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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

TERRESTAR CORPORATION, *et al*
TERRESTAR NETWORKS, *et al*
DEBTORS IN POSSESSION

)
)
) Lead Case No.
)
) 11 CV 10612 (SHL)
) 10 CV 15466 (SHL)
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**SUPPLEMENTARY OBJECTION
OF JEFFREY M. SWARTS**

IN RESPONSE TO:

**THE TSC DEBTORS' 3rd AMENDED
PLAN OF REORGANIZATION DISCLOSURES**

1. On July 22, 2012 I, Jeffrey M. Swarts, filed an objection to the TSC debtors' 3rd Amended Plan of Reorganization. In it I questioned the debtors' valuation of their estates, including its 1.4 GHz spectrum assets and its orbital slot(s). Also at issue is a substantial intellectual property portfolio, which I have not previously addressed.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} This supplementary objection is intended to inform the court why this is needed.

¹ Exhibit A-Terrestar-10K-2009; F-19; Intellectual property was scheduled at: \$36.935 million.

² 200_15466-ORDER DENYING REQUESTS OF JEFFREY M. SWARTS

³ 179_10612-TSC-Valuation Objections of Jeffrey M. Swarts

2. Just last week, on August 10, 2012, the debtors' filed a motion to appoint BOD member, Eugene I. Davis, as the chief restructuring officer (CRO) and president of the TSC debtors.

⁴ Mr. Davis has served on the TSC BOD since 2008, when he was appointed in conjunction with the issuance of PIK notes to TSN. He has extensive corporate experience on more than 33 boards across 57 organizations. ⁵ ⁶ Unfortunately, his subsequent chairmanship of the TSC Audit Committee is marred by glaring omissions and minimizations of key Terrestar assets, including the 2GHz spectrum, the company's orbital slot(s), intellectual property and a sweetheart, below market lease of the company's 1.4 GHz spectrum to Lightsquared, a primary competitor of TSN in its target market.

3. The company also has an extensive record of repeated questioning by regulators about financial reporting during Mr. Davis' tenure as a BOD member and Chairman of the Audit Committee. TSC's disclosures, currently at issue and to which I object, are also stamped with the disclaimer, "Although the TSC Debtors have used their reasonable business judgment to ensure the accuracy of the financial information contained in, or incorporated by reference into, this First Amended Disclosure Statement Supplement, much of that financial information has not been audited." Is this not a key role of a company's audit committee? Therefore, Mr. Davis has not fulfilled his current role within TSC as Chairman of the Audit Committee. I do not believe that he will be any more effective as the CRO of TSC.

4. In addition, and not surprisingly, Mr. Davis has had a two decade association with activist investor, Raymond L. Steele, former BOD member and interim CEO of Motient, Terrestar's predecessor corporation. Mr. Davis served on the BOD of Emerson Radio with Mr. Steele for at least 5-years, from 1992-1997, including the bankruptcy of Emerson in 1994. On September 24,

⁴ 564_10612-First Amended Supplement to Second Amended Disclosure Statement

⁵ Exhibit B-Eugene Davis_ Executive Profile & Biography - Businessweek

⁶ Exhibit C-Eugene I Davis - BOD Affiliations - Businessweek

1997, Emerson Radio requested Mr. Davis' resignation as a Director. The next day Mr. Davis' employment was terminated by the company for cause.⁷

5. Regrettably, although I approve of the creation of the badly needed CRO position, I do not believe that Mr. Davis is the person for the job. His two-decade association with Mr. Steele is not a recommendation – on the contrary. Mr. Steele is a former BOD member and interim Chairman of Motient, the predecessor corporation of Terrestar that concealed its satellite contract with Loral for nearly 3-years. For this reason, and others related to his association with Mr. Steele, I object to Mr. Davis' appointment to this position and I hereby renew my request that the court order the appointment an official *independent* Trustee to perform this vital role.

6. 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.⁸ 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. Your Honor, passing responsibility for this vital function to Mr. Davis will not, in my opinion, provide the transparency and principled oversight that minority stakeholders seek.

