

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Abu Dhabi	Moscow
Barcelona	Munich
Beijing	New Jersey
Boston	New York
Brussels	Orange County
Chicago	Paris
Doha	Riyadh
Dubai	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

VIA ELECTRONIC FILING

December 22, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation
FCC File No. SAT-MOD-20101118-00239; IB Docket No. 11-109

Dear Ms. Dortch:

On December 20, 2011, Jeffrey Carlisle, Executive Vice President, Regulatory Affairs & Public Policy, of LightSquared LLC, and John P. Janka and James H. Barker of Latham & Watkins met with Paul de Sa. The enclosed filings, which LightSquared made the same day, formed the basis for the conversation.

Respectfully submitted,

/s/ John P. Janka
John P. Janka

Enclosures (2)

cc: Paul de Sa



VIA ELECTRONIC FILING

December 20, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: LightSquared Subsidiary LLC, *Ex Parte* Communication
IB Docket No. 11-109; IBFS File No. SAT-MOD-20101118-00239

Dear Ms. Dortch:

LightSquared Subsidiary LLC and its affiliates (collectively, “LightSquared”)¹ write to oppose the proposals by certain members of the commercial GPS industry that the Commission should summarily terminate LightSquared’s authority to conduct ancillary terrestrial component (“ATC”) operations in the 1545.2-1555.2 MHz band (the “Upper 10 MHz”).²

In the application underlying this proceeding, LightSquared sought and obtained a simple modification to its ATC license to facilitate the provision of retail service without the need to deploy “dual-mode” handsets. That modification did not alter the authorized operating parameters of LightSquared’s network. More specifically, the authorized number of base stations and handsets, frequency bands and channel configuration, modulation, power levels, and emissions limits all remained the same.

The commercial GPS industry now asks the Commission to summarily terminate LightSquared’s rights in the Upper 10 MHz—even though this request is entirely unrelated to the limited license modification actually sought by LightSquared and granted by the Commission, even though LightSquared has held authority to operate in the Upper 10 MHz for years, and even though the industry *supported* grant of that authority and the specific technical limits set forth in LightSquared’s ATC license (prior to the commercial GPS industry’s recent and sudden “about face”).

¹ LightSquared is the successor-in-interest to SkyTerra, Mobile Satellite Ventures, Motient, and the American Mobile Satellite Corporation. For simplicity, each of these companies is referred to, individually and collectively, as “LightSquared.”

² See Letter to FCC from the Coalition to Save Our GPS, IB Docket No. 11-109 (Nov. 8, 2011) (“Coalition Letter”); Letter to FCC from the U.S. GPS Industry Council, IB Docket No. 11-109 (Nov. 9, 2011) (“U.S. GPS Industry Council Letter”).

As detailed further below, the commercial GPS industry's proposal is unsound from both a legal and a policy perspective:

- The commercial GPS industry's change in position on ATC is barred by the doctrine of judicial estoppel, and the industry's new proposal is procedurally flawed in any event;
- Nothing that LightSquared has done has altered its own substantive rights vis-à-vis the commercial GPS industry;
- The commercial GPS industry has failed to prepare itself for ATC deployment;
- The proposal to bar ATC operations in the Upper 10 MHz is substantively baseless because commercial GPS receivers are unlicensed and operate on an unprotected, non-interference basis; and
- Far better ways exist to facilitate the commercial deployment of ATC while addressing the concerns of the commercial GPS industry, including ways that build on the positive developments of the past few months.

At bottom, the commercial GPS industry's proposals are thinly-veiled attempts to shield GPS manufacturers from the financial and operational consequences of their own poor decisions, and from any responsibility to pursue demonstrably achievable technical innovations that would allow GPS receivers to function when LightSquared commences operations in the Upper 10 MHz. While LightSquared has offered to confine its initial operations to only the lower portion of the 1525-1559 MHz band in order minimize any near-term impact on GPS users, the commercial GPS industry has not shown a commensurate willingness to compromise. Instead, the commercial GPS industry asks the Commission to permanently foreclose LightSquared from conducting ATC operations in the Upper 10 MHz, ensuring that valuable spectrum continues to lie fallow at a time when the nation is facing a spectrum crunch, and that hundreds of millions of Americans are denied access to valuable, competitive wireless broadband services. The Commission should not indulge these requests, or allow the commercial GPS industry to escape responsibility for designing technically flawed GPS receivers—despite years of warning—and foisting those receivers on an unsuspecting public.

I. THE COMMERCIAL GPS INDUSTRY'S PROPOSAL TO BAR ATC OPERATIONS IN THE UPPER 10 MHZ IS ESTOPPED AND PROCEDURALLY FLAWED.

The commercial GPS industry's proposal to bar LightSquared's ATC operations in the Upper 10 MHz is procedurally barred for a number of reasons detailed below.

A. The Commercial GPS Industry Is Estopped From Challenging LightSquared's Right to Operate in the Upper 10 MHz.

The technical parameters that are salient to the coexistence of LightSquared's ATC network with commercial GPS receivers were established years ago in a series of final

orders that are no longer subject to reconsideration or review. In particular, the number of permitted ATC base stations, and the in-band power levels permitted to be transmitted by those stations, have been fixed for over six years.³ LightSquared recently proposed to conduct operations of its ATC network at those in-band power levels, as specified in the Commission's rules, and subject to certain additional limitations.⁴ The parameters contained in the Commission's rules and in LightSquared's ATC license were established with the full cooperation and support of the commercial GPS industry. Indeed, LightSquared worked closely with the commercial GPS industry to ensure that GPS receivers would remain compatible with LightSquared's plans to implement a terrestrial broadband network—and LightSquared entered into a series of negotiated agreements with the commercial GPS industry to resolve the industry's compatibility concerns.

More specifically, LightSquared's initial application for ATC authority prompted discussions between LightSquared and the commercial GPS industry that helped to resolve concerns that had been filed in response to that application.⁵ In fact, the commercial GPS industry drove a settlement in that adjudicatory proceeding that resulted in negotiated technical limits on LightSquared's ATC operations that were intended to "protect GPS receivers,"⁶ after taking into account the "increased user density from *potentially millions of MSS mobile terminals*

³ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Memorandum Opinion and Order and Second Order on Reconsideration, 20 FCC Rcd 4616, at ¶ 50 (2005) ("2005 ATC Order") (eliminating the numerical limit on ATC base stations and increasing permitted base station EIRP to 31.9 dBW per sector).

⁴ Although the Commission authorized LightSquared to employ higher base station power in 2010, *see SkyTerra Subsidiary LLC*, 25 FCC Rcd 3043, at ¶¶ 10, 46 (2010) (approving base station EIRP of 42 dBW per sector), LightSquared has proposed to operate its ATC base stations at the lower EIRP approved in 2005, *see Recommendation of LightSquared Subsidiary LLC*, IB Docket No. 11-109, at 13 n.17, 24-25 (June 30, 2011), and also has offered to limit the "power on the ground" that results from the operation of its base stations in the Lower 10 MHz to no more than -30 dBm until January 1, 2016, and -27 dBm thereafter. *See Letter to FCC from LightSquared Subsidiary LLC*, IB Docket No. 11-109 (Dec. 12, 2011).

⁵ *See Comments of Deere & Company*, IBFS File Nos. SAT-ASG-20010302-00017 et al., at 6 (May 7, 2001) (claiming that power from base stations could be sufficient to overload the "sensitive receiving amplifiers of the GPS terminals"); *see also Inmarsat Ventures plc*, Partial Petition to Deny, IBFS File No. SAT-ASG-20010302-00017, at 9-10 (Apr. 18, 2001) (expressing concern that power from base stations could "overload" Inmarsat METs and GPS receivers); *see also Comments of Inmarsat Ventures plc*, IB Docket No. 01-185, at 17-18 and Technical Annex at 8-9 (filed Oct. 22, 2001) (asserting that base station operations could overload Inmarsat METs and GPS receivers).

⁶ *See Letter to FCC from Mobile Satellite Ventures L.P. and the U.S. GPS Industry Council*, IB Docket No. 01-185 (July 17, 2002).

operating in ATC mode” and “*tens of thousands of ATC wireless base stations . . .*”⁷ In light of this settlement, the industry urged the Commission to grant LightSquared’s ATC application, and expressly: (i) explained that the agreed limits would “protect GPS receivers and at the same time allow [LightSquared] to maximize the utility of its ATC service to its users;” (ii) commended LightSquared “for its proposal to use its spectrum in a responsible manner that ensures the continued utility of GPS receivers operating in the vicinity of [LightSquared] ATC stations;” and (iii) observed that grant of that application “would validate [LightSquared’s] adherence to best commercial practices and advance the public and national interests in promoting the responsible use of spectrum.”⁸

The commercial GPS industry urged the Commission to adopt these negotiated protection criteria more broadly—across the board in its ATC rules. The industry also noted that reliance on such criteria would be consistent with the Commission’s trend away from managing interference by regulating “in-band energy distribution” (*i.e.*, limiting the power level emitted within LightSquared’s licensed band).⁹ In fact, the industry challenged the protection criteria that were then contained in the Commission’s ATC rules (which are much less stringent than the limits to which LightSquared agreed in obtaining its ATC license) by noting that those protection criteria were developed at a time when the Commission “generally used the emission mask approach to regulate in-band-energy distribution.”¹⁰

In asking the Commission to modify the GPS protection criteria in its rules to conform to the limits to which LightSquared had agreed (and that are a condition to its ATC license), the commercial GPS industry explained that those negotiated limits had been developed in order to “protect the GPS service’s present and future operations and to provide a stable environment for the development and operation of [LightSquared’s ATC] system.”¹¹ The GPS industry argued that “[n]othing in the record” supports the adoption of any other technical criteria to protect GPS,¹² and that the “careful industry negotiations” that led to that agreement¹³ “considered all relevant issues concerning potential interference to GPS” and reflected the agreement of “[a]ll relevant stakeholders.”¹⁴ The negotiated GPS protection criteria, which are far more stringent than those contained in the Commission’s ATC rules, not only are a condition

⁷ See Reply Comments of U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (Sept. 4, 2003) (emphasis added) (“*USGIC 2003 Reply Comments*”).

⁸ See Letter to FCC from U.S. GPS Industry Council, IBFS File No. SAT-MOD-20031118-00333 (Mar. 24, 2004).

⁹ See *USGIC 2003 Reply Comments*, at 3-4.

¹⁰ *Id.*

¹¹ Petition for Reconsideration of the U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (June 11, 2003) (“*USGIC 2003 Petition for Recon*”).

¹² *Id.* at 3.

¹³ *USGIC 2003 Reply Comments*, at 2 (emphasis added).

¹⁴ *USGIC 2003 Petition for Recon*, at 4.

to LightSquared's ATC authorization, but also have formed the basis for the ATC protection criteria imposed on Globalstar and TerreStar as conditions to their ATC authorizations.¹⁵

A similar result followed LightSquared's 2009 request that the Commission modify LightSquared's ATC authorization to facilitate the reconfiguration of the L Band and the improvements in the MSS/ATC operating environment that flowed from the LightSquared-Inmarsat Cooperation Agreement. In response to that application, the commercial GPS industry raised certain concerns about whether the planned operation of indoor MSS/ATC "femtocells" would be compatible with GPS operations.¹⁶ In doing so, the commercial GPS industry acknowledged that there no longer was any limit on the number of ATC base stations, and also recognized the potential for "unlimited numbers of base stations inside office buildings, college campus buildings, homes and many other indoor or outdoor locations."¹⁷ Again, the concerns of the commercial GPS industry in that adjudicatory proceeding were resolved through a settlement under which: (i) LightSquared agreed to (additional) GPS protection criteria that were made a condition of its ATC license; and (ii) the commercial GPS industry withdrew its objections because LightSquared's agreement had addressed the industry's concerns.¹⁸ Notably, the industry did not raise any concerns with respect to potential GPS receiver "desensitization" or "overload."

In short, the commercial GPS industry has: (i) participated actively in the Commission's MSS/ATC rulemaking and the LightSquared ATC licensing proceedings; (ii) worked with LightSquared to develop mutually-acceptable technical limits, ensure an acceptable level of protection for GPS receivers, and settle any initial incompatibility concerns; and (iii) supported the development of LightSquared's ATC network and the technical parameters under which it will operate.

In light of this history, the doctrine of judicial estoppel prevents the commercial GPS industry from challenging LightSquared's right to operate in the Upper 10 MHz at this late stage (or even challenging the adequacy of the commercial GPS protection criteria more broadly). The U.S. Supreme Court has explained that the doctrine of judicial estoppel bars a party from taking one position in an adjudicatory proceeding, prevailing with respect to that position, and then assuming a contrary position—especially if to the detriment of another party that has relied on the initial position taken.¹⁹ In evaluating whether the doctrine applies in a

¹⁵ See *Globalstar LLC*, 21 FCC Rcd 398, at ¶¶ 23-24 (2006); *TerreStar Networks Inc.*, 25 FCC Rcd 228, at ¶ 28 (2010).

¹⁶ See Comments of the U.S. GPS Industry Council, IBFS File No. SAT-MOD-20090429-00047 (July 10, 2009).

¹⁷ *Id.* at 2-3.

¹⁸ See Letter to FCC from SkyTerra Subsidiary LLC and the U.S. GPS Industry Council, IBFS File No. SAT-MOD-20090429-00047 (Aug. 13, 2009).

¹⁹ See *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase"); see also *Global NAPS, Inc. v. Verizon New England, Inc.*, 603 F.3d 71, 91 (1st Cir. 2010) (affirming district court's

particular case, relevant factors include: (i) whether a party's later position is "clearly inconsistent" with its earlier position; (ii) whether the party succeeded in convincing the adjudicator to accept the party's earlier position; and (iii) whether the party would derive an unfair advantage or impose an unfair detriment on other parties if not estopped.²⁰ The Commission has followed this Supreme Court precedent.²¹

Even a cursory analysis demonstrates that judicial estoppel applies in this case to bar the commercial GPS industry's proposal:

First, the commercial GPS industry's current proposal to preclude LightSquared from operating in the Upper 10 MHz flatly contradicts the industry's longstanding position that the technical limits negotiated with LightSquared are sufficient to protect GPS operations, and that "[n]othing in the record" supports the adoption of any other technical criteria to protect GPS.²²

Second, the inclusion of the limits negotiated by the parties in LightSquared's ATC license demonstrates that the GPS industry succeeded in convincing the Commission to accept those limits.

Finally, allowing the commercial GPS industry to change its position now would impose a substantial and unfair detriment on LightSquared, as the industry's proposal would deny LightSquared the ability to implement its ATC network after it: (i) designed its network, at great expense, around the negotiated protection criteria—which superseded the less-restrictive "equivalent [GPS]-protection requirements for ATC transmitters" that otherwise would have applied under the Commission's rules;²³ (ii) invested significant resources to reband the L Band to make it suitable for broadband service (including the Upper 10 MHz), in reliance on the GPS industry's cooperation and support; and (iii) further relied on the efficacy of the negotiated solution in agreeing to the network build-out requirements that the Commission required when Harbinger acquired control of LightSquared in March 2010.

application of judicial estoppel to hold entity to its "tactical choice" regarding its representation of the facts).

