Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
LightSquared Technical Working Group Report	)	IB Docket No. 11-109
LightSquared License Modification Application, IBFS Files Nos. SAT-MOD-20120928-00160, -00161, SES-MOD-20121001-00872	)	IB Docket No. 12-340
New LightSquared License Modification Applications IBFS File Nos. SES-MOD-20151231-00981, SAT-MOD-20151231-00090, and SAT-MOD-20151231-00091	)	IB Docket No. 11-109; IB Docket No. 12-340
Ligado Amendment to License Modification Applications IBFS File Nos. SES-MOD-20151231-00981, SAT-MOD-20151231-00090, and SAT-MOD-20151231-00091	)	IB Docket No. 11-109

To: The Commission

REPLY TO OPPOSITION

Lockheed Martin Corporation ("Lockheed Martin"), pursuant to section 1.106(h) of the Federal Communications Commission's ("FCC's" or "Commission's") rules,[1] hereby respectfully submits this reply to Ligado Networks LLC's ("Ligado's") Opposition to the petitions for reconsideration or clarification filed by Lockheed Martin[2] and seven others. The Opposition hardly warrants a response as it is as cursory as the limited and dismissive deliberation present in the *Ligado Order*.[3] Nonetheless, Lockheed Martin will do so.

[1] 47 C.F.R. § 1.106(h).

[2] Ligado Networks, LLC Opposition to Petitions for Reconsideration or Clarification, IB Docket Nos. 11-109 & 12-340 (June 1, 2020) ("Opposition"); Lockheed Martin Corporation, Petition for Reconsideration, IB Docket Nos. 11-109 & 12-340 (May 22, 2020) ("Petition").

[3] *LightSquared Technical Working Group Report et al.*, Order and Approval, IB Docket Nos. 11-109 & 12-340, FCC 20-48 (rel. Apr. 22, 2020) ("*Ligado Order*" or "*Order*").

First, Ligado argues that the Commission need not address the fact that it should have designated Ligado's applications for a hearing because Lockheed Martin failed either to comply with the requirements of section 1.106(c) of the Commission's rules or to request a hearing formally under section 309(d) of the Communications Act of 1934, as amended (the "Act").[4] Ligado's argument is wrong and fundamentally misconstrues the statute. The Act *requires* the Commission to determine "whether the public interest, convenience, and necessity will be served by the granting of such application[s]"[5] and, where "the Commission for any reason is unable to" make that public interest finding or the record presents "a substantial and material question of fact," the Commission "*shall formally designate the application for hearing*."[6] This obligation exists independent of the presence or absence of a formal request for hearing pursuant to section 309(d) of the Act and section 1.106(c) of the Commission's rules.[7] The Commission's failure to meet this obligation constitutes legal error and merits reconsideration, as Lockheed Martin demonstrated in the Petition.[8]

Ligado further seeks to buttress its argument with the bare assertion that the "facts are not in dispute."[9] While it may be true that "the record is replete with testing and analyses," there is no question that material facts remain in dispute; the Commission unlawfully failed to address,

[4] Ligado Opposition at 9 (citing 47 C.F.R. § 1.106(c) and 47 U.S.C. § 309(d)).

[5] 47 U.S.C. § 309(a).

[6] *Id.* § 309(e) (emphasis added).

[7] The case Ligado relies upon supports this very point. There, the Commission affirmed the seriousness of its obligation to evaluate whether there are substantial and material questions of fact regardless of whether a request for hearing had been filed formally under section 309(d) of the Act. *Application of Voicestream Wireless Corp.*, 16 FCC Rcd 9779, 9851 n.60 (2001) (cited by Ligado Opposition at 9).

[8] Petition at 7.

[9] Ligado Opposition at 9.

and in some instances completely ignored, material evidence in the record.[10] When this error is remedied on reconsideration, the substantial and material questions of fact regarding whether grant of Ligado's application will serve the public interest, convenience, and necessity will be readily apparent.

Second, Ligado's efforts to defend the interference complaint procedures are themselves deficient.[11] In no other spectrum context—including those cited by Ligado—is the interfering party allowed to determine whether a complaint it receives is "credible" before taking action.[12] Indeed, the best Ligado can muster in support of the *Order's* unprecedented complaint reporting process is a Media Bureau consent decree that has nothing to do with remedying harmful interference.[13] The *Order's* interference complaint procedures are plainly inadequate, and grounds for reconsideration.

Third, Ligado states that Lockheed Martin simply seeks to "rehash the debate regarding use of the 1 dB metric in this context, disagreeing with the Commission's method of analyzing harmful interference to GPS."[14] But the issue here is not the outcome of the debate, it's that the Commission failed to engage in the substance of that debate; the Commission's limited and dismissive analysis of the 1 dB standard and harmful interference to satellite communications does not constitute the "hard look" the Commission is required, by law, to take.[15] This is a

[10] *See, e.g.*, Petition at 7-8; *see infra* text at 4.

[11] Ligado Opposition at 15, 20.

[12] *Order* para. 92 and n.232.