THE 2008 JEFFERIES 1.4 GHz SPECTRUM VALUATION

7. As previously conveyed to the court, on February 29, 2008, TSC filed a SEC Schedule 14C-PRE in which Terrestar described the new issue of \$150 million in PIK notes as well as junior preferred and common stock to Harbinger and Echostar. *No proxy solicitation* was forthcoming from the company, with the new issues approved by the then controlling shareholders,

⁷ Exhibit D-EMERSON RADIO CORP - 10-K Annual Report - 04_03_1998; pg. 24

⁸ 513_10612-3RD Plan of Reorganization; Article 1 – 119 “Sale Distribution”, pg. 10

Harbinger and Echostar.⁹ The funds came to Terrestar from Harbinger and Echostar *and* transferred the 1.4 GHz spectrum Echostar and Harbinger had purchased in return for their notes, preferred and common shares. Both investments increased the equity value of the company according to “Financial Expert”, Jefferies & Company. Jefferies authored the “fairness opinion” attached to the document, which according to the current version of the company’s disclosures, was neither accurate nor fair to the company’s minority common shareholders and drew many unsuspecting shareholders, including myself, into the stock.¹⁰ However, in 2008, Harbinger and Echostar were in a controlling position vis-à-vis the common stock. Combined, they reported 121 million common shares or 79.3% of the outstanding stock in 2008, so any objection would have been overruled by them.

8. Contemporaneous with the transfer of the 1.4 GHz spectrum to Terrestar, on February 14, 2008, Eugene I. Davis, Dean Olmstead and David J. Rayner were appointed to the Board of Directors, expanding its membership from five to eight members. Less than 2-years later, on December 31, 2009, Jeffrey W. Epstein, then President of Terrestar Corporation, was questioned by SEC attorney Larry Spigel about Mr. Rayner’s independence as follows:¹¹

“We note that Mr. Rayner is a member of the audit committee. Please explain how Mr. Rayner is independent according to Exchange Act Rule 10A-3 and the Marketplace Rules of The Nasdaq Stock Market, Inc. Specifically address the consideration you have given to the fact that Mr. Rayner is Chief Administrative Officer of EchoStar Corporation, a company that beneficially owns a significant amount of TerreStar’s common stock and has the right to nominate members of the board of directors.”

Mr. Rayner resigned from the Terrestar Corporation BOD later that day.

⁹ Exhibit E-SEC-TSC-f22884pre14, Annex A; pg. 32 (Cont.)

“WHEREAS, the Board has adopted resolutions approving: (a) the spectrum agreement (the “EchoStar Spectrum Agreement”) by and among TerreStar Networks, the Corporation and EchoStar Corporation, pursuant to which the Corporation may issue to EchoStar 30,000,000 Common Shares; and (b) the spectrum contribution agreement (the “Harbinger Spectrum Agreement” and, collectively with the EchoStar Spectrum Agreement, the “Spectrum Agreements”) by and among TerreStar Networks, the Corporation, Harbinger Capital Partners Master Fund I, LTD and Harbinger Capital Partners Special Situations Fund, L.P., pursuant to which the Corporation may issue 1,200,000 shares of Junior Preferred (convertible into 30,000,000 Common Shares)” ...

¹⁰ Exhibit F-SEC-TSC-f22884pre14, Annex C-1, C-2, C-3 & C-4

9. In the February, 2008 Schedule 14C-PRE, pg. 20, Jefferies “fairness opinion” defined the TSC 1.4 GHz spectrum valuation 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.”

10. Your Honor, the *minimum* valuation in early 2008 was found by satellite market expert, Jefferies, to be \$533.4 million – not the \$177 million currently found in their Disclosures. The following year, in the TSC 2009 10-K, the company scheduled the 1.4 GHz spectrum licenses at \$177.480 million.¹² That represents a counter-intuitive drop of 67% in value in just 2-years. This was *contemporaneous* with the development of the iPhone, the iPad and a myriad of new 3G and 4G spectrum-dependent wireless devices.

