



LightSquared Flunks GPS Interference Tests: What Now?

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Faced with overwhelming evidence that its wireless broadband system would jam GPS receivers, hedge fund-backed LightSquared redirects its efforts towards Congress

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The gloves have come off now that test results show clearly the probable effects on GPS of LightSquared's proposed wireless broadband network: widespread, debilitating interference to GPS receivers.

Although both sides were achingly polite and positive as the working group responsible for designing and conducting the tests got started, a change in tone from both quarters emerged in recent press conferences and in the recommen-

dations submitted by LightSquared to the Federal Communications Commission (FCC) at the end of June. In those recommendations the firm blamed the GPS community — which it described as being built on an \$18-billion subsidy of free access to the GPS satellites — for the interference problems.

GPS receivers, LightSquared claimed, should have been designed to reject the powerful signals now proposed by LightSquared for the RF spectrum band neighboring that is used by GPS. Suggesting that protecting existing receivers would be “a bailout,” the firm underscored its billions of dollars of investment and said denying it the right to proceed would constitute an “unacceptable” message that government can “arbitrarily change long-established ground rules without warning and devalue a settled investment.”

LightSquared has now proposed a modified system that would use lower power and commence operations transmitting — for a time — only in the lower 10 megahertz of its current frequencies. The GPS community has come out against the plan, which it says would still cause unacceptable levels of interference, particularly to precision users.

With the FCC tied up until at least the last half of August as it takes comments and weighs its decision, the fight has shifted to Capitol Hill.

Grass Roots or AstroTurf?

In what appears to be an effort to drum up a groundswell of support, LightSquared has launched the “Empower Rural America Initiative” to “work with small cities and rural communities to ensure the deployment of this new satellite and broadband service.”

The initiative also has, among its goals, working with LightSquared to ensure filters and “other approaches” are developed to “resolve any GPS issues related to precision agriculture and other areas.”

The group will be headed by an advisory board that, at the time LightSquared announced the organization's formation, consisted of three people — former senator Byron Dorgan of North Dakota and former representatives George Nethercutt, a Republican from Washington State who served five terms in the House, and Charlie Stenholm, a Democrat from Texas.

Dorgan, a Democrat who retired from Congress in January of this year, was once described as a “prairie populist.” He was one of the most powerful members of the Senate's Democratic leadership, serving as assistant Democratic floor leader and as chairman of the Democratic Policy Committee

Dorgan was also a member of the Senate Commerce Committee, which has oversight over communications and the FCC — including the first cut at approving new FCC commissioners. He served on the Appropriations Committee and on the Aviation Subcommittee — all of which are playing a role in the LightSquared debate.

Though Dorgan is still in his “cooling off: period” — a two-year stretch when he is not allowed to lobby his old colleagues, his contacts across the country and knowledge of the interests at play could be very useful to a firm like LightSquared.

And he bumps into useful people.

Dorgan and Jeff Carlisle, LightSquared's executive vice president for regulatory affairs and public policy, were on a panel together at a morning meeting on the future of mobile satellite services. Arent Fox, the lobbying firm that hired Dorgan within weeks of his retirement from the Senate, was one of the sponsors for the May 11 event — which was headlined by FCC Chairman Julius Genachowski.

The other two Empower Rural America advisory board members are actively lobbying Congress and have a history of useful House committee assignments. Stenholm, who has been with the lobbying firm Olsson Frank Weeda since 2005, was the ranking member of the House Agricultural Committee and a member of the House Armed Services Committee. He represents a variety of agricultural interests including the Agriculture Geospatial Coalition.

Nethercutt, who runs his own shop,

was on the House Science and Appropriations Committees. His largest client of late has been the firm Sterling International.

Up to the Hill

The Capitol Hill initiative seems like a necessary move for LightSquared, which has been taking a legislative battering. What started off as only a series of concerned letters to the FCC from members of Congress about GPS interference has escalated into legislation aimed at stopping the project outright.

The House Appropriations Committee recently passed language effectively banning the FCC from moving the LightSquared project forward. Ohio Republican Rep. Steve Austria and Rep. Kevin Yoder, R-Kansas, added anti-LightSquared language to H. R. 2434, the Financial Services and General Government Appropriations Act, 2012, which funds the FCC. The measure would

stop the commission from spending any money on work to enable LightSquared to proceed until the "Commission has resolved concerns of potential widespread harmful interference . . . to commercially available Global Positioning System devices."

Meanwhile Rep Michael Turner, R-Ohio, is following up on his amendment to the 2012 Defense Authorization bill. That amendment requires the FCC to deny LightSquared permission to operate until interference issues with military receivers are resolved. Turner, who is chairman of the Strategic Forces Subcommittee, has scheduled a hearing on the LightSquared issue for August 3. Air Force Space Command (AFSPC) has confirmed that among those testifying will be General William L. Shelton, AFSPC Commander. Shelton was one of the first to speak out about interference from LightSquared calling its potential effects on GPS "just unbelievable."

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Though no spending or operating restrictions are involved, the House also mentioned the GPS/LightSquared conflict when it passed H.R. 2112, the appropriations bill for the U.S. Department of Agriculture and the Food and Drug Administration. In the report accompanying the bill, which helps illuminate the intent of the members, the House noted that American farmers and ranchers have invested some \$3 billion in precision agriculture. It directed USDA to insure that the FCC is aware of the committee's concern about the adverse consequences of GPS interference on agriculture and the protection of natural resources such as forests.

