MINTZ LEVIN

Howard J. Symons | (202) 434-7305 | hjsymons@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

September 3, 2010

FILED ELECTRONICALLY

Mr. Austin C. Schlick
General Counsel
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 Mr. Schlick:

Thank you for meeting with us on August 31 to discuss the relationship between ICO Global Communications (Holdings) Limited ("ICOG") and DBSD North America, Inc. ("DBSD").

This letter and the documents included with it are intended to respond to questions that arose during the meeting. Specifically, you asked us to provide the following:

1. Organizational charts for ICOG and its subsidiaries, reflecting corporate structure both prior to and after the July 2005 assignment to DBSD and its subsidiaries of all rights related to the domestic MSS business;

2. Documents that demonstrate that, since the formation of DBSD in 2005, (a) DBSD and its subsidiaries, and not ICOG, have been solely responsible for the fulfillment of the obligations of an FCC licensee, including the construction, launch, and operation of its MSS satellite, and (b) ICOG's business is wholly unrelated to the U.S. MSS business being pursued by DBSD; and

3. Disclosures to and acknowledgments by DBSD's investors regarding DBSD's BAS clearing responsibilities and related reimbursement obligations.

Documents responsive to your requests are attached, and summarized in the attached index of documents (the "Index"). We also take this opportunity to respond to Sprint's September 1, 2010 ex parte letter,[1/] which purports to address many of the same issues we discussed with you during our meeting.

Overview of Documents

Following is a brief overview of the documents we are submitting today in response to your request.

Organizational Charts. The organizational charts reflect the manner by which ICOG transformed its pre-DBSD subsidiaries (as reflected in the January 2005 organizational chart) into separate and distinct businesses to satisfy the DBSD investors' conditions to funding (as reflected in the June 2005 organizational chart). The post-investment organizational charts demonstrate the refined post-investment structure (as reflected in the January 2006 organizational chart), and the absence of any subsequent changes to the post-investment structure in the years following the investment, other than name changes (as reflected in the July 2010 organizational chart). We understand that the name changes have caused great confusion, so we ask that you review all documents with the understanding that many pre-2009 references to "ICO" were, by definition, references to ICO North America, Inc., which we now refer to as DBSD.

DBSD's Self-Reliance and Its Independence from ICOG After 2005. The 2005 investment into DBSD by third party investors enabled DBSD and its subsidiaries to independently undertake the North American MSS business. That transaction – and DBSD's independence and self-reliance – are best reflected in the voluminous documents under which the investors acquired their bonds. We have listed those documents in the Index, and submit with this letter selected documents from the list that are responsive to your second request (particularly the Securities Purchase Agreement and the Trust Indenture).

In particular, the documents submitted herewith describe in detail (a) the separate funding and business plan of DBSD, (b) the transfer to DBSD and its subsidiaries of all assets related to North American MSS operations, (c) the significant DBSD governance rights granted to the DBSD investors in exchange for their funding of DBSD, and (d) the specific and detailed separation of the domestic MSS assets from ICOG's retained assets. DBSD's independence was reinforced by the appointment of separate boards of directors, as evidenced by the press releases that are listed in the Index.

The segregation of North American operations into DBSD and its subsidiaries is undisputed, and was a natural consequence of ICOG's inability to independently fund the North American MSS business. To attract investors for the business, ICOG was compelled to separate the business from ICOG's international operations. Sprint's contention that this intentional segmentation was somehow sinister is absurd. The North American MSS business needed capital

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[1/] 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 Sept. 1, 2010) ("Sprint September 1 ex parte letter").

– $650 million of capital – *and the capital was not available unless ICOG segmented the business*. In this regard, we ask that you take particular note of the requirements in the Trust Indenture, which clearly reflect the investors' requirements for segmentation.

From and after the significant investment into DBSD, DBSD's self-reliance has been consistently maintained. While ICOG retained a 56% fully diluted interest in DBSD after 2005, ICOG's role after 2005 was merely that of an investor – just as Sprint itself maintains a 56% interest in Clearwire but disclaims any management authority over that entity.[2/] As a further demonstration of DBSD's independent operation, we ask that you take particular note of the separate bank accounts, financial statements, budgets and insurance policies that have been consistently maintained by the companies since July 2005. We have included samples of all such items for illustrative purposes that are substantially identical in form to financial statements and budgets that were prepared by DBSD on a regular periodic basis. If you would like to see more samples, or all of the separate statements and budgets, we will provide them.

