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

OPPOSITION TO NTIA'S PETITION FOR STAY

Ligado Networks, LLC ("Ligado") opposes the National Telecommunications and Information Administration's ("NTIA") request for a stay of the Commission's unanimous April 22, 2020 Order and Authorization approving Ligado's license modification application (the "Order"). NTIA's remarkably thin filing fails by a wide margin to meet its burden to demonstrate that the "extraordinary remedy of a stay" is warranted here. *In re Declaratory Ruling*, 25 FCC Rcd. 1215, 1218 ¶ 7 (2010). Accordingly, we respectfully urge the Commission to promptly reject this meritless request.

First, NTIA is unlikely to prevail on the merits of its Petition for Reconsideration. The 72-page Order was the culmination of the Commission's "extensive review of the record" generated during a comprehensive, multi-year proceeding, in which NTIA actively participated.

Order ¶¶ 1, 3, 18. In light of the ample notice and opportunity to comment that the Commission provided NTIA, its complaints regarding process are meritless and not a basis for reconsidering the Order. NTIA's substantive arguments, which merely reiterate arguments that the Commission has already meticulously considered and rejected regarding alleged harmful interference with GPS devices, fare no better. At bottom, NTIA simply disagrees with the Commission's expert judgment and its decision to rely on its existing rules as opposed to adopting NTIA's preferred new approach to analyzing interference issues, and those bald claims fall far short of meeting the high bar for granting reconsideration.

Second, NTIA effectively concedes that it will suffer no *imminent* irreparable injury—meaning "proof" of irreparable injury that "is *certain* to occur in the *near* future." *In re Declaratory Ruling*, 25 FCC Rcd. at 1219 ¶ 9 (emphasis added). NTIA admits that Ligado's system will not become operational for a period as long as eighteen months. Pet. at 3. Putting aside that NTIA's alleged injuries are contrary to the extensive record, even on NTIA's own theory those injuries would only occur *after* Ligado's network commences operations, and so by definition those purported injuries are not "certain to occur in the near future." In short, the *status quo* is that no energy that could affect GPS devices will be generated by Ligado's terrestrial network; by NTIA's own admission, that status quo will continue for an extended period of time. In light of this, NTIA's request for the extraordinary relief of a stay turns routine policy disagreements into a request for a lockdown of the FCC's process and puts at risk progress on spectrum developments that hinder 5G and destabilize FCC decision making. Ultimately, NTIA has failed to establish imminent irreparable injury, the "single most important prerequisite" for issuance of a stay. *In re Implementation of Section 621(A)(1)*, 2019 WL 5861929, at *4 ¶ 15 (F.C.C. Nov. 6, 2019).

Third and finally, issuance of a stay would harm both Ligado and the public interest. A stay would needlessly hamper Ligado's ability to make progress on important preliminary work items that are necessary to deploy the spectrum for 5G and have long lead times. Moreover, the Commission has explained that Ligado's network will provide extensive benefits to the public, by unlocking the benefits of advanced communications technologies for customers and businesses, including 5G. A stay would thus unnecessarily delay the "significant public interest benefits associated with Ligado's proposed ATC network and deployment." Order ¶ 18.

Argument

To "qualify for the extraordinary remedy of a stay" NTIA "must show that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay." *In re Declaratory Ruling*, 25 FCC Rcd. at 1218 ¶ 7. NTIA's petition, which addresses most of these criteria in a surprisingly conclusory fashion, does not come close to establishing that a stay is warranted.

I. NTIA Is Unlikely to Prevail on the Merits.

The Commission's detailed, unanimous order—crafted after a multi-year administrative process—itself indicates that NTIA is unlikely to prevail on the merits. Indeed, NTIA's petition for reconsideration brings forth no new substantive arguments and no new data, reiterating arguments the Commission has already rejected, and raises procedural objections that could have, and should have, been presented to the Commission prior to its adoption of the Order. Ligado will respond in detail to NTIA's petition for reconsideration, in a separate filing per 47 C.F.R. § 1.44, which it incorporates by reference. Ligado provides the following summary of the key failings of NTIA's arguments on the merits.

