

Law Offices

1500 K Street, N.W.
Washington, DC
20005-1209

202-842-8800 phone
202-842-8465 fax
www.drinkerbiddle.com

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September 16, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Open Range Communications Inc. Request for Confidential
Treatment Pursuant to Sections 0.457 and 0.459 of the FCC Rules
File No. SAT-STA-20100625-00147**

Dear Ms. Dortch:

Open Range Communications Inc., by its attorney, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, respectfully requests that the Commission withhold from public inspection and accord confidential treatment to the attached material which contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").¹ The attached material sets forth information regarding the financial posture of Open Range.

Exemption 4 permits the Commission to withhold from public inspection "trade secrets and commercial or financial information obtained from a person and privileged or confidential categories of materials not routinely available for public inspection." *Id.* Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)(footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993).

Section 0.457(d)(2) allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b) for such requests, Open Range hereby submits the following:

¹ See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

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(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. Open Range seeks confidential treatment for the above-identified Open Range material which contains information regarding the financial posture of Open Range.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*. Open Range is filing the information as part of an ex parte notice.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3))*. The Open Range material contains sensitive commercial information regarding the deployment of Open Range's broadband facilities that competitors could use to Open Range's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. The Commission has broadly defined commercial information, stating that "[c]ommercial" is broader than information regarding basic commercial operations, such as sales and profits..." The information in the Open Range submission falls clearly within the definition of commercial. Competitors could use this information to enhance their market position at Open Range's expense.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*. Substantial competition exists in a number of the broadband markets served or to be served by Open Range. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*. Release of the Open Range information could have a significant impact on Open Range's commercial operations. If competitors had access to this information, it could aid them in competing with Open Range to Open Range's detriment.

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. Open Range treats the information as confidential commercial information and has not disclosed the information publicly.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7))*. The Open Range information is not publicly available.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8))*. Open Range respectfully requests that the Commission withhold the information in the

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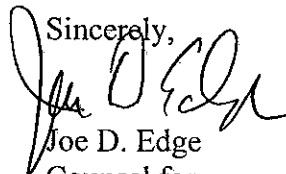
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Open Range submission from public inspection indefinitely. This information will remain commercially sensitive throughout the deployment and operation of the Open Range system.

Sincerely,



Joe D. Edge

Counsel for

Open Range Communications Inc.

JDE/cf

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September 16, 2010

VIA IBFS

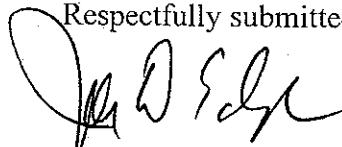
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Open Range Communications Inc. (File No. SAT-STA-20100625-00147)**

Dear Ms. Dortch:

Yesterday William S. Beans, Keyoumars Saeed, and Chris Edwards of Open Range Communications Inc., David Walsh of One Equity Partners, James Gorton of Latham and Watkins, Alfred Mottur of Brownstein Hyatt Farber Schreck, Charles Stenholm of Olsson Frank Weeda Terman Bode Matz, and the undersigned met with Edward Lazarus, Zack Katz, and Austin Schlick of the FCC staff regarding Open Range's above-referenced request for Special Temporary Authority. Open Range proposed that the Commission grant the Open Range STA request for a period of 180 days and consider renewal of the authority if Open Range demonstrates substantial progress towards moving to alternative spectrum. Open Range indicated that the Special Temporary Authority as presently configured would likely not support additional funding by the Rural Utilities Service of the Open Range project and, in any event, would place Open Range in financial jeopardy. Open Range described early reaction to the authority as presently configured and the need for an early resolution to put the matter to rest. Open Range also described its efforts to find alternative spectrum and agreed to keep the Commission informed regarding those efforts on an ongoing basis. In addition, prior to the meeting, Open Range representatives exchanged the attached e-mail correspondence (Attachments A, B, and C) with the Commission staff.

Respectfully submitted,



Joe D. Edge
Counsel for
Open Range Communications Inc.

JDE/cf

cc: Edward Lazarus
Zack Katz
Austin Schlick

Attachment A

Confidential and Proprietary

Attachment B

Confidential and Proprietary

Attachment C

Edge, Joe D.

Subject: FW: Open Range STA

Attachments: 2291_001.pdf

From: Mottur, Alfred E.
To: 'zachary.katz@fcc.gov' <zachary.katz@fcc.gov>
Sent: Wed Sep 15 14:01:42 2010
Subject: Fw: Open Range STA

Here is a version of the order with very minor edits (referenced on top right corner of cover page) that could help our conversation
Look forward to seeing you.

