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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:

ICO Global Communications (Holdings) Limited ("ICO Global") hereby responds briefly to Sprint Nextel Corporation's ("Sprint's") September 17, 2010 *ex parte* filing in the above-captioned proceedings.[1/]

In its unstinting effort to improperly impose BAS cost-sharing obligations on ICO Global, Sprint's filing, and the "Memorandum of Law" from Thomas Cooney attached to it, reiterates its prior mischaracterization of the relationship between ICO Global and DBSD North America, Inc. ("DBSD"). It is undisputed that ICO Global is the majority shareholder of DBSD, with the power to appoint a majority of the directors of DBSD, but Sprint and Mr. Cooney (who's actually just another partner in Sprint's outside law firm) are flatly wrong when they assert that ICO Global retains a "fully integrated, direct involvement in DBSD's licensed operations."[2/]

In fact, as we have demonstrated, ICO Global and DBSD are separate and distinct in both form and substance. Since its formation in 2005, DBSD (fka ICO North America) 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. In the face of these facts and given the

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[1/] *See Sprint Nextel Corporation Notice of Ex Parte Communication*, WT Docket No. 02-55, ET Docket Nos. 00-258, 95-18; New DBSD Satellite Services G.P., Applications for Transfer of Control, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Sept. 17, 2010) ("*Sprint Sept. 17 Ex Parte*").

[2/] *Id.* at 3.

absence of any evidence that the 2005 Transaction was undertaken to evade Commission rules, it would be unlawful and improper to impose DBSD's cost-sharing obligations on ICO Global. If Sprint's contrary position is allowed to prevail against the clear facts in this proceeding, it will have no limiting principle.

Sprint itself has long recognized that the BAS cost-sharing obligation was properly the responsibility of the MSS licensees[3/] – until it evidently concluded that the licensees may not be financially able to satisfy that obligation. Only then did it decide that extending this obligation to investors was necessary to "uphold and protect" the *Emerging Technologies* doctrine. Its efforts to recast the relationship between ICO Global and DBSD after-the-fact are merely an expedient to justify its self-serving change in position.

In support of Sprint's argument that ICO Global and DBSD are a common enterprise, Mr. Cooney claims that DBSD's investors did not have equity-like rights prior to conversion of their debt and that "the services provided by ICO Global post the 2005 Transaction were of the same nature and scope as provided prior to the 2005 Transaction." The first of these claims was clearly rebutted in our September 17 *ex parte*[4/] and the letter from Joseph Weinstein attached thereto. The second is likewise without foundation and ignores the facts of the 2005 Transaction, to the point of calling into question the credibility of any of his conclusions.

The 2005 Transaction transformed DBSD into a separate operating entity not dependent on ICO Global for personnel. Prior to the 2005 Transaction, DBSD did not have its own employees. After the 2005 Transaction, DBSD hired and utilized only its own employees in its domestic business operations. Prior to the 2005 Transaction, DBSD had no independent employee benefit plans. After the 2005 Transaction, DBSD procured, provided and independently funded its own employee benefit plans. Prior to the 2005 Transaction, DBSD did not engage any of its own third party consultants. After the 2005 Transaction, DBSD independently engaged all of its own third party consultants. Prior to the 2005 Transaction, DBSD relied on ICO Global to provide funding for its business operations. After the 2005 Transaction, DBSD provided all of its own financing for its business operations. Prior to the 2005 Transaction, DBSD had no independent insurance policies. After the 2005 Transaction, DBSD procured and independently funded its own insurance policies. In short, DBSD ***in fact*** became independent as a result of the 2005 Transaction. Thereafter, and contrary to Sprint's assertions, there was ***in fact*** no "direct and pervasive" involvement by ICO Global in the business of DBSD.

[3/] *See ICO Global Ex Parte Presentation*, WT Docket No. 02-55, ET Docket Nos. 00-258, 95-18; New DBSD Satellite Services G.P., Applications for Transfer of Control, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Sept. 17, 2010), at 5 ("*ICO Global Sept. 17 Ex Parte*").

[4/] *See ICO Global Sept. 17 Ex Parte* at 4; Weinstein Attachment at 1-2.

In the absence of facts to support its theory of "direct and pervasive" involvement by ICO Global in the business of DBSD, Sprint returns to the ministerial errors in the milestone certifications filed by DBSD in an effort to concoct a common enterprise involving ICO Global. Contrary to Sprint's assertions, however, ICO Global has never indicated that the certifications were "wrong," and ICO Global did not "provide . . . the certifications for the MSS system." The certifications were submitted *by New ICO Satellite Services, G.P.* (now known as DBSD) or by New ICO Satellite Services, G.P.'s counsel. The certifications themselves likewise describe the actions taken at each milestone *by New ICO Satellite Services, G.P.*[5/] As is clear from the filings, ICO Global had no involvement in DBSD's efforts to meet the milestones. And as we have explained, Dennis Schmitt, who signed the certifications, was employed by DBSD as its Controller beginning in 2005.[6/]

It is Sprint, not ICO Global, that is attempting to "distract" the Commission from the "fundamental issue" in this proceeding – whether ICO Global, which after 2005 had nothing to do with DBSD's MSS business, can be held liable for a cost-sharing obligation that two federal courts and Sprint itself have previously acknowledged is the MSS licensee's alone. Based on the law and the equities, the answer clearly is no.

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.

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

Sincerely,

Howard J. Symons

cc: Austin Schlick
Stewart Block
Julie Veach
David Horowitz
Sarah Stone
Andrea Kearney
Mindel De La Torre
Roderick Porter
Robert Nelson
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5/ While the transmittal letters and certifications use the shorthand "ICO," it is clear on the face of the documents that this referred to New ICO Satellite Services, G.P. and not to ICO Global.

6/ *See ICO Global Ex Parte Presentation*, WT Docket No. 02-55, ET Docket Nos. 00-258, 95-18; New DBSD Satellite Services G.P., Applications for Transfer of Control, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Sept. 1, 2010), at 2 n.2.

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