

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

In the Matter of)	
)	
Globalstar Licensee LLC)	Call Sign S2115
GUSA Licensee LLC)	Call Sign E970381
)	File No. SAT-STA-20081215-00231
Modification of Authority to Operate a)	
Mobile Satellite System in the 1.6 GHz)	
Frequency Band)	
)	

REPLY OF IRIDIUM SATELLITE LLC

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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 request for relief from the Commission’s *Modification Order*² in the form of a waiver and special temporary authority.³

¹ *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 (filed Feb. 2, 2009) (“Globalstar Opposition” or “Opposition”).

² *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, 2008 WL 4601493 (¶ 1) (rel. Oct. 15, 2008) (“*Modification Order*”).

³ *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, Request for Waiver and Request for Special Temporary Authority (filed Dec. 15, 2008) (“Globalstar Request”).

I. INTRODUCTION AND SUMMARY

Globalstar's Opposition makes crystal clear that Globalstar was in violation of its license terms when the request for waiver and special temporary authority was filed; that Globalstar ignored a subsequent warning from the International Bureau to comply with its license terms⁴; and, that Globalstar intends to continue violating its license terms in blatant and reckless disregard for its obligations as a licensee of the Federal Communications Commission ("FCC" or "Commission"). Under these circumstances, Globalstar's request must be summarily dismissed, and the Commission promptly should assess whether Globalstar's conduct is consistent with the character qualifications expected of all agency licensees.

The waiver request itself remains barren of any reasonable basis for the relief requested. Globalstar's Opposition provides no showings at all for several of its requested gateway waivers and for other gateways provides no meaningful information. Indeed, the basis for its request is restricted to one paragraph in a supporting affidavit, which discloses that Globalstar's dealers simply do not want to pay license fees for spectrum changes and that Globalstar is only willing to make changes where—in its own judgment—the transition is commercially reasonable. The lack of credibility concerning Globalstar's claims is underscored by the fact that, just a few weeks after claiming that eight gateways could not be transitioned, the Opposition now states that three (in France and Brazil) were successfully transitioned on January 29, 2009. What is more, Globalstar appears to have selectively transitioned only the three gateways supporting smaller markets, as compared to the remaining gateways in Russia, Australia, and Turkey. As detailed below, the bottom line is that Globalstar simply does not want to obey the Commission's

⁴ 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) (emphasis added) ("Porter Letter") (attached as Exhibit 1).

spectrum reallocation decision and wants to use the filing of its request for waiver and special temporary authority to slow down Iridium's efforts to obtain necessary global authorizations. Accordingly, Globalstar's request should, on the merits, be summarily denied.

II. ARGUMENT

A. Because Globalstar Admits to Knowing and Continuing Violation of Its Space-Station License, Its Filing Should Be Summarily Dismissed.

The only message that the FCC need take from Globalstar's most recent filing is the company's candid—and casual—admission that it was knowingly in violation of its modified space-station license when it filed its request for a waiver and special temporary authority, that it remains in violation of the license, and that it has no intention to cease violating the license either now or in the future. Iridium submitted with its Petition to Deny⁵ test results showing that Globalstar was continuing to operate on spectrum that had been re-assigned for Iridium's exclusive use,⁶ in direct violation of the terms of Globalstar's licenses and despite a letter from Commission staff specifically reminding Globalstar that “it is required to operate in full compliance” with its modified space- and earth-station licenses “*during the pendency of the Commission's consideration of Globalstar's recently filed waiver and STA requests.*”⁷ In response, Globalstar unequivocally admits that, in the region tested, it was out of compliance until at least January 29, 2009, a mere eight days ago.⁸ Globalstar further concedes its “inability

⁵ *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, Petition to Deny of Iridium Satellite LLC (filed Jan. 21, 2009) (“Petition to Deny” or “Petition”).

⁶ *See* Petition, Exhibit A.

⁷ Porter Letter at 1 (emphasis added).