BAS Reimbursement Obligation. Before providing the $650 million economic foundation for DBSD, the DBSD investors carefully analyzed the prospects for a North American MSS operation, and invested with full knowledge of the risks of the business, including the potential BAS reimbursement obligation. The investors' knowledge of DBSD's potential reimbursement obligation is best illustrated by the July 2005 Confidential Information Memorandum (the "CIM") that described in detail the DBSD investment opportunity, and which stated, on page 24: "as a result of a recent FCC ruling, Nextel Communications, Inc. is proceeding with the relocation of the BAS provider in the 2 GHz uplink band. Nextel may seek reimbursement from 2 GHz MSS licensees." The CIM revisits the reimbursement issue in the risk factors on pages 51 and 52.

The BAS clearing obligations were again addressed in DBSD's original business plan that was formulated in connection with the $650 million investment in September 2005. On page 12 of that original business plan, DBSD management acknowledged DBSD's obligation to "engage in Nextel/BAS negotiations," and targeted a strategic partner to cover some or all the cost of the resulting reimbursement obligations.

Response to Sprint's September 1 Ex Parte Letter

Sprint's September 1 ex parte letter launches numerous accusations of ICOG's "misguided effort to mislead the Commission." Yet it is Sprint, and not ICOG, that continues to distract the Commission from the legal and practical realities of DBSD's independence. As our September 1 ex parte letter in this proceeding and the documents included with this letter demonstrate, since 2005 DBSD and its subsidiaries have been solely responsible for the domestic MSS business and have not relied on ICOG for financial, technical, legal, or other support.

[2/] *See* Sprint Nextel 2009 Annual Report on Form 10-K (filed Feb. 26, 2010), at 21, *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzY1NzB8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1.

Sprint devotes the majority of its September 1 ex parte letter to various investor presentations and public statements that blur the lines between DBSD's domestic MSS operation and ICOG's foreign pursuits. Sprint relies virtually exclusively on these imprecise public disclosures to support its theory that "DBSD is an integrated part of *ICO Global's* operations" (emphasis in original). In advancing this integration theory, Sprint fails to reference any statements that reflect ICOG's participation in the domestic MSS operation.[3/] More importantly, Sprint's theory fails to recognize that all of the referenced presentations and disclosures were directed to existing and prospective investors in ICOG. Investors are concerned with the ***financial*** performance and prospects for the issuer – whether achieved directly or through its subsidiaries. There is no dispute that DBSD is, and always has been, a consolidated subsidiary of ICOG for financial reporting purposes.[4/] The financial consolidation does not, however, reflect operational integration. On the contrary, DBSD is and always has been self-reliant, as further demonstrated by this salient excerpt from the Trust Indenture:

> [DBSD] will not, and will not permit any of its Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to*, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of ICO* . . ., unless [the transaction is approved by the investors or DBSD's disinterested directors]

(emphasis added).

Sprint itself effectively acknowledges that DBSD, and not ICOG, was the operator of the North American MSS business. In Sprint's September 1 ex parte letter, Sprint repeatedly emphasizes that ICOG formed DBSD to "conduct all of ICO Global's North American operations." Sprint puts exaggerated significance on references to "ICO Global's" North American operation, but that phrase was simply an identifier; prior to the separate funding of

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[3/] Sprint can only point to isolated statements that it claims "demonstrate" that ICO Global is an MSS entrant. But neither of Sprint's examples refutes the extensive documentation of DBSD's sole responsibility for the MSS license after 2005. The passages it cites from Mr. Corkery's declaration in the DBSD bankruptcy case describe ICO Global's role *before* the 2005 establishment and funding of DBSD. His reference to "ICO Global's North American operations" reflects nothing more than the fact that ICO Global holds an ownership interest in DBSD. Likewise, the MSS spectrum is listed in the Jeffries presentation because DBSD is owned in the majority by ICOG – a fact we do not dispute – but nothing in that presentation suggests that ICOG has any role in running or supporting DBSD's efforts to launch and operate its MSS satellite. Likewise, ICO Global's 10-Ks continually refer to "our" MSS satellite, but that description simply reflects the SEC's mandate to describe an enterprise in plain English and does not purport to describe which corporate entity has the legal responsibility for the MSS business.

