

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Request by Globalstar, Inc. To Expand) RM-11339
Its Ancillary Terrestrial Component)
("ATC") Authority To Encompass Its)
Full Assigned Spectrum)

OPPOSITION TO PETITION FOR RULEMAKING

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

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TABLE OF CONTENTS

I.	STATEMENT OF INTEREST	2
II.	DISCUSSION	3
A.	Globalstar Does Not Need More ATC Spectrum	3
B.	The Commission Has Already Determined That BRS/EBS And ATC Require Separate Spectrum And That There Must Be A Guardband Between ATC and BRS/EBS Operations	7
C.	Now Is Not The Time For The Commission To Be Exposing BRS Operators To An Even Greater Risk Of Interference From MSS Operations In The S-Band.	11
III.	CONCLUSION	13

EXECUTIVE SUMMARY

Globalstar's Petition for Rulemaking ("Petition") should be denied. As Globalstar has previously recognized, and the Commission has confirmed, two services both attempting to provide ubiquitous mobile service cannot utilize the same spectrum to serve the same area. Thus, to protect Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") operations in the 2.5 GHz band from the adverse consequences of sharing spectrum with Globalstar's Mobile Satellite Service ("MSS") Ancillary Terrestrial Component ("ATC"), the Commission has limited ATC operations to spectrum not shared with BRS/EBS and separated the two allocations with a guardband. If Globalstar's Petition is granted, however, Globalstar would be afforded the right to deploy ATC over the entire 2483.5-2500 MHz band (the "S-Band"), including the spectrum MSS shares with BRS channel 1 at 2496-2500 MHz and the guardband at 2493-2496 MHz established by the Commission. Hence, Globalstar's Petition threatens to unravel the carefully balanced framework the Commission completed barely two years ago to ensure that ATC and BRS/EBS could peacefully co-exist in the 2483.5-2500 MHz band. As such, Globalstar's Petition is a matter of substantial concern to BRS licensees and channel lessees preparing to occupy the 2496-2500 MHz band.

Globalstar cannot get its stories straight. While Globalstar's filing with the Commission asserts that it needs more ATC spectrum, Globalstar has subsequently represented to the Securities and Exchange Commission and potential investors that its existing ATC spectrum is adequate. The credibility of Globalstar's Petition is hardly bolstered by its failure to mention that barely two years ago the Commission denied in IB Docket No. 02-364 the very same relief Globalstar now seeks in its Petition, and that Globalstar never challenged that finding. Perhaps not surprisingly, Globalstar's Petition is silent as to how a purported increase demand for satellite services from emergency/public safety providers translates into a finding that Globalstar suddenly needs more ATC spectrum. Indeed, Globalstar provides no data that would justify a 200% increase in Globalstar's ATC spectrum in the S-Band.

Even if Globalstar's credibility were not in question here, Globalstar cannot overcome the fact that *Globalstar cannot operate a mobile terrestrial service co-channel to or in spectrum immediately adjacent to BRS channel 1 without interference between the two services*. This is not new information – both the Commission and Globalstar have long recognized the need for a ATC and BRS to each have their own spectrum with a guardband between the two, and thus it is remarkable that Globalstar's Petition includes not a shred of technical evidence demonstrating that cochannel, co-coverage operations are possible and that a guardband is no longer necessary. Instead, Globalstar resorts to distorting prior Commission decisions and the underlying record to resurrect arguments the Commission has already rejected or that otherwise have no merit. The simple, uncontroverted fact is that ATC and BRS cannot operate ubiquitous mobile terrestrial services in the same area that are cochannel or utilize adjacent spectrum, and Globalstar's revisionist history cannot make it otherwise.

Finally, there could not be a worse time for the Commission to even consider adversely modifying the BRS industry's rights and obligations as against ATC. The BRS industry

absolutely must have regulatory certainty right now, as BRS operators prepare to commit billions of dollars towards planning the transitions of their markets to the new 2.5 GHz bandplan, designing systems capable of delivering the cellularized wireless broadband services made possible by the new bandplan, negotiating arrangements with equipment suppliers and, ultimately, bringing new wireless broadband service to noncompetitive or otherwise underserved areas. Recent announcements by Sprint Nextel and Clearwire have reaffirmed that the industry's investment in and the consumer benefits from BRS will be unprecedented. Accordingly, now is the ideal time for the Commission to make a clear and unqualified statement that it has no intention of sacrificing BRS channel 1 for the benefit of Globalstar. Denial of Globalstar's Petition would be a positive step in that direction.

