

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

In the Matter of)	IBFS File No. SES-RWL-20110908-01047
Application of Deere & Company)	Call Sign E010011
For Renewal of Earth Station License)	

**OPPOSITION OF DEERE & COMPANY
TO PETITION FOR RECONSIDERATION OF
LIGHTSQUARED, INC.**

Catherine Wang
Patrick J. Whittle
Jeffrey R. Strenkowski
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
catherine.wang@bingham.com
patrick.whittle@bingham.com
jeffrey.strenkowski@bingham.com

Counsel for Deere & Company

Dated: October 27, 2011

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND	1
III. ARGUMENT	5
A. LightSquared’s Petition Should Be Dismissed Because It Expressly Seeks to Punish Deere for Its Involvement in Matters of Public Interest, and Because It Seeks to Abuse the Commission’s License Renewal Process in Order to Gain Advantage in an Unrelated Matter.....	5
B. LightSquared’s Allegation That Deere Holds No License to Renew is False and LightSquared Should Upon Reasonable Inquiry Have Known This; Accordingly LightSquared’s Petition Should Be Dismissed as a Strike Pleading.....	7
C. LightSquared’s Petition Should Be Dismissed Because It Fails to Meet The Requirements of Section 1.106 of the Commission’s Rules	13
D. LightSquared’s Allegations Of Noncompliance Are Made in the Wrong Forum.....	15
E. The Conditions on Renewal Requested by LightSquared Are Without Merit, and Should Not Be Imposed	19
IV. CONCLUSION.....	21

Summary

Deere files this Opposition to the Petition for Reconsideration filed by LightSquared. LightSquared's Petition requests that the Commission take unprecedented action to revoke renewal of Deere's earth station license for the patently improper purpose of removing Deere as a policy opponent in a separate proceeding concerning LightSquared's use of satellite spectrum. The Petition is merely the latest salvo in LightSquared's attempts to force its proposed stand-alone terrestrial network into place to the detriment of Deere's lawful operations, as well as those of millions of other government and civilian GPS users.

Making no bones about its real objective in filing its Petition, LightSquared states that “[I]n recent months Deere has made numerous public statements asserting that the Commission should curtail deployment of LightSquared's terrestrial broadband network in the L Band in order to preserve Deere's ability to manufacture, market and operate receivers ... *On this basis alone, the Commission should deny Deere's renewal application on reconsideration.*” (emphasis added). In short, LightSquared takes the express position that it would be proper for the Commission to deny Deere the renewal of its subject license for the sole purpose of punishing Deere for raising in other proceedings significant public policy concerns regarding LightSquared's proposed network. It is hard to conceive of a more blatant attempt by a petitioner to abuse the Commission's license renewal procedures, and the Petition should be dismissed as such.

Because it is solely designed to obstruct and frustrate the Commission's administrative processes, LightSquared's filing also constitutes a “strike pleading,” and should be dismissed by the Commission on that ground as well. The Commission's policy on strike pleadings is based on the premise that a petitioner that improperly impedes action on an application opens itself to

charges of abusing the Commission's processes. Disputes such as those raised by LightSquared's Petition are not license renewal-related issues and should not be entertained by the Commission in this proceeding.

The Petition filed by LightSquared also fails to meet the requirements of Commission Rule 1.106, which requires that a petitioner state with particularity the manner in which the petitioner's interests are adversely affected by the action taken. The Petition fails to show that the action taken by the Commission *in this proceeding* – the routine grant of Deere's license – adversely affects LightSquared or its interests. Indeed, it could not, since the renewal merely maintains the status quo and LightSquared is demonstrably no worse off than it was before. But even more to the point, the sole adverse impact identified by LightSquared is not Deere's license itself, but Deere's objections in other forums to LightSquared's network plans and the attendant harm of those plans to GPS users. This is hardly a cognizable adverse effect of the type required by Rule 1.106.

LightSquared also uses the Petition as a means to lob a host of accusations concerning Deere's operations. LightSquared can hardly be seen as an objective source of information concerning Deere's operations under the license that LightSquared so desperately wants to be revoked. Nonetheless, even assuming *arguendo* that any of LightSquared's claims of noncompliance warrant inquiry, denial of Deere's license renewal is not the appropriate remedy and this proceeding is not the appropriate forum. LightSquared has turned the plain meaning of Section 25.156 on its head by attempting to distort a regulation that requires the Commission to *grant* a license or renewal under specified circumstances into one that would instead require automatic *nonrenewal* of a license that had already been granted. Routine approval of license

renewal is simply not the proper forum for determining compliance with the terms of the license itself.

Finally, LightSquared asserts that if the Commission does renew Deere's license, it should do so only upon conditions that, LightSquared asserts, are necessary "to mitigate the potential for harm that would result if Deere were allowed to foreclose LightSquared's use of the L Band..." Facially, these requested conditions too are merely an attempt by LightSquared to refight the same broad public policy battles it is fighting with Deere and others elsewhere, since the only purported justification for these conditions is to allow LightSquared to proceed unimpeded with its network plans. Accordingly, the conditions should be rejected. A grant of the Petition would allow LightSquared to do indirectly what the Commission has already determined it is not currently authorized to do directly. For the reasons set forth herein, LightSquared's Petition should be dismissed.

