

July 28, 2010

**Via Electronic Submission**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Marc S. Martin  
D 202.778.9859  
F 202.778.9100  
marc.martin@klgates.com

**Re: Written Ex Parte Presentation**

**WT Docket No. 02-55; ET Docket Nos. 00-258, 95-18;  
New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for  
Transfer of Control of Earth Station Licenses and Authorizations, File  
Nos. SES-T/C-20091211-01575, SES-T/C-20091211-1576, SAT-T/C-  
0091211-00144.**

Dear Ms. Dortch:

On July 26, 2010, representatives of Sprint Nextel Corporation (“Sprint Nextel”) met with Commission staff regarding the above-captioned proceedings.<sup>1</sup> This letter presentation provides additional information relevant to points raised during the meeting.

I. ICO Global Has Only Itself to Blame for Operational Delays

Sprint Nextel rejects the notion that ICO Global Communications (Holdings) Limited (“ICO Global”) was harmed by delays in the Broadcast Auxiliary Service (“BAS”) relocation. First, the Commission has repeatedly found that the delays were outside the individual or collective control of Sprint Nextel or the BAS operators.<sup>2</sup> In addition, Sprint Nextel completed this relocation of unprecedented size and complexity with no assistance

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<sup>1</sup> On July 27, 2010, Sprint Nextel filed an *ex parte* notice discussing the attendees and subject matter of that meeting.

<sup>2</sup> See *Improving Public Safety Communications in the 800 MHz Band, et al*, 25 FCC Rcd 1294, 1296 ¶ 4 (2010) (“*BAS Deadline Extension Order*”) (in which the Commission observed that “[t]wo themes have emerged throughout the BAS relocation process: the transition has proven to be far more complicated than was first anticipated, and Sprint Nextel has made continued progress in its efforts to relocate the BAS markets.”).

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from the MSS operators, despite their independent duty to relocate BAS incumbents.<sup>3</sup> Notably, MSS operators not only refused to engage in the BAS relocation process during Sprint Nextel's efforts, but also refused to relocate BAS incumbents in the many years prior to Sprint Nextel's involvement.<sup>4</sup> Had MSS operators, including ICO Global, made any effort to fulfill their independent duties to relocate BAS incumbents prior to Sprint Nextel's involvement, the unexpected complexity of the process might have been identified sooner, and the overall relocation timetable advanced. ICO Global's unsupported allegations that Sprint Nextel purposely delayed the BAS relocation are wrong.

Nor is there any substance to claims that the BAS relocation delays harmed the MSS operators. A review of the relevant time periods demonstrates that MSS operators routinely suffered their own milestone delays unrelated to the BAS relocation.<sup>5</sup> For example, in May 2005, the launch milestone for ICO Global's system was delayed until July 2007, without reference to BAS relocation delays.<sup>6</sup> ICO Global's subsidiary received further extensions in 2007 due to "manufacturing difficulties related to a limited number of satellite components."<sup>7</sup> In addition, the Commission observed that the MSS operators were provided with reasonable

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<sup>3</sup> See *Improving Public Safety Communications in the 800 MHz Band, et al*, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 7904, 7909 ¶ 11 (2009) ("*BAS Relocation Report & Order and Further Notice*") ("When Sprint Nextel undertook its commitment to relocate the BAS licensees, the Commission did not remove either the obligation previously placed on the MSS entrants to relocate the BAS licensees, or the procedures that had already been put in place for doing so.").

<sup>4</sup> *Id.*, 24 FCC Rcd at 7909 ¶ 10 ("When the decision was made to permit Sprint Nextel to use the 1990-1995 MHz band, no BAS licensees had been relocated by the MSS entrants, and there is no evidence that the MSS entrants exercised their right to relocate any BAS incumbents subsequent to the Commission's decision.") (emphasis added).

<sup>5</sup> See, e.g., *In the Matter of TerreStar Networks, Inc.*, SAT-MOD-20070608-00080, DA 07-4148 (Oct. 3, 2007) (postponing TerreStar's satellite launch date due to manufacturing problems that have "delayed project completion"); *BAS Relocation Report & Order and Further Notice*, 24 FCC Rcd at 7914 ¶ 22 n.53 ("TerreStar recently informed the Commission that the launch of its satellite will be delayed beyond the current June 30, 2009 launch milestone.").

<sup>6</sup> *ICO Satellite Services G.P. Application for Modification of 2 GHz WI Authorization, Memorandum Opinion and Order*, 20 FCC Rcd 9797, 9799 ¶ 5 (2005) (noting that ICO claimed waiver of its launch milestone deadline was warranted "because contractual difficulties with [Boeing Satellite Systems International] had delayed unavoidably its implementation of an NGSO system").

<sup>7</sup> *New ICO Satellite Services G.P. Application to Extend Milestones*, Memorandum Opinion and Order, 22 FCC Rcd 2229, 2229-2230 ¶¶ 1, 6 (2007).

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opportunities of their own to avoid any BAS relocation-related delays in satisfying their entry requirements.<sup>8</sup> But they declined to pursue them.<sup>9</sup> The MSS operators also had the opportunity to participate directly in the BAS relocation framework that Sprint Nextel established by providing their own hand-picked personnel to support the BAS relocation process.<sup>10</sup> The MSS operators, however, never responded to offers to participate in the relocation process.<sup>11</sup> As a result, any harm MSS operators claim to have suffered was caused exclusively by their own operational challenges and their strategic decisions to neither relocate BAS incumbents nor participate in the process Sprint Nextel established for doing so.

II. ICO Global and DBSD are Part of a Single, Integrated MSS System, Operation and Enterprise

In its July 19, 2010 *Ex Parte* notice, ICO Global asserted that “extending” the BAS reimbursement obligation to a “shareholder of or an investor in” the licensee would

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<sup>8</sup> *BAS Relocation Report & Order and Further Notice*, 24 FCC Rcd at 7930 ¶ 68 (the Commission also “provided an opportunity for the MSS entrants to relocate BAS incumbents, particularly in the top 30 markets, so that they would not be delayed in satisfying their entry requirements.”); *see also BAS Deadline Extension Order*, 25 FCC Rcd at 1296 ¶ 5 (*BAS Relocation Report & Order and Further Notice* “provided a mechanism by which MSS entities may operate in the band prior to the conclusion of the BAS relocation,” and as a result additional extensions of time were not “unduly burdensome – particular in light of the overall record of this proceeding.”).

<sup>9</sup> *See, e.g., BAS Relocation Report & Order and Further Notice*, 24 FCC Rcd at 7910 ¶ 11 (“As of today, no MSS entrant, however, has opted to invoke its right to relocate BAS licensees in any of the top 30 markets.”).

<sup>10</sup> *See, e.g., Reply Comments of Sprint Nextel Corp., the Ass’n for Maximum Serv. Television, the Nat’l Ass’n of Broadcasters, and the Soc’y of Broadcast Eng’rs, Improving Public Safety Communications in the 800 MHz Band, et al*, WT Docket No. 02-55, *et al*, 11 (Mar. 19, 2009) (“In 2007, Sprint Nextel went so far as to draft a formal Statement of Work that invited ICO and TerreStar to provide a team of employees made up of lawyers, engineers, and other personnel to work with other BAS relocation teams staffed by Sprint Nextel employees. Sprint Nextel offered to share its BAS relocation “playbook” with the MSS teams and also offered them office space, telecommunications facilities, and other administrative resources necessary to negotiate and draft contracts with BAS licensees and engage equipment manufacturers, installers, and other vendors.”).

<sup>11</sup> *Id.* (“Despite these overtures, ICO and TerreStar expressed no interest in picking up a pen and participating in the transition, and rebuffed Sprint Nextel’s invitation to make a constructive contribution to BAS relocation.”).

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“effectively broaden the reimbursement rules to require joint and several liability for those costs,” and that a corporation cannot be held liable for the obligations of separate corporate entities in which it holds an ownership interest.<sup>12</sup> By these statements, ICO Global attempts to paint itself as a passive investor that cannot be subject to reimbursement obligations herein. Yet the Commission has long had the power to ignore corporate separations when it deems it appropriate to do so, including when a statutory scheme or regulation may be frustrated.<sup>13</sup>

In any event, the Commission has explained that this argument misconstrues the central issue, which is “whether the affiliated entities [of a licensee] are directly liable according to the meaning of the FCC’s rules and orders, not whether the corporate veil may be pierced.”<sup>14</sup> Indeed, ICO Global is overly modest when it suggests it is merely a “shareholder or investor in” its subsidiary licensee.<sup>15</sup> The Commission has long treated ICO Global and its various subsidiaries as a single entity with regard to its operations and

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<sup>12</sup> ICO Global *Ex Parte* Notice, at 1.

<sup>13</sup> See, e.g., *In Re Applications of Cowles Florida Broadcasting, Inc.*, 35 FCC.2d 76, 80 (1972) (“[i]t is indisputable that the Commission may look behind the façade of corporate separation in appropriate circumstances”); see also *In the Matter of Petition by Telecable Corp.*, 19 F.C.C.2d 574, 587 (1969) (“Where the ownership of stock is used to dominate and control the subsidiary in such manner and to such extent that it becomes a merged agency or instrumentality of the parent, the separate corporate entities may be disregarded. Furthermore, separate corporate structures may be ignored where the purpose of a statutory scheme or regulation would otherwise be frustrated. The critical question, therefore, is whether the conduct of the general system corporations in the light of the relationship which exists among them requires that the legal concept of separate corporate identities be disregarded in order to preserve the integrity of [the statute] and to prevent the respondents from defeating the purpose and objective of the statutory provisions . . . .”) (emphasis added).

<sup>14</sup> *Response of the FCC to Debtors’ Omnibus Objection to Proofs of Claim Filed by Sprint Nextel Corporation Regarding Debtors’ Joint and Several Liability, In re DBSD North America, Inc., et al.*, Case No. 09-13061, at 13 n.26 (Aug. 31, 2009) (also noting that the Commission possesses broad statutory authority under Section 303 of the Communications Act of 1934, as amended (the “Act”) to disregard the common law doctrine of piercing the corporate veil for purposes of looking through the corporate form of a Commission licensee). Although the Commission’s filing was with regard to primary jurisdiction issues and not the merits of the joint and several liability issue, its description of the applicable law is germane.

<sup>15</sup> As of December 31, 2009, ICO Global owned 99.84% of DBSD North America, Inc. *New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations*, Nos. SES-T/C-20091211-01575, SES-T/C-20091211-1576, SAT-T/C-0091211-00144, Exhibit E, at 1.

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authorizations,<sup>16</sup> and routinely refers to the obligations not only of licensees but of MSS operators, entrants, and systems.<sup>17</sup> The Commission has also stated that “the term ‘MSS licensee’ *includes MSS systems licensed by the Commission to serve the United States, as well as non-U.S.-licensed satellite systems for which the Commission reserved spectrum to serve the United States.*”<sup>18</sup>

That common-sense treatment of the MSS operator as a multi-faceted corporate enterprise is borne out by ICO Global’s extensive statements and activity before the Commission regarding its MSS system. For example, ICO Global’s Senior Vice President routinely provided the actual milestone certifications for ICO Global’s licensed subsidiary, New ICO/DBSD.<sup>19</sup> His certifications disregard any serious concern for the corporate forms

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<sup>16</sup> See, e.g., *Applications of Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited for Transfer of Control*, Memorandum Opinion and Order, 18 FCC Rcd 1094, 1095, ¶ 3 (2003) (noting that ICO Global had “through subsidiaries” obtained a Letter of Intent authorization for provision of MSS in the United States, using specific segments in the 1990-2025 MHz band).

<sup>17</sup> See *Petition to Deny of Sprint Nextel Corporation, In the Matter of Applications for Transfer of Control of Earth Station Licenses and Authorizations*, File Nos. SES-T/C-20091211-01575, SES-T/C-20091211-1576, SAT-T/C-0091211-00144, at 18-19 (Jan. 14, 2010).

<sup>18</sup> *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order, 18 FCC Rcd 23638, 23643 n.20 (2003) (emphasis added).

<sup>19</sup> See, e.g., *Re: ICO Satellite Services G.P.*, File No. SAT-LOI-19970926-00163, 3-4 (July 19, 2005) (enclosing certification by Dennis Schmitt, Senior Vice President of “ultimate parent company” ICO Global that its subsidiary had commenced coordination of the physical operation of ICO’s satellite, and further attaching correspondence showing that ICO Global would be the principal contact with PanAmSat with respect to coordinating satellite operations) (attached hereto as **Attachment A**); *Re: New ICO Satellite Services G.P.*, File No. SAT-MOD-20050110-00004, 5 (Apr. 26, 2006) (enclosing certification by Dennis Schmitt, Senior Vice President of “ultimate parent” ICO Global that its subsidiary has completed propulsion integration for its 2 GHz geostationary satellite orbit MSS satellite) (attached hereto as **Attachment B**); *Re: New ICO Satellite Services G.P.*, File No. SAT-MOD-20050110-00004 (June 29, 2006) (enclosing certification by Dennis Schmitt, Senior Vice President of “ultimate parent” ICO Global that its subsidiary has completed bus integration for its 2 GHz geostationary satellite) (attached hereto as **Attachment C**); *In Re New ICO Satellite Services G.P.*, File Nos. SAT-MOD-20050110-00004, *et al* (July 18,

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of separation between ICO Global and its license-holding subsidiary. Indeed, ICO Global's Senior Vice President performed the very act that the Commission tentatively concluded triggers the MSS operators' obligation to reimburse Sprint Nextel's relocation costs<sup>20</sup> when he provided the certification that "the entire ICO 2 GHz mobile satellite service system is operational."<sup>21</sup>

Taken together, these submissions demonstrate ICO Global's critical role in developing and constructing the MSS system, as well as its involvement and expertise with regard to key aspects of satellite planning, launch, and operations. ICO Global and its subsidiaries are, in fact, operationally, administratively, and functionally intertwined, and collectively comprise the MSS operator subject to the Commission's jurisdiction. ICO Global in fact certified the operational milestone that triggers its reimbursement obligations under the Commission's tentative conclusion regarding band entry. As a result, ICO Global should be held directly (*i.e.*, jointly and severally) liable for the BAS reimbursement compliance obligation.<sup>22</sup>

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2006) (enclosing certification by Dennis Schmitt, Senior Vice President of "ultimate parent" ICO Global that its subsidiary had completed coordination of the physical operations of its satellite and filed modification applications) (attached hereto as **Attachment D**); *Re: New ICO Satellite Services G.P.*, File Nos. SAT-MOD-20050110-00004, *et al.*, (Oct. 3, 2006), Attachment 1 (certification by Dennis Schmitt, Senior Vice President of "ultimate parent" ICO Global that its subsidiary had completed main body integration of its satellite) (attached hereto as **Attachment E**).

<sup>20</sup> *BAS Relocation Report & Order and Further Notice*, 24 FCC Rcd at 7906, ¶¶ 2, 82 ("[A]n MSS operator 'enters the band' and thus incurs an obligation to share in the costs associated with relocation of BAS incumbents when its satellite is found operational under its authorization milestone.") (Emphasis added).

<sup>21</sup> *See Re: New ICO Satellite Services G.P. Final Milestone Certification and Selected Assignment Notification*, Attachment 1 (May 9, 2008) (attached hereto as **Attachment F**); *see also BAS Relocation Report & Order and Further Notice*, 24 FCC Rcd at 7914, ¶ 22 & n.56 ("ICO launched its satellite in April 2008 and, in May 2008, met its operational milestone under the terms of the BAS Relocation MO&O.") (emphasis added).

