

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

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

REPLY

LightSquared Inc., together with its affiliates (collectively, “LightSquared”), replies to the Opposition of Deere & Company (“Deere”) in this proceeding.

I. INTRODUCTION

LightSquared’s Petition for Reconsideration presents evidence and legal analysis demonstrating that Deere apparently has engaged in a pattern of willful and repeated violations of the Communications Act, the Commission’s rules, and the terms and conditions of Deere’s license. More specifically, the Petition establishes that Deere apparently is:

- operating outside of authorized frequencies;
- operating unauthorized antenna/receiver types;
- communicating with unauthorized points of communication;
- operating more terminals than it was authorized to deploy;
- operating at variance from the U.S. Table of Allocations without a waiver;
- operating transceivers that are outside the scope of its authority; and
- failing to maintain adequate “control” of radiocommunication devices.

Because of these apparent violations, the Petition questions whether Deere falsely certified in its renewal application that it is operating in a manner consistent with the parameters specified in its prior applications.

Tellingly, Deere does not deny that it has failed to comply with the terms of its license and applicable law. Deere’s failure to respond to the evidence of its unlawful conduct, and to otherwise address the Petition on its merits, warrants a denial of Deere’s renewal application. At a minimum, Deere’s failure confirms the existence of substantial and material questions of fact that warrant investigation and resolution.

LightSquared’s Petition also demonstrates that renewal of Deere’s license otherwise would harm the public interest by undermining the implementation of

LightSquared's wireless 4G LTE network and thereby blocking the provision of competitive mobile broadband service to hundreds of millions of American consumers. In particular, the Petition shows how Deere is impermissibly attempting to leverage its license in a small sliver of spectrum (2.5 kHz) to foreclose LightSquared's licensed use of a spectrum band that is approximately *twenty-six thousand times* as large. Significantly, Deere does not dispute that: (i) Deere's license was sought and granted on a non-interference basis; (ii) Deere had and has no legally cognizable expectation that its operations would be protected from interference; and (iii) Commission policy precludes an earth station operator like Deere from leveraging its license in a manner inconsistent with a coordination arrangement to which its space segment provider is party.

Accordingly, the Commission should reconsider its grant of Deere's renewal application and deny that application.

II. THE UNCONTESTED RECORD WARRANTS DENIAL OF DEERE'S RENEWAL APPLICATION

In its Opposition, Deere offers no response to concerns that it has failed to comply with the terms of its license. By not responding to the documented evidence of its unlawful conduct, Deere has made a series of admissions.¹ As delineated in the Petition, Deere apparently has engaged in a pattern of willful and repeated violations that go to the very core of its licensed activities. It also appears that Deere has falsely certified in its renewal application that it is operating in a manner consistent with the parameters specified in its prior applications²—a false certification being a serious offense that merits disqualification.³ Finally, as LightSquared's Petition demonstrates, Deere has repeatedly asserted license rights it does not have in order to undermine the public interest benefits to be delivered by LightSquared's wireless 4G LTE network.

¹ Cf. FED. R. CIV. PROC. 8(b)(6) ("Effect of Failing to Deny. An allegation . . . is admitted if a responsive pleading is required and the allegation is not denied.").

² Question 6 of FCC Form 312-R requires a renewal applicant to detail any changes between authorized and actual operations.

³ See, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000); *Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000) (Commission may disqualify an applicant who misrepresents facts or lacks candor in dealing with the agency).

All of these matters go to the heart of the public interest assessment of Deere’s renewal application that the Communications Act requires be conducted. As an initial matter, Deere has the evidentiary burden of satisfying the renewal standard set forth in Section 25.156(a).⁴ That rule requires the Commission to assess, prior to renewing an earth station license, whether: (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. In doing so, the Commission must consider the application, any pleadings and objections filed, and any other matters of which official notice may be taken.⁵

Instead of denying (or even responding to) the evidence of Deere’s apparent violations of its license, the Communications Act, and the Commission’s rules, Deere assumes the existence of those violations “*arguendo*” and asserts that the “denial of Deere’s license renewal is not the appropriate remedy and this proceeding is not the appropriate forum.”⁶ In doing so, Deere is mistaken that LightSquared is asking the Commission to “revoke” Deere’s license.⁷ This is simply untrue. LightSquared asks the Commission to consider Deere’s actions in the context of a renewal proceeding, in which Deere bears the burden to demonstrate that it would serve the public interest to “re-up” its license.⁸ As noted above, Section 25.156 *specifically* calls for the Commission to consider whether a renewal applicant has complied with the Commission’s rules and the terms of its license.⁹

⁴ 47 U.S.C. § 309(e).