The Senate is only now working its way through the appropriations process and the Democrat-controlled body has not yet taken some of the strong stands on GPS interference seen in the Republican-controlled House. However, the 2012 Department of Defense Authorization Act, which was sent to the Senate on June 22, does include a provision mandating that the secretary of defense conduct regular reviews of interference to GPS receivers and determine whether that interference is caused by a commercial system. The language mandates that the secretary report back to Congress on the issue every 90 days.

Grassley Steps Up the Pressure

The Hill activity most potentially damaging to LightSquared's plans in the near term, however, is not legislative. It is a

request from Senator Chuck Grassley, R-Iowa, for copies of FCC communications about LightSquared.

Grassley said in a July 5 letter that the FCC had intentionally ignored his April

Grassley asked if the commission had "safeguards to ensure that valuable spectrum allocations are not made to serial violators of our nation's securities laws."

request for copies of communications between the commission, the White House, LightSquared, its primary backer Phil Falcone and the Harbinger hedge fund he controls.

In the second letter, which was sent to the FCC and posted as a press release, Grassley said that Falcone was being investigated by the Securities and Exchange Commission for market manipulation, violations of the "short sale rule," and for taking a \$113 million loan from his hedge fund without investor permission. He also asked if the commission had "safeguards to ensure that valuable spectrum allocations are not made to serial violators of our nation's securities laws."

As one might imagine Falcone was concerned, arguing — according to press reports — that the letter created "an inappropriate impression."

Impressions matter, especially when you have so much on the line. Harbinger has invested more than \$2 billion in LightSquared and needs to raise billions more to bring the project to fruition.

The main Harbinger fund, according to Bloomberg News, owns 80 percent of LightSquared and has some 62 percent of its money tied up in the project. Some fund investors have pulled money out.

Falcone sought and got a meeting. In fact representatives of LightSquared and of Harbinger met separately with Grassley's staff to express their perspectives.

Grassley does not appear to be backing down. A Grassley spokeswoman told *Inside GNSS* in an email about the meetings that their office "reiterated that one of the reasons behind the senator's document request to the FCC was to ascertain whether the agency conducted due diligence on behalf of the public in advancing the company's project, including whether the FCC should grant approval to a company whose primary funding source is under multiple SEC investigations."

Senator Grassley's staff said that the senator's primary oversight focus is the FCC, the spokeswoman wrote, and invited LightSquared to "cooperate and assist" with the investigation.

"While we have deep respect for Senator Grassley, we respectfully disagree with the characterization of the exchange between staff in our offices, said FCC spokesman Neil Grace, in an email. "As always, we remain responsive and look forward to working together on this and other issues."

Tell It to the Judge

Should Grassley succeed in getting the documents he wants, they could shed light on what LightSquared said and what was promised by the firm and by the government. It has been suggested that the firm could sue the FCC if, after all this effort, its plan is turned down. Members of the GPS community have at least discussed suing, according to sources familiar with its deliberations.

Executive Branch Departures Could Slow LightSquared Decision

For those monitoring progress on the LightSquared decision, here are a few key government resignations that could potentially slow the process down.

Deputy Defense Secretary William Lynn, remains as co-chair of the National Space-Based Positioning, Navigation, and Timing Executive Committee, despite announcing plans to resign and return to private life. He will stay on until Leon Panetta, the nation's new secretary of defense, has selected a successor for the DoD's number-two position.

Scott Deutchman, deputy chief technology officer for telecommunications in the White House's Office of Science and Technology Policy, has left for the private sector. He advised the U.S. chief technology officer on administration initiatives involving spectrum, public safety, and broadband.

Deutchman previously worked at the FCC as acting senior legal advisor on broadband policy to then-acting chairman Michael J. Copps. He joins Neustar, a Virginia communications and data company.

Both parties have to wait, however, until the FCC process moves further along.

In the case of the GPS community, sources have told *Inside GNSS* that they cannot proceed with litigation because, so far, the issue has been handled only by the FCC's International Bureau. The agency has interpreted its January waiver giving LightSquared a conditional go-ahead for its network of high-powered terrestrial transmitters as being a minor change in policy that does not need to go to the full FCC board.

If the GPS community does not like the decision of the FCC staff they can petition for reconsideration or they can apply for a review by the full commission, explained Gregg Skall, an attorney specializing in telecommunications law with the firm Womble Carlyle Sandridge and Rice.

"But until the full commission has acted on it — and they have sought all of the relief possible by the FCC — they can't take it to court," said Skall. "The court

would simply send it back to the FCC. It is not 'ripe' for review by the court."

For the GPS community, getting a decision from the full commission could be a something of a problem. FCC Chairman Genachowski, who is widely seen as favoring LightSquared, controls the commission agenda and can delay consideration of matters by the full Commission — an issue that has come up in hearings this spring and something that Congress is considering changing.

An appeal could sit for a while, confirmed Skall, but "I would doubt that it would sit for a terribly long period of time. They like to avoid high profile, controversial issues."


If necessary, the GPS community could petition the U.S. Court of Appeals to force the commission to act. Furthermore, if the GPS community believes that the waiver granted to LightSquared does not give them the level of protection, they are entitled to under the rules,

"they could appeal it to the courts to have it overturned or sent back to the commission for further consideration," the attorney added.

Skall, who is not representing anyone involved in the LightSquared/GPS debate, spoke to *Inside GNSS* only about FCC procedure and not about the merits of the LightSquared/GPS arguments.

Conceivably LightSquared could also appeal the FCC's decision to the court.

"If they are denied their waiver, they could go to the commission and ask for a review, they could ask for reconsideration," said Skall. "If the commission turns them down on their waiver they could conceivably go to the Court of Appeals."

But if you are asking for a waiver of a rule, said Skall, you have a much greater burden to show that the commission either abused its discretion or acted contrary to the weight of the evidence. "That is a very heavy burden." 

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