⁸ *See* Globalstar Opposition, Affidavit of Paul A. Monte ¶ 14 (“Monte Affidavit”).

to date to achieve full compliance with the *Modification Order*”⁹ and then frankly concedes that, in at least three regions, it has made *no effort whatsoever to comply* and *does not intend to do so*.¹⁰

The FCC must not reward this flagrant and matter-of-fact disregard for the agency’s regulatory authority. As Iridium cautioned in its Petition, failure by the Commission to quash this sort of behavior will result in regulated entities “simply ignor[ing] the Commission[],”¹¹ just as Globalstar has here. Globalstar nowhere acknowledges that, by operating in violation of its license, it is acting completely outside the law.¹² Nor does the company even mention the December 17, 2008 letter from the International Bureau—attached as an exhibit to this filing—expressly reminding Globalstar of its obligations under the law. It is Globalstar’s filing that is “empty”¹³ of any respect for or recognition of the actions of the Commission and its staff.

Globalstar’s request must be dismissed out of hand, and no request for a waiver should even be entertained until the company is in full and demonstrated compliance with its modified license. This is not a matter of “equit[y],”¹⁴ but a black-and-white question of conforming to the Commission’s regulatory regime. As Iridium explained in its Petition, it is the FCC’s stated

⁹ Globalstar Opposition 8; *id.* at 9 n.20 (admitting “Globalstar’s difficulties in achieving full compliance with the *Modification Order*”).

¹⁰ *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”).

¹¹ Petition 6.

¹² *See* 47 U.S.C. § 301 (providing that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” without a license).

¹³ Globalstar Opposition 7.

¹⁴ *Id.* at 3.

policy that a regulated entity, like Globalstar, must come into and remain in compliance with a rule during the pendency of a waiver request.¹⁵ That is because “[t]he very essence of waiver is the assumed validity of the general rule.”¹⁶ Globalstar is attempting to turn that regime on its head.

While Globalstar’s Opposition contains candid admissions that the company is operating outside the terms of its license, and that it intends to continue doing so permanently, the Opposition does not even attempt to provide a justification for this lawless behavior. Globalstar’s sole excuse for its failure to heed the terms of its license is that compliance would impose a hardship on the company.

Globalstar’s assertion of “hardship”¹⁷ cannot excuse its failure to comply with the Commission’s mandates. To begin with, although Globalstar does its best in the text of its filing to obscure the precise nature of this alleged hardship, the affidavit attached to the filing makes quite clear that at the heart of the issue are “annual licensee fees” and other financial burdens.¹⁸ Despite its rhetoric about “making substantial efforts,”¹⁹ Globalstar is actually only willing to take “commercially reasonable steps,” that are entirely of its own designation, in order to come into compliance.²⁰

¹⁵ See Petition 5. “[T]he mere filing of a waiver request obviously does not excuse a company from noncompliance.” *In re AT&T Wireless Services, Inc.*, 17 FCC Rcd 9903, 9908 (¶ 13) (2002).

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969).

¹⁷ Globalstar Opposition 6, 12.

¹⁸ Monte Affidavit ¶ 13.

¹⁹ Globalstar Opposition at 5.

²⁰ Monte Affidavit ¶ 13.

Setting aside the obvious fact Globalstar cannot simply decide for itself the extent to which it will comply with the FCC's orders, it should also go without saying that "financial hardship is an unacceptable basis for continued noncompliance."²¹ Globalstar's Opposition gives no reason to believe that the financial hardship imposed by compliance with the terms of its license is particularly severe, but even where noncompliance is "*necessitated* by economics," this cannot excuse a licensee from violating the Commission's rules.²² Indeed, any other rule would be unsustainable, as nearly all regulated entities bear some degree of financial or economic hardship in coming into compliance with an FCC rule or regulation, especially where such a regulation involves a reallocation of spectrum that is dictated by the public interest. The FCC's efforts to coordinate orderly allocation and reallocation of spectrum would be infinitely complicated if each individual licensee could ignore Commission orders on the basis of a claimed yet unspecified "hardship," and simply continue operating while the agency was forced to sift through and dispose of individual requests for waivers.