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

_____)	
In the Matter of)	IBFS File No. SES-RWL-20110908-01047
Application of Deere & Company)	Call Sign E010011
For Renewal of Earth Station License)	
_____)	

**OPPOSITION OF DEERE & COMPANY
TO PETITION FOR RECONSIDERATION OF
LIGHTSQUARED, INC.**

I. INTRODUCTION

Deere & Company (“Deere”), through undersigned counsel, files this Opposition to the Petition for Reconsideration filed by LightSquared, Inc. (“LightSquared”) in the above-referenced proceeding on October 14, 2011 (the “Petition”).¹ LightSquared’s Petition requests that the Commission take unprecedented action to revoke its renewal of a license lawfully issued to Deere, for the patently improper purpose of removing Deere as a policy opponent in a separate proceeding concerning LightSquared’s use of satellite spectrum. LightSquared has also failed to raise any genuine substantive grounds for non-renewal. For the reasons set forth herein, Deere strongly opposes LightSquared’s Petition, and urges the Commission to dismiss the same.

II. BACKGROUND

LightSquared’s Petition is the latest salvo in that company’s attempts to force its proposed stand-alone terrestrial network into place to the detriment of Deere’s lawful operations,

¹ *Application of Deere & Company For Renewal of Earth Station License*, IBFS File No. SES-RWL-20110908-01047, Call Sign E010011, Petition for Reconsideration of LightSquared, Inc. (filed Oct. 14, 2011) (“*Petition*”).

as well as those of millions of other government and civilian GPS users. The Petition is a transparent attempt to move the existing dispute over LightSquared's own proposed network operations—now being fought elsewhere—into a new and inappropriate arena: Deere's earth station license renewal proceeding. The Petition does not really concern Deere's use of spectrum under the license, but instead attempts to shore up *LightSquared's* requests to use its satellite spectrum in a manner that would interfere with Deere's operations as well as a host of other service providers and users.

The broad policy dispute has been ongoing since November 18, 2010, when LightSquared filed what it characterized as “an update of its plans for offering integrated service” under its Mobile Satellite Service (“MSS”) Ancillary Terrestrial Component (“ATC”) authority using the L-band. What LightSquared characterized as a minor “update,” however, was a transparent spectrum grab and an attempt to provide terrestrial-only cellular service using spectrum that has heretofore been reserved exclusively for satellite applications with only an ancillary terrestrial component. The Bureau itself realized that LightSquared's application was not a “minor modification,” but nevertheless on January 26, 2011, granted LightSquared a conditional waiver of the integrated service rule that requires ATC to be integrated with an MSS licensee's satellite services.²

Following the grant of that conditional waiver, Deere sought reconsideration (and a number of other service providers sought Commission review) of the Bureau's order. This filing made clear that the Commission failed to consider the severe interference that LightSquared's proposed operations would cause to civilian and military GPS receivers. Among other things, Deere stated that LightSquared's planned high power network would cause severe co-channel

² *LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566 (2011).

interference with satellite signals downlinked into Deere's licensed earth station receive facilities used for the purpose of providing augmenting navigation data for Deere's high precision agricultural and construction equipment. Deere requested that the Commission initiate a comprehensive rulemaking to thoroughly evaluate the viability of reallocating the MSS L-band for stand-alone terrestrial applications. As discussed in Deere's petition for reconsideration filed in that docket on February 25, 2011,³ the agricultural, construction and survey industries served by Deere's advanced StarFire system will be acutely and adversely impacted by the interference caused by LightSquared's proposed new services. The impact on augmented high-precision GNSS receivers (which include essentially all Deere receivers) will be severe. This is in part because high-precision receivers have to capture more of the GNSS signal, and in part because the augmentation signal which concurrently transmits correctional data is downlinked in the 1525-1559 MHz band, co-channel to the frequencies where LightSquared proposes to deploy high-powered cellular base stations. The need to capture more of the GNSS signal and the L-band augmentation signal is necessary to help calculate high-precision measurements, and hence more accurate navigation results. A wide filter is also necessary to maintain the flexibility needed to comply with varying frequency assignments in the L-Band specified by the satellite operator.

The conditional waiver granted to LightSquared would, if final authority were granted, dramatically transform the nature and expand the scope of LightSquared's terrestrial mobile operations in a manner that is fundamentally inconsistent with the historical use of the spectrum and would significantly harm Deere as an existing license holder, as well as Deere's users.

³ See *LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Petition for Reconsideration of Deere & Company, IBFS File No. SAT-MOD-20101118-00239 (filed Feb. 25, 2011).

Deere therefore sought reconsideration of the conditional waiver granted to LightSquared not as a means of blocking a competitor or harassing a licensee, but rather to protect America's agricultural industry, which is dependent on the accuracy provided by Deere's receivers from the interference that LightSquared's stand-alone network will cause if allowed to operate as planned. Nor is this a mere bilateral dispute between Deere and LightSquared. Numerous other public and private parties dependent on the continuing reliable operation of GPS-based services have also objected to LightSquared's proposal and the interference it would cause.

LightSquared obviously took exception to Deere's request for reconsideration, and has been laser-focused on disrupting Deere's operations, services, and customers ever since. The instant Petition is nothing more than an attempt by LightSquared to induce the Commission to punish Deere for attempting to protect its GPS users from interference and maintain the services it provides to its customers. The Petition is simply a continuation of LightSquared's ongoing attempts to supersede GPS and other satellite use of the L-Band through any means possible, even if it means impairing agricultural and other high precision GPS use in rural and other areas. But this time, instead of arguing about the merits of its own plan for a stand-alone, high-power network operating in satellite frequencies when balanced against the interests of Deere and other government and civilian parties' ability to continue to provide augmented GPS-based services, LightSquared's filing is nothing more than an attempt to strip Deere of its earth station license in order to simply remove Deere and its users from the equation. It is a patent abuse of the Commission's earth station renewal procedures to attempt to use them as a means to eliminate Deere as a voice in the public debate surrounding LightSquared's proposal. A grant of the Petition would sanction this objectionable misuse of the Commission's procedures and allow LightSquared to make an end run around the Commission's processes without having to address

the severe interference that its planned system will cause to critical GPS services.⁴ The Petition should therefore be dismissed.

