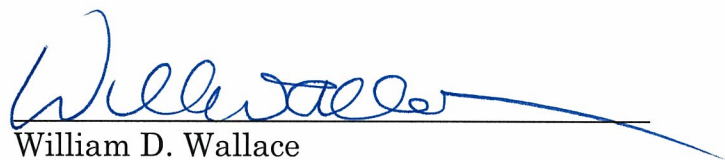
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