<sup>22</sup> Sprint Nextel notes that it first formally notified only the licensed subsidiaries of ICO Global and TerreStar of its intent to seek reimbursements from them for its band clearing costs. *See Letter to Ms. Marlene Dortch, Secretary, FCC from Lawrence R. Krevor, V.P., Sprint Nextel* (Mar. 7, 2006). At that time, Sprint Nextel had not received notice of the MSS licensees' sweeping refusal to comply with the Commission's reimbursement obligations, and there was not yet a need to pursue other entities in ICO's intertwined corporate structure for their joint and several reimbursement liability. That notice was only provided after Sprint

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ICO Global's central role in the operation of the MSS system is also demonstrated by filings made in the bankruptcy case of its subsidiaries. In the DBSD bankruptcy case, the debtors submitted a planned "Transition Space and Services Agreement" between ICO Global and DBSD North America, Inc. that acknowledged the existence of forty-three (43) "dual employees" between ICO Global and its subsidiaries, which even includes the CEO.<sup>23</sup> Those "dual" employees likely comprise the vast majority, if not the totality, of ICO Global's workforce.<sup>24</sup> Moreover, the agreement also outlined in part extensive list of services ICO Global would provide to DBSD on request, including such critical operational, technical and policy matters as:

- all legal and regulatory-related support, including: ... [m]anagement of corporate governance and other legal compliance ... [r]epresentation before U.S. ... regulatory bodies concerning spectrum, related rights and obligations, licensing, and spectrum coordination with respect to the G-1 satellite;
- all technical support for the ground segment, including ... [m]anagement of the alpha trial ... [r]esearch and development on ground network ... and [s]upport of regulatory and engineering analysis in connection with spectrum rights and spectrum clearing; and
- [a]ll operations and support for the GEO space segment, including ... [m]anagement and operation of the G-1 satellite, ... [t]echnical support of regulatory and engineering analysis in connection with spectrum rights and spectrum clearing.<sup>25</sup>

These ICO Global "services" are consistent with ICO Global's own statements to other federal regulatory agencies in which it held out itself, and not its subsidiary, as the MSS operator. For example, in regulatory filings to the Securities and Exchange Commission,

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Nextel had already incurred hundreds of millions of dollars in relocation costs related to the MSS operators, based on Sprint Nextel's reasonable expectation under the salient FCC's orders that it would be reimbursed.

<sup>23</sup> *Notice of Fifth Amendment to Plan Supplement in Support of the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, Case No. 09-13061 (Sept. 18, 2009) (Exhibit I) ("Space Services Agreement") at 1 (attached hereto as **Attachment G**).

<sup>24</sup> *See, e.g.*, LexisNexis at Vantage ICO Global Company Profile, at 3 (July 28, 2010) (indicating ICO Global has 41 employees) (attached hereto as **Attachment H**).

<sup>25</sup> Space Services Agreement, Schedule A, 1-2.

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ICO Global described itself as a “next-generation mobile satellite service (“MSS”) operator” that is “authorized by the [FCC] to offer MSS throughout the United States.”<sup>26</sup>

Finally, we note that ICO Global expects to continue to hold a material equity interest in the licensed subsidiary that is proposed to emerge from bankruptcy. By such equity stake, it stands to gain from the anticipated increase in the value of the 2 GHz spectrum that Sprint Nextel has cleared, which it may be permitted to exploit with greater flexibility in the future.<sup>27</sup> The Commission has deemed a sole stockholder of a licensee to be the holder of the station license where the stockholder stood to gain from the operation and sale of the station.<sup>28</sup> Similarly, ICO Global (and the other equity holders of the reorganized entity), will gain from the voluntary structured bankruptcy of its subsidiary, and will therefore be directly and unjustly enriched by Sprint Nextel’s band clearing efforts.<sup>29</sup>

In short, ICO Global’s activities with respect to the MSS system and 2 GHz spectrum demonstrate that the Commission, when adopting and repeatedly affirming the BAS reimbursement obligations, intended that all entities within the corporate structure that comprises the MSS operator or system should be held directly and jointly and severally liable for reimbursing Sprint Nextel for its *pro rata* share of Sprint’s first mover BAS spectrum clearing expenses.

Pursuant to Section 1.1206 of the Commission’s Rules, a copy of this letter is being filed electronically in the above-referenced dockets and electronic copies are being submitted to Commission staff listed below. If you have any questions, please feel free to contact me at (202) 778-9859.

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<sup>26</sup> *ICO Global Communications (Holdings) Limited*, Annual Report (Form 10-K), at 1, 28 (Mar. 31, 2009).

<sup>27</sup> *See Fixed and Mobile Services in the Mobile Satellite Service Bands, Notice of Proposed Rulemaking and Notice of Inquiry*, ET Docket No. 10-142, FCC 10-126 (July 15, 2010).

<sup>28</sup> *Liability of Federated Publications, Inc., Former Owner of WMRI, Inc., Licensee of WMRI (AM or FM), for Forfeiture*, 6 F.C.C.2d 279 (1967).

<sup>29</sup> The facts described herein clearly demonstrate that ICO Global and its licensed subsidiary have for years been operating as a single system, operation and enterprise with deliberate disregard for its corporate forms of separation. Having said that, Sprint Nextel submits that the Commission has authority to deem corporate parents and affiliates of MSS licensees, generally, directly liable for Sprint Nextel’s relocation costs as a matter of law without regard to the specific facts of ICO Global. *See, e.g.*, Reply Comments of Sprint Nextel Corporation, *In the Matter of Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55 *et al.* (July 24, 2009), at 2-3.

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Sincerely,

/s/ Marc S. Martin

Marc S. Martin

cc: Austin Schlick  
Stewart Block  
David Horowitz  
Andrea Kearney  
Sally Stone  
Julie Veach  
Gardner Foster  
Karl Kensinger  
Geraldine Matise

**ATTACHMENT A**

COPY

Received  
JUL 27 2005  
Policy Branch  
International Bureau



July 19, 2005

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JUL 19 2005

Federal Communications Commission  
Office of Secretary

By Hand Delivery

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

Re: ICO Satellite Services G.P.  
File No. SAT-LOI-19970926-00163

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> ICO Satellite Services G.P. ("ICO") submits the following documents as evidence of its compliance with the milestone requirement to "[c]ommence coordination of the physical operation of the satellite."<sup>2</sup> 1) an ICO affidavit (attached hereto as Attachment 1), certifying commencement of coordination of the physical operation of ICO's geostationary satellite; 2) a letter from ICO to PanAmSat (attached hereto as Attachment 2), referencing an initial meeting on physical coordination of satellite operations and confirming plans for future meetings on the topic, and 3) a letter from ICO to Telesat Canada (attached hereto as Attachment 3), proposing an initial meeting to address physical coordination of the companies' respective satellite operations.

Please direct any questions regarding this submission to the undersigned.

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> *ICO Satellite Services G.P.*, DA 05-1504, ¶ 38 (May 24, 2005).

2000 Pennsylvania Ave., NW  
Suite 4400  
Washington, DC 20006

202 330 4005 phone  
202 330 4008 fax  
web: [www.ico.com](http://www.ico.com)

Respectfully submitted,

*Suzanne Hutchings Malloy*

Suzanne Hutchings Malloy

Enclosures

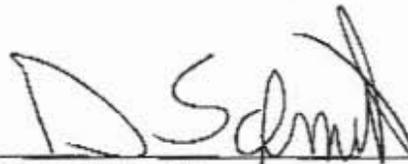
cc: Karl Kensinger, International Bureau

ATTACHMENT 1

CERTIFICATION

Pursuant to Section 25.121(d)(2) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent company of Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has begun physical coordination of its 2 GHz geostationary satellite orbit ("GSO") mobile satellite service ("MSS") satellite.



Dennis Schmitt

Date: July 18, 2005

ATTACHMENT 2



July 15, 2005

Mr. Tobias Nassif  
V.P., Space Operations  
PanAmSat  
1600 Forbes Way  
Long Beach, CA 90810

Dear Mr. Nassif:

ICO Satellite Services G.P. ("ICO") was recently authorized to operate a geostationary satellite in the Ka-band and S-band at the 91° W.L. orbital location, scheduled for launch in July of 2007. ICO is aware that PanAmSat currently operates the C-band GALAXY-9 satellite and the C-/Ku-band GALAXY-11 satellite at that location.

As discussed in a July 14 meeting, ICO and PanAmSat began coordination of the physical operations of (i.e., mitigating the possibility of collision between) the ICO and Panamsat satellites at 91° W.L. Specifically, ICO and PanAmSat prepared an agenda for discussing: the basic parameters of their respective satellites; existing and planned station-keeping operations, and; future meetings on physical coordination.

ICO looks forward to working with PanAmSat toward timely completion of physical coordination of operations of their respective satellites. Andrzej Korab will act as ICO's principal contact on this matter. His contact information is as follows:

Andrzej Korab  
ICO Global Communications  
222 North Sepulveda, Suite 1770  
El Segundo, California 90245  
310 760 0492

PanAmSat inquiries about this letter may also be directed to the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Hutchings Malloy".

Suzanne Hutchings Malloy  
Senior Regulatory Counsel  
ICO

2000 Pennsylvania Ave., NW  
Suite 4400  
Washington, DC 20006

202 330 4005 phone  
202 330 4008 fax  
web: [www.ico.com](http://www.ico.com)



July 14, 2005

John Forsey  
Director, New Satellite Ventures and International Coordination  
Telesat Canada  
1601 Telesat Court  
Gloucester, Ontario, Canada  
K1B 5P4

Dear Mr. Forsey:

ICO Satellite Services G.P. ("ICO") was recently authorized to operate a geostationary satellite in the Ka-band and S-band at the 91° W.L. orbital location, scheduled for launch in July of 2007. ICO is aware that Telesat Canada currently operates the NIMIQ-1 and NIMIQ-3 (a.k.a. DIRECTV-3) DBS satellites at that location.

ICO requests coordination of the physical operations of the ICO and Telesat Canada satellites. Specifically, ICO wishes to discuss options for mitigating the possibility of collision between the ICO and Telesat Canada satellites at 91° W.L. At an initial meeting, ICO proposes that the two companies discuss: the basic parameters of their respective satellites; existing and planned station-keeping operations, and; an agenda for future meetings on physical coordination.

ICO looks forward to working with Telesat Canada, and is available to meet at Telesat Canada's convenience. Andrzej Korab will act as ICO's principal contact on this matter (see contact information below), and will contact you directly next week.

Andrzej Korab  
ICO Global Communications  
222 North Sepulveda, Suite 1770  
El Segundo, California 90245  
310 760 0492

ICO looks forward to working with Telesat Canada on this matter.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Hutchings Malloy". The signature is written in a cursive style.

Suzanne Hutchings Malloy  
Senior Regulatory Counsel

2000 Pennsylvania Ave., NW  
Suite 4400  
Washington, DC 20006

Phone: 202 330 4005  
Fax: 202 330 4008  
Web: [www.ico.com](http://www.ico.com)

**ATTACHMENT B**

FOR INTERNAL USE ONLY

NON-PUBLIC

RECEIVED

APR 26 2006

Federal Communications Commission  
Office of Secretary

April 26, 2006

**REQUEST FOR CONFIDENTIAL TREATMENT****By Hand Delivery**

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

Re: New ICO Satellite Services G.P.  
File No. SAT-MOD-20050110-00004  
Call Sign: S2651

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") submits a certification (attached hereto as Attachment 1) of completion of the milestone to "complete propulsion integration."<sup>2</sup> The ICO certification is suitable for public inspection.

Subject to the confidentiality request stated below, ICO also submits the following documents ("Milestone Documents") to the International Bureau: (1) a letter from its satellite manufacturer, Space Systems/Loral ("SS/L"), certifying completion of propulsion integration for ICO's geostationary satellite and receipt of all payments due under the manufacturing contract as of the date of the letter (attached hereto as Attachment 2); and (2) a chart summarizing payments made under the manufacturing contract (attached hereto as Attachment 3). ICO offers these documents, along with its own milestone certification, as evidence that ICO is proceeding with timely implementation of its 2 GHz mobile satellite service ("MSS") system under the milestone schedule set forth in its Commission authorization.

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> See *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, ¶ 38 (IB 2005).

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Pursuant to paragraph 39 of the *ICO Modification Order*,<sup>3</sup> ICO notifies the Commission that the milestone to complete propulsion integration was completed on April 20, 2006, prior to the FCC milestone deadline, but 19 calendar days following the scheduled implementation date set forth in Appendix F of ICO's satellite manufacturing agreement.<sup>4</sup>

The Milestone Documents contain highly sensitive commercial and financial information. Specifically, they include information regarding amounts due, payment terms, and technical information specified in ICO's manufacturing contract. The disclosure of this information likely would cause substantial competitive and financial harm to ICO, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")<sup>5</sup> and Section 0.457(d) of the Commission's rules.<sup>6</sup> Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules,<sup>7</sup> ICO requests the Commission to withhold from public inspection and accord confidential treatment to the Milestone Documents.

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, ICO states the following:

1. ICO seeks confidential treatment of the Milestone Documents, which set forth specific information regarding amounts due, payment terms, and technical criteria.
2. As noted above, the Milestone Documents are being submitted to support ICO's milestone certification, filed pursuant to Section 25.143(e)(3) of the Commission's rules.
3. The Milestone Documents contain information regarding amounts due, payment terms, and technical criteria, which constitutes trade secrets or sensitive commercial and financial information that "would customarily be guarded from competitors,"<sup>8</sup> and is therefore

---

<sup>3</sup> *Id.* ¶ 39.

<sup>4</sup> The FCC implementation milestone schedule does not require ICO to complete propulsion integration until May 1, 2006, but the contractual milestone schedule set forth in Appendix F of ICO's satellite manufacturing agreement specifies a completion date of April 1, 2006.

<sup>5</sup> 5 U.S.C. § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

<sup>6</sup> 47 C.F.R. § 0.457(d).

<sup>7</sup> *Id.* §§ 0.457, 0.459.

<sup>8</sup> *Id.* § 0.457(d)(2).

Marlene H. Dortch  
April 26, 2006  
Page Three

exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.<sup>9</sup>

4. The Milestone Documents are related to the implementation of a 2 GHz MSS system, which will be subject to competition from a number of other MSS systems.

5. Disclosure of information regarding amounts due, payment terms, and technical information likely would result in substantial competitive harm to ICO. For example, disclosure of this information would allow competing MSS licensees to use this information to their competitive advantage. Specifically, knowledge of financial terms and conditions under ICO's manufacturing contract could allow competitors to obtain comparable or more favorable terms from other manufacturers. Furthermore, disclosure could harm ICO in future negotiations regarding satellite construction by allowing manufacturers to extract more favorable terms.

6. Article 31 of ICO's manufacturing contract contains specific provisions requiring both parties to the contract to maintain confidentiality of information furnished in connection with the contract or the transactions contemplated under the contract.

7. Information regarding amounts due, payment terms, and technical specifications is not available to the public. Consistent with, and except as provided under the confidentiality provisions of ICO's manufacturing contract, there has been no disclosure of such information to any third parties.

8. ICO requests confidential treatment of the Milestone Documents for an indefinite period. During the operational life of the ICO system, satellite manufacturers and 2 GHz MSS competitors could use the otherwise confidential information to their competitive advantage and to ICO's detriment.

9. The Commission has acknowledged that satellite construction contracts contain competitively sensitive information requiring protection from public disclosure.<sup>10</sup> Specifically, the Commission has found that financial and technical data contained in a satellite construction contract constitutes confidential information because its disclosure would cause substantial harm to the licensee's competitive position.<sup>11</sup> Moreover, in requiring Big LEO and 2 GHz MSS licensees to submit annual reports and any requested additional contract and construction

---

<sup>9</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

<sup>10</sup> See, e.g., *GE American Communications, Inc.*, 16 FCC Rcd 6731, 6731 (IB 2001).

<sup>11</sup> See *American Satellite Co.*, 1985 FCC Lexis 3117, at \*19 (1985).

