

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
LightSquared Request to Modify Its ATC ) IB Docket No. 12-340
Authorization )
)
LightSquared Technical Working Group ) IB Docket No. 11-109
Report )

PROTECTIVE ORDER

Adopted: October 3, 2016

Released: October 4, 2016

By the Chief, Satellite Division, International Bureau:

1. In this Protective Order, we set forth procedures to provide limited access to information that was filed in these proceedings subject to a request for confidential treatment. We find that allowing limited access to these materials pursuant to the procedures set forth in this Protective Order will facilitate meaningful participation in these proceedings by interested parties while also protecting information subject to a request for confidential treatment from improper disclosure and use. Such procedures will facilitate development of a more comprehensive record on which to base the Commission’s decision. Accordingly, we conclude that adopting these procedures will serve the public interest.<sup>1</sup>

2. Iridium Communications, Inc. (Iridium) filed the information that is the subject of this Protective Order on September 1, 2016. The information consists of redacted portions of a technical analysis, as well as portions of Iridium’s request for confidential treatment. On September 26, 2016, Ligado Networks LLC (Ligado)<sup>2</sup> filed a motion requesting that the materials that are the subject of this Protective Order should be made publicly available, or should be made available subject to such protections as the Commission determines are warranted.<sup>3</sup> We grant Ligado’s motion to the extent of adopting this Protective Order. The Protective Order provides procedures by which Ligado may, if it so

<sup>1</sup> 47 U.S.C. § 154(j).

<sup>2</sup> As a result of a name change, “Ligado” has been substituted for “LighSquared” in the names of various entities in the corporate structure of the applicant in these proceedings. Letter from Jeffrey J. Carlisle, to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 11-109 and 12-340, IBFS File Nos. SAT-MOD-20151231-00090, SAT-MOD-20151231-00091, and SES-MOD-20151231-00981 (filed Feb. 11, 2016).

<sup>3</sup> Ligado also observed that there was no request for confidential treatment of this information available in the public record. Iridium supplemented the public record in these proceedings on September 29, 2016, to include a copy, with some portions redacted, of a request for confidential treatment it first submitted to the FCC on September 1, 2016. Letter from Patrick R. Halley, Counsel to Iridium Communications Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 11-109 and 12-340, IBFS File Nos. SAT-MOD-20151231-00090, SAT-MOD-20151231-00091, and SES-MOD-20151231-00981 (filed Sept. 29, 2016). The September 1 request for confidential treatment was originally submitted as part of a single document together with the unredacted version of the technical study. The September 29 letter requests confidential treatment for portions of the September 1 request.

chooses, renew its request to place in the public record materials Iridium has designated for confidential treatment.<sup>4</sup>

3. *Definitions.* As used herein, capitalized terms not otherwise defined in this Protective Order shall have the following meanings:

“Acknowledgment” means the Acknowledgment of Confidentiality attached as Appendix A hereto.

“Competitive Decision-Making” means a person’s activities, association, or relationship with any of his or her clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party or with a Third-Party Interest Holder.

“Confidential Information” means information contained in the following request for confidential treatment and technical analysis filed in this proceeding that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules:

Request for Confidential Treatment and Technical Analysis of Ligado Interference Impact on Iridium User Links (Sept. 1, 2016).<sup>5</sup>

“Counsel” means In-House Counsel and Outside Counsel of Record.

“Document” means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person.

“In-House Counsel” means an attorney employed by a Participant in this proceeding or employed by an affiliated entity and who is actively engaged in the conduct of this proceeding, provided that such attorney is not involved in Competitive Decision-Making. (In this regard, an In-House Counsel’s employer is considered his or her client.)

“Outside Counsel of Record” or “Outside Counsel” means the attorney(s), firm(s) of attorneys, or sole practitioner(s), as the case may be, retained by a Participant in this proceeding, provided that such attorneys are not involved in Competitive Decision-Making. The term “Outside Counsel of Record” includes any attorney employed by a non-commercial Participant in this proceeding, provided that such attorney is not involved in Competitive Decision-Making.

