

September 1, 2010

FILED ELECTRONICALLY

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

Re: Notice of Ex Parte Presentation
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:

On August 31, 2010, Ben Wolff, Tim Dozois, and R. Gerard Salemme of ICO Global Communications (Holdings) Limited (“ICO Global”) and the undersigned met with Austin Schlick, Stewart Block, and Sarah Stone of the Office of General Counsel; Mindel De La Torre and Roderick Porter of the International Bureau; and Nicholas Oros and Jamison Prime of the Office of Engineering and Technology regarding the above-captioned proceedings. We also met separately on August 31 with John Giusti, chief of staff to Commissioner Copps, and on September 1 with Commissioner McDowell and Angela Giancarlo, his chief of staff, regarding these proceedings.

In the meetings, we explained that it would be improper to consider ICO Global to be part of a single entity engaged in the MSS business and thus liable for reimbursing Sprint’s BAS relocation costs. To the contrary, ICO Global and DBSD (fka ICO North America) are separate and distinct in both form and substance. ICO Global, together with its international subsidiaries, has been pursuing a satellite communications business outside of North America utilizing mid-Earth orbit satellites since 2000; DBSD and its subsidiaries (collectively, “DBSD”) have been pursuing an integrated satellite and terrestrial communications business focused exclusively in North America utilizing a geosynchronous satellite since its inception in 2005. Since 2005, DBSD has been separately funded and has relied on its own resources to construct, launch and operate its GEO satellite without any assistance from ICO Global. Even if the Commission were to define “entering the band,” the trigger for incurring BAS cost sharing obligations, to mean

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when an “MSS entrant” certifies that its satellite is operational,^{1/} ICO Global was no longer involved in DBSD’s MSS business when DBSD made that certification in 2008 and so cannot be held to have incurred this obligation.

With the formation of DBSD in 2005, ICO Global relinquished all of its rights to domestic MSS operations and focused exclusively on its international satellite business. While ICO Global retained a 56% fully diluted interest in DBSD, DBSD was independently funded by its outside investors, who provided more than \$600 million for DBSD’s MSS efforts. Indeed, DBSD’s investors insisted on arms’ length separation between DBSD and ICO Global as a condition of funding DBSD. ICO Global has provided no funding to DBSD since 2005, and has made no other contributions of assets, personnel or other resources to DBSD other than its original contributions in 2005. Furthermore, since 2005, DBSD’s investors have continuously held significant governance rights, including the right to board representation and to approve decisions relating to the scope and direction of DBSD’s business, funding and transactions between DBSD and ICO Global, if any.

We explained that, prior to 2005, ICO Global did provide financial and other support for its MSS subsidiary. After the formation and funding of DBSD, by contrast, DBSD was solely responsible for the construction, launch, and operation of its MSS satellite. It acquired from ICO Global the assets necessary to pursue the MSS operation in the United States and Canada. ICO Global employees with MSS expertise became and remain DBSD employees.^{2/} The related costs of the MSS operation, including the costs of relocating BAS licensees, were and are a liability of DBSD, and were disclosed to DBSD’s outside investors in the documentation associated with their investment in 2005.

^{1/} *Improving Public Safety Communications in the 800 MHz Band, et al.*, WT Docket No. 02-55 and ET Docket Nos. 00-258 and 95-18, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 7904, ¶ 91 (2009).

^{2/} Consistent with our August 2 ex parte in these proceedings, we explained that DBSD’s milestone certification was made by Dennis Schmitt in his capacity as Controller of DBSD rather than as a Senior Vice President of ICO Global. That the two entities shared a handful of officers, and that DBSD employees provided some services to ICO Global for which ICO Global compensated DBSD on an arm’s length basis, does not contradict the fact, supported by overwhelming evidence, that ICO Global had no ongoing role in DBSD’s business and that DBSD was solely responsible for fulfilling the obligations of an MSS licensee. Likewise, Sprint’s decision to serve its notice of intent to seek reimbursement on the “MSS licensee [DBSD]” by addressing its letter to “Suzanne Hutchings Malloy, ICO Global Communications” proves nothing other than that Sprint both knew DBSD was the appropriate party and that it had record of Ms. Malloy as having been an officer of ICO Global. Following the formation of DBSD in 2005, she was an employee solely of DBSD, although she retained an officer title at ICO Global. *Cf.* Letter from Marc S. Martin, Counsel for Sprint Nextel Corporation, to Marlene H. Dortch, WT Docket No. 02-55, ET Docket Nos. 00-258 & 95-18 (filed Aug. 30, 2010).

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Having relinquished its involvement in the U.S. market to DBSD, ICO Global remains actively involved in its international satellite business. It has one MEO satellite in orbit, and 10 MEO satellites in various stages of construction.^{3/} It holds spectrum rights in most countries outside of the U.S., and has earth stations, equipment and employees outside of North America. ICO Global has no control over DBSD's GEO satellite in orbit, terrestrial earth station equipment, or spectrum rights in the U.S. Since the formation of DBSD, ICO Global and DBSD have not in any manner commingled their respective assets or liabilities.

The separate businesses of ICO Global and DBSD – and DBSD's self-sufficiency since 2005 – refute any contention that ICO Global should be considered part of a common entity, along with DBSD, engaged in the MSS business. There is simply no factual or legal basis for making ICO Global liable for the relocation reimbursement obligations that Sprint itself has elsewhere acknowledged are the responsibility of "MSS licensees." There may be circumstances in which it is appropriate for the Commission to extend a licensee's obligations to affiliates of the licensee, but this is not one of them. To do so here would also stifle investment by creating a risk for future shareholders in Commission licensees that they could be held liable at some indeterminate future date for the licensee's obligations.

We also noted that not only would it be legally impermissible to impose liability for relocation costs on ICO Global, it would be grossly unfair. ICO Global (even prior to the formation of DBSD in 2005) never utilized the BAS spectrum or received any benefit from Sprint's delayed and inexplicably expensive band clearing activities, and it never will now that it has lost all but a minimal interest in DBSD following DBSD's exit from bankruptcy.

Finally, in the meetings with Commissioner McDowell, Ms. Giancarlo, and Mr. Giusti, we explained that there is no basis to link DBSD's Transfer of Control application with the BAS rulemaking item or to incorporate BAS relocation expense issues in the DBSD Transfer of Control item.

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary and served electronically on the Commission participants in the meetings.

^{3/} Conversely, DBSD's agreement with its investors limits it to the MSS business in North America utilizing a GEO satellite.

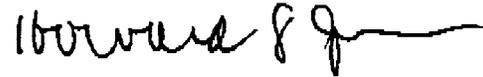
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Should there be any questions regarding this matter, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: Hon. Robert McDowell
Angela Giancarlo
John Giusti
Austin Schlick
Stewart Block
Sarah Stone
Mindel De La Torre
Roderick Porter
Nicholas Oros
Jamison Prime
Julius Knapp
Bruce Romano
Geraldine Matise
Rick Kaplan
Jennifer Flynn
Charles Mathias
Brad Gillen
Louis Peraertz
Edward Lazarus