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OPPOSITION TO PETITION FOR RULEMAKING

The Wireless Communications Association International, Inc. ("WCA"), by its attorneys and in response to the Commission's July 27, 2006 Public Notice,¹ hereby opposes the above-captioned "Petition for Expedited Rulemaking" ("Petition") of Globalstar, Inc. ("Globalstar"). In the Petition, Globalstar asks the Commission to amend Section 25.149(a)(iii) of its Rules to permit Globalstar to deploy Mobile Satellite Service ("MSS") Ancillary Terrestrial Component ("ATC") operations over the entire 2483.5-2500 MHz band, including the 2496-2500 MHz band that MSS shares with Broadband Radio Service ("BRS") channel 1 and the guardband the Commission has established between 2493 MHz and 2496 MHz to avoid interference between BRS and ATC.² The Commission denied this same request barely two years ago in IB Docket No. 02-364, and as shown below the Commission must deny it again.

¹ See *Consumer and Governmental Affairs Bureau, Reference Information Center, Petitions For Rulemaking*, Public Notice, Report No. 2784 (rel. July 27, 2006).

² See *Petition of Globalstar For Expedited Rulemaking For Authorization To Provide Ancillary Terrestrial Component Services In Its Entire Spectrum Allocation*, RM-11339 (filed June 20, 2006) ["Petition"].

I. STATEMENT OF INTEREST

As the trade association of the wireless broadband industry, WCA represents the vast majority of licensees and lessees of BRS channel 1 who are slated to relocate from their existing spectrum at 2150-2156 MHz to the 2496-2502 MHz band pursuant to the Commission's rebanding of the 2.5 GHz spectrum in WT Docket No. 03-66 and adoption of BRS relocation rules in ET Docket 00-258.³ Since the concept of permitting ATC operations within the 1.6/2.4 GHz MSS allocation was first raised, WCA has urged the Commission to fully protect BRS and Educational Broadband Service ("EBS") licensees from the potential adverse consequences of ATC. The Commission has consistently agreed with WCA that ATC cannot be permitted to impede the development of other terrestrial services, and thus both has maintained a guardband between ATC and BRS/EBS and steadfastly refused to permit ATC operations on the frequencies shared by MSS and BRS.

Now, however, despite the uncontroverted fact that ATC cannot operate cochannel to BRS or on spectrum immediately adjacent to BRS without harmful interference between the two services, Globalstar reheats its previously rejected claim that it needs more ATC spectrum and asks the Commission for authority to use the entire 2483.5-2500 MHz band for ATC. WCA and

³ See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004); *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 MHz Band*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606 (2006) [*"2006 BRS/EBS Order and MSS/ATC Order on Reconsideration"*]; *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services*, (continued on next page)

its constituents thus have an immediate and substantial stake in the Commission's disposition of Globalstar's Petition.

II. DISCUSSION

A. Globalstar Does Not Need More ATC Spectrum

Before turning to Globalstar's remarkable failure to provide any meaningful discussion of how two services intended to provide ubiquitous mobile service, like BRS and ATC, can possibly exist on a cochannel, co-coverage basis, it must be emphasized that Globalstar's alleged need for almost a threefold increase in its 2.4 GHz ATC spectrum allocation just is not credible. The Petition would have the Commission believe that allowing Globalstar to provide ATC across all its spectrum "is essential to enable Globalstar to meet the current and future needs of its customers."⁴ Yet, Globalstar made the following statement in a Form S-1 filing with the Securities and Exchange Commission ("SEC") *less than a month after filing its Petition*:

We believe we are uniquely positioned to benefit from the development of our ATC license given our existing in-orbit satellite fleet and ground stations. Unlike several of our competitors, our existing constellation and ground stations are technically capable of accommodating ATC operations. Even with high-bit rate applications, *we believe that our network and spectrum are sufficient to meet the demanding requirements of the current and next generation of wireless services.*⁵

Globalstar's assertion to potential investors that its "network and spectrum are sufficient to meet the demanding requirements of the current and next generation of wireless services" is

including Third Generation Wireless Systems, Ninth Report and Order and Order, 21 FCC Rcd 4473 (2006).

⁴ Petition at 1.

