



Coalition to Save Our GPS

Uniting to Protect GPS - A National Utility for More than 30 Years

FOR IMMEDIATE RELEASE: October 27, 2011

CONTACT: Prism Public Affairs

Dale Leibach: 202-207-3630 or dleibach@prismpublicaffairs.com

Anne Tyrrell: 202-207-3632 or atyrrell@prismpublicaffairs.com

LightSquared Did Not Pay for and Does Not Have a “Legal Right” to Build a Nationwide Terrestrial Network in the MSS Band

Misstatements hide \$10 billion spectrum windfall at expense of taxpayers; LightSquared shirks its responsibility for the billions its plans would cost governments and consumers

Summary: LightSquared repeatedly misstates and rewrites history in order to try to push through its ill-conceived plan to repurpose mobile satellite spectrum (MSS) to build a nationwide terrestrial network. It’s using legal double speak to hide a \$10 billion spectrum windfall – money that should be going to U.S. taxpayers. And, it’s offering up just a pittance towards the billions it would cost federal, state and local governments, as well as consumers, if its plans are allowed to go forward.

LightSquared’s Attempts to Rewrite History: LightSquared has time and again repeated its self-serving claim that it has been authorized for years to build its recently proposed nationwide terrestrial network, and that this alleged prior authorization shifts the burden of avoiding interference to GPS manufacturers and users. One of many examples is this August 2011, LightSquared statement:

“The public record shows that the Commission first approved rules allowing terrestrial operations in the L-band in 2003. LightSquared received its authorization to conduct terrestrial operations in 2004. LightSquared has had the legal right to build the network it is building today – with the same number of towers and power levels – since 2005. The interference at issue today arises because of sensitivity of GPS receivers to LightSquared’s base stations, operating at the power level authorized in 2005.”

LightSquared’s assertion is flat out wrong. It completely ignores clear statements in prior FCC decisions and rules. In fact:

- LightSquared has never had the legal right to build a nationwide terrestrial network in the satellite MSS band.
- If the FCC had granted rights to use this spectrum for nationwide, terrestrial-only wireless services, it would have been required by law to auction those rights to the highest bidder.

What LightSquared is really trying to do here is rewrite history so that it receives a massive increase in the value of its spectrum over what it paid for it *and* shift the costs of eliminating interference to GPS users, including federal, state and local governments, and GPS manufacturers.

The Real FCC History and Facts:

- Prior FCC decisions – including the ones that LightSquared seeks to rely on for its claim of “legal right” – made absolutely clear that MSS licenses could not offer the kind of stand-alone terrestrial services that LightSquared has now proposed and the FCC’s International Bureau (IB) conditionally approved. As early as 2003, the FCC stated categorically that “[w]e do not intend, *nor will we permit*, the terrestrial component to become a stand-alone service.”¹
- MSS licensees in the L-band, including LightSquared, have long been on full notice that the FCC would take further action to protect GPS if interference issues arose. In the same 2005 order that LightSquared says approved its plans, the FCC committed to take actions necessary to “ensure that *all FCC services* provide adequate protection to GPS.”² Given this commitment and the clear language of the FCC’s rules, LightSquared could not reasonably rely on these decisions as authorizing nationwide terrestrial use and a shift of the burden of interference to GPS users.
- As recently as the 2010 National Broadband Plan, the FCC reiterated the limited nature of permitted terrestrial operations in the MSS spectrum – these only included operations to fill-in the satellite service footprint. The FCC explained that “[t]he ATC [ancillary terrestrial component] rules allow MSS providers to deploy terrestrial networks to enhance coverage in areas where the satellite signal is attenuated or unavailable” and that “MSS licensees must integrate MSS and ATC services, including, notably, a requirement that all ATC handsets must have a satellite communications capability.”³
- When the FCC’s IB conditionally permitted LightSquared to provide stand-alone terrestrial services in January 2011, it rejected LightSquared’s claim that it already had the authority to do so. Instead, the IB waived the “integrate MSS and ATC services” rules in order to grant LightSquared’s conditional approval.
- The International Bureau’s January 2011 conditional order, by waiving restrictions on terrestrial use of the MSS band, also exposed GPS users to massive interference.
 - LightSquared has repeatedly claimed that the January 2011 waiver decision had “nothing to do with interference.” But nothing could be further from the truth.
 - By requiring an MSS licensee to integrate any terrestrial offering with its satellite service, the ATC rules effectively require the licensee to operate the terrestrial component in a manner that does not interfere with the satellite component. This “self-correcting” mechanism provided strong protections to GPS satellite services in the adjacent spectrum. This is why NTIA told the FCC in January 2011 that LightSquared’s November 2010 proposal, which for the first time proposed terrestrial-only services and use of terrestrial-only handsets, presented a “new interference environment” for GPS.⁴ The FCC’s January 2011 waiver order removed these practical protections, but still required that LightSquared demonstrate non-interference to GPS.
 - LightSquared’s license was – and remains – subject to a general FCC rule that MSS terrestrial operations are not permitted to cause interference to other services, including GPS, and that LightSquared is obligated to cure any such interference.⁵ LightSquared’s contention that GPS users are somehow responsible for mitigating the interference that *LightSquared* would create is false. It has no legal right to commence interfering operations or shift the burden of curing interference to GPS users.

