Jeffrey M. Swarts (*Pro Se*)
308 South Cedar Street
Danville, OH 43014-0289
(740)-599-6516
swarts@ecr.net

UNITED STATES BANKRUPCTY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Lead Case No.
TERRESTAR CORPORATION, *et al*	)	11 CV 10612 (SHL)
TERRESTAR NETWORKS, *et al*	)	10 CV 15466 (SHL)
DEBTORS IN POSSESSION	)	

OBJECTION
OF JEFFREY M. SWARTS

IN RESPONSE TO:

THE TSC DEBTORS' 3nd AMENDED PLAN OF REORGANIZATION

BACKGROUND

1. I, Jeffrey M. Swarts, am a shareholder of Terrestar Corporation (TSC), currently holding 468,000 common shares. In addition, I previously filed a derivative claim in the amount of **$960,342.13** in each case of the above-captioned debtors. [1] I have previously requested an Examiner to evaluate the debtors' assets and the appointment of a Trustee to manage the debtors' affairs in bankruptcy. [2] [3] The motion was joined by Mohawk Capital in Docket #203. Aldo Perez also joined the request in a personal letter to the court. The debtors and other numerous parties higher up in the

[1] TSN Claim #129 and TSC Claim #142. The court denied the Swarts Claims following a hearing on March16, 2012.
[2] TSN Docket #200 ORDER DENYING REQUESTS OF JEFFREY M. SWARTS
[3] Exhibit A-179_10612-TSC-Valuation Objections of Jeffrey M. Swarts

capital structure, other than Mohawk Capital, objected to an examiner and continued to do so in subsequent filings to the court. The debtors' recently requested and were granted the court's permission to retain RKF Engineering for $45,000 to perform such an evaluation. The debtors objected to numerous requests for an examiner by citing the cost to the estate and delay to exiting bankruptcy, but they have now taken the same course themselves. Apparently, the cost and delay is not excessive if they get the report they want.

2. I provided supplementary documents to the court on September 13, 2011 [4] and a hearing on the matter was conducted on September 19, 2011. [5] The court denied the request under §1104(a)(2) in its order of September 23, 2011. [6] Subsequently, on or before October 11, 2011, Aldo Perez through counsel filed numerous requests of the court including a formal Examiner Reconsideration Motion. [7] I joined Mr. Perez's request on November 13, 2011. [8] A hearing on the matter was held by the court on November 16, 2012. The court's order denying the motion was filed on November 30, 2011. [9] On January 5, 2012 Mr. Perez filed an appeal of Judge Lane's examiner order. [10] His statement of issues and designation of contents was file on the same day. [11]

3. Thus far examiner requests have been argued under §1104(a)(2), based upon the $5 million debt threshold that makes an examiner request mandatory. Other efforts by shareholders to argue that an examiner should be appointed under §1104(a)(1) have been ignored, rebuffed or suppressed by the debtors and other parties. Now the debtors have petitioned the court to allow them to hire their own hand-picked examiner, RKF Engineering, whose mission has been circumscribed by TSC General Counsel and Secretary, Douglas Brandon, as follows:

[4] 200_10612-TSC-Supplementary Documents of Jeffrey M. Swarts
[5] 213_10612-Transcript-Examiner Hearing Request
[6] 217_10612-TSC-Order-Examiner Denial
[7] 232_10612-TSC-Aldo Perez-Examiner Reconsideration Motion
[8] 272_10612-TSC-Joinder of Jeffrey M Swarts to Perez Request for Reconsideration
[9] 290_10612-TSC-Order-Aldo Perez Request for Reconsideration Motion for an Examiner
[10] 334_10612-TSC-Aldo Perez Appeal of Examiner Denial Order

> "RKF Engineering will assist the TSC Debtors in analyzing the technical and engineering aspects of the 1.4 Spectrum and potential scenarios for maximizing the value of their primary assets." [12]

However, it is doubtful that common shareholders and other parties, including creditors, will have transparency into this process, let alone access to RKF's working papers. [13] Who will be the actual consultant who does the valuation and makes the recommendation? What are his credentials? Does he have any prior associations with the debtors or its crony investors? A brief search of RKF shows that the company is really a consulting company, or "job shop" that hires "experts" to perform specific duties for their clients. Who is the spectrum expert that they have hired?

4. The 3rd plan contemplates that all proceeds from a liquidation, exceeding the allowed claims of the company, will go to the preferred "designated holders", who are for the most part, with the exception of Highland, post-petition bankruptcy speculators. [14] This provision, 119 – "Sale Distribution" puts the cart before the horse Your Honor. It assumes a 1.4 GHz spectrum valuation that minimizes the value of the asset, without providing an independent audit of the asset. A valuation by a job shop consultant hardly constitutes expert testimony.

5. We have been told repeatedly by the debtors, following the filing of the 1st and 2nd POR's, that the spectrum lease was encumbered and that the spectrum lease valuation was "likely" "below market value". However, now that the sweetheart lease to Harbinger-owned Lightsquared division, One dot Four, has been abandoned, a market test is not even on the table. What is their excuse now Your Honor? Do the debtors already have a letter of intent to purchase the license or the company? If so, why haven't they disclosed this material information? If not, why haven't they made a motion under §363?

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[11] 335_10612-TSC-Perez Designation of Items & Issues
[12] 510_10612-RKF Engineering Solutions Declaration
[13] 497_10612-Motion to Retain RKF Engineering
[14] 513_10612-3RD Plan of Reorganization; Article 1 – 119 "Sale Distribution", pg. 10

6. Why haven't the debtors provided the court with a valuation of the Terrestar Global orbital slot over Europe? Do they own an orbital slot over Asia? If not, where did it go? The original Terrestar business plan contemplated three satellites with worldwide coverage. A value for the European slot does *not* exist on the balance sheet as a separate line item. However, I know from my experience on the Loral equity committee that this sort of slot is worth $25-$40 million. [15] Perhaps those values do not appear because it was never the debtors' intention to maximize the value of the remaining assets of the company. [16] This is just one more example of a valuable asset being minimized by the debtors.

NOTES TO:
THE DEBTORS' 3rd PLAN OF REORGANIZATION

7. In their notes, pg. ii, the Debtors state that "much of that financial information has not been audited." The debtors have resisted every effort to have their finances audited by an independent examiner. There is no equity committee. There is no UCC at TSC. There are only the "facts" as stated in the debtors' Disclosure Statement, which have, by their own admission, not been audited. They state, "Nothing in this plan may be relied upon or used by any other entity for any other purpose." With that statement they exonerate themselves for any misstatements of "fact" or their valuation estimates.

8. They also state in their notes, "Any analyses, estimates or recovery projections may or may not turn out to be accurate." However, as they have resisted every effort to have a third party examine their assets, they have unilaterally increased the probability that their valuation estimates will be inaccurate. One cannot *fairly* absolve oneself of accountability for one's financial estimates

[15] Exhibit B-1510-Loral Hearing Transcript; the Loral court allowed the debtors to pay up to $40 million to New Skies *not* to deploy a GEO satellite in the slot at 121 W.L. in the year remaining on the New Skies license. New Skies was eventually paid $32 million New Skies to let the license expire. Dan Goldberg, CEO of New Skies, subsequently became CEO of Telesat, the new managing owner of Loral Skynet.

and valuations, while simultaneously denying others the means to check those estimates and valuations. I object to this combination of conditions that simultaneously absolve the debtors of accountability and prevent other parties from seeking statutory remedies that would mitigate and minimize such occurrences.

9. The Debtors also state in the Disclosures at pg. 2) -5 that “The TSC debtors believe that their businesses and assets have significant value that would not be realized in liquidation, either in whole or in substantial part.” These are precisely the arguments that common shareholders made when TSN was put up for auction.

10. The Debtors also try to preclude the filing of competing plans by stating, “The TSC Debtors also believe that any alternative to Confirmation, such as an attempt by another party to file a competing plan, would result in significant delays, litigation and additional costs, and could negatively affect the value of the TSC Debtors estates, which could ultimately lower the recoveries for all holders of Allowed Claims and Equity Interests.” Or, conversely, as shareholders believe, a market test is the only way to avoid doubt about the true value of the 1.4 GHz spectrum. Both are statements of belief and contain speculation. However, shareholders have the preponderance of evidence and reason on their side. I shall attempt to convey this evidence and reason to the court as it is the basis of my objection to Confirmation of the plan. [17]

SPECTRUM VALUATION CONSIDERATIONS

11. Insiders of the company, including Echostar, Harbinger and Highland, who own or have owned, in combination, controlling positions in every class of the debtors’ securities, are engaged in self-dealing with a malleable and complicit management. They are involved in similar

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[16] Ibid; The Loral court-approved value of the slot at 121 W.L. of $40 million somehow never informed its decision 1-1/2 years later when the court found only $10 million in value for all of the dozen or so remaining orbital slots of the company.

[17] Previously submitted pleadings and exhibits to the court are incorporated herein by reference.

machinations at DBSD, the former North American division of ICO, recently renamed Pendrell Corporation (PCO). I believe that the managements of these companies primary purpose, for the past half-dozen years, has been the conversion of ownership of extremely valuable FCC licensed public spectrum to their crony insider investors. These insiders in the Terrestar cases, Echostar, Harbinger and Highland, once having locked up the 1.4 GHz spectrum assets of TSC in a highly questionable lease to Harbinger, controlled the fulcrum security in TSC as well – the preferred shares – before they were sold to funds which speculate on distressed issues. Echostar, Highland and Harbinger forced the Chapter 11 petition of the debtors through their intransigence, when the debtors sought to renegotiate the maturity date and other structural terms of the preferred equity in early 2010. That was just two years after the Preferred Series E was issued and the common shares authorized were increased to 240 million. [18] The unconsummated preferred exchange tender, with the benefit of hindsight, now appears to be a clever ruse designed to give cover to the very insiders who now have divided the assets of DBSD and Terrestar in a carefully choreographed dance of bankruptcy petitions in both cases. Very little has been left to chance.