11. The debtors themselves have repeatedly described the 1.4 GHz spectrum as high-speed and that they expect to use it “to enter the emerging femtocell market by alleviating spectrum interference issues and providing a quality of service level not attainable with unlicensed spectrum.” This was the entire rational for issuing additional tranches of preferred and the equivalent of 60 million additional common shares in early 2008. It was also the pretext by which Terrestar Networks, Inc. issued two tranches of PIK notes valued at \$250 million to Echostar and Harbinger, among others, due on June 15, 2014.¹³ The notes had restrictive covenants with regard to the

¹¹ Exhibit G-SEC-Correspondence-2009-12-31-Larry Spigel; pg. 1-2

¹² Exhibit H-Terrestar-10K-2009; F-19

¹³ Exhibit I-SEC-TSC-EX-99.C-PIK Notes

acceleration of debt vis-à-vis any default, including on the soon to be issued preferred stock classes – then controlled by Harbinger and Echostar, with a mandatory redemption date of April 15, 2010, just 2-years later.

12. So, to summarize, when the preferred was being issued, the 1.4 GHz spectrum had a Jefferies fairness opinion that valued it from \$533.4 - \$856.2 million, but now that the debtors are in bankruptcy, they have repeatedly “talked down” the asset, claiming that the “the technological ecosystem” for the band is not mature and that the spectrum is only worth \$177.5 million. For nearly 2-years they used the pretext of a below-market lease to Lightsquared, owned by an insider of TSC, Harbinger, to deny a higher valuation. Even after Lightsquared declared bankruptcy, they continue to use this valuation, although the spectrum is now unencumbered. Even now, they stick to this valuation, despite recent undisclosed, contemporaneous examples of infrastructure development for the band by Airspan, Harris, and even what appears to be a pilot project by First Energy *spanning markets in 3-states* for automated utility metering.¹⁴ What is the true value of the 1.4 GHz spectrum? What is the history of the band and what are its technical specifications?

HISTORY OF THE 1.4 GHz SPECTRUM

13. TSC acquired all of the 1.4 GHz licenses from or through EchoStar and Harbinger, however the band’s license history prior to those license transfers is instructive with regard to the length of time they have pursued their Terrestar takeover strategy. The licenses allow the holder(s) rights to broadcast nationwide in the 1.4 GHz spectrum, which consists of an aggregate of 8 MHz of 1.4 GHz spectrum.¹⁵ 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

¹⁴ 553_10612-Objection of Jeffrey M Swarts; pg. 13-18.

¹⁵ Exhibit J-FCC-1.4 GHz Spectrum band

services as well as advanced two-way mobile and paging services. The license term is for 10 years, and will expire in April 2017. The 1.4 GHz spectrum licenses have nationwide coverage, including Hawaii, Alaska and Puerto Rico and represent approximately 2.34 billion MHz POP's.^{16 17}

14. On November 2, 2006 the FCC issued a public notice, DA 06-2014, describing an Auction for the 1.4 GHz Band Licenses, which was scheduled for February 7, 2007.¹⁸ The licenses included 52 Major Economic Area (MEA) licenses, consisting spectrum from 1390-1392 MHz and 12 Economic Area Grouping (EAG) licenses of two blocks (A & B) of paired spectrum at 1392-1393.5 and 1432-1433.5 MHz (A) and 1393.5-1395 and 1433.5-1435 MHz (B).¹⁹ Auction 69 began on 2/7/2007 and closed on 3/8/2007 – 1-month later. There were 267 rounds, culminating in net winning bids totaling \$123,000.²⁰ A key provision of all FCC license auctions is the Prohibition of Collusion. This rule is prominently displayed in all FCC auction documents and was stated explicitly in the Auction 69 auction documentation as follows:²¹

“2. Prohibition of Collusion; Compliance with Antitrust Laws

“15. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission’s rules prohibit applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).²² In Auction No. 69, the rule would apply to any applicants bidding for the same EAG or MEA. The rule would also apply to applicants bidding for licenses in overlapping EAGs and MEAs. For example, assume that one applicant applies for an EAG and a second applicant applies for a MEA covering any area within that EAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. In addition, the rule would preclude applicants that apply to bid for all markets from communicating

¹⁶ Exhibit K-FCC-1.4 GHz MAP-Major Economic Areas (MEA)

¹⁷ Exhibit L-FCC-1.4 GHz MAP-Appendix C (The geographic areas for different bands are the same.)

