

September 27, 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 Response to 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 “Response”). In its Motion, DBSD had requested that the bankruptcy court extend the exclusivity period, during which only DBSD may file a plan of reorganization. As Sprint Nextel indicated in its *ex parte* filing of September 21, 2010, the DBSD Motion made numerous inaccurate accusations regarding Sprint Nextel’s involvement in the above-captioned DBSD transfer of control proceedings. The attached Response corrects the record. Sprint Nextel is submitting this copy with the Commission to keep it fully apprised of the developments in the bankruptcy court.

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.

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Sincerely,

/s/ Marc S. Martin

Marc S. Martin

Counsel for Sprint Nextel Corporation

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

EXHIBIT A

Hearing Date and Time: October 4, 2010 at 9:45 a.m.
Response Deadline: September 27, 2010 at 4:00 p.m.

K&L GATES LLP

John H. Culver III
Felton E. Parrish
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, North Carolina 28202
Telephone: (704) 331-7400
Fax: (704) 331-7598

Counsel to Sprint Nextel Corporation

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re : Chapter 11
DBSD NORTH AMERICA, INC., *et al.*,¹ : Case No. 09-13061 (REG)
Debtors. : (Jointly Administered)
-----X

**LIMITED RESPONSE AND CONSENT OF SPRINT NEXTEL CORPORATION TO
DEBTORS' FOURTH MOTION FOR ENTRY OF AN ORDER EXTENDING THE
DEBTORS' EXCLUSIVE PERIODS PURSUANT TO SECTION 1121 OF THE
BANKRUPTCY CODE**

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. (6404); 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.

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Sprint Nextel Corporation (“**Sprint Nextel**”), through its undersigned counsel, files this Limited Response and Consent to Debtors’ Fourth Motion For Entry of An Order Extending The Debtors’ Exclusivity Periods Pursuant To Section 1121 Of The Bankruptcy Code (the “**Motion**”), respectfully showing the Court as follows:

Introduction

Sprint Nextel consents to the relief sought in the Motion. Indeed, had the Debtors contacted Sprint Nextel as they apparently contacted all other significant parties prior to filing the Motion, Sprint Nextel would have immediately consented to the relief sought. Instead of consulting Sprint Nextel prior to filing the Motion, however, the Debtors use the Motion as an opportunity to distort the status of the proceedings before the Federal Communications Commission (the “**Commission**”) in an attempt to portray Sprint Nextel as a bad actor. Given that the Debtors consulted every other significant party prior to filing the Motion, Sprint Nextel concludes that the Debtors did not consult Sprint Nextel so that they would have an opportunity to make unfounded and unnecessary allegations in an attempt to set the stage for further litigation if Sprint Nextel’s appeal is successful and the plan confirmation issues are remanded to this Court for further proceedings.¹

¹ Although the Plan proponents will again assert that Sprint Nextel’s appeal is frivolous, during oral argument before the Second Circuit, which was held on an expedited basis, counsel for the Senior Noteholders acknowledged that he believed that the case would be remanded. *See* Aug. 5, 2010 Oral Arg. Tr., at 67:16-21 (“Before I address Judge Raggi’s comments and questions regarding chapter 7 and gifting, I wanted to come back to what my co-counsel was just talking about and some of the comments from Judge Lynch with respect to what would happen if we go back to Judge Gerber. *Because I do believe that we’re going back. . . .*”) (emphasis added). A copy of the relevant portion of this transcript is attached as **Exhibit A**.

Accordingly, although Sprint Nextel expressly consents to the requested extension of exclusivity and does not object to entry of an order without a hearing under certification of no objection, Sprint Nextel does not believe that the Debtors' deposition of Sprint Nextel's position should go unanswered.²

Response

A. The Debtors Inaccurately Describe Sprint Nextel's Objection to the Transfer of Control Applications.

In the Motion, the Debtors contend that Sprint Nextel's opposition to the transfer applications is an attempt to either "coerce payment of Sprint Nextel's dischargeable claims or deprive the Debtors, as business competitors, of their invaluable FCC spectrum licenses."³ Neither assertion is accurate.

1. Sprint Nextel Does Not Seek To Collect A Dischargeable Claim.

The Debtors' Motion ignores the real basis for Sprint Nextel's objection to the transfer applications. Sprint Nextel opposes the transfer applications because it contends that the

² This is not the first time that Sprint Nextel has needed to clarify the status of proceedings before the Commission. On July 14, 2010, when the Debtors submitted their Third Post-Confirmation Status Report (the "**Status Report**"), they included a copy of a letter submitted by the Debtors to the Commission on July 13, 2010. *See* Debtors' Third Confirmation Status Report (Dkt. No. 756) (July 14, 2010). The Status Report did not include a copy of the response Sprint Nextel filed with the Commission to correct several misstatements contained in the Debtors' July 13 letter. To ensure that the record in this case was complete, Sprint Nextel filed with the Court the response to the July 13 letter that Sprint Nextel filed with the Commission. *See* Notice of Filing (Dkt. No. 759) (July 15, 2010).

³ *See* Motion, at ¶ 10. Sprint Nextel does agree with the Debtors on one point. The Debtors' spectrum license is "invaluable." That value has increased since the confirmation hearing was held over a year ago. Attached hereto as **Exhibit B** is a copy of a Notice of Proposed Rulemaking and Notice of Inquiry issued by the Commission on July 15, 2010 (the "FCC Rulemaking Notice"). As explained in the FCC Rulemaking Notice, the Commission is taking action and seeking comments "*to increase the value, utilization, innovation, and investment in MSS Spectrum . . .*" *See* FCC Rulemaking Notice, at 2, ¶ 3 (emphasis added). The MSS spectrum referenced in the FCC Rulemaking Notice is the type of spectrum held by the Debtors, and the Debtors are specifically referenced in the FCC Rulemaking Notice. *Id.* at 3-4, ¶ 6. Given this significant development, Sprint Nextel questions whether the Debtors' officers and directors should re-evaluate the consummation of a Plan that was premised on market conditions in May, 2009 – more than a year before the FCC Rulemaking Notice was issued.

proposed transfer is not in the public interest.⁴ As the Court is aware, the Debtors have no operations and no intentions to provide service prior to 2014.⁵ Instead, the Plan is premised upon the Debtors' desire to enter into a strategic transaction that will permit them to build out their infrastructure and provide services in the future.⁶ Sprint Nextel objected to the transfer applications on the ground that no public interest would be served by the proposed transfer because approval of the transfer would not facilitate the provision of service to customers.⁷

The Debtors never mention in the Motion that the primary basis for Sprint Nextel's opposition to the applications is that the proposed transfers are not within the public interest. Instead, through the creative use of snippets taken out of context, they attempt to create the impression that Sprint Nextel contends the applications should be denied solely because the Debtors filed for bankruptcy.⁸ To put that issue to rest: Sprint Nextel has not and does not contend that the Debtors' discharge of its claim should affect the transfer applications. In fact, Sprint Nextel has repeatedly stated to the Commission that it does not contend that the

⁴ When exercising its jurisdiction to determine whether any transfer of control application should be approved, the Commission is required to "weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessities. *In re Application of Orbital Communications Corporation and ORBCOMM Global, L.P.*, Order and Authorization, ¶ 11, 17 FCC Rcd. 4496, 4502, 2002 WL 372495, * 4 (Mar. 11, 2002).

⁵ See Exhibit D to Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (Dkt No. 229) (July 24, 2009).

⁶ See 9/22/09 Bankr. Ct. Hg. Tr. at 97:22-98:9 and 131:6-13 (Testimony of Michael Corkery, then acting CEO of DBSD North America, at the hearing on confirmation of the Second Amended Joint Plan of Reorganization) (attached hereto as **Exhibit C**). Because the Debtors acknowledge that they cannot provide service to consumers unless they are able to enter into a strategic transaction, Sprint suggested to the Commission that it was premature to conduct any public interest analysis until the Debtors were able to identify such a transaction and state how such a transaction is in the public interest. See *Petition to Deny of Sprint Nextel Corporation*, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Jan. 14, 2010), at 21-22 [hereinafter, the "Petition to Deny"]. A copy of the Petition to Deny is attached to the Motion as Exhibit B.

⁷ See Petition to Deny, at 9-15.

⁸ See Motion, at ¶ 14.

applications should be denied because the Debtors filed for bankruptcy or are attempting to discharge debts owed to Sprint Nextel. For example, Sprint Nextel's Petition to Deny expressly states as follows:

At the outset, Sprint Nextel would like to clarify that it does not contend that the Applications should be denied because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel as part of that process.⁹

Sprint Nextel repeated its position in response to the Debtors' mischaracterization of Sprint Nextel's position to the Commission. Sprint Nextel's submission to the Commission dated July 14, 2010, stated:

- First and foremost, at no point has Sprint Nextel ever contended that the Applications should be denied because DBSD has filed for bankruptcy or is attempting to discharge its obligations as part of its bankruptcy case.¹⁰
- As this statement makes clear, Sprint Nextel does not seek an order requiring DBSD to reimburse its portion of the BAS relocation expenses, and Sprint Nextel's opposition to the Applications is not based upon any "windfall" that DBSD may receive.¹¹

Given these clear statements, which have been made repeatedly to the Commission, there is no basis for the Debtors' assertion that Sprint Nextel is opposing the transfer of control applications in an attempt to obtain payment from DBSD.

⁹ See Petition to Deny, at p. 5.

¹⁰ See July 14, 2010 Letter from Lawrence R. Krevor to Mindel De La Torre, at p. 1 (attached hereto as **Exhibit D**). Significantly, although the Debtors attached numerous filings by Sprint Nextel as exhibits to the Motion, the Debtors did not include a copy of this letter which clearly refutes their baseless contentions. This failure to include documents that correctly reflect Sprint Nextel's position is not an isolated incident. For instance, the Debtors cite to a letter from Yosef J. Riemer to John H. Culver, which is attached as Exhibit G to the Motion. The Debtors failed to include Mr. Culver's response, which is attached hereto as **Exhibit E**. That response clearly states, in bold font, that **Sprint Nextel is not asking, nor has it ever asked, the Commission to require that DBSD pay anything to Sprint Nextel as a condition to the Commission's approval of the pending applications, nor has Sprint Nextel requested that the Commission deny the applications because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel.** See Exhibit E at p. 2.

