



Federal Communications Commission
Washington, D.C. 20554

DA 11-367

February 25, 2011

Jeffrey J. Carlisle
Executive Vice President
Regulatory Affairs & Public Policy
LightSquared
10802 Parkridge Boulevard
Reston, VA 20191-4334

Re: File Number: SAT-MOD-20101118-00239

Dear Mr. Carlisle:

On February 15, 2011, the U.S. GPS Industry Council (GPS Council) filed a petition for clarification of the *LightSquared Authorization Order*.¹ The GPS Council requests that the Commission clarify whether the Federal Advisory Committee Act (FACA) applies to the GPS interference working group that LightSquared was required to establish as a condition to the waiver granted in the *LightSquared Authorization Order*² and, if it doesn't, asks the Commission to elaborate on the process the working group should follow. In this letter, we set forth the FCC's International Bureau's and Office of Engineering and Technology's expectations for LightSquared's implementation of the working group condition, and clarify that the FACA would not apply to the working group contemplated by the waiver order and described in greater detail below.

I. The Working Group Process.

In light of the GPS Council's questions regarding the operation of the working group, we take this opportunity to provide further guidance on implementation of the *LightSquared Authorization Order*.

First, while the *Order* encourages the GPS community and federal interests to participate in the working group, it does not require LightSquared to obtain the participation of any particular organization or individual. The Commission has not selected the members of the working group, nor does it intend to do so. While participation by a broad cross-section of technical experts is desirable, LightSquared is responsible for selecting appropriate participants.

¹ *LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, Order and Authorization*, DA 11-133 (Int'l Bur. rel. Jan. 26, 2011).

² GPS Council Petition for Clarification at 2.

Second, Commission staff will not attend the working group meetings as a general matter, and will not control or supervise the working group. We expect LightSquared to schedule the meetings and set the agenda.³

Third, the *LightSquared Authorization Order* directed LightSquared to submit a final report that includes analyses of the potential for interference to GPS devices from LightSquared's facilities, and recommendations for steps that LightSquared or other interested parties could take to mitigate the potential for interference.⁴ To be clear, the *LightSquared Authorization Order* contemplates that there may be more than one interference analysis and set of recommendations in the final report. The *Order* does not ask or require LightSquared to develop a consensus recommendation among the working group participants. Rather, LightSquared should submit in its final report the various interference analyses and recommendations offered by working group participants, as well as LightSquared's individual and independent interference analysis and plan for avoiding harmful interference.

LightSquared may not commence commercial service on its L-band frequencies pursuant to the January 26, 2010 waiver until the Commission, after consultation with NTIA, concludes that the harmful interference concerns have been resolved.⁵ To that end, the progress reports and final report – containing both LightSquared's plan for avoiding harmful interference to GPS operations and the respective analyses and recommendations of the parties participating in the

³ If Commission staff attend a particular meeting, the normal *ex parte* rules for permit-but-disclose proceedings would apply. See 47 C.F.R. § 1.1206. Those rules allow parties to make their *ex parte* filings jointly with other participants. See, e.g., Robert M. Franklin, *Transferor, Inmarsat, plc, Transferee, Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat, plc, Memorandum Opinion and Order*, IB Docket No. 08-143, 24 FCC Rcd 449, 454 n.35 (Int'l Bur., 2009); *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 05-265, 22 FCC Rcd 15817, 15845 n.193 (2007); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338, 18 FCC Rcd 16978, 17097 n.602 (2003) (examples of the Commission or a Bureau accepting joint *ex parte* statements).

⁴ "LightSquared is further required to submit a final report no later than June 15, 2011, that includes the working group's analyses of the potential for overload interference to GPS devices from LightSquared's terrestrial network of base stations, technical and operational steps to avoid such interference, and specific recommendations going forward to mitigate potential interference to GPS devices." *LightSquared Order* at para. 43.

⁵ *LightSquared Order* at para. 48.

working group – will be placed in the public record. LightSquared should file its reports in the public record of the Commission’s proceeding and interested parties may comment on them.

2. *Applicability of the FACA.*

We are advised by the Commission’s Office of General Counsel that a working group conducted as described above would not trigger the requirements of the FACA. The FACA applies to advisory committees that are “established or utilized by one or more agencies in the interest of obtaining advice or recommendations.”⁶ An advisory committee is “established” when it has been formed by a government agency (which typically involves appointment of the membership), and it is “utilized” if it is “amenable to ... strict management by agency officials.”⁷ Moreover, FACA does not apply to meetings between Federal officials and a collection of individuals, even if convened at the request of the agency, unless the attendees are requested to provide consensus advice “as a group” rather than to offer their individual views.⁸ Here, the FCC will not select the membership of the working group, nor will the agency control, supervise, or otherwise manage it. While the *LightSquared Order* encouraged the GPS community and federal interests to participate in the working group, it did not require LightSquared to obtain the participation of any particular organization or individual.⁹ Further, as noted above, the FCC is not seeking the development of consensus positions or recommendations.¹⁰

⁶ 5 U.S.C. app. II § 3(2).

⁷ *Public Citizen v. Dept. of Justice*, 491 U.S. 440, 457-58 (1989); *see also* *Byrd v. Env'tl. Prot. Agency*, 174 F.3d 239, 246 (D.C. Cir. 1999) (finding that a committee providing recommendations to an EPA contractor was not “established” by the EPA and thus not a Federal Advisory Committee even though the EPA conceived of the need for the committee, submitted a list of suggested members to the contractor, and retained veto power over the membership).

⁸ *See* 41 C.F.R. Pt. 102-3, Subpt. A, App. A, Key Points and Principles III (“The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.”)

⁹ *See LightSquared Order* at para. 41.

¹⁰ *See* note 4, *supra*.

The GPS Council states in its petition that the initial discussions with LightSquared regarding the working group have been constructive.¹¹ We are gratified that the GPS Council and LightSquared have embraced participation in the working group. Please let us know if other questions arise.

Sincerely,

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¹¹ GPS Council Petition for Clarification at 5.