¹⁸ Exhibit M-DA-06-2014A1_1-4GHz Spectrum License Auction

¹⁹ Ibid; pg. 6 and Attachment A; pg. A-1, A-2 & A-3

²⁰ Exhibit N-FCC_Factsheet_Terrestrial_1dot4_Spectrum Licenses; pg. 1

²¹ Exhibit M-DA-06-2014A1_1-4GHz Spectrum License Auction; pg. 7

with all other applicants. Thus, applicants that have applied for the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.”

15. There were nine qualified bidders.²² The final Auction No. 69 results split all the licenses between two bidders, CCTV Wireless and Port L.L.C.²³ At the time of the auction, Port L.L.C. was a division of Dish Network Corporation, which paid \$57 million for the licenses that it acquired. CCTV Wireless was founded in December of 2006 and paid \$66 million for the remainder of the licenses.²⁴

16. CCTV later issued stock whose purchasers included Highland Capital, the current owner of most of TSC’s Preferred Series A.²⁵ The spectrum assets, controlled by CCTV One Four Holdings, were acquired in a complex set of transactions by TVCC Holding Company, LLC. (See Organization Chart.)²⁶ The complexity of the transactions is disclosed by the chart and by a FCC Ownership document that lists Jeffrey T. Kirshner of Harbinger Capital Partners Funds as the contact.²⁷ And, furthermore, to complicate matters even more, there is another FCC Exhibit, with a May 23, 2008 PDF creation date, that lists Terrestar Corporation as having a “100% interest in CCTV Parent”.²⁸ This followed the SEC 14C PRE that created new common and preferred, owned by Harbinger, and later sold to Solus, among others.²⁹ Perhaps the 1.4 GHz spectrum assets of TSC

²² Exhibit O-DA-07-123A2-Qualified Bidders

²³ Exhibit P-FCC-1.4 GHz Auction 69-Winning Bids-By License-POP

²⁴ Exhibit Q-SEC Form D_CCTV Notice of Sale of Securities_4-25-2007

²⁵ Ibid; pg. 2

²⁶ Exhibit R-TVCC Holding Company LLC_Ownership

²⁷ Exhibit S-TVCC Holding Company LLC_Ownership_All

²⁸ Curiously, the document is otherwise undated.

²⁹ Exhibit T-CCTV Indirect Ownership-Exhibit

are an intangible asset of little value as the TSC debtors now contend, but they sure went to extreme lengths to acquire it from a large number of highly competitive funds and corporations, with the apparent intended application of digital TV streaming. Within 6-months of acquiring the spectrum from Echostar and Harbinger, TSC leased it back to Harbinger in a sweetheart deal that has subsequently been used by Blackstone and the debtors to undervalue and minimize the corporation so that insiders can convert its ownership *wholly* to themselves.

17. Of course it is possible that Port L.L.C., which was subsequently spun-off from Dish Network Corporation, to Echostar and Mr. Ergen, and CCTV Wireless, just miraculously landed in Harbinger's lap after it was bought at auction. Nevertheless, it "accidentally" ended up in TSC's treasury. Perhaps it isn't worth much, as the debtors now state in every pleading and hearing before the court. However, I ask you Your Honor, is this probable? Is it credible? Or, are the spectrum assets of TSC, as they *reasonably* appear to be, *extremely* valuable? Is it possible that Dish and Harbinger colluded during the FCC auction, to keep the price of the 1.4 GHz licenses down, knowing their long term strategy would put the company into bankruptcy? Once in bankruptcy, is possible that they knew, in advance, those valuations could be used to minimize the spectrum valuations and deliver the highly valuable spectrum assets of ICO(DBSD), TSN and TSC in a highly choreographed dance of bankruptcy petitions? Perhaps all of this was just bad fortune on TSC's part – a poor business plan – gone awry, but this interpretation seems highly unlikely to me. There are just too many moving parts in this history to believe it was accidental.