²⁰ See *New Hampshire v. Maine*, 532 U.S. at 750-751.

²¹ See *Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, at ¶ 13 & n.25 (2006) (finding that Time Warner Cable was estopped from taking a contrary position to its prior interpretation of the Commission's rules).

²² For this reason, the commercial GPS industry cannot now seek protection from "intermodulation" effects into GPS receivers—assuming they actually exist. Notably, such effects would not result from any rule violation or exceedance of applicable out-of-band emissions limits, and in any event could be addressed relatively easily through appropriate GPS receiver design. Precedent is clear that the burden of addressing intermodulation effects does not fall entirely on ATC operators, even when *licensed* spectrum users may be impacted. See *2005 ATC Order* ¶ 59.

²³ See, e.g., *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 22144, at ¶¶ 34-36 (2004) ("*MSV License Order*").

B. The Commercial GPS Industry’s Proposals Otherwise Are Procedurally Flawed.

Even if the commercial GPS industry were not judicially estopped from challenging LightSquared’s right to operate in the Upper 10 MHz, that challenge still would be procedurally flawed, for a number of reasons.

First, the Commission’s rules limit the bases upon which a party may oppose grant of a modification application. Section 25.154(a)(4) of the Commission’s rules provides that petitions to deny (and, by extension, petitions for reconsideration that must meet the same standards) must establish that “grant of . . . *the application* would be prima facie inconsistent with the public interest[.]”²⁴ Yet, the commercial GPS industry makes no such showing. As noted above, the commercial GPS industry raises concerns about certain GPS receiver design defects that are wholly unrelated to the flexibility granted to LightSquared in this license modification proceeding (which simply obviated the need to deploy “dual-mode” ATC handsets). Moreover, there is no rational relationship between that flexibility and the draconian relief now requested by the commercial GPS industry. As such, the Commission should reject the industry’s attempts to raise these concerns in this proceeding.

Second, and for similar reasons, the eleventh-hour claims of the commercial GPS industry should be viewed as untimely, *de facto* petitions for reconsideration of LightSquared’s longstanding ATC license. Because that license is final, it cannot now be challenged. The question of GPS receiver “overload” was expressly raised (and then dropped) in the context of the initial ATC application filed by LightSquared and the Commission’s subsequent rulemaking proceeding over a decade ago.²⁵ If the GPS industry was not happy with the resolution of that application, the proper procedure was to have filed for reconsideration at that time. However, apart from the fact that LightSquared’s licenses are final, the Commission’s rules clearly establish that petitions for reconsideration must be filed within 30 days of the underlying grant—not *more than six years later*.²⁶

Third, summarily eliminating LightSquared’s rights in the Upper 10 MHz would constitute a regulatory taking. In evaluating whether a given action constitutes such a taking, courts look to: (i) the extent to which the regulation interferes with the affected party’s reasonable investment-backed expectations; (ii) the economic impact on the affected party; and (iii) the character of the government action.²⁷ Eliminating LightSquared’s right to operate in the Upper 10 MHz clearly would: (i) interfere with the expectations of LightSquared’s investors, who have invested billions of dollars to reband the Upper 10 MHz and design and implement an

²⁴ 47 C.F.R. § 25.154(a)(4) (emphasis added).

²⁵ *See, e.g.*, Inmarsat Ventures plc, Partial Petition to Deny, IBFS File No. SAT-ASG-20010302-00017, at 9 (Apr. 18, 2001); Comments of Deere & Company, IBFS File Nos. SAT-ASG-20010302-00017 et al., at 6 (May 7, 2001); Comments of Inmarsat Ventures plc, IB Docket No. 01-185, at 17-18 and Technical Annex at 8-9 (filed Oct. 22, 2001).

²⁶ 47 C.F.R § 1.106(f).

²⁷ *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

ATC network to utilize that spectrum—as mandated by Commission merger conditions requiring that LightSquared deploy the capability to serve 100 million people by 2012, and 260 million by 2015;²⁸ (ii) have substantial and adverse economic consequences for LightSquared, its investors, and its customers by significantly decreasing revenue opportunities and spectrum valuation; and (iii) be akin to physical interference by the government—and thus a taking—since any such action would effectively bar LightSquared’s terrestrial network from “occupying” the Upper 10 MHz in any manner whatsoever.²⁹

Finally, any decision to block ATC deployment based on commercial GPS “overload” issues would be arbitrary and capricious.³⁰ This is particularly evident given the overly broad nature of the requested action, which would prevent LightSquared from making *any* effective use of the Upper 10 MHz for ATC. In establishing service rules for ATC and licensing LightSquared and other providers, the Commission has made numerous explicit and implicit findings that ATC operations will serve the public interest.³¹ The Commission’s *National Broadband Plan* also reflects this fact.³² It would be arbitrary and capricious to reverse these findings at this late stage, *after* LightSquared has invested billions of dollars in its wireless 4G LTE network, and *after* the commercial GPS industry has supported the development of ATC for years based on negotiated GPS protection criteria—all to protect unlicensed commercial GPS receivers that simply are not entitled to any interference protection, and that fail to meet

²⁸ See *SkyTerra Communications, Inc. and Harbinger Capital Partners Funds*, 25 FCC Rcd 3059, Att. 2 Condition 2 (2010).

²⁹ Cf. *United States v. Causby*, 328 U.S. 256 (1946) (finding a possessory taking where the government’s regular use of airspace for military flights destroyed use of land as a chicken farm and requiring just compensation).

³⁰ See 5 U.S.C. § 706(2)(A). See also, e.g., *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) (agency action is “arbitrary and capricious” where it is not based on consideration of all relevant factors or there has been a clear error of judgment).

³¹ See, e.g., *MSV License Order* ¶ 2 (“[I]mplementation of ATC, pursuant to these rules, would increase network capacity and efficiency of spectrum use, extend coverage for handset operation in places where MSS operators have previously been unable to offer reliable service, make possible substantial economies of scale, improve emergency communications, and enhance competition.”); *SkyTerra Subsidiary LLC*, 25 FCC Rcd 2022, at ¶ 13 (2010) (“We find that granting the subject application will serve the public interest by facilitating more efficient spectrum use and provision of advanced broadband services [and] enable [LightSquared] to operate in wider contiguous spectrum bands, thereby facilitating provision of high-speed broadband services to users in the United States.”).

³² See CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, at 87-88 (2010), available at <http://www.broadband.gov/plan> (supporting additional flexibility to facilitate use of MSS spectrum to support terrestrial broadband services).

reasonable filtering standards, including those identified by the U.S. Government as critical to the proper interfacing of commercial GPS receivers with the U.S. GPS system.³³

II. LIGHTSQUARED HAS NOT ALTERED ITS RIGHTS BY ATTEMPTING TO ACCOMMODATE THE CONCERNS OF THE COMMERCIAL GPS INDUSTRY.

The commercial GPS industry correctly notes that LightSquared has attempted to accommodate the industry's concerns by focusing on solutions that will permit LightSquared to commence ATC base station operations in the 1526-1536 MHz band (the "Lower 10 MHz") in the near term (and in the Upper 10 MHz in the longer term). LightSquared's actions are entirely consistent with conditions imposed by the Commission in this proceeding,³⁴ and are reflective of LightSquared's willingness to implement its network in phases to facilitate the adaptation of the commercial GPS industry to an operating environment where ATC is present.

Critically, LightSquared has *never* offered to surrender its spectrum rights in the Upper 10 MHz, has *never* offered to refrain from operating in the Upper 10 MHz on a permanent basis, and has *never* suggested that technical solutions would not allow GPS receivers to coexist with adjacent ATC operations in the Upper 10 MHz. Rather, LightSquared simply has offered to temporarily defer use of the Upper 10 MHz in order to expedite the partial implementation of its network, while the parties continue to explore available options with respect to the Upper 10 MHz. This proposal is intended to facilitate LightSquared's ability to initiate commercial service consistent with Commission-imposed deadlines.³⁵

It would be perverse to punish LightSquared for attempting to engage the commercial GPS industry in this fashion. LightSquared has acted in good faith to identify a constructive path forward. In contrast, the commercial GPS industry has stated that it is open to solutions *only* if they would not require *any* accommodation on the part of the commercial GPS industry³⁶—a position that the Commission has found to be evidence of bad faith in other contexts.³⁷ Punishing LightSquared for being *more* reasonable than its status as a licensed user demands would encourage other operators to take a "hard line" in future interference disputes, and undermine any incentive for them to pursue cooperative solutions to such disputes.

³³ See Section III, *infra*.

³⁴ See *LightSquared Subsidiary LLC*, 26 FCC Rcd 566 (2011) ("2011 Waiver Order").

³⁵ See *SkyTerra Communications, Inc. and Harbinger Capital Partners Funds*, 25 FCC Rcd 3059, Att. 2 Condition 2 (2010).

³⁶ See U.S. GPS Industry Council Letter, at 2.

³⁷ Cf. 47 C.F.R. § 76.65(b)(1)(iv) (providing that a party violates its duty to negotiate in good faith when it refuses to put forth more than a single, unilateral proposal).

III. THE COMMERCIAL GPS INDUSTRY HAS FAILED TO PREPARE ITSELF FOR ATC DEPLOYMENT.

To the extent that commercial GPS receivers may not be fully compatible with the commercial deployment of LightSquared's ATC service in the Upper 10 MHz, the commercial GPS industry has only itself to blame. As discussed above, the salient technical parameters of LightSquared's network were approved in 2005, with the cooperation and support of the commercial GPS industry. In light of the industry's key role in shaping those parameters, the Commission should not tolerate the commercial GPS industry's eleventh-hour objection to LightSquared's planned deployment, in which LightSquared already has invested billions of dollars and years of effort.

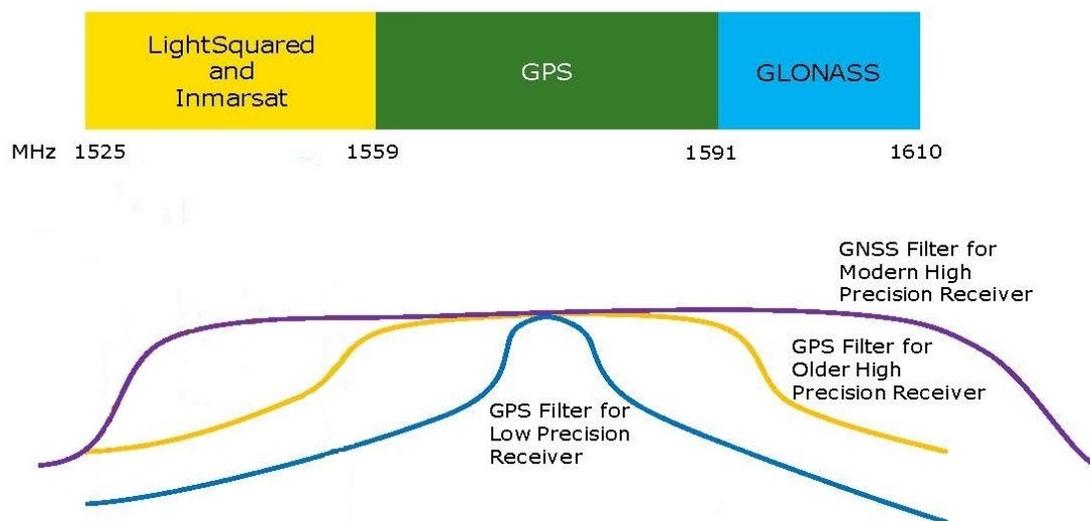
Perhaps the best explanation for the commercial GPS industry's "about face" and its failure to plan for the actual deployment of ATC is that it made a calculated decision years ago that LightSquared would never deploy. Today, however, the commercial GPS industry is faced with two realities: (i) LightSquared's long-standing ATC plans are coming to fruition; and (ii) the ability of the LightSquared network to support many additional smartphones will increase the speed with which many commercial GPS receivers are becoming obsolete. As the Commission has recognized countless times, its obligation is to protect *competition*, and not *competitors*³⁸—competition that LightSquared's 4G LTE wireless network will bring to the wireless marketplace. The Commission therefore should recognize the continued attacks by the commercial GPS industry for what they truly reflect: a lack of commercial foresight, and competitive fears. Giving any credibility to these attacks would encourage similarly reckless behavior by other unlicensed and/or nonconforming spectrum users, and would undermine the certainty and stability necessary for responsible operators like LightSquared to introduce competitive broadband networks as envisioned by the *National Broadband Plan*.

Particularly glaring is the commercial GPS industry's failure, over the past decade, to design GPS receivers that appropriately limit their reception to the 1559-1610 MHz band, which is allocated to the radionavigation-satellite service ("RNSS")—even though the GPS industry has known for a decade about LightSquared's spectrum rights in and deployment plans for the adjacent MSS band at 1525-1559 MHz. Instead, the commercial GPS industry has built receivers that employ inadequate filtering and frequency discrimination, likely in order to improve profits. This was confirmed in a recent presentation by the National Coordination Office for Space-Based Positioning, Navigation, and Timing ("PNT"), which clearly indicates that "overload" and "desensitization" effects stem from the failure of the commercial GPS industry to design GPS receivers so that they can filter out unwanted MSS/ATC signals in the adjacent 1525-1559 MHz band.³⁹

³⁸ See, e.g., *Alascom, Inc.*, 11 FCC Rcd 732, at ¶ 56 (1995).

³⁹ See National Coordination Office for Space-Based Positioning, Navigation, and Timing, *U.S. Space-Based Positioning, Navigation & Timing (PNT) Policy Update*, at 10 (Oct. 2010), available at <http://www.pnt.gov/public/2011/09/CGSIC/hessin.pdf> (chart attached as Exhibit 1 hereto) (showing that "concerns" with LightSquared stem from the fact that

Moreover, it appears that the commercial GPS industry actually has *exacerbated* the incompatibility of GPS receivers with ATC operations by employing less robust filters over time. As Deere explains, newer wideband GPS receivers “have filters that are open to a wider band around each GNSS frequency . . . to capture additional GNSS signal energy . . .” As a result, “if there are high powered LightSquared signals *in the adjacent MSS band*, more of the unwanted LightSquared energy will also be captured.”⁴⁰ This is illustrated vividly in the following chart, adapted from one included in a presentation made by Deere to Commission staff in August, and which shows how Deere has transitioned to far less robust “modern” filters that allow GPS receivers to “listen” throughout the entire 1525-1559 MHz MSS band (and beyond):⁴¹



This is particularly damning in Deere’s case, because the record clearly establishes that Deere has been aware of the need to manage “overload” effects since at least 2001.⁴²

Notably, many of the GPS receivers produced by the commercial GPS industry do not meet the standards set forth in relevant U.S. Government specifications for civilian GPS receivers wishing to interface with U.S. Government GPS satellites. Among other things, these

the “GNSS receiver filter response” in the 1525-1559 MHz band is inadequate with respect to LightSquared’s currently authorized power levels).