12. In both Terrestar Chapter 11 cases, the companies' spectrum, i.e. the 2 GHz band in TSN and the 1.4 GHz band in TSC, are intangible assets of widely recognized but disputed value. Terrestar's financial advisors have grossly understated the spectrum values. For example, DBSD, a congruent company, with virtually identical spectrum to TSN's, was also sought and recently purchased by Echostar out of bankruptcy. Early in the bankruptcy proceedings of both DBSD and TSN, Echostar attempted to take each company with DIP financing facilities of $87.5 (DBSD) and $75 (TSN) million. Judge Gerber's court, which has been administrating the DBSD bankruptcy, and this court, wisely rejected these transparent efforts by an insider of both companies to buy each

[18] Exhibit C-SEC-TSC-f22884pre14c; The offering was signed by then General Counsel and Secretary Jeffrey W. Epstein, current CEO of the company. Jefferies & Company, Inc provided Annex C, the Fairness Opinion, pg. 36-40.

company from itself, as controlling owners, at a price its hand-chosen management had set. The net result is that Echostar bought both companies in court-sponsored auctions from themselves and the creditors, for a combined value of $2.775 billion. ICO, the majority shareholder of DBSD, received approximately $300 million in the buyout from Echostar. The current TSC plan discloses that the unrestricted common shareholders will not receive a distribution. Apparently, however, the restricted shareholders, including management will, *contrary* to the absolute priority rule and the *fair and equitable* provisions of §1129.

13. Ordinarily, and consistent with TSC's balance sheet, spectrum value is an intangible asset of the company. TSC's spectrum value of for the 1.4 GHz spectrum is listed as an intangible asset of $177.48 million. However, although the combined "satellite assets" of DBSD and TSN are listed in their respective balance sheets at $1.58 billion neither breaks out a meaningful spectrum value as an intangible asset of either company. DBSD lists "$551.6 million" for its "satellite system under construction". DBSD lists *no separate value* for its intangible spectrum assets. [19] TSN did list a separate value in its balance sheet for virtually identical 2 GHz spectrum at $721.5 *thousand*. [20] Your Honor, these values are completely inconsistent with known valuations previously associated with both companies.

14. The DBSD estate asset values bear no resemblance whatsoever to those offered by ICO in a confidential, private debt offering in June of 2005, previously submitted to the court in my objection of November 16, 2010. The pertinent details of the ICO offering, which are in utter conflict with its own DBSD monthly balance sheet in bankruptcy, follow: [21]

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[19] Exhibit D-1179_13061-DBSD Monthly Operating Report July 2011.pdf, pg. 1
[20] Exhibit F-745_15446-TSN Monthly Operating Report-July 2011.pdf, pg. 3
[21] Exhibit E-ICO Debt Offering, pg. 6 or pg. 14 of the PDF

II. Investment Highlights

Potential for Up to 20 MHz of Nationwide Spectrum Offering Ubiquitous `Coverage.
ICO [DBSD] has the potential to receive up to 20 MHz of nationwide 2 GHz spectrum. The FCC has already assigned ICO 8 MHz in the 2 GHz band. This authorization allows the Company to serve the entire U.S., Puerto Rico and the U.S. Virgin Islands, which collectively represent approximately 300 million POPs. As a result of recent FCC actions, the Company believes it is likely to have 13.33 MHz (4.0 billion MHz POPs) in the next several months and could ultimately be granted 20 MHz (6.0 billion MHz POPs).

Access to Spectrum Could Enhance Value of ICO.
ICO should be an attractive partner to communications and media providers. Recent large U.S. spectrum transactions in the 1.9 GHz band have a established a median valuation of $1.64 per MHz POP. Using this valuation benchmark, the value of ICO could be enhanced by $4 billion to $10 billion depending on the amount of spectrum ultimately assigned to ICO.

15. Jefferies & Company, Inc. and specifically, Michael Henkin, the Senior Vice President, is listed on the Joint Placement Agents page, *iii*, of the debt solicitation. At the time of the debt solicitation, and as the former Vice President of Business Development for Loral in the late 90's, Mr. Henkin had a deep, *expert* understanding of the value of the spectrum and the satellites then under construction at Loral for both ICO (DBSD) and Terrestar. Contemporaneously, he and Jefferies were acting as financial advisors to Loral's Official Unsecured Creditor Committee, represented by Daniel Golden and Akin Gump's bankruptcy group – currently the debtors' attorneys in the Terrestar Chapter 11. [22] [23] Not surprisingly, Mr. Henkin's involvement in the Loral bankruptcy proceedings was never disclosed in any known Loral Chapter 11 pleading. However, it was disclosed in a contemporaneous financial analysis conducted for creditors of Federal Mogul,

[22] Exhibit G-Federal Mogul-Expert Valuation Report, pg. 9 and 10
[23] Exhibit H-Loral-Jefferies Expert Report

including Mr. Icahn, Mr. Subin and Sonnenschein, Nath and Rosenthal, LLP, which subsequently was hired by *de facto* equity committee chairman, Neil Subin. [24]

16. Mr. Subin also insisted on hiring Chanin Capital Partners, which had been a former employer of Jefferies & Company financial advisor, William Q. Derrough. Mr. Derrough was also an owner of Chanin until at least 2004, when he filed FEC papers related to a campaign contribution. Judge Drain, who had previously worked bankruptcies with both advisors, while still in private practice, understood these conflicts-of-interest, but never disclosed them in any known court proceeding or did anything to mitigate their deleterious effects to Loral's equity interests. In my opinion Mr. Belinsky and Sonnenschein "threw the fight" in the Loral confirmation hearing, ensuring that Loral equity holders would not receive a distribution in service of their longstanding crony investors. Mr. Wolfson, the head of Sonnenschein's bankruptcy group actually had the audacity to advise me to "buy the bonds". John Bicks, his second in command, had extensive prior associations with Raymond L. Steele, a high profile distressed debt speculator and short-seller of Globalstar and Loral common shares. [25] Mr. Bicks knowingly and corruptly manipulated my trust prior to my deposition. In addition, Sonnenschein advisors refused to depose Michael Targoff despite numerous requests by me to do so. The official equity committee "professionals" were hopelessly conflicted, conditions that became clearer as confirmation approached and their depositions of company and creditor parties showed with great clarity. In depositions they did not ask a single question about the Terrestar, ICO or Echostar satellite orders.

17. On February 29, 2008 TSC filed a SEC Schedule 14C-PRE in which Terrestar described new issues of Preferred stock to Echostar and Harbinger. The funds came to Terrestar

[24] Mr. Ichan was the former employer of Mark H. Rachesky, current principal of MHR Fund and current Chairman of Loral and Leap Wireless. Michael Targoff was the "agent" for Mr. Rachesky in both the Leap and Loral takeovers.

[25] During this period, Mr. Steele acted as the CEO of Motient and was a member of the BOD of Motient, Terrestar's predecessor corporation. Motient had at the time only recently emerged from Chapter 11 itself.

from Harbinger and Echostar transferred the 1.4 GHz spectrum Echostar had won at auction in return for its preferred shares. Both investments increased the equity value of the company. Jefferies wrote the "fairness opinion" attached to the document. [26] In the Schedule 14C-PRE, pg. 20, Jefferies defined the TSC 1.4 GHz spectrum values as follows:

> "Jefferies calculated the projected low, median and high value of the 1.4 GHz Band Spectrum to the Company under each business plan. Jefferies then summed the low, median and high projected values of each business plan to calculate aggregate low, median and high projected values of the 1.4 GHz Band Spectrum to the Company, assuming successful implementation of the proposed business plans. The resulting low, median and high projected values of the 1.4 GHz Band Spectrum to the Company were $533.4 million, $670.3 million and $856.2 million, or $0.23, $0.29 and $0.37 per MHz POP acquired in the Transactions, calculated using a discount rate of 20.0% and a terminal growth rate of 6.0%. Jefferies compared these values to the amount paid by the Company per MHz POP in the Transactions."

18. Since Mr. Henkin provided the buoyant valuations of the ICO 2 GHz spectrum in the 2005 ICO Debt solicitation, one assumes that when Jefferies was hired to do the Fairness Opinion for the TSC Schedule 14C-PRE, that he was also deeply involved in its valuations as well. So, to summarize, Jefferies found an implied value of $4-$10 billion for ICO's 2 GHz spectrum in 2005 and $533.4-$856.2 million for the TSC 1.4 GHz spectrum in 2008. Curiously, no such values are even remotely referenced or implied in any of the current balance sheet data of DBSD, TSN or TSC.

19. There is no doubt that Jefferies and Akin Gump assisted Loral, during its Chapter 11, in the concealment of significant satellite manufacturing contracts and minimization of Loral's intangible asset valuations, including those of its orbital slots, real estate and intellectual property. There is no doubt that the methodology employed by Jefferies, and indeed, all of the Loral financial advisors, Discounted Cash Flow (DCF) methodologies, did not capture the full value of Loral's satellite manufacturing division, SS/L. There is no doubt that DCF's are fatally flawed when they

[26] Exhibit C-SEC-TSC-f22884pre14, Annex C-1, C-2, C-3 & C-4

attempt to capture the value of high technology companies in development stages, such as DBSD and Terrestar. There is no doubt that ICO (DBSD), Terrestar and Echostar, with Mr. Henkin's active involvement, assisted Loral in concealing satellite contracts valued of as much as $1- $1.1 billion dollars before, during and after the Loral Confirmation Hearing. The Loral court-confirmed POR promoted estate valuations that did not adequately represent the value of the Loral estates. That is now abundantly clear.