¹¹ See July 14, 2010 Letter from Lawrence R. Krevor to Mindel De La Torre, at p. 2 (attached hereto as **Exhibit D**).

Although not seeking to obtain payment from the Debtors, Sprint Nextel does continue to seek payment from ICO Global Communications (Holdings) Limited (“**ICO Global**”), the Debtors’ non-bankrupt parent corporation, both in the transfer application proceeding and in proceedings that have been pending before the Commission for years. As the Court is aware, proceedings have been pending before the Commission (the “**BAS Relocation Proceeding**”) to clarify certain issues regarding Sprint Nextel’s right to reimbursement for its band clearing expenses, including the issue of whether the only entity responsible for the obligation is the entity holding the applicable license, or whether each corporate entity that constitutes an MSS enterprise is jointly and severally liable.¹² As part of the BAS Relocation Proceeding, Sprint Nextel has requested that the Commission determine that ICO Global is jointly and severally liable with other band entrants (other than the Debtors) for the reimbursement obligation.

Although the BAS Relocation Proceeding is separate from the proceeding regarding the transfer applications filed by the Debtors, the proceedings are related because ICO Global will retain a substantial interest in the Debtors and therefore a beneficial interest in the spectrum at issue after the proposed transfer.¹³ Thus, in connection with its opposition to the transfer applications, Sprint Nextel has requested that the Commission first resolve the issues raised in the BAS Relocation Proceeding. Sprint Nextel further requested that if the Commission

¹² Sprint Nextel recognizes that this Court has previously interpreted Commission orders to conclude that only the actual licensee is liable for the reimbursement obligation. However, that interpretation is not binding upon the Commission. *See Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Services*, 545 U.S. 967, 982 (2005) (“[A]llowing a judicial precedent to foreclose an agency from interpreting an ambiguous statute, as the Court of Appeals assumed it could, would allow a court’s interpretation to override an agency’s. *Chevron’s* premise is that it is for agencies, not courts, to fill statutory gaps.”). A copy of the submission that Sprint Nextel made to the Commission on July 27, 2010, to address this issue is attached hereto as **Exhibit F**.

¹³ As noted above, the inquiry being conducted by the Commission in the transfer of control proceedings is whether the proposed transfer is within the public interest. Sprint believes that it is inconsistent with Commission policy, and contrary to the public interest, to allow ICO Global to retain an interest in the spectrum cleared by Sprint Nextel unless ICO Global is willing to satisfy its reimbursement obligation.

determines in the BAS Relocation Proceeding that ICO Global is directly liable, then under the *Emerging Technologies* Doctrine the Commission should require ICO Global to satisfy that obligation before allowing ICO Global to retain any interest in the spectrum at issue.¹⁴

Each of the quotations cited by the Debtors to support their assertion that Sprint Nextel is seeking to collect a dischargeable debt is a statement made by Sprint Nextel in connection with its arguments that *ICO Global and not the Debtors* should be held directly liable for the reimbursement obligation owed to Sprint Nextel.¹⁵ Sprint Nextel never contends that the Commission should require reimbursement by the Debtors and, instead, as noted above, Sprint Nextel has expressly stated on multiple occasions that it is not requesting the Commission to deny the applications solely because the Debtors filed for bankruptcy and are attempting to discharge their obligations to Sprint Nextel. Thus, the Debtors' assertion that Sprint Nextel is seeking to collect a dischargeable debt is false and misleading.¹⁶

¹⁴ See Reply of Sprint Nextel Corporation to Opposition of New DBSD Satellite Services G.P. to Petition to Deny, *Applications for Transfer of Control of Earth Station Licenses and Authorizations*, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Feb. 3, 2010), 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. If as part of those rulemaking proceedings, the Commission determines that ICO Global is directly liable for the reimbursement obligation imposed by Sprint Nextel, it is well within the Commission’s authority to require ICO Global to satisfy that obligation before allowing ICO Global to retain any beneficial interest in the spectrum.”) [hereinafter, the “**Reply**”] (attached to Debtors’ Motion as Exhibit A).

¹⁵ For example, the Debtors cite to statements by Sprint Nextel that reference “strategic bankruptcies” to create the impression that Sprint Nextel opposes the transfer applications solely because the Debtors filed for bankruptcy. See Motion, at 9. However, the full discussion referenced by the Debtors clearly indicates that Sprint Nextel is making the statements to hold ICO Global, and not the Debtors, liable for the reimbursement obligation. See Petition to Deny, at 20-21 (“Permitting ICO Global to avoid its longstanding obligation through a strategic bankruptcy by its subsidiaries would make a mockery of the *Emerging Technologies* principles, and improperly reward ICO Global for its failure to deploy a viable system and its refusal to pay mandatory cost reimbursements.”). ICO Global has not filed for bankruptcy. Therefore, any liability of ICO Global has not been discharged as a result of the Debtors’ bankruptcy cases. 11 U.S.C. § 524(e).

¹⁶ Attached hereto as **Exhibit G** is an article that appeared in the TR Daily Report from Telecommunications Reports for September 24, 2010. The article discusses the status of the BAS Relocation Proceeding and states that “In recent weeks, Sprint Nextel and ICO have been lobbying the Commission heavily about whether *ICO* is liable for relocation costs.” (emphasis added). The article demonstrates that outside observers clearly understand that

2. Sprint Nextel Is Not Trying To Stifle Competition.

In a further attempt to cast aspersions upon Sprint Nextel's motivations, the Debtors contend that Sprint Nextel and the Debtors are competitors and, therefore, Sprint Nextel's opposition to the transfer applications must be motivated by a desire to harm a business competitor.¹⁷ That assertion is false and is not supported by any evidence. In making the assertion, the Debtors ignore the argument that Sprint Nextel is actually making in opposition to the transfer applications. As noted above, the primary basis of Sprint Nextel's objection is that the proposed transfers are not in the public interest because the Debtors have no plans to provide service and the spectrum will not be utilized for consumer services. Stated differently, Sprint Nextel contends that the spectrum should be utilized for consumer services sooner rather than be warehoused to provide service at some unknown point in the future. This concern raised by Sprint Nextel falls directly under the Commission's purview under its exclusive authority delegated by Congress to ensure the efficient management of the radio spectrum. It is hardly the argument that Sprint Nextel would be making if its objection was driven by any competitive concerns. If Sprint Nextel's goal was to prevent competition, then it would not be opposing the applications so that the Debtors could continue to let the spectrum lie fallow.

Moreover, the Debtors know full well that it is inaccurate to say that the Debtors and Sprint Nextel are business competitors. Putting aside the fact that the Debtors do not compete with Sprint Nextel because they provide no services to customers, even if the Debtors were operating, the Debtors' telecommunications services are different from those offered by Sprint

Sprint Nextel is seeking to recover from ICO Global and not the Debtors through the ongoing proceedings before the Commission.

¹⁷ See Motion at ¶¶ 10, 12.

Nextel and therefore there is no competition for customers. Terrestrial mobile wireless service providers (such as Sprint Nextel) and satellite mobile wireless service providers (such as the Debtors) both generally provide mobile wireless and data services, but those services are not interchangeable. After extensive study of the competitive marketplace, the Commission has concluded that “terrestrial mobile wireless services and MSS have different characteristics and involve different consumer benefits, coverage, prices, product acceptance, and distribution methods.”¹⁸ The Commission has further explained that the two services are not “perfectly interchangeable, appear to be imperfect substitutes for one another, and appeal to different market segments.”¹⁹ As a consequence, the Commission has stopped including any discussions or consideration of the MSS spectrum in its terrestrial mobile wireless services competition reports, because services in that MSS spectrum “do not impact competition in mobile wireless services.”²⁰

Ignoring both the facts and the law, the Debtors quote Sprint Nextel’s filings out of context in an attempt to portray Sprint Nextel as an entity motivated to undermine a business

¹⁸ See Fourteenth Report, *In the Matter of Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-, FCC 10-81 (May 20, 2010), at ¶ 37 (“*Fourteenth CMS Competition Report*”). In the future, certain MSS providers might be able to offer limited services related to an “ancillary terrestrial component” (“ATC”) to their satellite systems. *Id.* However, as the name suggests any such service is only ancillary to the provision of MSS, and no such services are currently available. *Id.* In any event, Debtors have testified that they lack the \$300 to \$800 million necessary to construct the ATC component of the MSS system at issue, and have no plans to do so. See 9/22/09 Bankr. Ct. Hg. Tr. at 96:22-25, 97:1-3, 101:3-7 (Testimony of Michael Corkery, then acting CEO of DBSD North America, at the hearing on confirmation of the Second Amended Joint Plan of Reorganization) (attached hereto as **Exhibit C**).

¹⁹ Fourteenth CMS Competition Report, at ¶ 37. The Debtors’ assertion that Sprint Nextel will directly compete with the Debtors because Sprint Nextel is one of two other entities licensed to provide service in the 2 GHz Band is also inaccurate. The determination of whether entities are business competitors depends upon the type of services provided, not the particular spectrum band used to provide those services. As noted above, the terrestrial services that Sprint Nextel provides do not compete with the MSS services that the Debtors are authorized to provide.

²⁰ *Id.* at ¶ 259. Instead, the Commission expressly shifted its discussion of MSS spectrum and MSS providers out of the commercial mobile wireless competition reports and into separate reports analyzing market conditions with respect to domestic and international satellite communication services. *Id.* at ¶ 38.

competitor. For example, the Debtors claim that Sprint Nextel has acknowledged that it is a competitor of the Debtors. To support that claim, the Debtors quote a portion of a statement made by Sprint Nextel in a submission to the Commission.²¹ The following is the complete statement made by Sprint Nextel with the portions omitted by the Debtors underlined:

Although Sprint Nextel's objections do not arise from business competition issues *per se*, the 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 for purposes of the court-established "generous attitude" towards standing.²²

When the portions of the sentence omitted by the Debtors are included, the meaning of the sentence changes. In the sentence that appeared in Sprint Nextel's filing, Sprint Nextel acknowledged that it *is not* a business competitor of the Debtors — its objections “do not arise from business competition issues *per se*.” Instead, Sprint Nextel argued only that, under the broader standard applied for standing purposes, it could be considered a competitor under applicable Commission precedent “for purposes of the court-established ‘generous attitude’ towards standing.” The sentence cited by the Debtors cannot fairly be construed as an acknowledgement by Sprint Nextel that its Petition to Deny was based on business competition issues, and the Debtors are able to argue otherwise only by selectively deleting material portions of the sentence to fundamentally change what Sprint Nextel stated to the Commission.