Moreover, any inconvenience that Globalstar is currently suffering is entirely self-inflicted and, thus, provides no "equit[able]" basis for excusing the company's noncompliance. Globalstar unabashedly admits that it has long known and "candidly acknowledged the difficulties it would have in conforming its operations" to the new spectrum allocation.²³ As it reminds the Commission, Globalstar was plainly aware of all of the claimed potential hardships

²¹ *Application of Calvary Educational Broadcasting Network, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 575, 577 n.11 (¶ 11 n.11) (1994).

²² *Liability of Cheyenne Broadcasting Co., Inc., Licensee of Stations KVWO-AM-FM, Cheyenne, Wyoming; For Forfeiture*, 3 RR 2d 714 (1964) (emphasis added).

²³ Globalstar Opposition 8.

at least as early as June 2008 when it was filing its papers in protest of the then-proposed license modification.²⁴

Yet, despite its long-standing knowledge of its alleged possible problems, the company failed to take advantage of what it concedes was a 60-day “invitation” from the FCC to file for a waiver before the license modifications took effect.²⁵ Globalstar did not, as it claims, “[seek] relief as appropriate,”²⁶ but instead burned through this entire 60-day period and filed its waiver request only *after* the license modifications took effect. Globalstar’s quibble that it actually filed on the effective date itself, based on a gross misapplication of one of the Commission’s rules,²⁷ only serves to highlight the self-inflicted nature of its alleged hardships. Given its long-standing knowledge, Globalstar should not even have come close to filing on the last day of the transition

²⁴ *Id.* at 13 n.34 (noting that the affidavit of Anthony Navarra, filed with the protest papers, discussed the technological limitations of Globalstar’s system); *see also 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, Protest of Globalstar Licensee LLC and GUSA Licensee LLC at 22* (filed June 6, 2008); *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* (filed June 23, 2008) (“Globalstar Protest Reply”).

²⁵ Globalstar Opposition 5.

²⁶ *Id.* at 8.

²⁷ There is no merit to Globalstar’s assertion that the effective date of the license modifications was somehow tolled by the Commission’s rule that permits a filing deadline to roll forward to the next business day. *Id.* at 4 n.8 (citing 47 C.F.R. § 1.4(j)). Rule 1.4(j) applies only to “filing date[s]” that “fall on a holiday.” 47 C.F.R. § 1.4(j). The effective date of an order is not a “filing date” and thus is outside the plain terms of Rule 1.4(j). This makes perfect sense; filing deadlines that fall on holidays or weekends are tolled because the FCC is not open to accept filings on such days, but the effective date of a Commission order requires no filing with the agency, so whether the FCC is open or closed the day of the week that such an order becomes effective is completely irrelevant.

period. The 60-day window—generous when compared to other such transition periods²⁸—was provided precisely to allow Globalstar to file for a waiver far enough in advance of the effective date for the Commission to take action, if only on an interim basis. Globalstar chose not to do so, and it cannot now use any resulting harms as an excuse for noncompliance. To the extent that matters are now “beyond Globalstar’s control,”²⁹ they are so only because Globalstar has allowed them to become that way.

The foot dragging Globalstar showed in waiting to file its waiver request until what it thought was the very last day to do so is entirely consistent with Globalstar’s overall behavior toward complying with the Commission’s Order. Although Globalstar asserts that it “moved promptly” to attempt to comply with the modified licenses,³⁰ its real-world actions suggest otherwise. Moreover, the Opposition provides no evidence that supports the company’s assertions. None of the scant few paragraphs in the Monte Affidavit that discuss Globalstar’s efforts to comply include any suggestion of when Globalstar began those efforts.³¹

In sum, nothing justifies Globalstar’s blatant noncompliance. The FCC should therefore dismiss Globalstar’s waiver request out of hand and, in light of the cavalier disregard for

²⁸ For example, the previous modification of Iridium’s Mobile Satellite Service (“MSS”) licenses, to allow sharing of certain spectrum being used exclusively by Globalstar, had a transition window of five days. The modification order was released on September 3, 2004, and took effect on September 8, 2004. *See 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*, File No. SAT-MOD-19990303-00021, Call Sign S2110, File No. SES-LIC-19960116-01966/01967, Call Sign E960132, Call Sign E960131, Order (rel. Sept. 3, 2004) (“*Sharing Modification Order*”); *see also License Communications Servs., Inc. Application for Modification of Business Radio Station WIE 694*, Memorandum Opinion and Order, 13 FCC Rcd 23781 (1998) (giving licensee 30 days to comply with modification).

