

**BEFORE THE  
Federal Communications Commission  
WASHINGTON, DC 20554**

In the Matter of )  
 )  
**LightSquared Subsidiary LLC** )  
 ) File No. SAT-MOD-20101118-00239  
Request for Modification of its Authority for )  
an Ancillary Terrestrial Component )

To: The Commission

**APPLICATION FOR REVIEW**

The Aircraft Owners and Pilots Association (“AOPA”), in accordance with Section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, requests that the Federal Communications Commission reverse the *Order and Authorization* granted by the International Bureau (the “Bureau”) to LightSquared subsidiary LLC (“LightSquared”) in the above-captioned proceeding.<sup>1</sup> AOPA represents more than 400,000 aircraft owners and pilots in promoting the economy, safety, utility, and popularity of flight in general aviation aircraft, and AOPA often participates in proceedings before courts and administrative agencies to assure due consideration of the interests of its members.<sup>2</sup> AOPA’s members are directly and acutely affected by the *LightSquared Order* because the waiver it grants creates a significant threat of irreparable disruption to the GPS system and to the future air travel system that depends on it.<sup>3</sup>

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<sup>1</sup> LightSquared Subsidiary, LLC, *Order and Authorization*, SAT-MOD-20101118-00239, Call Sign: S2358, DA 11-133 (rel. Jan. 26, 2011) (the “*LightSquared Order*”).

<sup>2</sup> See <http://www.aopa.org/> for additional information about AOPA and its interests.

<sup>3</sup> During the brief pendency of the LightSquared waiver request, AOPA fully explained to the Commission the dangers to general aviation posed by jeopardizing the integrity of the GPS system and urged the Commission not to permit terrestrial-only operations in the MSS band. See Letter from Melissa Rudinger, Senior Vice President, Government Affairs, AOPA to Mr. Nicholas Oros, Office of Engineering and Technology, WT docket No. 10-142, dated Jan. 14,

Given the substantial risks to aviation and the public safety posed by LightSquared's proposed terrestrial-only operations in the MSS spectrum and its likely severe and costly impact on GPS, AOPA contends that the Bureau erred in granting LightSquared a conditional waiver. The public interest clearly required that the Bureau consider the potential interference issues and any costs associated with their resolution before granting LightSquared's application. Instead, in an unprecedented decision to waive the Commission's rules and regulations, the Bureau granted LightSquared's application with only a vague condition that LightSquared participate in a process that addresses the interference concerns regarding GPS to the Commission's satisfaction. The Bureau's order does not require that the interference problem be fixed before LightSquared deploys service, nor does the Bureau's order consider what costs to the aviation user, either financially or operationally, might result. AOPA's members and the air travelers who depend on GPS simply cannot afford the uncertainty of the current and future potential dangers to the GPS system that has become and will continue to be increasingly crucial to all aspects of safe and efficient air travel. For these and other reasons set forth more fully below, the Commission should reverse the *LightSquared Order* and refrain from granting LightSquared's request until all potential harms to the GPS system and the aviation users have been ameliorated.

**I. THE BUREAU EXCEEDED ITS AUTHORITY BY GRANTING LIGHTSQUARED A WAIVER THAT PLAINLY CONFLICTS WITH COMMISSION PRECEDENT.**

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The *LightSquared Order* should be reversed because it exceeds the Bureau's authority and cannot be squared with Commission precedent.

First, under 47 C.F.R. § 0.261(b)(1), the Bureau is prohibited from acting on applications that "present new or novel arguments not previously considered by the Commission." AOPA

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2011. In addition, other pilots and organizations filed letters in this proceeding opposing grant of LightSquared's requested waiver.



understands that the Commission has never waived the integrated services requirement of 47 C.F.R. § 25.149(b)(4) or even stated that the requirement could be waived; therefore, the Bureau appears to have acted on the basis of new or novel issues the Bureau may not decide.

Second, the *LightSquared Order* should be reversed because it is in irreconcilable conflict with Commission precedent regarding ATC operations in the MSS band.<sup>4</sup> The *LightSquared Order* itself pointed out that existing Commission policy and Section 25.149(b)(4) of the Commission's rules prohibit the terrestrial-only services described by the waiver.<sup>5</sup> Commission precedent reflects the determination that such services cannot safely coexist with MSS satellite operations.<sup>6</sup> Despite this clear Commission policy, the Bureau acted to the contrary and granted to LightSquared a conditional waiver. However, the Bureau is not authorized to overrule the Commission's policy prohibiting terrestrial-only service offerings by MSS providers like LightSquared.

Third, the *LightSquared Order* seemingly ignores Commission precedent cautioning against making important rule or policy changes through the waiver process. As the Commission has noted in the past, the waiver process is not an appropriate forum for revising its rules or changing policy.<sup>7</sup> Instead, the Commission has held that when a requested waiver would cause work a significant change in the rule, it is incumbent on the Commission to conduct notice and comment rulemaking procedures consistent with the Administrative Procedure Act

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<sup>4</sup> See 47 C.F.R. § 1.115(b)(2)(i).

<sup>5</sup> *LightSquared Order*, ¶24; see also 47 C.F.R. § 25.149(b)(4).