HISTORICAL VALUATION CONSIDERATIONS

18. In Echostar Corporation's 2007 10-K the company filed an analysis of its FCC Authorizations. (F-27) As of December 31, 2006, Echostar had Long-Lived assets, including FCC authorizations in the United States of \$65 million. One year later, following the FCC auction in March of 2007, the company had \$379.8 million in this column – an increase of \$314.6 million in 2007.³⁰ Although a portion of this amount was no doubt associated with the purchase of non-1.4GHz assets, if so, those items have not been scheduled separately. At the time, Echostar was *leasing* its Port L.L.C. spectrum to TSC, which had an option to buy on or before July 23, 2008. The lease contract showed an intangible value of \$189.9 million – far beyond the \$57 million the company paid for the licenses in FCC Auction 69.³¹ Therefore, the implied value of the 1.4 GHz spectrum is somewhere between the \$57 million that Port L.L.C. paid for the licenses and \$314.6 million the company recorded in its increase in its “Long-lived Assets, including FCC authorizations”. For the purposes of the foregoing analysis, I shall use the midpoint value of **\$185.8 million** as the value of the Port L.L.C. spectrum licenses. Echostar, does not state that it purchased other long-lived assets or FCC licenses during 2007.

19. On February 5, 2008, after Harbinger had consolidated its ownership of CCTV Wireless I, LLC, a Delaware limited liability corporation, the “CCTV Parent”, Harbinger Capital Partners Master Fund I, LTD and Harbinger Capital Partners Special Situations Fund, L.P. (Harbinger) entered into a “SPECTRUM CONTRIBUTION AGREEMENT” with Terrestar Corporation (TSC). In return for transferring these licenses to TSC, TSC issued Harbinger 1,200,000

³⁰ Exhibit U-SEC-10K-Echostar Corporation-2007; F-27; pg. 107 of the PDF

³¹ Ibid, F-36; pg. 117 of the PDF

shares of its Series E Junior Participating Preferred Stock ³² and Harbinger granted “an irrevocable option to infeasibly purchase from the Owners all of the issued and outstanding equity of the CCTV parent for an aggregate price of **\$212,500,000.00.**” ³³ This value applied *only* to the licenses that had been purchased by CCTV Wireless in the FCC Auction 69.

20. Therefore, the combined value of the Port L.L.C. and the CCTV Wireless 1.4 GHz spectrum licenses, is **\$185.8 million + \$212.5 million = \$398.3 million**, based upon the SEC filings of the former parent companies of the FCC licensees. This value is *remarkably similar* to the **\$385 million** *minimum* valuation for the 1.4 GHz spectrum that I provided the court in my Objection to the 3rd Plan of Reorganization, submitted on July 22, 2012. Your Honor, the court need look no further than the filings of the contributing prior owners of the 1.4 GHz spectrum to conclude that the debtors’ **\$177.5 million** valuation *of the same assets* is a complete *fabrication*, as is their 3rd Plan of Reorganization, which rests upon it. I object to the Disclosures of the POR on this basis.

21. The fact is that Dish Network Corporation leased Port L.L.C. to TSC, before it was spun off to Echostar, for about 6-months before Echostar traded it for 30 million common shares of TSTR. Harbinger, aka, Lightsquared One dot Four, then re-leased the spectrum from TSC that they had just sold to TSC 6-months earlier, plus the Port L.L.C. licenses, for less than the value of the Spectrum Contribution Agreement. That is almost twice the spectrum for 15% less than what they said their half was worth just 6-months earlier. The covenants that both Echostar and Harbinger extracted from TSC in the PIK note financing prevented the company from seeking alternative financing. Then, TSC concocted the Preferred Exchange Offering, to keep regulators at bay, knowing it would be rejected by the preferred shareholders, who created the scheme in the first instance. So, even though the notes were more than 3-years from their redemption date, when the

³² The 1,200,000 shares of Junior Preferred is convertible to 30 million shares of common stock – a 1/25 ratio.

³³ Exhibit V-SEC-TSC-EX-99.F_Harbinger Spectrum Contribution Agreement; (emphasis added)

debtors defaulted on the preferred redemption date, and when the preferred refused to extend the redemption date, it accelerated the due date of the notes, forcing the bankruptcy filing of TSN.