In sum, there is no basis to contend that Sprint Nextel's opposition to the transfer applications is motivated by anti-competitive concerns, and there is not a shred of evidence that any action taken by Sprint Nextel in this or any other proceeding has been taken in bad faith.

²¹ See Motion at p. 7 n. 12.

²² See Reply, at 19 (emphasis added) (attached to Debtors' Motion as Exhibit A).

B. Sprint Nextel Has Not Launched An Improper *Ex Parte* Campaign.

The Debtors' discussion of the *ex parte* nature of the Commission transfer-of-control proceedings is grossly inaccurate and designed (1) to suggest that Sprint Nextel, rather than the Debtors and ICO Global, initiated an extensive *ex parte* campaign at the Commission, and (2) to disguise the fact that Sprint Nextel's *ex parte* submissions were typically submitted in response to the aggressive *ex parte* campaign instigated by the Debtors and ICO Global.

The default *ex parte* designation for transfer of control proceedings such as the Debtors' transfer of control proceedings is "restricted," which prohibits *ex parte* presentations to Commission staff.²³ On February 3, 2010, Sprint Nextel requested that the *ex parte* status of the transfer of control proceeding be changed to "permit but disclose," to allow discussion with Commission staff over the complex issues raised by the transfer applications.²⁴ The Debtors initially opposed that request.²⁵ Instead, the Debtors continued to submit letters addressing the merits of matters already discussed during the formal pleading cycle related to Sprint Nextel's Petition to Deny.²⁶

²³ In restricted proceedings, *ex parte* presentations are prohibited, and oral presentations may not be made to Commission staff unless all parties to the proceeding are given advance notice and an opportunity to attend. *See* 47 C.F.R. §§ 1.1202 & 1.208. By contrast, in "permit-but-disclose" proceedings, such activities are permissible generally provided that summaries of oral presentations and copies of written materials be subsequently filed with the Commission. *See* 47 C.F.R. § 1.206(b).

²⁴ *See* Sprint Nextel Corporation, *Request to Modify Ex Parte Statute to Permit-But-Disclose*, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Feb. 3, 2010).

²⁵ *See* DBSD, *Opposition to Request to Modify Ex Parte Statute to Permit-But-Disclose*, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Feb. 12, 2010), at 3.

²⁶ *See, e.g.*, DBSD Letter, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed April 20, 2010); DBSD Letter, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed May 27, 2010). Because the Debtors served these letters on Sprint, the letters technically did not constitute forbidden "*ex parte* presentations" under the FCC's rules. *See* 47 C.F.R. § 1.1202 (b)(1).

Then, on July 19, 2010, ICO Global filed a notice disclosing a July 16, 2010 *ex parte* meeting it had with the FCC. According to ICO Global's *ex parte* notice, that meeting ostensibly focused only on the BAS Relocation Proceeding (which was designated as "permit-but-disclose"), but the notice suggested that the meeting appeared to address matters related to the then "restricted" DBSD proceedings.²⁷ Shortly thereafter, on July 21, 2010, the Debtors abruptly reversed course and requested that the status of the DBSD proceeding be changed to "permit-but-disclose."²⁸ The next day, on July 22, 2010, the Commission modified the status of the proceeding to "permit but disclose."²⁹

Thus, the Commission changed the *ex parte* status of the proceeding to "permit but disclose" only because the Debtors withdrew their opposition so that they and ICO Global could have *ex parte* meetings with the Commission. As soon as the restricted status was changed, the Debtors and ICO Global embarked on a campaign to inundate the FCC with a barrage of *ex parte* materials, including multiple meetings, conference calls, and substantive written submissions on a seemingly daily basis.³⁰ Indeed, since the Debtors sought to change the *ex parte* status of the

²⁷ See ICO Global Communications (Holdings) Limited, Notice of Ex Parte Presentation, WT Docket No. 02-55, ET Docket Nos. 00-258, 95-18 (filed July 19, 2010).

²⁸ See DBSD, *Withdrawal of Opposition to Request to Modify Ex Parte Status to Permit-But-Disclose and Request to Modify Ex Parte Status to Permit-But-Disclose*, New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed July 21, 2010).

²⁹ See FCC Stamp Grant, *New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations*, File Nos. SAT-T/C-0091211-00144, *et al.* (July 22, 2010).

³⁰ As Sprint Nextel highlighted for the Commission at the time, the level of submissions by DBSD and ICO Global seriously undermined any claims that Sprint was the party impeding the Commission's consideration of the underlying transfer-of-control applications. See Sprint Nextel *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. SAT-T/C-0091211-00144, *et al.* (filed Aug. 10, 2010) (noting that "DBSD and ICO Global are also likely impeding consideration of their own applications by inundating the Commission with substantive *ex parte* submissions.")

proceeding to “permit but disclose,” the Debtors, ICO Global, and the Senior Noteholders have collectively made 26 *ex parte* filings that disclose multiple meetings with the FCC.³¹ Sprint Nextel has been forced to respond repeatedly to new arguments and mischaracterizations put forward by the Debtors and ICO Global through these *ex parte* submissions.³² The Debtors, therefore, are in no position to complain about the fact that Sprint Nextel has also conducted *ex parte* meetings largely in response to those of the Debtors and ICO Global.³³

³¹ There are three separate dockets for the FCC transfer of control proceedings because the Debtors filed three transfer of control applications. Because ICO Global improperly submitted its *ex parte* filings to only one of the three application dockets, the only docket that contains a complete list of filings may be found at:

http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-200242&f_number=SATT/C2009121100144

Significantly, the docket cited by the Debtors in fn. 25 of the Motion does not contain all of the filings made by ICO Global and, therefore, is an inaccurate depiction of the number of filings to which Sprint Nextel has been forced to respond. The citation to that docket creates the impression that the number of filings made by Sprint Nextel exceeds those made by other parties. A copy of the complete docket (as of September 24, 2010) is attached hereto as **Exhibit H**. A review of the complete docket accurately reveals the filings of all parties as opposed to the incomplete docket cited by the Debtors.

³² In a pattern that has since become typical, Sprint Nextel’s first *ex parte* submission under the new permit-but-disclose status was a response to ICO Global’s prior *ex parte* submission. See Sprint Nextel Notice of 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. SAT-T/C-0091211-00144, *et al.* (filed July 27, 2010) (noting that Sprint addressed a number of arguments raised by ICO Global in its July 19, 2010 Notice of Ex Parte Presentation) (attached hereto as **Exhibit F**). Among other things, Sprint Nextel has been forced to reply to statements made by ICO Global that appear contrary to statements made by the Plan proponents to this Court. For example, in a letter filed with the Commission by ICO Global on September 1, 2010 (copy attached as **Exhibit I**), ICO Global states that after the investment by the Senior Noteholders in 2005, it retained only a 56% fully diluted interest in the Debtors. In contrast, ICO Global has always been portrayed in this Court as a 99.8% shareholder in the Debtors. See Declaration of Michael P. Corkery (A) In Support of Debtors’ Chapter 11 Petitions And First Day Motions And (B) Pursuant to Local Rule 1007-2, at ¶ 9 (Dkt. No. 11) (May 15, 2009) [hereinafter, the “Corkery Declaration”]. The Debtors did previously disclose that the Senior Noteholders had the ability to convert the bonds into stock which would reduce the ownership interest of ICO Global to approximately 52%. *Id.* at ¶ 26. However, in arguments before the Commission, ICO Global repeatedly portrays itself as a 56% owner of the Debtors as if the conversion actually took place. See September 9, 2010 ICO Global submission to the FCC, at p. 1 (stating that “ultimately ICO Global lost *even its 56% interest* in the DBSD bankruptcy.”) (copy attached as **Exhibit J**) (emphasis added).

³³ The letter filed by the Debtors with the FCC on August 5, 2010 provides an example of the efforts taken by the Debtors. A copy of this letter is attached hereto as **Exhibit K**. The letter reveals that over the course of two days, counsel for the Debtors made a total of eight (8) phone calls to the Commission, including calls to the legal advisers for each of the five FCC Commissioners. It is no coincidence that these calls occurred on August 5, 2010, the same date that oral argument was heard on Sprint’s appeal of the Confirmation Order. The Debtors have made no secret of the fact that it is their desire to consummate the Plan before the appeal is resolved in an attempt to

C. There Is Nothing Improper about Sprint Nextel's Objection To The Transfer Applications.

At their core, the Debtors' contentions are premised upon their belief that it is improper for Sprint Nextel to oppose the transfer applications because to do so threatens the Debtors' reorganization.³⁴ The consummation and success of the Debtor's Plan has always depended upon their ability to demonstrate to the Commission that the transfers contemplated by the Plan are consistent with applicable telecommunications law. The Confirmation Order addresses this point and provides as follows:

Notwithstanding any other provision in the Plan or this Confirmation Order, no transfer of control and/or assignment of any rights and interests of the Debtors in any federal license issued by the Commission shall take place prior to the issuance of Commission regulatory approval for such transfer of control and/or assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.³⁵

Consistent with this provision in the Confirmation Order, Sprint Nextel has done nothing other than exercise its rights under applicable telecommunications law and Commission regulations. There is nothing improper with Sprint Nextel exercising the rights that were expressly preserved by the terms of the Confirmation Order.

In addition, there is nothing improper with Sprint Nextel's request that the Commission defer the effectiveness of any transfer approval for a period of ten days. Commission regulations

render the appeal equitably moot. The Debtors' efforts before the Commission intensified significantly after the Second Circuit set the appeal for oral argument on an expedited basis.

³⁴ See Motion, p. 6-7 n. 10.

³⁵ 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, at ¶ 98 (Dkt. No. 547) (Nov. 23, 2009).

provide authority for such a deferral,³⁶ and the Commission has deferred the effectiveness of its own actions in the past.³⁷

Finally, contrary to the Debtors' unsupported assertions regarding the time that their applications have been pending, there is nothing "routine" about their transfer applications and even if there were, there is no basis for the Debtors to have believed that the applications would be granted within three to five months from the date that the public comment period closed.³⁸ In other similar situations, the Commission has required ten months or more to resolve issues associated with transfer of control applications, including applications filed as a result of bankruptcy proceedings.³⁹ Thus, the Debtors' complaints that the Commission's consideration of the applications has been delayed by Sprint Nextel's conduct are wrong. If anything, the multiple filings by the Debtors and ICO Global have delayed the process. Sprint Nextel has done nothing improper, and the Debtors' transfer of control applications are proceeding along the normal timeframe for Commission consideration of such applications.