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This transmission and any attachment is attorney privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the e-mail. Thank you.

9/16/2010

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

In the Matter of)
)
Globalstar Licensee LLC)
)
Application for Modification of License)
to Extend Dates for Coming into Compliance with)
Ancillary Terrestrial Component Rules)
)
And)
)
Open Range)
)
Request for Special Temporary Authority)
)

File No. SAT-MOD-20091214-00152 **REDACTED**
Call Sign: S2115

File No. SAT-STA-20100625-00147

ORDER

Adopted: September 14, 2010

Released: September 14, 2010

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

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I. INTRODUCTION

1. In this Order, we deny a request by Globalstar Licensee LLC ("Globalstar") for a 16-month extension to come into compliance with the Commission's rules concerning the Ancillary Terrestrial Component ("ATC") of Globalstar's satellite system. In 2008, the Commission granted Globalstar a temporary waiver of the generally applicable ATC "gating criteria," providing Globalstar 16 months to come into compliance with the Commission's ATC rules.¹ Globalstar now seeks an additional 16 months to come into compliance. We conclude that Globalstar has not justified its request for a further extension of time. Specifically, we find that Globalstar has not established that its failure to come into compliance with the ATC gating criteria within the established timeframe was due to circumstances beyond its control or other sufficient justifications. We therefore deny the request and suspend Globalstar's ATC authority until such time as it comes into compliance with Commission rules.

2. As a consequence of Globalstar's failure to meet its obligations to justify continuation of its ATC operations under our rules, Open Range Communications, Inc. ("Open Range"), which is leasing spectrum from Globalstar, will not be able to continue to use Globalstar's ATC authority to provide service. We grant Open Range Special Temporary Authority (STA) in a limited set of markets for a period of 60 days, as detailed below, to provide Open Range additional time to obtain access to other spectrum and to minimize disruption to its customers.

3. This Order first addresses Globalstar's request to extend the deadline by which it was required to bring its satellite network into compliance with the ATC rules. The Order then addresses the Open Range request for Special Temporary Authority.

II. GLOBALSTAR MODIFICATION REQUEST TO EXTEND ATC DEADLINES

A. BACKGROUND

1. ATC Policy and Authorization Procedure

4. ATC consists of terrestrial base stations and mobile terminals licensed to the operator of a mobile satellite service ("MSS") system. ATC facilities can be used to offer service together with MSS, re-using frequencies assigned for MSS operations.² An MSS operator with a license from the Commission for certain frequency bands, including the "Big LEO" bands in which Globalstar is licensed to operate, may request blanket authority for operation of ATC stations in the United States. In adopting rules to permit ATC operations, the Commission concluded that authorizing ATC would advance the public interest by facilitating increased network capacity, more efficient use of spectrum, extension of coverage to places where MSS operators have previously been unable to offer reliable service, improved emergency communications, enhanced competition, and economies of scale in handset manufacture.³

¹ *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, Order and Authorization*, 23 FCC Rcd 15975 (2008) (Copps, Adelstein, and Tate issuing separate statements; Martin and McDowell dissenting) ("*Globalstar/Open Range ATC Order*"), petition for reconsideration pending, appeal pending sub nom. *Iridium Satellite LLC v. FCC*, U.S. Court of Appeals (D.C. Circuit) No. 08-1374.

² *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands; Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Report and Order and Notice of Proposed Rulemaking*, FCC 03-15, 18 FCC Rcd 1962 (2003) ("*ATC Report and Order*"), modified by Order on Reconsideration, 18 FCC Rcd 13590 (2003), reconsidered in part in *Memorandum Opinion and Order and Second Order on Reconsideration*, FCC 05-30, 20 FCC Rcd 4616 (2005) ("*ATC Second Reconsideration Order*"), further reconsideration pending.

³ *ATC Report and Order* at ¶¶ 2, 20-45, and 210-11.

of July 24, 2010 it had [REDACTED] active residential customers in markets covering 256,689 households.⁹⁵ In its September 2 submission, Open Range indicated that as of September 1, 2010 it had [REDACTED] active residential customers in markets covering 491,543 households.⁹⁶ Most recently, in its September 13, 2010 submission, Open Range indicated that other markets subsequently had been built or were in the process of being constructed, and it projected that there would be approximately 1,850,000 households covered by the end of this year.⁹⁷

B. DISCUSSION

45. As a consequence of the suspension of Globalstar's authority for WiMAX ATC stations in the 2483.5-2495 MHz frequency band, which we note was a foreseeable potential risk when Open Range entered into its spectrum leasing agreement with Globalstar, Open Range may not continue to use Globalstar's ATC authority to provide service. However, to provide Open Range some limited additional time to gain access to other spectrum for use in the provision of service while also minimizing disruption to its customers, we grant Open Range a limited STA for 60 days in specified markets identified below. We also attach other conditions on this STA.