THE 1.4 GHz SPECTRUM LEASES TO TSC

22. Before Terrestar purchased the 1.4 GHz spectrum licenses, held by Echostar and Harbinger, they leased them. In the 2008 14C Pre, previously cited, Jefferies valued these leases at **\$153.5 million** for the Echostar owned Port L.L.C. lease and **\$139.2 million** for Harbinger's CCTV Wireless lease. This is a total consideration of **\$292.7 million**, or **\$.13 per MHz POP**.³⁴

23. The calculated **\$.13 per MHz POP** of the 1.4 GHz spectrum was substantially below the precedent transaction values quoted, which ranged from **\$1.07 per MHz POP** for the AT&T / Aloha purchase of 700 MHz spectrum to the **.18 per MHz POP** purchase of AT&T 2.5 GHz spectrum by Clearwire.³⁵ The mean value for the 4-quoted precedent transactions was just under **.59 per MHz POP**. As a point of reference for the court, this mean value multiplied times TSC's **2.34 Billion MHz POP's** is **\$1.375 billion** – well beyond anything the debtors have quoted. Also, as another point of reference, the two FCC Auctions quoted by Jefferies as precedent transaction brought **.57** and **.54 per MHz POP** for Auction 73 and Auction 66, respectively – very similar to the calculated mean of the precedent transactions quoted by Jefferies. Adding the above value of **\$1.375 billion** to the NOL value of **\$233 million**, added to the European orbital slot value of **\$32 million**, added to the **\$36.9 million** intellectual property value, minus current liabilities (including taxes) of **\$522.4 million**, leaves an upper estate value of **\$1.154 billion** or **\$8.31 pps**.

24. Taking the above total consideration (paragraph 22) quoted by Jefferies of **\$292.7 million**, added to the NOL value of **\$233 million**, added to the orbital slot value of **\$32 million**,

³⁴ Exhibit E-SEC-TSC-f22884pre14; pg. 17

³⁵ Ibid; pg. 18

added to the intellectual property value of **\$36.9 million**, leaves an estate value of **\$594.6 million**. The company's July operating report minus total liabilities (including taxes) of **\$522.4 million**, leaves a value of **\$72.2 million** or **\$.52 pps**. The company is solvent by any measure, using the debtors' own historical numbers.

AT&T PURCHASES NEXTWAVE WIRELESS INC.

25. The recent purchase of Nextwave Wireless Inc. by AT&T provides an excellent precedent transaction by which to value TSC. On August 1, 2012, Nextwave announced that it had entered into an "Agreement and Plan of Merger" with AT&T in which the company's substantial debt obligations, listed in the latest 10-K as **\$896.5 million**, was assumed by AT&T, with a minimum of **\$25 million** or **\$1.00 cash** per share paid to common shareholders and another **\$25 million** held in escrow for indemnification obligations. This amount represents another **\$1.00 cash** per share, barring the filing of lawsuits, for a total of as much as **\$2.00 cash** per share.

26. Nextwave holds approximately **3.9 billion MHz POP's** of spectrum, with a reported transaction value of **.154 per MHz POP** – 18.5 % higher than the **\$.13 per MHz POP** calculated by the Jefferies in 2008 for the 1.4 GHz spectrum. This factor, **.154 per MHz POP**, multiplied by TSC's **2.3 billion MHz POP's**, provides a 1.4 GHz spectrum valuation of **\$354.2 million**. This number added to the NOL value, the orbital slot value and the intellectual property value provides an estate valuation of **\$656.1 million**. The estate value of **\$656.1 million** minus current liabilities (including taxes) of **\$522.4 million** leaves a common equity surplus of **\$133.7 million**, or **\$.96 per share**. Your Honor, again a contemporaneous precedent transaction impugns the debtors stated estate values and, therefore, the 3rd Amended Plan of Reorganization and its Disclosures. I object to them on the basis of this precedent transaction as well.

27. From a technical specification point-of-view, much of the Nextwave spectrum, especially that in the FCC Auction No. 66 AWS band, blocks A through F, consists of paired 5 MHz channels. Their FCC-licensed WCS licenses are very similar to TSC's and is specified as follows:³⁶

"We [Nextwave] hold 30 licenses issued by the FCC for WCS spectrum, which were acquired pursuant to privately negotiated purchase agreements. The 2.3 GHz WCS band is divided into four frequency blocks, A through D. Blocks A and B have 10 MHz of spectrum each and blocks C and D have 5 MHz each. We hold WCS licenses in the A, B, C and D frequency blocks. The WCS A and B blocks are licensed in 52 individual geographic regions covering the United States, including the Gulf of Mexico, and are called Major Economic Areas ("MEA"). The WCS C and D blocks are licensed in six larger geographic regions, also covering the United States and are called Regional Economic Area Groupings ("REAGs"). Both MEAs and REAGs are of various sizes in terms of population and geographic coverage."