²⁹ Globalstar Opposition 6.

³⁰ *Id.* at 5.

³¹ *See* Monte Affidavit ¶¶ 12-14.

Commission and staff authority demonstrated in Globalstar’s most recent filing, immediately initiate an enforcement proceeding to require Globalstar to comply with its licenses, determine the scale and extent of Globalstar’s violations of Commission orders, and determine what sanctions are appropriate in this case. As Iridium noted in its Petition, the FCC has previously determined that license revocation is appropriate when a licensee has, like Globalstar, willfully and repeatedly failed “to operate substantially as set forth in [its] license,”³² and such a remedy may be appropriate here.

B. Globalstar Has Failed to Justify Its Requested Waiver.

1. Globalstar Still Seeks to Use the Waiver Process to Undo the Commission’s Orders.

Globalstar does no better at rehabilitating the merits of its case for a waiver than it does at justifying its willful noncompliance. As a threshold matter, Globalstar fails to rebut Iridium’s contention that Globalstar is attempting to use the waiver process to “change the Commission’s policy,” which it may not do.³³ As Iridium explained in its Petition, Globalstar’s request for a waiver asks for permanent permission to continue, grow, and modify its business operations as if the FCC’s *Reconsideration Order*³⁴ and *Modification Order* never occurred. Nothing in Globalstar’s recent filing suggests otherwise; indeed, the Opposition confirms that this is precisely what Globalstar has in mind.

³² 47 U.S.C. § 312(a)(3); *see also* Petition 8.

³³ *Columbia Commc’ns Corp. v. FCC*, 832 F.2d 189, 193 (D.C. Cir. 1987).

³⁴ *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*”).

Although Globalstar has now reduced the number of gateways for which it seeks a waiver at this time,³⁵ the breadth of the relief it seeks for the remaining gateways continues to be just as broad as in the original request and demonstrates the continued intention of Globalstar not to vacate spectrum it is no longer licensed to utilize. Globalstar still asks for a permanent waiver³⁶ to accommodate the inefficient (and questionable) technological choices it made based on the spectrum distribution originally established in 1994.³⁷ And it emphasizes that it will require this relief going forward because it has no plans to alter the design of any of its future satellite systems; it insists that operations on its second-generation satellite constellation will utilize the same inefficient technology choices from 1994.³⁸

In other words, Globalstar continues to seek a waiver to maintain, grow, and modify its business operations as if nothing has changed since 1994, *i.e.*, as if the FCC's *Reconsideration*

³⁵ See Globalstar Opposition 6-7 (noting that Globalstar may “seek additional waivers in the future”).

³⁶ See *id.* at 19 (arguing that the Commission’s waiver authority is “not limited to transitional relief”).

³⁷ See *id.* (suggesting that the waiver is intended to address the fact that Globalstar “has built and marketed, and is operating on its system, on frequency bands contained in its 1995 license”); *id.* at 12 (asserting that Globalstar has provided “more than sufficient factual support” because it “described the manner in which its system has been designed and deployed in reliance on the Big LEO band plan the Commission established in 1994”); see also Monte Affidavit ¶¶ 4-10. Globalstar’s initial decision to design a system that it claims requires access to the entire spectrum band allocated in 1994 and offers no flexibility for reducing spectrum use was especially shortsighted given the Commission’s express admonition that it would revisit the spectrum allocation in the event that only one CDMA system ended up being built. *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, 5959-60 (¶¶ 54-55) (1994). To the extent that there are any hardships imposed by the design of Globalstar’s system, they arise because of poor choices that Globalstar itself made.

³⁸ See Globalstar Opposition 20 (explaining that, because the second-generation satellite constellation “has been designed to be backward-compatible with the first-generation system,” “the circumstances necessitating a waiver will continue with the new constellation”).

