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November 7, 2007

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

Re: *IB Docket No. 02-364 — Review of the Spectrum Sharing Plan among Non-Geostationary Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*

Dear Ms. Dortch:

Globalstar, Inc. (“Globalstar”) submits this letter for the record in the above-referenced proceeding, in which the Commission has sought comment on whether to revise the Big LEO Mobile Satellite Service (“MSS”) band plan to authorize Iridium Satellite LLC (“Iridium”) to share an additional portion of the MSS spectrum reserved for CDMA MSS operators. Press reports indicate that the Commission may now be considering a *reassignment* of certain frequencies used by CDMA systems for exclusive use by Iridium, rather than granting or denying Iridium additional sharing rights as contemplated in the pending proceeding. In Globalstar’s view, the legal validity of any such reassignment of Big LEO MSS spectrum without notice and opportunity for comment would be subject to challenge under the Administrative Procedure Act (“APA”).

The only issue presented by the pending *Further Notice* in this proceeding is whether to grant Iridium further sharing rights. While the Commission earlier considered broader options, including possible reassignment of a portion of the Big LEO MSS spectrum, in 2004 it decided against reassignment and chose to pursue a sharing course instead. In the *Report and Order* that accompanied the pending *Further Notice*, the Commission specifically declared that “we find that the record in this proceeding supports a finding that sharing L-band spectrum [reserved for CDMA operators] would be more beneficial than granting TDMA MSS operators exclusive access to additional L-band spectrum.”<sup>1/</sup> The 2004 *Report and Order* mandated spectrum

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<sup>1/</sup> See 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, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13386 (2004) at ¶ 47.

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sharing, and the accompanying *Further Notice* invited comment on a single issue – whether to require additional spectrum sharing.<sup>2/</sup>

The scope of the pending *Further Notice* thus is quite specific, making clear that the Commission contemplated *only* the additional sharing of spectrum. No other issues have been left open for consideration in this docket. For this reason, no party to this proceeding has submitted for the record any discussion of a possible reassignment to Iridium of spectrum reserved for CDMA carriers such as Globalstar. Nor did any party that sought reconsideration of the Commission's 2004 sharing decision, including Globalstar, raise the possibility of a reassignment to Iridium of spectrum reserved for CDMA carriers.<sup>3/</sup>

The APA requires the Commission to provide notice and opportunity for comment before revising its rules in any manner outside the scope of the *Further Notice*.<sup>4/</sup> The Commission's express decision in 2004 not to pursue reassignment would appear to foreclose as a legal matter any implication that spectrum reassignment is encompassed within the narrow sharing issue on which the *Further Notice* solicited comment. Furthermore, as a result of this lack of notice, no party submitted for the record any evidentiary support for or opposition to any reassignment of spectrum. Commission actions must be supported by substantial evidence on the record, considered as a whole;<sup>5/</sup> in this case, the record created in response to the *Further Notice* contains *no* evidence on whether or how any reassignment would serve statutory and Commission policy goals or how it would be achieved.<sup>6/</sup>

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<sup>2/</sup> See *id.* at ¶ 98. Globalstar has, of course, submitted for the record technical studies and policy arguments against further sharing.

<sup>3/</sup> While Globalstar sought reconsideration of certain aspects of the Commission's decision to require sharing by CDMA and TDMA Big LEO operators, neither it nor any other party urged that the Commission instead reassign any of the CDMA spectrum to Iridium. See *Petition for Reconsideration of Globalstar LLC*, filed in IB Docket No. 02-364 and EB Docket No. 00-258 (Sept. 8, 2004).

<sup>4/</sup> See 5 U.S.C. §§ 553(b), (c).

<sup>5/</sup> See, e.g., *Prometheus Radio Project v. FCC*, 373 F.3d 372, 389 (3<sup>rd</sup> Cir. 2004).

<sup>6/</sup> For example, the Commission has absolutely no record before it that would allow it to consider the impact of any reassignment on future CDMA systems, such as the German-based Courier system, or, for that matter, how its decision could impact the rules of other regulatory administrations worldwide.

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In sum, the Commission is obligated not to revise its rules in a manner that results in the reassignment of MSS spectrum reserved for CDMA operators without first providing adequate notice and affording interested parties the opportunity to comment.

Sincerely yours,

/s/ William T. Lake

William T. Lake  
Counsel to Globalstar, Inc.

cc: Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert J. McDowell  
Aaron Goldberger  
Bruce Gottlieb  
John Branscome  
Renee Crittendon  
Chris Moore  
Wayne Leighton  
Angela Giancarlo  
Helen Domenici  
Matthew Berry