III. ARGUMENT

A. **LightSquared's Petition Should Be Dismissed Because It Expressly Seeks to Punish Deere for Its Involvement in Matters of Public Interest, and Because It Seeks to Abuse the Commission's License Renewal Process in Order to Gain Advantage in an Unrelated Matter.**

LightSquared makes no bones about its real objective in filing its Petition. LightSquared states that “[I]n recent months Deere has made numerous public statements asserting that the Commission should curtail deployment of LightSquared’s terrestrial broadband network in the L Band in order to preserve Deere’s ability to manufacture, market and operate receivers ... In other words, Deere has made clear its plans to use any authority granted through renewal as part of an effort to foreclose LightSquared from implementing a nationwide LTE network. *On this basis alone, the Commission should deny Deere’s renewal application on reconsideration.*”⁵ In short, LightSquared believes – and says as much – that it would be proper for the Commission to deny Deere the renewal of its subject license for the sole purpose of punishing Deere for raising in other proceedings significant public policy concerns regarding LightSquared’s proposed network. It is hard to conceive of a more blatant attempt by a petitioner to abuse the Commission’s license renewal procedures.

Of course, the Commission may not in fact punish Deere in this manner for its participation in broader proceedings affecting the public interest, for such punishment would patently violate Deere’s First Amendment right to petition the government for redress of

⁴ See *LightSquared Subsidiary LLC; Request for Modification of its Authority for an Ancillary Terrestrial Component*, Public Notice, IB Docket No. 11-109, DA-11-1537, at 1.

⁵ *Petition*, at 10 (emphasis added).

grievances,⁶ as well as the policy behind countless whistleblower and SLAPP (Strategic Lawsuit Against Public Participation) statutes, as well as the reasoned decision-making standards of the Administrative Procedures Act. Nor would the Commission's policies and precedents permit such an outcome: the Commission has made clear over and over that it will not countenance the irrelevant insertion of broad public policy issues into individual application proceedings even when not expressly motivated, as it is here, by a petitioner's overtly retaliatory motives.

Thus, the Commission has consistently refused to allow petitioners to drag into licensing proceedings either broad matters of public interest that are unrelated to the specific action for which application is made or, conversely, matters of private dispute between the petitioner and the applicant, routinely dismissing such tactics as abusive. "The term 'abuse of process' has been defined as 'the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of

⁶ The First Amendment provides that "Congress shall make no law ... abridging the ... the right of the people ... to petition the Government for a redress of grievances." U.S.C.A. Const. Amend. 1. As the courts have repeatedly made clear, this means that governmental action to punish a party for exercising its right to participate in government proceedings affecting the public interest – as LightSquared would overtly have the Commission do to Deere here – is prohibited by the Constitution, even if the action requested by Deere would hamper LightSquared's plans: "Under the First Amendment, 'parties may petition the government for official action favorable to their interests without fear of suit, even if the result of the petition, if granted, might harm the interests of others.'" *Mercatus Group, LLC v. Lake Forest Hosp.*, 528 F. Supp. 797, 803 (N.D. Ill. 2007), *citing Tarpley v. Keistler*, 188 F.3d 788 (7th Cir.1999); *see also, e.g., White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000) ("the right to petition extends to all departments of the government, including the executive department, the legislature, agencies, and the courts"), *citing California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972).

that process, procedure, or rule.’ An abuse of process ordinarily involves an intent to gain some benefit by manipulating the Commission's procedures.”⁷

LightSquared’s Petition falls squarely into this category. It seeks nothing more than to harass Deere by manipulating this routine license renewal proceeding (in which LightSquared holds no particularized interest). The Commission has made clear that such tactics are unacceptable: “[B]oth Congress and the courts have recognized that the petition to deny process is not intended to facilitate disruption of the Commission's proceedings by individuals or groups ‘who have no legitimate interest’ in those proceedings or to allow members of the public to harass licensees with baseless allegations. Nor is it the function of the process to expand the Commission's jurisdiction to cover the adjudication of all commercial disputes in which a licensee or applicant may become involved.”⁸ The Commission should summarily dismiss LightSquared’s abusive filing.

B. LightSquared’s Allegation That Deere Holds No License to Renew is False and LightSquared Should Upon Reasonable Inquiry Have Known This; Accordingly LightSquared’s Petition Should Be Dismissed as a Strike Pleading

Because it is solely designed to obstruct and frustrate the Commission’s administrative processes, LightSquared’s filing constitutes a “strike pleading,” and should be dismissed by the Commission on that ground as well. The Commission's policy on strike pleadings is based on

⁷ *High Plains Wireless, L.P.; For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D and F*, 15 FCC Rcd 4620, ¶ 9 (2000) (citing *Broadcast Renewal Applicants (Abuses of the Comparative Renewal Process)*, 4 FCC Rcd 4780, n. 3 (1989)).

⁸ *Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, Further Notice of Proposed Rulemaking, 3 FCC Rcd 5179, ¶ 31 (1988).

the premise that a petitioner that improperly impedes action on an application opens itself to charges of abusing the Commission's processes.⁹

“An agency is not powerless to prevent an abuse of its processes. And in considering challenges to pending applications, ‘the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests.’”¹⁰ Accordingly, “the strike petition policy is aimed at curbing abuses of the Commission's processes, particularly with respect to a licensee's efforts to block, impede or delay the grant of a competing application.”¹¹ In determining whether a pleading is a strike petition, the Commission considers several factors: (1) statements by the petitioner's principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to disposition of the requested issues; (3) the absence of any reasonable basis for the adverse allegations in the petition; (4) economic motivation indicating a delaying purpose; and (5) (where relevant) other conduct of the petitioner.¹²

As to the first factor for identification of a strike pleading, as noted above, the Petition *itself* – which is verified by a LightSquared officer – clearly states, as discussed above, that its purpose is to seek to obstruct Deere from participating in the Commission’s proceedings involving the LightSquared terrestrial network proposal. Thus, this factor is clearly satisfied.

