

September 21, 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:

Sprint Nextel Corporation (“Sprint Nextel”) hereby submits to the record of the above-captioned proceedings a Motion filed on September 20, 2010 by DBSD North America, Inc. and its debtor-affiliates (collectively, “DBSD”) in the United States Bankruptcy Court, Southern District of New York, attached hereto as **Exhibit A** (the “Motion”). Through the Motion, DBSD requests that the bankruptcy court extend the exclusivity period, during which only DBSD may file a plan of reorganization. Sprint submits the Motion so that the Commission will be fully apprised of all developments in DBSD’s underlying bankruptcy case.

The Motion makes numerous inaccurate accusations regarding Sprint Nextel’s involvement in the above-captioned DBSD transfer of control proceedings. Sprint Nextel will be filing a response to the Motion in the bankruptcy court refuting these allegations and will submit its response to the Commission as soon as it is filed.

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.

Ms. Marlene H. Dortch  
September 21, 2010  
Page 2

Sincerely,

*/s/ Marc S. Martin*

Marc S. Martin

Counsel for Sprint Nextel Corporation

cc: Austin Schlick  
Stewart Block  
Sally Stone  
Geraldine Matisse  
Jamison Prime  
Nick Oros

**EXHIBIT A**

James H.M. Sprayregen, P.C.  
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  
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 DEBTORS' FOURTH MOTION FOR ENTRY OF  
AN ORDER EXTENDING THE DEBTORS' EXCLUSIVE PERIODS  
PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE**

---

PLEASE TAKE NOTICE that a hearing (the "**Hearing**")<sup>2</sup> on the Debtors' Fourth Motion for Entry of an Order Extending the Debtors' Exclusive Period Pursuant to Section 1121 of the

---

<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.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

Bankruptcy Code (the “**Motion**”), is scheduled to be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom No. 621 of the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”), Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, on **October 4, 2010 at 9:45 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Rules for the United States Bankruptcy Court for the Southern District of New York, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court’s case filing system (the User’s Manual for the Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect, or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon (a) the Debtors and their counsel, (b) the Office of the United States Trustee for the Southern District of New York, (c) counsel to the official committee of unsecured creditors, (d) counsel to DISH Network Corporation, (e) counsel to the ad hoc committee of secured noteholders, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, and (h) the parties in interest who have formally requested notice by filing a written request for notice pursuant to Bankruptcy Rule 2002, so as to be actually received **no later than September 27, 2010 at 4:00 p.m. (prevailing Eastern Time)**. Only those responses that are timely filed, served, and received will be considered at the Hearing.

Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

New York, New York  
Dated: September 20, 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  
Facsimile: (212) 446-4900

- and -

Marc J. Carmel  
Lauren M. Hawkins  
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

James H.M. Sprayregen, P.C.  
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  
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
	)	

---

**DEBTORS' FOURTH MOTION FOR ENTRY OF  
AN ORDER EXTENDING THE DEBTORS' EXCLUSIVE PERIODS  
PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE**

---

<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.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Jurisdiction.....	2
Preliminary Statement.....	3
Background.....	4
A. Prior Extensions of the Debtors’ Exclusive Periods.....	4
B. Steps Taken in Furtherance of Consummation Since Entry of the Third Exclusivity Order.....	5
C. Sprint’s Opposition to the Debtors’ Applications.....	6
Relief Requested.....	14
Basis for Relief.....	14
Cause Exists To Extend the Exclusive Periods.....	16
Notice.....	19
No Prior Request.....	19

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

In re Adelpia Commc’ns Corp.,  
352 B.R. 578 (Bankr. S.D.N.Y. 2006), clarified and reh’g denied,  
Case No. 02-41729, 2006 WL 2927222 (Bankr. S.D.N.Y. Oct. 10, 2006) ..... 15, 16, 17

In re Bayou Group, LLC,  
Case No. 06-22306 (Bankr. S.D.N.Y. Oct. 5, 2007) ..... 19

In re Chemtura Corp.,  
Case No. 09-11233 (Bankr. S.D.N.Y. June 17, 2010)..... 19

In re Clamp-All Corp.,  
233 B.R. 198 (Bankr. D. Mass. 1999) ..... 15

In re Lionel L.L.C.,  
Case No. 04-17324, 2007 WL 2261539 (Bankr. S.D.N.Y. Aug. 3, 2007)..... 17

In re McLean Indus., Inc.,  
87 B.R. 830 (Bankr. S.D.N.Y. 1987)..... 16

In re Tower Auto., Inc.,  
Case No. 05-10578 (Bankr. S.D.N.Y. Apr. 26, 2006)..... 19