20. The spectrum valuations of these companies have been all over the map, but one thing we do know is that the general trend for spectrum demand and pricing has been generally up, particularly high speed spectrum with a nationwide footprint, like TSC's 1.4 GHz spectrum. Both TSN and TSC, have at various times, been described by its management as a "development stage company". Each is attempting to use a valuation methodology, DCF's, which is fatally flawed for development stage companies. Development stage companies, by definition, have no revenues, so how can DCF's provide any meaningful metrics by which to measure future performance and therefore, the true value of their assets?

21. Using DCF's to value TSC's 1.4 GHz spectrum will lead to a similar outcome in these cases. A $2 million per month vacated lease on this spectrum is an inadequate and flawed valuation metric. The lease was put into place with an insider of Terrestar, Harbinger, a firm that was concurrently attempting to build Lightsquared, a company that was intended to compete directly with Terrestar. So, how can it be now, that this 1.4 GHz vacated lease, mired in multi-layered conflicts with an insider and competitor of the company, Lightsquared, can legitimately be used as a basis to develop DCF valuations by the debtors?

22. Any valuation based upon such a tautological construct is by its very nature, fundamentally flawed. And, it is entirely inconsistent with the prior Jefferies valuation of the same

spectrum of **$533.4-$856.2 million** in the February 29, 2008 Schedule 14C-PRE that created key fulcrum securities to deny any distribution to common shareholders in the event of a Chapter 11 petition. By then, in retrospect, the debtors knew that they would likely file for bankruptcy, but continued promoting the common stock anyway. The use of the company's own prior 1.4 GHz valuation would assure a distribution to all TSC's classes and certainly proves that TSC is not hopelessly insolvent. Since management is responsible for putting all these onerous conditions in place, their business judgment is clearly shown to be self-serving, conflicted and impaired.

23. The lease was *not* an arms length transaction and likely could be prosecuted as fraudulent conveyance – and would be, if the debtors' management were not also controlled by shares held by Harbinger, Solus and Highland. A vacated 1.4 GHz lease *cannot* properly be used to value the spectrum, contrary to the methodology used by Blackstone.

THE 1.4 GHz SPECTRUM ECOSYSTEM

24. TSC acquired all of the 1.4 GHz licenses, or rights to use these licenses, from or through EchoStar. It has the right to broadcast nationwide in the 1.4 GHz spectrum, which consists of an aggregate of 8 MHz of 1.4 GHz spectrum. The FCC adopted a flexible use standard for this band, allowing the licenses to be used for both fixed and or mobile services, including wireless internet, high speed data transfer services as well as advanced two-way mobile and paging services. The license term is for 10 years, and will expire in April 2017.

25. The licenses, like many FCC licenses, are subject to requirements to build out the license area during the ten-year license term. In the case of the 1.4 GHz Band Spectrum licenses, the license holders must make a showing of "substantial service" in their license areas within the initial 10-year license term. "Substantial service" is defined by the FCC as service which is sound,

favorable and substantially above a level of mediocre service which just might minimally warrant renewal. Terrestar states in the original 14C PRE of 2008:

> "The 1.4GHz Band Spectrum would provide the Company with additional capacity to both augment existing products and services and enter new markets and product segments. The Company contemplates using the 1.4 GHz Band Spectrum to enter the emerging femtocell market, thereby alleviating certain spectrum interference issues and providing a quality of service level the company believes is not attainable with existing spectrum. Utilization of the 1.4 GHz Band Spectrum for this application would require additional investment for build out, as well as further investment in the existing chipset/software platform."

26. That was 4-years ago. Significant changes have occurred in this technological ecosystem, including the development of multiband combined satellite/land segment interoperable base stations by Harris Corporation. These radio systems can connect to multiple bands from 30 MHz-2 GHz in satellite or land wireless modes. [27] This includes the Lightsquared's 1.6 GHz band, DBSD and Terrestar Networks' 2 GHz Mode and Terrestar Corporation's 1.4 GHz spectrum bands in wideband or narrowband configurations. The technological ecosystem exists and was developed by Harris, the same company that built the large unfurlable antennas deployed on the ICO-1, TS-1, TS-2 and Skyterra-1 satellites. These GPS-enabled base station radios are capable of connecting to new narrowband Harris P25 radios designed to work in the VHF and UHF frequencies. They are also capable of IP-based data communications with NSA certified encryption.

27. Funding issues for First Responder communications have been resolved with Congressional approval of legislation to provide $7 billion to build and operate an advanced public safety network – Terrestar Corporation's target market. This is a significant development that will have a marked impact on the valuation of the TSC estates. Furthermore, and unbeknownst to TSC equity holders, Lightsquared, while still holding the 1.4 GHz spectrum lease, pursued spectrum sublease arrangements with utilities. These included First Energy, which was running a pilot project

[27] Exhibit I-Harris-Satellite-AN-PRC-117G(V)1(C); pg. 2.

to develop smart metering technology in several small, rural markets. Airspan, a major technology developer for public safety, transportation and utility markets, among others, is marketing what they call “Airspan Solution for Smart Utilities in 1.4 GHz Band”. [28] The service is touted by the company as follows:

> “Enabling Smarter, Faster Communication with Exclusive
>
> “1.4 GHz Spectrum and Infrastructure Airspan enables Utilities to re-define communications networks by incorporating next-generation, 4G technology on a private, secure network in the 1.4 GHz band. With dedicated spectrum and Airspan advanced technology, Utilities can bring a new level of automation, management and efficiency to their network.”

The system and product offerings are substantial and belie the debtors’ assertions in the Examiner Hearing of September 16, 2011 that the technological ecosystem in the 1.4 GHz band is immature. Ms. Schultz in her argument during the Swarts examiner motion hearing that day stated the following (emphasis added) with regard to the valuation of the 1.4 GHz spectrum assets of TSC: [29]

> MS. SCHULTZ: Your Honor, we do believe that Mr.
> 21 Swarts has failed to provide any factual support, frankly. And
> 22 Mr. Sorkin will address, at the very end of our conclusion, why
> 23 we don't think that the documents that he has submitted are
> 24 relevant, why they're improperly authenticated and why they
> 25 shouldn't be considered as evidence.
>
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>
> 1 But if I could just speak to a couple of the things
> 2 that have been raised by Mr. Swartz and I'll try to be concise.
> 3 Instead of concrete evidence in support of his valuation
> 4 allegations, *Mr. Swartz attempts to use outdated, pre-lease*
> *5 reports, reports that are unrelated to TerreStar Corporation*
> *6 and attempts to extrapolate the value of the 1.4 spectrum from*
> *7 the value realized from the 2.0 spectrum in DBSD and TSN.*
> 8 First, Your Honor, if I could address why it's
> 9 inappropriate to extrapolate the value from the 2.0 spectrum to

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[28] Exhibit J-Airspan_Smart_Grids_1400_Brochure-2; this PDF was created by Airspan on 4/18/2011.

[29] Exhibit K-Transcript of Examiner Hearing-101568413_1[1]-1; pg. 60-63

the 1.4 spectrum. These are very different spectrums. It's not just that they're located six-tenths apart on the spectrum; they are very different. They have very different restrictions with respect to how they can be used.

First of all, there are technical parameters with respect to the 1.4 spectrum. Power transmission is restricted on the adjacent spectrum bands which makes it difficult to -- it limits the transition strength. It means that you have less effective signals and, frankly, at this time, makes it impossible to use the 1.4 spectrum for broadband, which is what Mr. Swarts was asserting. He said, you know, look at all of the cell phones that are out here and everybody's got SmartPhones and therefore clearly the 1.4 must have value.

Unfortunately, that's not the case. We would love nothing more than for there to be some wonderful, technological, you know, evolution that says hey this 1.4

spectrum has got an increased value because now it can be used for SmartPhones. That's just not the case.

Additionally, the 1.4 spectrum has unfavorable spectrum configuration. *These bands are comprised of eight megahertz spectrum capacity. This narrow configuration severely limits the use to lower bandwidth consuming applications such as smart grids, smart utility or radio.* Again, it's just not usable for broadband and some of those other more profitable things that the 2.0 spectrum can be used for.

And finally, *Your Honor, there's a real underdevelopment of the equipment that can be used for 1.4 because parties aren't out there developing this. Anyone who wants to utilize the 1.4 spectrum is forced to go into development mode themselves, basically, and develop the equipment in order to utilize the spectrum.*

All of these things, frankly, make it inappropriate to extrapolate the value from the 2.0 spectrum to 1.4. And I say that not because I think we're here to look at valuation because I know we're not. But just to provide *Your Honor with the background with respect to why we do not believe that it's appropriate to look at values that were received by DBSD, values that were received by TerreStar and which are valued by any other entity that may play in this market but who had more valuable spectrum.*

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Additionally, Your Honor, there have been allocations that this lease is under market. First and foremost, I want to say the debtors have not admitted, as Mr. Taub indicated, that this is an undermarket lease. Rather, what we believe Mr. Taub is referring to is a risk factor that's contained in our disclosure statement. *It's a risk factor that says that this might be under market. Not that we think it is. Not that we admit that it is but it might be under market. This is no different than a risk factor that a party puts in a plan or disclosure statement that says this plan may not be confirmed. It's a risk factor. This is what goes in a disclosure statement.*

But I think it's really important to talk about the lease. *The spectrum lease, as I said at the beginning of this presentation, is held by TerreStar 1.4 Holdings LLC, a nondebtor entity. Mr. Swarts, and potentially Mr. Taub, have asked this Court to fashion some sort of a relief that would somehow alleviate the nondebtor TerreStar 1.4 Holdings entity from its obligations under this lease. This is not something that the Bankruptcy Code provides.*

However, even if it did, and somehow the spectrum lease was terminated, this would create an unsecured claim of significant amount with respect to the termination against TerreStar 1.4 Holdings LLC. We believe that that termination claim would suck up any value at that entity and there would be

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nothing to upstream to TerreStar Holdings Inc. on behalf of its ownership interest in TerreStar 1.4 Holdings and nothing to upstream to TerreStar Corporation on behalf of its indirect ownership.