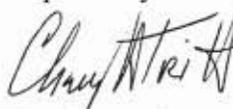
Marlene H. Dortch  
April 26, 2006  
Page Four

information to demonstrate compliance with the milestones, the Commission expressly contemplated that licensees could seek confidential treatment of “any portion of their report, pursuant to Section 0.459 of the Commission’s rules.”<sup>12</sup>

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Milestone Documents within the Commission on a “need to know” basis. In the event that any person or entity outside the Commission requests disclosure of the Milestone Documents, ICO requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Cheryl A. Tritt  
Counsel for New ICO Satellite Services G.P.

Enclosures

cc: Robert Nelson  
Cassandra Thomas  
Karl Kensinger

---

<sup>12</sup> See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16181 (2000).

## CERTIFICATION

Pursuant to Section 25.143(e)(3) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has completed propulsion integration for its 2 GHz geostationary satellite orbit mobile satellite service satellite.

A handwritten signature in black ink, appearing to read "D Schmitt", is written over a horizontal line.

Dennis Schmitt

Date: April 24, 2006

REDACTED

Attachment 2

REDACTED

Attachment 3

**ATTACHMENT C**

WWW.MORFO.COM  
FOR INTERNAL USE ONLY  
NON-PUBLIC

**COPY**

MORRISON & FOERSTER LLP  
NEW YORK, SAN FRANCISCO,  
LOS ANGELES, PALO ALTO,  
SAN DIEGO, WASHINGTON, D.C.  
DENVER, NORTHERN VIRGINIA,  
ORANGE COUNTY, SACRAMENTO,  
WALNUT CREEK, CENTURY CITY  
TOKYO, LONDON, BEIJING,  
SHANGHAI, HONG KONG,  
SINGAPORE, BRUSSELS

June 29, 2006

**REQUEST FOR CONFIDENTIAL TREATMENT**

**By Hand Delivery**

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

**RECEIVED**

**JUN 29 2006**

Federal Communications Commission  
Office of Secretary

Re: New ICO Satellite Services G.P.  
File No. SAT-MOD-20050110-00004  
Call Sign S2561

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") submits a certification (attached as Attachment 1) of completion of the milestone to "complete bus integration."<sup>2</sup> The ICO certification is suitable for public inspection.

Subject to the confidentiality request stated below, ICO also submits the following documents to the International Bureau: (1) a letter from its satellite manufacturer, Space Systems/Loral ("SS/L"), certifying completion of bus integration for ICO's geostationary satellite and receipt of all payments due under the manufacturing contract as of the date of the letter (attached as Attachment 2); and (2) a chart summarizing payments made under the manufacturing contract (attached as Attachment 3). ICO offers these documents, along with its own milestone certification, as evidence that ICO is proceeding with timely implementation of its 2 GHz mobile satellite service ("MSS") system under the milestone schedule set forth in its authorization.

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> See *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, ¶ 38 (IB 2005).

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NON-PUBLIC

Marlene H. Dortch

June 29, 2006

Page Two

Additionally, pursuant to paragraph 39 of the *ICO Modification Order*,<sup>3</sup> ICO hereby notifies the Commission that contract milestone #26, specified in Appendix F of its satellite manufacturing contract, is expected to be completed by July 27, 2006, more than 14 calendar days following the scheduled completion date of June 15, 2006. This particular contract milestone is not a required FCC implementation milestone. As indicated in the letter from SS/L (attached as Attachment 4) (together with Attachments 2 and 3, "Milestone Documents," all of which are subject to the confidentiality request stated below), the brief delay in completion of this contract milestone will not impact timely completion of the FCC implementation milestones.

The Milestone Documents contain highly sensitive commercial and financial information. Specifically, they include information regarding amounts due, payment terms, and technical information specified in ICO's manufacturing contract. The disclosure of this information likely would cause substantial competitive and financial harm to ICO, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")<sup>4</sup> and Section 0.457(d) of the Commission's rules.<sup>5</sup> Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules,<sup>6</sup> ICO requests the Commission to withhold from public inspection and accord confidential treatment to the Milestone Documents.

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, ICO states the following:

1. ICO seeks confidential treatment of the Milestone Documents, which contains specific information regarding amounts due, payment terms, and technical criteria.
2. As noted above, the Milestone Documents are being submitted to support ICO's milestone certification, filed pursuant to Section 25.143(e)(3) of the Commission's rules.
3. The Milestone Documents contain information regarding amounts due, payment terms, and technical criteria, which constitutes trade secrets or sensitive commercial and financial information that "would customarily be guarded from competitors,"<sup>7</sup>

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<sup>3</sup> *Id.* ¶ 39.

<sup>4</sup> 5 U.S.C. § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

<sup>5</sup> 47 C.F.R. § 0.457(d).

<sup>6</sup> *Id.* §§ 0.457, 0.459.

<sup>7</sup> *Id.* § 0.457(d)(2).

Marlene H. Dortch

June 29, 2006

Page Three

and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.<sup>8</sup>

4. The Milestone Documents are related to the implementation of a 2 GHz MSS system, which will be subject to competition from a number of other MSS systems.
5. Disclosure of information regarding amounts due, payment terms, and technical information likely would result in substantial competitive harm to ICO. For example, disclosure of this information would allow competing MSS licensees to use this information to their competitive advantage. Specifically, knowledge of financial terms and conditions under ICO's manufacturing contract could allow competitors to obtain comparable or more favorable terms from other manufacturers. Furthermore, disclosure could harm ICO in future negotiations regarding satellite construction by allowing manufacturers to extract more favorable terms.
6. Article 31 of ICO's manufacturing contract contains specific provisions requiring both parties to the contract to maintain confidentiality of information furnished in connection with the contract or the transactions contemplated under the contract.
7. Information regarding amounts due, payment terms, and technical specifications is not available to the public. Consistent with and except as provided under the confidentiality provisions of ICO's manufacturing contract, there has been no disclosure of such information to any third parties.
8. ICO requests confidential treatment of the Milestone Documents for an indefinite period. During the operational life of the ICO system, satellite manufacturers and 2 GHz MSS competitors could use the otherwise confidential information to their competitive advantage and to ICO's detriment.
9. The Commission has acknowledged that satellite construction contracts contain competitively sensitive information requiring protection from public disclosure.<sup>9</sup> Specifically, the Commission has found that financial and technical data contained in a satellite construction contract constitutes confidential information because its disclosure would cause substantial harm to the licensee's competitive position.<sup>10</sup> Moreover, in requiring Big LEO and 2 GHz MSS licensees to submit annual reports and any requested additional contract and construction information to demonstrate compliance with the milestones, the Commission expressly contemplated that

---

<sup>8</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

<sup>9</sup> See, e.g., *GE American Communications, Inc.*, 16 FCC Rcd 6731, 6731 (IB 2001).

<sup>10</sup> See *American Satellite Co.*, 1985 FCC Lexis 3117, at \*19 (1985).

Marlene H. Dortch  
June 29, 2006  
Page Four

licensees could seek confidential treatment of “any portion of their report, pursuant to Section 0.459 of the Commission’s rules.”<sup>11</sup>

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Milestone Documents within the Commission on a “need to know” basis. In the event that any person or entity outside the Commission requests disclosure of the Milestone Documents, ICO requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Cheryl A. Tritt  
Counsel for New ICO Satellite Services G.P.

Enclosures

cc: Robert Nelson  
Cassandra Thomas  
Karl Kensinger  
Andrea Kelly

---

<sup>11</sup> See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16181 (2000).

## CERTIFICATION

Pursuant to Section 25.143(e)(3) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has completed bus integration for its 2 GHz geostationary satellite orbit mobile satellite service satellite.

A handwritten signature in black ink, appearing to read 'D Schmitt', is written over a horizontal line. The signature is stylized and somewhat cursive.

Dennis Schmitt

Date: June 29, 2006

ATTACHMENT 2

REDACTED

ATTACHMENT 3

REDACTED

ATTACHMENT 4

REDACTED

**ATTACHMENT D**

July 18, 2006

Writer's Direct Contact  
202.887.1510  
CTritt@mofocom

**RECEIVED**

JUL 18 2006

By Hand Delivery

Federal Communications Commission  
Office of Secretary

**Received**

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

JUL 21 2006

Policy Branch  
International Bureau

Re: New ICO Satellite Services G.P.  
File No. SAT-MOD-20050110-00004, SAT-MOD-20050926-00182, SAT-AMD-  
20050927-00186, and SAT-AMD-20060505-00054  
Call Sign S2561

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") submits the attached certification of completion of the milestone to "complete coordination of physical operations of the satellite, and file any modification applications necessitated thereby."<sup>2</sup> This certification is based upon ICO's completion of physical coordination of its satellite at the proposed orbital location of 92.85° W.L. As stated below, ICO has determined that its proposal to operate at 92.85° W.L., a 0.15° offset from 93° W.L., will avoid the need for further physical coordination with other satellites.

By way of background, ICO is authorized to operate a geostationary satellite orbit ("GSO") satellite at 91° W.L., but has pending before the Commission a modification application, as amended, to provide for satellite operation at 92.85° W.L. in lieu of 91° W.L. As initially filed on September 26, 2005, the modification application ("Application") proposed to provide for satellite operation at 93° W.L. in lieu of 91° W.L. In that Application, ICO concluded that it would be necessary to coordinate with Intelsat, one of whose satellites is located at 93° W.L., in order to mitigate the possibility of collision with the ICO satellite.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> See *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, ¶¶ 32, 38 (IB 2005).

<sup>3</sup> See Application, IBFS File No. SAT-MOD-20050926-00182, at 18 (Sept. 26, 2005).

Marlene H. Dortch  
July 18, 2006  
Page Two

Subsequently, ICO conducted physical coordination discussions with Intelsat and determined that operation at a 0.15° offset from 93° W.L. (*i.e.*, at 92.85° W.L.) will avoid the need for further physical coordination with other satellites. Accordingly, on May 5, 2006, ICO filed an amendment (“Amendment”) to its modification application to provide for satellite operation at 92.85° W.L. in lieu of 93° W.L.<sup>4</sup>

As ICO stated in its Amendment, an offset of 0.15° between the nominal orbital positions of the Intelsat and ICO satellites is more than sufficient to ensure that no physical collision between the two satellites is possible.<sup>5</sup> Consequently, ICO believes that it has completed coordination of the physical operations of its satellite at the proposed 92.85° W.L. orbital location<sup>6</sup> and that it has filed the necessary modification applications.<sup>7</sup>

---

<sup>4</sup> Intelsat filed a petition to deny the amendment, opposing ICO’s request to use C-band frequencies at 92.85° W.L., but it did not state a basis for opposing ICO’s request to use non-C-band frequencies at 92.85° W.L. or to the requested change from 93° W.L. to 92.85° W.L. for physical coordination purposes. *See* Intelsat Petition to Deny at 1, 4 (May 22, 2006).

<sup>5</sup> *See* ICO Amendment, IBFS File No. SAT-AMD-20060505-00054, at 2 (May 5, 2006).

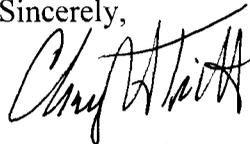
<sup>6</sup> ICO acknowledges that Commission confirmation of ICO’s milestone compliance does not constitute authorization to operate at the 92.85° W.L. orbital location requested in the pending Application, as amended. Any such authorization would be effective only upon grant of the Application.

<sup>7</sup> ICO’s completion of coordination of the physical operations of its satellite at the proposed 92.85° W.L. orbital location is sufficient for milestone purposes. *See The Boeing Company*, 18 FCC Rcd 12317, ¶ 28, n.56 (IB & OET 2003) (“That Boeing arranged for construction of the GSO satellite proposed in its license-modification application, rather than the NGSO satellites for which it had license authority as of the milestone deadline date, is not a material deficiency, given our favorable disposition of the application for modification...Had we denied the request for license modification, on the other hand, we could not have found that Boeing’s arrangements for construction of a GSO system satisfied the first milestone requirement.”). In the event that the Commission determines that ICO is required to complete coordination of the physical operations of its satellite at its currently authorized 91° W.L. orbital location, rather than at the proposed 92.85° W.L. orbital location, ICO requests a waiver or an extension of time to meet the milestone. The Commission may waive its rules upon a showing of “good cause.” *See* 47 C.F.R. § 1.3. Specifically, the Commission may waive a rule if the relief requested would not undermine the policy objective of the rule and otherwise would serve the public interest. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Grant of a waiver would serve the public interest by simplifying ICO’s coordination efforts with other satellites and allowing

Marlene H. Dortch  
July 18, 2006  
Page Three

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Cheryl A. Tritt

Attachment

cc: Cassandra Thomas  
Karl Kensinger  
Andrea Kelly

---

ICO to implement its 2 GHz mobile satellite service system and provide service to the public in a timely manner.



## CERTIFICATION

Pursuant to Section 25.143(e)(3) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

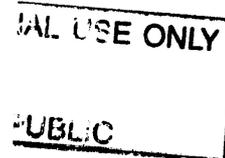
1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has completed coordination of the physical operations of its satellite and has filed the modification applications necessitated thereby.

Dennis Schmitt

Date: July 17, 2006

**ATTACHMENT E**

October 3, 2006

**SAT-MOD-20050110-00004**  
**SAT-MOD-20050926-00182**  
**SAT-AMD-20050927-00186**  
**SAT-AMD-20060505-00054****REQUEST FOR CONFIDENTIAL TREATMENT****By Hand Delivery**Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554**RECEIVED**  
OCT - 3 2006Federal Communications Commission  
Office of SecretaryRe: New ICO Satellite Services G.P.  
Call Sign S2651

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") submits a certification (attached hereto as Attachment 1) of completion of the FCC-prescribed milestone to "complete main body integration."<sup>2</sup> The ICO certification is suitable for public inspection.

Subject to the confidentiality request stated below, ICO also submits the following documents ("Milestone Documents") to the International Bureau: (1) a letter from its satellite manufacturer, Space Systems/Loral ("SS/L"), certifying completion of main body integration for ICO's geostationary satellite and receipt of all payments due under the manufacturing contract as of the date of the letter (attached hereto as Attachment 2); and (2) a chart summarizing payments made under the manufacturing contract (attached hereto as Attachment 3). ICO offers these documents, along with its own milestone certification, as evidence that ICO is proceeding with timely implementation of its 2 GHz mobile satellite service ("MSS") system under the milestone schedule set forth in its authorization.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 25.143(e)(3).

<sup>2</sup> See *ICO Satellite Services, G.P.*, 20 FCC Rcd 9797, 9808 (IB 2005).

<sup>3</sup> *Id.*

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Marlene H. Dortch  
October 3, 2006  
Page Two

Pursuant to paragraph 39 of the *ICO Modification Order*,<sup>4</sup> ICO hereby notifies the Commission that contract milestone #29, originally scheduled to be completed by September 1, was completed on September 28.

The Milestone Documents contain highly sensitive commercial and financial information. Specifically, they include information regarding amounts due, payment terms, and technical information specified in ICO's manufacturing contract. The disclosure of this information likely would cause substantial competitive and financial harm to ICO, and therefore is exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4")<sup>5</sup> and Section 0.457(d) of the Commission's rules.<sup>6</sup> Accordingly, pursuant to Sections 0.457 and 0.459 of the Commission's rules,<sup>7</sup> ICO requests the Commission to withhold from public inspection and accord confidential treatment to the Milestone Documents.

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, ICO states the following:

1. ICO seeks confidential treatment of the Milestone Documents, which contain specific information regarding amounts due, payment terms, and technical criteria.
2. As noted above, the Milestone Documents are being submitted to support ICO's milestone certification, filed pursuant to Section 25.143(e)(3) of the Commission's rules.
3. The Milestone Documents contain information regarding amounts due, payment terms, and technical criteria, which constitutes trade secrets or sensitive commercial and financial information that "would customarily be guarded from competitors,"<sup>8</sup> and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's rules.<sup>9</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

<sup>6</sup> 47 C.F.R. § 0.457(d).

<sup>7</sup> *Id.* §§ 0.457, 0.459.

<sup>8</sup> *Id.* § 0.457(d)(2).

