

September 2, 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: Notice of Ex Parte Communication

**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 Wednesday, September 1, 2010, Lawrence R. Krevor of Sprint Nextel Corporation (Sprint Nextel), Marc S. Martin of K&L Gates LLP, and Regina M. Keeney of Lawler, Metzger, Keeney & Logan, LLC met with Austin Schlick, General Counsel of the Federal Communications Commission (Commission), Sally Stone and Stewart Block of the Commission s Office of General Counsel, and Geraldine Matise, Jamison Prime, and Nicholas Oros of the Commission s Office of Engineering & Technology, regarding the above-captioned proceedings. Felton E. Parrish of K&L Gates LLP participated in the meeting via telephone.

Relying on documents in the record,¹ Sprint Nextel reconfirmed that the issue in the above-captioned proceedings is whether the Commission will permit entities like ICO

¹ See, e.g., Sprint Nextel 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-20091222-1576, SAT-T/C-0091211-00144 (July 28, 2010), at 3-8 (*Sprint Nextel July 28 Written Ex Parte Presentation*); Sprint Nextel Notice of *Ex Parte* Communication, 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-

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Global, which created and held itself out as the operator of the MSS system at issue, to avoid its regulatory obligations under the *Emerging Technologies* doctrine by failing to reimburse Sprint Nextel for their *pro rata* shares of Broadcast Auxiliary Service (BAS) retuning costs.

Sprint Nextel was informed of a recent oral presentation made to the Commission by ICO Global, in which ICO Global apparently did not dispute that ICO Global and DBSD had operated as a common enterprise prior to 2005, but indicated that it ceased doing so after a corporate reorganization in 2005. In response, Sprint Nextel noted several irrefutable facts that occurred after 2005, including (1) ICO Global's submissions to government agencies discussing ICO Global's 2 GHz MSS business; (2) ICO Global's investor presentations soliciting funds based on ICO Global's 2 GHz MSS assets and business; and (3) ICO Global's repeated submissions to the FCC over a two-year-long period attesting to ICO Global's fulfillment of the 2 GHz MSS licensee buildout milestones.² Taken together, Sprint explained that these facts demonstrate that ICO Global continued and continues to function as part of a common enterprise with DBSD after its 2005 reorganization despite ICO Global's contentions to the contrary.³

Sprint Nextel also highlighted important timing and sequence considerations concerning action in these proceedings. Those considerations focused on the desirability of issuing a final order in the above-captioned rulemaking proceeding prior to action on the transfer of control applications to clarify and reaffirm the Commission's longstanding *Emerging Technologies* doctrine, which will continue to serve a critical role in clearing spectrum for new wireless broadband services as the Commission implements its National Broadband Plan.⁴ Sprint Nextel also discussed other matters in the record relating to the

20091222-1576, SAT-T/C-0091211-00144 (Sept. 1, 2010) (*Sprint Nextel September 1 Notice of Ex Parte Communication*).

² The time period involved and the multiple signatories belie the notion advanced by ICO Global that these were clerical-type errors.

³ Sprint Nextel July 28 Written *Ex Parte* Presentation, at 3-8.

⁴ Sprint Nextel again notes for the record that it does not contend that the transfer of control applications should be denied because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel as part of that process. Sprint Nextel contends that the applications should not be granted pending the Commission's completion of its BAS cost reimbursement rulemaking which, among other things, is expected to address whether common enterprise liability applies and thus whether ICO Global Communications (Holdings) Limited is jointly and severally liable for reimbursing Sprint Nextel for its *pro*

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DBSD bankruptcy proceeding, consistent with prior filings submitted by Sprint Nextel in the record of the above-captioned proceedings. For example, Sprint Nextel noted that the financing deadlines that DBSD has cited as a basis for the alleged urgency of the transfer of control proceeding have been routinely extended by DBSD's lenders. Coincidentally, on the same day as this meeting with the Commission staff, those deadlines were extended yet again through September 15, 2010. The notice of the extension filed with the Bankruptcy Court is attached hereto as Exhibit A.

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.