Order in 2007 and *Modification Order* in 2008 had never occurred. That request is, on its face, a bald attempt to revisit and undo the Commission’s considered policy choices. Indeed, so long as Globalstar continues to seek an indefinite waiver based on *future* operations and anticipated business needs, its request can only be properly viewed as an attempt to overturn the FCC’s orders, as that is nothing more than a request *never* to comply with the orders. Globalstar has had ample opportunity to adapt its system for future operations to the new spectrum assignments, and even to improve upon its inefficient design, and it has failed to do so. This failure on Globalstar’s part to address these issues in a timely fashion should not be rewarded by allowing Globalstar to freeze the 1994 spectrum allocation into the indefinite future.

It is no answer that the Commission did not expressly state in the *Modification Order* that any waivers would only be transitional and short-term.³⁹ The agency invited timely requests for waivers to address the “undue costs” of “terminat[ing] transmissions” for certain of Globalstar’s “existing operati[ons].”⁴⁰ This plainly suggests that the FCC contemplated waivers for transitional purposes only and in truly exigent and limited circumstances. Moreover, it is well established that waivers may not “undermine the purposes of the rule”⁴¹ or effectively seek agency reconsideration of the rule,⁴² and in these circumstances the only relief that would not do

³⁹ See *id.* at 19.

⁴⁰ *Modification Order* ¶ 41.

⁴¹ *Rainbow DBS Company LLC*, Memorandum Opinion and Order, 22 FCC Rcd 4272, 4274-75 (¶ 7) (2007) (citing *WAIT Radio*, 418 F.2d at 1157, and *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

⁴² See *WITN-TV, Inc. v. FCC*, 849 F.2d 1522, 1522 (D.C. Cir. 1988) (“The waiver concept does not serve in this context, for petitioner’s plea, although ingeniously crafted, is in essence one for agency reconsideration of existing policy.”).

so would be transitional and short-term. The Commission need not have expressly reminded the parties of the well-known limitations on the waiver process for those limitations to apply.⁴³

2. Globalstar Continues to Make an Inadequate Showing to Support its Waiver Request.

Beyond the fact that Globalstar still seeks to use the waiver process to undo the Commission's orders, and for that reason alone should be denied the requested waiver, the company also continues to make an inadequate showing to support its waiver request. *First*, Globalstar's attempt to shift the burden to Iridium⁴⁴ does nothing for Globalstar's case for a waiver. Although Iridium *will* be harmed, as demonstrated further below, it is well established that the burden is on Globalstar to show that the waiver is warranted, and not on Iridium to show that waiver is *not* appropriate.⁴⁵

Second, Globalstar's blanket assertion that a waiver denial would undermine the Commission's vision for a global MSS service⁴⁶ has it exactly backwards. Between Iridium and Globalstar, only Iridium has fully realized the FCC's vision for MSS, as it is the only Big LEO MSS operator capable of providing communications services 24 hours a day, 7 days a week, over every surface on Earth. Because Globalstar's requested waiver would impede Iridium's ability

⁴³ The suggestion that Iridium contemplated permanent waiver relief for Globalstar, *see* Globalstar Opposition 20, is wholly without merit. Nowhere in the filing that Globalstar cites, *id.* at 20 n.60, did Iridium state or even imply that Globalstar should receive permanent waiver relief.

⁴⁴ Globalstar Opposition 3, 9.

⁴⁵ *See Columbia Commc'ns Corp.*, 832 F.2d at 192 (“The burden is on the applicant seeking waiver . . . to plead *specific* facts and circumstances which would make the *general* rule inapplicable.” (quoting *Tucson Radio, Inc. v. FCC*, 452 F.3d 1380, 1382 (D.C. Cir. 1971))).

⁴⁶ Globalstar Opposition 11-12.

to provide that truly global service on its newly reassigned spectrum, it is the *grant*, not denial, of the waiver that would undermine the agency's decision and the public interest.