<sup>9</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

Marlene H. Dortch

October 3, 2006

Page Three

4. The Milestone Documents are related to the implementation of a 2 GHz MSS system, which will be subject to competition from a number of other MSS systems.

5. Disclosure of information regarding amounts due, payment terms, and technical information likely would result in substantial competitive harm to ICO. For example, disclosure of this information would allow competing MSS licensees to use this information to their competitive advantage. Specifically, knowledge of financial terms and conditions under ICO's manufacturing contract could allow competitors to obtain comparable or more favorable terms from other manufacturers. Furthermore, disclosure could harm ICO in future negotiations regarding satellite construction by allowing manufacturers to extract more favorable terms.

6. Article 31 of ICO's manufacturing contract contains specific provisions requiring both parties to the contract to maintain confidentiality of information furnished in connection with the contract or the transactions contemplated under the contract.

7. Information regarding amounts due, payment terms, and technical specifications is not available to the public. Consistent with, and except as provided under the confidentiality provisions of ICO's manufacturing contract, there has been no disclosure of such information to any third parties.

8. ICO requests confidential treatment of the Milestone Documents for an indefinite period. During the operational life of the ICO system, satellite manufacturers and 2 GHz MSS competitors could use the otherwise confidential information to their competitive advantage and to ICO's detriment.

9. The Commission has acknowledged that satellite construction contracts contain competitively sensitive information requiring protection from public disclosure.<sup>10</sup> Specifically, the Commission has found that financial and technical data contained in a satellite construction contract constitutes confidential information because its disclosure would cause substantial harm to the licensee's competitive position.<sup>11</sup> Moreover, in requiring Big LEO and 2 GHz MSS licensees to submit annual reports and any requested additional contract and construction information to demonstrate compliance with the milestones, the Commission expressly

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<sup>10</sup> See, e.g., *GE American Communications, Inc.*, 16 FCC Rcd 6731, 6731 (IB 2001).

<sup>11</sup> See *American Satellite Co.*, 1985 FCC Lexis 3117, at \*19 (1985).

Marlene H. Dortch  
October 3, 2006  
Page Four

contemplated that licensees could seek confidential treatment of “any portion of their report, pursuant to Section 0.459 of the Commission’s rules.”<sup>12</sup>

In order to provide adequate protection from public disclosure, the Commission should strictly limit distribution of the Milestone Documents within the Commission on a “need to know” basis. In the event that any person or entity outside the Commission requests disclosure of the Milestone Documents, ICO requests that it be so notified immediately so that it can oppose such request or take other action to safeguard its interests as it deems necessary.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Cheryl A. Tritt  
Counsel to New ICO Satellite Services G.P.

Enclosures

cc: Robert Nelson  
Cassandra Thomas  
Karl Kensinger

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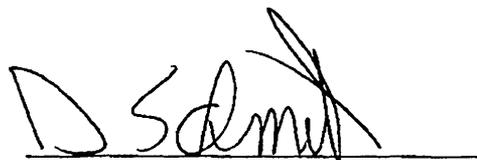
<sup>12</sup> See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6010 (1994) (emphasis added); see also *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16181 (2000).

**ATTACHMENT 1**

## CERTIFICATION

Pursuant to Section 25.143(e)(3) of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, ICO has completed main the body integration of its satellite.

A handwritten signature in black ink, appearing to read "D Schmitt", is written over a horizontal line.

Dennis Schmitt

Date: September 29, 2006

**REDACTED - FOR PUBLIC INSPECTION**

**ATTACHMENT 3**

**REDACTED - FOR PUBLIC INSPECTION**

**ATTACHMENT 2**

**ATTACHMENT F**

ORIGINAL



May 9, 2008

**By Hand Delivery**

FILED/ACCEPTED

MAY - 9 2008

Federal Communications Commission  
Office of the Secretary

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, Southwest  
Washington, D.C. 20554

Re: New ICO Satellite Services G.P.  
Final Milestone Certification and Selected Assignment Notification  
Call Sign S2651

Dear Ms. Dortch:

Pursuant to Section 25.143(e)(3) of the Commission's rules and its letter of intent ("LOI") authorization,<sup>1</sup> New ICO Satellite Services G.P. ("ICO") is providing a certification (attached hereto as Attachment 1) that its satellite system is operational.<sup>2</sup> ICO successfully completed two-way voice and data sessions using the ICO G1 satellite and authorized earth stations, in particular the North Las Vegas gateway and mobile terminals, in the 2000-2020 MHz and 2180-2200 MHz bands.

In addition, the ICO G1 satellite reached its intended orbit on April 25, 2008, and ICO selects 2010-2020 MHz in the 2 GHz MSS uplink band and 2180-2190 MHz in the 2 GHz MSS downlink band.<sup>3</sup>

<sup>1</sup> See 47 C.F.R. § 25.143(e)(3); *ICO Satellite Services G.P.*, 20 FCC Rcd 9797, ¶ 38 (IB 2005) ("*ICO Modification Order*").

<sup>2</sup> See *Improving Public Safety Communications in the 800 MHz Band*, 23 FCC Rcd 4393, ¶ 48 (2008).

<sup>3</sup> See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, ¶¶ 16, 28; *ICO Modification Order* ¶ 36.

815 Connecticut Avenue, NW  
Suite 610  
Washington, DC 20006

202 330 4005 phone  
202 330 4008 fax  
web: [www.ico.com](http://www.ico.com)

Marlene H. Dortch  
May 9, 2008  
Page 2 of 2

Please refer all questions about this submission to the undersigned.

Respectfully submitted,

By:   
Suzanne Hutchings Malloy  
Senior Vice President, Regulatory Affairs

Attachment

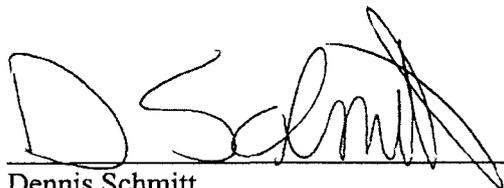
cc: Helen Domenici, Chief, International Bureau

**ATTACHMENT 1**

**CERTIFICATION**

Pursuant to Sections 25.163 of the Commission's rules, I, Dennis Schmitt, certify under penalty of perjury that:

1. I am a Senior Vice President of ICO Global Communications (Holdings) Limited, the ultimate parent company of New ICO Satellite Services G.P. ("ICO").
2. To the best of my knowledge, information, and belief, the entire ICO 2 GHz mobile satellite service system is operational; ICO successfully completed two-way voice and data sessions using the ICO G1 satellite and authorized earth stations, in particular the North Las Vegas gateway and mobile terminals, in the 2000-2020 MHz and 2180-2200 MHz bands.

  
Dennis Schmitt

Date: May 9, 2008

**ATTACHMENT G**

James H.M. Sprayregen, P.C.  
Christopher J. Marcus  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Marc J. Carmel  
Sienna R. Singer  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

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

---

In re:	)	
	)	Chapter 11
DBSD NORTH AMERICA, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 09-13061 (REG)
Debtors.	)	
	)	Jointly Administered

---

**NOTICE OF FIFTH AMENDMENT TO PLAN SUPPLEMENT IN SUPPORT OF THE  
DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION PURSUANT  
TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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**PLEASE TAKE NOTICE** that on August 17, 2009, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed their plan supplement in support of the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (4288); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the Debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

States Bankruptcy Code [Docket Nos. 268 and 269] (the “**Plan Supplement**”). The Plan Supplement contained an index listing Exhibits A through P. On August 25, 2009, the Debtors filed their first amendment to the Plan Supplement. *See* Notice of Amendment to Plan Supplement Exhibit to the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 291]. On September 2, 2009, the Debtors filed their second amendment to the Plan Supplement. *See* Notice of Filing of Second Amendment to Plan Supplement in Support of the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 328]. On September 3, 2009, the Debtors filed their third amendment to the Plan Supplement. *See* Notice of Filing of Third Amendment to Plan Supplement in Support of the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 343]. On September 4, 2009, the Debtors filed their fourth amendment to the Plan Supplement. *See* Notice of Filing of Fourth Amendment to Plan Supplement in Support of the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 365].

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file this fifth amendment to the Plan Supplement with the following revised and new exhibits to the Plan Supplement:

- Exhibit I - Transition Services Agreement with Schedules; and
- Exhibit Q - New Credit Facility Commitment Letter.

**PLEASE TAKE FURTHER NOTICE** that you may obtain copies of the Plan Supplement: (a) from The Garden City Group, Inc., the Debtors’ Claims and Solicitation Agent: (i) at its website at [www.gardencitygroup.com/cases/dbsd](http://www.gardencitygroup.com/cases/dbsd) in the “Disclosure Statement and Plan

Documentation” section; (ii) by writing to The Garden City Group, Inc., Attn: DBSD North America, Inc., 105 Maxess Road, Melville, New York 11747; (iii) by calling (888) 256-2603; or (iv) by emailing [dbsdmail@gardencitygroup.com](mailto:dbsdmail@gardencitygroup.com); or (b) for a fee via PACER at <https://ecf.nysb.uscourts.gov>.<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that the Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement any document in the Plan Supplement at any time in accordance with the Plan.

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the *Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, [Docket No. 231] (the “**Plan**”).

New York, New York  
Dated: September 18, 2009

*/s/ Marc J. Carmel*

---

James H.M. Sprayregen, P.C.  
Christopher J. Marcus  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

- and -

Marc J. Carmel  
Sienna R. Singer  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

Counsel to the Debtors  
and Debtors in Possession

## **Exhibit I**

### **Transition Services Agreement**

The attached document represents the most current draft of the Transition Services Agreement as of the date hereof and remains subject to further negotiation and revision by the parties. The Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement the following document at any time in accordance with the Plan.

## TRANSITION SPACE AND SERVICES AGREEMENT

This TRANSITION SPACE AND SERVICES AGREEMENT (“Agreement”), dated as of [ \_\_\_\_\_ ] (the “Effective Date”), is entered into between DBSD NORTH AMERICA, INC., a Delaware corporation (the “Company”) and ICO GLOBAL COMMUNICATIONS (HOLDINGS) LIMITED, a Delaware corporation (“Global”). The Company and Global may be referred to herein as the “Parties” or each a “Party.”

WHEREAS, on May 15, 2009, the Company and certain of the Company’s direct and indirect subsidiaries each filed a voluntary petition in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) initiating cases under chapter 11 of title 11 of the United States Code §§ 101-1330 and continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Plan of Reorganization, as approved by the Bankruptcy Court (the “Plan of Reorganization”), provides that, upon consummation of the Plan of Reorganization the Parties will enter into this Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

### 1. SERVICES

a. Services. Subject to the terms and conditions of this Agreement, Global shall provide to the Company as requested by the Company the consulting services that are set forth in Schedule A (the “Global Services”) and the Company shall provide to Global the administrative and operational services that are set forth in Schedule B (the “Company Services” and together with the “Global Services,” the “Services”) for the time periods and on the terms set forth in Schedule A and Schedule B respectively. [[The Company and Global will agree from time to time on the identity of the employees to perform the Services.]]

b. Office Space. From the date hereof until the termination of the Services Period, Global shall, and shall cause its subsidiaries or affiliates to, provide the Company access to the premises set forth in Schedule C (the “Occupied Premises”) on the terms and conditions set forth in Schedule C.

c. Representatives. Each Party will from time to time designate to the other Party in writing an individual who will be responsible for overseeing the performance of the Services and otherwise exercising the rights and responsibilities of such Party hereunder.

d. Dual Employees. The Parties acknowledge that those employees set forth in Schedule D are employees of each of Global and the Company (the “Dual Employees”). The Parties agree that the percentage of time each Dual Employee devotes to Global or the Company and such Parties’ relative percentage responsibility for the cost of such employee shall be as set forth in Schedule D. The Parties shall agree upon compensation and benefits for the Dual Employees. In the event that the Parties are unable to come to agreement with respect to the compensation and benefits of any Dual Employee, the Party that is responsible for the greatest percentage of the cost of such Dual Employee as set forth on Schedule D shall be entitled to determine the compensation and benefits for such Dual Employee and the Party that is not entitled to determine the compensation and benefits for such Dual Employee shall have thirty (30) days from the date hereof to elect to remove such Dual Employee from Schedule D and thereby terminate such individual’s status as a Dual Employee hereunder.

e. Reductions, Transition. The Company shall be permitted from time to time to (i) reduce or eliminate the scope of any Global Services to be provided by Global upon written notice to Global in accordance with the notice provisions set forth in the attached schedules or (ii) reduce or eliminate its use of all or any portion of the Occupied Premises upon written notice to Global in accordance with the notice provisions set forth in the attached schedules without affecting the other Services or Occupied Premises to be provided hereunder. Global shall be permitted from time to time to reduce or eliminate the scope of any Company Services to be provided by the Company upon written notice to the Company in accordance with the notice provisions set forth in the attached schedules. The Parties shall cooperate as is necessary to allow for orderly transition of Services and Occupied Premises.

f. Authorization and Scope of Agency Capacity. Certain Global Services identified in Schedule A may require Global to act as the Company's agent, and certain Company Services identified in Schedule B may require the Company to act as Global's agent. To the extent specified in Schedule A, the Company hereby appoints Global to act as its agent and attorney-in-fact subject to the Company's control, and Global consents to act as the Company's agent and attorney-in-fact subject to the Company's control. Global's authority as agent does not include authority to commit to any obligations on the Company's behalf or to compromise any claims belonging to the Company without specific additional written authorization. To the extent specified in Schedule B, Global hereby appoints the Company to act as its agent and attorney-in-fact subject to Global's control, and the Company consents to act as Global's agent and attorney-in-fact subject to Global's control. The Company's authority as agent does not include authority to commit to any obligations on Global's behalf or to compromise any claims belonging to Global without specific additional written authorization.

g. Standard of Care. Unless otherwise agreed by the Parties in writing, a Party providing services hereunder (a "Service Provider") shall use commercially reasonable efforts to perform the Services in a manner that is substantially similar in all material respects to the manner in which such Services were performed before the Effective Date, including with respect to level of service, priority of service, timeliness, quality and other relevant standards. Unless otherwise mutually agreed by the Parties in writing, with respect to any Service, a Party receiving services hereunder (a "Service Receiver") will use such Services only for the purpose of conducting the operations of the business or activity substantially in the same manner as conducted and operated prior to the Effective Date and will not use the Services for any other purposes.

## 2. PAYMENT

a. Payment for Services and Occupied Space. [[Other than with respect to the Dual Employees, each Party shall reimburse the other Party for actual costs and expenses of the performing Party in connection with the provision of Services based on an agreed proration of the salaries, taxes, and benefits (excluding, vacation, sick, and bonus pay) of each employee who performs services for both Global and the Company. Prorations shall be based on good faith estimates made twice a month by the employees.]] With respect to the Dual Employees, the Company shall pay all salaries, costs and expenses associated with the employment of the Dual Employees by both the Company and Global. Global shall reimburse the Company for its percentage responsibility of the cost of such employee in accordance with Schedule D. The Company shall not be required to reimburse Global for use of the Occupied Premises except for variable out-of-pocket costs incurred by Global specifically related to the Company's use of the Occupied Premises (and not a general cost associated with the building in which the Occupied Premises are located).

b. Invoicing. Each Party shall invoice the other monthly for the charges due under Section 2.a, and payment shall be due ten calendar days after receipt of the invoice. Each invoice shall set forth in reasonable detail, with reasonable supporting documentation attached thereto: (1) the Services

rendered by the performing Party hereunder, (2) the proration of salaries incurred by the performing Party with respect to each category of Services listed by employee or the payment due for Dual Employees, and (3) with respect to the Company's use of the Occupied Premises, any reimbursable costs (as described in Section 2.a above) incurred by Global with respect to the Occupied Premises.