⁴⁰ See Petition for Reconsideration of Deere & Company, IBFS File No. SAT-MOD-20101118-00239, at 6 (Feb. 25, 2011) (emphasis added).

⁴¹ See Letter to FCC from Deere & Company, IB Docket No. 11-109, Att. at 6 (Aug. 22, 2011). The potential for “overload” to any augmentation channels in the MSS band can be mitigated by employing separate front ends for the GPS signals and the MSS “augmentation” signals.

⁴² See Comments of Deere & Company, IBFS File No. SAT-ASG-20010302-00017, at 6 (May 7, 2001) (claiming that power from base stations could be sufficient to overload the “sensitive receiving amplifiers of GPS terminals”).

specifications call for GPS reception to be “contained within” 12 MHz of the L1 center frequency at 1575.42 MHz, and for GPS receivers to use sharp filters to limit the reception of signals from adjacent bands that contain unwanted energy, and, thus, manage the potential for “overload.”⁴³ The U.S. Government has said that these standards, while not “mandatory,” must be met in order for commercial GPS receivers to interface properly with the U.S. GPS system, and for use of the civilian GPS signal to meet expectations for system performance.⁴⁴ Having failed to satisfy these standards, the commercial GPS industry cannot credibly complain that its receivers may not function as desired once LightSquared implements its ATC network.⁴⁵

That LightSquared and its partners have been able to develop appropriate GPS receiver filtering technologies in less than six months, starting earlier this year, underscores that the commercial GPS industry could have done the same years ago, but made a deliberate decision *not* to incorporate robust filtering capabilities into GPS receiver designs.⁴⁶ Moreover, the rapid pace of these developments demonstrates that the commercial GPS industry is disingenuous (at best) in asserting that such technologies could not be developed as a matter of physics.⁴⁷ To the contrary, there is a proven potential for rapid technological change in commercial GPS receiver design. That possibility is precisely what the Commission mandated

⁴³ See United States Air Force Global Positioning Systems Wing, *Navstar GPS Space Segment/Navigation User Interfaces*, IS-GPS-200E, at §§ 3.3.1.1, 3.3.1.2 (June 8, 2010) (“GPS Interface Specification”); United States Department of Defense, *Global Positioning System Standard Positioning Service Performance Standard*, at § 2.4.2 (4th Ed., Sept. 2008) (“GPS Performance Standard”). Civilian users may access the course/acquisition, or “C/A,” code within the “L1” GPS signal. See GPS Interface Specification at § 3.2.1.3.

⁴⁴ See GPS Interface Specification at § 1.1 (“This Interface Specification (IS) defines the *requirements* related to the interface between the Space Segment (SS) of the Global Positioning System (GPS) and the navigation User Segment (US) of the GPS for radio frequency (RF) link 1 (L1) and link 2 (L2).”) (emphasis added).

⁴⁵ Tellingly, the PNT Executive Committee and Advisory Board are exploring the potential need for a GPS device certification process to foreclose such complaints in the future. See, e.g., PNT Advisory Board Agenda, Ninth Meeting (Nov. 9-10, 2011), *available at* <http://www.pnt.gov/advisory/2011/11/>.

⁴⁶ See *Press Release: Testing by World-Renowned Independent Laboratory Shows LightSquared is Compatible with High-Precision GPS Devices* (announcing that independent laboratory tests had shown that GPS devices can “easily surpass performance standards thanks to . . . newly developed solutions” by Javad GNSS, PCTel, and Partron, and that three additional top-tier, high-precision GPS manufacturers have developed solutions that currently are undergoing lab testing), attached to Letter to FCC from LightSquared, IB Docket No. 11-109 (Dec. 7, 2011).

⁴⁷ See, e.g., Reply Comments of Garmin International, Inc., IB Docket No. 11-109, at 21 (Aug. 15, 2011) (asserting that “the physics of filter design make it virtually impossible” to reject the ATC signal).

should occur in order to successfully manage the potential for ATC overload in other contexts.⁴⁸ The Commission should not eliminate incentives for such innovation by foreclosing LightSquared from operating in the Upper 10 MHz on a permanent basis.

IV. THE COMMERCIAL GPS INDUSTRY’S ATTEMPT TO BAR ATC OPERATIONS IN THE UPPER 10 MHZ IS SUBSTANTIVELY BASELESS BECAUSE COMMERCIAL GPS RECEIVERS ARE UNLICENSED AND OPERATE ON AN UNPROTECTED, NON-INTERFERENCE BASIS.

A. The Incompatibilities Identified by the Commercial GPS Industry Do Not Constitute Cognizable “Harmful Interference.”

The commercial GPS industry wrongly assumes that “desensitization” or “overload” of GPS receivers that could result from their “listening” in the adjacent MSS band would constitute “harmful interference.” In order for a user to experience “harmful interference,” that user must hold clear rights to use the spectrum in question that are superior or equal to those of the allegedly interfering party.⁴⁹ As discussed above, LightSquared has been licensed by the Commission (by final order) to use the 1525-1559 MHz MSS band—including the Upper 10 MHz—to support ATC operations. LightSquared has held such authority for years—and it defined the technical parameters of such operations with the cooperation and support of the commercial GPS industry. In contrast, the commercial GPS industry’s receivers are unlicensed devices that operate on a strict non-interference basis.

As demonstrated in the Petition for Declaratory Ruling also filed today by LightSquared (which LightSquared incorporates by reference):

- Manufacturers and users of unlicensed commercial GPS receivers lack standing to file complaints or other pleadings seeking “protection” from allegedly incompatible operations in adjacent MSS bands—including ATC operations—that are permitted by the Commission’s rules and the U. S. Table of Frequency Allocations;
- Commercial GPS receivers have no independent right to “protection” from operations in adjacent MSS bands, independent of the license conditions that limit the out-of-band power that may be emitted by MSS band transmitters into the RNSS band, and other than the benefit afforded by the guard band that should

⁴⁸ See, e.g., *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, at ¶ 120 (2003) (“*2003 ATC Order*”) (“We also believe that [overload] problems that may develop over time as ATC is deployed can be mitigated by future PCS handset design modifications and through a cooperative effort by PCS and MSS ATC licensees to resolve these issues.”).

⁴⁹ See, e.g., 47 C.F.R. § 2.105(c)(2)(ii) (noting that secondary services “[c]annot claim protection from harmful interference from stations of a primary service . . .”).

separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band;

- Commercial GPS devices that receive GPS signals in the MSS band are “nonconforming” and inconsistent with the MSS allocation in that band, and as such are not entitled to any “protection” regardless of whether they are licensed; and
- The costs of ensuring that GPS devices are compatible with adjacent band operations—including any costs necessary to retrofit legacy devices—are the responsibility of GPS manufacturers—or, at a minimum, are not the obligation of MSS/ATC licensees.

That certain commercial GPS manufacturers also provide MSS “augmentation” services—using narrowband channels leased from LightSquared or Inmarsat in the 1525-1559 MHz MSS band—does not give them the right also to conduct GPS operations in that band on a protected basis.⁵⁰ The Commission has made clear that GPS applications are distinct from MSS applications,⁵¹ and the commercial GPS industry has acknowledged as much.⁵² As such, the GPS operations of such manufacturers remain nonconforming uses of the 1525-1559 MHz MSS band that are inconsistent with the MSS allocation for that band and consequently are not entitled to any interference protection.⁵³

⁵⁰ Relevant agreements between LightSquared and Trimble provide that GPS users must maintain the ability to “tune” their reception of L-Band augmentation signals in small increments (*e.g.*, 1 kHz)—*i.e.*, maintain relatively narrow front ends—a capability many GPS devices lack.

⁵¹ *See, e.g., Radiodetermination Satellite Service*, 104 FCC 2d 650, at ¶ 15 (1986) (“MSS and RDSS [including RNSS] are intended to serve different customer needs[.]”); *Radiodetermination Satellite Service*, 104 FCC 2d 637, at ¶ 8 & n.4 (1986) (“RDSS and MSS are sufficiently different that separate and distinct allocations are warranted.”); *Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service*, Notice of Proposed Rulemaking, 16 FCC Rcd 19005, at ¶ 39 n.90 (2001) (noting that “data transmission is not considered a radionavigation application,” and “[r]adionavigation must be accomplished by obtaining information by means of the propagation properties of radiowaves”).

⁵² *See* U.S. GPS Industry Council Letter, at 4 (recognizing that “radionavigation signals are different in kind from radiocommunication signals”).

⁵³ Furthermore, the narrowband capacity used to support MSS “augmentation” services is provided subject to the terms of an international coordination agreement. Under longstanding precedent, an earth station operator cannot claim “harmful interference” from MSS operators that are consistent with the terms of a coordination agreement to which its space segment provider is bound. *See generally* Petition for Reconsideration of LightSquared, Inc., IBFS File No. SES-RWL-20110908-01047, at 11-17 (Oct. 14, 2011) (petition for reconsideration of the renewal of Deere’s earth station license).

B. There Is No Reasonable Basis for the Commercial GPS Industry’s Demand that LightSquared Surrender its Rights To Operate in the Upper 10 MHz.

There is no reasonable basis for the commercial GPS industry’s demand that LightSquared surrender its rights to operate in the Upper 10 MHz in order to create a “guard band” between MSS and GPS spectrum. Compelling such action would grant unlicensed, nonconforming commercial GPS operations the same effective status as licensed, conforming operations—contrary to the Communications Act, the Commission’s rules, and the U.S. Table of Frequency Allocations.⁵⁴ At the same time, such action would precluded the intended (*i.e.*, allocated) use of the 1525-1559 MHz band for MSS/ATC purposes.

More broadly, protecting unlicensed spectrum users at the expense of a licensed user would call *all* licensed spectrum rights into question, and undermine the certainty and stability necessary to encourage investment in innovative next-generation broadband communications networks. Simply stated, investors will be unwilling to invest in such networks if their operations can be compromised at any time due to the ostensible need to protect unlicensed, nonconforming operations—especially where, as here, the affected parties have sat on their objections for years only to raise them at the eleventh hour, and have failed to take any steps to mitigate their concerns.

The Commission already has found that excessive “guard band” solutions like that proposed by the commercial GPS industry are inappropriate to protect *primary, licensed* users in adjacent bands from ATC operations.⁵⁵ There is no reason that a different result should apply to unlicensed, nonconforming commercial GPS users. Notably, in establishing its ATC rules, the Commission declined to establish a requested 15-20 MHz guard band to protect primary, licensed PCS operations from ATC operations in the 2 GHz band.⁵⁶ In doing so, the Commission emphasized that “PCS carriers similarly were aware of potential interference from MSS systems in adjacent spectrum, and could have taken this into account in the design of their equipment.”⁵⁷ Unlicensed, nonconforming GPS operations are entitled to far less protection than those PCS operations—particularly where clear evidence exists that the commercial GPS industry could have taken ATC operations into account in designing GPS receivers over the past decade.

That said, it bears emphasis that an implicit “guard band” already separates LightSquared’s planned operations from GPS operations in the 1559-1610 MHz band. The Upper 10 MHz ends at 1555.2 MHz, and as such is separated by at least 3.8 MHz from the 1559-1610 MHz band. Moreover, as noted above, U.S. Government specifications call for commercial GPS reception to be “contained within” 12 MHz of the L1 center frequency at 1575.42 MHz.⁵⁸

⁵⁴ 47 C.F.R. § 2.106.

⁵⁵ 2003 ATC Order ¶ 118.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See GPS Interface Specification at §§ 3.3.1.1, 3.3.1.2 (June 8, 2010); GPS Performance Standard at § 2.4.2 (4th Ed., Sept. 2008).

As a result, the Upper 10 MHz would be separated from commercial GPS operations by more than 8.2 MHz (3.8 MHz + 4.42 MHz)—if the commercial GPS industry had designed its receivers properly. This degree of separation should be more than sufficient to protect such receivers, assuming that they also employ the sharp filters called for by the U.S. Government’s GPS interface specifications.

V. FAR BETTER ALTERNATIVES EXIST THAN PERMANENTLY FORECLOSING ATC USE IN THE UPPER 10 MHZ.

The commercial GPS industry asserts that the Commission should provide “administrative finality” with respect to the Upper 10 MHz because the commercial GPS industry otherwise could be required to retrofit or replace GPS receivers to facilitate LightSquared’s operations in the Lower 10 MHz, only to be required to accommodate operations in the Upper 10 MHz a few years from now.⁵⁹

As an initial matter, this result is entirely consistent with the *unlicensed, nonconforming* status of commercial GPS receivers. As the Commission has recognized, such receivers must operate at their own risk, and must bear the cost of adapting to changes in the operating environment—whenever they may occur.⁶⁰ Indeed, the commercial GPS industry has had *years* to make its GPS receivers compatible with LightSquared’s network—but has failed to do so. Certainly, the commercial GPS industry has no right to compel licensed MSS/ATC operators to operate in accordance with a single set of immutable technical parameters, or to forgo use of given spectrum *permanently* merely because such operators are willing to do so on a temporary basis as an accommodation and in the spirit of cooperation.

Indeed, LightSquared has proposed a “two-step” implementation of its network *to accommodate the concerns of the commercial GPS industry*, and, in particular, minimize any impact on the users of GPS receivers. Yet, the commercial GPS industry seeks to punish LightSquared for its willingness to be reasonable. Doing so not only would harm LightSquared and the greater public interest, but also would encourage other providers to eschew any semblance of cooperation in resolving future interference disputes.

There is absolutely no reason that the consistency sought by the commercial GPS industry should come at the expense of LightSquared’s established spectrum rights—or the interests of hundreds of millions of Americans who would be deprived of new, competitive wireless broadband services provided over LightSquared’s network. To the extent that the commercial GPS industry requires consistent treatment of the Upper 10 MHz and Lower 10 MHz at the outset, as a purely logical matter at least two preferable alternatives exist to the draconian and counterproductive measures that it proposes.

⁵⁹ Coalition Letter at 2-3.

⁶⁰ See, e.g., *Regulation of Domestic Receive-Only Satellite Earth Stations*, First Report and Order, 74 FCC 2d 205, at ¶ 28 (1979) (noting that “there may be significant additional costs associated with modifications necessary [for unlicensed receivers] to accommodate interference problems at a later date” and explicitly finding that these costs “would have to be borne by the unlicensed operator”).