³⁶ See, e.g., 47 C.F.R. § 1.102(b).

³⁷ *In re Applications of RKO General, Inc.*, Docket Nos. 18759, 18760, 18761, FCC 77313 (May 5, 1977), at ¶ 12; *In re Applications of Roy M. Speer*, File Nos. BTCCT-950913KG, *et al.*, 11 FCC Rcd 18393, ¶ 1 (June 6, 1996)

³⁸ See Motion, at 13-14.

³⁹ See, e.g., *Crossroads Wireless, Debtor-in-Possession to New Cingular Wireless PCS, LLC ULS File No. 0003959953* (requiring ten months from the Sept. 14, 2009 filing of the application out of bankruptcy to the grant of consent July 14, 2010 for the post-reorganization entity); *In the Matter of SkyTerra Communications, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee*, IB Docket No. 08-184, 25 FCC Rcd. 3059 (Mar. 26, 2010) (application placed on public notice on May 1, 2009, approximately eleven (11) months prior to Commission action).

Conclusion

The misleading statements contained by the Debtors in the Motion are completely inappropriate and unnecessary. The Debtors could have obtained Sprint Nextel's consent to the relief sought. In the Motion, the Debtors could have stated simply that they are diligently pursuing approval of the transfer applications but the applications have not yet been granted. Had the Debtors opted for that approach, this Response would not have been necessary. Instead, the Debtors opted to make misleading statements in an attempt to cast aspersions on Sprint Nextel's motivations. Sprint Nextel files this response solely to clarify the record with respect to the misrepresentations made by the Debtors. Sprint Nextel does not object to the relief sought by the Debtors and does not oppose the entry of the proposed Order without a hearing under certification of no objection.

[signatures on following page]

Dated: September 27, 2010
New York, New York

Respectfully submitted,

K&L GATES LLP

/s/ Eric Moser

Eric Moser
599 Lexington Avenue
New York, New York 10022-6030
Telephone: (212) 536-3900
Facsimile: (212) 536-3901
Eric.Moser@klgates.com

And

John H. Culver III
Felton E. Parrish
K&L Gates LLP
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, North Carolina 28282
Telephone: (704) 331-7400
Fax: (704) 331-7598
John.Culver@klgates.com
Felton.Parrish@klgates.com

Attorneys for Sprint Nextel Corporation

EXHIBIT A

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UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

IN RE:	.	
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DBSD NORTH AMERICA, INC., ET AL.,	.	
	.	
Debtors.	.	
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.....	.	
	.	
SPRINT NEXTEL CORPORATION,	.	
	.	
Appellants,	.	Case No. 10-1352
	.	
v.	.	
	.	
DBSD NORTH AMERICA, INC., ET AL.,	.	
	.	
Appellees	.	
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.....	.	
	.	
DISH NETWORK CORPORATION,	.	
	.	
Appellants,	.	Case No. 10-1175
	.	Case No. 10-1201
v.	.	
	.	
DBSD NORTH AMERICA, INC., ET AL.,	.	
	.	
Appellees.	.	
	.	
.....	.	

TRANSCRIPT OF ORAL ARGUMENT
Thursday, August 5, 2010
10:00 a.m.
Daniel Patrick Moynihan Courthouse
Ceremonial Courtroom 9th Floor
500 Pearl Street
New York, New York 10007



1 MS. FOU DY: -- exactly right.

2 JUDGE RAGGI: -- that might present a different
3 circumstance.

4 MS. FOU DY: That's right. Because then maybe
5 they would be pecuniarily affected.

6 JUDGE RAGGI: I understand. I understand that.

7 JUDGE POOLER: Thank you.

8 MS. FOU DY: Thank you.

9 (Pause)

10 ORAL ARGUMENT ON BEHALF OF
11 AD HOC COMMITTEE OF THE SENIOR SECURED NOTEHOLDERS

12 MR. DUNNE: May it please the Court. Dennis
13 Dunne, of Milbank, Tweed, Hadley and McCloy, LLP, on
14 behalf of the Ad Hoc Committee of the Senior Secured
15 Noteholders.

16 Before I address Judge Raggi's comments and
17 questions about the Chapter 7 and gifting, I wanted to
18 come back to what my co-counsel was just talking about and
19 some of the comments from Judge Lynch, with respect to
20 what would happen if we go back to Judge Gerber with a
21 reversal. Because, I do think that we're going back and
22 we're going back in the landscape of Judge Gerber having
23 found that the reorganization going concern value of this
24 enterprise is at least -- and maybe more -- \$100 million
25 less than necessary to pay my clients in full.

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Fixed and Mobile Services in the Mobile Satellite)	ET Docket No. 10-142
Service Bands at 1525-1559 MHz and 1626.5-)	
1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500)	
MHz, and 2000-2020 MHz and 2180-2200 MHz)	
)	
)	
)	

**NOTICE OF PROPOSED RULEMAKING
AND NOTICE OF INQUIRY**

Adopted: July 15, 2010

Released: July 15, 2010

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker
issuing separate statements.

I. INTRODUCTION

1. Today we take steps to make additional spectrum available for new investment in mobile broadband networks while ensuring that the United States maintains robust mobile satellite service capabilities. Mobile broadband is emerging as one of America's most dynamic innovation and economic platforms. Yet tremendous demand growth will soon test the limits of spectrum availability. As observed in the National Broadband Plan, 90 megahertz of spectrum allocated to the Mobile Satellite Service (MSS) – in the 2 GHz band, Big LEO band, and L-band – are potentially available for terrestrial mobile broadband use.¹ In this Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI), we seek to remove regulatory barriers to terrestrial use, and to promote additional investments, such as those recently made possible by a transaction between Harbinger Capital Partners and SkyTerra Communications,² while retaining sufficient market-wide MSS capability.

2. In the NPRM, we make two proposals. First, we propose to add co-primary Fixed and Mobile allocations to the 2 GHz band, consistent with the International Table of Allocations. This allocation modification is a precondition for more flexible licensing of terrestrial services within the band. Second, we propose to apply the Commission's secondary market policies and rules applicable to

¹ Connecting America: The National Broadband Plan, Recommendation 5.8.4, p.87 (2010) (*National Broadband Plan*). This figure consists of 40 megahertz of the 2 GHz band, 40 megahertz of the L-band, and 10 megahertz of the Big LEO band.

² See SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC, IB Docket No. 08-184, *Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Red 3059 (IB, OET, WTB 2010).

terrestrial services to all transactions involving the use of MSS bands for terrestrial services in order to create greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service.

3. In the NOI, we request comment on further steps we can take to increase the value, utilization, innovation, and investment in MSS spectrum generally. Building upon the proposed Fixed and Mobile allocations in the 2 GHz band, and to address, in part, the recommendations of the National Broadband Plan for increasing terrestrial deployment on spectrum currently allocated for MSS, we inquire about approaches for creating opportunities for full use of the 2 GHz band for stand-alone terrestrial uses while ensuring that an appropriate portion of the step-up in the value of the band inures to the public interest. The NOI requests comment on other ways to promote innovation and investment throughout the MSS bands while also ensuring market-wide mobile satellite capability to serve important needs like disaster recovery and rural access.

II. BACKGROUND

4. MSS is a radiocommunication service involving transmission between mobile earth stations and one or more space stations.³ MSS systems can provide communications in areas where it is difficult or impossible to provide communications coverage via terrestrial base stations, such as remote or rural areas and non-coastal maritime regions, and at times when coverage may be unavailable from terrestrial-based networks, such as during natural disasters.⁴ Three frequency bands that are allocated to the MSS are capable of supporting broadband service:⁵ the 2 GHz Band from 2000-2020 MHz and 2180-2200 MHz,⁶ the Big LEO Band from 1610-1626.5 MHz and 2483.5-2500 MHz,⁷ and the L-band from 1525-1559 MHz and 1626.5-1660.5 MHz.⁸

5. In 2003, the Commission adopted rules for licensing and operation of ancillary terrestrial component (ATC) facilities by MSS operators.⁹ ATC consists of terrestrial base stations and mobile

³ See 47 C.F.R. § 2.1(c).

⁴ See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands*, IB Docket No. 01-185, ET Docket No. 95-18, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15,532 at ¶ 1 (2001) (*MSS Flexibility NPRM*).

⁵ MSS is also provided in the Little LEO band from 137-138 MHz, 148-150.05 MHz, and 400.15-401 MHz. 47 C.F.R. § 25.202(a)(3). We have excluded this band from this discussion because it is unsuitable for provision of terrestrial broadband services.

⁶ The Notice of Proposed Rulemaking section below discusses the Region 2 and U.S. allocations for the 2 GHz MSS band.

⁷ The Big LEO band at 1610-1626.5 MHz is allocated on a primary basis in Region 2 and in the U.S. for Mobile Satellite Service, and on a co-primary basis for Aeronautical Radionavigation and Radiodetermination Satellite Services. Radioastronomy has a co-primary allocation at 1610.6-1613.8 MHz in Region 2 and the U.S. The 2483.5-2500 MHz band is allocated on a primary basis in Region 2 and in the U.S. for Mobile Satellite Service. In Region 2 there are also co-primary allocations for Radiodetermination Satellite, Fixed, Mobile and Radiolocation Services. In the U.S. there are co-primary allocations at 2483.5-2495 MHz for the Radiodetermination Satellite Service and at 2495-2500 MHz co-primary allocations for Fixed, Mobile and Radiodetermination Satellite Services.

⁸ The L-band at 1525-1559 MHz is allocated on a primary basis in Region 2 and in the U.S. for Mobile Satellite Service, and at 1525-1535 MHz in Region 2 on a co-primary basis for Space Operation Services and on a secondary basis for Earth Exploration Satellite, Fixed, and Mobile Services. At 1626.5-1660.5 MHz is allocated on a primary basis in Region 2 and in the U.S. for Mobile Satellite Service, and 1660-1660.5 MHz is co-primary with Radio Astronomy Service.