So, the technical specifications of the bands of the two companies are remarkably similar, except that TSC's 1.4 GHz band has better propagation characteristics. If TSC were to seek a FCC waiver of the current narrowband configuration of the spectrum from 1390-1995, it too would have one 5 MHz band, which could be used as a supplementary downlink channel for 4G mobile TV streaming. The 1432-1435 MHz channel could then be used as a rich content uplink channel for communications from the user back to the streaming server. Does it take a \$45,000 engineering consulting firm to figure this out? It seems to me that original licensee, CCTV, had envisioned just such a use, judging by its company name alone. Why haven't the debtors sought a FCC waiver to do this?

28. Certainly, the Nextwave transaction represents a virtually identical set of technical specifications. Nextwave is a highly leveraged, distressed enterprise, much more so than TSC. So, how is it that Nextwave shareholders will receive up to \$2.00 per share, while TSC common shareholders are slated to receive *nothing*, according to the 3rd Amended POR? Surely, TSC's POR does *not* represent the best interests of creditors, and equity holders.

³⁶ Exhibit W-SEC-Nextwave-10-K 1 d273816d10k; pg. 4

OBJECTION TO DIP FINANCING

29. I hereby object to the settlement between Elektrobit and the TSC debtors. Now that the terms of the New New Terrestar Notes have a shorter redemption date and an interest rate that reflects the increased risk of the reorganized debtors, there is no reason to further encumber the estate with a DIP super-priority claim. The fact is that the funds are coming from the owners of the same securities that forced the company into bankruptcy when they refused to accept the preferred exchange. However, in the event that the court approves the DIP financing motion, that will put the company's allowed debt claims over the \$5 million threshold that makes the appointment of an examiner under §1104(c)(2) mandatory – if the request is made *before* confirmation, following a hearing on the matter. Therefore, if the DIP is approved by the court, the examiner must be as well, if the provisions of §1104(c)(2) are followed.

30. In addition, because this pleading proves in several instances, that the company is not *hopelessly insolvent*, using the historical valuations and contemporaneous precedent transactions, the minority common shareholders are entitled to estate-paid legal and financial advisors. I request that the court appoint an official equity committee of non-insider shareholders to oversee the work of the CRO or, alternatively, a Trustee of the estates.

RESERVATION OF RIGHTS

31. This supplement and objection is intended to frame the issues surrounding our claims and interests in the Terrestar estates. I expect to file and reserve the right to file additional pleadings to further define our claims, interests and potential causes of action. We reserve all rights associated with our claims and our equity interests in the Terrestar debtors.

REQUESTED RELIEF

32. 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 the Disclosures as inadequate and either order the US Trustee to appoint an Examiner or an Official Equity Committee of minority common shareholders. Respectfully, the court should also acknowledge that the extension of exclusivity order that it signed, restricting the debtors from withdrawing the 2nd POR, has already occurred. When the debtors settled the Elektrobit claim, seeking a super-secured post-petition DIP, they violated this condition. The plan is no longer meaningfully resembles the 2nd POR and has been, in effect, withdrawn, even though the TSC debtors cannot admit this *de facto* state. Respectfully, the court should solicit other Reorganization Plans from other interested parties.

33. This supplement provides additional spectrum-specific valuation information that, when used in conjunction with my objection of July 22, 2012, rationally, must lead to the denial of the debtors' current disclosures and plan of reorganization. Approving the 3rd Amended plan, in the absence of a contemporary, market-based valuation of the 1.4 GHz spectrum asset, can only lead to an unjust outcome. The court should send a clear message to Terrestar insiders, who are bound by the *Character and Candor* requirements of FCC licensees, that collusion and debilitating conflicts-of-interest will not be rewarded by this court.

/s/ Jeffrey M. Swarts
August 14, 2012

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