

November 10, 2004

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

*Re: ET Docket No. 00-258*

Dear Ms. Dortch:

On November 8, 2004, the Wireless Communications Association International, Inc. ("WCA") timely filed the attached Reply to Opposition for Reconsideration regarding the Commission's consolidated *Report and Order* in IB Docket No. 02-364 and *Fourth Report and Order* in ET Docket No. 00-258.<sup>1</sup> The document was properly filed via ECFS under the lead docket number, IB Docket 02-364, but inadvertently was not filed via ECFS in ET Docket No. 00-258. Hence, to ensure that the Commission's records are complete in both proceedings, we are submitting an additional copy of the document herewith for inclusion in ET Docket No. 00-258.

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<sup>1</sup> *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands and Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 19 FCC Rcd 13356 (2004).

WILKINSON ) BARKER ) KNAUER ) LLP

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Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,

/s/ Robert D. Primosch

Robert D. Primosch  
Counsel for the Wireless  
Communications Association International, Inc.

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

In the Matter of	)	
	)	
Review of the Spectrum Sharing Plan Among	)	
Non-Geostationary Satellite Orbit Mobile	)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz	)	
Bands	)	
	)	
Amendment of Part 2 of the Commission's	)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	

**REPLY TO CONSOLIDATED OPPOSITION TO  
PETITIONS FOR RECONSIDERATION**

The Wireless Communications Association International, Inc. (“WCA”), by its attorneys and pursuant to Section 1.429(g) of the Commission’s Rules, hereby replies to the Consolidated Opposition filed by Globalstar LLC (“Globalstar”)<sup>1</sup> with regard to the petitions of WCA and others that seek reconsideration of the Commission’s *Fourth Report and Order* in ET Docket No. 00-258 and the *Report and Order* in IB Docket No. 02-364 (collectively, the “*Reallocation Order*”).<sup>2</sup> In addition, WCA addresses Nextel Communications, Inc.’s conditional commitment to work with Broadcast Auxiliary Service (“BAS”) licensees to ensure that any cost-savings inherent in the transition of BAS channels A1-A7 can also benefit the

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<sup>1</sup> Consolidated Opposition to Petitions for Reconsideration of Globalstar LLC, IB Docket No. 02-364 (filed Oct. 27, 2004)[“Opposition” or “Globalstar Opposition”].

<sup>2</sup> *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands and Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 19 FCC Rcd 13356 (2004).

“refarming” of BAS channels A8-A10 proposed in this proceeding by the Society of Broadcast Engineers, Inc. (“SBE”).<sup>3</sup>

## I. INTRODUCTION.

There is absolutely no dispute in the record that the Broadband Radio Service (“BRS”) channel 1 licensees being involuntarily displaced from the 2150-2162 MHz band to create additional auctionable spectrum for the Advanced Wireless Service (“AWS”) cannot co-exist on a co-channel, co-coverage basis in the 2496-2500 MHz band with the Big LEO Mobile Satellite Service (“MSS”) licensee, grandfathered BAS licensees and other incumbent terrestrial licensees. Hence, in their respective petitions for reconsideration, WCA and Sprint Corporation (“Sprint”) offered workable, good faith proposals that will solve the problem without defeating the legitimate expectations of any affected party.<sup>4</sup> These proposals are largely consistent with that put forth by SBE, although as shown in the WCA Opposition to SBE’s filing, BRS channel 1 licensees cannot be required to pay any of the costs associated with their involuntary relocation to the 2496-2502 MHz band.<sup>5</sup>

Predictably, however, Globalstar’s Consolidated Opposition continues to advocate an unwarranted spectrum windfall for Globalstar. Indeed, WCA, Sprint, Nextel Communications,

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<sup>3</sup> See Nextel Communications’ Opposition to Petitions for Reconsideration of Globalstar LLC and Society of Broadcast Engineers, IB Docket No. 02-364, at 14 (filed Oct. 27, 2004) [“Nextel Opposition”]; Petition of Society of Broadcast Engineers for Reconsideration, IB Docket No. 02-364, at 5 (filed Sept. 8, 2004) [“SBE Petition”].