⁹ Operation of ATC networks is permitted in certain spectrum allocated for Mobile-Satellite use under a footnote to the United States Table of Allocations. 47 C.F.R. § 2.106, footnote US380. When we coordinated this item with NTIA, they indicated that the service rules for MSS ensure compatible operation with Federal systems in and (continued....)

terminals to enhance coverage in areas where the satellite signal is attenuated or unavailable, re-using frequencies assigned for MSS operations.¹⁰ An MSS licensee may request blanket authority under its satellite authorization for operation of ATC stations in the United States.¹¹ The Commission adopted rules establishing several “gating criteria” that MSS operators must meet in order to obtain ATC authority.¹² First, to ensure that ATC will be ancillary to the provision of MSS, the Commission adopted a general requirement that MSS operators must provide substantial satellite service.¹³ In order to meet the substantial service requirement, an MSS operator must provide continuous satellite service in specified geographic areas,¹⁴ maintain spare satellites¹⁵ and make MSS commercially available throughout the required coverage area.¹⁶ To remain consistent with the Mobile-Satellite allocation¹⁷ and service rules, the Commission also required MSS-ATC licensees to offer a truly integrated service.¹⁸ Finally, as indicated in the *ATC Second Reconsideration Order*, “any MSS operator wishing to incorporate ATC into its system must meet the gating criteria for each spectrum band in which it wishes to provide ATC.”¹⁹

6. The deployment of MSS and ATC in the 2 GHz band has been a slow process. In 1997, the Commission reallocated 70 megahertz of spectrum for the 2 GHz MSS band,²⁰ which was reduced to 40 megahertz in 2003.²¹ The MSS allocation required the relocation of Broadcast Auxiliary Services (BAS) incumbents from the 2000-2020 MHz uplink band and Fixed point-to-point microwave incumbents from

(Continued from previous page)

adjacent to the bands allocated to the MSS, but that a more detailed review would be appropriate if changes to those rules are required.

¹⁰ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003) (*ATC Report and Order*), modified by Order on Reconsideration, 18 FCC Rcd 13590 (2003), reconsidered in part in *Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616 (2005) (*ATC Second Reconsideration Order*), further reconsideration pending.

¹¹ *ATC Report and Order* at ¶ 240. An individual, site-specific license must be obtained for any ATC base station that presents an aviation-hazard issue or for which an Environmental Assessment must be prepared. *Id.* at ¶ 239; also see 47 CFR §§ 1.1307, 17.4, and 17.7.

¹² These gating criteria are set forth in 47 CFR § 25.149.

¹³ *ATC Report and Order* at ¶¶ 72-86.

¹⁴ 47 CFR § 25.149(b)(1).

¹⁵ 47 CFR § 25.149(b)(2).

¹⁶ 47 CFR § 25.149(b)(3).

¹⁷ The Commission explained that ATC authority permits licensees to deploy MSS ATC subject to several conditions designed in part to ensure the allocation remains first and foremost a satellite service. See *ATC Report and Order* at ¶ 31.

¹⁸ 47 C.F.R. § 25.149(b)(4); *ATC Report and Order* at ¶¶ 87-88; *ATC Second Reconsideration Order*. The integrated service requirement can be satisfied by use of a dual-mode handset that can communicate with both the MSS satellite and ATC network or by submitting evidence demonstrating that the service they propose to offer will be integrated.

¹⁹ *ATC Second Reconsideration Order* at ¶ 34.

²⁰ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 at ¶ 14 (1997) (*MSS First Report and Order*).

²¹ Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, ET Docket No. 99-81, *Third Report and Order, Third Notice of Proposed Rule Making and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 at ¶ 28 (2003) (*AWS Third Report and Order*).

the 2180-2200 MHz downlink band, which has been a lengthy process.²² One 2 GHz band operator, currently identified in the Commission's records under the name of New DBSD Satellite Services G.P. (formerly New ICO Satellite Services G.P.) (DBSD), launched a satellite in April 2008 and has stated that it plans to offer mobile video, navigation and emergency assistance services (Mobile Interactive Media (MIM)) to vehicles or mobile personal communication devices.²³ However, DBSD, which is in the process of emerging from bankruptcy, has no definite plans as to when it will begin commercial satellite service.²⁴ TerreStar Networks Inc. (TerreStar) launched a satellite in July 2009 and plans to offer integrated satellite and terrestrial voice, data and video services.²⁵ TerreStar has announced plans to initiate commercial satellite service under a roaming and distribution agreement with AT&T for an integrated smartphone.²⁶ Although TerreStar and DBSD have received ATC authority, neither has commercial ATC stations in operation.²⁷

7. In the L-band and Big LEO MSS bands, MSS is more established and the Commission has taken additional steps to promote the development of ATC. The L-band in the United States is shared by Inmarsat, the largest commercial MSS operator in the world,²⁸ and SkyTerra Communications, Inc. (SkyTerra), which provides MSS in the United States and Canada. SkyTerra's ATC authority was recently modified to provide additional flexibility for the technical design of the ATC network, allowing for greater capacity and improved spectrum efficiency,²⁹ and the transfer of control of SkyTerra to Harbinger Capital Partners Funds (Harbinger) was recently approved.³⁰ SkyTerra/Harbinger plan to

²² See, e.g., Improving Public Safety Communications in the 800 MHz Band, *Report and Order and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, ET Docket No. 00-258 and ET Docket No. 95-18, 24 FCC Rcd 7904 at ¶¶ 5-23 (2009).

²³ 2008 Annual Report of ICO Communications (Holdings) Ltd., SEC Form 10-K, 6 (March 31, 2009); See also DBSD North America Alpha Trials (available at http://www.ico.com/_about/tech/dbsd-north-america-alpha-trials.php).

²⁴ *Bench Decision on Confirmation*, DBSD North America, Inc., Case No. 09-13061 (REG), at 7, 12-14 (Bankr. S.D.N.Y. issued Oct. 26, 2009).

²⁵ 2009 Annual Report of TerreStar Corp., Amendment No. 1, SEC Form 10-K, 1-2 (May 5, 2010).

²⁶ *Introducing the TerreStar Genus Smartphone*, available at <http://www.terrestar.com/genus.php>. The terrestrial portion of the smartphone operates in another frequency band using AT&T's terrestrial wireless network.

²⁷ See TerreStar Networks Inc., Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MSS-ATC Mobile Terminals in the 2 GHz MSS Bands, *Order and Authorization*, 25 FCC Rcd 228 (Int'l Bur. 2010); New ICO Satellite Services G.P., Application for blanket authority to operate Ancillary Terrestrial Component base stations and dual-mode MSS-ATC mobile terminals in the 2 GHz MSS bands, *Order and Authorization*, 24 FCC Rcd 171 (Int'l Bur. 2009).

²⁸ The Inmarsat 4 (I-4) satellite network consists of three satellites and offers world-wide coverage with broadband capabilities. See Comments of Inmarsat PLC, In the Matter of Report to Congress Regarding the ORBIT Act, IB Docket No. 09-48, April 29, 2009 at 2. See also http://www.inmarsat.com/About/Our_satellites/default.aspx?language=EN&textonly=False. Inmarsat has not sought ATC authority, but is permitted to do so under our rules.

²⁹ SkyTerra Subsidiary LLC Application for Modification Authority for an Ancillary Terrestrial Component, File Nos. SAT-MOD-20090429-00047/00046, SES-MOD-20090429-00536, *Order and Authorization*, 25 FCC Rcd 3043 (Int'l Bur. 2010). Up to 40 megahertz of spectrum may be available for ATC in the L-band depending on the efforts of the L-band operators to rationalize the spectrum assignments through the international process. *National Broadband Plan*, p.87.

³⁰ Applications for Consent to Transfer Control of SkyTerra Subsidiary LLC, IB Docket No. 08-184, *Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Rcd 3059 (WTB, OET 2010) reconsideration pending (*SkyTerra/Harbinger Order*).

launch two “next-generation” satellites in the 2010-2011 timeframe that will be capable of providing high-speed broadband services to small customer handsets approximately the size of cell phones. They also plan to construct an integrated national satellite/terrestrial “fourth generation” mobile broadband network,³¹ using spectrum from the L-band (10 megahertz now, and an additional 30 megahertz in the future through a cooperation agreement with Inmarsat) and 13 megahertz of terrestrial spectrum to which SkyTerra/Harbinger has access.³² The approval of the SkyTerra/Harbinger transfer was conditioned on adherence to certain voluntary commitments Harbinger made regarding the construction and operation of a proposed integrated satellite/terrestrial “fourth generation” mobile broadband network.³³

8. In the Big LEO band, both Iridium and Globalstar provide worldwide voice and data communications,³⁴ and only Globalstar has requested ATC authority (which it has received).³⁵ Globalstar has indicated that it plans to collaborate with one or more terrestrial partners to offer MSS bundled together with ATC broadband service.³⁶ In 2007, Globalstar and Open Range Communications, Inc. (Open Range) filed a notification with the Commission indicating that they had entered into a “spectrum manager lease agreement” whereby Open Range would be deploying terrestrial broadband service in several markets, pursuant to Globalstar’s ATC authority, using spectrum in the 2.4 GHz MSS band.³⁷ In 2008, the Commission modified Globalstar’s ATC authority for certain technical requirements and waived the ATC gating criteria on an interim basis and subject to certain conditions, found that the Commission’s ATC policies specifically contemplated spectrum leasing arrangements, and allowed Globalstar and its lessee Open Range Communications Inc. to deploy ATC service in the 2483.5-2495 MHz band.³⁸

³¹ “Fourth generation” networks provide speeds to end users commensurate with technologies such as 3GPP Long Term Evolution (LTE) or Worldwide Interoperability for Microwave Access (WiMAX) standards.

³² *SkyTerra/Harbinger Order* at Attachment 1 at 1. In addition, SkyTerra/Harbinger indicated that they were discussing with other Commission licensees the possibility of “pooling” spectrum, whereby the MSS and other spectrum would be incorporated into the infrastructure of the terrestrial wireless network. *Id.*

³³ *SkyTerra/Harbinger Order* at ¶ 72 and Attachment 2.

³⁴ Due to satellite equipment failures, Globalstar’s two-way service is currently not continuously available. See letter dated July 13, 2007 to the Acting Chief of the International Bureau from William F. Adler, Secretary of Globalstar Licensee LLC, in IBFS File No. SAT-STA-20070713-00098.