- *First*, such consistency would be readily achievable if the commercial GPS industry were to “harden” existing commercial GPS receivers against ATC operations in both the Lower 10 MHz and Upper 10 MHz in a single step. On this point, it is important to remember that the commercial GPS industry would not face the prospect of a “double retrofit” at all if the commercial GPS industry had planned properly over the past decade, and had manufactured robust GPS receivers capable of functioning alongside ATC operations.
- *Second*, the Commission could provide more formal consistency by granting LightSquared’s Petition for Declaratory Ruling on an expedited basis, and also by adopting receiver standards for commercial GPS devices to ensure that they are sufficiently robust to facilitate a long-term, workable solution for the Upper 10 MHz as well as the Lower 10 MHz.

Adopting either of these alternatives would eliminate much of the uncertainty surrounding commercial GPS operations, which stem from: (i) the commercial GPS industry’s failure to warn its customers that the receivers they have purchased are unlicensed and must operate on a non-interference basis; and (ii) the complete absence of any GPS service rules, including receiver standards.

Another approach, which is consistent with a recent proposal made by LightSquared in a related context,⁶¹ would be for the Commission to decide in the near term to permit LightSquared to proceed in implementing its network in the Lower 10 MHz, while deferring resolution of Upper 10 MHz issues to provide more time for the parties to pursue technical solutions. In this respect, LightSquared notes that it has proposed to operate its ATC base stations at the EIRP levels that the Commission adopted generally in the *2005 ATC Order*, which are reflected in the Commission’s rules, instead of the higher EIRP levels authorized in LightSquared’s ATC license.⁶² In addition, LightSquared has offered to limit the “power on the ground” that results from the operation of its base stations in the Lower 10 MHz to no more than -30 dBm until January 1, 2016, and -27 dBm thereafter, which should provide greater certainty to GPS users and manufacturers.⁶³ As LightSquared has demonstrated, testing done by the Technical Working Group (“TWG”) showed that in the presence of a -30 dBm LightSquared signal operating in the Lower 10 MHz, all cellular phones, the vast majority of general location and navigation receivers, and narrowband timing devices performed well, and many high-precision devices that do not use an MSS augmentation signal also performed well.⁶⁴ LightSquared also has proposed that, subject to LightSquared operating in a manner consistent

⁶¹ See Letter to FCC from LightSquared Subsidiary LLC, IB Docket No. 11-109 (Dec. 12, 2011) (“LightSquared December 12 Letter”).

⁶² See *Recommendation of LightSquared Subsidiary LLC*, IB Docket No. 11-109, at 13 n.17, 24-25 (June 30, 2011).

⁶³ See LightSquared December 12 Letter at 2.

⁶⁴ See Letter to FCC from LightSquared Subsidiary LLC, IB Docket No. 11-109, Att. D at 3 (Oct. 6, 2011).

with that limit, the Commission should find the condition set forth in the *2011 Waiver Order*⁶⁵ satisfied as it applies to the Lower 10 MHz and LightSquared's entire uplink band (1626.5–1645.5 MHz and 1646.5-1660.5 MHz), while maintaining that condition as it applies to the Upper 10 MHz until the Commission, with the consent of the PNT Executive Committee (through the NTIA), determines to otherwise eliminate that condition.⁶⁶

Regardless of the approach taken, LightSquared asks that the Commission and NTIA continue working with the parties to explore a full range of options, including engineering, system design, device filtering, and other strategies to enhance the capabilities of LightSquared's terrestrial network, ensure its timely build-out, improve the performance of GPS receivers, and otherwise serve the public interest.

* * * * *

For the foregoing reasons, the Commission should reject any suggestion by the commercial GPS industry that LightSquared be foreclosed from operating in the Upper 10 MHz in accordance with its existing ATC authority.

Respectfully submitted,

/s/ Jeffrey J. Carlisle
Jeffrey J. Carlisle
Executive Vice President, Regulatory Affairs
and Public Policy
LIGHTSQUARED INC.
10802 Parkridge Boulevard
Reston, VA 20191
703-390-2001

Attachment

⁶⁵ See *2011 Waiver Order* ¶ 48.

⁶⁶ See LightSquared December 12 Letter at 1.

EXHIBIT 1



SPACE-BASED POSITIONING
NAVIGATION & TIMING
NATIONAL COORDINATION OFFICE

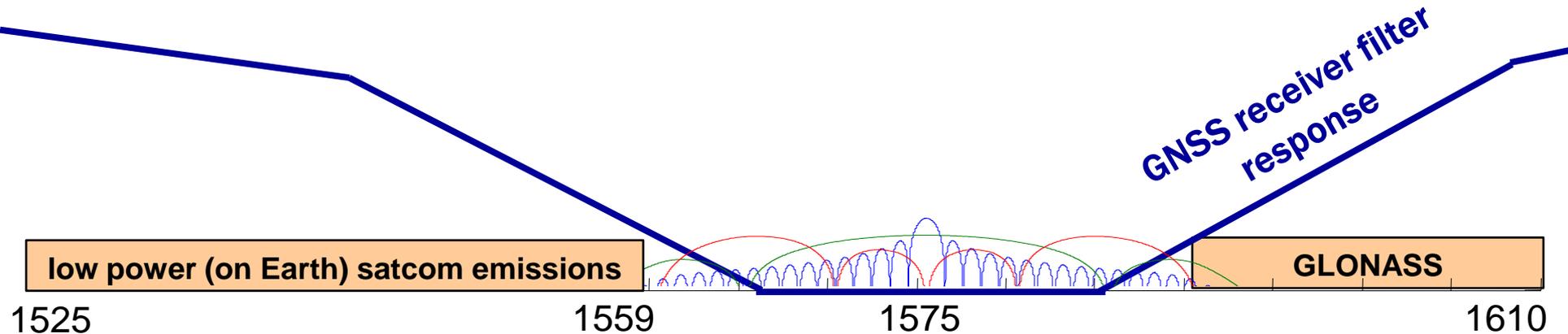
U.S. Space-Based Positioning, Navigation & Timing (PNT) Policy Update

Col Robert M. Hessin
Deputy Director
National Coordination Office

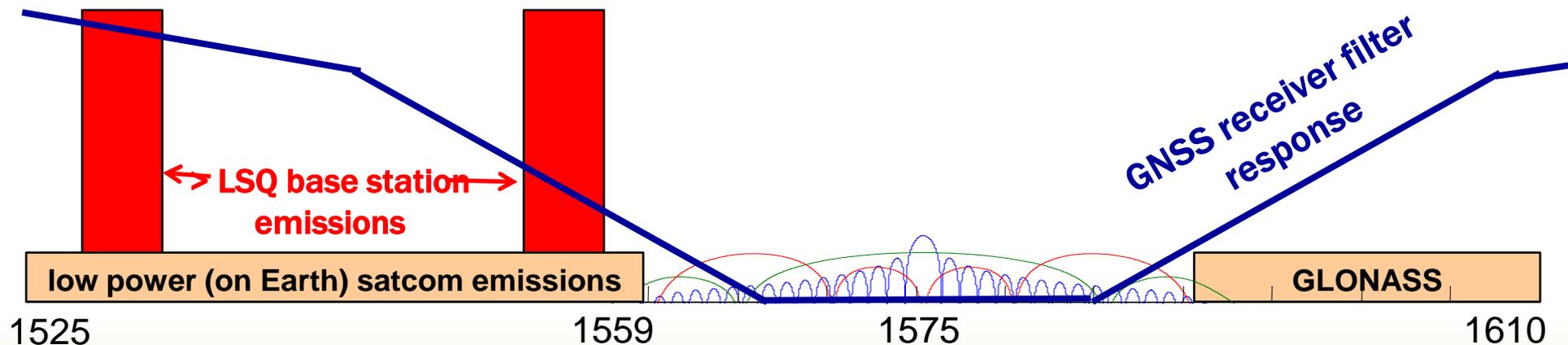


Illustration of Concerns with LightSquared

Situation before LightSquared



Situation with LightSquared



Summary

By this petition, LightSquared asks the Commission to resolve the regulatory status of unlicensed commercial Global Positioning System (“GPS”) receivers vis-à-vis LightSquared’s licensed operations in the 1525-1559 MHz Mobile-Satellite Service (“MSS”) band. After years of planning and billions of dollars in investment, LightSquared is preparing to commence commercial service over an integrated satellite and terrestrial 4G LTE wireless network using this MSS spectrum—consistent with Commission-mandated milestones requiring LightSquared to provide a competitive 4G LTE broadband capability to 100 million Americans by the end of 2012 and 260 million Americans by the end of 2015.

It recently has become apparent that the commercial GPS industry has manufactured, and sold to unsuspecting consumers, unlicensed and poorly designed GPS receivers that “listen” for radio signals both in the “RNSS” frequency band in which the U.S. GPS system is intended to operate, as well as across the adjacent “MSS” frequency band that is *not* intended for GPS use, and in which LightSquared is licensed. The commercial GPS industry claims, without justification, that these GPS receivers somehow are entitled to “protection” from the LightSquared authorized operations that occur entirely within the MSS band. The GPS industry also claims that LightSquared must alter its plans in order to accommodate these commercial GPS receivers, and has demanded that LightSquared abandon the use of large segments of the MSS band in which LightSquared is licensed.

It does not matter whether the Commission characterizes commercial GPS receivers as unlicensed receive-only earth stations that operate under Part 25 of the Commission’s rules, or as unlicensed devices that operate under Part 15 of the Commission’s rules. The relevant precedent under either analysis reaches the same inescapable result: unlicensed commercial GPS receivers simply are not entitled to interference protection from LightSquared’s licensed operations in the MSS band. Moreover, the commercial GPS

industry is mistaken that LightSquared must bear the financial burden resulting from the failure of the commercial GPS industry, for almost a decade, to account for the deployment of LightSquared's network in the design and manufacture of commercial GPS receivers.

LightSquared's planned operations in the MSS band are fully consistent not only with its longstanding license, but also with the U.S. Table of Frequency Allocations, the Commission's service rules, and the technical standards developed over the past decade with the cooperation and support of the commercial GPS industry itself (including applicable limits on LightSquared's out-of-band emissions into the RNSS band). In contrast, commercial GPS receivers are not licensed, do not operate under any service rules, and thus are not entitled to any interference protection whatsoever. Moreover, a commercial GPS receiver that "listens" in the MSS band represents a nonconforming (and doubly unprotected) use of spectrum that is inconsistent with the U.S. Table of Frequency Allocations. The commercial GPS industry therefore has *no* basis for claiming "protection" for its unlicensed receivers, or for asserting that LightSquared's operations would cause cognizable "harmful interference" to commercial GPS receivers.

To the extent that commercial GPS receivers are not fully compatible with LightSquared's planned operations in the MSS band (which is adjacent to the RNSS band), it should be apparent that the GPS industry simply has failed to prepare itself for ATC deployment. As the Commission has long recognized, the type of receiver "desensitization" or "overload" concerns that give rise to this petition—the inability of GPS receivers to adequately "reject" the reception of signals in the adjacent MSS band—should not be blamed on the licensee in the adjacent band (LightSquared), because "overload" is "basically a . . . receiver design problem" that is within the control of the commercial GPS industry.

While the deployment of terrestrial transmitters in the MSS band has been expected for almost a decade, the commercial GPS industry has failed to take that eventuality

into account in designing and selling GPS receivers. Namely, the commercial GPS industry has failed to heed the Commission’s requirement for “manufacturers to design receivers reflecting the state of the art,” and also has failed to factor into its receiver design the proximity and “high power” of terrestrial land mobile transmitters “so as to reduce the susceptibility” of unlicensed receivers to incompatibilities in such an environment. The commercial GPS industry also has failed to meet U.S. Government specifications stating that civilian GPS receivers should use sharp filters to eliminate the impact of energy transmitted in adjacent frequency bands.

That LightSquared was able to develop appropriate filtering technologies for GPS receivers in less than six months, at its own expense, shows that the commercial GPS industry readily could have done the same. Worse, evidence submitted by commercial GPS interests themselves demonstrates that the industry has done the opposite—in the recent past, commercial GPS manufacturers have “opened up” their receivers to make them even more sensitive to the energy that is permissibly emitted by licensed MSS/ATC operators in adjacent frequency bands.

These issues must be resolved in order to clear up any misperceptions in the marketplace about the scope of LightSquared’s authority to deploy its network in all of its licensed spectrum. LightSquared therefore respectfully asks the Commission to declare that:

- (i) Manufacturers and users of unlicensed commercial GPS receivers lack standing to file complaints or other pleadings seeking “protection” from allegedly incompatible operations in adjacent MSS bands—including ATC operations—that are permitted by the Commission’s rules and the U. S. Table of Frequency Allocations;
- (ii) Commercial GPS receivers have no independent right to “protection” from operations in adjacent MSS bands, independent of the license conditions that limit the out-of-band power that may be emitted by MSS band transmitters into the RNSS band, and other than the benefit afforded by the guard band that should separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band;

- (iii) Commercial GPS devices that receive GPS signals in the MSS band are “nonconforming” and inconsistent with the MSS allocation in that band, and as such are not entitled to any “protection” regardless of whether they are licensed; and
- (iv) The costs of ensuring that GPS devices are compatible with adjacent band operations—including any costs necessary to retrofit legacy devices—are the responsibility of GPS manufacturers—or, at a minimum, are not the obligation of MSS/ATC licensees.

LightSquared respectfully requests that the Commission issue the requested declaratory ruling on an expedited basis to ensure that consumers can benefit from the competitive retail services to be offered over LightSquared’s network as soon as possible.

Table of Contents

I. INTRODUCTION1

II. BACKGROUND3

 A. LightSquared’s History3

 B. LightSquared’s Negotiations with the Commercial GPS Industry5

 C. Evolution of LightSquared’s ATC Authority8

 D. 2011 Waiver Order9

III. DISCUSSION10

 A. Users and Manufacturers of Unlicensed Commercial GPS Receivers
 Lack Standing to Complain about Alleged “Interference”11

 B. Commercial GPS Receivers Have No General “Protection” from
 LightSquared’s Operations13

 C. Commercial GPS Operations in the MSS Band Represent a
 Nonconforming Use that Is Not Entitled to “Protection”18

 D. The Commercial GPS Industry Must Bear the Costs of Ensuring that
 Its Receivers Are Compatible with Adjacent MSS/ATC Operations23

IV. CONCLUSION29

Exhibit 1

Exhibit 2

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

In the Matter of)
)
LightSquared Inc.) IB Docket No. _____
)
Petition for Declaratory Ruling)
)

PETITION FOR DECLARATORY RULING

LightSquared Inc., together with its affiliates (collectively, “LightSquared”), hereby petitions the Commission for a declaratory ruling regarding the regulatory status of commercial Global Positioning System (“GPS”) receivers vis-à-vis LightSquared’s authorized operations in the 1525-1559 MHz Mobile-Satellite Service (“MSS”) band.

I. INTRODUCTION

After years of planning and billions of dollars in investment, LightSquared is preparing to: (i) commence commercial service over an integrated satellite and terrestrial 4G LTE wireless network using portions of the MSS band in which LightSquared is licensed to operate; (ii) provide mobile voice and broadband services to hundreds of millions of American consumers, including in rural and underserved areas, and thereby advance the goals of the *National Broadband Plan*; and (iii) satisfy the network system deployment milestones that the Commission imposed on LightSquared in March 2010.