⁵ Globalstar, Inc., Registration Statement (Securities and Exchange Commission Form S-1) at 76 (filed July 17, 2006) (emphasis added) ["Globalstar S-1"]. Globalstar repeated this statement in the Form 10-12G it submitted to the SEC two weeks ago. *See* Globalstar, Inc., Registration of Securities (Securities and Exchange Commission Form 10-12G), at 24 (filed Aug. 14, 2006) ["Globalstar Form 10-12G"].

hardly surprising, as the Commission too has determined that Globalstar does not need more ATC spectrum. Indeed, barely two years ago the Commission concluded in IB Docket No. 02-364 that “[b]ased on our review of the record, no MSS provider has demonstrated it needs more spectrum for ATC.”⁶ In so doing, the Commission explicitly rejected a claim by Globalstar’s creditors that Globalstar’s inability to utilize all of its spectrum for ATC put it at a competitive disadvantage relative to other MSS operators:⁷ “[W]e find no reason to believe that CDMA operators need more spectrum to implement ATC operations and decline to change the amount of Big LEO spectrum that is currently available for ATC.”⁸

⁶ See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 13356, 13396 (2004) (emphasis added) [“2004 ATC Order”]. It is astonishing that Globalstar’s S-1 treats the Commission’s decision in IB Docket No. 02-364 as if it never happened: “In June 2006 we petitioned the FCC to authorize us to use all of our remaining spectrum for ATC services. *Based on the February 2003 FCC order adopting the ATC rules [in IB Docket No. 01-185]*, we anticipate that the FCC will authorize us to use more of our spectrum for ATC service.” Globalstar S-1 at 82 (emphasis added). See also Globalstar 10-12G at 27 (same statement).

⁷ See Comments of The Official Creditors’ Committee of Globalstar, L.P., IB Docket No. 02-364, at 10 (filed July 11, 2003)

⁸ *2004 ATC Order*, 19 FCC Rcd at 13396 (emphasis added). While Globalstar again contends that limitations on its ATC spectrum put it at a competitive disadvantage relative to other MSS providers that are permitted to use all of their spectrum for ATC (*see* Petition at 13), its competition analysis is simplistic at best. Among other things, Globalstar’s analysis fails to take account of the competitive advantages Globalstar trumpets in its Petition and its S-1. See, e.g., Petition at 7 (“At present, Globalstar is the only MSS licensee capable of seamlessly incorporating ATC into its existing, first-generation MSS system in full compliance with all of the relevant terms and conditions in the Commission’s ATC rules.”); Globalstar S-1 at 3 (“We believe we are able to retain our current customers and attract new customers because our pricing plans . . . are the lowest in the mobile satellite service business and our voice services provide the best audio quality in our industry.”); *id.* at 62 (“We are the only satellite network operator currently using the patented QUALCOMM Incorporated CDMA technology, which permits the dynamic selection of the strongest signal available and, we believe, produces a higher audio quality than our competitors’ technology.”).

Although Globalstar did not seek reconsideration of that decision two years ago, it now argues that it requires a 200% increase in 2.4 GHz ATC spectrum to “meet the current and future needs of its customers, which include a growing number of first responders and other federal, state, and local public safety entities.”⁹ Once again, however, Globalstar’s S-1 filing says otherwise:

We believe our existing network is capable of handling the expected growth in demand for our services, as evidenced by our ability to handle increased usage of over 500% in the areas affected by Hurricane Katrina while terrestrial communications networks were impaired.¹⁰

Furthermore, even if the Commission were to overlook Globalstar’s inability to keep its stories straight, Globalstar’s Petition hardly establishes a need for almost three times the 2.4 GHz band ATC allocation currently provided. Rather, Globalstar merely states that a “significant” number of its customers are from the emergency/public safety community, and that those customers rely on Globalstar’s services “with increasingly [sic] frequency.”¹¹ That is hardly enough to justify the sweeping change that Globalstar envisions. For example, Globalstar never states exactly how the purported demand (vague as it is) translates into a finding that Globalstar must be permitted to utilize all of its MSS spectrum for ATC.¹² It appears, in fact, that nearly all the emergency/public safety-related service accomplishments Globalstar cites in its Petition were

⁹ Petition at 1.

¹⁰ Globalstar S-1 at 62.

¹¹ Petition at 2.