Sincerely,

/s/ Marc S. Martin
Marc S. Martin

Counsel for Sprint Nextel Corporation

rata share of the BAS relocation costs. The automatic stay does not apply to entities that have not filed for bankruptcy. *Teacher's Ins. & Annuity Ass'n of Am. v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986) (It is well-established that stays pursuant to §362(a) are limited to debtors and do not encompass non-bankrupt co-defendants.). ICO Global, DBSD's corporate parent, has not filed for bankruptcy protection and, therefore, is not entitled to the protection of the automatic stay.

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cc: Austin Schlick
Stewart Block
David Horowitz
Andrea Kearney
Sally Stone
Julie Veach
Gardner Foster
Karl Kensinger
Geraldine Matise
Jamison Prime
Nick Oros
Rick Kaplan
Jennifer Flynn
Robert Nelson
Julius Knapp
Bruce Romano
Paul Murray
John Leibovitz
Mindel DeLaTorre
Roderick Porter
Charles Mathias
John Giusti
Louis Peraertz
Angela Giancarlo
Edward Lazarus

EXHIBIT A

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KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

Marc J. Carmel
Lauren M. Hawkins
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
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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> , ¹)	Case No. 09-13061 (REG)
)	
Debtors.)	Jointly Administered

**NOTICE OF FILING OF AMENDMENT NO. 5 TO
THAT CERTAIN SECURED SUPER-PRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT DATED AS OF JANUARY 8, 2010**

PLEASE TAKE NOTICE that on September 1, 2010, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed Amendment No. 5 to that certain Secured Super-Priority Debtor-in-Possession Credit Agreement dated as of January 8, 2010 (the “**Amendment**”), attached hereto as **Exhibit A**, pursuant to paragraph 32 of the Final Order

1 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.

(A) Authorizing the Debtors To Obtain Postpetition Financing on a Second Lien, Secured Super-Priority Basis and (B) Granting Related Relief [Docket No. 592].

PLEASE TAKE FURTHER NOTICE that you may obtain a copy of the Amendment: (a) from The Garden City Group, Inc., the Debtors' Claims and Solicitation Agent: (i) at its website at www.gardencitygroup.com/cases/dbsd; (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; or (b) for a fee via PACER at <https://ecf.nysb.uscourts.gov>.

New York, New York
Dated: September 1, 2010

/s/ Marc J. Carmel
James H.M. Sprayregen, P.C.
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
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- and -

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Counsel to the Debtors
and Debtors in Possession

EXHIBIT A

AMENDMENT NO. 5

AMENDMENT NO. 5 dated as of August 31, 2010 between DBSD North America, Inc., a Delaware corporation (the "**Borrower**") as a debtor and a debtor-in-possession under Chapter 11 of the Bankruptcy Code, the "Subsidiary Guarantors" referred to on the signature pages hereto (individually, a "**Subsidiary Guarantor**" and, collectively, the "**Subsidiary Guarantors**" and, together with the Borrower, the "**Loan Parties**"), as debtors and debtors-in-possession under Chapter 11 of the Bankruptcy Code, the Lenders party hereto and NexBank, SSB, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "**Administrative Agent**").

The Borrower, the Subsidiary Guarantors, the Lenders, and the Administrative Agent, are parties to a Credit Agreement dated as of January 8, 2010 (as amended by Amendment No. 1 thereto dated as of March 4, 2010, Amendment No. 2 thereto dated as of June 23, 2010, Amendment No. 3 thereto dated as of July 30, 2010 and Amendment No. 4 thereto dated as of August 13, 2010 and as otherwise amended, modified and supplemented and in effect from time to time, the "**Credit Agreement**").

The Borrower, the Subsidiary Guarantors and the Lenders wish now to amend the Credit Agreement in certain respects, and accordingly, the parties hereto hereby agree as follows:

Section 1. Definitions. Except as otherwise defined in this Amendment No. 5, terms defined in the Credit Agreement are used herein as defined therein.

Section 2. Amendments. Subject to the execution and delivery of this Amendment No. 5 by each Loan Party, the Administrative Agent and each Lender, but effective as of the date hereof, the Credit Agreement shall be amended as follows:

2.01. References Generally. References in the Credit Agreement (including references to the Credit Agreement as amended hereby) to "this Agreement" (and indirect references such as "hereunder", "hereby", "herein" and "hereof") shall be deemed to be references to the Credit Agreement as amended hereby.