So, Your Honor, taking all of that into consideration, we believe that the only appropriate way to value the equity ownership of TerreStar Corporation and TerreStar Holdings and interim TerreStar Holdings, in TerreStar 1.4, is to look at the money that's coming in under the lease that currently encumbers the assets of TerreStar 1.4 which is the current spectrum lease.

28. Ms. Schultz, in her argument, stressed the lack of development of 1.4 GHz spectrum technology, but as noted previously, Airspan was marketing a complete technological system for the band *6-months before* she made these misleading statements to the court. Equipment for first responders, including P25 radios and wide-band spectrum receivers and transmitters were well along in development by Harris Corporation *at the time these statements were made*. In fact, this equipment has been in development for years. Harris manufactured the huge, low power signal antennas used on both TSN and DBSD's Loral-built satellites. For the debtors to assert now that somehow they did not know about these technology infrastructure developments would be ludicrous. Indeed, the debtors must have known about the First Energy pilot program utilizing the 1.4 GHz band *at the time of the examiner motion hearing* on September 19, 2011. Their statements to the court during that hearing were untrue and misleading because they did not disclose the true extent of these developments or their knowledge of them.

29. Clearly, the debtors have been hiding the ball Your Honor – providing further evidence of why an examiner was and is needed in these cases under §1104(a)(1). The debtors' *ad hominem* arguments against common equity holders' claims of hidden value ignore the clear, established development of technology for the band to the extent that a major US utility, First Energy, is running what appears to be a promising pilot in Ohio, Pennsylvania and Virginia. Your Honor, this sublease is not in just a few cells, it encompasses hundreds of separate FCC-licensed radio cells. So, the automated smart grid is working and being utilized by a major utility on a daily basis. There is no technology deficit in the band, there is only a lack of commitment to deploy it – until the "right people" will benefit – post-emergence.

30. Your Honor, the debtors for 1-1/2 years, through two separate plans of reorganization (POR's) have promulgated valuations to the court that they acknowledge *"might be under market."*

However, they nevertheless used the lease encumbered spectrum as the basis to develop a discounted cash flow valuation for these valuable assets while ignoring precedent transactions such as the 2.0 GHz valuations of both DBSD and TSN. Of course there are differences in spectrum bands, including the 2.0 GHz and 1.4 GHz. However, one might argue that the 1.4 GHz band is inherently more valuable because it does not have a satellite requirement. It already has the land wireless authority being sought by Echostar for the 2.0 GHz band. In fact, Mr. Ergen has argued in papers to the FCC for a waiver similar to that received by Lightsquared to convert its spectrum to land wireless *because of the excessive costs* of launching and maintaining satellite coverage and the cost of dual-mode handsets like the Genus. It is curious that the debtors never requested this variance *before they filed for bankruptcy.* That would have increased the value of TSC's spectrum and allowed the company to refinance its debt on more favorable terms and redeem the preferred before its artificially short redemption date passed.

31. Now that Lightsquared has declared bankruptcy, defaulted on the 1.4 GHz lease obligation, upon which the entire TSC 2nd POR was premised – as I predicted on February 20, 2012 in my Confirmation Objection – the termination claim speculated upon by Ms. Schultz, has been shown to be grounded in paranoid delusion. Now that Mr. Falcone and Harbinger have been charged by the SEC, as I stated would likely happen *at the time* of my Confirmation Objection, perhaps others should be concerned about becoming defendants in shareholders actions. Mr. Falcone and Harbinger have been charged by the SEC with misappropriation of funds (to pay Mr. Falcone's taxes) and securities fraud related to several investments. Apparently, we are going down this "rabbit hole" whether we want to or not. It is the actions of the former controlling shareholder of Terrestar, that hired its current management, that have created these circumstances, not their poor victims who are simply crying out in pain and demanding justice.

32. For nearly two years shareholders of TSC have been subjected to the destruction of their hopes and dreams and their faith in American capitalism. In many cases their life savings have been utterly decimated by these people, Your Honor. And, finally, after the 1.4 GHz lease has been vacated by mutual consent of Lightsquared and TSC, the debtors can't figure out how to market their single most valuable asset. Had they spent the money they are currently spending on RKF Engineering on an examiner last fall, TSC, by now, would be out of bankruptcy. Instead, they chose to spend what remained of their cash assets promoting a plan that was *not feasible and unconfirmable.* Imagine if the court had approved the 2nd POR and forced unsecured creditors to accept the 7-year 6% notes indentures that the debtors filed a SEC T-3 for on January 25, 2012? Imagine TSC's prospects for emergence if they *had not paid* its advisors nearly **$10 million** to promote a POR that was *not feasible and unconfirmable?*

SELECTED PRE-PETITION EVENTS

33. Following is a timeline of key selected events:

2008 Feb – TSC enters into the Echostar Spectrum Agreement on February 5, 2008 to lease the 1.4 GHz Band Spectrum held by Echostar Port with two options

2008 Feb – TSC files PRE 14C on February 28, 2008 in which the 1.4 GHz spectrum is exercised for 30 million common shares going to Echostar. Jefferies does the fairness opinion that valued the spectrum at $533.4 million, $640 million and $856.2 million, or $0.23, $0.29 and $0.37 MHz POP.

2008 May – TSC increases total number of shares from 200,000,000 to 240,000,000, issues additional Preferred Shares in exchange for PIK Notes due 2014 and secures certain rights with respect to spectrum licenses. Jefferies again does the "fairness opinion".

2009 July – TSN launches TS1, commissioning, GBBF testing

2009 Sept – TSC enters into lease of 1.4 GHz Spectrum with LightSquared

2009 Nov – On November 24 in a PRE 14C, TSC increases authorized shares from 240,000,000 to 800,000,000, restated the Certificate of Designations of the Series B Preferred and Series E Preferred. No fairness opinion is offered by TSC this time and Harbinger owns 87,673,303 shares of TSTR.

2010 July – TSC / 1.4 Holdings seeks and receives FCC consent to replace the spectrum manager lease agreement with a long-term *de facto* lease agreement, which was amended October 13, 2010

2010 Oct – TSC amends 1.4 GHz spectrum lease with LightSquared on October 13, 2010. Edward Lazarus, a former partner at Akin Gump, was the FCC Chief of Staff for Chairman Julius Genakowski, when the lease revisions were approved by the FCC.

2010 Oct – TSN files bankruptcy 6-days later on October 19, 2010

2010 Nov – LightSquared (Skyterra) successfully launches SkyTerra 1 on November 14, 2010.

2010 Nov – Elektrobit sues non-debtor TSC on November 19, 2010 in the Supreme Court of New York for $25.9 million as a guarantor of the TSN contract with Elektrobit.

2011 Feb – TSC files for Chapter 11 bankruptcy protection

SPECTRUM VALUATION ARGUMENTS

33. TSN, in Docket #745, valued its intangible assets, primarily consisting of its 20MHz of 2 GHz spectrum, at **$721.5 *thousand***. TSC, in its Disclosures, pg. 3 of Exhibit D, values its intangible assets, primarily consisting of its 8MHz of 1.4 GHz spectrum, at **$177.5 *million***. Although the spectrum characteristics of each vary, because of their locations on the radio frequency spectrum, both spectrum assignments are highly valuable. Where the 2 GHz spectrum is composed of larger contiguous blocks, adjacent to those of DBSD and the PCS band, the 1.4 GHz spectrum has better propagation characteristics and is better suited to land-based cellular service. It

also has DBS, point-to-multi-point authority, a characteristic that is highly sought after, and bid up in auctions by broadcasters. For the purposes of this analysis, I assume that the relative merits and demerits of each spectrum assignment cancel each other.

34. The value of the 2 GHz spectrum has been confirmed by the sales of DBSD and TSN for a combined value of **$2.775 billion**. If one subtracts the value of the three Loral-built satellites and two launches, baked into this number, one can get an approximation value for the spectrum, as the satellites and the spectrum are the main assets of the companies. The satellites cost approximately **$300 million** each to build and launch, according to figures that I was privy to when a member of the Official Loral Equity Committee. Subtracting **$850 million** (TS-2 has not been launched) from **$2.775 billion** leaves **$1.925 billion** as the implied residual value for the 40MHz of 2 GHz spectrum. That translates to as much as **$48.125 million** per MHz. Using this value multiplied times TSC's 8 MHz of 1.4 GHz would provide a spectrum valuation of **$385 million** – not the **$177.5 million** quoted in the TSC balance sheet. This is a minimum valuation produced by two precedent transactions of companies in bankruptcy that were not arms-length transactions – where the buyers were insiders of the company.

35. This is a very conservative valuation based upon precedent transactions in the DBSD and TSN bankruptcies, i.e. the assets were bought in court-sponsored, bankruptcy auctions. Once out of bankruptcy, the TSC assets would be much more valuable to a potential purchaser because the assets would not be subjected to the constant drain to pay for TSC's advisors.

36. This court in its Summary Judgement Opinion on the Sprint litigation over the BAS incumbent claim, released on August 19, 2011, quoted other precedent transactions at other nearby spectrum bands that are much higher. [30]

[30] 10-05461-69-Sprint Litigation Opinion-Sean Lane.pdf; Valuations are in bold type for emphasis.