³⁵ Globalstar LLC Request for Authority to Implement an Ancillary Terrestrial Component for the Globalstar Big LEO Mobile Satellite Service System, *Order and Authorization*, 21 FCC Rcd 398 (Int’l Bur. 2006). Globalstar is permitted to operate ATC at 1610-1617.775 MHz and 2483.5-2495 MHz. 47 C.F.R. § 25.149(a)(2)(iii).

³⁶ Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities, *Order and Authorization*, File No. SAT-MOD-20080516-00106, 23 FCC Rcd 15975 at ¶ 5 (2008) (*Globalstar Waiver Order*).

³⁷ *Id.* at ¶¶ 5-7; See Globalstar Licensee LLC and OpenRange Communications Inc. – Notification of Spectrum Manager Lease Agreement, File No. SAT-MOD-20080516-00106, filed Nov. 14, 2007. At the time (just as today), the MSS rules had no established procedures with respect to entering into spectrum leasing arrangements to provide terrestrial services pursuant to an MSS licensee’s ATC authorization. In terming its leasing arrangement as a “spectrum manager leasing arrangement,” Globalstar was drawing upon the “spectrum manager” model established with regard to spectrum leasing arrangement in the Wireless Radio Services. See discussion below, in section III. B.

³⁸ *Globalstar Waiver Order* at ¶¶ 21-23, 24-27, 28-33. ATC operation is conditioned on Globalstar providing two-way MSS operations for the required geographic coverage area by July 1, 2010, and two-way MSS to customers equipped with dual-mode MSS-ATC terminals by July 1, 2011. Globalstar has petitioned for a sixteen-month extension of these dates. Request for Modification of Waiver Conditions, Globalstar Licensee LLC, File No. SAT-MOD-20091214-00152, filed Dec. 14, 2009. The July 1, 2010 deadline has been extended until August 2, 2010. Globalstar Licensee LLC Application for Modification of License to Extend Dates for Coming into Compliance (continued....)

III. NOTICE OF PROPOSED RULEMAKING

9. Today we take steps to make additional spectrum available for mobile broadband services, while ensuring that America has robust mobile satellite service capability to meet public safety, rural connectivity, federal government, and other important needs. In this Notice of Proposed Rulemaking we propose to take a number of actions to further our goal of enabling the provision of terrestrial broadband services in the MSS bands. In the 2 GHz MSS band, we propose to add co-primary Fixed and Mobile allocations to the existing Mobile-Satellite allocation. While this action in itself does not change the status of the existing MSS licensees and the Commission's service rules for MSS and ATC networks, it lays the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. In keeping with this proposed flexible allocation for the 2 GHz MSS band, if an MSS license is cancelled for any reason we also propose not to assign any additional spectrum for MSS in this band to either the existing MSS licensees or to a new MSS entrant. To further our goal of increasing the provision of terrestrial broadband services in the MSS bands, we also propose to apply the Commission's terrestrial secondary market spectrum leasing rules and procedures to transactions involving terrestrial use of MSS spectrum in the 2 GHz, Big LEO and L-bands.

A. 2 GHz MSS Band Allocation

10. We tentatively conclude to add primary Fixed and Mobile allocations to the 2000-2020 MHz and 2180-2200 MHz bands. This allocation will be co-primary with the existing Mobile-Satellite allocation for these bands. By making this allocation we lay the groundwork for future flexibility in use of this spectrum and will bring our allocation for this band into harmony with international allocations. Currently, the 1980-2010 MHz band is allocated to Fixed, Mobile, and Mobile-Satellite (Earth-to-space) on a primary basis while the 2170-2200 MHz band is allocated to the Fixed, Mobile, and Mobile-Satellite (space-to-Earth) on a primary basis in the international table for all regions.³⁹ The 2010-2025 MHz band is allocated to Fixed, Mobile, and Mobile-Satellite (Earth-to-space) on a primary basis in Region 2 (North and South America) and to Fixed and Mobile on a primary basis in other regions.

11. We note that prior to 1997 both the 2 GHz MSS uplink and downlink bands were allocated for Fixed and Mobile services⁴⁰ and used predominantly by BAS⁴¹ and Fixed Service (FS) licensees in the 2000-2020 MHz and 2180-2200 MHz bands, respectively. In 1997 the Commission reallocated the 1990-2025 MHz band to Mobile-Satellite (Earth-to-space) and the 2165-2200 MHz band to Mobile-Satellite (space-to-Earth).⁴² Later, in 2003 the Commission reallocated 30 megahertz in the 1990-2000 MHz, 2020-2025 MHz, and 2165-2180 MHz bands for Fixed and Mobile services on a primary basis.⁴³ The 2003 reallocation retained the remaining 40 megahertz of spectrum in the 2000-2020 MHz and 2180-2200 MHz bands for MSS use.⁴⁴ A footnote to the Table of Frequency Allocations permits MSS operators to operate ATC in conjunction with their MSS networks despite the fact that these bands are not presently

(Continued from previous page) _____
with Ancillary Terrestrial Component Rules, File No. SAT-MOD-20091214-00152, *Order*, DA-10-1225 (IB June 30, 2010).

³⁹ See 47 C.F.R. § 2.106.

⁴⁰ See 47 C.F.R. § 2.106 (1996).

⁴¹ 47 C.F.R. §§ 74.602, 78.18(a)(6), 101.803(b). The band is also authorized for use by the Cable Television Relay Service (CARS) and the Local Television Transmission Service (LTTS). For purposes of this proceeding, we will refer to all three of these services under the collective term "BAS."

⁴² *MSS First Report and Order* at ¶ 14.

⁴³ *AWS Third Report and Order* at ¶ 28.

⁴⁴ *Id.*

allocated for Fixed and Mobile uses.⁴⁵ Because we are proposing that a Fixed and Mobile allocation be added to these bands, this footnote would no longer be necessary for the 2 GHz band. We propose to modify this footnote to remove the 2000-2020 MHz and 2180-2200 MHz bands. The current footnote is still necessary for the Big LEO and L-band MSS because these bands have no Fixed and Mobile allocations in the International Table.

12. Two footnotes in the Allocation Table, NG156 and NG168, permit certain BAS and FS licensees to continue to operate on a primary basis in the 2 GHz MSS band until December 9, 2013 (the sunset date for the band).⁴⁶ After the sunset date, any remaining licensees will operate on a secondary basis. In proposing to add primary Fixed and Mobile allocations to these bands, we are not proposing to change this relationship. The incumbent BAS and FS licensees will continue to operate with primary status until they are relocated or until the sunset date.⁴⁷ However, we tentatively conclude to amend these two footnotes to clarify that ATC operations by MSS will continue to be permitted on a primary basis after the sunset date but that existing Fixed and Mobile operations (*i.e.* the incumbent BAS and FS licensees) will become secondary on the sunset date.⁴⁸

13. The proposal to add Fixed and Mobile allocations is the first step to providing additional flexibility to the 2 GHz MSS bands.⁴⁹ The existing service rules continue to permit MSS and ATC operation and are not altered by the re-introduction of a Fixed and Mobile allocation to the band.⁵⁰ The existing MSS licensees, both of which have launched satellites, will continue to be able to operate under the terms of their licenses and must continue to comply with all of the Commission's existing ATC rules.⁵¹ In the NOI, we seek comment on additional steps to create the opportunity for expanded use of the 2 GHz band for terrestrial services.

⁴⁵ 47 C.F.R. § 2.106 footnote US380 ("In the bands 1525-1544 MHz, 1545-1559 MHz, 1610-1645.5 MHz, 1646.5-1660.5 MHz, 2000-2020 MHz, 2180-2200 MHz, and 2483.5-2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.").

⁴⁶ 47 C.F.R. § 2.106 footnotes NG156 and NG168. BAS licensees in the 2000-2020 MHz band with an initial application receipt date prior to June 27, 2000 and FS licensees in the 2180-2200 MHz band with an initial application receipt date prior to January 16, 1992 shall operate on a primary basis until the sunset date.

⁴⁷ If the incumbents refuse relocation, they will convert to secondary status as provided by the Commission's rules. The Commission is considering issues related to the relocation of the BAS incumbents in a separate proceeding. *Improving Public Safety Communications in the 800 MHz Band, Report and Order and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, ET Docket No. 00-258 and ET Docket No. 95-18, 24 FCC Rcd 7904 (2009).

⁴⁸ We recognize that further modifications to these footnotes may be necessary if new Fixed and Mobile service licenses are issued in the band, but we will not address that issue at this time.

⁴⁹ This item does not propose to alter the primary MSS allocation under the Emerging Technologies relocation policies. *See AWS Third Report and Order* at n.104 (Commission declined to apply the Emerging Technologies (ET) relocation policies to MSS entrants when it reallocated a portion of the 2 GHz MSS band for AWS because, at the time, the purposes of the ET relocation policy were not implicated, *i.e.*, prevent disruption to customers and minimize economic impact on licensees).

⁵⁰ *See* 47 C.F.R. §§ 25.101-701; *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, *Report and Order*, 15 FCC Rcd 16127 (2000); *ATC Report and Order* at ¶¶ 66-206.

⁵¹ We note specifically that fixed and mobile stations operating in the 2 GHz Band must comply with existing MSS ATC service rules specified in 47 C.F.R. 25.252, as well as the limits on the radiated power of out-of-band emissions in the 1559-1610 MHz band, among others, from ATC base and mobile stations according to the technical and operational conditions specified in the ATC authorizations.

14. We also believe that in the event that one or both of the 2 GHz MSS licenses were to be returned or cancelled for any reason, the returned spectrum could be used for terrestrial mobile broadband deployment. We last addressed the issue of “returned spectrum” in 2005, and concluded at that time that assigning each systems’ 10 megahertz of spectrum in each direction of transmission (20 megahertz per system) would serve the public interest. In reaching that conclusion, we considered alternative proposals that some, or all, of the returned spectrum be reallocated to other services, or made available for use by other MSS systems.⁵²

15. We propose that, in the event a 2 GHz MSS license is returned or cancelled, the spectrum covered by the license should not be assigned to the remaining licensee, or made available for a new MSS licensee. Assigning the returned spectrum under the existing satellite licensing rules would potentially limit options for flexible use and promotion of fixed/mobile deployment. Moreover, deployment of fixed and mobile services under the ATC framework may be substantially delayed by requirements for prior satellite deployment.⁵³ Accordingly, the returned spectrum would not be declared available for further licensing under the satellite licensing rules. As we explain in the accompanying NOI, we are exploring ways to promote the development of terrestrial mobile services. It is in the public interest to retain flexibility on how best to assign the spectrum, should it become available, until we make final decisions in this proceeding.