It recently has become apparent that the commercial GPS industry has manufactured, and sold to unsuspecting consumers, unlicensed and poorly designed GPS receivers that “listen” for radio signals both in the 1559-1610 MHz “RNSS” frequency band in which the U.S. GPS system is intended to operate,¹ as well as in the adjacent 1525-1559

¹ “RNSS” is an acronym for the “radionavigation-satellite service.”

MHz “MSS” frequency band that is licensed for LightSquared’s operations.² The commercial GPS industry claims, without justification, that these unlicensed receivers somehow are entitled to “protection” from the LightSquared authorized operations that occur entirely within the MSS band. The GPS industry also claims that LightSquared must alter its plans in order to accommodate unlicensed GPS receivers, and has demanded that LightSquared abandon the use of large segments of the MSS band in which LightSquared is licensed.

As detailed below, the commercial GPS industry is mistaken in its assertions that unlicensed GPS receivers are entitled to interference protection from LightSquared’s licensed operations in the MSS band. The commercial GPS industry also is mistaken that LightSquared must bear the financial burden resulting from the failure of the commercial GPS industry, for almost a decade, to plan for the deployment of LightSquared’s network in the design and manufacture of commercial GPS receivers.

These issues must be resolved in order to remove uncertainty and clear up any misperceptions in the marketplace about the scope of LightSquared’s authority to deploy its network in all of its licensed spectrum. LightSquared therefore asks the Commission to declare that:

- (i) Manufacturers and users of unlicensed commercial GPS receivers lack standing to file complaints or other pleadings seeking “protection” from allegedly incompatible operations in adjacent MSS bands—including ATC operations—that are permitted by the Commission’s rules and the U. S. Table of Frequency Allocations;
- (ii) Commercial GPS receivers have no independent right to “protection” from operations in adjacent MSS bands, independent of the license conditions that limit the out-of-band power that may be emitted by MSS band transmitters into the RNSS band, and other than the benefit afforded by the guard band that

² “MSS” is an acronym for the “mobile-satellite service,” which, as described below, is distinct from RNSS. *See* Section III.C, *infra*. The U.S. Table of Frequency Allocations and the Commission’s rules allow both satellite transmissions as well as terrestrial wireless operations in 1525-1559 MHz MSS band. *See* 47 C.F.R. § 2.106 n.US380; 47 C.F.R. § 25.253.

should separate LightSquared's terrestrial operations in the MSS band from commercial GPS operations in the RNSS band;

- (iii) Commercial GPS devices that receive GPS signals in the MSS band are “nonconforming” and inconsistent with the MSS allocation in that band, and as such are not entitled to any “protection” regardless of whether they are licensed; and
- (iv) The costs of ensuring that GPS devices are compatible with adjacent band operations—including any costs necessary to retrofit legacy devices—are the responsibility of GPS manufacturers—or, at a minimum, are not the obligation of MSS/ATC licensees.

LightSquared respectfully requests that the Commission issue the requested declaratory ruling on an expedited basis to ensure that consumers can benefit from the competitive retail services to be offered over LightSquared's network as soon as possible.

II. BACKGROUND

A. LightSquared's History

LightSquared³ was first authorized in 1989 to provide MSS in the L Band.⁴

Since the mid-1990s, the company has operated across North America using the capacity of two satellites—MSAT-1 and MSAT-2. More recently, LightSquared has procured replacement spacecraft that are among the most sophisticated commercial communications spacecraft ever built. The first, SkyTerra 1, was placed into service earlier this year. The construction of the second, SkyTerra 2, is substantially complete; the satellite is undergoing testing and otherwise is being readied for launch. The advanced design of the new

³ LightSquared is the successor-in-interest to SkyTerra, Mobile Satellite Ventures, Motient, and the American Mobile Satellite Corporation. For simplicity, each of these companies is referred to, individually and collectively, as “LightSquared.”

⁴ *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd 6041 (1989); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *on remand, Ridgely Communications, Inc.*, 7 FCC Rcd 266 (1992); *aff'd, Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation*, 8 FCC Rcd 4040 (1993).

LightSquared satellites enables communication with smartphones and tablets that have the same form factor as the terrestrial wireless devices that consumers use today.

LightSquared's new spacecraft are part of the Commission-authorized, integrated satellite and terrestrial network that LightSquared is building, consistent with the Commission's mandate to provide competitive 4G LTE broadband capability to 100 million Americans by the end of 2012, and 260 million Americans by the end of 2015.⁵ Specifically, LightSquared has been authorized to deploy a complementary terrestrial infrastructure in any part of the 66 MHz of the L Band where its satellites may operate.⁶ LightSquared has made significant strides in constructing this terrestrial network, which, coupled with its satellite network, will enable the provision of seamless broadband connectivity across the United States.⁷ The deployment of this network has been fully coordinated with Inmarsat, the other L Band MSS operator that serves the United States.

Thus, LightSquared's 4G LTE network promises to be a competitive alternative to the commercial mobile wireless networks of companies like AT&T and Verizon, and will continue the long tradition of LightSquared and its predecessors as a positive competitive force.⁸ LightSquared's network also will advance the Commission's goals in the areas of broadband access, spectrum efficiency, and public safety. LightSquared

⁵ See *SkyTerra Communications, Inc. and Harbinger Capital Partners Funds*, 25 FCC Rcd 3059, Att. 2 Condition 2 (2010).

⁶ See *Mobile Satellite Ventures Subsidiary LLC*, 19 FCC Rcd 22144, at ¶¶ 18-26 (2004) (“*MSV ATC Order*”); *SkyTerra Subsidiary LLC*, Order and Authorization, 25 FCC Rcd 3043 (2010) (“*2010 SkyTerra ATC Modification Order*”); *LightSquared Subsidiary LLC*, 26 FCC Rcd 566 (2011) (“*2011 Waiver Order*”). For these purposes, the L Band consists of the 1525-1544/1545-1559 MHz and the 1626.5-1645.5/1646.5-1660.5 MHz bands.

⁷ See Letter to FCC from LightSquared, IB Docket No. 08-184 (Oct. 31, 2011) (detailing progress in meeting construction and terrestrial service requirements).

⁸ See, e.g., *FCC Report to Congress as Required by the ORBIT Act*, Twelfth Annual Report, 26 FCC Rcd 8998 (2011) (noting that LightSquared contributes to “substantial competition”).

currently is not able to commence the deployment of terrestrial-only devices on this 4G LTE network because of the objections of the commercial GPS industry.⁹

B. LightSquared’s Negotiations with the Commercial GPS Industry

The concept of using MSS spectrum for combined satellite and terrestrial purposes, and LightSquared’s authority to conduct such operations, have evolved with the active participation *and support* of the commercial GPS industry for almost a decade. Indeed, LightSquared has worked with the commercial GPS industry to ensure that GPS receivers would remain compatible with LightSquared’s forthcoming terrestrial broadband network in the L Band. During this time, the GPS industry *repeatedly* supported the evolving technical parameters of LightSquared’s network—and, in particular, supported LightSquared in proceedings in which the Commission relaxed the numerical limits applicable to LightSquared’s terrestrial transmitters and significantly increased the power level at which LightSquared’s terrestrial base stations may transmit within its authorized MSS spectrum.

For example, LightSquared’s initial application for ATC authority prompted discussions between LightSquared and the commercial GPS industry, and helped resolve some of the objections that had been filed to that application, including objections that commercial GPS receivers might not work properly in the presence of (*i.e.*, could experience “overload” near) a terrestrial base station transmitting in the adjacent MSS band.¹⁰ In fact, the commercial GPS industry drove the adoption of the out-of-band power limits that were

⁹ See 2011 Waiver Order ¶¶ 42-43.

¹⁰ See Comments of Deere & Company, IBFS File No. SAT-ASG-20010302-00017, at 6 (May 7, 2001) (claiming that power from base stations could be sufficient to overload the “sensitive receiving amplifiers of the GPS terminals”); Inmarsat Ventures plc, Partial Petition to Deny, IBFS File No. SAT-ASG-20010302-00017, at 9-10 (Apr. 18, 2001) (expressing concern that power from base stations could “overload” Inmarsat METs and GPS receivers); Comments of Inmarsat Ventures plc, IB Docket No. 01-185, at 17-18 and Technical Annex at 8-9 (filed Oct. 22, 2001) (asserting that base station operations could overload GPS receivers).

adopted in the Commission’s ATC rulemaking¹¹ and that have always applied to LightSquared’s authorization for its terrestrial network.¹² Those terrestrial power limits were intended to minimize the impact of LightSquared’s ATC operations on commercial GPS receivers,¹³ after taking into account the “increased user density from *potentially millions of MSS mobile terminals operating in ATC mode*” and “*tens of thousands of ATC wireless base stations . . .*.”¹⁴

A joint industry agreement memorialized those technical limits in order to “protect the GPS service’s present and future operations and to provide a stable environment for the development and operation of [LightSquared’s] system.”¹⁵ The analysis that led to that agreement “considered all relevant issues concerning potential interference to GPS,” and reflected the agreement of “[a]ll relevant stakeholders,” as identified by the commercial GPS industry.¹⁶ In particular, those limits were adopted with the express expectation of “GPS receivers operating in the vicinity of [LightSquared terrestrial base] stations.”¹⁷ The limits, which are far more stringent than the limits contained in the Commission’s rules, also have formed the basis for the out-of-band power limits imposed on Globalstar and TerreStar as

¹¹ See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962 (“2003 ATC Order”), recon. granted in part, 18 FCC Rcd 13590 (2003), recon. granted in part 20 FCC Rcd 4616, at ¶ 53 (2005) (“2005 ATC Order”).

¹² See *MSV ATC Order* ¶ 80 (subsequent history omitted).

¹³ See Letter to FCC from Mobile Satellite Ventures L.P. and the U.S. GPS Industry Council, IB Docket No. 01-185 (July 17, 2002).

¹⁴ See Reply Comments of U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (Sep. 4, 2003) (emphasis added). NTIA subsequently identified the agreement with the commercial GPS industry as evidence that effective technical solutions “are attainable by the MSS ATC communities and agreeable with the GPS community.” See Letter to FCC from NTIA, IB Docket No. 01-185, at 3 (Feb. 10, 2003).

¹⁵ See Petition for Reconsideration of the U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (Jun. 11, 2003).

¹⁶ *Id.* at 4.

¹⁷ See Letter to FCC from U.S. GPS Industry Council, IBFS File No. SAT-MOD-20031118-00333 (Mar. 24, 2004).

conditions to their ATC authorizations.¹⁸ The commercial GPS industry also endorsed the LightSquared network in the very same proceedings in which the Commission relaxed, and then eliminated, limits on the number of terrestrial transmitters in the MSS band, and in which the Commission authorized a substantial increase in the power level that could be emitted by terrestrial base stations within the MSS band.¹⁹

A similar pattern emerged following LightSquared's 2009 request that the Commission modify the application of certain of its technical rules following the execution of the LightSquared-Inmarsat Cooperation Agreement to facilitate the deployment of 4G LTE wireless service, including another increase in the power level that could be emitted by terrestrial base stations within the MSS band.²⁰ In response to that license modification request, the commercial GPS industry raised certain concerns about whether the planned operation of LightSquared's "femtocells" would be compatible with indoor GPS operations.²¹ Those concerns about indoor transmitters similarly were resolved through the adoption of negotiated out-of-band power limits.²² Notably, the commercial GPS industry did not object to *any* other aspect of LightSquared's proposed terrestrial network license modification, nor did the commercial GPS industry raise any new concerns with respect to potential receiver "desensitization" or "overload."

¹⁸ See *Globalstar LLC*, 21 FCC Rcd 398, at ¶¶ 23-24 (2006); *TerreStar Networks Inc.*, 25 FCC Rcd 228, at ¶ 28 (2010).

¹⁹ See *MSV ATC Order* ¶ 90 (relaxing numerical limit on L Band ATC base stations); *2005 ATC Order* ¶¶ 46-48, 55 (eliminating the numerical limit on L Band ATC base stations and increasing permitted base station EIRP from 23.9 dBW per sector to 31.9 dBW per sector).

²⁰ See *2010 SkyTerra ATC Modification Order* ¶¶ 10, 46 (increasing permitted base station EIRP from 31.9 dBW per sector to 42 dBW per sector).

²¹ See Comments of the U.S. GPS Industry Council, IBFS File No. SAT-MOD-20090429-00047 (Jul. 10, 2009).

²² See Letter to FCC from SkyTerra Subsidiary LLC and U.S. GPS Industry Council, IBFS File No. SAT-MOD-20090429-00047 (Aug. 13, 2009).

In short, the commercial GPS industry participated actively in the rulemaking and licensing proceedings that underlie LightSquared's existing authority, and the industry supported the development of LightSquared's network. In particular, the GPS industry worked with LightSquared to develop mutually-acceptable power limits that would ensure, according to the GPS industry itself, a suitable level of protection for commercial GPS devices. Moreover, the GPS industry described the Commission's initial grant of LightSquared's ATC authority as validation of LightSquared's "adherence to best commercial practices" with respect to protecting commercial GPS interests.²³

C. Evolution of LightSquared's ATC Authority

The Commission adopted its initial rules authorizing terrestrial use of MSS spectrum in 2003, and granted LightSquared the authorization to conduct such operations the following year.²⁴ On several subsequent occasions, LightSquared sought, and the Commission granted, modifications of that authority. Significantly, though, LightSquared plans to operate its network at power levels that have been permitted since 2005, when the Commission, on reconsideration, eliminated any numerical limit on LightSquared's terrestrial base stations, and generally relaxed the "in-band" base station power limits applicable to the L Band.²⁵ Even in the context of that reconsideration proceeding, the commercial GPS industry stood by the out-of-band power limits approved by the Commission, explaining that

²³ See Letter to FCC from U.S. GPS Industry Council, IBFS File No. SAT-MOD-20031118-00333 (Mar. 24, 2004).

²⁴ See generally *2003 ATC Order*; *MSV ATC Order* (subsequent history omitted).