<sup>6</sup> 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, *Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616, 4628, ¶ 33 (2005) (“We clarify that ‘integrated service’ as used in this proceeding and required by 47 C.F.R. § 25.149(b)(4) forbids MSS/ATC operators from offering ATC-only subscriptions.”).

<sup>7</sup> See *XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc.*, 23 FCC Rcd 12348, 12422 (¶ 162) (2008).

(“APA”).<sup>8</sup> By revising the ATC integrated services rule through the waiver process, the Bureau ignored the APA and these Commission admonitions.

## II. THE BUREAU MISAPPLIED THE APPLICABLE WAIVER STANDARDS.

The *LightSquared Order* also fundamentally misapplies longstanding requirements for granting a waiver. Under familiar D.C. Circuit precedent, the Commission may grant a waiver of its rules in a particular case only if (1) the relief requested would not undermine the policy objective of the rule in question and (2) would otherwise serve the public interest.<sup>9</sup> The *LightSquared Order* fails to satisfy either prong of this test.

The waiver granted by the Bureau severely jeopardizes the public interest. The *LightSquared Order* was primarily concerned with LightSquared’s history as a good actor in the MSS band and the potential for future wireless broadband services in the band. Neither of these asserted public interest benefits, however, outweighs the significant threat to the GPS system that accompanies LightSquared’s proposed operations. In particular, the threats to the general aviation industry are unconscionable. As AOPA has explained to the Commission, due to the reliance on GPS by the general aviation community both now and in the future, any interference source severely threatens the safety of all aircraft operating in the airspace environment as well as the viability of those aircraft continuing to be able to operate in the environment. Many system users rely on GPS for navigation, electronic mapping, terrain avoidance, and air traffic proximity awareness and have already invested in equipment that may not be economically replaced or modified by any resolution that LightSquared may identify. Moreover, for more than 20 years, AOPA has worked with the Federal Aviation Administration’s goal of transitioning all ground-based air navigation to a GPS system. Today, a majority of our members rely on GPS in

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<sup>8</sup> See *id.*; see also [cite].

<sup>9</sup> *WAIT Radio*, 418 F.2d at 1157.

one form or another for safe operation in the aviation environment. The aviation community's reliance on GPS is predicated on its dependability, and the waiver granted to LightSquared may serve to degrade that essential quality of the GPS system. Under these circumstances, grant of LightSquared's application would only serve the public interest if LightSquared's terrestrial operations are on an interference-free basis with GPS at no operational and financial cost to the aircraft operator. At a minimum, if the *LightSquared Order* is not reversed, the report required in accordance with that Order must reflect all views, and the FCC must ensure through credible studies and analysis that the GPS signal is not negatively impacted and that there are no operational or commensurate financial impacts on the aviation system users.

**III. THE WAIVER CONDITIONS UNLAWFULLY DELEGATE TO LIGHTSQUARED THE BUREAU'S DUTIES TO DETERMINE THE SCOPE OF THE INTERFERENCE PROBLEM AND DEVISE SOLUTIONS.**

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While the *LightSquared Order* includes conditions that delay LightSquared's roll-out of commercial services, the vagueness of those conditions only multiply the legal infirmities of the decision. By appointing LightSquared to essentially lead the examination of the scope of the GPS interference problem and any solutions, the Bureau appears to have unlawfully subdelegated to a private, interested party its duties to explore, analyze, and make those determinations. Such an outcome violates the public's trust in the Commission to fairly, fully, and objectively discharge its statutory duties.

While the *LightSquared Order* contemplates inter-industry cooperation in the process, the vague and ill-defined contours of that process violate the due process rights of interested parties. Due process requires that agency proceedings and determinations must be governed by



articulated standards that can be evaluated by a reviewing court.<sup>10</sup> The *LightSquared Order*, however, lacks any procedural guidelines or discernible standards for the industry working group to apply. LightSquared, a very interested party, is appointed the leader of the required inter-industry process. Although the Bureau retains the right to determine whether the results of the working group are completed, the *LightSquared Order* does not articulate what criteria the Bureau will apply to make that determination. In other words, the Bureau replaced a waiver proceeding governed by the APA and the Commission's rules with an *ad hoc* process with no discernible rules or standards. At the same time, the GPS industry and all who depend on it will be subject to the report produced by this private interested party, potentially without recourse.

#### IV. CONCLUSION

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For the foregoing reasons, AOPA requests that the Commission reverse the *LightSquared Order* and direct the Bureau to withhold action on LightSquared's application until LightSquared demonstrates that it will not interfere with GPS and without a cost to the aviation user.

Respectfully submitted,



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<sup>10</sup> *United States v. Atkins*, 323 F.2d 733, 741-42 (5th Cir. 1963) (failure of voter registration approval board to adopt "uniform objective standards" that enabled the decision maker to exercise "arbitrary power" violated due process).

## CERTIFICATE OF SERVICE

I, Heidi Williams, Senior Director of Airspace and Modernization for AOPA, do hereby certify that a true and correct copy of the foregoing "Application for Review" was served by U.S. mail, first class, postage-prepaid on the 25<sup>th</sup> day of February, 2011, on the following:

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Heidi Williams