

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

In the Matter of)
)
LightSquared Request for Declaratory Ruling) IB Docket No. 12-296
Regarding Build-Out Milestones)

COMMENTS OF THE COMPETITIVE CARRIERS ASSOCIATION

The Competitive Carriers Association (“CCA”)¹ submits these comments in response to a Public Notice issued on October 10, 2012 in the above-captioned proceeding,² seeking comment on LightSquared Subsidiary LLC’s (“LightSquared”) request to “declare that the build-out milestones in the *Harbinger Transfer Order* no longer apply.”³ CCA recommends that the Commission grant LightSquared’s requested relief. LightSquared should be afforded a reasonable opportunity to deploy its service and thereby allow the significant public interest benefits of the network to be realized, including making 4G network capacity available to competitive wireless carriers on reasonable terms and conditions. CCA recommends that once the FCC has set a clear regulatory path forward for deployment of LightSquared’s terrestrial network, the FCC can then revisit LightSquared’s build-out obligations.

¹ CCA is the principal association representing 100 competitive wireless telecommunications providers across the United States, including many regional and rural wireless carriers. CCA recently changed its name from RCA—The Competitive Carriers Association to more accurately reflect the composition of its membership.

² Public Notice, Federal Communications Commission Invites Comment on LightSquared Request for Relief from Build-Out Conditions, DA 12-1604 (rel. Oct. 10, 2012).

³ *Id.*

I. GRANTING LIGHTSQUARED'S REQUEST WOULD SERVE THE PUBLIC INTEREST

CCA has long supported the Commission's efforts to facilitate the introduction of new wireless service providers and otherwise enhance competition in the wireless industry by advocating for reasonable data roaming, interoperability and other requirements that take into account current marketplace realities. CCA also has supported the *National Broadband Plan's* goal of identifying and dedicating an additional 500 MHz of spectrum for mobile broadband use within ten years.⁴ Unfortunately, efforts to meet that goal have fallen short. Meanwhile Verizon Wireless recently closed its deal with the cable companies to acquire over 20 MHz of AWS spectrum nearly nationwide and AT&T has proposed over 40 separate acquisitions of 4G LTE spectrum, further aggregating scarce spectrum resources and limiting access for competitive carriers.

In addition, as the Commission is aware, licensees in the Lower 700 MHz band, including a number of CCA members, have been significantly hindered in planning for, securing financing for, and purchasing the necessary equipment and infrastructure for building out this spectrum due to a lack of interoperable devices resulting from circumstances beyond their control.⁵ The lack of interoperability in the Lower 700 MHz Band stems in large part from AT&T's procurement practices which, as the leading purchaser of wireless devices in that band,

⁴ Connecting America: The National Broadband Plan, at 84 ("*National Broadband Plan*").

⁵ See *Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, RM-11592 (filed Sept. 29, 2009); *Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations*, Order, FCC 11-188, ¶ 70 (rel. Dec. 22, 2011) (agreeing "that the lack of interoperability in the 700 MHz band raises important public interest concerns"). *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, Notice of Proposed Rulemaking, FCC 12-31 (rel. Mar. 21, 2012).

has caused manufacturers to produce devices and equipment that operate only in its own boutique 700 MHz Band Class, Band Class 17.

Given CCA's members' current need for usable spectrum, LightSquared's spectrum proposal—and the wholesale capacity that LightSquared will offer on its network—represents a potential alternative pathway to 4G, particularly for competitive carriers seeking a nationwide footprint and enhanced speeds, but facing additional, well-documented challenges in deploying their own 4G networks.⁶ Wholesale capacity, which LightSquared has indicated it will make available at rates lower than current prevailing rates,⁷ also promises to provide a way for competitive carriers to offer high-speed service capable of competing with the nation's two largest wireless providers. CCA and its members thus have supported LightSquared's entry into the marketplace as a wholesale provider, like other CCA members, and many CCA members had planned to partner with LightSquared to utilize its mobile wireless solutions.