> The spectrum for which TerreStar holds the S-Band License was previously used for other purposes and was made available to TerreStar only after that bandwidth was cleared by Sprint, a wireless telecommunications carrier. Sprint relinquished its license to the 800 MHz spectrum in exchange for the license to the 1990-1995 MHz spectrum pursuant to an agreement with the FCC. See Improving Public Safety Communication in the 800 MHz Band, 19 FCC Rcd. 14969 ¶¶ 11-12 (2004) (the "800 MHz Order"). Before Sprint could operate in the 1990-1995 MHz spectrum, however, the FCC required Sprint to move the Broadcast Auxiliary Service ("BAS") incumbents already occupying the 1950-2025 MHz spectrum. According to the FCC, Sprint's new license to the 1990-1995 MHz spectrum was worth **$2.801 billion** more than the license to the 800 MHz spectrum. See Improving Public Safety Communications in the 800 MHz Band, 25 FCC Rcd. 13874 ¶ 7 n.13 (2010) (citing 800 MHz Order ¶ 297; Improving Public Safety Communications in the 800 MHz Band, 19 FCC Rcd. 25120 ¶ 31 (2004)) ("The Commission valued the 1.9 GHz spectrum that Sprint is receiving as worth **$ 4.86 billion**, and the spectrum Sprint is giving as worth **$ 2.059 billion**. . . . [t]he difference [of which is] $ **2.801** billion . . . ."). In the 800 MHz Order, the FCC recognized that Sprint could either (a) credit move costs against Sprint's **$2.801 billion** windfall; or (b) seek pro rata reimbursements from other MSS licensees who would subsequently occupy the cleared 1995-2025 MHz spectrum. See 800 MHz Order ¶¶ 261, 329-330. The FCC emphasized that Sprint was not entitled to "double dip" by receiving compensation from both MSS licensees and the FCC. Improving Public Safety Communications in the 800 MHz Band, 25 FCC Rcd. 13874 ¶ 6 (citing 800 MHz Order ¶¶ 261, 329-330). If Sprint failed to obtain reimbursement from the relevant MSS licensees, however, Sprint will be entitled to credit from the FCC against any windfall.

37. The value of the Sprint spectrum vacated was **$2.059 billion**, remarkably similar to the value calculated above for the 2 GHz spectrum bands of DBSD and TSN. In fact, averaged together, the mean value is **$1.992 billion**, or **$49.8 million** per MHz. Fundamentally, the 2.0 GHz and 1.4 GHz cover the same populations, with slightly greater coverage for the 2.0 GHz factoring in Canada's population, which is not covered by the 1.4 GHz band. However, because the POP is virtually the same for both bands, it can be ignored for the purpose of this valuation analysis. The **$49.8 million** multiplied by **8 MHz** provides an implied valuation of **$398.4 million**. When added to the **$233 million** NOL value gives a total estate value of **$631.4 million**. Subtracting "Current liabilities" of **$494 million** leaves **$137.4 million** or **$.99** per common share. Given this analysis, TSC is *clearly not hopelessly insolvent* common shareholders have a right to be represented by

competent council and a financial advisor *paid for by the TSC estates*. These spectrum calculations prove that there is an equity surplus. It is unconscionable that the debtors continue to rely on a spectrum valuation that is clearly below market to value.

38. If one factors in the value of the undisclosed TSC Global orbital slot over Europe with an implied precedent transaction value of **$25-$40 million**, the numbers get even better. A similar orbital slot over Europe in the Loral proceedings (See docket #1510) paid **$32 million** to New Skies *not to populate* its slot with a satellite, with only 1-year left on the slot license. This value alone would add **$.23** per common share of TSC for a total of **$1.22** pps. And yet, this slot is not only *not* described in the Disclosures, it has not been referenced any known docket other than an Akin Gump compensation invoice.

39. The values quoted above for viable businesses are so much higher than anything quoted in the debtors' own filings that the court must look elsewhere to find the truth. Although the §363 auction outcomes are precedent transactions and exceed the efficacy of DCF's in valuing "development stage companies". A lease transaction that united one distressed company, Lightsquared, with another, the pre-petition TSC, in an insider sweetheart deal, cannot be used as an adequate precedent transaction or as a legitimate baseline for Discounted Cash Flow valuation methodologies. This is precisely what the debtors continue to assert by sticking to a valuation that is no longer relevant now that the spectrum is unencumbered. The 1.4 GHz spectrum lease value of TSC, a "developmental stage company", could not adequately be derived using DCF's. It still can't. I objected to Blackstone's valuation methodology before the lease was vacated and I certainly object to it now because it does not represent even a semblance of its market value. It was fundamentally flawed before because it sought to use a *non-arms-length* transaction with Lightsquared as the basis for valuing the spectrum, even though the revenues being derived from

were not mature and artificial. It is still fundamentally flawed because the debtors refuse to put the spectrum to a market test. Clearly, they believe the spectrum has great value or they would liquidate it in a §363 sale instead of trying to jam junior creditors and minority equity holders. Therefore, the 3rd POR does not comport with the "fair and equitable" provisions of the US Chapter 11 bankruptcy code.

40. The values quoted by Jefferies in its SEC filed Schedule 14C-PRE were high enough to allow Echostar to take a fulcrum security position with the preferred in 2008 and they should be sufficient just 4-years later when the demand for spectrum is so much greater. The court's own values quoted in its recent opinion should act as the upper end of the range, where the vacated Sprint spectrum was valued at **$2.06 billion**. That provides an implied value, adjusted somewhere between **$385 million** on the low end, the Jefferies Schedule 14 C-Pre mid-point values of **$533.4 million**, **$670.3 million** and **$856.2 million** and a high end valuation of **$2.06 billion**. The described valuation range is reasonable based upon the consolidated debtors own numbers, published with the oversight of the SEC, in its February 2008 Schedule 14C-PRE; the recent precedent transactions of DBSD and TSN; and the value of the vacated 2 GHz spectrum value published by the court in its Summary Judgement.

41. In her rebuttal to a prior version of the above, Ms. Schultz stated: [31]

> 3 Instead of concrete evidence in support of his valuation
> 4 allegations, Mr. Swartz attempts to use outdated, pre-lease
> 5 reports, reports that are unrelated to TerreStar Corporation
> 6 and attempts to extrapolate the value of the 1.4 spectrum from
> 7 the value realized from the 2.0 spectrum in DBSD and TSN.
> 8 First, Your Honor, if I could address why it's
> 9 inappropriate to extrapolate the value from the 2.0 spectrum to
> 10 the 1.4 spectrum. These are very different spectrums. It's
> 11 not just that they're located six-tenths apart on the spectrum;
> 12 they are very different. They have very different restrictions
> 13 with respect to how they can be used.

[31] Exhibit K-Transcript of Examiner Hearing-101568413_1[1]-1; pg. 60-63

However, Ms. Schultz has no problem continuing to use a spectrum valuation based upon an insider, sweetheart lease which has been vacated because the lessee has filed for bankruptcy, has defaulted on its meager **$2 million** per month payments and has been charged with multiple counts of securities fraud by the SEC.

42. I ask you, Your Honor, which argument has the preponderance of reason underpinning it? As a matter of fact, I have been right about almost everything that I have written to the court about. I am more convinced than ever, following last month's sale of Space Systems\Loral (SS/L) to MacDonald, Dettwiler and Associates Ltd. by Loral for **$1.01 billion**. This price compares with the Loral debtors valuation in bankruptcy of **-$116 to -$103 million**. The Loral examiner found a value of **$98 to $173 million** for SS/L. All of the financial advisors used Discounted Cash Flow methodologies to calculate the value of the Loral estates, including SS/L. The debtors ignored the examiner's findings, as did the creditors, represented by Akin Gump. However, even the examiner's valuation, using DCF's proved to be, *at best*, 1/6 the true value of the assets, once subjected to a market test and sold to MacDonald, Dettwiler and Associates Ltd.

43. The debtors are resorting to the same bag of tricks here Your Honor. Ms. Schultz continues to promote a valuation based upon a transaction that no longer exists. They continue to let their valuation rest upon DCF's based upon a transaction and revenue stream that has vanished into thin air. The debtors continue to oppose any 3rd party valuation, other than that of a "job shop" that they have hired to reinforce their own agenda, which always includes the elimination of their own common equity. The debtors cannot withdraw their plan vis-à-vis the courts prior order extending exclusivity. Thus, the debtors must continue to promulgate a plan and valuation that no longer is *feasible or confirmable*, if it ever was.

44. Ms. Schultz implies in her prior statement that only broadband spectrum is very valuable, which is simply untrue. Most smartphones are not used for media intensive applications. Most are used to retrieve email and text messages and occasionally visit an internet site that provides maps or GPS coordinates. These functions do not require 4G speeds. In fact, most business users would be happy to trade 4G for 2G or 3G, if the coverage were ubiquitous. And, furthermore, as mobile phone users become more sophisticated they realize that downlink speeds are more important than uplink speeds. Most cellular providers are therefore evolving to asymmetric use of their scarce spectrum resources. TSC's 1.4 GHz spectrum is ideal for use as a supplementary downlink channel. UK consulting firm, Plum Consulting, has written extensively about these technologies and their use in the 1.4 GHz band in Europe. [32] The fundamental case for this technology is summarized in the Plum report as follows:

> **"The case for a supplemental downlink at 1.4 GHz**
>
> "In principle, there is a substantial case for harmonizing the 1.4 GHz for supplemental downlink. It:
>
> - "Provides much needed downlink capacity given the asymmetric nature of mobile broadband and mobile multimedia traffic. Downlink to uplink ratios range from 4: 1 to 8: 115 and are expected to increase in future with the rapid proliferation of smartphones and tablets.
> - "Enables considerably higher user data rates and supports a greater number of users, all of which will substantially enhance the user experience.
> - "Equipment for use of the band could be available by 2014 and the spectrum is readily available in Europe and in numerous countries outside Europe (see Figure 3), providing the basis for realizing significant economies of scale, which should drive down equipment costs.
> - "Following the current release of 800 MHz and 2.6 GHz, there are unlikely to be other new bands available on a European basis for mobile broadband and enhanced multimedia services before 2018 or later (see Figure 4). In addition, the frequencies at 1.4 GHz are lower