[4/] For this reason, it is appropriate, customary and consistent with SEC disclosure recommendations that ICOG's 10-K filing refers to "our" MSS satellite. This reference does not mean that ICOG, as opposed to DBSD, has any role in the MSS business other than as a financially consolidated owner of DBSD.

DBSD, the MSS assets were "ICO Global's," but the entire point of the transaction was to convey them to a self-sufficient entity funded by third party investors.

Sprint's claim that ICOG has engaged in "misdirection" and its CEO's statement that ICOG is playing "corporate shell games"[5/] are particularly ironic – and galling – given that Sprint itself has structured its relationship with Clearwire in essentially the same manner as ICOG and DBSD. Just as ICOG transferred assets and employees to a separately funded DBSD to pursue the MSS business, Sprint contributed spectrum, employees, equipment, equipment leases, and contracts into a joint venture – New Clearwire – that likewise obtained significant third party funding to build and operate a 4G network. Sprint retains a 56% ownership interest in the new venture and appoints a majority of the board of directors, but it states that it does not control the venture and it does not report the finances of the venture on a consolidated basis.[6/] At the same time, Sprint and Sprint's CEO routinely refer to New Clearwire's 4G Network as "our," *i.e.*, Sprint's, network.[7/] Sprint presumably does not believe that Mr. Hesse's statements or its own characterization of the Clearwire network render its treatment of its Clearwire investment a "corporate shell game."

We understand that Sprint, in conjunction with receiving an extraordinary grant of 10 MHz of prime spectrum, has spent significant sums to clear the MSS spectrum and that it may not be able to recover a portion of those sums from a bankrupt licensee. That does not, however, provide any legal or equitable basis for imposing relocation reimbursement liability on an entity, ICOG, that has had no role or responsibility in DBSD's MSS business since 2005 and thus cannot be considered an "MSS entrant" in any sense of that term. As demonstrated above and in the attached documentation, ICOG and DBSD are not a common enterprise for purposes of conducting the MSS business – nor, contrary to Sprint's suggestion, is ICOG a "façade" intended to evade Commission rules.[8/] It is indisputable that ICOG was and is engaged in the separate business of providing satellite services outside the U.S.

Nor is there any equitable basis for imposing liability on ICOG for BAS relocation costs. ICOG was never nor will ever be a "beneficiary" of Sprint's band clearing activities. To the contrary, even prior to the formation of DBSD in 2005 ICOG never utilized the BAS spectrum or received any benefit from Sprint's delayed and inexplicably expensive band clearing activities,

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5/ 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 Sept. 2, 2010).

6/ *See supra* note 2; Letter from Howard J. Symons, Counsel to ICO Global, WT Docket No. 02-55, ET Docket Nos. 95-18, 00-258 (filed Aug. 2, 2010), at 12.

7/ *See* http://shop.sprint.com/en/solutions/mobile_broadband/mobile_broadband_4G.shtml (visited Sept. 3, 2010); *see also* "Sprint expands leadership with launch of Samsung Epic 4G," (Sprint news release) *available at* http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1459287&highlight (quoting Dan Hesse describing "the fast speeds on our 4G network in more than 48 cities").

8/ *See* Sprint September 1 ex parte letter at 3 n.5.

and it never will now that it has lost its 2005 investment in DBSD (valued at more than $800 million in 2005) as a result of DBSD's bankruptcy.

There may be limited, fact specific 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.

Please do not hesitate to contact us if you need any additional information on these or other issues.

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

Sincerely,

Howard J. Symons

Howard J. Symons

Attachments

cc:
Stewart Block
Sarah Stone
Julie Veach
David Horowitz
Andrea Kearney
Mindel De La Torre
Roderick Porter
Robert Nelson
Gardner Foster
Karl Kensinger
Julius Knapp
Bruce Romano
Geraldine Matise
Nicholas Oros
Jamison Prime
Paul Murray
John Leibovitz
Rick Kaplan
Jennifer Flynn
John Giusti
Angela Giancarlo
Charles Mathias
Brad Gillen
Louis Peraertz
Edward Lazarus