In re Tronox Inc.,  
Case No. 09-10156 (Bankr. S.D.N.Y. Apr. 28, 2010)..... 19

**Statutes**

11 U.S.C. § 1121(d) ..... 2, 14, 15

11 U.S.C. § 1121(d)(2) ..... 15

28 U.S.C. § 1334..... 2

28 U.S.C. § 1408..... 3

28 U.S.C. § 1409..... 3

28 U.S.C. § 157..... 2

**Rules**

Fed. R. Bank. P. 2002 ..... 20

**Other Authorities**

H.R. Rep. No. 95-595 (1977),  
as reprinted in 1978 U.S.C.C.A.N. 5963 ..... 15

The above-captioned debtors (the “**Debtors**”) hereby move the Court, pursuant to this motion (the “**Motion**”), for the entry of an order pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), substantially in the form attached hereto as **Exhibit A** (the “**Order**”), extending the exclusive periods during which only the Debtors may file a chapter 11 plan of reorganization and solicit acceptances thereof. Specifically, the Debtors seek to extend the exclusive period to file a chapter 11 plan (the “**Exclusive Filing Period**”) through November 15, 2010 and to extend the exclusive period to solicit acceptances of a chapter 11 plan (the “**Exclusive Solicitation Period**,” and, together with the Exclusive Filing Period, the “**Exclusive Periods**”) through the earlier of (i) January 15, 2011 and (ii) 45 days after the first to occur of the following events: (a) the Federal Communications Commission (the “**FCC**”) denies the Applications (as described herein); and (b) the United States Court of Appeals for the Second Circuit (the “**Second Circuit**”) vacates or reverses the order confirming the Plan<sup>2</sup> (the “**Confirmation Order**”).<sup>3</sup> In support of this Motion, the Debtors respectfully state as follows.

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

---

<sup>2</sup> See Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 500] (the “**Plan**”).

<sup>3</sup> See Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code [Docket No. 547].

3. The statutory basis for the relief requested herein is section 1121(d) of the Bankruptcy Code.

### **Preliminary Statement**

4. Consummation of the Debtors' confirmed Plan has been on hold for more than nine months pending approval of the Debtors' routine license transfer applications filed with the FCC on December 11, 2009 (the "**Applications**").<sup>4</sup> As a result, the Debtors are once again requesting an extension of their Exclusive Periods. The Debtors have made every effort to ready themselves to effectuate the Plan while simultaneously (a) combating ongoing opposition to the Applications at the FCC by Sprint Nextel Corporation ("**Sprint**")<sup>5</sup> and (b) defending appeals (the "**Appeals**") by Sprint and DISH Network Corporation ("**DISH**") of the Confirmation Order and the order designating DISH's vote on the Plan (the "**Designation Order**").<sup>6</sup> This fourth and final extension of the Exclusive Periods is necessary to ensure that the Debtors have an opportunity to formulate a new plan in the event that the FCC denies the Applications or the Second Circuit overturns the Confirmation Order.<sup>7</sup>

---

<sup>4</sup> See Plan at § X.A.5 (providing that as a condition precedent to consummation of the Plan, "[a]ll authorizations, consents, and regulatory approvals shall have been obtained from the FCC or any other federal regulatory agency including, without limitation, any approvals required in connection with the transfer, change of control, or assignment of FCC licenses, and no appeals of such approvals remain outstanding.").

<sup>5</sup> To assist the Court in understanding the nine month delay to consummation of the Debtors' confirmed Plan and the need for the relief sought herein, the Debtors have attached hereto copies of Sprint's pleadings and communications to the FCC in opposition to the Applications, and have described Sprint's ongoing actions against the Applications. The Debtors reserve the right to seek additional relief with respect to Sprint's opposition to the Applications.

<sup>6</sup> See Order Designating the Vote of DISH Network Corporation to Reject the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 546].

<sup>7</sup> Pursuant to section 1121(d)(2) of the Bankruptcy Code, the 120-day period to file a plan "may not be extended beyond a date that is 18 months after the [petition] date" and the 180-day period to solicit plan acceptances "may not be extended beyond a date that is 20 months after the [petition] date." The Debtors commenced these

5. While the Debtors remain confident that the FCC will approve their Applications, this result is not guaranteed. To ensure that the Debtors have sufficient time to consummate the Plan upon receipt of FCC approval, or alternatively, to ensure that they have a reasonable amount of time to formulate a modified version of the Plan or an alternate plan with their constituencies in the event that it becomes necessary to do so, the Debtors seek to extend the Exclusive Filing Period to November 15, 2010 and to extend the Exclusive Solicitation Period to January 15, 2011. To obtain the consent of DISH, the Debtors have agreed to incorporate conditions into the Order similar to those agreed to by DISH and the Debtors to resolve DISH's potential objection to the Second and Third Exclusivity Orders (as defined herein); specifically, that the Debtors' Exclusive Solicitation Period be "extended until the earlier of (a) January 15, 2011 and (b) 45 days after the first to occur of the following events: (i) the FCC denies the Applications; and (ii) the Second Circuit vacates or reverses the Confirmation Order." See Ex. A, ¶ 2. Accordingly, DISH does not object to the relief requested herein. This Motion has the support of the Official Committee of Unsecured Creditors (the "**Committee**") and the *ad hoc* committee of senior secured noteholders (the "**Senior Noteholders**").

### **Background**

#### **A. Prior Extensions of the Debtors' Exclusive Periods.**

6. By order entered November 3, 2009, the Court extended the Debtors' Exclusive Period in which to solicit acceptances on a plan until February 9, 2010 [Docket No. 506], without prejudice to the Debtors' ability to seek further extensions of their Exclusive Periods.

---

Chapter 11 Cases on May 15, 2009 (the "**Petition Date**"). November 15, 2010 and January 15, 2010 are 18 and 20 months after the Petition Date, respectively.