NTIA first complains of the process that led to the Commission's adoption of the Order, arguing that the Commission failed to defer to the NTIA's opinion on the issue of harmful interference to GPS. Pet. at 3-6. In essence, NTIA argues that the Commission should have ceded its exclusive statutory authority to manage spectrum by providing certain other federal entities a *de facto* veto over the Commission's actions. NTIA's procedural arguments are wrong on the merits and fail to meet the standard for granting reconsideration. Indeed, the Order correctly explains that that the Commission, not other entities, is charged by statute with managing spectrum. Order ¶ 128 n. 422. Moreover, the Commission fully complied with its obligations under the Memorandum of Understanding that governs its relationship with NTIA. Order ¶ 122. Commission staff consulted with NTIA for years, and the Commission provided NTIA with six months of advance notice of its proposed decision. *See, e.g.*, Order ¶ 123. No more was required of the Commission.

NTIA's substantive arguments fare no better. At bottom, NTIA's harmful interference arguments boil down to nothing more than a disagreement with the detailed analysis set forth in the Commission's Order—which is not a basis for reconsideration. *See In re Broadwave USA*, Fourth Memorandum Opinion and Order, FCC 03-97, 18 FCC Rcd. 8428, 8450 ¶ 49 (2003) ("We find that petitioners' arguments do little more than disagree with our analysis, judgments, and policy choices. Bare disagreement, absent new facts and arguments, is insufficient grounds for granting reconsideration."). The Order exhaustively considered all of the record evidence that related to GPS, and thoroughly analyzed the potential for harmful interference. Having done so, the Order correctly: (1) rejected the 1 dB metric that NTIA prefers; (2) analyzed harmful interference using a performance-based metric; and (3) concluded that granting Ligado's license modification applications would not result in harmful interference to GPS and would benefit the

public interest. Those conclusions were based on the evidence in the record, including reams of technical data and Ligado's agreements with major GPS device manufacturers, as well as on the stringent conditions that the Commission imposed on Ligado's future operations. The Commission's exacting analysis and conclusions regarding GPS are exactly the kinds of technical issues to which the Commission is entitled deference as the relevant expert agency. *See Keller Commc'ns, Inc. v. FCC*, 130 F.3d 1073, 1077 (D.C. Cir. 1997). NTIA's disagreement with this expert analysis is not a valid basis on which to grant reconsideration.

Finally, NTIA broadly claims that the Order disregards "executive branch concerns" about harmful interference risks. Pet. at 3-4, 6-7. As noted above, the Order did not "disregard" these concerns, but rather evaluated them in detail and rejected them as unfounded on the merits. *See, e.g.*, Order ¶¶ 45-59, 83-106, 124-128. Moreover, as the Commission is well aware, many key executive branch officials, including the Attorney General and the Secretary of State, have praised the Commission's decision as "vital to our national security" and essential to the United States' "economic and technological leadership."[1]

II. NTIA Will Suffer *No* Harm, Much Less Irreparable Harm.

To demonstrate irreparable harm, NTIA must "provide proof indicating that the harm is *certain* to occur *in the near future*," and that the harm would be "great." *In re Declaratory Ruling*, 25 FCC Rcd. at 1219 ¶ 9 (emphasis added). This factor is "a prerequisite for obtaining" a stay. *Id.* at 1218 ¶ 7; *see also In re Implementation of Section 621(A)(1)*, 2019 WL 5861929, at *4 ¶ 15 (F.C.C. Nov. 6, 2019) (noting this is the "single most important prerequisite for the

[1] Attorney General William P. Barr's Statement on FCC Chairman Pai's Draft Order to Approve Ligado's Application to Facilitate 5G and Internet of Things Services (Apr. 16, 2020), https://www.justice.gov/opa/pr/attorney-general-william-p-barr-s-statement-fcc-chairman-pai-s-draft-order-approve-ligado-s; Michael Pompeo, *Support for 5G and Internet of Things Development* (Apr. 16, 2020), https://www.state.gov/support-for-5g-and-internet-of-things-development/

issuance" of a stay); *In re Updating Intercarrier Compensation Regime*, 2019 WL 5558878, at *6 ¶ 18 (FCC Oct. 25, 2019) ("Failure to demonstrate irreparable harm is 'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.'" (citation omitted)).

