

June 9, 2009

New DBSD Satellite Services G.P.
11700 Plaza America Drive, Suite 1010
Reston, Virginia 20190

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
WT Docket No. 02-55; ET Docket Nos. 00-258 and 95-18

Dear Ms. Dortch:

On June 8, 2009, the undersigned for New DBSD Satellite Services G.P. (“DBSD,” formerly New ICO Satellite Services, G.P. (“ICO”)) left a voice mail message for Paul Murray, legal advisor to acting Chairman Michael Copps. DBSD continues to urge the Commission to unconditionally eliminate the top 30 market rule to permit commencement mobile satellite service (“MSS”) operations. Contrary to the prior expectations of the Commission when it adopted the Sprint/BAS relocation plan, DBSD will have launched its satellite well in advance of completion of BAS clearing,¹ and the ability of MSS operators to commence operations should not be conditioned upon the resolution of reimbursement or other issues.

Throughout the BAS relocation proceeding, the Commission has modified traditional relocation and reimbursement procedures to balance the needs of BAS licensees, MSS entrants, and later, Sprint Nextel, in each instance in recognition of the unique circumstances presented.² The original Commission BAS relocation plan modified the traditional *Emerging Technologies* relocation scheme to allow MSS to begin operations prior to completion of BAS relocation in order to minimize up-front payments for a nationwide clearing effort by MSS entrants.³ In adopting the Sprint/BAS plan, the Commission anticipated that MSS operations could commence

¹ *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶ 270 (2004)(“800 MHz Order”).

² These changes have included adoption of market-by-market rather than link-by-link relocation to minimize disruption to BAS operations, minimized up-front relocation costs and deferred relocation obligations to promote the rapid introduction of innovative MSS, and immediate licensing of nationwide 1.9 GHz spectrum to facilitate Sprint’s spectrum acquisition and reconfiguration commitments without enabling any undue windfall. *See, e.g., Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service*, 15 FCC Rcd 12315, ¶¶ 7, 20-21 (2000)(“MSS 3rd R&O”); *800 MHz R&O at ¶ 2*, 20, 256.

³ *MSS Third R&O at ¶ 20* (noting that “the ubiquitous nature of MSS operations precludes the gradual build-out of facilities ... to spread out their relocation costs.”).

prior to completion of BAS relocation,⁴ and that MSS would commence operations prior to the end of the 800 MHz reconfiguration and true-up period.⁵ Instead, DBSD launched its satellite as required by the FCC's milestone requirements over a year ago, on April 14, 2008, but the BAS clearing process is still far from complete. Because of the clearing delays, DBSD has suffered, and continues to suffer, harms from the inability to properly plan for nationwide operations, to recover any of its developmental and operational costs, and from the erosion of the useful life of its first-of-its-kind next generation MSS satellite.

In light of the above, it is eminently reasonable and well within existing precedent to permit MSS operators immediate access to 2 GHz spectrum to provide MSS to the public. It would be unreasonable and contrary to the public interest to retain or otherwise condition the top 30 market rule to continue to prohibit introduction of MSS, and further exacerbate the related harms to MSS, now that circumstances have changed so radically from those anticipated by the Commission.

Please direct any questions about this matter to the undersigned.

Respectfully submitted,

/s/Suzanne Hutchings Malloy
Suzanne Hutchings Malloy

cc: Paul Murray

⁴ 800 MHz R&O at ¶ 270.

⁵ *Id.*