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U.S. House of Representatives

Washington, DC 20515-6035

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May 21, 2020

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Written *Ex Parte* Presentation Regarding Ligado proceedings, DA/FCC 20-48, IB Docket No. 11-109 and IB Docket No. 12-340

Dear Ms. Dortch:

We write to express our strong opposition, as Chairman and Ranking Member of the House Armed Services Committee, to the recent Ligado order; and we request the Federal Communications Commission suspend the order and reconsider the proceeding.

There are still too many unknown impacts and remaining concerns for this decision to move forward. We recognize the need to accelerate the deployment of real 5G capabilities, and we will do our part to ensure the Department of Defense (DOD) continues to aggressively undertake initiatives to share spectrum that is useful for 5G with commercial users. However, these initiatives must not come at the cost of U.S. defense capabilities.

On May 7, 2020, a bipartisan group of House Armed Service Committee Members sent a letter to each of the commissioners that contained a number of questions regarding the decision.¹ Commissioners Starks, O'Reilly, Rosenworcel, and Carr provided timely responses.² The commission's rules provide that a petition for reconsideration of a non-rule making proceeding can be entertained if it relies on newly discovered facts or if a reconsideration of the facts relied

¹https://republicansarmedservices.house.gov/sites/republicans.armedservices.house.gov/files/HA_SC_FCCLigadoLetter_FINAL.pdf

² <https://www.fcc.gov/sites/default/files/orielly-letter-house-asc-05132020.pdf>

upon is in the public interest.³ Based upon the responses we received to our inquiry, we believe both criteria have been met in this case, and believe the reconsideration of the approval order and the imposition of additional protections for covered GPS and satellite communications are in order.

The commission failed to properly resolve concerns of harmful interference, creating an undue burden on the Department of Defense.

The first question posed to the commissioners asked them to provide the legal analysis upon which their determination was based and “whether that decision is consistent with the FY 17 NDAA requirement to resolve concerns of widespread interference with GPS devices prior to permitting the commercial use of this spectrum.” The commissioners who responded to our letter were consistent in their responses that widespread interference concerns have been resolved. However, the commission relied largely on assertions made by Ligado in arriving at their decision, disregarding the collective objection of 14 federal agencies and departments, testing by the Department of Defense and the Department of Transportation, and the countless other ex-parte filings in the record of proceedings.⁴ In fact, at least one GPS device manufacturer alleges that Ligado misrepresented the nature of an agreement that was reached between the two parties, and that, despite Ligado’s repeated assertion, no “co-existence agreement” exists.⁵ This misrepresentation, if true, could call into question the facts upon which this decision was based.

Furthermore, the order does not demonstrate that Ligado’s plan satisfies the plain meaning of the phrase “resolve concerns.” The language in paragraph (89), for example, addresses concerns about interference with high precision receivers used for vital national security purposes by stating vaguely that the two “should be able to co-exist,” and such an arrangement is “technically possible.” In subsequent paragraphs, the commission acknowledges that the testing shows there is potential for Ligado’s operations to interfere with high precision receivers, and attempts to resolve concerns solely through the implementation of mitigation efforts proposed by Ligado. The order relies merely on Ligado’s good faith and proposed solutions that have not been agreed to by the impacted agencies to resolve issues through negotiations with the government in the likely event there are interference issues when operations begin.

Ligado’s proposal to mitigate issues is, according to senior Defense officials, unworkable. The mitigation plan calls for establishment of a 1-800 telephone number that the DOD can call to report to Ligado after interference is detected. The Department must articulate precisely what the problem is, and then Ligado will take steps, solely within their discretion, to attempt to resolve the issue. Ligado has also proposed to address concerns regarding the adverse impact of its proposal to U.S. Government devices by upgrading or replacing devices. The costs of these actions should not be minimized and may require the testing, verification, and

³ 47 CFR § 1.106

⁴<https://ecfsapi.fcc.gov/file/10410288301607/NTIA%20Letter%20to%20FCC%20Chairman%20Re%20Ligado%20Applications%204.10.20.pdf>

⁵<https://ecfsapi.fcc.gov/file/10515880808967/Garmin%20May%2015%2C%202020%20Ex%20Parte.pdf>

recertification of each piece of GPS-enabled equipment and related software in the Defense inventory. It is not as simple as switching out an antenna or chip set, much of this equipment is networked together to provide a common operational picture to commanders, and any changes would need to be verified throughout the entire enterprise. It appears highly likely neither the commission nor Ligado have a complete understanding of the costs and complexity involved to ensure the safety of operations of military equipment that cost the taxpayers hundreds of billions of dollars. The expense and time required to confirm or deny interference would be an unacceptable distraction from the Department's mission and could be a significant imposition on DOD operations. The costs to implement this effort would need to be borne by Ligado or any subsequent operator of this terrestrial communications network alone. **This order contains no concrete accountability measures to prevent or remedy harm to GPS users caused by Ligado.**

Additionally, the mitigation measures do not take into consideration operational security and that certain operations at U.S. bases, and the revelation of interference with those operations, would likely be sensitive information. For equipment that cannot be reasonably repaired or replaced, the commission suggests that the DOD should "immediately" provide Ligado with information about impacted GPS receivers so Ligado can "verify" that a deployment at authorized power levels would cause harmful interference. It is not reasonable to expect the Department to provide such potentially sensitive information to Ligado or any other private company for this purpose. The suggestion they do so illustrates Ligado's lack of awareness of, or concern for, how the DOD and its bases operate to maintain security.

The commission's order does not address the full scope of the Department of Defense's concerns.

In the committee letter, the commissioners were also asked whether "...each commissioner receive a briefing from the Department of Defense on the classified test data contained in the classified report of DOD testing to accompany the Department of Transportation Adjacent Band Compatibility Assessment from April of 2018?" **None of the responding commissioners were aware of the classified information the DOD provided to the commission.** As a result, the commission failed to consider material information that may have fundamentally altered their decision. Given the sensitive issues involved in this decision, much of the relevant information from the DOD is classified. Therefore, a thorough review of classified materials submitted by the DOD is an essential step prior to making a decision.

Additionally, while we share the goal of maximizing the use of spectrum to support national security and increase economic prosperity, this order does not further either of those objectives. The practical effect of this decision will be to allow Ligado to operate a terrestrial communications network in a part of the spectrum that every other country in the world reserves almost exclusively for space to ground telecommunications and satellite navigation systems. Even if this decision did advance American 5G capabilities, no other nation is likely to follow us down this path, isolating the United States and potentially strengthening China's influence over 5G.

The public and affected agencies cannot have confidence in the commission's decision without resolution of these errors through a reconsideration and the implementation of additional

safeguards acceptable to the GPS user community. Suspending the order and a full reconsideration of the proceeding is in the public interest.

Sincerely,

A handwritten signature in blue ink that reads "Adam Smith". The signature is stylized with large, flowing letters.

Adam Smith
Chairman

A handwritten signature in black ink that reads "Mac Thornberry". The signature is stylized with a prominent "Mac" and a large "Thornberry".

William "Mac" Thornberry
Ranking Member

AS/WMT:jds