Third, Globalstar still fails to make a sufficient factual showing to justify its now narrowed waiver request. In fact, Globalstar is purposefully vague about the extent to which it seeks a waiver by making general allegations as to global operations. But although Globalstar curiously fails at any point in its filing to specify the gateways for which it continues to seek the waiver, it appears that, of the original eight gateways identified in the waiver request,⁴⁷ the gateways for which Globalstar continues to seek relief are: Meekatharra (Australia), Ogulbey (Turkey), Khabarovsk (Russia), Moscow (Russia), and Novosibirsk (Russia).⁴⁸

As a threshold matter, the narrowing of Globalstar's request casts a significant cloud over the veracity and credibility of any of Globalstar's contentions. Just seven weeks ago, Globalstar claimed in its original request that a waiver was absolutely necessary in all eight gateways because otherwise Globalstar would "be unable to continue to meet the needs of its customers" and might even need to "cease operations entirely."⁴⁹ Now, Globalstar reports that, on January 29, 2009, a mere *eight days* after Iridium submitted its Petition and evidence showing Globalstar's violation of its space-station license in the United Kingdom, it was able to modify three of the eight gateways (including the gateway that covers the United Kingdom) to comply with its license "without significantly compromising its service quality."⁵⁰ It is not clear which of Globalstar's assertions, if any, are to be believed.

⁴⁷ See Globalstar Request 12-15.

⁴⁸ Globalstar has expressly withdrawn from its requests the Aussaguel (France), Manaus (Brazil), and Petrolina (Brazil) gateways. See Globalstar Opposition 6; Monte Affidavit ¶ 14.

⁴⁹ See Globalstar Request 18.

⁵⁰ Monte Affidavit ¶ 14..

In any event, Globalstar makes an inadequate—in some cases no—factual showing for all five of the remaining gateways. Indeed, Globalstar fails to make *any* independent showing with respect to the Meekatharra (Australia) and Ogulbey (Turkey) gateways. The Ogulbey gateway is not mentioned once in the filing, and the Meekatharra gateway is only discussed in the context of a filing by Pivotel Group Pty Limited (“Pivotel”), Globalstar’s local operator in Australia.⁵¹ Globalstar offers no specific facts at all to justify the continued inclusion of these two gateways in its waiver request. The only possible reason to be found in the filing is that the costs of compliance in those two gateways are not, in Globalstar’s opinion, “commercially reasonable” in part because the “annual license fees . . . would make it prohibitively expensive.”⁵² But “a licensee’s failure to comply with [the FCC’s] rules because of a private business decision will not warrant a grant of a rule waiver,” and Globalstar fails to support its arguments with anything but vague allegations of unproven costs.⁵³

⁵¹ See Globalstar Opposition 5, 12-13 (discussing Letter from Robert Sakker, Executive Director, Pivotel Group Pty Limited, to Marlene H. Dortch, Secretary, FCC (filed Jan. 21, 2009) (“Pivotel Letter”). Although the letter from Pivotel suggests that the company is still operating Globalstar’s service in Australia, *see* Pivotel Letter 2, it appears that, under Pivotel’s Australian license, the company ceased to have any authority to continue doing so once the license modifications became effective. The license authorizes “transmissions to Australia from Globalstar satellites where the satellites are being operated in accordance with . . . relevant licences, orders and authorisations made by the Federal Communications Commission of the United States of America, as in effect from time to time.” Space Apparatus License of Pivotel Group Pty Limited, License No. 1137160, *available at* http://web.acma.gov.au/pls/radcom/licence_search.licence_lookup?pLICENCE_NO=1137160. Thus, Globalstar operations in Australia must necessarily be within the parameters of current FCC spectrum assignments.

⁵² Monte Affidavit ¶ 13.

⁵³ *Styles Interactive, Inc. Application for Review of Denial of Petition for Reconsideration Seeking Waiver of IVDS Final Down Payment Deadline*, 12 FCC Rcd 17987, 17992 (¶ 8) (1997); *see also Citizens Utility Company Petition for Waiver of Section 36.154(d) of the Commission’s Rules*, 7 FCC Rcd 8656, 8656 (¶¶ 6-7) (finding that hardship related to repaying funds mistakenly withheld did not amount to good cause for waiver).

