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

In the Matter of)
LightSquared Request for Relief from Build- Out Conditions) IB Docket No. 12-296
NTIA Letter Regarding LightSquared Conditional Waiver) IB Docket No. 11-109
LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component) File No. SAT-MOD-20101118-00239
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	ET Docket No. 10-142))))
SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC) IB Docket No. 08-184)

REPLY COMMENTS OF LIGHTSQUARED

LightSquared Inc., LightSquared Subsidiary LLC, and One Dot Six Corp. (collectively, "LightSquared") hereby reply to the comments filed in the above-referenced proceeding. Those comments respond to LightSquared's letter requesting that the Commission confirm that the build-out conditions contained in the *Harbinger Transfer Order*¹ no longer apply because of the effect of intervening Commission actions since those conditions first were imposed, and proposing that those build-out conditions be revisited once GPS questions regarding LightSquared's ancillary terrestrial component ("ATC") authorizations have been

SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, 25 FCC Rcd 3059 (2010) ("Harbinger Transfer Order").

resolved and a regulatory path forward has been charted for the company ("September 24 Letter"). ²

The September 24 Letter explains that the Commission's February 2012 Public Notice³ has rendered it a practical impossibility for LightSquared to meet the build-out conditions set forth in the Harbinger Transfer Order, as that public notice proposes the revocation or suspension of the very L-Band regulatory authorizations on which the build-out of LightSquared's network is premised. Commenters confirm that regulatory uncertainty has precluded LightSquared's ability to implement its network. The Competitive Carriers

Association ("CCA") highlights the "unique and changed circumstances" that LightSquared faces as a result of the February 2012 Public Notice and related developments, and urges the Commission to acknowledge the "significant regulatory uncertainty that has made it impossible [for LightSquared] to implement its terrestrial network." Even the Coalition to Save Our GPS—which has taken a different position than LightSquared on the February 2012 Public Notice—agrees that the public notice has created significant uncertainty about LightSquared's ability to use substantial portions of its L-Band spectrum for its terrestrial network deployment.⁵

The record also establishes that grant of LightSquared's request would serve the public interest. In particular, CCA highlights the considerable benefits that would flow from the

See Letter from LightSquared Inc. to FCC, IB Docket Nos. 08-184, 11-109; ET Docket No. 10-142; IBFS File No. SAT-MOD-20101118-00239 (Sep. 24, 2010).

Public Notice: International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver, IB Docket No. 11-109, DA 12-214 (rel. Feb. 15, 2012) ("February 2012 Public Notice").

Comments of the Competitive Carriers Association, IB Docket No. 12-296, at 6 (Nov. 9, 2012) ("CCA Comments").

Comments of the Coalition to Save Our GPS, IB Docket No. 12-296, at 4 (Nov. 9, 2012) ("Coalition Comments").

deployment of the LightSquared's 4G network—including increased competition, lower rates, improved service quality, and greater consumer choice. No party disputes these demonstrable benefits, or otherwise claims that grant of LightSquared's requested relief here would be contrary to the public interest.

The Coalition does suggest that in evaluating LightSquared's request the Commission *also* should address: (i) the proposals made in the *February 2012 Public Notice*; and (ii) whether LightSquared has access to spectrum other than in the L Band that the company could use to satisfy the build-out conditions. There is no need for the Commission to address either topic at this time.

First, the Commission need not address the February 2012 Public Notice any longer because LightSquared has proposed a comprehensive and constructive solution that would resolve the GPS compatibility questions underlying that public notice while still allowing LightSquared to implement its network. Unlike the proposals in the public notice, LightSquared's solution enables the realization of the significant public interest benefits that would flow from the LightSquared network—the very benefits on which the build-out conditions are premised. More specifically, in recent filings⁶ LightSquared has proposed to:

(i) Permanently relinquish its authority to conduct terrestrial operations in its upper 10 MHz downlink band at 1545-1555 MHz—the part of LightSquared's downlink band that is closest to the GPS band—thus providing GPS receivers an additional 10 MHz guardband from terrestrial services;

Band issues).