7. By order entered January 26, 2010, the Court extended the Debtors' Exclusive Period in which to solicit acceptances on a plan until the earlier of (a) June 9, 2010 and (b) 45 days after the first to occur of the following events: (i) the FCC denies the Applications described in the Motion; and (ii) the United States District Court for the Southern District of New York (the "**District Court**") vacates or reverses the Confirmation Order [Docket No. 614] (the "**Second Exclusivity Order**"). The Second Exclusivity Order was entered without prejudice to the Debtors' ability to seek further extensions of their Exclusive Periods.

8. By order entered June 8, 2010, the Court extended the Debtors' Exclusive Period in which to solicit acceptances on a plan until the earlier of (a) October 7, 2010 and (b) 45 days after the first to occur of the following events: (i) the FCC denies the Applications described in the Motion; and (ii) the Second Circuit vacates or reverses the Confirmation Order [Docket No. 729] (the "**Third Exclusivity Order**"). The Third Exclusivity Order was entered without prejudice to the Debtors' ability to seek further extensions of their Exclusive Periods.

**B. Steps Taken in Furtherance of Consummation Since Entry of the Third Exclusivity Order.**

9. Since the entry of the Third Exclusivity Order, the Debtors and their advisors have worked diligently to complete all necessary tasks and to resolve all outstanding issues in the Debtors' chapter 11 cases (the "**Chapter 11 Cases**") so that the Plan can be consummated as expeditiously and efficiently as practicable upon receipt of FCC approval, including, without limitation:

- a. On June 18, 2010, the Debtors filed two omnibus objections to claims on the basis that the claims should be allowed only in a reduced amount or disallowed entirely [Docket Nos. 741 and 742, respectively] (the "**Omnibus Objections**"). On August 12, the Court issued orders granting the Omnibus Objections [Docket Nos. 778 and 779, respectively]. The Debtors are continuing to analyze and reconcile the outstanding claims filed against them.

- b. On July 1, 2010, the Debtors met with the FCC to explain the pressing need for approval of the Applications (the “**FCC Meeting**”). Counsel for the Senior Noteholders and Sprint also attended the FCC Meeting. Since the FCC Meeting, the Debtors have had numerous additional meetings and telephone conferences with the FCC renewing their request for prompt action on the Applications. The Debtors have also drafted and submitted numerous letters to the FCC clarifying and reasserting their position in favor of prompt approval of the Applications.
- c. On August 5, 2010, the Debtors appeared before the Second Circuit to defend the District Court order affirming the Confirmation Order<sup>8</sup> and the Designation Order<sup>9</sup> against the Appeals by DISH and Sprint. The Second Circuit has yet to issue its decision on the Appeals.
- d. On August 19, 2010, the Debtors filed a second amended disclosure identifying those individuals expected to serve as directors and officers in the reorganized Debtors [Docket No. 784] in accordance the Bankruptcy Code.
- e. The Debtors have worked closely with the lenders under the Secured Super-Priority Debtor-in-Possession Credit Agreement dated as of January 8, 2010 (the “**DIP Facility**”) to secure extensions to the maturity of the DIP Facility so the Debtors have the necessary financing through the effective date. The Debtors have also worked with the parties who have committed to provide exit financing to secure extensions to the exit financing commitments.

### C. Sprint’s Opposition to the Debtors’ Applications.

10. Sprint has vigorously opposed the FCC’s approval of the Applications in an apparent effort to either coerce payment of Sprint’s dischargeable claims or deprive the Debtors, as business competitors, of their invaluable FCC spectrum licenses—or both.<sup>10</sup>

---

<sup>8</sup> These appeals are styled as DISH Network Corp. v. DBSD N. Am, Inc., No. 10-1175 (2d Cir. docketed Apr. 1, 2010) and Sprint Nextel Corp. v. DBSD N. Am., Inc., No. 10-1352 (2d Cir. docketed Apr. 12, 2010), respectively.

<sup>9</sup> This appeal is styled as DISH Network Corp. v. DBSD N. Am., Inc., No. 10-1201 (2d Cir. docketed Apr. 1, 2010).

<sup>10</sup> Though Sprint is careful to assert in its filings with the FCC that it is the Debtors’ parent, ICO Global Communications (Holdings) Limited (“**ICO Global**”), from which it seeks to recover under a theory of joint and several liability (a theory that this Court and the District Court have already found to be meritless with

11. Sprint holds a contingent and disputed \$211 million general unsecured claim against one of the Debtors, New DBSD Satellite Services G.P. (“**Satellite Services**”), for reimbursement of Sprint’s prepetition Broadcast Auxiliary Service (“**BAS**”) relocation expenses. Under the terms of the Debtors’ Plan, Sprint’s BAS relocation claim against Satellite Services will be discharged on the effective date, and Sprint will share in the *pro rata* recovery of the allowed amount of its claim (if any) with other Class 5 claimants.

12. In addition to being a general unsecured creditor, Sprint is a potential business competitor of the Debtors. Satellite Services holds licenses and authorizations from the FCC to provide mobile satellite services (“**MSS**”) in the 2 GHz spectrum band (the “**S-Band**”) and to operate ancillary terrestrial components (“**ATC**”) on a non-common carrier basis in connection with the MSS/ATC system the Debtors are developing. Sprint is one of **only two** other entities licensed by the FCC to provide mobile service in the S-Band.<sup>11</sup> As an S-Band licensee, Sprint will directly compete with the Debtors in the development and deployment of services utilizing the S-Band spectrum if the Debtors are able to reorganize. In addition, as Sprint has acknowledged,<sup>12</sup> if the Debtors are able to successfully deploy their integrated MSS/ATC system, it will compete with Sprint’s terrestrial-only system.