“Outside Consultant” means a consultant or expert retained for the purpose of assisting Outside Counsel or a Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making. The term “Outside Consultant” includes any consultant or expert employed by a non-commercial Participant in this proceeding, provided that such consultant or expert is not involved in Competitive Decision-Making.

“Outside Firm” means a firm, whether organized as a partnership, limited partnership, limited liability partnership, limited liability company, corporation or otherwise, of Outside Counsel or Outside Consultants.

“Participant” means a person or entity that has filed, or has a good faith intention to file, an application, petition to deny or material comments in this proceeding.

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<sup>4</sup> See para. 4, *infra*.

<sup>5</sup> Letter from Bryan N. Tramont, Counsel to Iridium Communications Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 11-109 and 12-340, IBFS File Nos. SAT-MOD-20151231-00090, SAT-MOD-20151231-00091, and SES-MOD-20151231-00981 (filed Sept. 1, 2016).

“Redacted Confidential Document” means a copy of a Stamped Confidential Document where the Confidential Information has been redacted.

“Reviewing Party” means a person who has obtained access to Confidential Information (including Stamped Confidential Documents) pursuant to paragraphs 6 or 10 of this Protective Order.

“Stamped Confidential Document” means any document, or any part thereof, that contains Confidential Information and that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION,” unless the Commission determines, *sua sponte* or by request pursuant to paragraph 4 of this Protective Order or Sections 0.459 or 0.461 of its rules,<sup>6</sup> that any such document is not entitled to confidential treatment. By designating a document a “Stamped Confidential Document,” a Submitting Party signifies and represents that it contains Confidential Information.

“Submitting Party” means a person or entity who submits a Stamped Confidential Document.

“Support Personnel” means employees of a Reviewing Party’s Outside Firm and third-party contractors and employees of third-party contractors who are assisting in this proceeding, provided such persons are involved solely in performing clerical or ministerial functions with regard to documents and information connected with this proceeding, including performing one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding.

“Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information that is submitted under this Protective Order.

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document or information as Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential. The documents and information challenged will continue to be treated as Confidential Information until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.<sup>7</sup> Any decision on whether the materials should be considered Confidential Information does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA, unless the decision so indicates.<sup>8</sup>

5. *Submission of Stamped Confidential Documents.* A Submitting Party shall submit to the Secretary’s Office one copy of each Stamped Confidential Document it seeks to file and an accompanying cover letter. Before doing so, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in any such Stamped Confidential Document. Each page of the Stamped Confidential Document shall be stamped “CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”. The cover letter also shall contain this legend. In addition, with respect to each Stamped Confidential Document submitted, the Submitting Party shall also file through the Commission’s Electronic Comment Filing System (“ECFS”) a copy of the respective Redacted

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<sup>6</sup> 47 CFR §§ 0.459, 0.461.

<sup>7</sup> Cf. 47 CFR §§ 0.459(g), 0.461(i).

<sup>8</sup> See 47 CFR §§ 0.459(h), 0.461.

Confidential Document and an accompanying cover letter.<sup>9</sup> Each Redacted Confidential Document shall have the same pagination as the Stamped Confidential Document from which it is derived. Each page of the Redacted Confidential Document and the accompanying cover letter shall be stamped “REDACTED – FOR PUBLIC INSPECTION.” To the extent that any page of the filing contains both Confidential Information and non-confidential information, only the Confidential Information may be redacted and the page of the unredacted filing shall clearly distinguish among the Confidential Information and the non-confidential information. In addition, two copies of each Stamped Confidential Document and the accompanying cover letter shall be delivered, as directed by Commission staff, to Clay DeCell, [Clay.DeCell@fcc.gov](mailto:Clay.DeCell@fcc.gov), (202) 418-0803, International Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 6-C407, Washington, D.C. 20554.