¹² While Globalstar states that it has approximately 227,000 subscribers and a subscriber growth rate as high as 51 percent, it does not indicate how much of this is attributable to its operations (emergency/public safety or otherwise) in the United States. Given how Globalstar has pilloried Iridium’s filings for a similar lack of specificity, it is odd that Globalstar makes the same mistake in its Petition. *See, e.g.*, Joint Reply Comments of L/Q Licensee, Inc., Globalstar, L.P. and Globalstar USA, L.L.C., IB Docket No. 02-364, at 11-12 (filed July 25, 2003).

achieved via Globalstar's satellite-delivered services, *without the assistance of ATC*.¹³ If anything, this suggests that Globalstar should be devoting more spectrum to its satellite-delivered services and less to ATC, not the reverse.

It is also revealing that a good portion of Globalstar's "need" showing in its Petition is similar to the public interest showing Globalstar filed with its March 2005 ATC application, *which assumed that Globalstar's ATC operations would be limited to the 2487.5-2493 MHz band*.¹⁴ Yet, when the Commission granted Globalstar's ATC application in January 2006, it limited Globalstar's ATC operations in the S-band to 2487.5-2493 MHz as Globalstar had requested, and Globalstar never challenged that decision.¹⁵ In effect, Globalstar is asking the Commission to believe that with the passage of just six months (*i.e.*, the period between the Commission's grant and the filing of Globalstar's Petition) its public interest showing for 5.5 MHz of ATC spectrum at 2487.3-2493 MHz became obsolete and the demand for ATC grew such that it needs 200% *more* ATC spectrum at 2483.5-2500 MHz. This simply is not credible.

In sum, Globalstar's own statements confirm that the Commission was absolutely correct in concluding just two years ago that Globalstar does not need more ATC spectrum. Given that Globalstar has presented the Commission with no hard data to suggest otherwise, and has

¹³ *See, e.g.*, Petition at 3 ("The effectiveness of Globalstar's MSS services in such stressed conditions rests on the fact that – as an MSS system – Globalstar's satellite constellation is largely unaffected by ground-based disasters that can disrupt terrestrial services.").

¹⁴ *Compare, e.g.*, Petition at 8-13 with Application of Globalstar LLC for Authority to Implement an Ancillary Terrestrial Component for the Globalstar above 1 GHz, or Big LEO, Mobile Satellite Service (MSS) System (Call Sign ES2115), File No. SAT-MOD-20050301-00054, Exhibit A at 3-4 (filed Mar. 1, 2005) ["Globalstar ATC Application"]; *see also* Globalstar ATC Application, Exhibit B-1 at 2 ("The ATC base stations will retransmit in S-band, just like the Globalstar satellites, but only in the 2487.5-2493 MHz band.").

¹⁵ *See Globalstar LLC*, 21 FCC Rcd 398 (International Bureau, rel. January 20, 2006).

represented to the SEC and potential investors that its spectrum allocation is sufficient, Globalstar's Petition requires no further consideration.

B. The Commission Has Already Determined That BRS/EBS And ATC Require Separate Spectrum And That There Must Be A Guardband Between ATC and BRS/EBS Operations

Even more important than whether Globalstar has demonstrated a need for three times its current 2.4 GHz band ATC spectrum allocation, Globalstar cannot overcome the fact that *ATC cannot operate co-channel to BRS or in spectrum adjacent to BRS channel 1 without interference.*¹⁶ This is not new information – both the Commission and Globalstar recognized the problem in the Commission's initial ATC rulemaking (IB Docket No. 01-185).¹⁷ In fact, Globalstar advised the Commission in no uncertain terms that “a Globalstar ATC system could

¹⁶ By now the Commission is aware that one of the critical features of BRS channel 1 is that operators using Time Division Duplex (“TDD”) technology may use the channel both for subscriber-to-base (upstream) and base-to-subscriber (downstream) transmissions. Alternatively, an operator using Frequency Division Duplex technology likely will use BRS channel 1 for upstream transmissions only. In either case, BRS channel 1 cannot occupy spectrum that is cochannel or immediately adjacent to that used for base-to-subscriber transmissions, since upstream and downstream transmissions cannot co-exist in proximate spectrum absent a guardband and other technical protections. *See, e.g.*, Comments of Wireless Communications Ass'n Int'l in Response to Third Notice of Proposed Rulemaking, ET Docket No. 00-258, at 12-28 (filed April 14, 2003). Globalstar's ATC use of the 2.4 GHz band is restricted to base-to-subscriber communications. *See Globalstar LLC*, Order and Authorization, 21 FCC Rcd 398, 400 (2006).