With respect to the three Russian gateways, the facts that Globalstar offers do not show “good cause” for a waiver.⁵⁴ Globalstar asserts that it cannot terminate operations on the affected channels in Russia “without reducing capacity below the current demand” in the areas served by the Russian gateways,⁵⁵ but refuses to provide any evidence or explanation of the actual channel loading on the system at those gateways.⁵⁶ Globalstar states only that it serves 40,000 subscribers through the Russian gateways.⁵⁷ As Iridium has explained before, however, the mere number of subscribers says nothing about how those subscribers actually use the spectrum.⁵⁸ Globalstar must show how those subscribers actually use the now reassigned spectrum in a way that prevents the company from “reducing capacity.”⁵⁹

Globalstar also fails to explain adequately how the alleged potential for intrasystem interference among the three Russian gateways requires that each gateway be allocated a separate access channel.⁶⁰ Intrasystem interference alone does not justify a waiver. Indeed, Globalstar apparently has been able to overcome the same sort of problem with respect to its two

⁵⁴ 47 C.F.R. § 1.3.

⁵⁵ Globalstar Opposition 5.

⁵⁶ *See id.* at 13. Contrary to Globalstar’s accusation, *see id.* at 14, Iridium provided documentation of its channel loading to support its request that the Commission revise the Big LEO band plan, *see* Comments of Iridium Satellite LLC, IB Docket 02-364, at 9-15 (filed Jul. 11, 2003).

⁵⁷ Globalstar Opposition 7.

⁵⁸ Petition 12.

⁵⁹ Globalstar Opposition 7.

⁶⁰ *See id.* at 7, 13-14.

Brazilian gateways, for which it now no longer seeks a waiver.⁶¹ At a bare minimum, Globalstar must demonstrate that its customers are, in fact, adversely affected by such interference. While intrasystem interference may indeed reduce some capacity within the Globalstar network (something that Globalstar has not provided any compelling technical evidence to support), what is important is the effect this capacity loss would have on actual subscribers during normal operations. If the interference effect causes only a loss of 10% of potential capacity, it may be that Globalstar's customer demands can be met without infringing on Iridium's spectrum. But Globalstar does not provide the loading details necessary for the Commission to complete this analysis and therefore fails to justify its requested waiver.

C. Iridium Will Suffer Harm from the Grant of Globalstar's Waiver Request.

Inventing its own incorrect standard by which to judge its waiver request, Globalstar argues that the Commission should grant its request solely because it allegedly does no harm. Globalstar suggests that it is unaware of Iridium having received earth-station authorizations to use the reassigned spectrum outside of the United States and argues that, therefore, permitting Globalstar to continue operations on Iridium's spectrum will not interfere with Iridium.⁶² The mere lack of interference is hardly "good cause" for a waiver, especially when Globalstar is operating with complete disregard for the law and the rights of other parties, as it candidly admits here.

Moreover, the grant of Globalstar's request will indeed harm and prejudice Iridium. Since the Commission first modified Iridium's license in 2004 to allow sharing of the now

⁶¹ See Globalstar Request 14 (asserting that "Globalstar must to the extent possible, and particularly for the access channel, assign the [Brazilian] gateways channels that differ from one another").

⁶² See Globalstar Opposition 10.

reassigned spectrum,⁶³ Iridium has made significant efforts overseas to obtain the corresponding earth-station authorizations. Globalstar's relentless advocacy and use of the spectrum overseas, however, has impeded those efforts. For instance, the German counterpart to the FCC has thus far refused Iridium the requested authorizations on the grounds that Globalstar holds authorizations in the same frequencies and that Globalstar had not consented to release of the spectrum. Other European administrations similarly refused Iridium authorizations because Globalstar had not vacated the frequencies and was asserting that the FCC had acted outside its authority.⁶⁴