16. We seek comment on all of these proposals.

B. Secondary Market Rules and Procedures for Terrestrial Services in MSS Bands

17. We seek to modify the Commission’s policies and procedures with regard to spectrum leasing arrangements between MSS licensees and third parties for the provision of terrestrial services using MSS spectrum. Specifically, we propose to subject spectrum leasing arrangements between an MSS operator in the 2 GHz, Big LEO, and L-bands and a third party entity involving the use of MSS spectrum for the provision of terrestrial services to the Commission’s general secondary market spectrum leasing policies and rules that currently apply to wireless terrestrial services. This proposal would apply to all terrestrial use of the MSS spectrum in the 2 GHz, Big LEO, and L-bands, which currently consists of ATC operations, but in the future may include other terrestrial operations in the 2 GHz MSS band.⁵⁴ The proposal aims to provide greater regulatory predictability and parity, so that a common set of policies and rules applies for spectrum leasing arrangements involving the provision of terrestrial services, independent of the underlying allocation.

18. In 2003, in order to promote more efficient use of terrestrial wireless spectrum through secondary market transactions while also eliminating regulatory uncertainty, the Commission adopted a comprehensive set of policies and rules to govern spectrum leasing arrangements between licensees and spectrum lessees.⁵⁵ The *Secondary Markets First Report and Order* established policies and rules – including notification and/or approval procedures – by which terrestrially-based Wireless Radio Service

⁵² Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands, IB Docket Nos. 05-220, 05-221, *Order*, 20 FCC Rcd 19696 (2005), *reconsideration pending*.

⁵³ MSS licensees are required to make satellite service commercially available throughout their required coverage area before beginning ATC service. Consequently, a new MSS entrant would have to delay commencing ATC service while constructing and launching a satellite.

⁵⁴ As explained above, there are some BAS and FS operations in the 2 GHz MSS band. This proposal does not apply to these operations, which will lose primary status at the December 9, 2013 sunset date. Nor are we proposing to extend these terrestrial spectrum leasing policies to MSS leasing arrangements (e.g., transponder leases) that do not involve spectrum associated with terrestrial operations.

⁵⁵ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (*Secondary Markets First Report and Order*), *Erratum*, 18 FCC Rcd 24817 (2003).

licensees holding “exclusive use” spectrum rights could lease some or all of the spectrum usage rights associated with their licenses to third party spectrum lessees, which then would be permitted to provide wireless services consistent with the underlying license authorization.⁵⁶ Through these actions, the Commission sought to promote more efficient, innovative, and dynamic use of the terrestrial spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among terrestrial wireless service providers.⁵⁷ The Commission’s secondary markets policies and rules were designed to ensure that the spectrum leasing arrangements would be consistent with statutory requirements, including the requirements of Section 310(d) with respect to transfers of spectrum rights to third parties,⁵⁸ and that the Commission would have the opportunity to evaluate, in a streamlined process, the various public interest considerations that might arise.⁵⁹ At that time, the Commission decided not to extend these terrestrial spectrum leasing policies and rules to the satellite services (such as MSS), for which an established set of policies and rules pertaining to satellite-capacity transponder leasing was already in effect.⁶⁰

19. The 2004 *Secondary Markets Second Report and Order*⁶¹ built upon this spectrum leasing framework by, for example, establishing immediate approval procedures for categories of terrestrial spectrum leasing arrangements that do not raise potential public interest concerns (such as concerns relating to foreign ownership or competition),⁶² and extending the spectrum leasing policies to additional

⁵⁶ *Secondary Markets First Report and Order* at ¶¶ 8-9, 12-13, 91-92. Wireless Radio Services do not include satellite services. 47 C.F.R. § 1.907. Under these secondary market policies and rules, the service rules and policies applicable to the licensee under its license authorization – including all technical, interference, and operational rules – apply to the spectrum lessee as well. *Secondary Markets First Report and Order* at ¶¶ 91-92; see 47 C.F.R. §§ 1.9020(c)-(d), 1.9030 (c)-(d), 1.9035(c)-(d). The rules and procedures for spectrum leasing arrangements are set forth in Part 1, Subpart X. 47 C.F.R. §§ 1.9001 *et seq.*

⁵⁷ *Secondary Markets First Report and Order* at ¶ 2.

⁵⁸ *Secondary Markets First Report and Order* at ¶¶ 46-81 (revising the Commission’s standard for determining whether spectrum leasing arrangements constitute a transfer of *de facto* control under Section 310(d) in the context of the Wireless Radio Services); see also 47 C.F.R. § 1.9010.

⁵⁹ *Secondary Markets First Report and Order* at ¶¶ 4, 91-92, 123-125, 150-159, 180. The Commission provided for two different types of spectrum leasing arrangements – (1) spectrum manager leasing arrangements, which do not involve a transfer of *de facto* control under Section 310(d) and (2) *de facto* transfer leasing arrangements, which do involve a transfer of *de facto* control. For notifications regarding proposed spectrum manager leasing arrangements, the parties are required to file the notification at least 21 days in advance of commencing operations, and the notification will be placed on public notice for comment; the Commission could prevent the leasing arrangement from going into effect (or continuing) if it found that the public interest was not being served (e.g., where competitive harms were present). *Id.* at ¶¶ 123-125. Applications for *de facto* transfer leasing arrangements are subject to approval in a streamlined, 21-day approval process unless the Commission determined that the public interest was not being served. *Id.* at ¶¶ 150-159.

⁶⁰ *Id.* at ¶¶ 204-212. See also Establishment of Domestic Communication-Satellite Facilities by Nongovernmental Entities, Docket No. 16495, *Report and Order*, 22 FCC 2d 86 (1970); Domestic Fixed-Satellite Transponder Sales, CC Docket No. 82-45, *Memorandum Opinion, Order and Authorization*, 90 FCC 2d 1238 (1982), *aff’d sub nom. World Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984); Amendment of the Commission’s Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service, IB Docket No. 95-41, *Report and Order*, 11 FCC Rcd 2429 (1996).

⁶¹ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004) (*Secondary Markets Second Report and Order*).

⁶² *Id.* at ¶¶ 4, 10-50.

Wireless Radio Services as well as Public Safety services.⁶³ The Commission has continued to add terrestrial services to this secondary market spectrum leasing framework, including the Advanced Wireless Services in 2003 (when the service rules were adopted for this new service)⁶⁴ and the Broadband Radio Services and Educational Broadband Services in 2004 (when the rebanding plan for these services in the 2.5 GHz band was adopted).⁶⁵

20. In its 2008 *Globalstar Modification Order*, the Commission determined that its ATC policies specifically contemplated that an MSS licensee might lease access to MSS spectrum to a third-party ATC provider (provided that the ATC gating requirements are met).⁶⁶ The Commission also found that the particular MSS/ATC spectrum leasing arrangement between MSS licensee Globalstar and terrestrial provider Open Range was consistent with Commission policy, including the statutory requirement relating to transfers of control under Section 310(d) as that requirement is interpreted under the standard set forth in the *Secondary Markets First Report and Order* for Wireless Radio Services.⁶⁷ While the Commission did not expressly adopt the terrestrial Wireless Radio Services spectrum leasing policies for MSS/ATC spectrum leasing arrangements, it nonetheless applied the statutory interpretation relating to those policies to the particular lease of MSS spectrum associated with Globalstar's ATC authorization.⁶⁸

21. As noted above, SkyTerra/Harbinger also has proposed various arrangements that involve the use of MSS spectrum in the provision of terrestrial services. In particular, it plans to combine MSS L-band spectrum and terrestrial spectrum in the 1.4 GHz and 1670-1675 MHz bands (some of which was obtained in the secondary market through the terrestrial spectrum leasing rules), and also proposes to include the use of additional terrestrial spectrum licensed or controlled by other Commission licensees with which it may enter into spectrum arrangements, as part of its network.⁶⁹ The approval of the SkyTerra/Harbinger transaction by the Chiefs of the International Bureau, the Office of Engineering and Technology, and the Wireless Telecommunications Bureau addressed similar issues related to the leasing, or use, of MSS spectrum by third parties insofar as the approval included adoption of Harbinger's voluntary commitment to obtain prior Commission approval before entering into certain business arrangements with the largest and second largest wireless providers at the time of the arrangement.⁷⁰ As

⁶³ *Id.* at ¶¶ 51-60. The Commission did not extend these rules to satellite services. At that time, no commenters had proposed extending the spectrum leasing rules for Wireless Radio Services to any satellite services. *Id.* at ¶ 66.

⁶⁴ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (*AWS-1 Service Rules Report and Order*); *Order on Reconsideration*, 20 FCC Rcd 14058 (2005).

⁶⁵ Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket Nos. 03-66, 03-67, 02-68, 00-230, MM Docket No. 97-217, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 at ¶¶ 177-181 (2004).

⁶⁶ *Globalstar Waiver Order* at ¶ 25.

⁶⁷ Specifically, the Commission found that the leasing arrangement was consistent with a "spectrum manager" leasing arrangement under its spectrum leasing policies for Wireless Radio Services. As such, the lease did not involve a transfer of *de facto* control, and no prior Commission approval was required. *Id.* at ¶¶ 25-26. Furthermore, the Commission found that the parties' notification to the Commission of the proposed spectrum leasing arrangement before operations commenced – which provided detailed information and various certifications about the lease as well as the parties' respective responsibilities – was consistent with the Commission's spectrum leasing policies for Wireless Radio Services, which requires that spectrum leasing parties provide notification to the Commission, including certain specified information about the arrangement, in advance of commencing operations under the lease. *Id.* at ¶ 27.

⁶⁸ *Id.* at ¶¶ 24-27.

⁶⁹ See *supra* ¶ 7; *SkyTerra/Harbinger Order*, Attachment 1.

⁷⁰ *SkyTerra/Harbinger Order* at ¶ 72 and Attachment 2.