⁹ See *William P. Johnson and Hollis B. Johnson, d/b/a/ Radio Carrollton*, Docket No. 19636, Memorandum Opinion and Order, 69 F.C.C. 2d 1138 (1978) (“*Radio Carrollton*”); *clarified*, 69 F.C.C. 2d 424 (1978); *recon. denied*, 72 F.C.C. 2d 264 (1979); *aff’d sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980); *cert. denied*, 450 U.S. 1041 (1981).

¹⁰ *Radio Carrollton* at ¶ 22 (citing *United Church of Christ v. FCC*, 359 F.2d 994, at 1005 (1966)).

¹¹ See *Radio Carrollton* at ¶ 25.

¹² See *id.* at ¶ 26.

Second, LightSquared withholds significant information relevant to the issues it raises and when this information is considered it is apparent that a fundamental premise of LightSquared's Petition is based on a reckless misrepresentation by LightSquared. The initial (supposedly) substantive issue LightSquared raises is its claim that Deere allegedly failed to file a letter certifying the completion and operation of mobile earth terminals pursuant to the construction permit; LightSquared asserts that this purported failure automatically terminated Deere's license, and that Deere therefore holds no license to renew! As its basis for this dramatic claim, LightSquared states that "in preparing this petition, LightSquared, through counsel, conducted a thorough review of the Commission's electronic databases and the Commission's Public Reference Room regarding call Sign E010011, and made [unspecified] informal inquiries of Commission staff. LightSquared has found no evidence that Deere filed the requisite certificate of completion."¹³

But from this summary statement, LightSquared withholds certain very pertinent facts. First, upon inquiry by Deere's counsel, it was found that the *entire file* containing the Commission's records for Deere's satellite filings was unavailable in the Public Reference Room, having been apparently checked out to Staff. Presumably, this is why LightSquared could not locate the certification letter, but the inability to locate an entire file hardly constitutes probative evidence that a particular document would not be in the file once located. Nor could LightSquared's follow-up inquiries have been very diligent. Upon a routine check with the Commission's duplicating contractor, Best Copy & Printing, Inc., Deere was able to quickly locate the certification letter, and confirm that it was filed with the Commission on December 21, 2001. (See Exhibit A attached hereto.) The certification letter was also filed via e-mail because,

¹³ *Petition*, at 7.

as the Commission will recall, its filing requirements for hard-copy documents were temporarily modified at that time due to concerns over suspected anthrax-laced mail. A duly diligent and less disingenuous petitioner would have at least mentioned these facts. But LightSquared has withheld them.

Moreover, had LightSquared tracked down the Commission's own file, even if it hadn't found the certification letter, it would have discovered that the file was replete with voluminous correspondence between Deere and the Commission's staff regarding the license – occurring during much of the period between the supposed “automatic termination” and the present. This record is hardly consistent with the notion that Deere's license had lapsed in 2002, and a responsible party would have made further inquiries rather than flinging reckless and groundless accusations that no license currently is in force.¹⁴

As another example of LightSquared's withholding of relevant facts, much of LightSquared's Petition is devoted to yet another rehash of its arguments as to the alleged benefits of its proposed network, and cites this too as a reason why the Deere license should supposedly be denied renewal. LightSquared withholds the fact, however, that the Commission has already placed a hold on LightSquared's plans to undertake its vaunted network plan, for important public interest reasons that go far beyond the scope of Deere's instant license, and these issues would not be resolved even if the license were denied renewal.¹⁵ Thus, the implication that nonrenewal of Deere's license would serve the public interest because it would

¹⁴ Even as to the limited search it purportedly conducted, LightSquared has not adequately verified its allegations of fact. The sole verification of its factual allegations is a summary declaration of Jeffrey J. Carlisle, LightSquared's Executive Vice President, that “to the best of [his] knowledge and belief, the factual assertions in the Petition are true and accurate.” Yet Mr. Carlisle did not conduct the search, which was allegedly carried out by LightSquared's counsel, nor does he even claim to have supervised the search and examined its results.

¹⁵ *LightSquared Subsidiary LLC; Request for Modification of its Authority for an Ancillary Terrestrial Component*, Public Notice, IB Docket No. 11-109, DA-11-1537, at 1.

allow LightSquared to go forward with its terrestrial network plans is simply wrong – and LightSquared knows it. As stated by the Commission in *Radio Carrollton*, “[w]here a petition contains outright misrepresentations, ... they will of course be relevant not only to an abuse of process evaluation, but will also raise independent questions regarding the licensee's [i.e., LightSquared's] basic character qualifications.”¹⁶ Certainly, that is the case here.

As to the third factor, that of the Petition lacking a reasonable basis, the Petition provides no basis whatever to connect the license renewal to the alleged adverse impacts to LightSquared. “Should it appear that the allegations in the petition are specious, with little or no factual or legal basis, such evidence would tend to raise the question whether petitioner was acting in good faith.”¹⁷ The license renewal is not the cause of LightSquared's difficulties with its planned network, nor would the relief requested further LightSquared's goals except through the impermissible means of silencing an advocate for the protection of GPS users.