¹⁷ *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*, Notice of Proposed Rulemaking, 16 FCC Rcd 15532, 15547 (2001) (“Permitting reuse of MSS spectrum for terrestrial services will require protection of adjacent channel and intraband operations, restrictions on tower heights and transmit power, and frequency stability.”); Letter from William D. Wallace, Esq., Counsel for Globalstar, L.P., IB Docket No. 01-185, at 2 (filed May 29, 2002) (stating that an ATC system can avoid interference with an adjacent channel BRS system through “frequency and physical separation”). Also, WCA highlighted the issue in its filings and supporting technical studies in IB Docket No. 01-185. *See, e.g.*, Letter from Paul J. Sinderbrand, Esq. Counsel for Wireless Communications Ass'n Int'l, IB Docket No. 01-185 (filed December 18, 2002); Reply Comments of Wireless Communications Ass'n Int'l, IB Docket No. 01-185 (filed Nov. 13, 2001); Comments of Wireless Communications Ass'n Int'l, IB Docket No. 01-185 (filed Oct. 22, 2001).

not share frequencies with another terrestrial service”¹⁸ and, at a time when the BRS/EBS band was limited to 2500-2690 MHz, Globalstar advised the Commission that restricting the operation of ATC base stations to spectrum below 2498.0 MHz will avoid interference to BRS or EBS.¹⁹

The Commission ultimately agreed and assigned the 2492.5-2498 MHz band to ATC:

Globalstar contends that ATC base stations operating below 2498.0 MHz will not interfere with [BRS/EBS]. We evaluated, in Appendix C3, Section 4.2, the worst case potential for ATC base stations to interfere with currently deployed [BRS/EBS] operations above 2500 MHz in various situations and we agree with Globalstar that ATC base station operators (using either cdma-2000 or IS-95 characteristics) would protect existing [BRS/EBS] equipment, provided that ATC base station operations are below 2498.0 MHz.²⁰

Thereafter, when in IB Docket No. 02-364 the Commission reallocated the 2495-2500 MHz band for fixed and mobile services and assigned the 2496-2500 MHz band to BRS channel 1, it moved the ATC spectrum at 2492.5-2498 MHz down 5 MHz to 2487.5-2493 MHz, thus creating a 3 MHz guardband between ATC and BRS channel 1. The Commission’s discussion of the potential for interference between ATC and BRS channel 1 is telling:

ATC operations will be moved down 5 MHz in frequency in the S-band so that ATC base stations do not overlap the new fixed and mobile allocation [at 2495-2500 MHz]. In the [2003 ATC Order], the Commission separated ATC base stations, by 2 megahertz, from the edge of the fixed and mobile terrestrial allocation at 2500 MHz. By moving the ATC band [down to 2487.5-2493 MHz],

¹⁸ Letter from William D. Wallace, Esq., Counsel for Globalstar, L.P., IB Docket No. 01-185, at 4 (filed Feb. 26, 2004).

¹⁹ See Letter from William D. Wallace, Esq., Counsel for Globalstar, L.P., to William Caton, Acting Secretary, Federal Communications Commission, IB Docket No. 01-185, Attachment 1 at 26 (filed Mar. 13, 2002) [“Globalstar March 13, 2002 Letter”].

²⁰ *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, 2062 (2003) (footnotes omitted) [“2003 ATC Order”]. Notably, the Commission did not accept Globalstar’s suggestion that ATC base stations could operate in the 2498-2500 MHz band subject to frequency coordination with nearby BRS or EBS stations. See Globalstar March 13, 2002 Letter, Attachment 1 at 26.

we have even greater frequency separation (*i.e.*, 2 MHz plus 1 MHz guard band from 2495-2496 MHz) to protect BRS²¹