6. *Procedure for Obtaining Access to Confidential Information.* Access to Confidential Information is limited to Counsel, Outside Consultants, their employees and employees of their Outside Firms, and Support Personnel. Any person other than Support Personnel seeking access to Confidential Information subject to this Protective Order shall sign and date the Acknowledgment agreeing to be bound by the terms and conditions of this Protective Order, and file the Acknowledgment with the Commission. A copy of the Acknowledgment also shall be delivered to the relevant Submitting Party through its Counsel of Record and any known Third-Party Interest Holders through counsel so that it is received at least five business days prior to such person’s reviewing or having access to the Submitting Party’s Confidential Information. Where there are multiple Submitting Parties or Third-Party Interest Holders, a copy of the Acknowledgment must be served on each within the time period stated above.

7. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.*<sup>10</sup> Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person’s Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information.<sup>11</sup> If an objection is not timely filed with the

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<sup>9</sup> If a party is not able to submit a copy of the Redacted Confidential Document via ECFS, it must file two copies of the Redacted Confidential Document with the Secretary’s Office along with the appropriately stamped cover letter.

<sup>10</sup> This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. The procedure for objecting to specific Confidential Information being reviewed by *any* individual pursuant to the Protective Order (in other words, for requesting that certain information be entirely withheld from review under the Protective Order) is set forth in paragraph 26 of the Order adopting the Protective Order in MB Docket No. 15-149. *See Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10374, para. 26 (2015). As stated there, where such an objection is timely made, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information by the Reviewing Party until the objection is resolved.

8. *Review of Stamped Confidential Documents.* A Submitting Party shall make available for review the Stamped Confidential Documents of such party at the offices of the party's Outside Counsel of Record. A Reviewing Party shall be provided the following alternatives: (1) a Reviewing Party shall be provided adequate opportunity to inspect the documents on site; (2) a Reviewing Party may inspect the documents on site with the ability to request copies, at cost, of some or all of the documents; or (3) a Reviewing Party may request a complete set of the documents at cost, allowing two business days after the request is made for receipt of the copies. If a Reviewing Party plans on requesting a complete set of documents, it is encouraged to make such a request at the time it submits the Acknowledgment to allow it the opportunity to begin reviewing the documents at the end of the five-day period referred to in paragraph 6. All copies of documents that are removed from the Submitting Party's office must be returned or destroyed in accordance with the terms of paragraph 19.

9. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to any Confidential Information in its orders in this proceeding, it will do so by redacting any Confidential Information from the public version of the order and by making the unredacted version of the order available only to a court and to those persons entitled to access to Confidential Information under this Protective Order.

10. *Permissible Disclosure.* A Reviewing Party may discuss and share the contents of Confidential Information with another Reviewing Party, with Support Personnel, as appropriate, and with the Commission and its staff. A Submitting Party's Confidential Information may be disclosed to employees and Counsel of the Submitting Party, and a Third-Party Interest Holder's Confidential Information may be disclosed to employees and Counsel of the Third-Party Interest Holder.

11. *Filings with the Commission.* A party making a filing in this proceeding that contains Confidential Information shall submit to the Secretary's Office one copy of the filing containing the Confidential Information (the "Confidential Filing") and an accompanying cover letter. The cover or first page of the Confidential Filing and each page of the Confidential Filing that contains or discloses only Confidential Information shall be clearly marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The accompanying cover letter shall also contain the appropriate legend. The Confidential Filing shall be made under seal, and will not be placed in the Commission's public file. The party shall submit a copy of the filing in redacted form, i.e., containing no Confidential Information (the "Redacted Confidential Filing") to the Commission via ECFS.<sup>12</sup> The Redacted Confidential Filing and the accompanying cover letter shall be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying

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<sup>11</sup> An objection ordinarily will first be ruled upon by the International Bureau. If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's Order; if a motion for stay is not filed within that time, the Confidential Information shall be made available to the Reviewing Party.

<sup>12</sup> If a party is not able to submit a copy of the Redacted Confidential Filing via ECFS, it must file two copies of the Redacted Confidential Filing with the Secretary's Office along with the appropriately stamped cover letter, as described in this paragraph.

the Redacted Confidential Filing shall state that the party is filing a redacted version of the filing. Each Redacted Confidential Filing shall have the same pagination as the Confidential Filing from which it is derived. To the extent that any page of the Confidential Filing contains any Confidential Information, only the Confidential Information may be redacted and the page of the unredacted Confidential Filing shall clearly distinguish among the Confidential Information and the non-confidential information. Two copies of each Confidential Filing and the accompanying cover letter must be delivered, as directed by Commission staff, to Clay DeCell, [Clay.DeCell@fcc.gov](mailto:Clay.DeCell@fcc.gov), (202) 418-0803, International Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 6-C407, Washington, D.C. 20554.

12. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the Submitting Party or as provided under this Protective Order, Confidential Information shall not be disclosed further.

13. *Protection of Stamped Confidential Documents and Confidential Information.* A Reviewing Party shall have the obligation to ensure that access to Confidential Information (including Stamped Confidential Documents) is strictly limited as prescribed in this Protective Order. A Reviewing Party shall have the further obligation to ensure that Confidential Information are used only as provided in this Protective Order.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.<sup>13</sup>

15. *Client Consultation.* Nothing in this Protective Order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information to which they have access under this Protective Order; *provided, however,* that in rendering such advice and otherwise communicating with such clients, Counsel shall not disclose Confidential Information.

16. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing this material, agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by a Submitting Party to a Reviewing Party shall not be deemed a waiver of any privilege or entitlement provided that the Submitting Party takes prompt remedial action.

17. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Stamped Confidential Documents or Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Stamped Confidential Document or Confidential Information.

18. *Violations of the Protective Order.* Should a Reviewing Party violate any of the terms of this Protective Order, such Reviewing Party shall immediately convey that fact to the Commission and to the relevant Submitting Parties and known Third-Party Interest Holders. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of

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<sup>13</sup> 47 CFR §§ 0.442, 0.461.

Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party or any Third-Party Interest Holder at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

19. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, Reviewing Parties shall destroy or return to the Submitting Party Stamped Confidential Documents and all copies of the same. No material whatsoever containing or derived from Confidential Information may be retained by any person having access thereto, except Outside Counsel and Outside Consultants may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) prepared in whole or in part by that party that contain Confidential Information, and one copy of orders issued by the Commission or Bureau that contain Confidential Information. All Reviewing Parties shall certify compliance with these terms and shall deliver such certification to Counsel for the Submitting Party and file such certification with the Commission not more than three weeks after conclusion of this proceeding. Such certification shall be made pursuant to 28 U.S.C. § 1746 and is subject to 18 U.S.C. § 1001. The provisions of this paragraph regarding retention of Stamped Confidential Documents and copies of the same and Confidential Information shall not be construed to apply to the Commission or its staff.

20. *Questions.* Questions concerning this Protective Order should be addressed to Clay DeCell, [Clay.DeCell@fcc.gov](mailto:Clay.DeCell@fcc.gov), (202) 418-0803, Satellite Division, International Bureau, or to Joel Rabinovitz, [Joel.Rabinovitz@fcc.gov](mailto:Joel.Rabinovitz@fcc.gov), (202) 418-0689, Transaction Team, Office of General Counsel.

FEDERAL COMMUNICATIONS COMMISSION

Jose P. Albuquerque  
Chief, Satellite Division  
International Bureau

## APPENDIX A

## Acknowledgment of Confidentiality

**IB Docket No. 12-340, IB Docket No. 11-109  
IBFS File Nos. SAT-MOD-20151231-00090, SAT-MOD-20151231-00091,  
SES-MOD-20151231-00981**

I am seeking access to Confidential Information.

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it.

I agree that I am bound by the Protective Order and that I shall not disclose or use Stamped Confidential Documents or Confidential Information except as allowed by the Protective Order.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission (Commission). I further acknowledge that the Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding.

I acknowledge that nothing in the Protective Order limits any other rights and remedies available to a Submitting Party at law or in equity against me if I use Confidential Information in a manner not authorized by this Protective Order.

I certify that I am not involved in Competitive Decision-Making.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a party or as an employee of Counsel, Outside Consultant, or Outside Firm, and I agree that I will not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Stamped Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order and to ensure that there is no disclosure of Confidential Information in my possession, in the possession of those who work for me or in the possession of other Support Personnel, except as provided in the Protective Order.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Name]  
[Position]  
[Firm]  
[Telephone]  
[Party]