2.02. Definitions. Section 1.01 of the Credit Agreement shall be amended by amending the following definition:

"**Termination Date**" shall mean September 15, 2010.

Section 3. Representations and Warranties. Each Loan Party represents and warrants to the Lenders and the Administrative Agent, as to itself and each of its subsidiaries, that (a) the representations and warranties set forth in Article III (as hereby amended) of the Credit Agreement, and in each of the other Loan Documents, are true and correct in all material respects on the date hereof as if made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, such representation or warranty shall be true and correct in all material respects as of such specific date), and as if each reference in said Article III to "this Agreement" included reference to this Amendment No. 5 and (b) no Default or Event of Default has occurred and is continuing.

Section 4. Confirmation of Subsidiary Guarantees and Security Documents. Each Subsidiary Guarantor, by its execution of this Amendment No. 5, hereby consents to this Amendment No. 5 and confirms and ratifies that all of its obligations as a Subsidiary Guarantor under the Credit

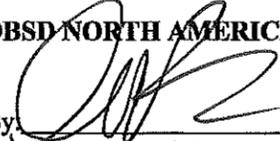
Amendment No. 5

Agreement (including, without limitation, Article VII thereof) shall continue in full force and effect for the benefit of the Administrative Agent and the Lenders with respect to the Credit Agreement as amended hereby. Each of the Loan Parties, by its execution of this Amendment No. 5, confirms that (a) all of its obligations and security interests granted by it under each of the Collateral Documents to which it is a party shall continue in full force and effect in favor of the Administrative Agent for the benefit of the Lenders and the Administrative Agent with respect to the Credit Agreement as amended hereby and (b) all references in each Collateral Document to the "Credit Agreement" (or words of similar import) refers to the Credit Agreement as amended hereby without impairing any such obligations or security interests in any respect.

Section 5. Miscellaneous. Except as herein provided, the Credit Agreement shall remain unchanged and in full force and effect. This Amendment No. 5 is a "Loan Document" for all purposes of the Credit Agreement. This Amendment No. 5 may be executed in any number of counterparts, all of which taken together shall constitute one and the same amendatory instrument and any of the parties hereto may execute this Amendment No. 5 by signing any such counterpart. This Amendment No. 5 shall be governed by, and construed in accordance with, the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 5 to Credit Agreement to be duly executed and delivered as of the day and year first above written.

DBSD NORTH AMERICA, INC.

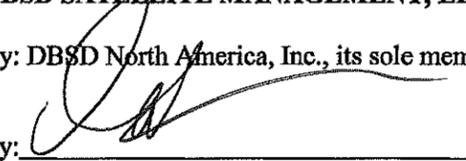
By: 

Name: David Bagley
Title: SVP, Corporate Development

SUBSIDIARY GUARANTORS

DBSD SATELLITE MANAGEMENT, LLC

By: DBSD North America, Inc., its sole member

By: 

Name: David Bagley
Title: SVP, Corporate Development

EXECUTED AS A DEED FOR AND ON BEHALF
OF:

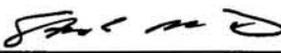
DBSD SATELLITE NORTH AMERICA LIMITED

By: 
Name: Stephen De Wess
Title: Director

In the presence of: 
Name of witness: Debbie Macomber C/O DBSD NORTH AMERICA, INC.
Address of witness: 11700 Plaza America Dr., Ste 100
Reston, VA 20190

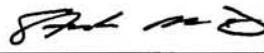
DBSD SATELLITE SERVICES G.P.

By: DBSD Services Limited, a general partner

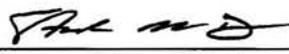
By: 
Name: Stephen De Wess
Title: Director

NEW DBSD SATELLITE SERVICES G.P.