NTIA has failed to make any such showing. All of NTIA's purported irreparable injuries arise out of claimed harmful interference which could only occur once Ligado's network begins operations, meaning transmitting its terrestrial signals. Indeed, NTIA repeatedly makes clear that only actual "operations" of Ligado's network could cause any such hypothetical injury. *See, e.g.*, NTIA Pet. for Reconsideration at iv, 1, 16. *See also* Order ¶ 60 (evaluating whether "Ligado's proposed terrestrial operations" "sufficiently address concerns about potential harmful interference").

NTIA states that "Ligado does not expect to commence the contemplated service within the next eighteen months." Pet. at 3. By definition, that means NTIA's claimed injury—which relates to harmful interference arising out of *operation* of Ligado's network—is not "imminent." Moreover, the Order itself requires "six months advance notice regarding the activation of any base station transmitting in the 1526-1536 MHz band," providing further assurance that any supposed potential harmful interference is not in fact imminent. Order ¶¶ 130, 138, 145.

Both the case law and the Commission's past decisions make clear that an injury is not imminent if it will only occur many months later, after preliminary activities are completed and facilities are constructed. Thus, where a party requesting a stay merely "predict[s] that they will be harmed when" a facility becomes "operational" many months later, any asserted injury is necessarily "not imminent." *Appalachian Voices v. Chu*, 725 F. Supp. 2d 101, 105 (D.D.C. 2010). *See also, e.g.*, *W. Watersheds Project v. BLM*, 774 F. Supp. 2d 1089, 1102 (D. Nev.

2011), *aff'd* 443 F. App'x 278 (9th Cir. 2011) ("initial stages of development" of challenged project posed "no threat," and the claimed injury would not arise until project began operations a year later, so there was "no risk of irreparable harm" before a decision on the merits could be reached); *Teva Pharms. USA, Inc. v. FDA*, 404 F. Supp. 2d 243, 246 (D.D.C. 2005) (when "harm is months away" it "is simply too early" and there is no irreparable injury).

The Commission has previously adopted this approach, denying a stay request where any "potential for increased interference" would not arise until "stations [are] built and operations begun," which would take "some time." *In re Amendment of Part 73*, 1989 WL 513098, at *3 ¶¶ 10-11 (FCC June 15, 1989). For that reason, and because the Commission contemplated timely action on the reconsideration petitions, there was "no danger of irreparable harm," particularly given that operation of the relevant stations was not imminent. *Id.* So too here.[2]

Finally, NTIA asserts without support that it will suffer "substantial irreparable harm if Ligado commences preparation for its terrestrial buildout." Pet at 3. That is nonsense: NTIA cannot justify its assertion that mere preparatory activity could inflict irreparable injury. It is actually Ligado, not the NTIA, that would bear all of the risk of undertaking such preparatory activity to advance the goal of rolling out 5G. Indeed, NTIA does not even attempt to provide "proof" that these preparatory activities will, of themselves, cause harm that is "certain to occur in the near future." *In re Declaratory Ruling*, 25 FCC Rcd. at 1219 ¶ 9. In any event, as noted

[2] The Commission regularly acts on reconsideration petitions, including those that raise complex technical or legal issues, in far less than 18 months. *See, e.g., In re Creation of Interstitial 12.5 Kilohertz Channels in the 800 Mhz Band Between 809-817/854-862 Mhz)*, Order on Reconsideration, FCC 20-62 (rel. May 12, 2020) (four and a half months); *In re Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Order on Reconsideration, FCC 20-49 (rel. Apr. 21, 2020) (just over five months).

above, it is clear that only actual "operations" of Ligado's network could cause the supposed harmful interference that is the basis for NTIA's stay request.[3]

III. Ligado and the Public Will Be Harmed By Further Delay.

Both Ligado and the public will be harmed by a stay, which would needlessly delay deployment of 5G services in America.