---

respect to Satellite Services’ *direct* parents), it is the *Debtors*’ reorganization that Sprint is attempting to thwart through its opposition to the Applications.

<sup>11</sup> See Bench Decision on Debtors’ Objection to Proofs of Claim Filed by Sprint Nextel Corporation at 6 [Docket No. 434].

<sup>12</sup> “[T]he fact that DBSD’s proposed system would provide satellite and integrated ancillary terrestrial mobile radio services that could compete with Sprint Nextel’s terrestrial mobile radio services means Sprint Nextel clearly constitutes DBSD’s competitor”. Reply of Sprint Nextel Corporation to Opposition of New DBSD Satellite Services G.P. to Petition to Deny at 19 (“**Reply**,” attached hereto as **Exhibit B**).

## 1. Sprint's Petition to Deny the Debtors' Applications.

13. On December 11, 2009, Satellite Services filed the Applications with the FCC. The FCC included the Applications in its Public Notice issued December 16, 2009,<sup>13</sup> thereby triggering a 30-day public comment period (the “**Comment Period**”) before the FCC was permitted to take action on the Applications. Sprint filed a Petition to Deny the Applications with the FCC on January 14, 2010 (“**Petition to Deny**” attached hereto as **Exhibit C**). Sprint was the only entity who filed an opposition to approval of the Applications and remains the only entity arguing to the FCC that the Applications should be denied. Satellite Services filed a timely opposition to the Petition to Deny on January 25, 2010 (“**Opposition**”). Sprint then filed its Reply on February 22, 2010.

14. In both its Petition to Deny and Reply papers, Sprint makes numerous arguments for denial of the Applications that relate directly to the Debtors' Chapter 11 Cases and the discharge of Sprint's prepetition BAS relocation claims. Among other things, Sprint asserts that the Applications should be denied because:

- The Chapter 11 Cases are a “**scheme**” among the Debtors and their non-debtor parent company, ICO Global;<sup>14</sup>
- The Debtors and ICO Global are using the Chapter 11 Cases to “**evade**” ICO Global's liabilities to Sprint for the Debtors' prepetition obligations to reimburse Sprint's BAS relocation expenses;<sup>15</sup>

---

<sup>13</sup> See FCC Public Notice, Satellite Radio Applications Accepted for Filing, Report No. SES-01202 (Dec. 16, 2009).

<sup>14</sup> See Reply at 4 (“Applications are part of the larger scheme that [DBSD], other debtors in the related bankruptcy proceeding, and parent ICO Global are pursuing.”)

<sup>15</sup> See Reply at 12 (“One way to ensure that subsequent band entrants cannot penalize the entity that clears the band is to clarify that parties such as ICO Global cannot evade reimbursement obligations through corporate restructurings or targeted bankruptcies.”)

- Granting the Applications will create a risk that other companies will file “**targeted, strategic bankruptcies**” to evade their BAS relocation obligations;<sup>16</sup> and
- The FCC’s rules regarding reimbursement of BAS relocation expenses should apply to affiliates of the Debtors regardless of any “**collateral attack on FCC jurisdiction**” through bankruptcy.<sup>17</sup>

15. In addition, in both its Petition to Deny and Reply papers, Sprint requests that the FCC delay deciding on the Applications until after: (a) the Appeals currently pending before the Second Circuit are resolved;<sup>18</sup> (b) the Debtors have located a strategic partner;<sup>19</sup> and (c) the FCC concludes a separate and ongoing rulemaking proceeding (the “**BAS Rulemaking**”) under which, Sprint asserts, the FCC should rule that ICO Global is liable for Sprint’s BAS relocation claims.<sup>20</sup>

16. Finally, Sprint is requesting that, if the FCC grants the Applications prior to the Second Circuit entering a decision in the Appeals, the FCC defer the effective date of such

---

16 See Petition to Deny at 20 (denial of the Applications would avoid “any risk that targeted, strategic bankruptcies might disrupt that precedent.”)

17 See Petition to Deny at 20 (FCC precedent requiring new bandwidth entrants to reimburse the party that has cleared the band prior to or shortly after commencing operations “should apply to all entrants regardless of collateral attacks on FCC jurisdiction by way of creative corporate restructurings or bankruptcies.”)

18 See Petition to Deny at 21 (“Should the Commission nonetheless be inclined to find that DBSD has somehow carried its burden with respect to the Applications, it should delay its consideration and decision until after certain bankruptcy appeals have been resolved.”); Reply at 11 (“Consideration of the Applications before the appellate court has had an opportunity to rule would not only fail to resolve the bankruptcy proceeding, but also waste Commission resources.”)

19 See Petition to Deny at 22 (“[T]he Applications should be considered only if and when DBSD concludes its ongoing search for a strategic partner.”)

20 See Reply at 16 (“Because the joint and several liability issue is already pending before the Commission in the ongoing BAS rulemaking proceeding, any declaration of joint and several liability could be made in that separate rulemaking proceeding. The Applications could be considered contemporaneously with those separate rulemaking proceedings.”).

