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

In the Matter of)	
)	
Modification of Licenses held by)	File Nos.
)	
Iridium Constellation, LLC and)	SAT-MS-20030515-00089
Iridium, US LP)	SES-MS-20030515-00666
)	
For a Mobile Satellite System in the)	
1.6 GHz Frequency Band)	

Received
AUG 05 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 the licenses held by Iridium Constellation, LLC and Iridium, US LP (collectively, “Iridium”) as proposed in the Commission’s Order to Show Cause.¹

Globalstar objects to this four-month extension of Iridium’s temporary authority. Iridium still has not demonstrated an actual need for additional

¹ Iridium Constellation, LLC and Iridium, US L.P., Order to Show Cause, DA 03-2298 (Int’l Bur. July 17, 2003).

spectrum in the Middle East or elsewhere, and Globalstar continues to question the statutory basis for the Commission's intervention.²

In addition to Globalstar's continuing objections on those two points, Globalstar objects to the Commission's unsupported pre-judgment of Iridium's need for additional spectrum in the Middle East until November 14, 2003, based on the Commission's view of U.S. operations in that region. Neither Iridium nor the Defense Information Systems Agency ("DISA"), on whose statements the Commission relies for modifying Iridium's license, have provided evidence of such need to the public record, and the Commission has no demonstrated expertise to justify such a ruling.

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 an increasingly large record before the Commission.

First, Iridium has never documented its alleged capacity constraint and alleged need for additional spectrum in the Middle East Region. Indeed, Globalstar has demonstrated that factors other than increased call traffic may be causing the

² Globalstar reserves the right to challenge any grant on the grounds stated herein, 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.

call congestion of which Iridium complains.³ Moreover, it is not clear that awarding Iridium additional spectrum has improved its system performance. The information submitted by Iridium indicates that the maximum number of calls per satellite did not increase after Iridium started using the additional spectrum in Channels 8 and 9 as a result of prior STAs.⁴

Nor has Iridium submitted for the record any copies of written correspondence or written complaints from its U.S. military or government customers about its quality of service. Iridium did, however, submit a Marine Corps Systems Command Liaison Team field (Central Iraq) report dated April 2003, as Exhibit D to its Comments in IB Docket 02-364. That report states that Iridium phones “provided reliable communications at all times.” One cannot square Iridium’s claim that call congestion has degraded Iridium service in the Middle East when actual users in this report rated Iridium phones as “highly reliable.” It is more likely, as Globalstar has previously explained, that any call congestion allegedly experienced by Iridium 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.⁵

³ See Letter from William D. Wallace to Thomas S. Tycz, File Nos. SAT-MS-20030515-00089 and SES-MS-20030515-00666, at 2 and Attachment (filed June 11, 2003).

⁴ Id., Attachment, Pt. II.

⁵ The Commission has simply accepted at face value the undocumented statements of “need” submitted by Iridium and DISA. Order to Show Cause, ¶¶ 8-9. (continued...)

Second, 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 interferors in the region. Augmenting Iridium’s spectrum assignment has had only a marginal impact on Iridium’s quality of service because of other limitations imposed by the system design, and Iridium has not demonstrated that there was an actual improvement in service. Globalstar has observed that it, too, was experiencing unusually high radio link failure in the Middle East Region. In combination with these other sources of interference, Iridium’s operating in Globalstar’s spectrum assignment will only exacerbate Globalstar’s reduced quality of service.⁶

Finally, Globalstar has 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.

(...continued)

Given the substantial factual record prepared by Globalstar on this issue, the Commission’s action eviscerates the due process requirements set forth in 47 U.S.C. § 316.

⁶ See Letter from William D. Wallace to Thomas S. Tycz, supra n.3, Attachment, Pt. I (describing interference into Globalstar).

As in prior Iridium STA requests, the Commission is relying on a letter from the DISA supporting extension of Iridium's authority to use additional spectrum. (Order to Show Cause, ¶ 8.) DISA again did not consult Globalstar before sending the letter, so Globalstar was not able to analyze the predicate for DISA's assertion that "Iridium's use of additional spectrum has had a positive effect on system performance." (Id.) As Globalstar has explained in its Reply Comments filed on July 25, 2003, in IB Docket No. 02-364, it is very unlikely that additional spectrum is needed for Iridium to improve its service in the Middle East. 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 on Iridium's STA requests and in IB Docket No. 02-364 (incorporated herein by reference) have clearly shown that there are substantial and material questions of fact with respect to (a) the existence and 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. Pursuant to Section 316 (47 U.S.C. § 316), 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.