A stay would injure Ligado because it would derail Ligado's ability to prepare for deploying its planned network. Ligado cannot begin its preparations to incorporate this spectrum into the 3GPP process and to ramp up its discussions with key equipment manufacturers in the 5G ecosystem such as Nokia, Ericsson, Samsung, and Qualcomm and other important industry players in the face of a stay being granted. Without such certainty, Ligado would be unable to make the investments necessary to develop its network or to enter into network partnership agreements. Ligado will miss major business opportunities that are likely never to resurface. The last several years have seen a wireless industry transformed by growth in the "Internet of Things." These new technologies often implicate massive projects—including stadiums, convention centers, or train stations—which require large upfront commitments and expansive time horizons. Thus, once one network is selected for a large-scale project, that opportunity is usually foreclosed for other networks for many years. These extended purchasing cycles mean that each year Ligado is unable to deploy, Ligado loses access to large portions of the market.

[3] Should NTIA's petition for reconsideration remain pending when Ligado's network nears operation, NTIA could potentially renew its request for a stay, as the Commission's rules do not impose an express time limit for seeking a stay. *See* 47 C.F.R. § 1.106(n). The FCC also provides NTIA with other mechanisms to prevent imminent harm from Ligado operations, should NTIA actually demonstrate that any such harm is imminent in the future, such as a petition to suspend the license *See* 47 U.S.C. § 303(m) (granting FCC authority to suspend licenses). *Cf. W. Watersheds Project v. BLM*, 2011 WL 1630789, at *6 (D. Nev. Apr. 28, 2011) ("[P]laintiffs have not demonstrated that allowing the project to proceed at this stage would hinder, in any way, the court's ability to prevent irreparable injury at the point it becomes imminent.… Future injury or conjectural hypothetical injury months from now cannot form the basis of an injunction at this stage.").

Such delays will inflict needless financial harm on Ligado. Moreover, additional delay is particularly inappropriate given that Ligado's license modification applications took nearly 4.5 years to resolve. *See* Order ¶ 3.

A stay would also be contrary to the public interest. At the outset, NTIA provides no independent reason a stay would serve the public interest; instead, it merely rehashes its flawed harmful interference argument. Pet. at 3. To the contrary, a stay would *harm* the public interest. As the Order explains, Ligado's services are expected to provide significant benefits to the public, including (1) bringing advanced communications services to the public and businesses, (2) supporting an array of Internet of Things deployments, (3) providing these advanced services "in rural areas and other communities that terrestrial networks alone cannot effectively reach," and (4) enhancing network capability and creating jobs. Order ¶¶ 19-24.

The Commission has historically regarded these types of public benefits as weighing strongly against a stay. For example, the Commission has previously rejected a request for a stay that "has the potential to deny customers the benefits of new advanced services and competition." *In re Implementation of Section 224*, 26 FCC Rcd. 7792, 7797 ¶ 13 (2011).

Finally, contrary to NTIA's contention, Pet. at 2-3, a stay would alter, not preserve, the *status quo*. The Order was effective immediately upon its April 22 release. Order ¶ 164. NTIA waited until May 22—a full month after the Commission issued the Order—to file its stay request. The Commission has previously explained that where an "*Order* has been in effect for two weeks when [petitioner] requested a stay, granting [petitioner's] motion would, in fact, alter the *status quo*." *In re Implementation of Section 621(A)(1)*, 2019 WL 5861929, at *7 ¶ 22. Accordingly, NTIA's attempt to disrupt rather than maintain the status quo further weighs against its stay request.

Conclusion

For the reasons given above, the Commission should deny NTIA's stay request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 29th day of May 2020, I caused the foregoing opposition to be served on the following:

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