Approval for a period of at least ten business days.<sup>21</sup> Sprint has represented to the FCC that such ten-day deferral is necessary to avoid prejudicing Sprint's appeal of the underlying bankruptcy issues and ability to seek a stay.<sup>22</sup> To avoid that deferral, and despite believing that Sprint's request for it is improper, the Debtors committed to Sprint and the FCC that they will not consummate the Plan earlier than the fourth business day following approval of the Applications, regardless of whether the Debtors' exit financing becomes available sooner.<sup>23</sup> Notwithstanding that commitment, Sprint has not withdrawn either its request to the FCC to defer ruling on the Applications until the decision on the Appeals is issued, or its request for a ten-day deferral to stay the effectiveness of any FCC action on the Applications.

## 2. Sprint's Ex Parte Opposition to the Debtors' Applications

17. The FCC changed the *ex parte* status of the Applications' proceeding from "restricted" to "permit but disclose" on July 22, 2010, thereby allowing the parties to meet directly with FCC staff but requiring that a written disclosure of what transpired at such meetings be publicly filed with the FCC.<sup>24</sup> Since the *ex parte* restriction was lifted in late July, Sprint intensified its efforts to prevent the Applications from being approved, including nearly 20

---

<sup>21</sup> See Letter from Marc S. Martin, K&L Gates LLP, Counsel to Sprint, to Marlene H. Dortch at 2 (Aug. 9, 2010) (attached hereto as **Exhibit D**).

<sup>22</sup> See Letter from Marc S. Martin to Marlene H. Dortch at 1-2 (Aug. 17, 2010) (attached hereto as **Exhibit E**).

<sup>23</sup> See Letter from Peter A. Corea to Marlene H. Dortch at 1-2 (Aug. 27, 2010) (attached hereto as **Exhibit F**); Letter from Yosef J. Riemer, Kirkland & Ellis LLP, Counsel to DBSD, to John Culver, K&L Gates LLP, Counsel to Sprint at 2 (Sept. 1, 2010) (attached hereto as **Exhibit G**).

<sup>24</sup> In "restricted" proceedings, any written presentations to FCC decision makers must be served on all parties to the proceeding, and oral presentations may not be made unless all parties are given advance notice and an opportunity to be present. See 47 C.F.R. §§ 1.1202(b) and 1.1208 (2010). In "permit-but-disclose" proceedings, presentations are generally permitted, but parties making written or oral *ex parte* presentations must submit to the FCC copies of the written presentation or a memorandum which summarizes new data or arguments made in the oral presentation. See 47 C.F.R. § 1.1206(b)(1) and (b)(2) (2010).

meeting and/or telephone calls with FCC staff, the General Counsel, Bureau Chiefs and Commissioners at the FCC.<sup>25</sup> These contacts have been followed up by a letter writing campaign, whereby Sprint has submitted multiple letters to the FCC in connection with its opposition to the Applications.

18. In its extensive *ex parte* campaign against the Applications, Sprint is arguing to the FCC that that the Applications should be denied because: (i) the Chapter 11 Cases are “**corporate shell games**” to avoid the Debtors’ and ICO Global’s obligations to pay Sprint’s

---

<sup>25</sup> See Letter from Marc S. Martin to Marlene H. Dortch (July 27, 2010) (disclosing meeting between Sprint and the FCC) (attached hereto as **Exhibit H**); Letter from Marc S. Martin to Marlene H. Dortch (July 28, 2010) (disclosing meeting between Sprint and the FCC) (attached hereto as **Exhibit I**); Letter from Charles W. Logan, Lawler, Metzger, Keeney & Logan, LLC, Counsel to Sprint, to Marlene H. Dortch (July 30, 2010) (disclosing meeting between Sprint and the FCC) (attached hereto as **Exhibit J**); Letter from Marc S. Martin to Marlene H. Dortch (Aug. 9, 2010) (disclosing teleconference between counsel to Sprint and FCC General Counsel, Legal Advisor to Commissioner Baker, Legal Advisor to Chairman Genachowski, and Deputy Chief of the International Bureau) (attached hereto as **Exhibit K**); Letter from Charles Logan to Marlene H. Dortch (Aug. 10, 2010) (disclosing meeting between Sprint and the FCC) (attached hereto as **Exhibit L**); Letter from Trey Hanbury, K&L Gates LLP, Counsel to Sprint, to Marlene H. Dortch (Aug. 10, 2010) (disclosing teleconference between counsel to Sprint and FCC staff) (attached hereto as **Exhibit M**); Letter from Marc S. Martin to Marlene H. Dortch (Aug. 26, 2010) (disclosing teleconferences between Sprint and FCC General Counsel and staff, Deputy Chief of the Wireless Telecommunications Bureau, Chief of the International Bureau, and staff of the Offices of Commissioners Copps, Baker, and Clyburn) (attached hereto as **Exhibit N**); Letter from Marc S. Martin to Marlene H. Dortch (Aug. 30, 2010) (disclosing teleconference between Sprint and Legal Advisor to Commissioner Clyburn) (attached hereto as **Exhibit O**); Letter from Marc S. Martin to Marlene H. Dortch (Aug. 30, 2010) (disclosing meeting with Chief of Staff and Senior Legal Advisor to Commissioner McDowell) (attached hereto as **Exhibit P**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 2, 2010) (disclosing teleconferences between Sprint CEO, Dan Hesse, and Commissioners McDowell and Copps) (attached hereto as **Exhibit Q**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 2, 2010) (disclosing Sprint meetings with FCC General Counsel and staff and Office of Engineering and Technology and staff) (attached hereto as **Exhibit R**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 2, 2010) (disclosing Sprint meeting with Chief of Staff and Legal Adviser to Commissioner Copps) (attached hereto as **Exhibit S**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 10, 2010) (disclosing Sprint meeting with FCC General Counsel and staff and Office of Engineering and Technology and staff) (attached hereto as **Exhibit T**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 13, 2010) (disclosing Sprint meeting with Legal Advisor to Commissioner Baker) (attached hereto as **Exhibit U**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 13, 2010) (disclosing Sprint meeting with Legal Advisor to Commissioner Clyburn) (attached hereto as **Exhibit V**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 14, 2010) (disclosing Sprint meeting with Chief Counsel and Senior Legal Advisor to Chairman Genachowski) (attached hereto as **Exhibit W**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 15, 2010) (disclosing teleconference between Sprint and FCC General Counsel staff) (attached hereto as **Exhibit X**); Letter from Marc S. Martin to Marlene H. Dortch (Sept. 16, 2010) (disclosing teleconferences between Sprint CEO, Dan Hesse, Chairman Genachowski, and Commissioners Baker and Clyburn) (attached hereto as **Exhibit Y**). These letters can be found on the FCC docket at: [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related\\_filing.hts?f\\_key=-199978&f\\_number=SEST/C2009121101576](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-199978&f_number=SEST/C2009121101576), last visited Sept. 20, 2010.