[32] Exhibit L-Plum_June2011_Benefits_of_1.4GHz_spectrum_for_multimedia_services

> than other bands that could become available before 2020 (e.g. 3.5 GHz) and so have more desirable propagation characteristics (indoor penetration and rural coverage)." [33]

45. The Plum Report states with great clarity, in the last bullet above that, "*the frequencies at 1.4 GHz are lower than other bands … and so have more desirable propagation characteristics (indoor penetration and rural coverage).*" This statement is consistent with what I stated in the September examiner hearing. Ms. Schultz contrasts the spectrum bands as follows:

> Additionally, the 1.4 spectrum has unfavorable spectrum configuration. These bands are comprised of eight megahertz spectrum capacity. This narrow configuration severely limits the use to lower bandwidth consuming applications such as smart grids, smart utility or radio. Again, it's just not usable for broadband and some of those other more profitable things that the 2.0 spectrum can be used for. [34]

Ms. Schultz is only partially right. If the spectrum is configured as a supplementary downlink at an 8:1 ratio to the uplink, the bands would be broad enough to support 3G downloads and WIMAX, if not LTE. As usual, the gap between what the debtors know and what they disclose to the court is substantial. Not only is TSC's spectrum capable of supporting broadband, if configured differently, as the Plum Report indicates, but it is currently being used for smart grid technology by First Energy. The debtors' assertions that the technology in the 1.4 GHz band is undeveloped are plainly false and were false in September when Ms. Schultz stated them in court. First Energy is currently using the band for automated utility metering in three mid-Atlantic rural markets. If the technology were undeveloped, they would not currently be using it in their pilot project.

46. Congruently, if the 1.4 GHz were to be purchased by an LTE-based provider, the spectrum could be used for uplink traffic. For example, if Echostar, the current purchaser of both

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[33] Ibid; pg. 3

DBSD and TSN 2 GHz spectrum, intended to use its spectrum for vehicle, boat and airplane movie downloads, the 1.4 GHz spectrum could be used to communicate from the handset or vehicle communications unit back to the streaming media server. This uplink communication could be very similar to other streaming media services, such as Pandora.com or Netflix.com for example. Narrowband uplinks in this sort of architecture are vital to a rich user experience, but they require relatively little bandwidth compared with the downlink channel(s). Such uplinks are typically text-based, narrowband applications. The debtors would like the court to believe that wireless broadband technology has stood still in the 5-years since the 1.4 spectrum was licensed by the FCC. Nothing could be further from the truth. Echostar's purchase of Blockbuster, also out of bankruptcy, clearly shows the direction of Mr. Ergen's strategy. The foregoing spectrum infrastructure description is entirely consistent with this strategy. And, it shows with great clarity that the debtors have systematically obfuscated the true value of the 1.4 GHz spectrum by "talking down" the asset.

THE NEW NEW TERRESTAR NOTES

47. On February 22, 2012, at which time the Swarts Claims had not yet been denied by the court, I objected to the new Terrestar notes. They were intended to compensate unsecured creditors for their losses. The notes, as described in a SEC Form T-3 contemplated a term of 7-years and an interest rate of 6.0%, notwithstanding the fact that the redemption date contemplated was 2-years past the 1.4 GHz license expiration. The 6.0% interest rate was much too low for notes encumbered by the risks that the 2nd Amended POR entailed. That plan, which the debtors promoted to the court for 6-months, soliciting votes and wasting valuable resources, was premised upon a continuing stream of revenue from the 1.4 GHz spectrum lessee, Lightsquared.

48. As I predicted on February 20, 2012, in my objection to the 2nd POR, Lightsquared has filed for bankruptcy protection and the lease has been terminated by mutual consent. Harbinger

[34] Transcript of Examiner Hearing-101568413_1[1]-1; pg. 61

and Philip Falcone have been charged by the SEC with misappropriation of funds and securities fraud related to other investments of the Harbinger funds. However, as the controlling owner of both Lightsquared and Terrestar, Harbinger and Mr. Falcone no doubt operated under the same ethical principles when the Terrestar Preferred Series B, C, D & E were created in early 2008 and subsequently when the Terrestar 1.4 GHz insider sweetheart lease was signed with Lightsquared. Terrestar's *current* management was hired when Harbinger and Mr. Falcone were the controlling common shareholders of TSC. The "new Terrestar notes" described in the 2nd Amended POR fit an ongoing pattern of *impaired bad faith business judgment* by the debtors' management and advisors.

49. The debtors' 1.4 GHz spectrum valuation, upon which the entire 3rd Plan is premised, is still based upon DCF's derived from a lease revenue stream that no longer exists. The debtors claim to be making progress in their petition to this court for an extension of exclusivity. However, the only progress this investor can discern is the fabrication of yet another strategy to exclude common shareholders from a significant distribution from the estate. Now, having wasted 6-months and *several million dollars* on a POR that was *not feasible and unconfirmable*, the debtors have now concocted a DIP financing arrangement with the preferred, that will allow *the same parties* to cram down minority preferred shareholders, such as Mohawk, and have the same outcome for common shareholders – "0". They are creating a new super-secured DIP claim that – in the event that Elektobit prevails, and has its claim allowed against TSC – it will be immaterial because, they too, will have been crammed down into irrelevancy by the DIP super-priority claim.

50. In my opinion the bankruptcy has been unnecessarily prolonged by the debtors' promotion of plans that had no chance of confirmation simply to burn through the company's remaining liquidity – manipulating the court to accept a DIP financing arrangement with the same

parties. Your Honor, why haven't other parties been solicited to provide post-petition financing? Why haven't the debtors sought a market test of the assets in a court-sponsored a §363 sale? Why have the debtors argued again and again that there are insufficient time and funds for the appointment of an independent examiner to evaluate the 1.4 GHz spectrum and look into numerous claims of misconduct by company fiduciaries and insider investors, while they spend *millions* promoting a plan that is *not feasible and unconfirmable*?

51. The New Terrestar notes of the 2nd POR relied upon a tenuous precept, that the 1.4 GHz Spectrum Lessee, Lightsquared, was and would remain solvent for a period of 7-years. The impairment of the 1.6 GHz spectrum assets transferred from Terrestar that I warned the court about in February interfered with the nationwide GPS system. On February 14th, 2012, just 1-month after the filing of the TSC 2nd Amended POR and the SEC Form T-3 for the New Terrestar Notes, the National Telecommunications and Information Administration wrote to the FCC stating:

> "Based on NTIA's independent evaluation of the testing and analysis performed over the last several months, we conclude that LightSquared's proposed mobile broadband network will impact GPS services and that there is no practical way to mitigate the potential interference at this time. Furthermore, while GPS equipment developers may be able to mitigate these issues via new technology in the future, the time and money required for federal, commercial, and private sector users to replace technology in the field and the marketplace, on aircraft, and in integrated national security systems cannot support the scheduled deployment of terrestrial services proposed by LightSquared."

Subsequent to the initial reports of LightSquared's interference with GPS, LightSquared proposed that they would not operate, or "stand still" in the upper 10 MHz of its band while the interference issues are tested and presumably resolved. However, EXCOM, the Executive National Executive Committee for Spaced-Based Positioning, Navigation, and Timing has concluded as follows:

> "It is the unanimous conclusion of the test finding by the National Spaced-Based PNT EXCOM Agencies that both LightSquared's original and modified plans for its proposed mobile network would cause harmful interference to many GPS receivers. Additionally, an analysis by the Federal Aviation Administration

> (FAA) has concluded that the LightSquared proposals are not compatible with several GPS-dependent aircraft safety-of-flight systems. Based upon this testing and analysis, there appear no practical solutions or mitigations that would permit the LightSquared broadband service, as proposed, to operate in the next few months or years without significantly interfering with GPS. As a result, no additional testing is warranted at this time." [35]

LightSquared, the then 1.4 GHz spectrum lessee and the TSC debtors *pretended* that Lightsquared was solvent at the time, but nothing could have been further from the truth just 1-month after the filing of the TSC 2nd POR. It is incomprehensible that the debtors did not understand these risks when they filed the 2nd Plan. At the time of its filing the 2nd POR was already out of date and was no longer feasible under section §1129(a)(7) of the Bankruptcy Code – if it was feasible before.

52. In addition, the lease, upon which the entire 2nd Amended POR was premised, had not been subjected to a "fairness opinion" other than Jefferies in the PRE 14C that created the Preferred Series B stock of Harbinger, Echostar and now Solus. Although Harbinger and Echostar subsequently sold some, if not all of their preferred shares, the Jefferies' 1.4 GHz spectrum valuation that facilitated the creation of the Preferred Series B, C, D & E in February of 2008 is now nowhere to be found. Instead what we have is a $175-$185 million valuation based upon a vacated lease to an insider of the company that is now just a hollow artifact of a now non-existent revenue stream. Although the spectrum is now unencumbered, and there is no legitimate reason why a §363 sale motion could not be filed by the debtors, we have only management's ethically challenged and impaired business judgment to rely on for the true valuation of the company's largest asset.

53. The financial advisor that did the fairness opinion, vis-à-vis the creation of the Preferred B, C, D & E, Jefferies, suffers from a long and infamous history of debilitating conflicts of interest. Jefferies was the solicitation agent for the ICO Debt Offering. They have been

[35] Exhibit M-NTIA Letter to FCC Regarding Lightsquared GPS Interference; pg. 2

extremely active in the DBSD bankruptcy. They were the Loral Unsecured Creditors Committee financial advisor. Their advice and "expert testimony" was a key component in the Loral bankruptcy that wrongly eliminated the equity interests of shareholders. Jefferies' primary satellite industry advisors, including William Q. Derrough and Michael Henkin, were actively and corruptly involved in the elimination of Loral equity interests – and Mr. Henkin's involvement was not even disclosed in any known Loral bankruptcy pleading.