As LightSquared has explained, significant regulatory uncertainty “has placed LightSquared's ATC authorizations in jeopardy and has rendered the deployment of LightSquared's network impossible for the time being.”⁸ For example, LightSquared confronts

⁶ See Comments of Competitive Carriers Association, *Inquiry Concerning the Deployment of Advanced Telecommunications Capacity to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as amended by the Broadband Data Improvement Act*, GN Docket No. 12-228, at 11-15 (filed Sept. 20, 2012). .

⁷ Maisie Ramsay, *LightSquared: We'd Halve LTE Prices*, WIRELESSWEEK.COM, Mar. 29, 2012; Scott Moritz and Todd Shields, *LightSquared Vows Lower Data Bills*, BLOOMBERG, Dec. 9, 2011 (noting that the starting price for LightSquared's high-speed Internet service will be \$7 per gigabyte and that “the market rate is about \$10 a gigabyte”).

⁸ Letter of Jeffrey J. Carlisle, EVP, Regulatory Affairs and Public Policy, LightSquared Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 08-184, 11-109; ET Docket No. 10-42; IBFS File No. SAT-MOD-20101118-00239, at 3 (filed Sept. 24, 2012) (“LightSquared Letter”); *see also id.* at 3-4 (explaining that “LightSquared cannot predict

great uncertainty due to: (i) the Bureau’s proposal to vacate and suspend the ATC authority on which LightSquared’s terrestrial network is premised;⁹ (ii) unresolved issues regarding the terms for co-existence with GPS devices; and (iii) the lack of applicable technical standards pursuant to which equipment necessary to deploy LightSquared’s network could be developed.¹⁰

Notwithstanding these challenges, CCA continues to believe that the wholesale capacity, like what LightSquared promises to make available on its network, will provide an alternative way for competitive carriers to offer nationwide 4G service and a potential path for millions of Americans to realize the benefits of enhanced competition leading to lower rates, higher service quality, and increased choice. LightSquared is working with the Commission and the National Telecommunications and Information Administration to implement an appropriate solution, and has proposed to deploy its network by pairing 30 MHz of its existing L-band spectrum with a 10 MHz channel at 1670-1680 MHz. It would serve the public interest to grant LightSquared more time to pursue and implement that solution so that the competitive benefits of LightSquared’s terrestrial network can be realized.

what technical parameters should apply such that the equipment used in its terrestrial network will be consistent with the resolutions identified to the GPS compatibility question”).

⁹ Public Notice, International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver, DA 12-214 (rel. Feb. 15, 2012).

¹⁰ See LightSquared Letter at 3-4. The circumstances necessitating LightSquared’s request thus are distinguishable from the Commission’s recent decision in the LMDS context. See, e.g., *T-MOBILE LICENSE, LLC Requests for Extension of Time or in the Alternative, Limited Waiver of Substantial Service Requirements for 16 Local Multipoint Distribution Service Licenses*, Memorandum Opinion and Order, DA 12-1608, ¶ 11 (rel. Oct. 10, 2012) (finding that “T-Mobile has had other ways to develop its service independent of the backhaul market” and that “its decision to put its LMDS spectrum on the shelf until the market for wireless backhaul improved constituted a business decision voluntarily made by T-Mobile, not an inevitable result of circumstances beyond its control”).

II. GRANTING THE REQUESTED RELIEF WOULD BE CONSISTENT WITH COMMISSION PRECEDENT

The Commission should grant LightSquared's requested relief from the requirements set forth in the *Harbinger Transfer Order* and revisit build-out obligations once it has charted a clear regulatory path forward for deployment of LightSquared's terrestrial network. The build-out milestones in the *Harbinger Transfer Order* were adopted at a time when it appeared LightSquared would be able to proceed with its plan to deploy a wholesale broadband network for the benefit of consumers lacking access to 4G LTE services, particularly those in rural and regional parts of the U.S. Because the FCC has proposed to suspend indefinitely or revoke its ATC authorizations, LightSquared now faces uncertainty regarding its regulatory future and therefore its ability to build and deploy a network. These unique and changed circumstances justify an extension of the build-out requirements set forth in the *Harbinger Transfer Order*.