⁵ 47 U.S.C. § 309(a); 47 C.F.R. § 25.156(a).

⁶ Opposition at 15.

⁷ *See id.* at 16.

⁸ Deere’s suggestion that the Commission ignore Deere’s violations because Deere has existing customers should be rejected. The existence of such customers neither justifies renewal in and of itself, nor gives Deere *carte blanche* to violate its license and Commission rules, nor justifies Deere’s attempt to foreclose commercial service over the LightSquared network by knowingly deploying receivers that are incompatible with LightSquared’s long-authorized operating parameters.

⁹ Deere suggests that the Commission must grant the renewal application, without further inquiry, because by granting Deere’s license application in 2001, the Commission determined that “the terms of the license itself”—*i.e.*, the then-proposed facilities and operations—were consistent with the Commission’s rules. Opposition at 16. This argument renders the renewal standard set forth in Section 25.156(a) a nullity. Clearly, the Commission is not obliged to grant *every* renewal application

This inquiry is essential. Whether Deere has been operating in accordance with the terms of its license and the requirements of the Commission’s rules and the Act, and whether Deere more generally has the requisite character to serve as a Commission licensee, are fundamental questions in this renewal proceeding.¹⁰ Deere’s pattern of violations, if taken to be true, *would* demonstrate a lack of character, and *would* warrant denial of Deere’s renewal application.¹¹ If nothing else, Deere’s apparent misrepresentations and false certification would provide a basis for its disqualification.¹² Again, Deere has not denied the allegations set forth in the Petition. Moreover, Deere cannot credibly contest the source of the information cited in LightSquared’s Petition—which in most cases is Deere itself.¹³

The Commission should deny Deere’s renewal application on reconsideration because the *uncontested* record establishes that renewal would be contrary to the public interest. At a minimum, the *uncontested* record raises substantial and material questions of fact that warrant investigation and resolution before the Commission considers granting renewal of Deere’s license.¹⁴

III. THE RECORD SUPPORTS THE IMPOSITION OF APPROPRIATE CONDITIONS SHOULD THE COMMISSION RENEW DEERE’S LICENSE

Should the Commission renew Deere’s license on reconsideration, LightSquared also has established why the Commission should do so only after imposing

simply because the Commission had granted the underlying license, and regardless of how the licensee had used (or misused) its authority over the course of a decade.

¹⁰ That the Commission *also* could pursue an enforcement remedy against Deere (*see* Opposition at 17) is irrelevant to the determination required by Section 25.156(a).

¹¹ Deere is mistaken that its apparent violations are not “serious,” do not reflect a pattern of abuse, and therefore should be ignored in this context. *See* Opposition at 18 n.38. Those apparent violations of the essential terms of its license are hardly minor infractions; rather, they appear to be willful, repeated, and ongoing—thus calling into question Deere’s character qualifications. *See Character Qualifications in Broadcast Licensing*, 102 FCC.2d 1179, at ¶ 102 (1986).

¹² *See supra*, n.3.

¹³ Deere’s suggestion that the information forming the basis of LightSquared’s allegations cannot be trusted, Opposition at 15, is a self-indictment, as Deere was the source of almost all of the factual information that LightSquared cited.

¹⁴ *See* 47 U.S.C. § 309(d)(2) (Commission may grant a renewal application only after finding “that there are no substantial and material questions of fact and that a grant of the application would be consistent with [the public interest]”).

conditions designed specifically to “mitigate the potential for harm that would result if Deere were allowed to foreclose LightSquared’s use of the L Band.”¹⁵ The Petition demonstrates that renewal of Deere’s license would harm the public interest by undermining the implementation of LightSquared’s wireless 4G LTE network. Specifically, the Petition explains how: (i) Deere is impermissibly attempting to leverage a small sliver of licensed spectrum (2.5 kHz) in an effort to foreclose LightSquared’s licensed use of a spectrum band that is approximately *twenty-six thousand times* as large;¹⁶ and (ii) Deere would use its renewed authority to deny the benefits of competitive mobile broadband service to hundreds of millions of American consumers actions, contrary to the objectives set forth in the *National Broadband Plan*.¹⁷ For these reasons, LightSquared requested that the Commission require Deere to: (i) operate on a strict noninterference basis; and (ii) satisfy minimum standards to ensure compatibility with other users of the 1525-1559 MHz band.¹⁸