²⁵ Although the Commission authorized LightSquared to employ higher base station power in 2010, see *2010 SkyTerra ATC Modification Order* ¶¶ 10, 46 (2010) (approving base station EIRP of 42 dBW per sector), LightSquared has proposed to operate its ATC base stations at the lower EIRP approved in 2005, see *Recommendation of LightSquared Subsidiary LLC*, IB Docket No. 11-109, at 13 n.17, 24-25 (June 30, 2011), and also has offered to limit the "power on the ground" that results from the operation of its base stations in a portion of its licensed spectrum to no more than -30 dBm until January 1, 2016, and -27 dBm thereafter. See Letter to FCC from LightSquared Subsidiary LLC, IB Docket No. 11-109 (Dec. 12, 2011).

those limits were “the product of careful industry negotiations that ‘considered all relevant issues’” and were adequate notwithstanding the “increased user density from potentially millions of MSS mobile terminals operating in ATC mode” and “tens of thousands of ATC wireless base stations.”²⁶

D. 2011 Waiver Order

In 2011, LightSquared sought and obtained from the Commission a waiver to afford LightSquared’s customers additional flexibility to provide retail ATC service through “terrestrial-only” mobile handsets. The grant of the waiver, and the underlying license modification application, did not effect any change in the number of LightSquared’s terrestrial base stations, or the power that would be emitted by those base stations.²⁷ Notwithstanding these facts, certain members of the commercial GPS industry have used the underlying proceeding to raise concerns that the in-band power levels from LightSquared’s licensed terrestrial base stations could “overload” GPS receivers—concerns entirely unrelated to the waiver relief sought by LightSquared (which did not affect those power levels in any manner whatsoever).

In the spirit of cooperation and to facilitate grant of the requested waiver, LightSquared agreed to participate in a process intended to examine the concerns raised by the commercial GPS industry.²⁸ Critically, however, nothing in the *2011 Waiver Order* altered the relative substantive rights and obligations of the parties. In other words, the *Order* did not in any way alter the interference protection or status of unlicensed commercial GPS receivers under Commission rules and precedent.

²⁶ See Reply Comments of the U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (Sep. 4, 2003).

²⁷ See *2011 Waiver Order*.

²⁸ Letter to FCC from LightSquared Subsidiary LLC, IBFS File No. SAT-MOD-20101118-00239 (Jan. 21, 2011).

III. DISCUSSION

As noted above, LightSquared is poised to implement a wireless 4G LTE network that will extend the benefits of broadband to hundreds of millions of American consumers—consistent with the objectives of the *National Broadband Plan*. However, LightSquared’s efforts to commence operations of the terrestrial component of this network have been frustrated by the objections of the commercial GPS industry.

LightSquared recognizes that a great deal of controversy exists regarding its rights and obligations vis-à-vis commercial GPS receivers. Much of this confusion stems from the apparent misunderstandings of the commercial GPS industry about the regulatory status of commercial GPS receivers under longstanding Commission precedent.

Commercial GPS receivers that are not licensed could be characterized as unlicensed receive-only earth stations that operate under Part 25 of the FCC’s rules (at least to the extent they communicate with U.S. GPS spacecraft).²⁹ Alternatively, such commercial GPS receivers could be treated as unlicensed devices that operate under Part 15 of the FCC’s

²⁹ On a few occasions, the Commission has treated GPS receivers as subject to the regulatory framework that governs unlicensed receive-only earth stations, which is codified in Section 25.131 of the Commission’s rules. *See Public Notice: National Telecommunications and Information Administration Provides Information Concerning Executive Branch Recommendations for Waiver of Part 25 Rules Concerning Licensing of Receive-Only Earth Stations Operating with Non-U.S. Radionavigation Satellites*, DA 11-498 (Mar. 15, 2011) (noting that the FCC’s rules require licensing of “receive-only earth stations operating with non-U.S. licensed [RNSS] satellites.”) (“March 15 Public Notice”); *see also* Inmarsat Hawaii Inc., IBFS File No. SES-MSC-20100415-00483 (Jul. 7, 2010) (granting waiver of Section 25.131(j) to permit unlicensed GPS (RNSS) terminals to receive transmissions from a U.K.-licensed Inmarsat satellite); *Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements*, Second Report and Order, 18 FCC Rcd 24423, at ¶ 30 (2003) (GPS receivers among the list of receive-only earth stations exempt from compliance with equipment certification procedures because of the absence of applicable performance standards in the Commission’s rules). NTIA has viewed GPS receivers in a similar fashion. *See* Letter to FCC from NTIA (Mar. 2, 2001), attached to the March 15 Public Notice (observing that the FCC’s rules “require licensing of . . . receive-only earth stations operating with non-U.S. licensed [RNSS] satellites,” including GPS (RNSS) receivers, and citing Section 25.131).

rules. In fact, the commercial GPS industry itself characterizes many of its devices as “Part 15” devices.³⁰ In any event, manufacturers and users of commercial GPS receivers that are not licensed have simply no legal right to interference protection vis-à-vis LightSquared, or any other licensed user of radio spectrum for that matter.

For the reasons set forth below, LightSquared submits that the Commission can and should declare that: (i) manufacturers and users of unlicensed commercial GPS receivers lack standing to file complaints or other pleadings seeking “protection” from allegedly incompatible operations in adjacent MSS bands—including ATC operations—that are permitted by the Commission’s rules and the U. S. Table of Frequency Allocations; (ii) commercial GPS receivers have no independent right to “protection” from operations in adjacent MSS bands, independent of the license conditions that limit the out-of-band power that may be emitted by MSS band transmitters into the RNSS band, and other than the benefit afforded by the guard band that should separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band; (iii) commercial GPS devices that receive GPS signals in the MSS band are “nonconforming” and inconsistent with the MSS allocation in that band, and as such are not entitled to any “protection” regardless of whether they are licensed; and (iv) the costs of ensuring that GPS devices are compatible with adjacent band operations—including any costs necessary to retrofit legacy devices—are the responsibility of GPS manufacturers—or, at a minimum, are not the obligation of MSS/ATC licensees.

A. Users and Manufacturers of Unlicensed Commercial GPS Receivers Lack Standing to Complain about Alleged “Interference”

Prior to 1979, the Commission required that all “receive-only” earth stations (*i.e.*, facilities that receive transmissions from satellites but not transmit to them) be licensed.

³⁰ See, e.g., Garmin nüvi 200 Series Manual at 13; Magellan eXplorist 310 User Manual at 3 (both attached as Exhibit 1 hereto).

In 1979, the Commission relaxed this requirement for receive-only earth stations communicating with U.S.-authorized spacecraft, and allowed those earth stations to operate without a license “in those situations where the interference protection afforded by coordination and licensing is not desired or needed.”³¹

Critically, the Commission gave users of receive-only earth stations the option of bypassing the licensing requirement and operating on an unlicensed basis *only* if they were willing to operate on a *completely unprotected basis*, and also forgo the benefit of any interference protection otherwise potentially available to them. In addition, the Commission recognized explicitly that there could be “no assurances that an unlicensed facility would be able to maintain the level of interference-free reception which it initially enjoys.”³² In other words, the Commission anticipated that the introduction of a new terrestrial service (*e.g.*, the introduction of LightSquared’s ATC service in the MSS band) could change the interference environment, and cautioned unlicensed users that they would not be permitted to block such change.

Further, the Commission emphasized that it would not tolerate petitions to deny license applications “or other forms of complaint or relief filed by unlicensed facility operators [or end users] on the basis of experienced or anticipated interference.”³³ This is consistent with the notion that unlicensed receive-only earth stations have no substantive rights to protect—and thus no standing to assert those rights. In short, to the extent that GPS receivers are deemed to be earth stations that are regulated by Part 25, users of unlicensed commercial GPS receivers not only lack the substantive right to “protection” from adjacent

³¹ *Regulation of Domestic Receive-Only Satellite Earth Stations*, 74 FCC 2d 205, at ¶ 27 (1979) (“1979 Receive-Only Earth Station Order”); *see also Deregulation of Domestic Receive-Only Satellite Earth Stations*, 2 FCC Rcd 200 (1987); *Earth Station Application Procedures*, 6 FCC Rcd 2806 (1991); 47 C.F.R. § 25.131.

³² *1979 Receive-Only Earth Station Order* ¶ 28.

³³ *Id.*

operations, but also lack the procedural right (*i.e.*, standing) to bring any complaint to the Commission with respect to the alleged incompatibility of LightSquared’s ATC operations and commercial GPS devices.

The same result would lie if commercial GPS receivers were deemed to be subject to regulation under Part 15. As Commission staff appropriately have recognized, “[t]he basic premise of all Part 15 unlicensed operation is that unlicensed devices cannot cause interference to licensed operations nor are they protected from any interference received.”³⁴ More specifically, Part 15 unlicensed devices lack “any vested or recognizable right to continued use of any given frequency”³⁵ Moreover, such devices must operate subject to the condition that “interference must be accepted that may be caused by the operation” of another radio station, whether licensed or unlicensed.³⁶ In other words, Part 15 users are effectively tertiary in all analyses of relative spectrum rights—their rights are subordinate to all other spectrum users, primary or secondary.³⁷ As such, a Part 15 user has no legitimate right to complain if its unlicensed device does not function properly, or if that device must be used in a suboptimal operating environment.

B. Commercial GPS Receivers Have No General “Protection” from LightSquared’s Operations

As detailed above, Commission precedent makes clear that unlicensed commercial GPS operations must proceed on an unprotected basis vis-à-vis other spectrum

³⁴ See FCC Spectrum Policy Task Force, *Report of the Unlicensed Devices and Experimental Licenses Working Group*, at 5 (Nov. 15, 2002).

³⁵ 47 C.F.R. § 15.5(a).

³⁶ 47 C.F.R. § 15.5(b).

³⁷ See, e.g., 47 C.F.R. § 2.105(c) (primary services have protection against secondary services; a given secondary service has protection against lower priority services). See also *Unlicensed Operation in the TV Broadcast Bands, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, 23 FCC Rcd 16807, at ¶ 50 (2008) (Part 15 devices do not enjoy interference protection vis-à-vis licensed primary or secondary spectrum users).

uses—whether licensed or unlicensed. Specifically, an unlicensed receive-only earth station user has “no assurances” that it will be able to “maintain the level of interference-free reception which it initially enjoys.”³⁸ Thus, unlicensed commercial GPS receivers enjoy no independent right to protection from operations in the adjacent MSS band—including terrestrial operations—even where an adjacent service evolves in a manner that results in an incompatibility with existing commercial GPS operations.

That said, the commercial GPS industry *does* benefit from: (i) the technical limits that it has negotiated with LightSquared and other MSS licensees—and which are reflected in the ATC authorizations held by those operators; and (ii) the frequency separation that should exist between LightSquared’s operations and the intended use of civilian GPS signals.

In particular, the out-of-band emission (“OOBE”) limits reflected in LightSquared’s license protect commercial GPS users that operate in the 1559-1610 MHz band that is allocated on a primary basis for RNSS. The commercial GPS industry has acknowledged that those negotiated limits “represent[] a ‘win-win’ for [LightSquared], for the Commission’s increased reliance on OOBE to limit interference, and for GPS safety of life and public safety use.”³⁹ Similarly, the Commission has long recognized that such out-of-band power limits are sufficient to allow GPS devices to operate alongside adjacent MSS operations.⁴⁰

For example, in establishing service rules for MSS operations in the Big LEO Band in 1994, the Commission found that such out-of-band power limits were sufficient to

³⁸ *1979 Receive Only Earth Station Order* ¶ 28.

³⁹ *See Reply Comments of U.S. GPS Industry Council, IB Docket No. 01-185, at 4 (Sep. 4, 2003).*

⁴⁰ *See, e.g., Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, at ¶ 133 (1994). *See also AMSC Subsidiary Corp.*, 10 FCC Rcd 10458, at ¶ 28 (1995).

protect GPS operations in the adjacent RNSS band, and rejected the suggestion that “additional protection bandwidth”—*i.e.*, a guard band—also was necessary for this purpose.⁴¹ The following year, when the Commission authorized LightSquared to operate mobile earth terminals (“METs”) in connection with its first satellite, the Commission found that out-of-band power limits were sufficient to “resolve any concern with regard to [LightSquared’s] data METs causing harmful interference to GPS receivers from [LightSquared’s] METs operating in bands near the frequency bands used by GPS and GLONASS receivers.”⁴² These cases are consistent with: (i) the Commission’s reliance on out-of-band power limits to protect aeronautical GPS receivers from MSS operations in the Big LEO Band,⁴³ and (ii) the Commission’s observation, in initially granting LightSquared’s ATC authorization, that such out-of-band power limits constitute “equivalent RNSS-protection requirements for ATC transmitters.”⁴⁴

Notably, the Commission has found that the use of out-of-band power limits to protect the commercial GPS industry from operations in adjacent MSS bands is appropriate only where the commercial GPS industry cannot otherwise protect itself. Thus, the Commission has suggested that it would be appropriate to *relax* applicable out-of-band power limits to the extent that the commercial GPS industry can provide equivalent protection through reasonable changes in GPS receiver design.⁴⁵ This petition does not ask the Commission to modify the out-of-band power limits applicable to LightSquared’s terrestrial

⁴¹ See *Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, at ¶ 133 (1994).

⁴² See *AMSC Subsidiary Corp.*, 10 FCC Rcd 10458, at ¶ 28 (1995).

⁴³ See *Emission Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, 17 FCC Rcd 8903 (2002).

⁴⁴ *MSV ATC Order* ¶ 34.

⁴⁵ See *Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS)*, Notice of Proposed Rulemaking, 14 FCC Rcd 5871, at ¶¶ 75-76 (1999).

operations in the MSS band. However, ample evidence that the commercial GPS industry could have designed more robust receivers, but chose not to do so, reinforces the need for the Commission to clarify that LightSquared need not bear the burden of correcting the deficiencies in commercial GPS receivers.

In addition to the protection afforded by out-of-band power limits, commercial GPS receivers are able to benefit from the protection afforded by the implicit ~8.5 MHz “guard band” that *should* separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band that use the GPS C/A code. LightSquared intends to provide much of this separation by ending its planned operations in the MSS band almost 4 MHz from the edge of the adjacent RNSS band.⁴⁶ The remaining separation would be provided if commercial GPS receivers met U.S. Government specifications calling for the use of sharp filters to limit reception of adjacent signals.⁴⁷ That commercial GPS receivers do not provide for such separation, resulting in a heightened potential for “overload,” can hardly be blamed on LightSquared.

Apart from applicable out-of-band power limits and the benefit of the implicit guard band that should separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band, there is no independent basis upon which the commercial GPS industry can assert a right to protection from “desensitization” or

⁴⁶ LightSquared intends to operate in the so-called “Upper 10 MHz” at 1545.2-1555.2 MHz. Thus, its operations will be separated from the edge of the RNSS band by at least 3.8 MHz.

⁴⁷ See United States Air Force Global Positioning Systems Wing, *Navstar GPS Space Segment/Navigation User Interfaces*, IS-GPS-200E, at §§ 3.3.1.1, 3.3.1.2 (Jun. 8, 2010) (“*USG GPS Interface Standard*”) (calling for commercial GPS reception to be “contained within” 12 MHz of the L1 center frequency at 1575.42 MHz); United States Department of Defense, *Global Positioning System Standard Positioning Service Performance Standard*, at § 2.4.2 (4th Ed., Sep. 2008).