Additionally, such proposed relief would be consistent with Commission precedent,¹¹ including, for example, its decision to extend the deadline for deployments in the Wireless Communications Service ("WCS") band. The Commission recently reset WCS construction deadlines "to enable licensees to respond to revisions" made to technical standards applicable in that band.¹² Such relief was necessary because regulatory uncertainty about the terms for the co-existence of terrestrial satellite radio repeaters and WCS had hindered WCS deployment and

¹¹ Request of RCA-The Competitive Carriers Association for Extension of the Build-out Deadlines for Lower 700 MHz A Block Licensees (filed July 27, 2012 and submitted in *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, on Oct. 18, 2012) at 17-20.

¹² *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Order on Reconsideration, FCC 12-130, ¶¶ 121 (rel. Oct. 17, 2012).

created WCS equipment manufacturing challenges.¹³ The Commission also has provided relief in the context of other wireless services,¹⁴ and satellite service.¹⁵ Indeed, in the case of milestones imposed in connection with an initial license grant (a circumstance not present here), Commission rules contemplate the grant of milestone relief based on circumstances that are outside the control of a licensee.¹⁶ The Commission can and should acknowledge that LightSquared continues to face significant regulatory uncertainty that has made it impossible to implement its terrestrial network.

In granting LightSquared's request, CCA believes that the Commission should recognize LightSquared's good-faith efforts to date to implement its competitive 4G wireless network.¹⁷ Similarly, the Commission should consider the numerous public interest benefits that would flow

¹³ See *id.* ¶ 120; *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order, 25 FCC Rcd 11710, at ¶ 191 (2010).

¹⁴ See *Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, 25 FCC Rcd 10097, 10100, 10102 (2010) (lack of equipment availability engendered by “difficult coordination rules, the stringent power limits, and perceived resistance to alternative technologies by incumbents” warranted additional time to construct and would facilitate development of MVDDS equipment “for the provision of innovative wireless services, including wireless broadband”); *Applications Filed By Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101 of the Commission's Rules and Extensions of Time To Construct and Demonstrate Substantial Service*, 23 FCC Rcd 5894, 5905 (2008) (difficulties in securing viable, affordable network equipment warranted extension of time to construct).

¹⁵ See *Teledesic Corporation Application for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the Domestic and International Fixed Satellite Service*, Order and Authorization, 12 FCC Rcd 3154 ¶¶ 20-21 (1997) (“[B]ecause Teledesic will not be able to proceed beyond the initial phases of construction until the inter-satellite link issues are resolved, we will not impose any system implementation milestones until we grant Teledesic authority to launch and operate an NGSO FSS system using specific inter-satellite link spectrum.”).

¹⁶ See 47 C.F.R. §§ 1.946(e)(1), 25.117(c)(1).

¹⁷ See LightSquared Letter at 2.

from a wholesale alternative like LightSquared's proposal—particularly in rural and underserved parts of the country as discussed above. Notably, LightSquared's case is unlike cases in which a licensee simply misses a build-out deadline, allows spectrum to lay fallow, and other service providers are available to step in and fill the resulting void. CCA has supported strong build-out requirements to prevent the largest carriers from warehousing spectrum, and continues to believe build-out requirements are important to prompt and efficient use of licensed spectrum. However, CCA has also emphasized build-out requirements should not and cannot be imposed in a vacuum. The FCC must take into account market and regulatory realities when imposing and enforcing build-out requirements. Given the existence of LightSquared's satellite network and the substantial investment it already has made in its terrestrial network, LightSquared is in the best position to deploy a nationwide wireless network using the L-band. LightSquared's regulatory uncertainty justifies an extension of the build-out milestones. Accordingly, the FCC should extend the build-out requirements set forth in the *Harbinger Transfer Order*.

III. CONCLUSION

LightSquared's proposed wireless network deployment holds great potential for competitive wireless carriers and, as a result, American consumers. In particular, the availability of LTE-capable wholesale capacity would provide an alternative opportunity for competitive wireless carriers to offer 4G service in unserved and underserved rural areas, and to launch such service on a national scale. Consistent with its policy and precedent, the Commission should extend the build-out requirements set forth in the *Harbinger Transfer Order* and revisit build-out obligations once it has charted a clear regulatory path forward for LightSquared.

Respectfully submitted,

/s/

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