prepetition BAS relocation expense claims; (ii) “**all beneficiaries**” of Sprint’s BAS relocation expenses should be required to pay their share of such expenses; and (iii) the FCC should not permit beneficiaries of Sprint’s BAS relocation efforts to “**evade**” their reimbursement obligations. On September 1 and 2, 2010, Sprint’s Chief Executive Officer, Dan Hesse, placed calls to FCC commissioners in which, among other things, Mr. Hesse:

[E]mphasized the importance of the Commission’s longstanding policy of ensuring that **all beneficiaries** of a spectrum clearing project pay their fair share of relocation expenses. Permitting the beneficiaries of a relocation project to **evade** their payment obligations will discourage anyone from undertaking precisely the type of spectrum-clearing projects essential to achieving the goal of clearing 500 megahertz of additional spectrum for broadband use. On the facts of this case, Mr. Hesse reminded the Commissioners that the equities strongly favor Sprint Nextel, which followed the Commission’s rules, returned the BAS incumbents and cleared the 2 GHz MSS spectrum for future broadband use while the 2 GHz MSS licensees, their parents and affiliates did nothing to relocate incumbents for nearly a decade. Mr. Hesse noted that Sprint Nextel should be reimbursed by the benefiting MSS operators consistent with long-standing Emerging Technologies doctrine and urged the Commission not to allow common enterprise beneficiaries of spectrum clearing to play **corporate shell games** to avoid their obligations to the Commission and Sprint Nextel.<sup>26</sup>

Sprint is also arguing to the FCC that the Applications should be denied because ICO Global and the Debtors’ secured creditors will be unjustly enriched as a result of the discharge of Sprint’s claims in the Chapter 11 Cases:

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>27</sup>

19. In addition, throughout its *ex parte* opposition to the Applications, Sprint continues to request that the FCC: (i) delay deciding on the Applications until (a) the Second

---

<sup>26</sup> See Ex. Q at 1 (disclosing teleconferences between Sprint CEO, Dan Hesse, and Commissioners McDowell and Copps) (emphasis added).

<sup>27</sup> See Ex. I at 8.

Circuit issues a decision in the Appeals, and (b) the FCC concludes the BAS Rulemaking; or (ii) defer the effectiveness of any approval of the Applications for at least ten business days if the Applications are approved before the Second Circuit issues a decision. For example, on an August 6, 2010 call to the FCC and in a follow up letter sent to the FCC on August 9, 2010:

Sprint Nextel [ ] requested that if, notwithstanding Sprint Nextel's requests in the record to the contrary, the Commission takes action on the DBSD applications prior to the issuance of a decision by the United States Court of Appeals for the Second Circuit, then the Commission should also formally defer the effective date of its action or otherwise defer the effectiveness of the decision for a period of at least ten (10) business days. This deferral would minimize potential mootness issues related to premature Commission action and potential changes to the Reorganization Plan, and would afford the parties sufficient time to seek further expedited resolution of the associated bankruptcy appeal issues.<sup>28</sup>

As a further example, on August 6, 2010 Sprint had three separate telephone conversations with three members of the FCC and left voice messages with three other members of the FCC, in which:

Sprint Nextel emphasized that the Commission should issue its decision and clarifications in the long-pending BAS Relocation Further Notice of Proposed Rulemaking prior to attempting to apply any such rules to the pending DBSD transfer-of-control applications. Sprint Nextel reiterated that when the Commission does take action on the DBSD transfer-of-control applications, it should deny them. If for some reason the Commission eventually decides to grant DBSD's applications, it should expressly condition any approval on ICO Global immediately fulfilling its separate obligation to pay its fair share of the BAS relocation expenses.<sup>29</sup>

### **3. Consummation of the Plan Awaits Approval of the Applications**

20. The Comment Period on the Debtors' Applications closed on January 15, 2010. At that time, the Debtors expected that the Applications would be processed within three

---

<sup>28</sup> See Ex. D at 2.

