

August 23, 2010

VIA ELECTRONIC FILING

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

Re: Ex Parte Communication
WT Docket No. 02-55
ET Docket Nos. 00-258 and 95-18

New DBSD Satellite Services G.P., Applications for Transfer of Control
File Nos. SAT-T/C-20091211-00144, et al.

Dear Ms. Dortch:

ICO Global Communications (Holdings) Limited (“ICO Global”), by its counsel, submits this letter to briefly respond to the recent ex parte by Sprint Nextel Corporation (“Sprint”),^{1/} to correct several factual and legal claims that Sprint makes in that filing. None of these claims refutes ICO Global’s prior demonstration that extending liability for BAS relocation reimbursement to ICO Global, as Sprint has proposed, would be unjustified and unprecedented.

First, contrary to Sprint’s assertion,^{2/} ICO Global is not accusing Sprint of “conspiring” with the broadcast industry to prevent MSS licensees from participating in clearing. Rather, as ICO Global’s August 2 ex parte made clear,^{3/} the fault lies with Sprint alone. Sprint refused to allow the MSS licensees to be a meaningful part of the BAS relocation process, refusing them the information they needed to be involved and ensuring that they would stay out of the process by proffering a facially unreasonable argument as a condition to joining the process.^{4/} Indeed, if Sprint is willing to waive the nondisclosure agreement it imposed on the discussions surrounding that agreement, ICO Global will submit that agreement for the record so that the Commission

^{1/} Ex Parte Presentation of Sprint Nextel Corporation, WT Docket No. 02-55, ET Docket Nos. 95-18, 00-258 (filed Aug. 6, 2010) (“*Sprint August 6 Ex Parte*”).

^{2/} *Id.* at 1-2.

^{3/} Ex Parte Communication of ICO Global, WT Docket No. 02-55, ET Docket Nos. 95-18, 00-258 (filed Aug. 2, 2010) (“*ICO Global August 2 Ex Parte*”).

^{4/} *See id.* at 2-6.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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can evaluate for itself the reasonableness of Sprint's required conditions for participation in the band clearing process.

Second, Sprint's argument that ICO Global is "not correct" in claiming that the 36-month limit on reimbursements was never extended is belied by its own acknowledgment that the Commission has issued a tentative conclusion regarding whether to extend it.^{5/} Sprint cannot simultaneously claim that the deadline has been extended and admit that the Commission is considering whether to extend it.

Third, Sprint's argument that making ICO Global jointly and severally liable would not constitute rulemaking because it would not be a "new" rule but rather a "clarification" of an existing rule,^{6/} is wrong. "Entrant" was meant to be synonymous with "licensee" and cannot now be changed to refer to any affiliates of the licensee.^{7/}

Moreover, the argument that the Commission can impose joint and several liability on ICO Global through a rule "clarification" was explicitly and repeatedly rejected by the Bankruptcy Court, a ruling that Sprint's argument wholly fails to address. The Bankruptcy Court emphasized that any such ruling would constitute new rulemaking, and specifically held that any attempt to create such liability "under the rubric of clarifying a rule that said nothing of the kind" would be "disingenuous[.]".^{8/} Given these clear precedents, there can be no plausible argument that expanding the definition of "entrant" to include any affiliate of a licensee as well as the licensee itself would be anything other than a new rule.^{9/}

Fourth, Sprint's argument that joint and several liability for all affiliates of a licensee was somehow "implied" in past FCC orders not only has clearly been rejected by the court (*see id.* at 11-13), but also any such "implied" holding would not be sufficient to overcome the normal rule that shareholders are not liable for corporate debts.^{10/} While Sprint claims that ICO Global

^{5/} *Sprint August 6 Ex Parte* at 3 n.8.

^{6/} *Id.* at 3-4.

^{7/} *See ICO Global August 2 Ex Parte* at 9-10 (discussing the Commission's well established history of equating "entrant" in this context with "licensee" and the Bankruptcy Court's holding to that effect).

^{8/} Bench Decision on Debtors' Objection to Proofs of Claim Filed By Sprint Nextel Corporation, Case No. 09-13061 (Sept. 30, 2009) at 12; *see also id.* ("What Sprint and the FCC are actually proposing, then, is that by rulemaking, one or more *new rules* addressing joint and several liability might be put into effect") (emphasis added).

^{9/} As ICO Global explained, these determinations are binding on the FCC. *ICO Global August 2 Ex Parte* at 10-11. Contrary to Sprint's characterization, the Bankruptcy Court did not find that the FCC's orders were ambiguous on what "entrant" meant. *See id.* at 11 & n.41. Even if the FCC were not bound by the earlier court decision on the basis of issue preclusion, the Commission is still precluded from redefining "entrant" to mean all licensee affiliates by the prohibition on retroactive rulemaking.

^{10/} *See ICO Global August 2 Ex Parte* at 11 & n.42.

August 23, 2010

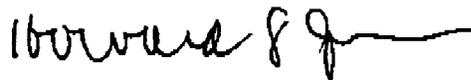
Page 3

should not have reasonably believed that it would not be responsible for its affiliates' liabilities,^{11/} it is not "bad faith" for corporations to rely on longstanding and well-established corporate law principles.

Finally, ICO Global's arguments regarding the FCC's lack of authority to pierce the corporate veil are directly relevant to Sprint's attempts to impose liability for relocation reimbursement costs on ICO Global. As the Bankruptcy court held – and as Sprint itself acknowledged through its identification of defendants in the lawsuit it filed to recover those costs – reimbursement is an obligation of the licensee and the licensee alone. Thus, the only way for ICO Global to be liable for its affiliate's debts would be through veil-piercing. As ICO Global has explained, however, such action by the FCC would be impermissible here.^{12/} DBSD is not the instrument of ICO Global's business plan. To the contrary, ICO Global's business has been and remains separate from DBSD's business. ICO Global never had any intent of operating a GEO satellite or deploying an ATC network in the United States; its business plans are focused entirely on the international market using a different satellite system. Indeed, DBSD's investors insisted on corporate separation between DBSD and ICO Global as a condition of investing in DBSD, because they did not want any liability for ICO Global's operations outside the U.S. Sprint's reference to overlapping personnel as somehow demonstrating the "intertwined" nature of the companies is meritless. While there are some individuals with roles in both companies, not all employees are shared; many U.S. employees are exclusive employees of DBSD and the companies function totally separately.^{13/}

For these reasons and as set out in ICO Global's other filings in these proceedings, the Commission may not and should not make ICO Global liable for reimbursing Sprint's BAS relocation costs.

Respectfully submitted,



Howard J. Symons

cc: Rick Kaplan
Jennifer Flynn
Austin Schlick

^{11/} *Sprint August 6 Ex Parte* at 4.

^{12/} *ICO Global August 2 Ex Parte* (at 12-16).

^{13/} *See id.* When it comes to its own business, Sprint well understands the importance of shielding itself from the obligations of its affiliates – as evidenced by its determination not to include Clearwire on its consolidated financial statements despite Sprint's majority ownership of Clearwire. *See id.* at 12 & n.45 (citing Sprint Nextel 2009 Annual Report on Form 10-K (filed Feb. 26, 2010) at F-9).

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

August 23, 2010

Page 4

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