<sup>4</sup> See Petition for Partial Reconsideration of Wireless Communications Ass’n Int’l, IB Docket No. 02-364, at 5-25 (filed Sept. 8, 2004) [“WCA Petition”]; Consolidated Opposition to Petitions for Reconsideration of Wireless Communications Ass’n Int’l, IB Docket No. 02-364, at 11-15 (filed Oct. 27, 2004) [“WCA Opposition”]; Sprint Petition for Partial Reconsideration, IB Docket No. 02-364 (filed Sept. 8, 2004) [“Sprint Opposition”]. See also Petition for Reconsideration of Nextel Communications, Inc., IB Docket No. 02-364 (filed Sept. 8, 2004).

<sup>5</sup> See WCA Opposition at 12-16.

Inc., BellSouth Corp. and others have already demonstrated that Globalstar's proposal to "share" the 2496-2500 MHz band is a misnomer, since it is premised on severe geographic and technical restrictions that would eliminate any possible use of the spectrum by involuntarily relocated BRS channel 1 licensees.<sup>6</sup> Stripped of its anti-BRS diatribe, Globalstar's Opposition confirms that Globalstar still does not comprehend even the most basic facts about BRS, and thus must resort to misrepresenting the record to advance its argument.

WCA continues to support SBE's proposal to convert the 2.4 GHz BAS band to three 12 MHz-wide digital channels located at 2450-2486 MHz, subject to WCA's caveat that the relocation costs cannot be imposed on the BRS channel 1 licensees being relocated involuntarily.<sup>7</sup> WCA also applauds Nextel's offer to permit SBE's BAS "refarming" proposal share in the cost savings achieved by Nextel's proposed refarming of BAS channels A1-A7 to the 1990-2025 MHz band, if Nextel accepts the Commission's *800 MHz Report and Order* in WT Docket No. 02-55.<sup>8</sup> Nonetheless, to ensure full funding of the SBE proposal, it remains imperative that the Commission adopt the relocation cost reimbursement proposal submitted by WCA in this proceeding, under which the costs of clearing the 2486-2500 MHz band of BAS and other terrestrial licensees would be borne by the beneficiaries of that process, *i.e.*, Globalstar (who benefits from the clearing of the 2487.5-2493 MHz band for the MSS Ancillary Terrestrial Component ("ATC")) and the appropriate 1.7/2.1 GHz auction winners.

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<sup>6</sup> See WCA Opposition at 6-11; Nextel Opposition at 4-11; Sprint Opposition to Petitions for Reconsideration, IB Docket No. 02-364, at 5-6 (filed Oct. 27, 2004); Opposition of BellSouth Corporation *et al.*, IB Docket No. 02-364, at 6 (filed Oct. 27, 2004).

<sup>7</sup> See WCA Opposition at 11-16.

<sup>8</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, FCC 04-168 (rel. Aug. 6, 2004) ("*800 MHz Report and Order*").

## II. DISCUSSION.

### A. The Commission Must Reject Globalstar's Attempt to Appropriate the 2496-2500 MHz Band For Itself.

Globalstar's Opposition merely regurgitates the same MSS/BRS "sharing" proposal already proven to be a sham in WCA's Opposition, and thus WCA need not reiterate its position in detail here. Simply put, Globalstar's proposal fails because it would prohibit any use of BRS channel 1 at 2496-2500 MHz outside the top 35 Metropolitan Statistical Areas ("MSAs") and, by virtue of draconian technical limitations Globalstar seeks to impose on BRS licensees, would effectively preclude any BRS operation at 2496-2500 MHz within the top 35 MSAs.<sup>9</sup> WCA has already demonstrated at length why this is no solution at all, and that the most equitable approach is to delete the MSS co-primary allocation at 2496-2500 MHz, thereby eliminating any potential for MSS/BRS interference while leaving MSS with more spectrum than it has any right to expect in the 2483.5-2500 MHz band.<sup>10</sup>

For all of its bluster, Globalstar's filing never comes to grips with the fact that BRS channel 1 licensees are being forcibly evicted from spectrum they are already using solely to accommodate a new service (AWS), and that (unlike Globalstar) many BRS channel 1 licensees bought and paid for their spectrum at auction. For these reasons alone, the notion that the Commission should "withdraw the 2496-2500 MHz allocation for BRS" for Globalstar's benefit cannot withstand scrutiny.<sup>11</sup>

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<sup>9</sup> See WCA Opposition at 7-11.