Lastly, the economic motivation of LightSquared is clear: LightSquared has been prevented by the Commission from initiating commercial service on its proposed network until further interference testing on the GPS band can be completed, and measures are put in place to prevent the serious harm to the public interest that would result from allowing LightSquared to run roughshod over the interests of hundreds of millions of GPS users. LightSquared's private economic interest is to secure spectrum rights, deploy its planned network as fast as it can, and let others pick up the pieces and bear the costs of the resulting disruption to GPS. Numerous parties, including Deere, have vigorously sought to hold LightSquared to account for its plans and to protect the public interest in maintaining the critical GPS infrastructure that exists today. LightSquared's Petition seeks to prevent Deere from advocating in the public interest, and is

¹⁶ *Radio Carrollton* at ¶ 26.

¹⁷ *Radio Carrollton* at ¶ 26.

designed merely to protect LightSquared's private economic interest. Such conduct is, of course, completely incompatible with the public interest both in maintaining the GPS infrastructure and in vigorous and open debate regarding this issue. The Commission should not allow LightSquared to hold Deere's license hostage for its own pecuniary gains.

The Commission has been careful in the past not to permit parties to subvert the Commission's administrative processes into a private "forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction ..."¹⁸ Accordingly, in rejecting attempts to import commercial, policy, and other similar disputes into the FCC's administrative proceedings, the Commission has repeatedly reminded parties: "It is important to emphasize that the Commission's review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that *flow from the proposed transaction ...*"¹⁹

To be sure, the Commission has recognized that its public interest authority enables it to "impose and enforce *narrowly tailored*, transaction-specific conditions that ensure that the public interest is served by the transaction."²⁰ Consonant with the focused nature of this authority, the Commission has held that it will impose conditions *only* to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's

¹⁸ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd. 6547, 6550 (2001) ("AOL-Time Warner Order").

¹⁹ *AOL-Time Warner Order*, at 6550.

²⁰ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, ¶ 19 (rel. Nov. 17, 2005) ("Verizon/MCI Order").

responsibilities under the Communications Act and related statutes.²¹ “Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.”²²

Deere urges the Commission to follow its usual practice in its transaction proceedings and to dismiss LightSquared’s Petition as unrelated to the renewal of Deere’s license. Disputes such as those raised by LightSquared’s Petition are not license renewal-related issues and should not be entertained by the Commission in this proceeding

C. LightSquared’s Petition Should Be Dismissed Because It Fails to Meet The Requirements of Section 1.106 of the Commission’s Rules

The Petition filed by LightSquared fails to meet the requirements of Section 1.106 of the Commission’s Rules.²³ That rule requires:

Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, *it shall state with particularity the manner in which the person's interests are adversely affected by the action taken*, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.²⁴

The rule also provides that, “[t]he petition shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed.”²⁵ The Petition fails to meet these standards and accordingly should be dismissed.

²¹ See *id.*

²² *Id.* See also *id.*, n.157 (rejecting claims of numerous commenters seeking conditions and raising claims unrelated to the transaction under consideration). As noted below, the specific conditions requested by LightSquared are of precisely this nature, and should be rejected.

²³ 47 C.F.R. § 1.106.

²⁴ 47 C.F.R. § 1.106(b)(1) (emphasis added).

²⁵ 47 C.F.R. § 1.106(d)(1).

LightSquared's Petition goes on at length about its history, its network plans and its potential as a wireless broadband competitor.²⁶ But it fails to show that the action taken by the Commission *in this proceeding* – the routine grant of Deere's license – adversely affects LightSquared or its interests. Indeed, it could not, since the renewal merely maintains the status quo and LightSquared is demonstrably no worse off than it was before. But even more to the point, the sole cited adverse effect on LightSquared of Deere's license is set forth in a single sentence of LightSquared's Petition: "At present, however, LightSquared is not able to actually commence operating the terrestrial component of this 4G LTE network *because of the objections of companies such as Deere.*"²⁷ In short, the sole adverse impact identified by LightSquared is not Deere's license but Deere's objections in other forums to LightSquared's network plans and the attendant harm of those plans to GPS users. This is hardly a cognizable adverse effect of the type required by Section 1.106.

Put another way, LightSquared fails to demonstrate that it has standing to petition the Commission for reconsideration of Deere's earth station license renewal. LightSquared was not a party to the proceeding, and it can not demonstrate any specific interest in the license renewal process itself. The Commission has stressed the importance of insisting on a proper showing of standing in preventing its licensing procedures from being misused:

Particularly insofar as commercial parties may be attempting to use the Commission's processes to "leverage" the resolution of contract or other commercial disputes not within the sphere of the Commission's responsibilities, it is appropriate that we continue to insist that proper standing be demonstrated and that such standing not be automatically accorded where the injury complained of is neither related to action on the application nor redressable through an adverse decision on it. *Compare CAPH v. FCC*, 778 F.2d 823 (D.C. Cir. 1985). A stricter insistence on proper

²⁶ See *Petition*, at 4-5.

²⁷ *Petition*, at 5 (emphasis added).

standing requirements might provide an alternative mechanism for addressing some abuse concerns.²⁸

While LightSquared may dispute Deere's use of the spectrum allotted by the license on public policy grounds, Deere's rights to use the licensed spectrum is a distinct question of policy from the Commission's grant of renewal of the license itself. As LightSquared is well aware, the Commission has a separate forum for determining the use of the L-Band. LightSquared's claims and objections belong there, not in this proceeding.