“overload” allegedly caused by LightSquared.⁴⁸ For this reason, and because (as discussed below) commercial GPS users have no rights in the MSS band, the “desensitization” or “overload” effects experienced by GPS receivers that are “listening” in the MSS band cannot be construed as cognizable “harmful interference” under the Commission’s rules, notwithstanding the liberal (and improper) use of that term by GPS interests.⁴⁹

Similarly, there is no reasonable basis for the commercial GPS industry’s demand that LightSquared surrender its rights to operate in an additional 10 MHz (or more) of spectrum in order to increase the size of the existing guard band. Notably, in establishing rules for the ATC use of MSS spectrum, the Commission declined to establish a 15 MHz guard band to supplement the existing out-of-band power limits that were adopted to protect primary, licensed PCS operations from terrestrial operations in the 2 GHz MSS band.⁵⁰ Even though those PCS operations were licensed (unlike commercial GPS operations), the Commission emphasized that “PCS carriers similarly were aware of potential interference

⁴⁸ Section 25.255 merely provides a procedural vehicle for addressing cognizable “harmful interference” otherwise arising as the result of MSS/ATC operations. *See* 47 C.F.R. § 25.255. It does not provide substantive rights or interference protection that otherwise does not exist for unlicensed or non-conforming uses of spectrum under applicable law.

⁴⁹ Thus, Section 25.255 of the FCC’s rules does not apply in such cases, because it is triggered only in the event of cognizable “harmful interference.” *See* 47 C.F.R. §25.255. Moreover, in the case of inter-service issues (*i.e.*, concerns about MSS/ATC impact on adjacent frequency band systems), the procedures of Section 25.255 apply *only in the event that concerns about out-of-band emissions exist* (which is not the case here), and not in the case of receiver “desensitization” or “overload.” *See 2003 ATC Order* at ¶ 103 (“For the intra-service analyses, we evaluate the amount of interference that would be caused to another operator’s system that is sharing the same MSS allocation. . . . This interference could be . . . interference caused to the mobile earth terminals (METs) operating with the other MSS system. *For the inter-service case, we evaluate the impact of out-of-band emissions* from ATC operations on adjacent band systems.”) (emphasis added); *id.* at ¶¶ 119, 120 (unresolved concerns about out-of-band emissions are subject to Section 25.255 procedures; concerns about receiver “desensitization” or “overload” of adjacent band systems are to be mitigated by future receiver design modifications and through a cooperative effort among those involved.).

⁵⁰ *2003 ATC Order* ¶ 118.

from MSS systems in adjacent spectrum, and could have taken this into account in the design of their equipment.”⁵¹ The *unlicensed, nonconforming* GPS operations at issue here are entitled to far less protection than those licensed PCS operations—particularly where evidence exists that the commercial GPS industry could have taken ATC operations in MSS bands into account in designing GPS receivers over the course of the last decade, but chose not to do so.

C. Commercial GPS Operations in the MSS Band Represent a Nonconforming Use that Is Not Entitled to “Protection”

The commercial GPS industry has manufactured and sold many GPS receivers that employ inadequate filtering and frequency discrimination, and thus render themselves incompatible with long-planned uses of adjacent spectrum bands. Among other things, these commercial GPS receivers do not adequately filter out the energy that is emitted in adjacent frequency bands, largely because they fail to meet standards set forth in relevant U.S. Government specifications for civilian GPS use. Those specifications call for commercial GPS signal reception to be “contained within” 12 MHz of the L1 center frequency at 1575.42 MHz, and for commercial GPS receivers to use sharp filters to limit the reception of signals from adjacent bands that contain unwanted energy, and, thus, manage the potential for “overload.”⁵² While these standards are not “mandatory,” they were promulgated and are conveyed to manufacturers with the explicit representation that failure to meet them would compromise a receiver’s ability to function properly and use the civilian GPS signal as intended. Because they do not meet this specification, many commercial GPS receivers effectively “listen” to transmissions in the adjacent MSS band. As Deere explains, wideband GPS receivers “have filters that are open to a wider band around each GNSS frequency . . . to

⁵¹ *Id.*

⁵² See n.47, *supra*. Civilian users may access the course/acquisition, or “C/A” code, within the “L1” GPS signal. See *USG GPS Interface Standard* at § 3.2.1.3.

capture additional GNSS signal energy”⁵³ As a result, “if there are high powered LightSquared signals *in the adjacent MSS band*, more of the unwanted LightSquared energy will also be captured.”⁵⁴

This is consistent with the findings of the technical working group (“TWG”) that the GPS industry and LightSquared jointly established following the issuance of the *2011 Waiver Order*. The TWG found, in short order, that the “overload” issue emanates from the possibility that the operation of a GPS receiver could be affected by “strong signals *outside the GPS band*” (*i.e.*, in the MSS band).⁵⁵ Similarly, a recent presentation by the National Coordination Office for Space-Based Positioning, Navigation, and Timing (“PNT”) indicates that GPS concerns stem from the inability of GPS devices “listening” in the adjacent MSS band to filter out the energy from authorized transmissions in that adjacent band.⁵⁶

Commercial GPS “listening” activities, like other commercial uses of the radiofrequency spectrum in the United States, must be conducted in accordance with the Communications Act of 1934, as amended, and the Commission’s rules. Among other things, such operations must be consistent with the U.S. Table of Frequency Allocations, absent an appropriate waiver of the Table to permit a “nonconforming” use.⁵⁷ When the Commission does grant such a waiver, the nonconforming use must proceed on an

⁵³ See Petition for Reconsideration of Deere & Company, IBFS File No. SAT-MOD-20101118-00239, at 6 (Feb. 25, 2011) (emphasis added).

⁵⁴ *Id.* (emphasis added).

⁵⁵ See *GPS Technical Working Group Progress Report # 1*, at 1 (emphasis added), attached to Letter to FCC from LightSquared Subsidiary LLC, IBFS File No. SAT-MOD-20101118-00239 (Mar. 15, 2011).

⁵⁶ See National Coordination Office for Space-Based Positioning, Navigation, and Timing, *U.S. Space-Based Positioning, Navigation & Timing (PNT) Policy Update*, at 10 (Oct. 2010), available at <http://www.pnt.gov/public/2011/09/CGSIC/hessin.pdf> (chart attached as Exhibit 2 hereto) (showing that “concerns” with LightSquared stem from the fact that the “GNSS receiver filter response” in the 1525-1559 MHz band is inadequate with respect to LightSquared’s currently authorized power levels).

⁵⁷ See 47 C.F.R. §§ 2.102(a); 2.106.

unprotected basis with respect to all other services.⁵⁸ In other words, nonconforming uses enjoy *no* allocation status, and, like Part 15 uses, are treated as effectively tertiary in all analyses of relative spectrum rights.

In the United States, the 1525-1559 MHz band has been allocated for MSS use on a primary basis. MSS is defined as a “radiocommunication service: (1) Between mobile earth stations and one or more space stations, or between space stations used by this service; or (2) Between mobile earth stations by means of one or more space stations.”⁵⁹ The U. S. Table of Frequency Allocations contains a footnote (US380) specifying that such allocated MSS use includes terrestrial operations, subject to the Commission’s ATC rules and all applicable conditions and provisions of a licensee’s MSS authorization.⁶⁰

The adjacent 1559-1610 MHz band has been allocated for RNSS use on a primary basis. RNSS is defined as a “radiodetermination-satellite service used for the purpose of radionavigation.” “Radiodetermination-Satellite Service” (or “RDSS”) is defined as a “radiocommunication service for the purpose of radiodetermination involving the use of one or more space stations.” “Radiodetermination” is defined as the “determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, *by means of the propagation properties of radio waves.*”⁶¹

Commission precedent makes clear that RDSS (and the more-narrowly-defined RNSS) operations do not fall within the scope of the definition of MSS. The Commission has explained that “MSS and RDSS are intended to serve different customer

⁵⁸ See, e.g., *QUALCOMM, Inc.*, Memorandum Opinion, Order and Authorization, 4 FCC Rcd 1543, at ¶ 11 (1989).

⁵⁹ 47 C.F.R. § 2.1(c).

⁶⁰ 47 C.F.R. § 2.106 n.US380.

⁶¹ 47 C.F.R. § 2.1(c) (emphasis added).

needs,”⁶² and that “RDSS and MSS are sufficiently different that separate and distinct allocations are warranted.”⁶³ Tellingly, the U.S. Table of Frequency Allocations includes a footnote permitting “differential GPS” operations in the 1559-1610 MHz RNSS band.⁶⁴ The Commission has explained that a “footnote of this kind is necessary” because these operations involve “data transmission [that] is not considered a radionavigation application,” and “[r]adionavigation must be accomplished by obtaining information by means of the propagation properties of radiowaves.”⁶⁵ The commercial GPS industry itself acknowledges the difference between MSS and RNSS, and in a recent letter to the Commission, the U.S. GPS Council went so far as to emphasize the widespread recognition that “radionavigation signals are different in kind from radiocommunication signals.”⁶⁶

Given these distinctions, the fact that certain commercial GPS manufacturers also provide *MSS* “augmentation” services, using narrowband data streams leased from LightSquared or Inmarsat in the 1525-1559 MHz MSS band, does not give them the right also to conduct *GPS* (or RNSS) operations in that band on a protected basis.⁶⁷ Such GPS operations remain nonconforming uses of the 1525-1559 MHz MSS band that are

⁶² *Radiodetermination Satellite Service*, Second Report and Order, 104 FCC.2d 50, at ¶ 15 (1986).

⁶³ *Radiodetermination Satellite Service*, Memorandum Opinion and Order, 104 FCC.2d 637, at ¶ 8 & n.4 (1986).

⁶⁴ *See* 47 C.F.R. § 2.106 n.US343.

⁶⁵ *Review of Part 87 of the Commission’s Rules Concerning the Aviation Radio Service*, Notice of Proposed Rulemaking, 16 FCC Rcd 19005, at ¶ 39 n.90 (2001).

⁶⁶ *See* Letter to FCC from U.S. GPS Industry Council, IB Docket No. 11-109, at 4 (Nov. 9, 2011).

⁶⁷ Relevant agreements between LightSquared and Trimble provide that GPS users must maintain the ability to “tune” their reception of L-Band augmentation signals in small increments (*e.g.*, 1 kHz)—*i.e.*, maintain relatively narrow front ends—a capability many GPS devices lack.

inconsistent with the MSS allocation for that band and that may occur only on a doubly unprotected, non-interference basis.⁶⁸

This would be the case even if the GPS receivers at issue were licensed to operate in the adjacent RNSS band—which they are not. This also would be the case even if GPS receivers were designed to “listen” only in the 1559-1610 MHz RNSS band (which they are not), but nevertheless received some signals in the 1525-1559 MHz MSS band due to limitations in available filtering or frequency discrimination capabilities (which, as LightSquared has demonstrated, can be overcome in any event).⁶⁹ Any contrary interpretation would turn the Table of Frequency Allocations on its head by conferring *de facto* allocation status upon nonconforming operations, while precluding the intended (read: allocated) use of the 1525-1559 MHz band for MSS purposes.

Moreover, any such contrary interpretation would lack any limiting principle. In theory, such an interpretation would allow a commercial GPS user—or any other nonconforming user—to extend its “listening” activities into *any* adjacent band, and then assert a right to “protection” from primary operations in that band. Again, this result would run contrary to the Table of Frequency Allocations and undermine the carefully balanced allocation scheme reflected therein.

⁶⁸ Furthermore, the narrowband capacity used to support MSS “augmentation” services is provided subject to the terms of an international coordination agreement. Under longstanding precedent, an earth station operator cannot claim “harmful interference” from MSS operators that are consistent with the terms of a coordination agreement to which its space segment provider is bound. *See generally* Petition for Reconsideration of LightSquared, Inc., IBFS File No. SES-RWL-20110908-01047, at 11-16 (Oct. 14, 2011) (petition for reconsideration of the renewal of Deere’s earth station license).

⁶⁹ *See Press Release: Testing by World-Renowned Independent Laboratory Shows LightSquared is Compatible with High-Precision GPS Devices* (announcing that independent laboratory tests had shown that GPS devices can “easily surpass performance standards thanks to . . . newly developed solutions” by Javad GNSS, PCTel, and Partron, and that three additional top-tier, high-precision GPS manufacturers have developed solutions that currently are undergoing lab testing), attached to Letter to FCC from LightSquared, IB Docket No. 11-109 (Dec. 7, 2011).

D. The Commercial GPS Industry Must Bear the Costs of Ensuring that Its Receivers Are Compatible with Adjacent MSS/ATC Operations

As discussed above, unlicensed commercial GPS devices, as well as any commercial GPS devices that operate on a nonconforming basis, have no independent right to “protection” from operations in the MSS band—regardless of whether GPS devices are regulated under Part 15 or Part 25. It does not matter whether the GPS devices “listen” in the MSS band intentionally, or merely because they are designed that way to save on manufacturing costs. The consequence is the same: The commercial GPS industry must accept responsibility for the inability of GPS receivers to reject the power transmitted in the adjacent MSS band, because the “overloading” issue is “basically a . . . receiver design problem.”⁷⁰ As a result, the commercial GPS industry must bear the burden of ensuring that its operations are compatible with operations in the adjacent MSS band, and it is not entitled to recover the cost of doing so from MSS licensees. Any attempt to allocate such costs to MSS licensees would confer *de facto* substantive rights on users of commercial GPS receivers—contrary to the Table of Frequency Allocations, the Commission’s rules, and decades of Commission policy.

The Commission has long recognized the problems created by poorly-designed receivers, such as the GPS receivers at issue here. For this reason, the Commission consistently has expressed that it expects “receiver manufacturers to design receivers reflecting the state of the art,” explaining that “[w]here design inadequacies in various situations result in interference being received . . . the installation of suitable receiver filters is the appropriate remedy.”⁷¹ The Commission also has clearly articulated that equipment

⁷⁰ See *Public Notice: Potential Interference to Television Reception From the Operation of FM Broadcast Stations on Certain Frequencies*, PN 65-130 (Feb. 19, 1965).

⁷¹ See *Public Notice: Policy to Govern the Change of FM Channels to Avoid Interference to Television Reception*, 2 FCC 2d 462 (Feb. 3, 1966).

manufacturers bear the responsibility for the failure of their devices to work as intended.⁷² Similarly, Commission staff has explained that “[t]he incentive of equipment manufacturers to redesign their equipment is weakened or eliminated if, as interference problems arise, the Commission moves to eliminate the interference in other ways, for example, by placing responsibility on the transmitters,” and that this in turn may “inhibit the fullest possible use of the spectrum.”⁷³

Part 15 of the Commission’s rules reflects these longstanding policies, and makes clear that manufacturers of unlicensed devices bear responsibility for ensuring that such devices are designed properly. For example, Section 15.15(a) provides that “[a]n intentional or unintentional radiator”—such as a GPS receiver—“shall be constructed in accordance with good engineering design and manufacturing practice.”⁷⁴ Furthermore, Section 15.17(a) directs manufacturers to “consider the proximity and the high power of . . . licensed radio stations . . . when choosing operating frequencies during the design of their equipment so as to reduce the susceptibility for receiving harmful interference.”⁷⁵

It is clear that GPS manufacturers have not met these Commission requirements, or those that the federal government has established for GPS receivers

⁷² See *Public Notice: FCC Policy for Handling Complaints of Interference to Home Electronics Equipment* (Apr. 5, 1996) (“Each year the FCC receives thousands of complaints of interference to televisions, radios, audio systems, telephones, and other home electronics equipment. In most instances the FCC cannot resolve the problem because the cause of this interference is the design or construction of these products and not a violation of any FCC rule.”); see also *Channels for Class D Citizens Radio Service*, 62 FCC 2d 646, at ¶ 28 (1976) (refusing to impose costs on or prevent service by the transmitting party where the majority of alleged interference results “directly from poor television receiver design, lack of adequate filtering in television receivers presently on the market, and inability of television receivers adequately to reject unwanted or adjacent channel signals.”).