<sup>10</sup> See WCA Petition at 5-15.

<sup>11</sup> See Globalstar Opposition at 7.

Moreover, Globalstar's argument is based on false assumptions. For example, Globalstar claims that BRS channel 1 licensees do not need the 2496-2500 MHz band because "BRS has 148 MHz [in the 2500-2690 MHz band] in which to operate without the 4 MHz in the 2496-2500 MHz band segment . . . ." <sup>12</sup> That assertion is flat-out wrong! Excluding BRS channel 1, BRS has only been allocated a total of 70.5 MHz (less than half that assumed by Globalstar) in the restructured 2.5 GHz bandplan adopted in WT Docket No. 03-66. <sup>13</sup> And, in many markets even less spectrum is available for BRS because grandfathered Educational Broadband Service licensees utilize BRS spectrum.

Globalstar also ignores the fact that there are numerous BRS licenses, and often many BRS licensees, in a market. With even a cursory examination of the Commission's Universal Licensing System database, Globalstar would have learned that in many areas of the country BRS channel 1 is the *only* channel licensed to the BRS channel 1 licensee, with the remaining BRS channels licensed to other parties. This, obviously, puts the lie to Globalstar's assertion that clearing the 2496-2500 MHz band for BRS "is clearly unjustified because of the enormous bandwidth already made available to BRS [in the 2500-2690 MHz band]." <sup>14</sup> For many BRS channel 1 licensees, the "enormous bandwidth" assumed by Globalstar is just the 6 MHz of BRS channel 1. <sup>15</sup> And for others, it may not be much more. If the Commission wants to

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<sup>12</sup> *Id.*

<sup>13</sup> See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165, 14183-4, 14335-6 (2004) ["2.5 GHz Band Restructuring Order"].

<sup>14</sup> Globalstar Opposition at 4.

<sup>15</sup> While not disagreeing that Commission precedent requires that involuntarily relocated BRS licensees be left no worse off than before, Globalstar contends that the concept of "no worse off" is limited to  
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consider the BRS allocation as a whole here, then it must also consider whether MSS requires the 4 MHz at 2496-2500 MHz given the huge amount of unused MSS spectrum at 2 GHz.

Also wrong is Globalstar's claim that "[b]ased on WCA's own data, the MDS industry has warehoused [BRS] Channel 1 for decades . . . ."<sup>16</sup> Globalstar would do well to read the record more carefully. As noted in WCA's Petition for Reconsideration in this proceeding, BRS channel 1 "currently plays a critical role in the provision of wireless broadband services in many markets,"<sup>17</sup> a fact reinforced in supporting filings by other BRS interests in this proceeding and elsewhere.<sup>18</sup> Not surprisingly then, the Commission preserved a full 6 MHz of relocation spectrum for displaced BRS channel 1 licensees in the expanded 2500-2690 MHz bandplan, which Globalstar again conveniently glosses over in its Opposition.<sup>19</sup> Simply stated,

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equipment only and thus does not entitle involuntarily relocated BRS to the same 6 MHz of interference-free spectrum that they have now at 2150-2156 MHz. *See id.* at 5-6. WCA has already addressed this point at length in its prior filings before the Commission, and incorporates those submissions by reference here. *See, e.g.,* Comments of Wireless Communications Ass'n Int'l on Third Notice of Proposed Rulemaking, ET Docket No. 00-258, at 5-7, 28-36 (filed Apr. 14, 2003).

<sup>16</sup> Globalstar Opposition at 5.

<sup>17</sup> WCA Petition at 3.