[13] Ligado Opposition at 20 (citing *Howard Stirk Holdings, LLC, HSH Flint (WEYI) Licensee, LLC; and HSH Myrtle Beach (WWMB) Licensee, LLC*, Consent Decree, DA 20-472, at 5 (2020) ("The Compliance Officer shall maintain a hotline for Covered Employees to call the Compliance Officer to obtain advice on compliance with the Compliance Plan and to report violations of the Compliance Plan.")).

[14] Ligado Opposition at 9-10.

[15] Petition at 7 (citing *Loyola University v. FCC*, 670 F.2d 1222, 1227 (D.C. Cir. 1982)).

substantial legal error that must be reversed on reconsideration. Further, the Order's failure to adopt an objective interference compliance standard represents a substantial legal error, and enables Ligado to subjectively adjudicate interference claims.

Finally, Ligado argues that the Commission is not obligated to conduct a cost-benefit analysis, and that in any event "[t]he Commission's public interest analysis fully considered the costs and benefits associated with granting Ligado's applications."[16] This is wrong. While section 309 of the Act does not mandate a cost-benefit analysis, the Commission's public interest analysis must reflect reasoned decision-making.[17] And as the Petition explained, the *Ligado Order* fundamentally failed to "intelligibly apply" the public interest standard to the economic evidence and arguments in the record.[18] Instead, the Commission decided it was comfortable

[16] Ligado Opposition at 14.

[17] 5 U.S.C. § 557(c)(3)(A) (agency resolving an adjudication issue must address "all the material issues of fact, law, or discretion presented on the record."); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971) (agency's decision must be "based on a consideration of the relevant factors"); *Loyola University v. FCC*, 670 F.2d 1222, 1227 (D.C. Cir. 1982); s*ee also Public Citizen v. National Highway Traffic Safety Admin.*, 848 F.2d 256, 266-267 (D.C. Cir. 1988).

[18] *See* Petition at 12-20; *see, e.g.*, Comments of Aircraft Owners and Pilots Association *et. al.*, IB Docket Nos. 11-109 & 12-340 (filed May 23, 2016) ("Such interference would result in . . . loss of billions of dollars in Federal Aviation Administration ("FAA") and commercial aviation sector GPS investments."); Memorandum from Thu Luu, Department of the Air Force, Executive Agent for GPS, to IRAC Chairman, National Telecommunications and Information Administration, at 3 (dated Feb. 14, 2020) (stating it is "practically impossible for [the Department of Defense] to identify and repair or replace all of the potentially adversely affected receivers" and that "even if a solution were shown to be feasible, could take on the order of billions of dollars . . . .") (Memorandum attached as exhibit to Letter from Douglas W. Kinkoph, Associate Administrator, Performing the Delegated Duties of the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, to Ajit Pai, Chairman, FCC, IB Docket Nos. 11-109 & 12-340 *et al*. (filed Apr. 10, 2020)); RTI International, *Economic Benefits of the Global Positioning System (GPS)*, Final Report, RTI Project Number 0215471, at ES-1, ES-4 (June 2019) (sponsored by the National Institute of Standards and Technology) (estimating that GPS generated "roughly $1.4 trillion in economic benefits . . . since it was made available for civilian and commercial use" in the U.S. alone, and that "the loss of GPS service would have a $1 billion per-day impact.").

with "essentially putting [a] finger in the wind and making it up as [it] go[es] along," which "is no basis for reasoned, evidence-based decision-making by an expert agency."[19] The failure to conduct an assessment of the costs and benefits in the *Ligado Order* with any level of rigor demonstrates the Commission's lack of reasoned decision making and justifies reconsideration.[20]

For the reasons discussed herein and the Petition, the Commission should reconsider the *Ligado Order*, reverse its grant of the Applications, deny the waiver request, and designate the Applications for a hearing.

Respectfully submitted,

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[19] *See Establishment of the Office of Economics and Analytics*, Order, 33 FCC Rcd 1539, 1549 (2018) (Statement of Chairman Ajit Pai).

[20] *See Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012) ("And when an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable. *See City of Portland v. EPA*, 507 F.3d 706, 713, 378 U.S. App. D.C. 344 (D.C. Cir. 2007) (noting that "we will [not] tolerate rules based on arbitrary and capricious cost-benefit analyses"); *Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 206, 377 U.S. App. D.C. 356 (D.C. Cir. 2007) (vacating regulatory provisions because the cost-benefit analysis supporting them was based on an unexplained methodology)). The paucity of the Brattle Group's post hoc attempt to provide such an assessment only highlights the *Order's* shortcomings. *See* The Brattle Group, Inc., Opposition to Petitions for Reconsideration, IB Docket Nos. 11-109 & 12-340 (June 1, 2020) ("Opposition").

CERTIFICATE OF SERVICE

I, Jennifer Warren, Vice President, Technology Policy & Regulation, Lockheed Martin Corporation, hereby certify that on this 8th day of June, 2020, pursuant to agreements to accept service by email, I caused a copy of the foregoing Reply to Opposition of the Lockheed Martin Corporation to be served via email on:

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