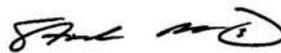
By: DBSD Satellite Services G.P., a general partner
By: DBSD Services Limited, a general partner

By: 
Name: Stephen De Wess
Title: Director

DBSD SATELLITE SERVICES LIMITED

By: 
Name: Stephen De Wess
Title: Director

DBSD SERVICES LIMITED

By: 
Name: Stephen De Wess
Title: Director

SSG UK LIMITED

By: 
Name: Stephen De Wess
Title: Director

3421554 CANADA INC.

By: 
Name: Stephen De Wess
Title: Director

Aristeia Master, L.P.,
By: Aristeia Capital, L.L.C.,
its Investment Manager,
as a Lender

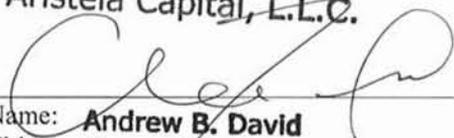


By: _____

Name: _____
Title: **Robert H. Lynch, Jr.**
Manager
Aristeia Capital, L.L.C.

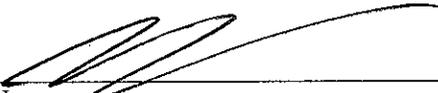
By: _____

Name: **Andrew B. David**
Title: **General Counsel**
Aristeia Capital, L.L.C.

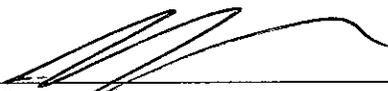


Amendment No. 5 to DIP Credit Agreement

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

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

Longhorn Credit Funding, LLC
By: Highland Capital Management, L.P.,
As Collateral Manager
By: Strand Advisors, Inc.,
Its General Partner,
as a Lender

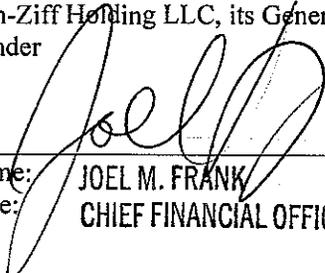
By: 
Name: _____
Title: **JASON POST**
OPERATIONS DIRECTOR

Highland Offshore Partners, L.P.
By: Highland Capital Management, L.P.,
As Collateral Manager
By: Strand Advisors, Inc.,
Its General Partner,
as a Lender

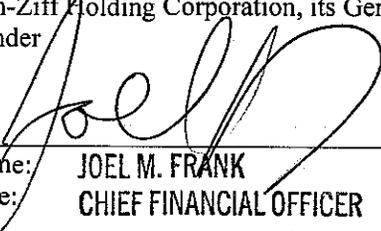
By: 
Name: _____
Title: **JASON POST**
OPERATIONS DIRECTOR

Amendment No. 5 to DIP Credit Agreement

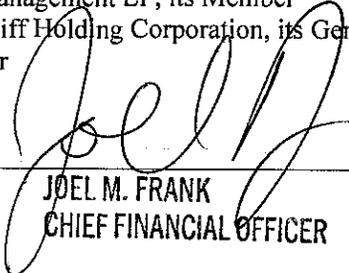
OZ Global Special Investments Master Fund, L.P.
By: OZ Advisors II LP, its General Partner
By: Och-Ziff Holding LLC, its General Partner,
as a Lender

By: 
Name: JOEL M. FRANK
Title: CHIEF FINANCIAL OFFICER

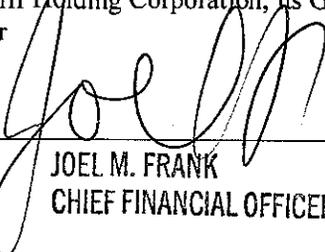
OZ Master Fund, Ltd.
By: OZ Management LP, its Investment Manager
By: Och-Ziff Holding Corporation, its General Partner,
as a Lender

By: 
Name: JOEL M. 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 Lender

By: 
Name: JOEL M. 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 Lender

By: 
Name: JOEL M. FRANK
Title: CHIEF FINANCIAL OFFICER

Amendment No. 5 to DIP Credit Agreement

Plainfield Special Situations Master Fund II Limited,
as a Lender

By: 
Name: Thomas X. Firtus
Title: Authorized Individual

Plainfield OC Master Fund Limited,
as a Lender

By: 
Name: Thomas X. Firtus
Title: Authorized Individual

Amendment No. 5 to DIP Credit Agreement

NEXBANK, SSB, as Administrative Agent

By: 
Name: Jeff Scott
Title: VP Agency Services

Amendment No. 5 to DIP Credit Agreement