<sup>29</sup> See Ex. K at 1-2.

to five months. As of the date hereof, however, more than nine months have passed since the Applications were filed, and a decision on the Applications has not yet been entered. The Debtors are unable to consummate their confirmed Plan until after the Applications are approved.

### **Relief Requested**

21. By this Motion, the Debtors seek the entry of an order extending the Debtors' Exclusive Filing Period through November 15, 2010 and extending the Debtors' Exclusive Solicitation Period through the earlier of (i) January 15, 2011 and (ii) 45 days after the first to occur of the following events: (a) the FCC denies the Applications; and (b) the Second Circuit vacates or reverses the Confirmation Order.

### **Basis for Relief**

22. Section 1121(d) of the Bankruptcy Code authorizes a court to extend a debtor's exclusive periods to file a chapter 11 plan and solicit plan acceptances for cause. In re Adelpia Commc'ns Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006), clarified and reh'g denied, Case No. 02-41729, 2006 WL 2927222 (Bankr. S.D.N.Y. Oct. 10, 2006). Specifically, section 1121(d)(1) of the Bankruptcy Code states:

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).<sup>30</sup> The purpose of the exclusive periods is to give the debtor “the opportunity to retain control over the reorganization process.” In re Clamp-All Corp., 233 B.R. 198, 207 (Bankr. D. Mass. 1999).

23. Although the Bankruptcy Code does not define “cause,” the legislative history of section 1121 indicates that “cause” is intended to be a flexible standard that balances the competing interests of a debtor and its creditors. See H.R. Rep. No. 95-595 at 231–32 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6191 (“[C]hapter 11 recognizes the need for the debtor to remain in control to some degree, or else debtors will avoid the reorganization provisions . . . until it would be too late for them to be an effective remedy. At the same time, the [statute] recognizes the legitimate interests of creditors[.]”). This flexibility is intended, in part, to give a debtor an adequate opportunity to negotiate an agreement with its creditors and consummate its plan. In re McLean Indus., Inc., 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (“The term ‘cause’ is . . . to be viewed flexibly in order to allow the debtor to reach an agreement.”) (internal quotations and citations omitted).

24. Determining whether cause exists to reduce or increase the exclusive periods is a fact-specific exercise that falls within the discretion of the bankruptcy court. Adelphia, 352 B.R. at 578. In making this determination, the court’s “root consideration” should be whether the exclusive periods have given the debtor “a reasonable time *in light of the bankruptcy case in its entirety*[.]” and courts must assess the totality of the circumstances by considering a variety of factors. McLean Indus., 87 B.R. at 834 (emphasis added). Courts, including this one, have identified a number of relevant factors to be considered, including:

---

<sup>30</sup> The Debtors commenced these Chapter 11 Cases on May 15, 2009, and the requested relief is within the time frames provided by section 1121(d)(2) of the Bankruptcy Code.

- a. the size and complexity of the case;
- b. whether the debtor has had sufficient time to permit it to negotiate a plan of reorganization and prepare adequate information;
- c. whether the debtor has made good faith progress towards reorganization;
- d. whether the debtor is paying its bills as they come due;
- e. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. whether the debtor has made progress in negotiations with its creditors;
- g. the amount of time that has elapsed in the Chapter 11 cases;
- h. whether the debtor is using the exclusive periods to pressure creditors to submit to the debtor's reorganization demands; and
- i. whether any unresolved contingencies remain.

Adelphia, 352 B.R. at 587; In re Lionel L.L.C., Case No. 04-17324, 2007 WL 2261539, at \*6 (Bankr. S.D.N.Y. Aug. 3, 2007).

25. Taking these factors into consideration, the Debtors respectfully assert that ample cause exists to extend the Exclusive Periods.

**Cause Exists To Extend the Exclusive Periods**

26. If the Applications are ultimately denied, it may result in the Debtors having to start the FCC license transfer process, and possibly the development of and solicitation of votes for a new plan of reorganization, from scratch. For this reason, the Exclusive Period extensions sought by the Debtors herein are critical to ensure that the Debtors have sufficient time develop and solicit an alternative plan and resubmit FCC applications, as necessary.

27. Moreover, each of the traditional factors enumerated by this Court as relevant to determining whether cause exists to extend the Exclusive Periods supports the Debtors' Motion:

