January 28, 2013

PUBLIC DOCUMENT

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Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
Room 2099B
14th Street and Pennsylvania Avenue NW.
Washington, DC 20230.

ATTN: Brian Baker, Director, Electronics and Materials Division
Office of National Security and Technology Transfer Controls

Re: **RIN 0694–AF64**

Dear Mr. Baker:

Globecomm Systems, Inc. ("Globecomm") respectfully submits these comments in response to the November 28, 2012 notice of proposed rulemaking published by the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") concerning military electronic equipment. See "Revisions to the Export Administration Regulations ('EAR'): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List ('USML')," 77 C.F.R. 70945 (November 28, 2012). Globecomm is concerned that the new 600-series in Category 3 of the Commerce Control List ("CCL") could inadvertently capture dual use communications equipment. In particular, the use of design-intent, catch-all criteria in the proposed export control classification number ("ECCN") 3A611, paragraph (a), could potentially result in new licensing requirements for products that currently are EAR99 or are controlled elsewhere on the CCL.

I. Globecomm Background

Globecomm, a U.S. company headquartered in New York, with approximately 500 employees, is a leading global provider of managed network communication solutions. The satellite-based communications products and services that Globecomm offers include pre-engineered systems, systems design and integration services, managed network services and life cycle support services. Globecomm's customers include communications service providers, commercial enterprises, broadcast and other media and content providers, and government and government-related entities. As a provider of satellite communications services and systems, this proposed rule could impact several of its products. For more information, see: www.globecommsystems.com.

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II. Comments

Globecomm supports the regulatory efforts to migrate certain computers, telecommunications equipment, radar and other electronics equipment that are not inherently military from the United States Munitions List ("USML") Category XI to the CCL. Globecomm also strongly supports BIS' stated intention that this proposed new 600-series should "not increase the number of destinations to which a license is required, alter the policy under which license application are reviewed or create any apparent instances of an item that is subject to the EAR being covered by more than one ECCN." See 77 Fed. Reg. at 70946. However, Globecomm is concerned that the proposed new rule could inadvertently control certain products that are inherently dual use and controlled elsewhere on the CCL, through the use of broad catch-all language.

Whereas the proposed USML revisions would convert Category XI into a more positive list, the proposed ECCN 3A611 reverts to the design-intent criteria that the export control reform initiative is intended to eliminate. In particular, Globecomm notes that the proposed ECCN 3A611, paragraph (a), applies to "any radar, telecommunications, or computer equipment, end items, or systems 'specially designed' for military use…." This design-intent language could create confusion, for example, as to licensing requirements for communications products that are presently controlled under ECCNs 5A002, 5A991 or EAR99, and which operate in frequency bands used by military customers.

Many U.S. companies in the electronics sector, in order to remain economically competitive in the global market, need to develop products that can be configured to operate in frequencies for civilian and military applications. It is common for communications systems configured for military customers to be assembled with commercial-off-the-shelf ("COTS") equipment. In such cases, it would be typical for the manufacturer to develop a standard prototype and then offer the system in whatever frequency range the customer specifies. The system would perform an identical function and employ the same technology in transmitting and receiving communications signals, regardless of whether it is set to operate in a traditionally military-allocated or civilian-allocated frequency band.

The dual use nature of such products is bolstered by the fact that frequency bands historically designated for military satellite communications (e.g., X-band or Ka-band) are increasingly becoming commercialized. There have been several CJ rulings issued classifying X-band and Ka-band components as ECCN 5A002, 5A991 or as EAR99. (See the attached chart for examples published on the State Department's website). If communications equipment currently controlled under ECCNs 5A002, 5A991 or EAR99 were pulled into the new ECCN 3A611, on the basis of frequency configuration for a military customer, this would have the effect of increasing controls rather than reforming controls.

Globecomm recommends that paragraph (a) should be clarified to enumerate specific categories of items, along with particular thresholds and parameters. Globecomm also suggests that the proposed ECCN 3A611 be modified to explicitly exclude items that are comprised of commercial available components. A similar exclusion already exists in the USML Category XI, paragraph (c) for parts and components, and it would be an appropriate carve-out alongside the

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"specially designed" language in ECCN 3A611. To that end, Globecomm proposes the addition of the following note to the proposed ECCN 3A611:

> "**Note:** This ECCN does not control equipment or systems that are comprised of parts, components, or accessories in normal commercial use, which operate in a frequency range allocated for military use."

* * *

Globecomm appreciates this opportunity to submit these comments for consideration. We would welcome the opportunity to answer any questions BIS may have concerning the issues raised in these comments.

Respectfully submitted,

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Attachment:

- CJ Chart for Communications Equipment

ATTACHMENT
COMMUNICATIONS EQUIPMENT CJ CHART

Model Name	Manufacturer	Description	CJ Determination	Date
Raptor 45 cm X-band USAT (Version 1)	Integral Systems Inc. (Satcom Solutions division)	Portable Ultra Small Aperture Terminal for Satellite Communications	ECCN 5A991.g.	06/24/2011
LB61 Series X-Band Low Noise Block Down Converter (LNB) X-Band Series	Locus Microwave	High Frequency Low Noise Block Down Converter	ECCN 5A991.g.	07/14/2011
Auto-Explorer Ka-band AUTOXKAC-1.2	Globecomm Systems Inc.	Portable communication terminal - sends and receive data signals via Ka-band satellite	ECCN 5A002	09/06/2011
X-Band Low Noise Amplifiers L61000 Series	Locus Microwave Inc.	High Frequency Low Noise Amplifiers	EAR99	09/21/2011
40 Watt Ka-Band Block Up Converter 01-323A	EM Solutions Pty Ltd.	40 Watt Ka-Band BUC	EAR99	10/18/2011
X-Band Feed Assembly 10A0100 & 12A0100	Overwatch Systems, Ltd.	X-band feeds that are used on GATR Technologies' deployable SATCOM antennas	ECCN 5A991	11/23/2012

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