These Commission decisions, coupled with the fact that that Globalstar itself advised the Commission of its inability to share spectrum with another terrestrial service and of the need for a guardband between ATC and BRS/EBS, render it shocking that Globalstar's Petition offers not a shred of technical evidence which demonstrates that the Commission's findings were incorrect. Indeed, the best Globalstar can do is selectively quote (or, more precisely, misquote) the Commission's decision on reconsideration of the *2004 ATC Order*. According to the Petition, "[t]he Commission concluded that, 'when BRS and MSS are both operating in the same geographic area, sharing spectrum, through engineering solutions, should be feasible.'"²² What Globalstar fails to acknowledge is that the Commission made this finding with respect to *downlink satellite MSS transmissions* in the 2496-2500 MHz band, and was not discussing co-existence with ATC at all! Hence, even if the Commission's finding were correct (and WCA continues to believe that it is not), the quoted language is irrelevant as to ATC. In any case, Globalstar is plainly wrong when it suggests that the Commission believes it is feasible for ATC and BRS to share spectrum – the Commission has never said any such thing, and the fact that it made a point of establishing a guardband between the two should end any discussion of the matter.

What is left of Globalstar's argument is revisionist history. For example, the Commission did not, as Globalstar contends, limit ATC to the 2487.5-2493 MHz band solely to

²¹ *2004 ATC Order*, 19 FCC Rcd at 13388-9 (2004).

²² Petition at 26, *quoting 2006 BRS/EBS Order and MSS/ATC Reconsideration Order*, 21 FCC Rcd at 5624.

provide Globalstar with “placeholder” ATC spectrum pending resolution of the various MSS reallocation issues opened for comment in IB Docket No. 02-364.²³ The Commission clearly was aware of the interference risks associated with having ATC and BRS in proximate spectrum, and as the language quoted above illustrates, intentionally limited ATC to the 2487.5-2493 MHz band to avoid cochannel sharing and maintain a guardband between ATC and BRS channel 1. Similarly, Globalstar distorts the intent behind the Commission’s requirement that Globalstar’s ATC base stations be tunable across the entire S-band.²⁴ This was not, as Globalstar would now have the Commission believe, a precursor to grant of the relief Globalstar now seeks, but was done merely to ensure that Globalstar’s ATC operations would not be disrupted if the Commission assigned ATC different S-band spectrum in IB Docket No. 02-364.²⁵ Nowhere did the Commission imply that cochannel, co-coverage sharing was possible, that no guardband between ATC and BRS was necessary, or that the tunability requirement was in any manner related to ATC protection of BRS channel 1.²⁶

WCA recognizes that Globalstar has not proposed to modify Section 25.255 of the Commission’s Rules, which imposes a general obligation on MSS licensees to resolve harmful interference caused by their ATC operations, and, where they fail to do so, permits parties

²³ *See id.* at 15-16.

²⁴ *Id.*

²⁵ *See 2003 ATC Order*, 18 FCC Rcd at 2057.

²⁶ Further, while Globalstar claims a “proven track record of avoiding interference,” the lack of interference to BRS/EBS stems from the fact that (1) Globalstar has yet to initiate its ATC operations, (2) BRS channel 1 operations have yet to relocate to the 2496-2500 MHz band and (3) the Commission has imposed a 7 MHz guardband between Globalstar’s ATC operations and the current location of EBS channel 1 (2500-2690 MHz).

suffering such interference to seek relief from the Commission.²⁷ Nor has Globalstar proposed modification to footnote US391 to the Table of Allocations, which provides with respect to the 2495-2500 MHz band that MSS (and which would presumably also include the ATC operations of any MSS licensee) “shall not receive protection from non-Federal stations in the fixed and mobile except aeronautical mobile services in that band.” While Globalstar is, in effect, proposing that ATC in the 2495-2500 MHz band be secondary to BRS,²⁸ the Commission has recognized that “[e]stablishing a secondary allocation, . . . , does not itself adequately protect primary licensees against interference.”²⁹ Indeed, the Commission had Section 25.255 and footnote US391 in front of it during its consideration of ATC in IB Docket No. 02-364, yet determined (correctly) that they were insufficient to fully protect BRS/EBS and thus relocated ATC to spectrum separate from that allocated to BRS/EBS. The threat of interference to BRS from ATC has not changed, and thus the Commission must preserve the guardband solution it adopted in IB Docket No. 02-364.

C. Now Is Not The Time For The Commission To Be Exposing BRS Operators To An Even Greater Risk Of Interference From MSS Operations In The S-Band.