46. From the outset, Open Range's use of Globalstar's spectrum pursuant to a spectrum leasing arrangement has been contingent upon Globalstar complying with all of the Commission's requirements associated with the deployment of ATC. In granting Globalstar temporary waivers of the ATC rules in the 2008 *Globalstar/Open Range ATC Order*, the Commission considered the purposes of the ATC gating policy and the concerns expressed by commenters that the interim waiver of those rules might evolve into a long-term exemption of the requirement that the gating criteria be met before ATC can be authorized.⁹⁸ In issuing an interim waiver to permit launching of ATC for an interim period, the Commission made clear that the scope of the waiver was limited and would permit Open Range's deployment pursuant to the RUS loan "subject to termination" if Globalstar's required dates for coming into compliance with gating criteria were not met.⁹⁹ In keeping with the limited scope and conditions of this temporary waiver, the Commission also required that Globalstar and Open Range notify their customers that their services are subject to mandatory suspension in the event that the gating criteria are not met.¹⁰⁰

47. We further note that Open Range, in notifying the Commission in 2007 of its spectrum leasing arrangement with Globalstar, recognized that the spectrum lease did not provide Open Range with

⁹⁵ Open Range July 28, 2010 *ex parte* submission to Marlene Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range July 28 Submission"), exhibit titled "A Progress Report to the FCC, dated July 24, 2010" at 17 (confidential treatment requested) (filed in response to a letter request from Roderick K. Porter, Deputy Chief, International Bureau, FCC, to Joe D. Edge, Counsel to Open Range, dated July 20, 2010 ("July 20, 2010 Letter Request to Open Range")); Open Range September 14, 2010 *ex parte* submission to Marlene Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 14 Submission").

⁹⁶ Open Range September 2, 2010 *ex parte* submission to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 2 Submission"), Attachment A (confidential treatment requested); Open Range September 14 Submission.

⁹⁷ Open Range September 13, 2010 *ex parte* submission to Marlene H. Dortch, Secretary, FCC, from Joe D. Edge, Counsel to Open Range ("Open Range September 13 Submission"), Attachment A (confidential treatment requested); Open Range September 14 Submission.

⁹⁸ See *Globalstar/Open Range ATC Order* at ¶¶ 20-23. These commenters included CTIA, Iridium, and Sprint. *Id.*

⁹⁹ *Id.* at ¶ 22-23. See also *supra* para. 17 (arguments raised by CTIA and Iridium in their petitions to deny).

¹⁰⁰ *Globalstar/Open Range ATC Order* at ¶ 23.

180 demonstrates substantial progress toward

the right to use leased spectrum for the provision of terrestrial service if Globalstar, the MSS licensee, failed to meet the ATC gating criteria.¹⁰¹ The express terms of the lease agreement – which Globalstar and Open Range modeled on the Commission's spectrum leasing rules for terrestrial spectrum,¹⁰² and which the Commission found to be consistent with those policies¹⁰³ – similarly recognize that, as a spectrum lessee, Open Range does not have any greater rights to use the spectrum than Globalstar, the licensee, would have.¹⁰⁴

48. We nonetheless issue a 90-day STA to Open Range to provide additional time to gain access to spectrum that it could use and to minimize disruption to its customers. We temporarily waive Section 2.106, Table of Frequency Allocations, to permit Open Range to continue to offer terrestrial fixed and mobile service in the 2483.5-2495 MHz frequency band for the duration of this STA.¹⁰⁵ We specifically reject Open Range's request that we provide authorization for a period of 18 months, which would be beyond the 180-day maximum period permitted by statute.¹⁰⁶ We observe that Open Range has been on notice since December 2009, if not longer, that Globalstar would not be able to meet the July 1, 2010, deadline, and thus already has had significant opportunity to seek access to alternative spectrum.

49. In issuing an STA to Open Range, we adopt certain conditions. We provide Open Range authority to operate only in the specific geographic markets listed in Appendix A. This list includes those markets in which Open Range either already is providing service or has projected that it will have launched by the end of this year.¹⁰⁷ If Open Range enters into an agreement for accessing alternative spectrum and presents a plan to transition off the 2483.5-2495 MHz frequencies, we will consider revisiting the terms of the STA to make any appropriate adjustments that would assist Open Range's customers in transitioning to the use of this alternative spectrum and associated equipment.