Any waiver that permits Globalstar to continue using the spectrum will simply further delay Iridium's ability to obtain the necessary authorizations around the world. Iridium continues to negotiate with foreign administrations, like Russia, and thus it is not the case that "spectrum will go entirely unused" if Globalstar's request is denied.⁶⁵ The denial of a waiver to Globalstar will actually assist Iridium's effort to obtain the authorizations it requires, because forcing Globalstar to vacate the spectrum that is no longer authorized to use will make clear,

⁶³ In 2004, the Commission modified Iridium's MSS licenses to allow Iridium co-primary, shared use of the 1618.25 to 1621.35 MHz band. *See Sharing Modification Order* ¶ 5. Under the most recent license modifications, Globalstar and Iridium share the 1617.775 to 1618.725 MHz band, and Iridium has exclusive use of the 1618.725 to 1621.35 MHz band. *See Modification Order* ¶¶ 44-47.

⁶⁴ Globalstar's suggestion that a waiver could be revisited in the future, *see* Globalstar Opposition 10, thus does nothing to remedy the harm to Iridium. Globalstar's very presence on Iridium's spectrum causes continuing prejudice to Iridium's efforts to obtain the authorizations necessary to give full effect overseas to the Commission's *Modification Order*.

⁶⁵ Globalstar Opposition 9.

once and for all, to foreign administrations that Globalstar no longer has any rights to this spectrum.⁶⁶

III. CONCLUSION

For the foregoing reasons and the reasons stated in its Petition, Iridium respectfully requests that the Commission expeditiously enter an order dismissing or denying Globalstar's requests for a waiver and special temporary authority and begin an enforcement proceeding to require immediate compliance with its license terms and to determine the extent of Globalstar's willful and knowing violations of the terms of its licenses; whether Globalstar has the character qualifications expected of all Commission licensees; and, what sanctions are appropriate as a result of this conduct.

Respectfully submitted,

/s/ Joshua S. Turner

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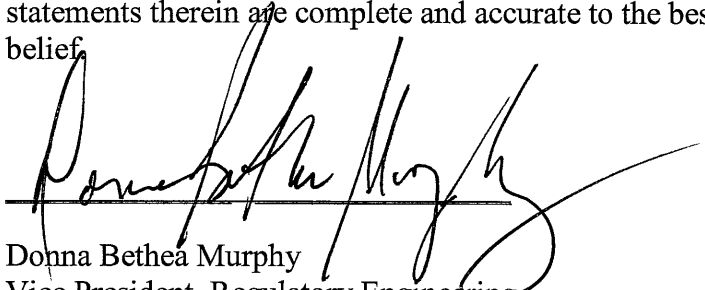
February 9, 2009

⁶⁶ Iridium is further harmed by the fact that Globalstar is preventing Iridium from accessing its new spectrum at precisely the time that it has seen an increase in customers due to the declining quality of Globalstar's service.

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 stylized and cursive.

Donna Bethea Murphy
Vice President, Regulatory Engineering
Iridium Satellite LLC

Dated: February 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2009, I caused a true and correct copy of the foregoing to be served by first-class mail, unless noted otherwise, to the parties listed on the following service list.

/s/ Joshua S. Turner

Joshua S. Turner

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EXHIBIT 1



Federal Communications Commission
Washington, D.C. 20554

December 17, 2008

Mr. William T. Lake
WILMER CUTLER PICKERING HALE
AND DORR L.L.P.
1875 Pennsylvania Ave., NW
Washington, D.C. 20006

Re: Call Sign S2115

Dear Mr. Lake:

On December 15, 2008, Globalstar filed a "Request For Waiver and Request For Special Temporary Authority" with respect to certain modifications made to the license of Globalstar by the Commission in its Order released October 15, 2008. The Order became effective 60 days after October 15, 2008.

This letter reminds Globalstar that it is required to operate in full compliance with the Commission's October 15, 2008, Order during the pendency of the Commission's consideration of Globalstar's recently filed waiver and STA requests.

Sincerely,

A handwritten signature in cursive script that reads "Roderick K. Porter".

Roderick K. Porter
Deputy Bureau Chief,
International Bureau

cc: William F. Adler
Vice President –Legal and
Regulatory Affairs
GLOBALSTAR, Inc.
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