Deere does not dispute that the harms identified by LightSquared would flow from the renewal of Deere’s license, nor does Deere dispute that the conditions proposed by LightSquared would help to mitigate those harms.¹⁹ Rather, Deere suggests that these conditions would be inappropriate because the Commission currently is considering this subject matter in other proceedings.²⁰ Presumably, Deere is referring to a separate licensing proceeding in which the Commission waived certain of its requirements to facilitate the offering of retail ATC service in the 1525-1559 MHz band.²¹

¹⁵ Petition at 23.

¹⁶ Indeed, Deere admits as much in the Opposition, noting that it has specifically designed “high-precision GNSS receivers (which includes essentially all Deere receivers)” so that they must access spectrum licensed to LightSquared in order to work properly. *See* Opposition at 3 (noting that Deere’s receivers employ a “wide filter” in order to “capture more of the GNSS signal”).

¹⁷ Petition at 8-17.

¹⁸ *Id.* at 23-25.

¹⁹ The cases Deere cites for the proposition that *merger* conditions must be “transaction-specific,” *see* Opposition at 19-20, are inapposite in this *license renewal* proceeding. In any event, the conditions requested by LightSquared are tailored to mitigate the harm that would flow from renewal of Deere’s license.

²⁰ *See* Opposition at 19-20.

²¹ Deere suggests that the significance of its apparent violations is somehow vitiated by LightSquared’s interest in resolving issues concerning Deere’s license, which Deere is using in another proceeding to delay the provision of wireless 4G LTE service to

As an initial matter, it is not clear whether the Commission could impose license conditions on *Deere's* operations in the context of a licensing proceeding involving LightSquared's authority. More fundamentally, there appears to be no better place to address the scope of Deere's rights in the 1525-1559 MHz band than in the context of a proceeding involving its license to operate in a small portion of that band.

Even if the Commission were considering broad L-Band receiver requirements in a parallel *rulemaking* proceeding, it still would be appropriate to impose conditions on Deere now. Indeed, the Commission routinely has imposed interim conditions on existing operators in licensing proceedings to ensure that their operations remain consistent with the Commission's public policy objectives on a going-forward basis.²² Accordingly, LightSquared reiterates its request that the Commission condition any renewal of Deere's license by requiring Deere to: (i) operate on a strict non-interference basis;²³ and (ii) satisfy minimum standards to ensure compatibility with other users of the 1525-1559 MHz band.

IV. DEERE'S PROCEDURAL ARGUMENTS ARE WITHOUT MERIT

Instead of addressing the substance of LightSquared's Petition, Deere claims that the Petition is procedurally improper. Each of Deere's arguments in this respect is meritless.

A. LightSquared's Petition Is Well Founded

Deere strains to characterize LightSquared's Petition as a "strike" pleading, and asserts without justification that LightSquared is asking the Commission to punish Deere for its "speech" in an unrelated proceeding. As discussed above, LightSquared's concerns stem not from Deere's advocacy—which has been far from convincing—but rather from: (i)

hundreds of millions of American consumers. See *LightSquared Subsidiary LLC*, 26 FCC Rcd 566 (2011), *recon. pending*. If anything, Deere's actions in the pending proceeding involving LightSquared's license highlight the significance of the issues raised in this proceeding, as well as the need for the Commission to evaluate Deere's violations of its license and the Commission's rules.

²² See, e.g., *ARINC Incorporated*, 20 FCC Rcd 7553 (2005) (imposing conditions pending completion of the AMSS rulemaking).

²³ Although Deere *already* lacks interference protection for multiple reasons, as set forth in the Petition, an explicit non-interference condition would clarify matters for Deere—which continues to assert non-existent spectrum rights vis-à-vis LightSquared. See Petition at 10-16.