D. LightSquared's Allegations Of Noncompliance Are Made in the Wrong Forum

The Petition lists a series of alleged "noncompliance" issues associated with Deere's operations apparently discovered through investigations by LightSquared. Following Deere's petition for reconsideration of LightSquared's waiver, LightSquared has apparently combed various documents for tidbits which it believes reflect badly on Deere's operations.²⁹ As shown by the Petition itself, LightSquared can hardly be seen as an objective source of information concerning Deere's operations under the license that LightSquared so desperately wants to be revoked. Nonetheless, Deere respectfully asserts that even assuming *arguendo* that any of LightSquared's claims of noncompliance warrant inquiry, denial of Deere's license renewal is not the appropriate remedy and this proceeding is not the appropriate forum.

LightSquared cites Section 25.156(a) for the proposition that the Commission should use this proceeding to take Deere to task for its alleged noncompliance – but LightSquared cites no

²⁸ *Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, Further Notice of Proposed Rulemaking, 3 FCC Rcd 5179, n.43 (1988).

²⁹ LightSquared's assiduity and creativeness on this issue presents a curious contrast to its lack of due diligence in searching for Deere's notice of completion, as discussed above.

case in which an allegation of noncompliance filed by a competitor in a renewal proceeding has led the Commission to take the extraordinary step of revoking a license, as LightSquared would have the Commission do to Deere here.³⁰

Rather, LightSquared has turned Section 25.156 on its head by attempting to distort a regulation that requires the Commission to *grant* a license or renewal under specified circumstances into one that would instead require automatic *nonrenewal* of a license that had already been granted.³¹ In fact, under the clear language of Section 25.156, the renewal of the license “*will be granted*” (emphasis added) if the Commission determines that “the proposed facilities and operations comply with all applicable rules, regulations, and policies, and that grant of the application will serve the public interest, convenience and necessity.”³² Since the instant renewal merely maintains the status quo, and the Commission has long ago determined that the terms of the license itself (*i.e.*, the facilities and operations as proposed under the license renewal) meet this standard, there is no basis to deny renewal under this rule. Routine approval

³⁰ See *Petition*, at 2 (“The Commission’s rules provide that an earth station renewal application can be granted *only* if the Commission finds that: (i) the applicant is legally, technically, and otherwise qualified; (ii) the proposed facilities and operations comply with all applicable rules, regulations, and policies; and (iii) grant of the application will serve the public interest, convenience and necessity.”) (emphasis in original). Although LightSquared cited Rule 25.156(a) in its Petition in a manner that implies that it provided the actual wording of the text of the rule, the word “only” (as emphasized in the LightSquared Petition) does *not* appear in the text of the rule, and for obvious reasons as discussed further herein.

³¹ 47 C.F.R. § 25.156(a) states in full: (a) Applications for a radio station authorization, or for modification or renewal of an authorization, will be granted if, upon examination of the application, any pleadings or objections filed, and upon consideration of such other matters as it may officially notice, the Commission finds that the applicant is legally, technically, and otherwise qualified, that the proposed facilities and operations comply with all applicable rules, regulations, and policies, and that grant of the application will serve the public interest, convenience and necessity.

³² 47 C.F.R. § 25.156(a).

of license renewal is simply not the proper forum for determining compliance with the terms of the license itself.

Although LightSquared does not mention it, its allegations regarding Deere's alleged noncompliance with the terms of its license actually fall under a different Commission Rule: sanctions for failure *to operate in conformance* with the Communications Act, license specifications, or any condition placed on a license, are separately provided for by Section 25.160.³³ That Rule provides that the Commission may impose forfeitures for failure to operate in conformance with the Act, license specifications or Commission-imposed conditions, and provides that a station license may be revoked only “for ... *repeated and willful violation* of the kind set forth in paragraphs (a) and (b).”³⁴ Section 25.160 on its face does not apply to license renewal proceedings – it is a stand alone provision that governs the Commission's authority to enforce the terms of a license through an enforcement proceeding.

If followed, LightSquared's requested course of action would leave thousands of users of Deere's services – who utilize these services for critical agricultural, construction and related purposes – entirely without service. Thus, the unprecedented remedy LightSquared seeks would not merely punish Deere, it would also punish Deere's GPS users. Yet this is the same LightSquared that has denied any intent to harm users or to have them bear the cost of LightSquared's network plans.

Deere respectfully asserts that the Commission's handling of similar allegations in the context of broadcast license renewal applications is an appropriate model here. In that context, the Commission has long held that noncompliance with the conditions of authorization under a license does not ordinarily justify revocation of a license in a renewal proceeding. In a host of

³³ 47 C.F.R. § 25.160.

³⁴ 47 C.F.R. § 25.160(c) (emphasis added).

broadcast license renewal proceedings, the Commission has confronted petitions to deny, petitions for reconsideration, and even informal objections of technical violations of the Commission's rules by investigating the alleged violations, and engaging with the licensee to ensure compliance with the conditions of its authorization.³⁵ Except in the most extreme cases, it has *not* taken those allegations as justifying nonrenewal of a license that is otherwise in the public interest, and it should not do so here.³⁶