### 3. TERM AND TERMINATION

a. Term. The initial term of this Agreement shall commence on the Effective Date and end on the close of business on [\_\_\_\_\_] (such period, as it may be extended, being referred to as the "Services Period").

b. Termination. Either Party may terminate this Agreement before its expiration if the other Party materially breaches this Agreement, and such breach has not been cured within thirty (30) days after written notice of such material breach has been sent to the other Party. In the case of any termination hereunder, the Parties shall cooperate with any such termination and transition. Notwithstanding the foregoing, individual Services provided hereunder may be terminated earlier in accordance with the provisions of the relevant Schedules.

### 4. MISCELLANEOUS

a. Confidentiality. The Parties acknowledge that during the term of this Agreement, each of them and their agents, employees, affiliates and representatives may obtain or have access to certain Confidential Information. Each Party agrees that it shall not, and shall cause its agents, employees, affiliates and representatives not to, reveal to any other person any such Confidential Information without the prior written consent of the other Party; provided, that such undertaking shall not apply to: (a) disclosure of Confidential Information that is or has become generally available to the public other than as a result of disclosure by or at the direction of a Party or a Party's representatives or the representatives of any affiliate of any Party in violation of this Agreement; (b) disclosures of Confidential Information to the extent necessary or required under any applicable law or regulation (including, without limitation, any rule, regulation or policy statement of any national securities exchange, market, or automated quotation system) or in connection with any audit or judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement, after giving prior written notice to the other parties to this Agreement to the extent practicable under the circumstances, and subject to having undertaken any reasonably available arrangements to protect confidentiality (for example, seeking a protective order in relation to such Confidential Information); or (c) disclosures of Confidential Information with respect to the Company by any Stockholder to a third party who is not a competitor of the Company and who is bound by restrictions regarding the disclosure and use of such Confidential Information (either contractual, legal or fiduciary). "Confidential Information" means any information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of a Party (whether conveyed in written, oral or in any other form and whether such information has been furnished before, on or after the date of this Agreement) that is not known to the public or otherwise publicly available.

b. Audits. Each Party shall be entitled, at any time during the term of this Agreement and for a period of 12 months after termination, to reasonably audit or reasonably investigate any or all aspects of the services and functions that the other Party has agreed to perform or provide to or for such Party under this Agreement. All such audits and investigations shall be performed during reasonable business hours, shall be conducted at the requesting Party's expense, and may be conducted either by the requesting Party's officers or employees or by third parties retained by or on behalf of the requesting Party. The provisions of this Section 4.b shall survive the termination or expiration of this Agreement.

c. Indemnification. Each Service Provider shall defend, indemnify and hold harmless the Service Receiver, such Service Receiver's affiliates, partners, officers, employees, agents, subcontractors and permitted assigns (each, an "Indemnified Party") from and against any and all losses, liabilities, claims, litigation, damages, penalties, actions, demands or expenses, including the reasonable fees and expenses of counsel (collectively, "Losses") incurred by such Indemnified Party arising out of, in connection with or by reason of any Services provided (or required to be provided) by the Service Provider or in connection with the employment of the Dual Employees, except to the extent such Losses result from the gross negligence or willful misconduct of an Indemnified Party or primarily from the breach by the Party that is an Indemnified Party hereunder.

d. Governing Law; Consent to Jurisdiction and Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law doctrine. Each Party hereby submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware or the United States District Court for the District of Delaware and any judicial proceeding brought against any of the parties on any dispute arising out of this Agreement or any matter related hereto shall be brought in such courts. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may have or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each Party hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the address specified in Section 4.f or in any other manner permitted by law. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

e. Further Assurances. Each Party shall give such further assurance, provide such further information, take such further actions and execute and deliver such further documents and instruments as are, in each case, within its power to give, provide and take so as to give full force and effect to the provisions of this Agreement.

f. Assignment; Binding Effect. This Agreement shall not be assignable or otherwise transferable by either Party hereto, without the prior written consent of the other Party and any purported assignment or other transfer without such consent shall be void and unenforceable. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto.

g. Notices. All notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be deemed to have been effectively given (a) when personally delivered to the Party to be notified; (b) when sent by confirmed facsimile to the Party to be notified at the number set forth below; (c) three (3) business days after deposit in the United States mail postage prepaid by certified or registered mail return receipt requested and addressed to the Party to be notified as set forth below; or (d) one (1) business day after deposit with a national overnight delivery service, postage prepaid, addressed to the Party to be notified as set forth below with next-business-day delivery guaranteed, in each case as follows:

If to the Company to:

DBSD North America, Inc.  
11700 Plaza America Drive, Suite 1010  
Reston, Virginia 20190  
Attention: John L. Flynn, General Counsel  
Telephone: (703) 964-1400  
Facsimile: (703) 964-1401

With a copy (which shall not constitute notice) to:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

If to Global to:

ICO Global Communications (Holdings) Limited
11700 Plaza America Drive, Suite 1010
Reston, Virginia 20190
Attention: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

With a copy (which copy shall not constitute notice) to:

Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Attention: Robert Townsend
Telephone: (415) 268-7080
Facsimile: (415) 268-7522

A Party may change its address for purposes of notice hereunder by giving ten (10) days' notice of such change to all other parties in the manner provided in this Section 4.f.

h. Amendments. The provisions of this Agreement may not be amended or waived except by a writing signed by the Parties hereto.

i. Relationship of the Parties. For purposes of this Agreement, the Company and its affiliates, on the one hand, and Global and its affiliates on the other, shall be deemed to be independent contractors, and anything in this Agreement to the contrary notwithstanding, nothing herein shall be deemed to constitute the Parties as partners, joint ventures, co-owners, an association or an entity separate and apart from each Party itself, nor shall this Agreement cause any Party to be deemed an employee or agent, legal or otherwise, of any other Party for any purposes whatsoever. No Party is authorized to make any statements or representations on behalf of any other Party or in any way obligate any other Party, except as expressly authorized in writing by such other Party.

j. Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of the Parties to this Agreement, and their respective successors and permitted assigns, and are not intended to confer third party beneficiary rights upon any other person, association or entity, legal or otherwise.

k. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any

other jurisdiction, it being intended that all rights and obligations of the Parties hereunder shall be enforceable to the fullest extent permitted by law.

l. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

m. Entire Agreement; Waiver; Remedies Cumulative. This Agreement (together with the documents attached as exhibits hereto and any documents or agreements specifically contemplated hereby) supersedes all prior discussions and agreements among either of the Parties hereto (and their Affiliates) with respect to the subject matter hereof and contains the entire understanding of the Parties with respect to the subject matter hereof. All remedies provided by this Agreement are in addition to all other remedies available to the Parties in law or equity.

j. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

DBSD NORTH AMERICA, INC.

By: \_\_\_\_\_  
Name:  
Title:

ICO GLOBAL COMMUNICATIONS (HOLDINGS)  
LIMITED

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE A

Global Services

## SCHEDULE A

### Global Services

Listed below are highlights of the services Global and/or the Dual Employees, as applicable, may be requested to perform for the Company. This is not meant to be an exhaustive list.

1. Accounting and Finance: All accounting and finance-related support, including:
  - a. Processing of core transactions, including accounts payable, payroll, cash receipts
  - b. Financial reporting
  - c. Tax return preparation and analysis (in conjunction with outsourced tax preparer)
  - d. Management of outside audit and tax professionals and related services
  - e. Budgeting
  - f. Treasury and Cash Management
  
3. Legal and Regulatory: all legal and regulatory-related support, including:
  - a. Management of corporate governance and other legal compliance
  - b. Legal aspects of financial reporting and disclosure
  - c. Support for deals and contracts
  - d. Development and maintenance of intellectual property
  - e. Management of litigation, as necessary
  - f. Representation before U.S., U.K, and other regulatory bodies concerning spectrum, related rights and obligations, licensing, and spectrum coordination with respect to the G-1 satellite
  - g. Records management
  
4. Network Systems: all technical support for the ground segment, including:
  - a. Management of the alpha trial
  - b. Research and development on ground network
  - c. Research and development regarding user devices
  - d. Designing, building, and operating satellite base stations, terrestrial networks and user devices
  - e. Support of regulatory and engineering analysis in connection with spectrum rights and spectrum clearing
  - f. Support of intellectual property developments
  
5. Corporate Development and Supply Chain Management: all related support, including:
  - a. Management of all vendor contracts
  - b. Management of insurance policy negotiation and maintenance including property and casualty, director and officer liability, and space insurance related to the GEO system
  - c. Participate in and oversight of discussions with potential partners related to the GEO system and related assets
  - d. Management of spectrum clearing
  
6. Space Segment: All operations and support for the GEO space segment, including:
  - a. Management and operation of the G-1 satellite, gateway, ground based beam forming system, pointing beacon station sites, satellite operations, TT&C facilities, and launch vehicles

- b. Technical development of the capabilities and implementation of the GEO space segment system
  - c. Management of all outside vendors in the GEO space segment
  - d. Troubleshooting and development activities in support of the GEO system as required
  - e. Technical support of regulatory and engineering analysis in connection with spectrum rights and spectrum clearing
  - f. Support of all field trials, network system testing, and system development utilizing GEO space segment operations
7. Human Resources: All human resources-related support, including:
- a. Management of U.S. benefits program (including, without limitation 401(K) plans) and related tax support
  - b. All employee relations issues
8. IT: all IT-related support, including:
- a. Maintenance and support of desktop systems and related software
  - b. All Company internet support
  - c. Access to the financial systems IT (Oracle system and software)
9. Public Relations: All public relations related support, including:
- a. Investor Relations
  - b. Media Relations
  - c. Marketing
10. Records Retention:
- a. Retention of Company records and access to same as necessary for reporting, etc.
11. Intellectual Property: Global hereby grants to the Company a nonexclusive, royalty-free license (the "Global License") to use Global's patents, trademarks, domain names, know-how and processes in a manner consistent with past practices. The Global License shall remain in effect until the earlier of (i) the expiration of the Services Period; or (ii) such time as Global and the Company enter into a separate license agreement with respect to such services.

The Company may from time to time reduce or eliminate the scope of any Global Services to be provided to the Company upon not less than 90 days prior written notice to Global in accordance with Section 4(g) of the Transition Services Agreement.

SCHEDULE B

Company Services

## SCHEDULE B

### Company Services

Listed below are highlights of the services Company and/or the Dual Employees, as applicable, may be requested to perform for Global. This is not meant to be an exhaustive list.

1. Accounting and Finance: All accounting and finance-related support, including:
  - a. Processing of core transactions, including accounts payable, payroll, cash receipts
  - b. Sarbanes-Oxley compliance
  - c. Financial reporting, including quarterly and annual SEC reporting
  - d. Tax return preparation and analysis (in conjunction with outsourced tax preparer)
  - e. Management of outside audit and tax professionals and related services
  - f. Budgeting
  - g. Treasury and Cash Management
2. Legal and Regulatory: All legal and regulatory-related support, including:
  - a. Management of corporate governance and other legal compliance
  - b. SEC compliance and other legal aspects of financial reporting and disclosure
  - c. Support for deals and contracts
  - d. Development and maintenance of intellectual property
  - e. Management of Boeing litigation, EC litigation and other litigation as necessary
  - f. Representation before Ofcom, EC and other regulatory bodies concerning spectrum, related rights and obligations, licensing of the ICO-P system
  - g. Records management
3. Network Systems: All network systems support, including:
  - a. Support for research and development of network and user devices as appropriate including vendor ecosystems
  - b. Support of regulatory and engineering analysis in connection with ICO-P spectrum rights
  - c. Analysis of potential ATC utilization of ICO-P system as required
4. Corporate Development and Supply Chain Management: all related support, including:
  - a. Management of all vendor contracts
  - b. Management of insurance policy negotiation and maintenance including property and casualty, director and officer liability, and space insurance related to the MEO system
  - c. Senior management oversight of day-to-day operations of international business
  - d. Participate in and oversight of discussions with potential partners related to the MEO system and related assets
5. Space Segment: All operations and support of the MEO space segment, including:
  - a. Troubleshooting and development activities in support of the MEO system as required
  - b. Management of all outside vendors in the MEO space segment
  - a. Management and operation of the F2 satellite in orbit, Slough, UK facility, Brewster Satellite Access Node (SAN), other SANs, satellite operations, and launch vehicles
  - b. Management and operation of the ICO Warehouse facility (IWF) and all stored MEO satellite hardware

- c. Technical development of the capabilities and implementation of the MEO space segment system, including possible modifications and alternate uses
  - d. Technical support of regulatory and engineering analysis in connection with MEO spectrum use
  - e. Support of all field trials, network system testing, and system development utilizing MEO space segment operations
6. Human Resources: All human resources-related support, including:
- a. Management of United Kingdom benefits program (including, without limitation equity incentive benefit plans) and related tax support
  - b. All employee relations issues
7. IT: All IT-related support, including:
- a. Maintenance and support of desktop systems and related software
  - b. All Company internet support
8. Public Relations: All public relations related support, including:
- f. Investor Relations
  - g. Media Relations
  - h. Marketing
9. Intellectual Property: The Company hereby grants to Global a nonexclusive, royalty-free license (the "Company License") to use the Company's patents, trademarks, domain names, know-how and processes in a manner consistent with past practices. The Company License shall remain in effect until the earlier of (i) the expiration of the Services Period; or (ii) such time as Global and the Company enter into a separate license agreement with respect to such services.

Global may from time to time reduce or eliminate the scope of any Company Services to be provided to Global upon not less than 90 days prior written notice to the Company in accordance with Section 4(g) of the Transition Services Agreement.

SCHEDULE C

Occupied Premises

## SCHEDULE C

### Occupied Premises

Facility location	Allocation %	
	DBSD	Global
Reston, VA (10th Floor)	70%	30%
Reston, VA (3rd Floor)	70%	30%
Bellevue, WA	50%	50%
Las Vegas, NV (Industrial Space)	95%	5%
El Segundo, CA (222 N. Sepulveda)	85%	15%
El Segundo, CA (755 N. Nash)	0%	100%
Vista Heathrow, UK	25%	75%
Slough, UK	40%	60%

The Company may reduce or eliminate its use of all or any portion of the Occupied Premises upon not less than 180 days prior written notice to Global in accordance with Section 4(g) of the Transition Services Agreement; provided, however, that the Company may reduce or eliminate its use of all or any portion of the Occupied Premises upon less than 180 days prior written notice if the Company agrees to pay and pays all costs incurred by Global with respect to such reduction or termination pursuant to the applicable lease agreement.

SCHEDULE D

Dual Employees

SCHEDULE D

Dual Employees

Name	Allocation %	
	DBSD	Global
Boyd Daniels	50%	50%
Crystal McGowan	50%	50%
Melanie Ryan	50%	50%
Mike Corkery	50%	50%
Scott Martin	50%	50%
Stacie Stansfield	50%	50%
Stephen De Wees	50%	50%
Jillian Graham	50%	50%
Melissa Damstrom	50%	50%
Deb Macomber	70%	30%
David Bagley	85%	15%
Bill Tolpegin	85%	15%
Gerard Mulford	95%	5%
Lyman Moquin	95%	5%
Mariam Sorond	95%	5%
Ruben Calzadilla	95%	5%
Sourabh Gupta	95%	5%
Stefan Raab	95%	5%
Su Zhang	95%	5%
Tom Conklin	95%	5%
David Zufall	95%	5%
Steven Birrell	95%	5%
Ashish Patel	95%	5%
Frank Celentano	95%	5%
David Horton	85%	15%
Bob Day	85%	15%
Gunnar Bjornstrom	85%	15%
John Zukoski	85%	15%
Thomas Papanos	85%	15%
Andrzej Korab	85%	15%
Robert White	85%	15%
Uzair Khan	60%	40%
James Hokanson	60%	40%
Suzanne Lehmer	75%	25%
John Flynn	75%	25%
Patty Lamm	75%	25%
Chris Doherty	70%	30%

Peter Corea	90%	10%
Suzanne Hutchings-Malloy	90%	10%
Lalji Ghedia*	25%	75%
Navin Kapila*	25%	75%
Colin Woodward*	0%	100%
Paul Bulford*	25%	75%

\* Notwithstanding Section 2.a of the Agreement, with respect to the four Dual Employees with an asterisk next to their name, the employment relationship will be transferred to Global. Global shall pay all salaries, costs and expenses associated with the employment of such Dual Employees and the Company shall reimburse Global for its percentage responsibility of the cost of such employee in accordance with this Schedule D.