Deere’s apparent willful and repeated violations of the terms of its license and applicable law; (ii) Deere’s attempts to use its license for a mere 2.5 kHz of spectrum to foreclose LightSquared’s implementation of its wireless 4G LTE network in 66 MHz of spectrum, contrary to the public interest; and (iii) Deere’s assertion of spectrum rights that it simply does not have. In truth, it is *Deere* that seeks to restrict public scrutiny and criticism of its apparent violations—and full consideration of the numerous, reasonable, and *uncontested* grounds for denying Deere renewal,²⁴ as set forth in the Petition.

B. LightSquared’s Petition Satisfies the Requirements of Section 1.106

LightSquared’s Petition explains in detail how the renewal of Deere’s authority would undermine LightSquared’s ability to provide commercial service over its wireless 4G LTE network. If Deere’s license were not renewed, its ability to harm LightSquared would be severely circumscribed. As such, there can be no doubt that the Petition “state[s] with particularity the manner in which [LightSquared’s] interests are adversely affected by the action taken” and “the respects in which [LightSquared] believes the action taken by the Commission or the designated authority should be changed,” and thus satisfies the requirements of Section 1.106.²⁵

As LightSquared previously explained, LightSquared did not participate in this proceeding prior to the reconsideration stage because Deere’s renewal application was granted without public notice just five days after it was filed.²⁶ Deere simply ignores that explanation and asks that LightSquared be denied standing because it “was not a party to the

²⁴ See *Radio Carrollton*, 69 FCC 2d 1139, at ¶ 25 (1978) (petitioners have a “statutory right” to raise public interest questions at renewal). The Commission will not declare a petition a “strike” pleading where, as here, it raises *bona fide* public interest arguments. *Id.* at ¶ 24 (applying a “stringent standard” so as “to avoid any possibility of imposing an undue chill on the filing of petitions to deny”). The very First Amendment principles that Deere invokes improperly to try to inhibit LightSquared’s speech actually support LightSquared’s right to file its Petition and bring Deere’s violations to the Commission’s attention. See, e.g., *Meratus Group LLC v. Lake Forest Hosp.*, 528 F. Supp. 797, 803 (N.D. Ill. 2007) (“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.’”), *cited in* Opposition at 6 n.6.

²⁵ See 47 C.F.R. §§ 1.106(b)(1), 1.106(d)(1).

²⁶ Petition at 1 n.2.

[underlying] proceeding.”²⁷ Deere’s argument, of course, fails to consider that Section 1.106(b)(1) *expressly* allows a party to intervene at the reconsideration stage if there was “good reason why it was not possible for him to participate in the earlier stages of the proceeding”—such as a lack of effective public notice.²⁸ Deere’s reading of Section 1.106 would deprive LightSquared of *any* opportunity to challenge Deere’s application, contrary to the requirements of the Act.²⁹

Deere’s argument that the Petition does not “state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed” is similarly misplaced.³⁰ The Petition clearly asks the Commission to reconsider and deny Deere’s renewal application, and to impose specific conditions should the Commission nevertheless decide to grant renewal.³¹

C. LightSquared’s Petition Provides a Reasonable Basis for Questioning Whether Deere Filed Its Certificate of Completion

LightSquared’s Petition raises the possibility that Deere did not timely file a required certificate of completion for its license. To the extent that Deere did not do so, its license terminated automatically in 2002.³² In response, Deere produces a document that it claims was filed in December 2001, and then spills a great deal of ink criticizing LightSquared’s efforts to find such a document.

As a preliminary matter, there is no basis to question LightSquared’s good faith in bringing this issue to the Commission’s attention; LightSquared took a number of reasonable and good faith steps in attempting to locate such a certificate.³³ Those measures

²⁷ Opposition at 14.

²⁸ *See, e.g., Aspen FM, Inc.*, 12 FCC Rcd 17852, 17854 (1997) (standing awarded to file petition for reconsideration without pre-grant objection when application granted five days after Public Notice of its acceptance); *Ted and Jana Tucker*, 4 FCC Rcd 2816 (1989) (standing to file petition for reconsideration without pre-grant objection when application was granted four days after Public Notice of its acceptance).

²⁹ *See* 47 U.S.C. § 309(b), (d).

³⁰ *See* Opposition at 13.

³¹ *See, e.g.,* Petition at 25.