³⁵ See, e.g., *Ms. Cynthia D. Lewis 2405 Essington Road Joliet, IL 60435 Dorann Bunkin, Esq. Wiley Rein LLP 1776 K St., N.W. Washington, DC 20006 In re: WVAZ(FM), Oak Park, IL Facility ID No. 6588 AMFM Broadcasting Licenses, LLC File No. BRH-20040802AAV Application for Renewal of License Informal Objection*, 22 FCC Rcd 4812, n. 6 (Media Bureau 2007) (“Even assuming, *arguendo*, that [the licensee] failed to fully comply with the notice requirements, this sole defect would not warrant the dismissal of its renewal application. Indeed, in many cases where an applicant has violated Section 73.3580, the Commission has held that the appropriate remedy is to ‘require[] the applicant to correctly republish the local notice and advise the Commission it has done so.’”). See also *Existing Shareholders of Clear Channel Communications, Inc. (Transfers) and Shareholders of Thomas H. Lee Equity Fund VI, L.P., Bain Capital (CC) IX, L.P., and BT Triple Crown Capital Holdings III, Inc. (Transferees) For Consent to Transfers of Control of Ackerley Broadcasting -- Fresno, LLC Ackerley Broadcasting Operations, LLC; AMFM Broadcasting Licenses, LLC; AMFM Radio Licenses, LLC; AMFM Texas Licenses Limited Partnership; Bel Meade Broadcasting Company, Inc. Capstar TX Limited Partnership; CC Licenses, LLC; CCB Texas Licenses, L.P.; Central NY News, Inc.; Citicasters Co.; Citicasters Licenses, L.P.; Clear Channel Broadcasting Licenses, Inc.; Jacor Broadcasting Corporation; and Jacor Broadcasting of Colorado, Inc.*, 23 FCC Rcd. 1421, n. 100 (“Although [the licensee’s] license renewal applications is uncontested, the station currently is being investigated by the Commission’s Enforcement Bureau for allegedly violating the Rule regarding the broadcast of telephone conversations (47 C.F.R. § 73.1206). However, even if established, this alleged violation does not raise a substantial and material question of fact concerning the licensee’s basic qualifications to hold a broadcast license.”); *Joe Ray Blalack, Letter*, 22 FCC Rcd 556 (2007) (forfeiture was the appropriate sanction for licensee’s violation of Section 73.1206 and designation of license renewal application was not required). LightSquared’s allegations, even if proven true, would not constitute a serious violation of the Commission’s rules or the Act, or if taken together, would constitute a pattern of abuse.

³⁶ Many of the allegations lobbed by LightSquared are so specious as to constitute bad faith and abuse of the Commission’s process, such as LightSquared’s facially meritless invocation of Section 25.119 (governing transfers of control *of a licensee*) (47 C.F.R § 25.119) in claiming Deere violated that provision because it does not sufficiently “control” its products once placed into the stream of commerce.

E. The Conditions on Renewal Requested by LightSquared Are Without Merit, and Should Not Be Imposed

Finally, LightSquared asserts that if the Commission does renew Deere's license, it should do so only upon conditions that, LightSquared asserts, are necessary "to mitigate the potential for harm that would result if Deere were allowed to foreclose LightSquared's use of the L Band...".³⁷ Facially, these requested conditions too are merely an attempt by LightSquared to refight the same broad public policy battles it is fighting with Deere and others elsewhere, since the only purported justification for these conditions is to allow LightSquared to proceed unimpeded with its network plans. Accordingly, the conditions should be rejected, for reasons discussed exhaustively above.

The first condition requested by LightSquared is that the Commission "make clear that all operations under Deere's license are subject to the condition that Deere accept all interference that may be caused by the operation of any other authorized radio station (including those operated by LightSquared or its wholesale customers)." But the degree to which Deere, other providers like it, and their users, are protected from interference are the *central issues* in the broad public policy debates now raging over LightSquared's network proposal. It would be patently improper for the Commission to dispose of these issues by the back-door mechanism of imposing a new condition in a license renewal provision, and it is abusive for LightSquared to ask it to do so.³⁸

³⁷ *Petition*, at 23.

³⁸ LightSquared seems to be implying that Deere already lacks interference protection in the first place. But even if this were true (and it is not), no condition would be necessary to effectuate such a hypothetically pre-existing state of affairs. In fact, LightSquared's argument that Deere has lost its interference protection is based entirely on Section 25.162 of the Commission's Rules. This section provides only that such protection may be forfeited by a licensee *if the Commission makes requisite findings of violation*. The Commission has made no

Second, LightSquared asks the Commission to condition renewal on a requirement that “Deere receivers ... meet minimum standards to ensure compatibility with other users of the 1529-1559 MHz band. Such standards would help to guard against the possibility that Deere would experience actual interference, or that Deere would seek to curtail operation of the LightSquared network...”³⁹ But, again, the fundamental issue at stake in the broader proceedings affecting LightSquared’s network proposal is the extent to which that proposal would severely impinge on the rights of current holders and users of GPS services to receive reliable service, the question of whether any meaningful and realistic mitigation solutions exist, and if so, who must pay for ameliorative measures and how they are to be carried out. Here too, LightSquared is asking the Commission to decide these vital matters of public interest by the expedient of tacking a condition onto a license renewal. The Commission has routinely rejected past attempts to shoehorn broad issues of public policy into narrow licensing proceedings and should do so again here.⁴⁰

such findings here, nor could it on the record before it. As noted above, such findings are to be made, if at all, in an enforcement proceeding, not a routine license renewal.

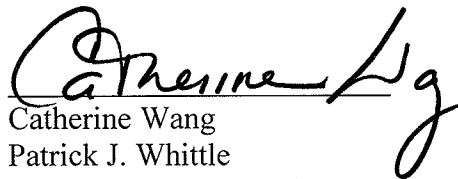
³⁹ *Petition*, at 23.

⁴⁰ Notably, the precedent cited by LightSquared that purportedly supports this condition – the imposition of certain standards on aircraft-based devices – was carried out in a rulemaking, not an individual licensing proceeding, as LightSquared’s own citation (*Petition*, at n.75) makes clear. For instances in which the Commission has rejected attempts to back-door broad public interest concerns into license proceedings, *see, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, ¶ 207 (rel. Nov. 10, 2008) (finding that issues that could broadly affect an industry are not appropriate for consideration in the Commission’s review of a transaction); *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, WT Docket No. 08-246, ¶ 133 (rel. Nov. 5, 2009) (finding that issues related to general concerns that are not transaction-specific are better addressed in other rulemaking proceedings).