For the past several years, the Commission and the BRS industry have labored through a series of interconnected rulemakings to devise a solution to the complex interference issues associated with, *inter alia*, creating a new bandplan for the 2500-2690 MHz band, transitioning BRS licensees to the new bandplan (including new BRS channel 1 at 2496-2502 MHz), and

²⁷ See also 47 C.F.R. § 25.254(a)(3) (requiring an ATC applicant to demonstrate at the time of application “that it has taken, or will take steps necessary to avoid causing interference to other services sharing the use of the 2450-2500 MHz band through frequency coordination”).

²⁸ See Petition at 25-26.

creating technical rules to ensure that BRS licensees moved to the 2496-2500 MHz band do not suffer harmful interference from their new neighbors in the S-band.³⁰

Now that the new 2.5 GHz bandplan, the associated BRS technical rules and at least some regulatory framework for BRS relocation are finally in place, BRS operators are just beginning the process of doing what is necessary to realize the Commission's vision for the 2.5 GHz spectrum, *e.g.*, planning the transitions of their markets to the new 2.5 GHz band, designing systems capable of delivering the cellularized wireless broadband services made possible by the new bandplan, negotiating arrangements with equipment suppliers and, ultimately, bringing new wireless broadband service to noncompetitive or otherwise underserved areas.³¹ Recent

²⁹ See, *e.g.*, 2003 ATC Order, 18 FCC Rcd at 1997.

³⁰ Recent developments have only heightened WCA's concerns about Globalstar's Petition. By virtue of the Commission's *Order on Reconsideration* in IB Docket No. 02-364, BRS channel 1 licensees/lessees must contend with a substantial risk of interference from non-ATC downstream MSS transmissions in the 2496-2500 MHz band. See 2006 BRS/EBS Order and MSS/ATC Order on Reconsideration, 21 FCC Rcd at 5623-7. As a result, two of the largest holders of rights to BRS spectrum have already asked the D.C. Circuit and the Commission, respectively, for a further review of the *Order on Reconsideration*. See *Sprint Nextel Corporation v. Federal Communications Commission*, Docket No. 06-1278 (D.C. Cir. filed July 21, 2006); *Petition of BellSouth Corp. et al.*, for Partial Reconsideration, WT Docket No. 03-66, at 6-10 (filed July 19, 2006). The Commission will only throw the BRS industry into further uncertainty if it issues a notice of proposed rulemaking that even suggests that it might eliminate the protection BRS already has with respect to ATC.

³¹ Again via selective quotation, Globalstar distorts the record when it asserts that "[t]he Commission recognized that it 'may be as long as five years before BRS operations are relocated to [the 2496-2500 MHz] band,'" and as a result Globalstar "may operate as it always has during that time." Petition at 26, quoting 2006 BRS/EBS Order and MSS/ATC Order on Reconsideration, 21 FCC Rcd at 5623 (footnote omitted). The quoted language refers to Globalstar's satellite MSS transmissions, not ATC. Also, while it is true that BRS operators have up to five years to transition, most will not need five years, as evidenced by the fact that Sprint Nextel and Clearwire have already filed notices in WT Docket No. 06-136 that they are transitioning nearly a dozen markets, and many more are expected to follow. Hence, Globalstar's suggestion that the ATC/BRS interference problem is five years away is simply wrong. Markets are being transitioned now.

announcements by Sprint Nextel and Clearwire have reaffirmed that the industry's investment in and the consumer benefits from BRS will be unprecedented.³²

Against this backdrop, there could not be a worse time for the Commission to even consider adverse modification of the BRS industry's rights as against ATC. The BRS industry absolutely must have regulatory certainty right now – indeed, with BRS operators are preparing to devote billions of dollars to doing exactly what the Commission wants them to do under its new paradigm for the 2.5 GHz spectrum, now is the ideal time for the Commission to make a clear and unqualified statement that it has no intention of sacrificing BRS channel 1 for the benefit of Globalstar. Denial of Globalstar's Petition would be a positive step in that direction.

III. CONCLUSION

For the reasons set forth above, WCA requests that Globalstar's Petition for Rulemaking be denied.

Respectfully submitted,

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³² See, e.g., Sharma and Clark, "Sprint to Spend Up to \$3 Billion To Build Network Using WiMax," THE WALL STREET JOURNAL, p. B2 (August 9, 2006); Flynn and Markoff, "Motorola and Intel to Invest in Clearwire," THE NEW YORK TIMES, p. C7 (July 6, 2006).

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that the foregoing Comments were served this 28th day of August 2006 by depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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