⁷³ See *FCC Staff Report on Radio Frequency Interference*, GN Docket No. 78-369, at 72 (Jun. 16, 1981).

⁷⁴ 47 C.F.R. § 15.15(a).

⁷⁵ 47 C.F.R. § 15.17(a).

(discussed above).⁷⁶ The fact that LightSquared, at its own expense, was able to develop appropriate filtering technologies for GPS receivers in less than six months (starting earlier this year) shows that the commercial GPS industry readily could have done the same. Worse, evidence submitted by commercial GPS interests themselves demonstrates that the GPS industry has done the opposite—in the recent past, commercial GPS manufacturers have “opened up” their receivers to make them more sensitive to the energy that is emitted permissibly by licensed MSS/ATC operators in adjacent frequency bands.⁷⁷

While the Commission has afforded manufacturers flexibility to employ a variety of receiver designs, reflecting trade-offs between cost and robustness, it has done so with the understanding that the users of those receivers must bear the risk of any resulting incompatibility. Thus, as the Commission recognized in establishing the framework for terrestrial uses of MSS bands, it generally has not regulated “the susceptibility of receivers to interference from transmissions on nearby frequencies,” but instead has chosen to “rely on the marketplace—manufacturers and service providers—to decide how much susceptibility to interference will be acceptable to consumers.”⁷⁸ The simple fact is that GPS manufacturers could have designed their receivers with greater filtering or frequency discrimination capabilities—perhaps at greater cost—but chose not to do so. Permitting GPS manufacturers to shift costs onto MSS licensees—which have no control over GPS receiver design—would lead to “moral hazard” and market failure—contrary to the Commission’s clear intent. For this reason, the Commission has rejected prior attempts by the commercial GPS industry and others to shift the costs of compatibility onto licensed operators—including MSS licensees.

⁷⁶ See n.47, *supra*.

⁷⁷ See Comments of the Information Technology and Innovation Foundation, IB Docket No. 11-109, at 5 (Aug. 15, 2011); Petition for Reconsideration of Deere & Company, IBFS File No. SAT-MOD-20101118-00239, at 6 (Feb. 25, 2011).

⁷⁸ 2005 ATC Order ¶ 56.

For example, in *AirTouch Satellite Services*, AirTouch (a provider of MSS) sought a license to deploy mobile handsets in the Big LEO Band in accordance with out-of-band power limits that had been established through a negotiated rulemaking, with the participation of the GPS industry. The U.S. GPS Industry Council objected to such deployment, claiming, among other things, that tighter out-of-band power limits were necessary to protect newer, “semi-codeless” GPS receivers that were more susceptible to interference. The Commission rejected this claim, observing that the GPS industry had known of MSS deployment plans for years, and that the new GPS receivers “appear to have been introduced to the market without any reasonable expectation, based on FCC rules, that they would be protected from interference.”⁷⁹ Consequently, AirTouch could not be made to shoulder the burden of the GPS industry’s poor receiver design.

Similarly, prior to the adoption of the *2003 ATC Order*, various PCS interests raised concerns that PCS handsets operating in the 1930-1990 MHz band “would not be able to adequately filter out transmissions from nearby MSS ATC handsets”⁸⁰ In rejecting PCS industry proposals to establish a guard band or otherwise constrain MSS/ATC operations to mitigate the possibility of “overload,” the Commission recognized that PCS carriers had been “aware of potential interference from MSS systems in adjacent spectrum, and could have taken this into account in the design of their equipment.”⁸¹ The Commission also found that any incompatibility could be “mitigated by future PCS handset design modifications and through a cooperative effort by PCS and MSS licensees to resolve these issues.”⁸²

⁷⁹ *AirTouch Satellite Service US, Inc.*, 14 FCC Rcd 17328, at ¶ 15 (1999).

⁸⁰ *2003 ATC Order* ¶ 117.

⁸¹ *Id.* at ¶ 118.

⁸² *Id.* at ¶ 120.

Recent Commission action follows suit. For example, in its MSS rulemaking proceeding, the Commission has made clear that GPS manufacturers bear responsibility for designing their equipment to ensure that it is not susceptible to interference from MSS ATC operations. Specifically, the Commission has noted that:

[R]esponsibility for protecting services rests not only on new entrants but also on incumbent users themselves, who must use receivers that reasonably discriminate against reception of signals outside their allocated spectrum. In the case of GPS, we note that extensive terrestrial operations have been anticipated in the L-band for at least 8 years. We are, of course, committed to preventing harmful interference to GPS and we will look closely at additional measures that may be required to achieve efficient use of the spectrum, including the possibility of establishing receiver standards relative to the ability to reject interference from signals outside their allocated spectrum.⁸³

There is even greater reason to hold GPS manufacturers accountable for the poor design of *unlicensed* GPS receivers, because the Commission has made clear that the deployment of unlicensed satellite receivers must occur only on a non-protected basis, and subject to the possible need to implement costly modifications without recourse against the licensed operator who is purportedly causing the “interference.” For example, the *1979 Receive-Only Earth Station Order* made clear that unlicensed operators would not be protected against licensed operations initiated in the future, acknowledged that “there may be significant additional costs associated with modifications necessary to accommodate interference problems at a later date,” and explicitly found that these costs “would have to be borne by the unlicensed operator.”⁸⁴ Similarly, the Commission’s rules make clear that earth

⁸³ See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Report and Order, 26 FCC Rcd 5710, at ¶ 28 (2011), recon. pending.

⁸⁴ *1979 Receive-Only Earth Station Order* ¶ 28.

station operators may commence construction of such stations “prior to grant of a license *at the applicant’s own risk.*”⁸⁵

Indeed, even when a satellite receiver is licensed, it is not entitled to interference protection under all circumstances, but only where it has been designed to meet appropriate standards. For example, the receiver standards developed for FSS bands and certain DBS bands expressly require satellite receivers to accept a defined level of energy from adjacent spectrum users. Those standards, which are contained in Part 25, are designed to prevent the very type of problem created here—a user complaining about “interference” caused by that user effectively “listening” in part of the limited spectrum resource in which that user is not entitled to operate. In particular, the antenna performance requirements in Sections 25.209, 25.224, and 25.138 of the Commission’s rules require a certain level of “rejection” of radio signals from adjacent satellites, and expressly deny interference protection to the extent an antenna does not meet those specifications.⁸⁶

That millions of commercial GPS devices have been deployed does not alter the fact that the commercial GPS industry must bear the costs of poor receiver design and mitigate any impact on commercial GPS users. Rather, such deployment merely underscores the harm visited upon the public by the commercial GPS industry’s failure to design receivers properly in the first instance, and to plan a transition to more robust receivers in a timely and responsible manner. The Commission has recognized that service providers can and should employ a variety of incentives to ensure that customers transition from legacy equipment to more robust devices.⁸⁷ There is no evidence that the commercial GPS industry has employed such incentives—despite its clear acknowledgement *as early as 2003* that “*potentially*

⁸⁵ 47 C.F.R. § 25.113(a) (emphasis added).

⁸⁶ 47 C.F.R. §§ 25.209, 25.224, and 25.138.

⁸⁷ *See, e.g., Alltel Corporation Petition for Limited Waiver of Location-Capable Handset Penetration Rule*, Order, 22 FCC Rcd 337, at ¶ 19 (2007).

millions of MSS mobile terminals operating in ATC mode” and “*tens of thousands of ATC wireless base stations*”⁸⁸ would be operating in the 1525-1559 MHz band.

IV. CONCLUSION

For the reasons set forth herein, LightSquared urges the Commission to declare that: (i) manufacturers and users of unlicensed commercial GPS receivers lack standing to file complaints or other pleadings seeking “protection” from allegedly incompatible operations in adjacent MSS bands—including ATC operations—that are permitted by the Commission’s rules and the U. S. Table of Frequency Allocations; (ii) commercial GPS receivers have no independent right to “protection” from operations in adjacent MSS bands, independent of the license conditions that limit the out-of-band power that may be emitted by MSS band transmitters into the RNSS band, and other than the benefit afforded by the guard band that should separate LightSquared’s terrestrial operations in the MSS band from commercial GPS operations in the RNSS band; (iii) commercial GPS devices that receive GPS signals in the MSS band are “nonconforming” and inconsistent with the MSS allocation in that band, and as such are not entitled to any “protection” regardless of whether they are licensed; and (iv) the costs of ensuring that GPS devices are compatible with adjacent band operations—including any costs necessary to retrofit legacy devices—are the responsibility of GPS manufacturers—or, at a minimum, are not the obligation of MSS/ATC licensees.

⁸⁸ See Reply Comments of U.S. GPS Industry Council, IB Docket No. 01-185, at 2 (Sep. 4, 2003) (emphasis added).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Carlisle', with a horizontal line extending to the right.

Jeffrey J. Carlisle
Executive Vice President, Regulatory Affairs
and Public Policy
LIGHTSQUARED INC.
10802 Parkridge Boulevard
Reston, VA 20191
703-390-2001

December 20, 2011

EXHIBIT 1

GARMIN[™]

set up and go!

nüvi[®] 200 Series



affordable navigation

Industry Canada Compliance

Category I radiocommunication devices comply with Industry Canada Standard RSS-210. Category II radiocommunication devices comply with Industry Canada Standard RSS-310.

FCC Compliance

This device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) this device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation.

This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to part 15 of the FCC rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses, and can radiate radio frequency energy and may cause harmful interference to radio communications if not installed and used in accordance with the instructions. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and the receiver.
- Connect the equipment into an outlet that is on a

different circuit from the GPS unit.

- Consult the dealer or an experienced radio/TV technician for help.

This product does not contain any user-serviceable parts. Repairs should only be made by an authorized Garmin service center. Unauthorized repairs or modifications could result in permanent damage to the equipment, and void your warranty and your authority to operate this device under Part 15 regulations.

Limited Warranty

This Garmin product is warranted to be free from defects in materials or workmanship for one year from the date of purchase. Within this period, Garmin will, at its sole option, repair or replace any components that fail in normal use. Such repairs or replacement will be made at no charge to the customer for parts or labor, provided that the customer shall be responsible for any transportation cost. This warranty does not cover failures due to abuse, misuse, accident, or unauthorized alteration or repairs.

This product is intended to be used only as a travel aid and must not be used for any purpose requiring precise measurement of direction, distance, location, or topography. Garmin makes no warranty as to the accuracy or completeness of map data in this product.

THE WARRANTIES AND REMEDIES CONTAINED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY LIABILITY ARISING UNDER



Magellan® eXplorist® 310

User Manual

Safety Warnings

The Magellan eXplorist is a navigation aid designed to assist you in arriving at your selected destination. When using the Magellan eXplorist, these safety rules must be followed to prevent accidents that can result in injury or death to yourself or others:

IN THE INTERESTS OF SAFETY, DO NOT USE THIS NAVIGATION DEVICE WHILE DRIVING A VEHICLE.

Please do not try to change any settings on the Magellan eXplorist while driving. Come to a complete stop or ask a passenger make any changes. Taking your eyes off the road is dangerous and can result in an accident in which you or others could be injured.

USE GOOD JUDGEMENT

This product is an excellent navigation aid, but does not replace the need for careful orienteering and good judgement. Never rely solely on one device for navigating.

USE CARE

The Global Positioning System (GPS) is operated by the U.S. Government, which is solely responsible for the accuracy and maintenance of the GPS network. The accuracy of position fixes can be affected by the periodic adjustments to GPS satellites made by the U.S. government and is subject to change in accordance with the Department of Defence civil GPS user policy and the Federal Radionavigation Plan. Accuracy can also be affected by poor satellite geometry and obstructions, like buildings and large trees.

USE PROPER ACCESSORIES

Use only Magellan cables and antennas; the use of non-Magellan cables and antennas may severely degrade performance or damage the receiver, and will void the warranty.

No part of this guide may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, for any purpose other than the purchaser's personal use without the prior written permission of MiTAC Digital Corporation.

Federal Communication Commission Interference Statement

This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

This device complies with Part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation.

EXHIBIT 2



SPACE-BASED POSITIONING
NAVIGATION & TIMING
NATIONAL COORDINATION OFFICE

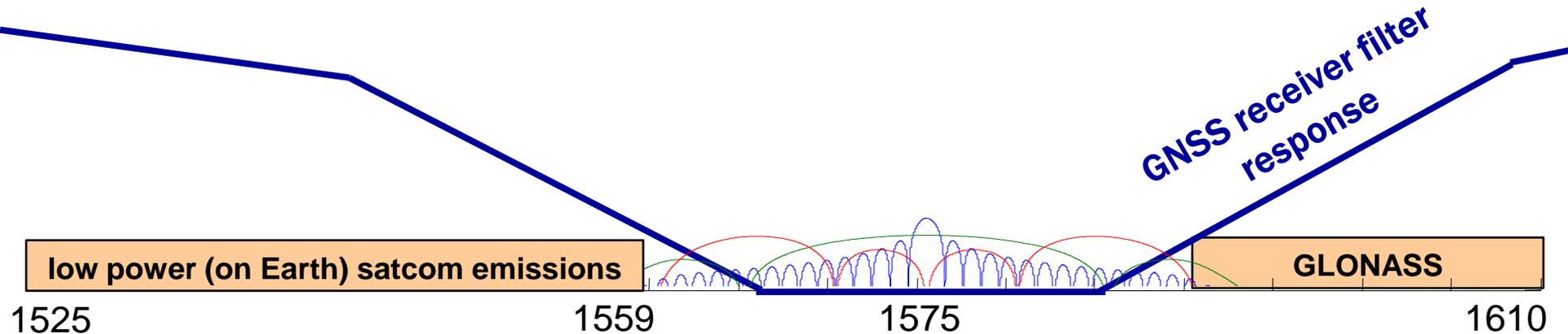
U.S. Space-Based Positioning, Navigation & Timing (PNT) Policy Update

Col Robert M. Hessin
Deputy Director
National Coordination Office



Illustration of Concerns with LightSquared

Situation before LightSquared



Situation with LightSquared