## **Exhibit Q**

### **New Credit Facility Commitment Letter**

The attached document represents the most current draft of the New Credit Facility Commitment Letter as of the date hereof and remains subject to further negotiation and revision by the parties. The Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement the following document at any time in accordance with the Plan.

September 4, 2009

DBSD North America, Inc.  
New Credit Facility  
Commitment Letter

DBSD North America, Inc.  
Plaza America Tower  
11700 Plaza America Drive, Suite 1010  
Reston, Virginia 20190  
Attention: John Flynn, Executive Vice President

Ladies and Gentlemen:

DBSD North America, Inc., a Delaware corporation (the "Borrower") has advised each of the persons signatory hereto as an "Initial Loan Lender" (hereinafter referred to individually as an "**Initial Loan Lender**" and, collectively, the "**Initial Loan Lenders**") and each of the persons signatory hereto as a "Delayed Drawdown Loan Lender" (hereinafter referred to individually as a "**Delayed Drawdown Loan Lender**" and, collectively, the "**Delayed Drawdown Loan Lenders**" and, together with the Initial Loan Lenders, the "**Commitment Parties**") that (i) the Borrower and its subsidiaries have filed petitions commencing cases (the "**Chapter 11 Cases**") in the bankruptcy court for the Southern District of New York (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and (ii) upon the Borrower's emergence from the Chapter 11 Cases, the Borrower will require a delayed draw term loan facility in the aggregate principal amount of \$53,750,000, subject to adjustment as specified in the Term Sheet referred to below, comprising an initial drawing thereunder (the "**Initial Loan Facility**") and a subsequent drawing thereunder (the "**Delayed Drawdown Loan Facility**") and, together with the Initial Loan Facility, the "**New Credit Facility**"), in each case, in the respective aggregate principal amounts specified in such Term Sheet. You have requested that each Commitment Party commit to provide a portion of the New Credit Facility. Reference is made to (i) that certain Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, dated July 24, 2009, as docket number 231 in the Chapter 11 Cases (the "**Plan**"), (ii) the Summary of Terms and Conditions for Proposed New Credit Facility, filed with the Plan, and attached hereto as Exhibit B (such Summary of Terms and Conditions, as updated by the form of New Facility Agreement (as defined below), being referred to herein as the "**Term Sheet**"), and (iii) the form of New Credit Facility Agreement (the "**New Facility Agreement**") contained in that certain Third Amendment to Plan Supplement (the "**Plan Supplement**") filed on September 2, 2009, as docket number 343 in the Chapter 11 Cases.

Each Initial Loan Lender is pleased to advise you of its commitment to severally provide the portion of the Initial Loan Facility specified opposite the name of such Initial Loan Lender in Exhibit A hereto and each Delayed Drawdown Loan Lender is pleased to advise you of its commitment to severally provide the portion of the Delayed Drawdown Loan Facility specified opposite the name of such Delayed Drawdown Loan Lender in Exhibit A hereto, in each case upon the terms and subject to the conditions set forth or referred to in this commitment letter (the "**Commitment Letter**") and the Term Sheet and the New Facility Agreement. Capitalized terms used and not defined herein have the respective

meanings given thereto in the Term Sheet, the New Facility Agreement and the Plan. It is understood that amounts repaid or prepaid in respect of Initial Loans or Delayed Drawdown Loans may not be reborrowed.

The Commitment Parties reserve the right to syndicate all or any portion of the New Credit Facility to one or more other lenders identified by the Commitment Parties after consultation with you (the "**Proposed Lenders**"), which shall include the Senior Noteholders, and may commence syndication efforts upon your execution of this Commitment Letter. You and the Commitment Parties acknowledge that the respective amounts of the Initial Loan Facility and the Delayed Drawdown Loan Facility may be adjusted as provided in the Term Sheet. The Commitment Parties shall be ratably relieved of their respective obligations to provide their portions of the New Credit Facility to the extent that an offer of a Proposed Lender to provide a portion of the New Credit Facility is accepted and such Proposed Lender agrees in writing to the terms of this Commitment Letter (such Proposed Lenders whose offers are so accepted, together with the Commitment Parties, the "**Lenders**").

You agree to actively assist each Commitment Party in completing a syndication reasonably satisfactory to it prior to the execution and delivery of the definitive documentation for the New Credit Facility. Such assistance shall include (a) your using commercially reasonable efforts to ensure that the syndication efforts benefit materially from your existing lending and investment banking relationships, (b) direct contact between senior management and advisors of the Borrower, on the one hand, and the proposed Lenders, on the other hand, (c) the hosting, with each Lender, of one or more meetings or conference calls with prospective Lenders on such dates and times as are reasonable to the Borrower and (d) your assistance in the preparation of materials to be used in connection with the syndication of the New Credit Facility (collectively with the Term Sheet, the "**Information Materials**"). The Commitment Parties will manage all aspects of any syndication, including decisions as to the selection of institutions to be approached and when they will be approached, when their commitments will be accepted, which institutions will participate, the allocations of the commitments among the Lenders and the amount and distribution of amounts and common stock among the Lenders. To assist the Commitment Parties in any syndication efforts, you agree to promptly prepare and provide to the Commitment Parties all information with respect to the Borrower and its subsidiaries and the transactions contemplated hereby, including all financial information and projections (the "**Projections**"), as we may reasonably request in connection with the structuring, arrangement and syndication of the New Credit Facility. You hereby represent and covenant that (a) all information other than the Projections (the "**Information**") taken as a whole that has been or will be made available to any Commitment Party by you or any of your representatives is or will be, as of the time furnished, complete and correct in all material respects and does not or will not, as of the time furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made and (b) the Projections that have been or will be made available to any Commitment Party by you or any of your representatives have been or will be prepared in good faith based upon reasonable assumptions at the time of preparation thereof (it being understood that the Projections are subject to inherent uncertainties and contingencies that may be outside your control and that no assurance can be given that such Projections will be realized). You agree to supplement the Information and Projections from time to time until the Closing Date so that the representations and covenants in the immediately preceding sentence remain correct. You understand that in syndicating the New Credit Facility we may use and rely on the Information and Projections without independent verification thereof.

As consideration for the Commitment Parties' commitments hereunder, you agree to pay the following amounts:

(1) to each Commitment Party, amounts (the “**Commitment Amounts**”) equal to 2% of the aggregate amount of the portion of the New Credit Facility (whether drawn or undrawn) to be provided by such Commitment Party, such Commitment Amounts to be earned on the date hereof and payable ratably on the earlier of (A) the Closing Date (on the terms specified in the Term Sheet) and (B) the Termination Date (as defined below) or any other date on which the commitments of the Commitment Parties hereunder in respect of the New Credit Facility expire or otherwise terminate (without the concurrent occurrence of the Closing Date) (such other date, together with the Termination Date, a “**Commitment Amount Payment Date**”), provided that such Commitment Amounts shall not be payable to a Commitment Party on any Commitment Amount Payment Date if such Commitment Amount Payment Date occurs as a direct result of a failure by such Commitment Party to perform its obligations under this Commitment Letter; and

(2) to each Commitment Party, amounts (the “**Closing Amounts**”) equal to 2% of the aggregate amount of the portion of the New Credit Facility (whether drawn or undrawn) to be provided by such Commitment Party, such Closing Amounts to be earned and payable ratably on (A) the Closing Date, in the case of the Initial Loan Lenders, and (B) the Delayed Drawdown Date, in the case of the Delayed Drawdown Loan Lenders;

provided that (x) to the extent the Commitment Amounts or the Closing Amounts are payable on the Closing Date or (in the case of the Closing Amounts payable to the Delayed Drawdown Loan Lenders) on the Delayed Drawdown Date, such amounts shall be added to the principal of the Initial Loan and the Delayed Drawdown Loan, respectively (as specified in the Term Sheet), (y) to the extent the Commitment Amounts are payable on any Commitment Amount Payment Date, such amounts will be payable in cash and in immediately available funds and (z) to the extent the Initial Loan Facility is provided by the Initial Loan Lenders as a debtor in possession financing as specified below, the Commitment Amounts and the Closing Amounts (or portions thereof) otherwise payable to the Initial Loan Lenders under clauses (1) and (2) above, respectively, shall be payable to the Initial Loan Lenders on the date of the initial funding of such debtor in possession financing and shall be added to the principal of the loans advanced thereunder.

You agree that the Borrower will make all payments under this Commitment Letter free and clear of and without deduction, reduction or withholding for any taxes; provided that if, the Borrower shall be required by applicable law to deduct, reduce or withhold any taxes from any such payments (“**Withholding Tax**”), the sum payable shall be increased as necessary so that after making all required deductions, reductions or withholdings, each Commitment Party receives an amount equal to the sum it would have received had no such deductions, reductions or withholdings been made (the “**Gross-up**”). If a Commitment Party determines in its reasonable discretion that it has received a credit or similar benefit for Withholding Taxes paid against its domestic tax due on income for which a Gross-up was provided, it shall pay over such credit or similar benefit to the Borrower (but only to the extent of the additional amounts paid by the Borrower pursuant to this paragraph with respect to the Withholding Tax giving rise to such credit and only to the extent such Commitment Party reasonably determines it would not be worse off than if a Withholding Tax was not payable), net of all out-of-pocket expenses of such Commitment Party and without interest (other than any interest paid by the relevant governmental authority with respect to such credit); provided that if such Commitment Party is required to repay all or a portion of such credit to the relevant governmental authority, the Borrower, upon the request of such Commitment Party, shall repay the amount paid over to the Borrower that is required to be repaid (plus any penalties, interest or other charges imposed by the relevant governmental authority) to such Commitment Party after receipt of written notice that such Commitment Party is required to repay such credit (or a portion thereof) to such governmental authority. In no event shall a Commitment Party be required to share with the Borrower or its advisors any information that the Commitment Party deems confidential. In the event that the Borrower fails to make any such required deduction, reduction or withholding, the Borrower shall

indemnify each Commitment Party for the amount of any tax and any interest, penalties or additions to tax, and any out-of-pocket expenses that the Commitment Party incurs as a result of such failure. Each Commitment Party will supply the Borrower with an IRS Form W-8BEN or W-9 as may be applicable.

As additional consideration for the Commitment Parties' commitments hereunder, the Commitment Parties will receive, on the Closing Date and the Delayed Drawdown Date for the Initial Loan and Delayed Drawdown Loan, respectively, a percentage of the New Common Stock, on a *pro rata* basis, calculated as 11.02% of the New Common Stock for \$34,372,000 under the Initial Loan; and 8.98% of the New Common Stock for every \$21,528,000 of the Delayed Drawdown Loan. To the extent that the Initial Loan is increased and the Delayed Drawdown Loan is reduced due to Additional Initial Loan Commitments (as defined in the Term Sheet), then additional New Common Stock reserved for the Additional Initial Loan Commitments shall be based at a proportion of 11.02% for every \$34,372,000 of Additional Initial Loan Commitments, whereas the previous New Common Stock reserved for distribution on the Delayed Drawdown Date shall be reduced at a proportion of 8.98% for every \$21,528,000 of Additional Initial Loan Commitments.

You agree that, once paid, the consideration or any part thereof payable under this Commitment Letter shall not be refundable under any circumstances, regardless of whether the transactions or borrowings contemplated hereby are consummated. All consideration payable hereunder shall be in addition to reimbursement of the Commitment Parties' reasonable out-of-pocket expenses as provided for in this Commitment Letter. You agree that the Commitment Parties may, in their sole discretion, share all or a portion of any of the amounts payable pursuant hereto or any of the New Common Stock with any of the other Lenders.

Each Commitment Party's commitment hereunder is subject to (a) such Commitment Party not becoming aware after the date hereof of any information or other matter affecting the Borrower and its subsidiaries or the transactions contemplated hereby that, in such Commitment Party's judgment, is inconsistent in a material and adverse manner with any such information or other matter disclosed to such Commitment Party prior to the date hereof, (b) each of the following being in form and substance satisfactory to such Commitment Party: (i) the Plan, as confirmed in the Chapter 11 Cases, (ii) the final order (the "**Confirmation Order**") entered by the Bankruptcy Court confirming the Plan (which, at all times, shall be in full force and effect and, as of the Closing Date, shall be a final, non-appealable order in full force and effect not subject to a stay) and (iii) the order (which may be the Confirmation Order) (in any case, the "**Commitment Approval Order**") entered by the Bankruptcy Court approving this Commitment Letter and the terms and conditions hereof (which, at all times, shall be in full force and effect and, as of the Closing Date or the Commitment Amount Payment Date, shall be a final, non-appealable order in full force and effect not subject to a stay), (c) the negotiation, execution and delivery of definitive documentation for the New Credit Facility satisfactory to such Commitment Party (the Commitment Parties hereby acknowledge that, to the extent that the terms of the New Credit Facility are specified in the form of New Credit Facility contained in the Plan Supplement, such form of New Facility Agreement is satisfactory), (d) there not occurring or becoming known to such Commitment Party any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on the business, operations, property, condition (financial or otherwise) or prospects of the Borrower and its subsidiaries taken as a whole, since the date of this Commitment Letter, (e) the Closing Date occurring at or prior to 5:00 p.m. (New York City time) on March 31, 2010, (f) no Commitment Termination Event occurring and (g) the other conditions set forth or referred to in the New Facility Agreement. The terms and conditions of each Commitment Party's commitment hereunder and of the New Credit Facility are not limited to those set forth herein and in the Term Sheet; provided that those matters not covered by the provisions hereof or of the Term Sheet are subject to the approval and agreement of the Commitment Parties and the Borrower. As provided in the Term Sheet, if requested by the Borrower, the Initial Loan Lenders may elect in their sole discretion to provide, ratably, all (or, if the

Initial Loan Lenders agree, a portion) of the Initial Loan Facility in the form of debtor in possession financing to the Borrower between the confirmation of the Plan by the Bankruptcy Court and the consummation of the transactions contemplated therein; in such event, such debtor in possession financing will be provided on such additional terms and conditions as the Initial Loan Lenders may determine in their sole discretion.

The Commitment Parties may terminate this Commitment Letter and their commitments hereunder, by notice to the Borrower, upon the occurrence of a Commitment Termination Event (the date upon which a Commitment Termination Event occurs, the “**Termination Date**”); provided that, upon the occurrence of a Commitment Termination Event described in clauses (d), (f), (g) or (h) of this paragraph, this Commitment Letter and the commitments of the Commitment Parties hereunder shall automatically terminate, without any notice or cure period. As used herein, a “**Commitment Termination Event**” shall mean the earliest to occur of: (a) the Borrower shall fail to comply with any provision of this Commitment Letter; (b) the Commitment Approval Order is not entered on or before September 30, 2009 (or, if the hearing to consider confirmation of the Plan has been adjourned at the request of the Commitment Parties as provided herein, October 15, 2009); (c) the Confirmation Order in form and substance acceptable to the Commitment Parties is not entered on or before September 30, 2009 (or, if the hearing to consider confirmation of the Plan has been adjourned at the request of the Commitment Parties as provided herein, October 15, 2009); (d) an order is entered by a court of competent jurisdiction reversing, amending, supplementing, vacating or otherwise modifying the Confirmation Order or the Commitment Approval Order in any material respect without the consent of the Commitment Parties, it being agreed that an order reversing or vacating either of such orders is material; (e) an order is entered by a court of competent jurisdiction staying the Confirmation Order or the Commitment Approval Order and such stay remains in effect for a period in excess of twenty (20) days; (f) any of the Chapter 11 Cases is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or a trustee or examiner with expanded powers is appointed with respect to any of the Debtors; (g) the Debtors withdraw the Plan, or amend the Plan, in either case without the consent of the Commitment Parties and (h) the Debtors do not adjourn the hearing to confirm the Plan for a period of up to 30 days following the request of the Commitment Parties; provided that the dates set forth in clauses (b) and (c) above, may be extended at the direction of a majority (in number) of the Commitment Parties (treating Commitment Parties that are affiliated or under common management as a single Commitment Party for this purpose).