54. I discovered former Loral employee, Mr. Henkin's representation of the Loral UCC indirectly in a Federal Mogul UCC document previously submitted to this court. Contemporaneously, the Federal Mogul UCC legal advisors, Sonnenschein, Nath and Rosenthal LLP, including lead attorneys, Peter Wolfson and John Bicks, were sitting on the opposite side of the table in the Loral bankruptcy, where they were *theoretically* representing the Official Equity Committee. Contemporaneously, Mr. Neil Subin was the Chairman of the Federal Mogul UCC working with Jefferies and the *de facto* Chairman of the Loral Equity Committee. Just last week Mr. Subin's one-time largest investment, Fibertower, filed a Chapter 11 bankruptcy petition in a Texas bankruptcy court. And, even more interesting, Solus, one of the controlling shareholders of TSC's preferred, is a 20.6% common shareholder of Fibertower as well, as of February 12, 2012. Fibertower's former CEO, Arthur J. Samberg, was charged with insider trading by the SEC. (SEC 10-cv-00831) He subsequently shut down his hedge fund, Pequot Capital Management. Mr. Samberg's brother, Joseph D. Samberg, Managing Director of JDS Capital, was a large shareholder of Nucentrix, a Fibertower predecessor corporation. Joseph D. Samberg "served" on the Loral Official Equity Committee, and like Giora Payes, also a Nucentrix investor, supported every move that Mr. Subin made, including hiring conflicted advisors, Sonnenschein and Chanin.

55. Your Honor, it's as if there are no conflict-of-interest provisions whatsoever in the US Bankruptcy code. What plans are there, if any, to combine TSC's valuable 1.4 GHz spectrum, with Fibertower's nationwide 39 GHz and 24 GHz spectrum? Only an independent examiner can answer this question Your Honor. The TSC debtors never will. I urge the court, once again, to reconsider appointing an independent examiner under §1104(a)(1).

56. I do not object to the term sheet for the New New TSC Notes. Had this term sheet accompanied the 2nd POR New TSC notes, I would not have objected to them.

ARGUMENT

57. Through a series of actions in the bankruptcy court, Jefferies and Company has negotiated a minimum distribution of $1 million from the TSC estates. So, the company that provided the ICO Debt Solicitation and authored the Terrestar "fairness opinions", by virtue of a terminated, disputed contract with Terrestar, is now in the controlling position to vote the 2nd Amended Plan of Reorganization in or out. Because our Claims in the amount of approximately $960 thousand have been disallowed, our vote will not count. We respectfully request that the court reconsider its decision to disallow our TSC claim, #142, on the grounds that TSC and TSN concealed the Terrestar satellite order with Loral for nearly 3-years, leading to the unjust elimination of preferred shareholder claims in the Loral bankruptcy confirmation hearing. The fact is that the TSC debtors have used every trick in the book to string us along on the basis that they wanted an equitable settlement, but it is now evident that these negotiations were in bad faith. I was callously manipulated once again by Akin Gump attorneys, including Sarah Schultz.

58. I believe that the inter-creditor statute that Akin Gump used to object to our claim is, in our case, unconstitutional because it violates the due process provisions of the 5th Amendment. Our property was seized by the Loral bankruptcy court and given to Akin Gump's

creditor clients, despite clear knowledge *at the time* that Loral had hidden the Terrestar contracts for almost 3-years. I expect to file a Motion for reconsideration of the Swarts Claim, #142, against the TSC debtors within weeks. That claim was timely filed and my arguments clearly demonstrated fraudulent concealment by Terrestar management. Local New York inter-creditor law does not trump the US Constitution when the primary creditor and/or debtor have acted illegally by concealing material information. My legal argument to the court will be a Constitutional one.

59. As previously stated, last month the sale of Space Systems\Loral (SS/L) to MacDonald, Dettwiler and Associates Ltd. (MDA)for **$1.01 billion** was announced by Loral. This price compares with the Loral debtors' valuation in bankruptcy of **-$116 to -$103 million**. The Loral examiner found a value of **$98 to $173 million** for SS/L. All of the financial advisors used Discounted Cash Flow methodologies to calculate the value of the Loral estates, including SS/L – ignoring substantial intangible asset values for patents and orbital slots. The Loral debtors ignored the examiner's findings, as did the creditors, represented by Akin Gump and Jefferies. However, even the Loral examiner's valuation, using DCF's, proved to be, *at best,* 1/6 of the true value of the SS/L assets, when compared with the sale to MDA. Without the *active and knowing concealment* of the TSN, ICO (DBSD) and several Echostar satellite orders at SS/L, Loral could not have legitimately filed for bankruptcy or claimed to be hopelessly insolvent, as they did for 2-1/2 years post-petition. Had those satellite orders been timely disclosed, the SEC and DOJ would have investigated the bankruptcy thoroughly and Loral's equity holders would still own the company. US government regulators not only neglected to adequately pursue calls for an investigation, but facilitated covering the whole thing up, even when presented with compelling and timely evidence. Is TSC a case "Déjà vu all over again"?

60. I object to Jefferies' allowed claim and its vote vis-à-vis the current POR. The only other unsecured claimant, Van Vlissingen and Co. holds a $444.2 thousand scheduled claim. Therefore, it is through slight-of-hand manipulation that the debtors have created a pre-approved POR. This process and plan is not "fair and equitable" because a terminated advisor with multiple conflicts of interest going back many, many years is in a controlling position, vis-à-vis the approval of the 3rd POR. There is no doubt how they will vote, nor what the outcome will be – common equity claims will be eliminated. Only Elektrobit stands between the debtors and a classic cram down of junior creditors and common equity holders. Elektrobit has stated that they will vote against the 3rd POR and will contest confirmation. I applaud them and their advisors for taking a stand against an unethical management that has treated them so badly. The Elektrobit phone was a key component in securing the 2 GHz spectrum license by TSN. What did Elektrobit receive for it, other than a hollow TSC guarantee?

61. Jefferies, as the Loral UCC financial advisor, assisted Loral and TSC in the concealment of the ICO-1(DBSD-1), TS-1, TS-2 and at least two Echostar satellites, representing $1-$1.1 billion in revenues. Jefferies, and specifically, Michael Henkin, were the agents for the ICO debt solicitation that brought $650 million in funding to ICO to build its satellite system. Mr. Henkin was the former Vice President for Business Development at Loral in the late 90's. He knew, or should have known, or was negligent in not knowing, that this non-recognition of known revenues was leading to the elimination of equity claims in the Loral bankruptcy from July 15, 2003 through November 21, 2005.

62. Jefferies' William Q. Derrough was the lead financial advisor of the Loral UCC and was, at least through 2004 a principle owner of Chanin Capital LLC, which was later hired by *de facto* Loral Equity Committee Chairman Neil Subin as the Equity Committee's financial advisor.

Russell Belinsky, the lead advisor for Chanin outlined numerous deleterious conflicts of interest in his affidavit, but never served it to the Chairman of the Equity Committee, David Kilcoyne or myself. Neither US Trustee, Pamela Lustrin, or Judge Robert D. Drain objected to Chanin's retention, despite numerous *contemporaneous* conflicts with Loral creditors, debtor fiduciaries and other Loral interests. Joshua Targoff, son of Michael Targoff, former President and current CEO of Loral, was also a Jefferies attorney at the time. The conflict-of-interest provisions of the Chapter 11 code are routinely ignored by these advisors, without consequence. And, now Jefferies is miraculously in a controlling position vis-à-vis the approval of the TSC 3rd POR.

63. Your Honor, these circumstances, so carefully crafted by the Debtors and their advisors represents a *manifest injustice* to the non-controlling creditors and individual minority shareholders of the company. The Debtors no longer even try to hide that their valuation of the estates, and admit that the 1.4 GHz spectrum, is "likely" materially below the market value of the assets. Ms. Schultz has stated this in open court. Following the recent action of the US Congress in approving $7 billion in funding to develop a nationwide interoperable First Responder communications network, windfall profits await those "fortunate enough" to still have a piece of Terrestar post-emergence.

64. However, now that Lightsquared has declared bankruptcy, they will have to dramatically restructure to take advantage of the new national interoperable network funding. The Federal government cannot do business with bankrupt corporations. Because of unresolved GPS receiver interference issues, Lightsquared has been denied authority to operate their land wireless network by the FCC. So, Lightsquared has had to relinquish its lease with TSC for the 1.4 GHz spectrum as I predicted on February 20th. To allow the valuation of this vacated under market lease to determine the outcome of the TSC bankruptcy could be a grave error if allowed by the court.

The court should require the debtors to present a viable business plan or conduct a §363 auction for the spectrum assets of the company. If a §363 liquidation sale did not bring at least the value of the vacated lease, provisions in the sale terms could disallow it. The sale could also have a provision to solicit a new *solvent* lessee.

65. The court should not move forward with the solicitation of votes for the 3rd POR or confirmation until the above issues have been explored by the debtors. Once again, I ask the court to reconsider its decision to deny an examiner. An examiner could look at the spectrum lease issue to determine whether: 1) it was an arm's length transaction; 2) whether the Jefferies "fairness opinion" was fair; 3) what the true value of the 1.4 GHz spectrum is; and 4) whether the lease represented a fraudulent conveyance to the former controlling insider of TSC, Harbinger and Philip Falcone, before it was terminated by Lightsquared and the debtors.

66. The debtors, through counsel, claim that 1.4 Holdings, a 100% owned division of Terrestar Holdings has an independent Board of Directors. However, if it is 100% owned, the BOD of 1.4 Holdings must do as they are directed by the Board of Terrestar Holdings. Terrestar Holdings management officers all hold similar positions at TSC and include Jeffrey W. Epstein, President; Vincent Loiacono, Treasurer; Douglas Brandon, Treasurer and Dennis W. Matheson, Chief Technology Officer of TSN and TSC. The offices of Terrestar Holdings are in the same building as TSN and TSC. There is no meaningful difference between the managements and ownership of Terrestar Corporation, Terrestar Holdings and 1.4 Holdings, which is not even listed as a separate corporation by the SEC on its web site. Logically, they should be treated by the court as one and the same.