IV. CONCLUSION

50. We conclude that Globalstar has not shown good cause for granting the requested

¹⁰¹ Globalstar/Open Range Spectrum Lease Notification at 2 (“an MSS carrier may choose to deploy ATC services through the lease of some or all of its spectrum to a terrestrial provider, so long as the gating criteria contained in the Commission's rules governing ATC service are met”).

¹⁰² *Id.* at 2 (stating that the Globalstar/Open Range lease agreement is “[c]onsistent with the Commission's Part 1 rules governing ‘Spectrum Manager’ leases,” and citing the Commission's Part 1, Subpart X rules that apply to terrestrial spectrum leasing arrangements).

¹⁰³ *Globalstar/Open Range ATC Order* at ¶ 24 (wherein the Commission reviewed the terms of the Globalstar/Open Range lease agreement, the text of which is available as Exhibit 10.3 to Globalstar's May 2008 10-Q Report to the Security and Exchange Commission).

¹⁰⁴ See Globalstar May 2008 10-Q Report, Exhibit 10.3 (“Spectrum Manager Lease Agreement”); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) at ¶ 91 (applicable service rules apply to the spectrum lessee in the same manner as they apply to the licensee); see also *id.* at ¶ 187; 47 C.F.R. § 1.9020(k).

¹⁰⁵ 47 C.F.R. § 2.106. Because there is no fixed or mobile allocation in the 2483.5-2495 MHz band, we waive the Table of Allocations, 47 C.F.R. § 2.106, to grant Open Range a separate authorization to provide service under the limited terms of the STA.

¹⁰⁶ 47 U.S.C. § 309(f).

¹⁰⁷ See Open Range September 13 Submission, Attachment A (confidential treatment requested). This list includes all of the markets that Open Range indicated that it had already built or in which construction was in progress and the “market date” would be no later than the end of 2010.

additional extensions of time for compliance with the continuous-coverage, spare-satellite, and integrated-service gating requirements.¹⁰⁸ Consequently, we deny Globalstar's extension request. Since Globalstar did not meet the continuous coverage or spare satellite requirements by July 1, 2010, as required by Condition (d) in the *Globalstar/Open Range ATC Order*, Globalstar is required, by the terms of that Condition, to immediately suspend operation of ATC stations in the S-band. As provided for in Condition (d), the suspended operation may resume at such time that Globalstar complies with the continuous coverage and spare satellite requirements. Further, the requirements specified in Condition (e) of the *Globalstar/Open Range ATC Order*, regarding two-way dual-mode MSS/ATC terminals, remain in effect.

51. As a consequence of the suspended ATC operations, Open Range may not continue to operate under Globalstar's ATC authority. We do, however, grant Open Range an STA, for a period of 60 days, to provide Open Range additional time to obtain access to other spectrum for its service and to minimize disruption to its existing customers.

V. ORDERING CLAUSES

52. Accordingly, pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, IT IS ORDERED that the application for modification of license, File No. SAT-MOD-20091214-00152, IS DENIED. Consequently, Globalstar Licensee LLC's authority for operation of WiMAX ATC stations in the 2483.5-2495 MHz frequency band IS SUSPENDED. 180

53. IT IS FURTHER ORDERED that the Motion to Hold Globalstar Applications in Abeyance filed by Iridium Satellite LLC on December 31, 2009 IS DISMISSED AS MOOT with respect to the captioned application.

54. IT IS FURTHER ORDERED that Open Range's request for an STA is GRANTED IN PART and DENIED IN PART, and that Open Range IS AUTHORIZED, for a period of 60 days, to provide terrestrial fixed and mobile service in the 2483.5-2495 MHz frequency band, subject to the following conditions:

(a) Open Range is authorized to provide service only in the markets identified in Appendix A, attached hereto;

(b) Open Range is not authorized to provide service in any additional markets;

(c) Operations shall be subject to the technical specifications and conditions identified in the *Globalstar/Open Range ATC Order*, including the conditions specified in paragraphs 35, 36, 41(b) and 41(c) of that Order; and

(d) Open Range shall not cause harmful interference to, and shall not claim protection from, any other lawfully operating station. In the event harmful interference results from operation pursuant to this authorization, Open Range shall cease operations immediately upon notification of such interference, and shall immediately inform the Federal Communications Commission, in writing, of the incident.

¹⁰⁸ Because we have acted to deny Globalstar's license modification request, we consider Iridium's request that we hold Globalstar's pending applications in abeyance moot with respect to the instant application. We therefore partially dismiss Iridium's request. We will address Iridium's request, insofar as it concerns other pending applications, in connection with those other applications.