<sup>18</sup> *See* Sprint Opposition at 6 n.16; BellSouth Opposition at 5-6; Opposition of The BRS Rural Advocacy Group To Petition for Reconsideration of Globalstar LLC, IB Docket No. 02-364, at 2-4 (filed Oct. 27, 2004); Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, WT Docket No. 03-66 (filed June 1, 2004). Letter from Joel Brick, Technical Director, Sioux Valley Wireless, IB Docket No. 02-364 (filed May 30, 2004). In the *2.5 GHz Band Restructuring Order*, the Commission erroneously suggests that "[b]ecause of their frequency separation from the rest of the MDS spectrum, [BRS channels 1 and 2/2A] were not as extensively used." *2.5 GHz Band Restructuring Order*, 19 FCC Rcd at 14177. To the contrary, it is precisely because of that separation that channels 1 and 2/2A are utilized for subscriber to base communications in every frequency division duplex ("FDD") wireless broadband system that currently operates using BRS spectrum. *See* WCA Petition at 3 n. 4.

<sup>19</sup> *See 2.5 GHz Band Restructuring Order*, 19 FCC Rcd at 14183. Globalstar tries to salvage its case by blatantly misrepresenting a portion of the Commission's earlier *Notice of Proposed Rulemaking* in the same proceeding. *See* Globalstar Opposition at 5 n. 4. Contrary to what Globalstar suggests, nowhere in that document did WCA or the Commission state or even suggest that BRS channel 1 had been  
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Globalstar's assertion that BRS channel 1 licensees are not operational is false, and thus Globalstar's reliance on that falsehood to sustain its attack on BRS channel 1 licensees must fail.<sup>20</sup>

Also, Globalstar takes no account of the fact that operators are today utilizing all of the BRS allocation, and cannot suffer a reduction in spectrum without a reduction in existing services to the public. To cite one example, the Commission has found that "WATCH T.V. Company (WATCH TV) provides over 200 channels of digital video and audio service to over 13,000 subscribers by using and reusing every megahertz available to it in the 2150-2162 MHz band and in the 2500-2690 MHz band in Lima, Ohio."<sup>21</sup> How that finding can be squared with Globalstar rhetoric is something Globalstar understandably never addresses.

Lastly, the Commission should give no credit to Globalstar's claim that it can occupy the 2496-2500 MHz band yet still fully protect involuntarily relocated BRS channel 1 licensees in the top 35 MSAs from harmful interference in that spectrum.<sup>22</sup> More specifically, Globalstar states that it allocates different 1.23 MHz channels of the S-band to different geographic regions "based on a complex resource allocation scheme that is controlled by its gateways and

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"warehoused for decades." Indeed, it is highly unlikely that the Commission would have preserved a full 6 MHz for BRS channel 1 in the new 2.5 GHz bandplan had it believed otherwise.

<sup>20</sup> Globalstar's Opposition acknowledges that "as of March 2004, it was fully loaded on 7.5 MHz of S-band spectrum, excluding new aviation services and not having yet implemented ATC, and expected to require the entire 16.5 MHz by March 2005." Globalstar Opposition at 12 (footnote omitted). The contradiction here is obvious – if Globalstar has reached full capacity without ATC, it clearly does not need ATC to serve its customers and thus does not need access to the 2496-2500 MHz band for that purpose. Furthermore, Globalstar also admits that even if it were to deploy ATC, it would be limited "primarily [to] a few urban centers where a user on the ground has difficulty obtaining line of sight to the satellites." *Id.* at 15 (footnote omitted).

<sup>21</sup> *2.5 GHz Band Restructuring Order*, 19 FCC Rcd at 14199 n. 190.

<sup>22</sup> Globalstar Opposition at 10.

network control center.”<sup>23</sup> From there Globalstar asserts that because downlink S-band transmissions at a given 1.23 GHz channel “generally” will differ from one beam to another, and because it operates multiple satellites each transmitting multiple beams, Globalstar has “regional control of frequencies.”<sup>24</sup> Yet nowhere in its Opposition does Globalstar demonstrate that this gives it the ability to avoid interference to BRS licensees in any particular market. Similarly, Globalstar’s supporting Technical Appendix merely reiterates Globalstar’s conclusory arguments with no technical analysis at all, and does not even address the critical issue of whether Globalstar has sufficiently finite control over its transmissions to avoid interfering with co-channel BRS facilities *at the locations where they actually operate*. Further, Globalstar’s generic assertion that it can control its spectrum usage on a “regional” basis is plainly inadequate given Globalstar’s own admission that co-channel MSS and BRS facilities will create harmful interference over rather substantial distances. Globalstar’s technical argument lacks the granularity necessary to assure the Commission that such interference will not occur, and thus should be given no consideration here.