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See LightSquared Modification Applications, IBFS File Nos. SAT-MOD-20120928-00160, SAT-MOD-20120928-00161, and SES-MOD-20121001-00872; LightSquared Petition for Rulemaking (filed Nov. 2, 2012) (seeking terrestrial allocation at 1675-1680 MHz); LightSquared Petition for Rulemaking (filed Sep. 28, 2012) (addressing Lower L-

- (ii) Submit the issue of rules for LightSquared's eventual terrestrial use of its lower 10 MHz downlink band at 1526-1536 MHz to a separate rulemaking proceeding, as proposed in a pending rulemaking petition (during the pendency of that rulemaking proceeding, LightSquared, voluntarily, would not deploy its lower 10 MHz spectrum on its terrestrial network); and
- (iii) In lieu of any terrestrial use of its upper 10 MHz downlink band, initially employ alternative (non-L-Band) spectrum, comprised of a contiguous 10 MHz band at 1670-1680 MHz, which would provide the needed coverage for its terrestrial network, and consist of (x) 1670-1675 MHz, which LightSquared already has authority to use nationwide, and (y) 1675-1680 MHz, which LightSquared proposes to share with certain existing federal government users.

The Commission should continue to focus on these types of constructive solutions and the resulting public interest benefits. The relief LightSquared requested in its September 24 Letter, moreover, should not await resolution of these issues. Until the Commission has taken action on the comprehensive solution LightSquared has proposed, LightSquared is in no position to construct its terrestrial network.

Second, the build-out conditions established in the Harbinger Transfer Order are based on the premise that LightSquared has continued access to L-Band spectrum sufficient to implement a 4G network. Indeed, the Harbinger Transfer Order makes clear that any non-L-Band spectrum available to LightSquared would be used in addition to, and not as a substitute for, that L-Band spectrum. In light of the clear language of the Harbinger Transfer Order, it is simply incorrect to take the position that the possibility of using some other kind of spectrum somehow requires application of the build-out conditions when the vast majority of spectrum explicitly contemplated by the order is not available for deployment. The Coalition itself acknowledges that the Harbinger Transfer Order requires LightSquared to construct a network

using L-Band spectrum "and" other available spectrum.⁷ This conclusion is reinforced repeatedly in the *Order*. For example:

- Paragraph 55 of the *Harbinger Transfer Order* notes that "Harbinger plans to construct an integrated satellite/terrestrial [4G] mobile broadband network that *primarily uses [LightSquared's] ATC authority* and SkyTerra's new next generation satellites "⁸
- Paragraph 71 of the *Harbinger Transfer Order* notes that the Commission's public interest determination is "dependent . . . especially on Harbinger's plan to build a terrestrial network *using [LightSquared's] ATC authority* to facilitate broadband service to most of the U.S. population."
- Paragraph 72 of the *Harbinger Transfer Order* notes that merger condition imposing the build-out conditions "requires the Applicants to build a terrestrial network *using [LightSquared's] ATC authorizations.*" ¹⁰

As such, the relevant inquiry regarding the *Harbinger Transfer Order* is focused on the uncertainty surrounding LightSquared's ATC authority in the L Band.

* * * * *

Clarifying that the build-out conditions set forth in the *Harbinger Transfer Order* are no longer applicable to LightSquared would facilitate the continued consideration of constructive solutions that will allow LightSquared to implement its network, facilitate the provision of competitive broadband services to hundreds of millions of Americans, and thereby advance the public interest considerations that led to the imposition of those conditions in the first place. Accordingly, the Commission should grant LightSquared's request on an expedited basis.

⁷ See Coalition Comments at 5 n.9.

⁸ *Harbinger Transfer Order* ¶ 55 (emphasis supplied).

⁹ *Id.* ¶ 71 (emphasis supplied).

¹⁰ *Id.* ¶ 72 (emphasis supplied).

Respectfully submitted,

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