During the recent Iraq War, Globalstar's Saudi service provider served over 450 British Special Forces, generating about 200,000 minutes of use per week, in addition to several dozen other users roaming into Iraq, including Saudi Board Security Guards, Saudi Naval Support and Saudi Red Crescent. Globalstar's Turkish service provider also supplied phones to the Turkish Special Forces and the Turkish Ground Army for use during the Iraq War.

As these examples illustrate, Globalstar also has many military and non-military customers in the Middle East Region. While Globalstar does not wish to compromise critical communications services supporting U.S. operations in the Middle East, 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 operations from degrading Globalstar's service to its critical U.S. and Coalition military and humanitarian assistance customers.

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

In its "Protest" filed on May 23, 2003, in response to the Commission's prior Order to Show Cause (DA 03-1722, released May 16, 2003), to modify Iridium's

spectrum assignment in the Middle East Region and globally, Globalstar explained in detail why the Communications Act of 1934 does authorize the proposed modification of Iridium's spectrum assignment. The Commission itself has recognized that the Act does not have extraterritorial application.

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.⁷

Accordingly, 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.⁸

Because the Communications Act does not permit the Commission to dictate the terms and conditions of Iridium operations in non-U.S. territories, the Commission cannot authorize Iridium to operate on Channel 9 within the "Middle East Region" (which the Commission has not defined) or globally outside the Middle East Region, even on a non-harmful interference basis as to the Globalstar system.

⁷ 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); see also Maritime Telecommunications Network, Inc., 16 FCC Rcd 11615, ¶ 18 (Int'l Bur. 2001) (citing EEOC v. Arabian American Oil Co., 499 U.S. 244, 248 (1991) and Foley Brothers v. Filardo, 336 U.S. 281, 285 (1949)).

⁸ On July 21, 2003, Iridium announced that it had received approval from Iraq's Coalition Provisional Authority and its Ministry of Transportation and Communications to sell services and equipment in Iraq. It is not clear why the Commission must continue to act on Iridium's request now that Iridium has obtained "landing rights" in Iraq.

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.

In response to Globalstar's previous objections to the Commission's extraterritorial application of the Communications Act for Iridium, the Commission stated that:

Iridium is authorized to operate satellites on frequencies specified in its Authorization. The Commission has jurisdiction with respect to those satellites pursuant to, *inter alia*, 47 U.S.C. §§ 151, 152, 301, 303(r). *See also*, 47 C.F.R. § 25.102; International Telecommunications Union Radio Regulation 18:1; Establishment of Domestic Communication Satellite Facilities by Nongovernmental Entities, 22 FCC 2d 85, Appendix C Memorandum on Legal Issues (1970).⁹

The issue addressed in the Order to Show Cause is not, however, the question at issue in the Domsat proceeding, that is, whether the Commission "possesses the requisite legal power under the Communications Act of 1934 . . . to authorize any entity, either common carrier or noncommon carrier or some combination of both, to own and operate satellite facilities and earth stations to provide domestic satellite communications services."¹⁰ Rather, the issue here is whether the Commission can extend its regulations into other administrations globally and authorize the terms

⁹ Iridium Constellation, LLC and Iridium, US LP, DA 03-1917, n. 18 (released June 11, 2003).

¹⁰ Establishment of Domestic-Communication Satellite Facilities by Nongovernmental Entities, 22 FCC 2d 86, App. C at 133 (1970).

and conditions under which Iridium can operate in foreign countries, even on a secondary basis. The Commission has expressly and firmly answered that question in the negative.

IV. CONCLUSION

For the reasons set forth above, Globalstar urges the Commission not to grant Iridium additional authority to operate on Channel 9 in the Middle East, or, assuming that the Commission finds that it has the authority to so authorize Iridium, at the least, to modify any interim grant of authority to Iridium so that it operates only on a secondary basis as to the Globalstar system.

Respectfully submitted,

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Date: July 28, 2003

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 28th day of July, 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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