**B. The Commission Should Adopt WCA’s Relocation Cost Reimbursement Proposal to Ensure Full Funding of SBE’s BAS “Refarming” Plan.**

WCA continues to support SBE’s proposal to “refarm” BAS operations by digitizing BAS channels A8, A9 and A10 and refarming them into the 2450-2486 MHz band, thus eliminating any potential co-channel interference among BAS, Big LEO MSS (including

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

MSS/ATC) and BRS.<sup>25</sup> In addition, as noted above, WCA fully supports Nextel's offer to permit SBE's BAS "refarming" proposal share in the cost savings achieved by Nextel's proposed refarming of BAS channels A1-A7 to the 1990-2025 MHz band, if Nextel accepts the Commission's *800 MHz Report and Order*.<sup>26</sup> Nonetheless, it remains necessary for the Commission to adopt the relocation cost reimbursement proposal submitted by WCA in this proceeding, under which the costs of clearing the 2486-2500 MHz band of BAS and other terrestrial licensees would be borne by the Globalstar and 1.7/2.1 GHz auction winners who ultimately benefit therefrom, to the extent such costs are not voluntarily paid by Nextel.<sup>27</sup>

There are three reasons why the Commission should adopt WCA's proposal notwithstanding Nextel's offer. First, Nextel's offer to replace BAS equipment to eliminate BAS operation at 2496-2500 MHz will not clear any incumbent non-BAS terrestrial licensees out of that spectrum, nor will it refarm any 2.4 GHz BAS operations that do not share equipment with 1990-2110 MHz band operations.<sup>28</sup> Accordingly, the cost of clearing those

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<sup>25</sup> See SBE Petition at 3-5.

<sup>26</sup> See Nextel Opposition at 12-18.

<sup>27</sup> It should be noted, however, that WCA has consistently called for the Commission to adopt "self-help" rules, similar to those in place for microwave relocation, which will allow BRS channel 1 licensees to expedite their relocation. Under such a self-help system, any BRS channel 1 licensee should be permitted to fund the clearing of the 2496-2500 MHz band and otherwise incur costs associated with relocation, subject to reimbursement by Globalstar and by the appropriate AWS auction winners. See WCA Petition at 21. n. 42.

<sup>28</sup> For example, there are at least four public safety poll licenses in the 2450-2500 MHz band; three are statewide (MI, NH and MA), and one authorizes operations within a 6 kilometer radius in Kansas. *Id.* at 22. Because of the mobile, wide-area nature of these operations, coordination with BRS channel 1 licensees at 2496-2500 MHz is not possible, and thus the four licensee must modify their facilities as necessary to preclude operation at 2496-2500 MHz. However, because each of the four licensees is authorized to operate with an emission bandwidth of 16 MHz anywhere in the 2450-2500 MHz band, excluding them from the 2496-2500 MHz band should leave them with more than enough spectrum within 2450-2496 MHz for their operations.

operations must be shared equitably by Globalstar and AWS auction winners in accordance with their benefit therefrom. Second, because Nextel's offer is limited to clearing BAS out of the 2496-2500 MHz band, it will not clear BAS licensees out of the 2486-2496 MHz band to facilitate ATC. Again, these costs must be apportioned among Globalstar and AWS auction winners according to their benefit. Finally, adoption of WCA's proposal will ensure full funding of SBE's plan in the event that Nextel does not accept the *800 MHz Report and Order*.

Respectfully submitted,

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November 8, 2004

## CERTIFICATE OF SERVICE

I, Michelle Bynum, hereby certify that on this 8<sup>th</sup> day of November, 2004 I served the foregoing Reply to Consolidated Opposition to Petitions for Reconsideration by depositing true copies thereof with the United States Postal Service, first class postage prepaid and addressed to the following:

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