The Borrower agrees that it will not, and will not permit any of its subsidiaries to, directly or indirectly seek, solicit, propose, file, support, encourage, or vote for any modification, supplement, or amendment to the Plan or any other plan of reorganization for the Borrower or any such subsidiary if such modified, supplemented or amended Plan or other plan of reorganization is not in a form approved by the Commitment Parties and does not authorize the New Credit Facility and the other matters contemplated by this Commitment Letter (including without limitation the payment of fees and the issuance of the Borrower's common stock to the Commitment Parties as provided herein) (a “**Non-Conforming Plan**”), unless the Borrower reasonably believes it has a fiduciary obligation to consider or support a Non-Conforming Plan.

The Borrower acknowledges and agrees that the Commitment Parties are not advising the Borrower as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Commitment Parties shall have no responsibility or liability to the Borrower with respect thereto.

You agree (a) to indemnify and hold harmless each Commitment Party and its affiliates and their respective officers, directors, employees, advisors and agents (each, an “**indemnified person**”) from and against any and all losses, claims, damages and liabilities to which any such indemnified person

may become subject arising out of or in connection with this Commitment Letter, the New Credit Facility, the use of the proceeds thereof or any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any indemnified person is a party thereto, and to reimburse each indemnified person promptly upon written demand for any reasonable attorneys' fees of a single legal counsel in each applicable jurisdiction for all indemnified persons (except in cases of conflicts of interest precluding the use of a single legal counsel for all indemnified persons) or other reasonable out-of-pocket expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to any indemnified person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court to arise from the willful misconduct or gross negligence of such indemnified person or disputes solely among indemnified persons, and (b) to reimburse each Commitment Party and its affiliates on demand for all reasonable out-of-pocket expenses (including reasonable due diligence expenses, reasonable syndication expenses and reasonable fees, charges and disbursements of attorneys' fees of a single legal counsel in each applicable jurisdiction for all indemnified persons (except in cases of conflicts of interest precluding the use of a single legal counsel for all indemnified persons)) (the "**Expenses**") incurred in connection with the New Credit Facility and any related documentation (including this Commitment Letter and the Term Sheet and the definitive financing documentation) or the administration, amendment, modification or waiver thereof, whether or not the financing contemplated hereby is consummated, provided that reimbursement and indemnification obligations relating to administration, amendments, modifications or waivers of definitive financing documentation shall be governed by such definitive financing documentation. No indemnified person shall be liable for any damages arising from the use by others of Information or other materials obtained through electronic, telecommunications or other information transmission systems (except, in any case, to the extent found by a final, non-appealable judgment of a court to arise from the willful misconduct or gross negligence of such indemnified person), or for any special, indirect, consequential or punitive damages in connection with the New Credit Facility or its activities relating thereto. To the extent you determine that to pay any Expenses pursuant to this letter or the Term Sheet the approval of the Bankruptcy Court is required, you agree to file a motion on an expedited basis with the Bankruptcy Court to obtain approval for such payments.

This Commitment Letter shall not be assignable by you without the prior written consent of each Commitment Party (and any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and the indemnified persons. This Commitment Letter may not be amended or waived except by an instrument in writing signed by you and each Commitment Party. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by facsimile or e-mail transmission shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter is the only agreement that has been entered into among us with respect to the New Credit Facility and sets forth the entire understanding of the parties with respect thereto.

This Commitment Letter shall be governed by, and construed in accordance with, the law of the State of New York. Each party hereto consents to the exclusive jurisdiction of the United States Bankruptcy Court for the Southern District of New York during the time the Chapter 11 Cases are pending, or otherwise to the nonexclusive jurisdiction of any state or federal court located in the City of New York. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding has been brought in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A

TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS COMMITMENT LETTER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

The Commitment Parties hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it and the other Lenders may be required to obtain, verify and record information that identifies the Borrower, which information includes the Borrower's name and address, and other information that will allow the Commitment Parties and the other Lenders to identify the Borrower in accordance with said Act. This notice is given in accordance with the requirements of said Act and is effective for each of the Commitment Parties and the other Lenders.

This Commitment Letter is delivered to you on the understanding that neither this Commitment Letter nor the Term Sheet nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your officers, directors, employees, accountants, attorneys, agents and advisors who are directly involved in the consideration of this matter on a confidential and need-to-know basis and for whom you shall be responsible for any breach by any of them of this confidentiality undertaking, (b) to the extent required in motions, in form and substance reasonably satisfactory to the Commitment Parties, to be filed with the Bankruptcy Court or (c) as may be compelled in a judicial or administrative proceeding or as otherwise required by law (in which case you agree to inform us promptly thereof); provided that the Commitment Parties hereby consent to the Borrower's disclosure in the Chapter 11 Cases of the aggregate amount of the commitments under each of the Initial Loan Facility and the Delayed Drawdown Loan Facility and the identity of the Commitment Parties under each such facility.

You acknowledge that each Commitment Party and its affiliates (the term "Commitment Party" as used below in this paragraph being understood to include each Commitment Party's affiliates) may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which you may have conflicting interests regarding the transactions described hereby or otherwise. None of the Commitment Parties will use confidential information obtained from you by virtue of the transactions contemplated hereby or other relationships with you in connection with the performance by such Commitment Parties of services for other companies, and the Commitment Parties will not furnish any such information to other companies. You also acknowledge that the Commitment Parties have no obligation to use in connection with the transactions contemplated hereby, or to furnish to you, confidential information obtained from other companies.

The compensation, reimbursement, indemnification and confidentiality provisions contained herein shall remain in full force and effect regardless of whether definitive financing documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or any Commitment Party's commitment hereunder.

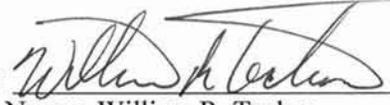
If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms hereof and of the Term Sheet by returning to us executed counterparts hereof not later than 6:00 p.m. (New York City time), September 4, 2009. The Commitment Parties' commitments herein will automatically expire at such time in the event we have not received such executed counterparts in accordance with the immediately preceding sentence. The Commitment Parties acknowledge that the obligations of the Borrower hereunder are subject to the entry of the Commitment Approval Order by the Bankruptcy Court approving this Commitment Letter and the terms and conditions hereof.

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

Aristeia International Limited

\_\_\_\_\_  
as an Initial Loan Lender

By: \_\_\_\_\_

Name: William R. Techar

Title: Member of the Manager

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

Aristeia Partners, L.P.

\_\_\_\_\_  
as an Initial Loan Lender

By:   
\_\_\_\_\_  
Name: William R. Techar  
Title: Member of the Manager

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

Highland Credit Opportunities CDO Ltd  
By: Highland Capital Management, L.P.,  
As Collateral Manager  
By: Strand Advisors, Inc.,  
Its General Partner

\_\_\_\_\_  
as an Initial Loan Lender

By: 

Name:

**JASON POST**

Title:

**OPERATIONS DIRECTOR**

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

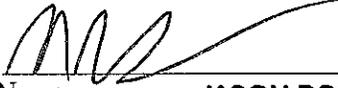
Longhorn Credit Funding, LLC

By: Highland Capital Management, L.P., As Collateral Manager \_\_\_\_\_,

By: Strand Advisors, Inc.

Its General Partner

as an Initial Loan Lender

By:  \_\_\_\_\_

Name:

**JASON POST**

Title:

**OPERATIONS DIRECTOR**

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

GoldenTree 2004 Trust  
By: GoldenTree Asset Management, LP  
as an Initial Loan Lender

By: 

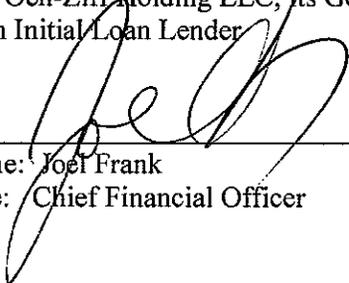
Name: Karen Weber  
Title: Director, Bank Debt

*New Credit Facility Commitment Letter*

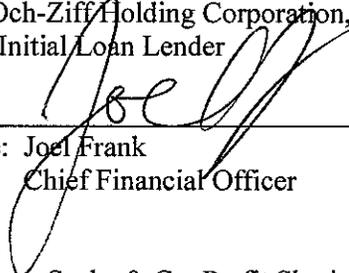
We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

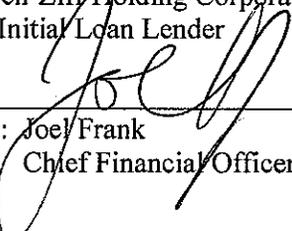
OZ Global Special Investments Master Fund, L.P.  
By: OZ Advisors II LP, its General Partner  
By: Och-Ziff Holding LLC, its General Partner  
as an Initial Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

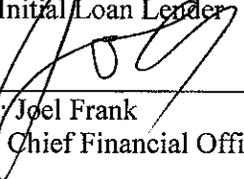
OZ Master Fund, Ltd.  
By: OZ Management LP, its Investment Manager  
By: Och-Ziff Holding Corporation, its General Partner  
as an Initial Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

Goldman Sachs & Co. Profit Sharing Master Trust  
By: OZ Management II LP, its investment manager  
By: Och-Ziff Holding II LLC, its General Partner  
By: OZ Management LP, its Member  
By: Och-Ziff Holding Corporation, its General Partner  
as an Initial Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

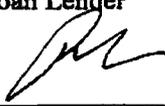
Gordel Holdings Limited  
By: OZ Management LP, its Investment Manager  
By: Och-Ziff Holding Corporation, its General Partner  
as an Initial Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

Plainfield Special Situations Master Fund II Limited  
as an Initial Loan Lender

By: 

Name: Rayan R. Joshi

Title: Authorized Individual

*New Credit Facility Commitment Letter*



Aristeia Partners, L.P.

\_\_\_\_\_,  
as a Delayed Drawdown Loan Lender

By:   
\_\_\_\_\_  
Name: William R. Techar  
Title: Member of the Manager

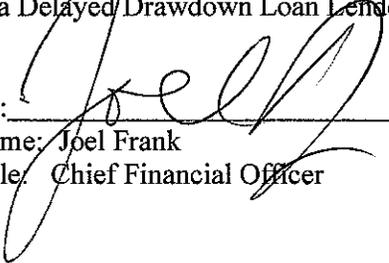
Highland Credit Opportunities CDO Ltd  
By: Highland Capital Management, L.P.,  
As Collateral Manager  
By: Strand Advisors, Inc.,  
Its General Partner

\_\_\_\_\_,  
as a Delayed Drawdown Loan Lender

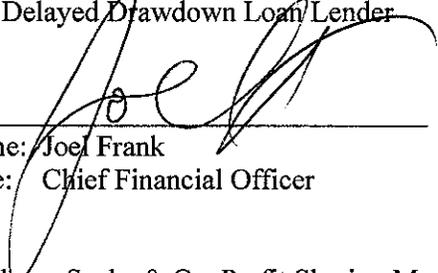
By:   
Name: **JASON POST**  
Title: **OPERATIONS DIRECTOR**

*New Credit Facility Commitment Letter*

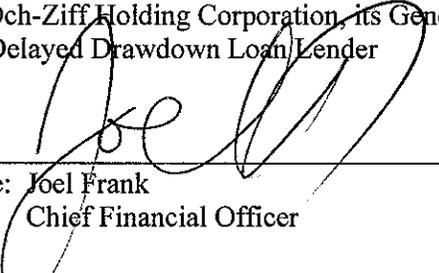
OZ Global Special Investments Master Fund, L.P.  
By: OZ Advisors II LP, its General Partner  
By: Och-Ziff Holding LLC, its General Partner  
as a Delayed Drawdown Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

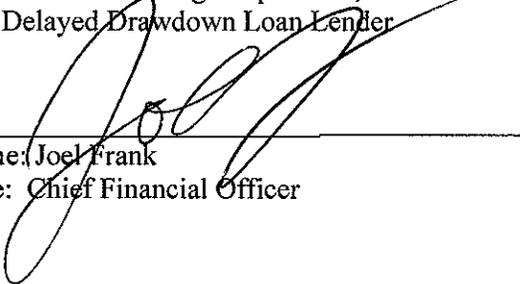
OZ Master Fund, Ltd.  
By: OZ Management LP, its Investment Manager  
By: Och-Ziff Holding Corporation, its General Partner  
as a Delayed Drawdown Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

Goldman Sachs & Co. Profit Sharing Master Trust  
By: OZ Management II LP, its investment manager  
By: Och-Ziff Holding II LLC, its General Partner  
By: OZ Management LP, its Member  
By: Och-Ziff Holding Corporation, its General Partner  
as a Delayed Drawdown Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

Gordel Holdings Limited  
By: OZ Management LP, its Investment Manager  
By: Och-Ziff Holding Corporation, its General Partner  
as a Delayed Drawdown Loan Lender

By:   
Name: Joel Frank  
Title: Chief Financial Officer

**Plainfield Special Situations Master Fund II Limited,**  
**as a Delayed Drawdown Loan Lender**

By:   
Name: Rayan R. Joshi  
Title: Authorized Individual

Accepted and agreed to  
as of the date first  
written above by:

DBSD NORTH AMERICA, INC

By: 

Name: MICHAEL P. GREGORY

Title: ACTING CEO, SVA, CFO

*New Credit Facility Commitment Letter*

Commitment Parties and CommitmentsInitial Loan Facility

<b>Name of Initial Loan Lender</b>	<b>Initial Loan Facility Commitment</b>
Aristeia International Limited	\$4,200,000
Aristeia Partners, L.P.	\$600,000
Highland Credit Opportunities CDO Ltd	\$7,500,000
Longhorn Credit Funding, LLC	\$7,500,000
GoldenTree 2004 Trust	\$2,000,000
OZ Global Special Investments Master Fund, L.P.	\$52,416
OZ Master fund, Ltd.	\$4,587,650
Goldman Sachs & Co. Profit Sharing Master Trust	\$61,914
Gordel Holdings Limited	\$98,020
Plainfield Special Situations Master Fund II Limited	\$6,450,000
<b>Total</b>	<b>\$33,050,000</b>

Delayed Drawdown Loan Facility

Name of Delayed Drawdown Loan Lender	Delayed Drawdown Loan Facility Commitment
Aristeia International Limited	\$2,800,000
Aristeia Partners, L.P.	\$400,000
Highland Credit Opportunities CDO Ltd	\$10,000,000
OZ Global Special Investments Master Fund, L.P.	\$34,944
OZ Master fund, Ltd.	\$3,058,434
Goldman Sachs & Co. Profit Sharing Master Trust	\$41,276
Gordel Holdings Limited	\$65,346
Plainfield Special Situations Master Fund II Limited	\$4,300,000
<b>Total</b>	<b>\$20,700,000</b>

Term Sheet

**Federal Rule of Evidence 408 – Prepared at the Direction of Counsel  
– Settlement Negotiations**

**DBSD NORTH AMERICA, INC.  
SUMMARY OF TERMS AND CONDITIONS FOR PROPOSED NEW CREDIT  
FACILITY**

This term sheet summarizes the material terms of the proposed **New Credit Facility Agreement** among DBSD N.A. (the “**Borrower**”), a Delaware limited liability company, and the New Credit Facility Lenders.