³² *See* 47 C.F.R. § 25.161 (2001).

³³ *See* Petition at 7-8.

included, *inter alia*, reviewing the Commission’s electronic records and available Public Reference Room files, consulting Public Reference Room staff to confirm that no additional files existed, requesting assistance from the Commission’s copy contractor and receiving confirmation (from the same employee that “discovered” the “certificate” produced by Deere) that no such certificate existed in the Commission’s records, and, through that same copy contractor employee, receiving confirmation from a branch chief that Commission staff could not locate any such document after due inquiry.

Substantively, the “certificate” submitted by Deere with its Opposition raises more questions than it answers. Remarkably, it is not date-stamped.³⁴ Nor has Deere produced an electronic return receipt for its e-mail submission, a proof of filing that was routinely provided by the Commission at that time.³⁵ Moreover, it is unclear whether the “certificate” attached to Deere’s Opposition was properly filed with the Commission, as Deere has produced only: (i) a partial facsimile transmission (to an unidentified recipient) of an e-mail dated weeks *after* Deere purportedly submitted the “certificate”; and (ii) a document that may or may not have been attached to that e-mail. Unfortunately, there is no security in the Commission’s Public Reference Room that prevents an interested party from simply inserting a document into the Commission’s paper files years after the fact—which would be consistent with: (i) the recent and unexplained appearance of the “certificate” in IBFS the very day that Deere claims to have located it in the Commission’s files;³⁶ and (ii) the failure of Commission staff to find the “certificate” weeks earlier, despite an internal review at the request of LightSquared and the Commission’s copy contractor. Finally, even if the “certificate” is genuine, it does not appear to meet the requirements of Section 25.133, as the certificate does not state that Deere constructed facilities “as authorized.”³⁷

³⁴ This is particularly notable because the cover letter to the “certificate” included in Exhibit A to the Opposition expressly requested a stamped receipt copy.

³⁵ *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, FCC 01-345, at ¶ 5 (Nov. 29, 2001) (“The Commission will automatically reply to all incoming e-mails to confirm receipt.”).

³⁶ A copy was uploaded to IBFS File No. SES-LIC-20010112-00051 after LightSquared filed its Petition. Based on the document name, it apparently was scanned and uploaded on or about October 21, 2011 (“2011102145555.pdf.”).

³⁷ *See* 47 C.F.R. § 25.133(b) (2001).

Normally, the filing of a certificate of completion is a ministerial act that occurs in the ordinary course of business, and that should not give any cause for concern. Certainly, if Deere's filing had been made at the proper time and in good faith, one would expect Deere to simply note that fact. Instead, Deere devotes a majority of its response to a histrionic attack on LightSquared, referring to a document that neither staff nor the Commission's copy contractor could find, and that did not appear in IBFS, until *after* LightSquared raised a question about its timely submission. While LightSquared does not exclude the possibility that a reasonable explanation exists for this series of odd and troubling events, until that explanation is made Deere's response should raise red flags that warrant further investigation by the Commission. LightSquared thus requests that the matter of Deere's certificate of completion be referred to the Enforcement Bureau and the General Counsel's office for appropriate follow up.

V. CONCLUSION

For the foregoing reasons and those set forth in its Petition for Reconsideration, LightSquared urges the Commission to reconsider its grant of Deere's renewal application and deny that application.

Respectfully submitted,

/s/ Jeffrey J. Carlisle

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November 8, 2011

DECLARATION OF JEFFREY J. CARLISLE

I, Jeffrey J. Carlisle, hereby make the following declarations under penalty of perjury.

1. I am Executive Vice President, Regulatory Affairs and Public Policy of LightSquared Inc. ("LightSquared"). In that capacity, I am responsible for all domestic and international regulatory and policy matters on behalf of LightSquared, including those at the FCC.
2. I have reviewed the foregoing Reply, and certify that, to the best of my knowledge and belief, the factual assertions in the Reply are truthful and accurate.

/s/ Jeffrey J. Carlisle
Jeffrey J. Carlisle

Executed: November 8, 2011

CERTIFICATE OF SERVICE

I, Curleen Brothers, hereby certify that on this 8th day of November, 2011, I caused a true copy of the foregoing "Reply" to be served by first class mail, postage pre-paid, upon the following:

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