

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

In the Matter of)
)
New Operating Globalstar LLC;)
Consent To Assignment and Transfer of) IB Docket No. 04-4
Control of Licenses and Authorizations Held)
by Globalstar, L.P. Subsidiaries and Affiliate)
)
To: The Commission)

COMMENTS OF IRIDIUM SATELLITE, LLC

Iridium Satellite, LLC (“Iridium”), by its attorneys, hereby respectfully requests that the Commission condition any license transfer or assignment in the above-captioned applications for assignment and transfer of control of licenses and authorizations for the operation of the Globalstar mobile satellite service (“MSS”) system¹ upon the applicants’ compliance with the outcome of the pending expedited rulemaking proceeding considering reallocation of the “Big LEO” band at 1.6/2.4 GHz, in which the Globalstar and Iridium systems operate.²

As Iridium has noted previously, the Commission’s Big LEO rebalancing proceeding and any resulting reallocation of spectrum is consistent with law and Commission precedent.³ Globalstar, however, contends that the Commission cannot

¹ Public Notice, “New Operating Globalstar LLC Seeks Consent to Assignment And Transfer of Control of Licenses And Authorizations Held By Globalstar, L.P. Subsidiaries and Affiliate”, DA 04-39 (rel. Jan. 9, 2004).

² *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, IB Docket No. 02-364, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003).

³ Reply Comments of Iridium Satellite, LLC, IB Docket No. 02-364, at 26-29 (filed July 25, 2003).

reallocate Big LEO spectrum in a rulemaking proceeding.⁴ Instead, Globalstar asserts that a license proceeding under Section 316 of the Communications Act is required.⁵ Iridium's Reply Comments in the rulemaking proceeding fully refute Globalstar's procedural claim.⁶

To foreclose any further dispute regarding the Commission's authority to reallocate Big LEO MSS spectrum, however, Iridium requests that the Commission impose a condition on any license transfer or assignment that requires the proposed new licensee, New Operating Globalstar LLC ("NGLLC"), and its owners, Thermo Satellite LP, to comply with the outcome of the Big LEO rebalancing rulemaking.⁷

⁴ Joint Comments of L/Q Licensee, Inc., Globalstar L.P., and Globalstar USA, L.L.C., IB Docket No. 02-364, at 30-33 (filed July 11, 2003) ("Comments of Globalstar").

⁵ Comments of Globalstar at 30. Section 316 of the Communications Act requires that, before the Commission modifies the terms of a particular license, it must give the license holder written notice of the proposed modification and an opportunity to protest the proposed modification. 47 U.S.C. § 316(a)(1) (2000).

⁶ Notably, Globalstar does not have an unconditional right to operate in perpetuity in the existing CDMA spectrum, and therefore, any reallocation of its spectrum is not a "modification" of its license subject to Section 316. See *AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1158-59 (D.C. Cir. 2000) ("[W]e regard 'a license [as] modified for purposes of section 316 when an *unconditional right* conferred by the license is substantially affected.'") (quoting *P&R Temmer v. FCC*, 743 F.2d 918, 927-28 (D.C. Cir. 1984)) (emphasis added and alteration in original), *cert. dismissed*, *Motient Servs. v. FCC*, 531 U.S. 1121 (2001). Furthermore, a generally applicable spectrum reallocation plan adopted in a valid rulemaking proceeding does not constitute a "modification" of a particular license subject to the requirements of Section 316. Finally, Globalstar cannot plausibly claim that it did not receive notice that the spectrum would be reallocated if only one CDMA licensee materialized or that it has not had an opportunity to make its objections to such action known.

⁷ See, e.g., *NewCity Communications, Inc. (Transferor) and Cox Radio, Inc. (Transferee)*, Memorandum Opinion and Order, 12 FCC Rcd 3929, 3943 (1997) (permitting Cox to own newspaper and radio interests "during the pendency of and subject to the outcome in the attribution rulemaking proceeding"); *Westinghouse Broad. Co.*, Memorandum Opinion and Order, 55 F.C.C.2d 685, 686 (1975) (conditioning any grants of renewal applications on action taken at the conclusion of pending rulemaking proceeding); *CBS, Inc.*, Memorandum Opinion and Order, 53 F.C.C.2d 1112, 1113-14 (1975).

For the foregoing reasons, Iridium requests that the Commission impose the requested condition on any license transfer or assignment in the above-captioned applications.

Respectfully submitted,

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