IV. CONCLUSION

LightSquared's Petition requests that the Commission take the extraordinary action of revoking a license lawfully issued to Deere for the improper purpose of removing Deere as a policy opponent in a separate proceeding concerning LightSquared's own use of satellite spectrum. LightSquared has failed to raise any genuine substantive grounds for non-renewal. For the reasons set forth herein, Deere strongly opposes LightSquared's Petition, and urges the Commission to dismiss the same.

Respectfully submitted,



Catherine Wang
Patrick J. Whittle
Jeffrey R. Strenkowski
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
catherine.wang@bingham.com
patrick.whittle@bingham.com
jeffrey.strenkowski@bingham.com

Counsel for Deere & Company

Dated: October 27, 2011

Exhibit A

Deere & Company Certification of Completion of Construction Filed December 20, 2001



JOHN DEERE

Ag Management Solutions
4140 NW 114th Street, Urbandale, IA 50322 USA

John H. Winter
Director

20 December 2001

VIA FEDERAL EXPRESS

Magalle Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Deere & Company , Inc.
Call Sign: E010011;
Nature of Service: Mobile Earth Stations
Certification of Completion of Construction**

Dear Ms. Salas:

Deere & Company hereby submits this letter pursuant to Section 25.133(b) of the Commission's Rules, 47 C.F.R. § 25.133 (b), to provide certification that construction of the above referenced facilities under Call Sign E010011 is complete, and the stations are in regular operation and will remain so during the license period unless the license is submitted for cancellation.

Name of Licensee: Deere & Company
FCC File Numbers: SES-LIC-20010112-00051
Call Sign: E010011
Date of License: 10/09/01

Please date-stamp and return the enclosed additional copy of this certification. Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

John H. Winter
Director, Deere Ag Management Solutions



JOHN DEERE

Ag Management Solutions

4140 NW 114th Street, Urbandale, IA 50322 USA

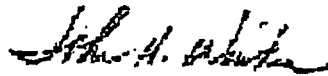
John H. Winter
Director

Certification

I, John Winter, Director, Ag Management Solutions of Deere & Company, hereby certify that the information and statements in the attached letter submitted pursuant to Section 25.133(b) of the Commission's Rules, are true and correct to the best of my knowledge, information and belief, with respect to the Mobile Earth Station facilities licensed to Deere under call sign E010011.

Executed this 20th day of December, 2001.

Deere & Company



By: John H. Winter

Title: Director, Ag Management Solutions

*Entered in
database 01/16/02*

Pritchard-Kelly, Ruth

From: Pritchard-Kelly, Ruth
Sent: Friday, December 21, 2001 12:36 PM
To: 'ibsecretary@fcc.gov'
Subject: Call Sign E010011; File # SES-LIC-20010112-00051

Dear Sir or Madam:

Attached (in WORD) is the letter certifying that the mobile earth terminals approved under call sign E010011 (File No. SES-LIC-20010112-00061) have been completed and are operational.

Please do not hesitate to contact me if you have any questions about this filing.

Sincerely,

Ruth Pritchard-Kelly
Counsel to Deere & Company

Swidler Berlin Shereff Friedman, LLP
Washington, D.C.
U.S.A.
email: RPKelly@swidlaw.com
phone: +202-295-8423



deerecom.doc

The preceding E-mail message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at (202) 295-8423. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

Declaration

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


_____)	
In the Matter of)	IBFS File No. SES-RWL-20110908-01047
Application of Deere & Co.)	Call Sign E010011
For Renewal of Earth Station License)	
_____)	

Declaration of M. Renee Britt

I, M. Renee Britt, hereby make the following declarations under penalty of perjury.

1. I am a Paralegal Specialist at the law firm of Bingham McCutchen, LLP. In that capacity, I regularly assist attorneys at Bingham McCutchen, LLP and their clients with a variety of administrative functions and research, as well as diligence requests.
2. On behalf of Deere & Co. (“Deere”), on October 20, 2011, I contacted the Federal Communications Commission’s duplicating contractor, Best Copy & Printing, Inc. (“BCPI”), to inquire as to whether it had a copy, or could obtain from the Commission’s Public Reference Room (“Reference Room”), of the Call Sign E010011 certification of construction notification filed by Deere.
3. In addition to making the request to BCPI, on October 20, 2011, I traveled to the Federal Communication Commission’s Reference Room, requested and was provided with one file concerning Call Sign E010011.
4. On October 20, 2011, I was informed by Jay Joshi of BCPI that an additional file containing the Commission’s records for Deere’s satellite filings was unavailable in the Reference Room, having been apparently checked out to Commission staff.

5. On October 21, 2011, BCPI responded to my request and forwarded to me the copy of the Deere certification letter filed with the Commission on December 21, 2001, which is attached to the foregoing Opposition at Exhibit A.
6. I declare that I created this Declaration with the assistance of persons under my direct supervision and that, to the best of my knowledge, the facts represented herein are true and accurate.



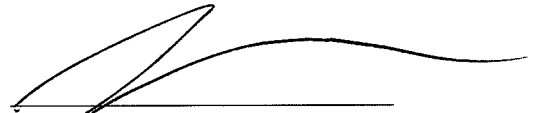
M. Renee Britt

Executed: October 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Opposition of Deere & Company to Petition for Reconsideration was sent via first class mail, postage prepaid on October 27, 2011, to:

Jeffrey J. Carlisle
Executive Vice President, Regulatory Affairs
and Public Policy
LightSquared, Inc.
10802 Parkridge Boulevard
Reston, VA 20191



Jeffrey R. Strenkowski