67. Mohawk Capital LLC has previously asserted that the TSC Debtors should have explored a bankruptcy filing for 1.4 Holdings and a rejection of the 1.4 GHz spectrum lease. The

debtors have asserted that this would have exposed the company to a "significant rejection damages claim" and that there is no evidence that there would be an interested party willing to pay more than the $175-$185 million value of the lease. The net result of the predicted bankruptcy of Lightsquared is that this argument proved to be a *red herring that wasted valuable estate resources and more than 6-months of the court's time*. Now, predictably, even with an unencumbered, valuable spectrum asset, the debtors pretend that they can't figure out what to do with it. Again, they waste the court's valuable time and precious estate resources.

68. Your Honor, the very existence of wireless carriers is predicated on their spectrum assets. All of the major carriers are desperate for additional spectrum assets and the recent congressional funding of a wireless interoperable network to the tune of $7 billion demonstrates this existential fact. Of course, the debtors post-petition preferred speculators would like to run out the clock on the company's current ownership, as would management. However, the 3rd POR, like the 2nd, if implemented, would provide for the transfer of a very significant public asset to a very small number of very wealthy and politically connected individuals.

69. I have previously submitted the ICO Debt Solicitation for the record in the Examiner Hearing of September 19, 2011. In the document on page 6, Jefferies estimated a value of **$9.8 billion** and **$1.64 per MHz POP** for 20 MHz of 2 GHz spectrum. Using these numbers as a comparable base, in my Objection to the TSC Disclosures (Docket #179, pg. 7-10) I have most recently estimated a value of "somewhere between **$385 million** on the low end, the Jefferies Schedule 14 C-Pre mid-point values of **$533.4 million**, **$670.3 million** and **$856.2 million** and a high end valuation of **$2.09 billion**." I have also suggested that the Terrestar Global orbital slot over Europe is worth **$25-$40 million**, with a midpoint of **$32 million**. By their own admission, the debtors describe the NOL tax assets as being worth **$233 million**. That produces a minimum

valuation of the company's assets of **$650 million**. This valuation puts common shareholders very much "in the money" Your Honor. We deserve a seat at the table with the preferred and management. We deserve legal and financial representation, paid for by the TSC estate.

70. The debtors and their advisors will no doubt assert that I am not an expert in valuation, as they did during the Loral bankruptcy. However, if I may point out as a matter of undisputed fact, the estate valuation that I and other LSPC members provided the court in Loral's bankruptcy, in the last analysis, has been shown to be much more accurate than the contemporaneous Loral estate valuations of Jefferies, Greenhill, Chanin and Judge Drain. Furthermore, now that Jefferies "fairness opinion" presented in the 14C-PRE has been dismissed as wrong by the debtors, perhaps the court should consider opinions from those with higher integrity of thought, purpose and a better track record valuing satellite companies.

71. The debtors argue that comparisons between 2 GHz valuations and the 1.4 spectrum have entirely different spectrum characteristics. That is precisely why an outside examination by an expert or a market test is indicated. There are numerous suitors that might make a bid on the 1.4 GHz spectrum if allowed by the court. Those parties include, but are not limited to Echostar, AT&T, Sprint, Leap and MetroPCS. Even Lightsquared might have found the wherewithal to bid if it had not recently declared bankruptcy. If no bid were to exceed the current Blackstone estimate, the sale terms could include a provision whereby the sale would be terminated and the 3rd POR reconsidered by the court.

72. Your Honor, only a market test can resolve the valuation questions, definitively, as it did in the TSN auction. That is why TSN's plan was almost unanimously unopposed by unsecured creditors, who got very meager estimated distributions of 6-1/4% on their allowed claims. The sale lent very significant legitimacy to an otherwise nebulous and controversial

process. The court should be commended for its management of the TSN bankruptcy and it should take a similar tack here at TSC. For the avoidance of doubt, the court should order an asset sale under §363 or an alternative lease arrangement with a different *solvent* suitor.

73. The Debtors assert under §1129 that:

> "Either each holder of an Impaired Claim or Equity Interest in the TSC Debtors has accepted (or is deemed to have accepted) the Plan, or each non-accepting creditor will receive or retain under the Plan on account of such claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that the holder would receive or retain if the TSC Debtors were liquidated on that date under Chapter 7 of the Bankruptcy Code."

74. Unfortunately, once again the Debtors rely on the 1.4 GHz spectrum lease to Lightsquared as the baseline for their valuation of the company, even though the lease is gone. But, once again, using their prior valuations and an estimate of valuation derived from the sale of a bankrupt TSN to Echostar, the value of the 1.4 GHz spectrum is significantly higher than that contemplated by the plan. Clearly, in today's market, with wireless-enabled devices everywhere, if the Debtors offered the company and/or 1.4 Holdings in a §363 in a sale to the financial markets, the proceeds would exceed the current contemplated return on the Plan. Without such a market test, the court will not know the true value of the assets, until they have passed to other ownership. This is the unfortunate situation that the Loral court now finds itself in – the Loral estates turned out to be worth more than 400% more on an equity basis than the value promulgated by the Loral Debtors, Jefferies, and as ordered by the Loral court.

75. In describing the 2nd Amended POR, the Debtors asserted under §1129 that:

> "Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the TSC Debtors or any successors thereto under the plan."

Clearly, they were completely wrong about that. Had the 2nd POR been confirmed, for which votes had been solicited by the debtors, it would already have been impossible for the debtors to emerge from Chapter 11 protection. These debtors have a history of seeking Chapter 11 bankruptcy protection and manipulating the process to favor their crony investors, For example, on October 16, 2010 Terrestar (formerly Motient) filed for Chapter 11 for the second time in 8-years. During its prior reorganization, Terrestar signed a satellite construction contract with the Space Systems/Loral on July 14, 2002, 1-year and 1-day before Loral itself filed for bankruptcy on July 15, 2003. The Terrestar satellite program was concealed from its signing date for almost 3-years, until April 5, 2005, just 4-months before confirmation.

76. Upon the successful launch 7-years after the Loral satellite construction contract was signed, few investors expected Terrestar to file for bankruptcy again. And, following the AT&T sales agreement and the successful test of the Elektrobit Genus phone that possibility seemed even more remote. [36]Furthermore, when the phone won a 2011 CTIA innovation award, the likelihood of Terrestar's financial success seemed assured. No one outside the company knew that the Genus phone was not being purchased in great numbers, or that Terrestar was secretly refusing shipments of the phone from Elektrobit. Terrestar's management was the author of all of these deceptive omissions. They knew better. Confidential filings with the SEC about the Elektrobit phone papered over the material omissions of TSC fiduciaries.

77. The court has jurisdiction regarding all matters related to the reorganization of the company. The court should order a market test of the assets. Certainly, the risk of further reorganization of the TSC estates remains high and therefore the Plan does not comply with the provisions of §1129. The last POR was proven to be *infeasible within a couple months* with Lightsquared as the lessee of the 1.4 GHz spectrum. The 2nd POR was required to comport with the "best interests" tests under §1129(a)(7) and it did not. By their own admission, the debtors state that the 3rd POR is similar to the 2nd and they use the same valuation for the 1.4 GHz spectrum,

even though the asset is now unencumbered by a lease. The debtors have not withdrawn the 2nd POR, because in a prior order extending exclusivity, Your Honor stated that if they withdrew the plan that you would open up the process to other competing plans of reorganization. Perhaps it is time to do that, Your Honor, since the debtors are so intransigent about pursuing a market test of their assets.

78. Your Honor, as I have previously articulated to the court, the debtors, their advisors and their crony creditors are simply making up their valuations of the Terrestar and DBSD estates, depending upon which self-serving argument they are pursuing at the time. Their purpose, since the bankruptcy of Loral in mid-2003, has been to convert the ownership of extremely valuable 2 GHz and 1.4 GHz public spectrum to their own purposes. This bankruptcy is just another in a long line of similar bankruptcies coordinated and executed by the debtors' advisors. Some of the same bankruptcy speculators are currently active in similar processes at Fibertower Corporation in an effort to wrest that company's valuable nationwide spectrum from its current ownership. There is *no* meaningful congruence between the spectrum values that these people provided to lenders when they were soliciting debt funding and the values that they now promulgate in their disclosures in the DBSD, Terrestar and now, Fibertower bankruptcies. It is a given at this late stage that Echostar has won the auctions and if the FCC (also under Congressional investigation) approves the spectrum transfers, then the onerous tactics and securities used by the debtors to separate common shareholders from their hard earned income will have been successful. Our nation's own regulatory authorities have been involved in and complicit in these violations of the 5th Amendment of the US Constitution. These manipulations represent a *manifest injustice* to me, my wife and other investors similarly situated.

[36] Exhibit N-95523422-GENUS-User-Guide

REQUESTED RELIEF

79. Given recent developments, the TSC 3rd POR rests upon a valuation baseline that has no contemporaneous fairness opinion supporting it. I pray that the court reject it on that basis, order the US Trustee to appoint an Official Equity Committee of Individual Common Shareholders and solicit other Reorganization Plans from interested parties. Approving this plan, in the absence of a contemporary, market valuation of the 1.4 GHz spectrum asset, can only lead to an unjust outcome. The court should send a clear message to insiders of FCC licensees, that these sorts of market manipulation by crony insiders will not be tolerated by The United States Department of Justice.

/s/ Jeffrey M. Swarts
July 22, 2012

308 South Cedar Street
Danville, OH 43014-0289
(740)-599-6516
swarts@ecr.net