Massive Spectrum Giveaway: There are many motivations for LightSquared to seek to rewrite history. One of the less obvious reasons is that if its rewrite of history is accepted as fact and its plans go forward, LightSquared would receive a massive \$10 billion increase in the value of its spectrum.

- Because of these restrictions limiting terrestrial use, the value of the MSS spectrum held by LightSquared's predecessor was much lower than the value of other spectrum – such as Advanced Wireless Service spectrum – in which ubiquitous, terrestrial-only use was permitted.
- The FCC's National Broadband Plan recognized that granting terrestrial authority would “step up” spectrum values. And LightSquared's own consultants, the Brattle Group, this year estimated that LightSquared's mobile satellite spectrum is worth \$12 billion if it could be used for unrestricted terrestrial mobile broadband use, but only \$2 billion if limited to satellite uses.⁶
- LightSquared said that it paid approximately \$2 billion for its MSS spectrum rights. So, all sophisticated market participants understood that LightSquared was **not** authorized to use the MSS spectrum for nationwide terrestrial use in 2005 or even 2010, when Harbinger Capital Partners, which controls LightSquared, bought out the company's predecessor.
- **If allowed to go forward, LightSquared gets to pocket the \$10 billion increase in spectrum value that would result.** Again, it's important to note that the FCC relied on the extensive restrictions on MSS described in the above “The Real FCC History and Facts” to avoid auctioning terrestrial rights when it authorized “ancillary terrestrial” operations in this spectrum in 2003.⁷
- LightSquared should not be allowed to use this legal double speak to enjoy massive unjust enrichment while harming GPS users.

Drain on U.S. Treasury: The massive replacement costs for federal government GPS equipment and systems that would be caused by LightSquared's plans would create a major drain on the U.S. Treasury. LightSquared is shirking its financial responsibilities, relying on its bogus claim of “legal rights” to terrestrial use to argue that GPS users and manufacturers should pay the bill for eliminating interference.

- LightSquared admits that even under its latest revised plans, hundreds of thousands of high precision GPS receivers used by government and private users would suffer interference. But it has offered only a pittance, \$50 million, to replace or retrofit affected equipment. And, it is yet to be proven that LightSquared will not also interfere with hundreds of millions of consumer GPS devices, which is why NTIA and the FCC recently called for more testing.
- The head of the Air Force Space Command, Gen. William Shelton, testified at a September 15, 2011 House Armed Services Subcommittee hearing that it would be safe to say that if LightSquared is allowed to proceed with its plans the cost just to the Department of Defense to address interference from the LightSquared network “would be in the b's – billions of dollars.”
- Add to that the cost of replacing many more billions worth of GPS equipment owned by other federal, state and local government users, as well as businesses, farmers and consumers that would be harmed by LightSquared's plans.

Massive Federal Government Costs: The costs of replacing GPS in federal government uses could be in the range of \$245 billion if LightSquared's plans go forward, a sampling of department and agency impact assessments shows. And that figure does not include any estimates from heavy government users of GPS such as the Departments of Homeland Security, Agriculture and Energy.

The documents paint a vivid picture of how widespread and engrained the use of GPS, particularly high-precision GPS, is in the federal government and lends insight into the massive nature of the potential costs and disruptions of critical federal government services. Excerpts of the impact assessments and testimony about the cost of replacing GPS devices and infrastructure in the federal government are available at the Coalition's website [here](#).

Bottom Line: All in all, LightSquared's proposal represents a new low in financial engineering at the expense of the U.S. taxpayer. Never before has a single company tried to gain so much from our national spectrum resources and pay so little for the collateral damage caused by its plans.

#

¹ *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; 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 and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, ¶1 (2003).

² *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, ¶ 70 (2005).

³ *National Broadband Plan*, Recommendation 5.8.4., p. 87.

⁴ Letter from Lawrence Strickling, NTIA, to FCC Chairman Julius Genachowski, January 12, 2011, at 1.

⁵ Section 25.255 of the Commission's rules states that: "[i]f harmful interference is caused to other services by ancillary MSS ATC operations, either from ATC base stations or mobile terminals, the MSS ATC operator must resolve any such interference."

⁶ *Brattle Group Report, June 22, 2011, pp. 1 n. 2, 8-9.*

⁷ Letter from Trimble Navigation Limited to Strategic Forces Subcommittee, House Armed Services Committee, October 6, 2011, p. 13, fn 38.