- a. Size and Complexity: The Chapter 11 Cases have been more complex than might otherwise have been the case, in large part because DISH and Sprint have been fighting and continue to fight both confirmation and consummation of the Plan at each stage, despite defeats in both this Court and the District Court. The Debtors are now defending the District Court order affirming the Confirmation Order and the Designation Order against appeals by Sprint and DISH, all of which are currently pending in the Second Circuit. The Debtors have also been countering Sprint's repeated opposition to approval of the Applications.
- b. Sufficient Time To Negotiate a Plan and Prepare Disclosure Statement: The Debtors negotiated the Plan, prepared the Disclosure Statement,<sup>31</sup> solicited votes on the Plan, and obtained confirmation of the Plan all within approximately six months. However, if the FCC ultimately does not approve the Debtors' Applications, the Debtors may need additional time to amend the Plan or formulate an alternate plan and, to the extent necessary, resolicit votes thereon.
- c. Good Faith Progress Toward Reorganization: There is no question that the Debtors and their advisors have made good faith efforts to ensure that the Chapter 11 Cases progress as expeditiously as possible. Within just four and a half months, the Debtors negotiated, filed, and solicited votes upon their Plan and presented a successful case for confirmation of the Plan. The Debtors stand poised to consummate the Plan promptly upon receiving FCC approval of the Applications. The significant time and resources devoted to the Chapter 11 Cases by the Debtors, their advisors, and numerous parties in interest to date strongly support an extension of the Exclusive Periods.
- d. Payment of Bills as They Come Due: The Debtors have been paying their undisputed postpetition bills as they become due in the ordinary course of their business. Moreover, the improved liquidity generated by the liquidation of the Debtors' auction rate securities provides further comfort that the Debtors will continue to meet their postpetition obligations as they come due. The additional requested extension of the Exclusive Periods will not jeopardize the rights of creditors and other parties who do business with the Debtors during these Chapter 11 Cases.
- e. Reasonable Prospects for Filing a Viable Plan: The Debtors filed, solicited votes on, and completed the confirmation hearing on their Plan within the original Exclusive Periods. The Court entered the Confirmation

---

<sup>31</sup> “**Disclosure Statement**” means the Disclosure Statement for the Plan, dated July 24, 2009 as amended, supplemented or modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

Order on November 23, 2009. In the event the Applications are not approved, the Debtors' prospects for filing another viable plan are good, as demonstrated by the Debtors' success in garnering the support for the Plan by substantially all parties entitled to vote and as demonstrated by the Debtors' receipt and handling of competing proposals for financing and strategic alternatives. Extending the Exclusive Periods will ensure that the Debtors have an appropriate opportunity to negotiate an amended version of the Plan or an alternate plan and will prevent the Debtors from having to contend with multiple competing plans of reorganization in the event that the outcome of the FCC licensing process prevents the Debtors from consummating the confirmed Plan.

- f. Progress in Creditor Negotiations: Prior to solicitation of the Plan, the Debtors received the support of the Plan by, among other constituents, a majority in principal of the secured noteholders, the current equity holder, and the Committee. After solicitation, the Debtors made additional adjustments to the Plan to resolve outstanding concerns, and the Debtors continued to negotiate with their constituents regarding the Plan and potential strategic alternatives.
- g. Amount of Time Elapsed: Just over 15 months have elapsed since the petition date. The Debtors won confirmation of the Plan in just over six months, and filed their Applications with FCC as early as practicable thereafter, on December 11, 2009. In the intervening months, the Debtors have made every effort to ready themselves to consummate the Plan and are prepared to do so upon receipt of FCC approval of the Applications.
- h. Misuse of Exclusive Periods To Pressure Creditors: The Debtors are not seeking an extension of the Exclusive Periods to pressure creditors. To the contrary, the requested extension is intended to preserve and capitalize on the substantial progress the Debtors have made to date. Extending the Exclusive Periods will permit the Debtors to reach an agreement with parties in interest without the disruptive impact of competing plans if it becomes necessary for the Debtors to formulate and solicit votes on an amended plan.
- i. Unresolved Contingency: There are no unresolved contingencies that counsel against extending the Exclusive Periods.

28. Courts in this district routinely have granted relief similar to the relief requested herein. See, e.g., In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. June 17, 2010) (granting a fourth extension of the debtor's filing and solicitation exclusivity periods for 99 days); In re Tronox Inc., Case No. 09-10156 (Bankr. S.D.N.Y. Apr. 28, 2010) (granting a

fourth extension of the debtor's filing and solicitation exclusivity periods for four months); In re Bayou Group, LLC, Case No. 06-22306 (Bankr. S.D.N.Y. Oct. 5, 2007) (granting a fourth extension of the exclusivity periods in which to file a plan and to solicit plan acceptance for 30 days); In re Tower Auto., Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Apr. 26, 2006) (granting a fourth extension of the filing and solicitation exclusivity periods for 60 days).

29. Finally, the relief requested in this Motion will not prejudice the rights of interested parties. Any interested party may move this Court, on appropriate notice, to reduce the Exclusive Periods for cause shown. This remedy is more than sufficient to protect stakeholders from any undue delay on the part of the Debtors. For all of these reasons, the Court should extend the Exclusive Periods as set forth herein.

#### **Notice**

30. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Committee; (c) counsel to DISH; (d) counsel to the Senior Noteholders; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; and (g) the parties in interest who have formally requested notice by filing a written request for notice, pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

#### **No Prior Request**

31. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, extending the Debtors' Exclusive Filing Period through November 15, 2010 and extending the Debtors' Exclusive Solicitation Period through the earlier of (i) January 15, 2011 and (ii) 45 days after the first to occur of the following events: (a) the FCC denies the Applications; and (b) the Second Circuit vacates or reverses the Confirmation Order; and granting such other further relief as is just and proper.

New York, New York  
Dated: September 20, 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  
Facsimile: (212) 446-4900

- and -

Marc J. Carmel  
Lauren M. Hawkins  
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