**This term sheet is non-binding and does not represent a commitment. This summary does not outline all of the terms, but only the material conditions, covenants, representations, warranties, and other provisions that would be contained in the definitive documentation for the proposed New Credit Facility Agreement.**

---

**Closing Date:** The New Credit Facility Agreement would close and become effective on the date (the “**Closing Date**”) of (a) the execution and delivery of the New Credit Facility Agreement by the Borrower, subsidiaries that are guarantors under the New Credit Facility Agreement (the “**Subsidiary Guarantors**”), and the New Credit Facility Lenders, and (b) satisfaction of the other conditions precedent to the effectiveness of the New Credit Facility Agreement described below.

**Prepetition Facility:** The Prepetition Facility shall be amended to become the Amended Facility. The Amended Facility, as contemplated, will be effective on the Closing Date.

**New Credit Facility:** The New Credit Facility will be funded with \$46,800,000 to \$52,000,000 (the “**New Credit Facility Funding Amount**”) and will be governed by the terms of the New Credit Facility Agreement. Of such amount, at least \$31,200,000 (the “**Initial Loan**”) will become available upon the Closing Date, and the remaining amount (the “**Delayed Drawdown Loan**”) will become available upon the earlier of January 1, 2011 or such other date as agreed by the New Credit Facility Lenders (the “**Delayed Drawdown Date**”), in each case subject to incremental commitments for the Initial Loan, as described in “Miscellaneous” below.

In the event that the New Credit Facility Lenders elect, in their sole discretion, to provide debtor in possession financing (a “**DIP Facility**”) to the Borrower after Confirmation, but prior to the Effective Date, then an amount equal to all or a portion of the Initial Loan may be advanced as a DIP Facility, on terms and subject to conditions substantially similar to the terms of the Initial Loan; provided that all amounts so advanced as a DIP Facility shall be

rolled into the Initial Loan under the New Credit Facility (which shall not increase the amounts available under the Initial Loan).

Interest Rates:

Amounts outstanding under the New Credit Facility would bear interest at the rate of interest as specified by the Amended Facility Agreement plus 7.5% (the “**Drawn Rate**”). Undrawn amounts under the New Credit Facility Agreement with respect to the Delayed Drawdown Loan would bear interest at 50% of the Drawn Rate. Interest shall be payment in kind.

New Common Stock:

The New Credit Facility Lenders will receive, on the Closing Date and the Delayed Drawdown Date for the Initial Loan and Delayed Drawdown Loan, respectively, a percentage of the New Common Stock, on a *pro rata* basis, calculated as: 10% of the New Common Stock for \$31,200,000 under the Initial Loan; and 10% of the New Common Stock for every \$20,800,000 of the Delayed Drawdown Loan. To the extent that the Initial Loan is increased and the Delayed Drawdown Loan is reduced due to Additional Initial Loan Commitments (as defined herein), then additional New Common Stock reserved for the Additional Initial Loan Commitments shall be based at a proportion of 10% for every \$31,200,000 of Additional Initial Loan Commitments, whereas the previous New Common Stock reserved for distribution on the Delayed Drawdown Date shall be reduced at a proportion of 10% for every \$20,800,000 of Additional Initial Loan Commitments.

Commitment Discount:

A discount in an amount equal to 2% of the Initial Loan (the “**Initial Loan Commitment Discount**”) plus a discount in the amount equal to 2% of the Delayed Drawdown Loan (the “**Delayed Drawdown Discount**” and, together with the Initial Loan Commitment Discount, the “**Commitment Discounts**”) would be payable in full to the New Credit Facility Lenders that have committed funds before July 31, 2009 on a *pro rata* basis with respect to the Initial Loan and Delayed Drawdown Loan. The Commitment Discounts will be structured in the form of an original issue discount (“**OID**”) payable at the Closing Date.

Closing Discount:

A discount in an amount equal to 2% of the Initial Loan amount (the “**Initial Loan Closing Discount**”) plus a discount in the amount equal to 2% of the Delayed Drawdown Loan Amount (the “**Delayed Drawdown Closing Discount**” and, together with the Initial Loan Closing Discount, the “**Closing Discounts**”). The Initial Loan Closing Discount would be payable in full to the New Credit Facility Lenders on a *pro rata* basis at the Closing Date, and the Delayed Drawdown Closing Discount would be payable in full to the New Credit Facility Lenders on a *pro rata* basis at the Delayed Drawdown

Date. The Closing Discounts will be structured in the form of OID.

**Maturity Date:** The New Credit Facility would mature on the same date that the Amended Facility is set to mature (“the **Maturity Date**”).

**Prepayment Premium:** If the New Credit Facility is prepaid in full or in part prior to the Maturity Date, a prepayment premium will be applied. If such prepayment occurs within 6 months of the Closing Date, the required premium will be the present value of 110% of par plus the remaining scheduled interest payments for the 6 months following the Closing Date discounted at the corresponding U.S. Treasury note rate plus 50 basis points. If such prepayment occurs thereafter, the required premium will be a percentage of the drawn amounts under the Initial Loan and the Delayed Drawdown Loan as described in the following table:

<b>Months Following Closing Date</b>	<b>Payment as a Percentage of Amounts Outstanding</b>
7 – 12 months	110%
13 – 18 months	108%
19 – 24 months	106%
25 – 30 months	104%
31 – 36 months	102%
Thereafter	par

In each case plus accrued interest on the amount of the New Credit Facility being prepaid.

**Collateral:** The New Credit Facility shall have a second priority perfected lien and security interest on all the same assets of the Borrower and the Subsidiary Guarantors as, and co-extensive with (but second in priority to), the first priority lien and security interest securing the Amended Facility.

**Conditions Precedent to Closing:** The provisions of the New Credit Facility Agreement shall be subject to the satisfaction of conditions precedent usual and customary for transactions of this type, including, without limitation, the following:

- a) receipt and satisfactory review of Borrower’s audited financials;
- b) payment of all accrued and unpaid expenses and fees;

- c) signing and closing of an intercreditor agreement among parties to the Amended Facility Agreement and other applicable junior or other lenders;
- d) the negotiation, execution, and delivery of definitive documentation for the New Credit Facility consistent with this Summary of Terms and Conditions and otherwise satisfactory to the New Credit Facility Lenders;
- e) simultaneous closing of the Amended Facility and the New Credit Facility;
- f) simultaneous Effective Date for the Borrower and Subsidiary Guarantors on terms and subject to conditions reasonably acceptable to the New Credit Facility Lenders;
- g) all assumed (or not discharged) liabilities of the Borrower and the Subsidiary Guarantors shall be reasonably acceptable to the New Credit Facility Lenders; and
- h) other conditions precedent to be agreed upon.

Any borrowings under the Delayed Drawdown Loan shall also be subject to additional conditions, including, without limitation:

- i) no material adverse changes from the Closing Date;
- ii) no breach of any representations or warranties at the Delayed Drawdown Date; and
- iii) other conditions precedent to be agreed upon.

The commitment to enter into, as well as the borrowings under, the New Credit Facility Agreement shall further be conditioned upon the full cooperation of the Borrower and its advisors to support the exploration and pursuit and consummation of strategic alternatives for the Borrower (whether such alternatives are to be consummated before or after the Effective Date) if and when requested by the New Credit Facility Lenders.

Participation:

The opportunity to participate in the New Credit Facility will be offered to the New Credit Facility Lenders, all other Holders of the Class 2 Senior Note Claims on a *pro rata* basis, and the Existing Stockholder (with the Existing Stockholder being offered the opportunity to participate up to 5% of the New Credit Facility); provided that in no event shall each New Credit Facility Lender's

participation in the New Credit Facility be required to be less than its *pro rata* share, based on its percentage ownership of the Secured Notes Claims, of 95% of the total amount of the New Credit Facility. In order to participate in the New Credit Facility, each lender must execute agreements evidencing its commitments to participate in the New Credit Facility no later than 5 business days prior to the scheduled date of the Confirmation Hearing, or such other date as agreed to by the Borrower and the New Credit Facility Lenders.

Taxes: The Borrower and the New Credit Facility Lenders will cooperate to maximize the tax efficiency for the New Credit Facility Lenders.

Miscellaneous: Incremental commitments for initial funding over the estimated Initial Loan amount (such additional commitments, the “**Additional Initial Loan Commitments**”) will be treated as part of the Initial Loan and will reduce the Delayed Drawdown Loan dollar for dollar.

**ATTACHMENT H**

atVantage™

ICO GLOBAL - Company Profile

7/28/2010

**ICO GLOBAL - Company Profile - 7/28/2010****Table of Contents**

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Board Relationships	
Products and Brands	
In The News	
<a href="#">Criteria Summary</a>	<a href="#">10</a>
<a href="#">Sections With No Data</a>	<a href="#">11</a>

Below is a link to the atVantage profile on which this report is based. This link will expire after 90 days of inactivity.

<https://atvantage.lexisnexis.com/RunSavedProfile.aspx?guid=3A1D0434-F964-4E91-B1BE-E923E10963DB>

Overview

Company Type: Public - Parent  
 Physical Address: 11700 Plaza America Dr., Ste. 1010  
 Reston, Virginia 20190  
 United States  
 Telephone: 703-964-1400  
 Fax: 703-964-1401  
 Email: investor@ico.com  
 Web Site: www.ico.com  
 Stock Information: ICOG [NASDAQ]  
 DUNS® Number: 78-311-5962



1 Secondary NAICS Categories  
 Satellite Telecommunications (517410)  
 SIC: Radio & TV communications equipment (3663)  
 2 Secondary SIC Categories  
 Radio & TV communications equipment (3663)  
 Communication services, nec (4899)

Employees: 41  
 Net Sales: 0 (USD)<sup>1</sup>  
 Key Competitors:<sup>2</sup> Globalstar, Iridium, SkyTerra

Business Description:<sup>1</sup> When it gets off the ground, ICO Global Communications will be a satellite-based communications system with global coverage. The company's principal operating subsidiary, DBSD North America, (formerly known as ICO North America), is authorized to operate a medium-Earth-orbit satellite service to provide mobile voice, data, and Internet services primarily in the US. In addition to telephone and messaging capabilities, its consumer-oriented service is slated to deliver mobile entertainment content such as television programming, as well as interactive navigation data to wireless computing devices and vehicle navigation systems. Debt-laden DBSD North America filed for Chapter 11 bankruptcy protection in mid-2009.

## Finances

### Last Fiscal Year:

Total Assets: 663,964,000 (USD)<sup>3</sup>

Total Liabilities: 856,475,000 (USD)<sup>3</sup>

Net Sales: 0 (USD)<sup>1</sup>

Auditor:<sup>1</sup> Deloitte & Touche LLP, 2010

## Executives

Name	Position
Benjamin G. Wolff	Chairman & CEO
Timothy P. Leybold	Interim CFO/Senior VP
John L. Flynn	Gen Counsel, Sec & Exec VP
Suzanne Hutchings Malloy	Senior VP-Regulatory Affairs
David Bagley	Senior VP-Corp Dev
Robert S. Day, Jr.	Senior VP-Space Sys
David Zufall	Senior VP-Network Sys
Tom Conklin	Product Mgr-Applications
Christopher Doherty	Coord-Media

Board of Directors

Board Members<sup>4</sup>

Name	Board of Directors	Strategic
Samuel L. Ginn	<b>M</b>	<b>M</b>
Nicolas Kauser	<b>M</b>	
Craig O. McCaw	<b>C</b>	
Barry L. Rowan	<b>M</b>	
H. Brian Thompson	<b>M</b>	
David H. Wasserman	<b>M</b>	
Benjamin G. Wolff	<b>C</b>	

**M** Member    **C** Chairperson

## Board Relationships

Board Relationships<sup>4</sup>

Name	Currently Serves on These Other Boards
Nicolas Kauser	TRIQUINT SEMICONDUCTOR INC
Craig O. McCaw	CLEARWIRE CORP
H. Brian Thompson	BELL CANADA INTERNATIONAL INC SONUS NETWORKS INC AXCELIS TECHNOLOGIES INC PENSKE AUTOMOTIVE GROUP INC
David H. Wasserman	HERTZ GLOBAL HOLDINGS INC
Benjamin G. Wolff	DBSD North America, Inc. CLEARWIRE CORP

Products and Brands

Products

Brands<sup>3</sup>

ICO (Logo)

ICO MIN (Multimedia Service)

## In The News

Recent News Articles<sup>5</sup>

Local Digest - The Washington Post, May 20, 2010 Thursday

MERGERS & ACQUISITIONS FCC names leader of NBC-Comcast review The Federal Communications Commission named John Flynn, general counsel for ICO Global Communications Holdings, to lead the agency's review of Comcast's proposed purchase of NBC Universal.

Daily Briefing - The Atlanta Journal-Constitution, November 1, 2008 Saturday

AUTOMOTIVENissan launches 0% financingNissan Motor Co. said Friday it will begin offering zero-percent financing for five of its top-selling vehicles starting next week as it seeks to lift its U.S. sales and prove to consumers that credit remains available. Nissan's North American unit will offer the 36-month financing program on its Rogue and Murano crossovers, its Altima and Sentra sedans and its Versa hatchback from Nov. 4 to Jan. 5. Mercedes offers buyout packageWith the economy slowing and demand for new vehicles shrinking, Mercedes-Benz is offering buyout packages to its nearly 4,000 workers at its Vance, Ala., plant for the first time since the factory opened 11 years ago. The Mercedes-Benz M-Class Sport Utility, the R-Class Sport Tourer and the full-sized GL-Class Luxury Sport Utility Vehicle are built at the Vance plant.

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Judge cuts award in Boeing case - Chicago Tribune, October 23, 2008 Thursday

A judge late Tuesday revised the damage amount in a trial involving Boeing Co., saying the Chicago-based aerospace company was found responsible for at least \$370 million in damages in a dispute with ICOWorldCommunicationsHoldingsLtd. over the completion of a satellite telecommunications network.

Boeing loses satellite suit - Chicago Tribune, October 22, 2008 Wednesday Correction Appended

(The headline as published has been corrected in this text.)Boeing Co. must pay at least \$370 million to ICOWorldCommunicationsHoldingsLtd. for failing to complete a satellite telecommunications network for ICO, a California jury decided (this sentence as published has been corrected in this text).

NATION & WORLD BUSINESS BRIEFS - Detroit Free Press (Michigan), October 22, 2008 Wednesday

AVIATIONUAL Corp. posts lossUAL Corp., the parent of United Airlines, posted a third-quarter net loss of \$779 million as falling oil prices forced the carrier to cut the value of fuel contracts bought in advance.

Heads up: Casino loss limit repeal measure in appeal - The Kansas City Star, October 22, 2008 Wednesday

## Sources (6)

1. Hoover's Company Records - In-depth Records, July 20, 2010, Copyright 2010 Hoover's Inc., All Rights Reserved
2. Hoover's Company Records - Basic Record, July 27, 2010, Copyright 2010 Hoover's Inc., All Rights Reserved
3. Directory of Corporate Affiliations, July 20, 2010, Copyright 2010 Reed Elsevier Inc. All rights reserved.
4. ExecRelate, ©2010 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.
5. Martindale-Hubbell Corporate Practice Profiles Section (via Company Dossier), ©2010 Reed Elsevier Inc., Martindale-Hubbell
6. Major Newspapers - 10 Most Recent, July 28, 2010

Selected Companies

Company Name	Business	Deals	Offerings
ICO GLOBAL COMMUNICATIONS (HOLDINGS) LTD	✓		

Subsidiaries which are linked to events are shown indented below their parent.

Date Range

1/1/2005 to 7/28/2010

Subsidiaries

Subsidiaries were included

Included Companies

The corporate hierarchy of your selected companies is shown below. Companies in bold are eligible for inclusion in your profile. Included companies are indicated by ✓. Companies that you have excluded are indicated by ✗.

- ICO Global Communications (Holdings) Limited - Reston, VA
  - ✓ DBSD North America, Inc. - Reston, VA

### Sections With No Data

The following sections were not included in the report because they contained no data:

- ICO GLOBAL COMMUNICATIONS (HOLDINGS) LTD - Company Overview - Corporate Counsel
- Mergers & Acquisitions
- Offerings