Globalstar, SkyTerra/Harbinger, and other MSS providers realize their plans to offer high-speed broadband services to consumers using terrestrial networks under their ATC authority, the services they offer have the potential to expand the services offered in the overall market of mobile terrestrial wireless services and enhance competition in this larger mobile marketplace.⁷¹

22. Given these developments in the use of MSS spectrum for the provision of terrestrial services through various secondary market arrangements, we now propose to subject MSS/ATC spectrum leasing arrangements to the same general policies and rules – including notification and/or approval procedures – that we currently apply to spectrum leasing arrangements involving Wireless Radio Services.⁷² We expect that technological advancements will enable MSS licensees and their spectrum lessees to use their ATC authority to provide mobile broadband services similar to those provided by terrestrial mobile providers and enhance competition in the mobile broadband sector.⁷³ As the kinds of terrestrial services that will be offered using MSS spectrum converges with those services offered by terrestrial mobile providers, we tentatively conclude that spectrum leasing arrangements associated with both should be treated consistently. Such action would create greater predictability, consistency, and transparency between all spectrum leasing arrangements involving terrestrially-based mobile service offerings. Further, this would ensure that the Commission would have the opportunity to evaluate, in a streamlined process, the various public interest considerations that might arise with respect to MSS/ATC spectrum leasing arrangements. We seek comment on these proposals.

23. We start with the premise that the Commission's general spectrum leasing framework currently applicable to all terrestrial Wireless Radio Services spectrum leasing arrangements should apply to MSS/ATC spectrum leasing arrangements. Accordingly, we would require that leasing parties submit specified information and certifications (including information about the parties, the amount and geographic location of the spectrum involved, and other overlapping terrestrial-use spectrum holdings of the parties) to the Commission in advance of any operations that would be permitted pursuant to the proposed transaction.⁷⁴ As with proposed spectrum leasing arrangements involving Wireless Radio Services, to the extent a proposed arrangement does not raise potential public interest concerns, the transaction would be subject to immediate processing or approval,⁷⁵ whereas to the extent potential public

⁷¹ See *supra* ¶¶ 6-8; see also Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66, *Fourteenth Report* at ¶ 37 (May 20, 2010) (*Fourteenth Mobile Competition Report*).

⁷² See generally 47 C.F.R. §§ 1.9001 *et seq.* (Part 1, Subpart X – Spectrum Leasing). Currently, terrestrial operations in the MSS spectrum are governed by the ATC rules and authorizations. As noted above, the secondary market policies and rules do not alter the underlying service rules and policies that apply to the licensee and, in turn, the spectrum lessee. We note that the existing MSS ATC service rules for the 2 GHz Band (47 C.F.R. 25.252), L-Band (47 C.F.R. 25.253), and Big LEO Band (47 C.F.R. §25.524) require coordination with radio astronomy stations (see also 47 C.F.R. § 25.213); accommodate Global Maritime Distress and Safety System and Aeronautical Mobile-Satellite (Route) Service emergency communications; protect the Search and Rescue Satellite-Aided Tracking Earth stations, and restrict on out-of-band emissions in the radionavigation satellite service band used by Global Positioning System. The Commission intends to coordinate any future grant of ATC authority with NTIA, pursuant to the general notification process, to assure adequate protection of the GPS. See *ATC Second Reconsideration Order* ¶ 71.

⁷³ See *Fourteenth Mobile Competition Report* at ¶ 37 (describing developments in the MSS spectrum bands).

⁷⁴ This could be in the form of a notification, such as for a spectrum manager leasing arrangement that did not involve transfer of *de facto* control, or an application.

⁷⁵ See *Secondary Markets Second Report and Order* at ¶¶ 15-28, 47-50; 47 C.F.R. § 1.9020(e)(2) (immediate processing for spectrum manager leasing arrangements); § 1.9030(e)(2) (immediate approval procedures for *de facto* transfer leasing arrangements).

interest concerns were raised (e.g., potential competitive harms⁷⁶) the transaction would be subject to streamlined procedures as the Commission evaluated whether the public interest would be served by the proposed transaction.⁷⁷

24. We also seek comment on whether only a subset of the spectrum leasing policies and rules applicable to Wireless Radio Services should be applied to terrestrial use of MSS spectrum relating to ATC services, and if so, which ones. For instance, considering that the ATC rules require use of an integrated MSS/ATC network, should MSS licensees and potential lessees of MSS/ATC spectrum only be permitted to enter into spectrum manager leasing arrangements,⁷⁸ or should they also have the option of entering into *de facto* transfer leasing arrangements, as permitted in the Wireless Radio Services?⁷⁹ As the Commission evaluates whether a particular MSS/ATC spectrum arrangement raises potential competitive concerns, what considerations should it take into account, and should those differ in any respect from its current considerations of potential competitive harms under the existing spectrum leasing policies applicable to terrestrial mobile services? We propose to require that parties seeking to enter into MSS/ATC spectrum leasing arrangements file the requisite information using the form used for spectrum leasing arrangements involving the Wireless Radio Services.⁸⁰ We also seek comment on how the adoption of industry-wide MSS/ATC spectrum leasing rules should affect existing MSS leasing arrangements. What other concerns or issues do commenters think should be addressed? We invite commenting parties to address any aspect of the approach we are proposing.

25. Finally, we seek comment on whether the Commission's secondary market policies and rules for terrestrial wireless services need to be modified to accommodate spectrum leasing arrangements or other secondary market transactions involving non-ATC terrestrial use of spectrum allocated or co-allocated to MSS, such as the proposals discussed in the NOI below.

IV. NOTICE OF INQUIRY

26. In this Notice of Inquiry, we launch a broader inquiry into how we can best increase the value, utilization, innovation and investment in the spectrum for terrestrial services throughout the 2 GHz, Big LEO and L-bands, while ensuring that the United States market, as a whole, continues to have robust mobile satellite service capabilities. As an initial matter, we focus on flexibility for deploying new mobile broadband services under the proposed co-primary Fixed and Mobile allocations in the 2 GHz band. We also are interested in additional options for increasing terrestrial use of the Big LEO and L-bands.

⁷⁶ Spectrum leasing arrangements, like license assignments or transfers of control, potentially raise competitive issues, and thus are subject to the same Commission policies pertaining to competition. *Secondary Markets First Report and Order* at ¶¶ 116-119, 147. If a proposed spectrum leasing arrangement raises the potential for competitive harm, the transaction will not be subject to immediate processing or approval. *Secondary Markets Second Report and Order* at ¶¶ 25-27, 49 (spectrum leasing arrangements are subject to the Commission's competition policies associated with the provision of mobile services). In the *Secondary Markets Second Report and Order*, the Commission noted that spectrum leasing arrangements involving MSS spectrum where ATC is permissible potentially raised competitive concerns similar to those involving other terrestrial mobile services. *Id.* at ¶ 26.

⁷⁷ See *Secondary Markets Second Report and Order* at ¶¶ 14-50; *Secondary Markets First Report and Order* at ¶¶ 123-125, 151-159, 181; 47 C.F.R. §§ 1.9020(e)(1); 1.9030(e)(1).

⁷⁸ As noted above, Globalstar's spectrum leasing arrangement with Open Range is a "spectrum manager" leasing arrangement. In spectrum manager leasing arrangements, the MSS licensee retains *de facto* control and acts as a "spectrum manager" by maintaining an active, ongoing oversight role over the spectrum lessee. See generally *Secondary Markets First Report and Order* at ¶¶ 94-125.

⁷⁹ See generally *Secondary Markets First Report and Order* at ¶¶ 126-181; 47 C.F.R. §§ 1.9020; 1.9030.

⁸⁰ 47 C.F.R. §§ 1.913(a)(5), 1.9003.

A. Utilizing the 2 GHz Band for Terrestrial Services

27. The current licensees, DBSD and TerreStar, are authorized to use the entire allocated 40 megahertz for MSS and related ATC operations. We seek comment on how best to encourage the growth of new mobile broadband services in the 2 GHz Band under the proposed co-primary Fixed and Mobile allocations in a way that will attract investment.

28. The National Broadband Plan recommends that Congress consider expressly expanding the FCC's authority to enable it to conduct incentive auctions in which incumbent licensees may relinquish rights in spectrum assignments to other parties or to the FCC in exchange for a portion of the proceeds realized by the auction of new spectrum licenses.⁸¹ That is, existing licensees could, on a voluntary basis, relinquish bandwidth in exchange for a portion of the proceeds from an auction for the new licenses authorizing terrestrial only services. Would voluntary incentive auctions, if Congress were to grant such authority to the FCC, be an appropriate mechanism for providing an option for incumbent 2 GHz MSS licensees to vacate the band in favor of mobile broadband providers operating on new licenses?

29. Alternatively, are there other approaches that could create licenses that would attract the substantial investment necessary to launch new mobile broadband services in the 2 GHz band and that are within the Commission's existing legal authority? Should existing 2 GHz MSS licensees be given the option to return some of their spectrum (which we could then auction to new terrestrial licensees) while concurrently modifying the MSS licensees' authorizations to allow them to operate terrestrial networks under the proposed Fixed and Mobile allocations instead of under the current ATC service rules? What is an appropriate metric for assessing how much bandwidth should be returned in exchange for modifying the existing MSS licenses? What, if any, additional conditions – such as build-out requirements for terrestrial networks – are appropriate or necessary to serve the public interest?

30. As noted in the National Broadband Plan, the 2 GHz MSS band is adjacent to the Advanced Wireless Services-2 paired "J" block at 2020-2025 MHz and 2175-2180 MHz.⁸² In any of the scenarios discussed above, would the opportunity to integrate the J Block and 2 GHz MSS spectrum help attract new investment and utilization of new mobile broadband networks in the 2 GHz band? If so, we seek comment on how the Commission could and whether it should take into account such potential as it decides how to increase utilization of the 2 GHz MSS spectrum for terrestrial use.

B. Increasing Value, Utilization, Innovation and Investment in all MSS Bands

31. As noted above, the Commission already has taken additional steps to promote the development of ATC in the Big LEO and L-bands. Are there any other actions that the Commission could take that would increase terrestrial use of the MSS bands? Are there any such actions that would specifically apply to the Big LEO or L-bands? Are there any value or investment promoting actions that might apply to MSS spectrum generally? Are there various incentives that the Commission could apply to help ensure that the public receives the maximum benefits from the use of the spectrum?⁸³

⁸¹ *National Broadband Plan*, Recommendation 5.4, p. 81.

⁸² See *National Broadband Plan*, Recommendation 5.8.3, p. 87. The Advanced Wireless Services-2 J block at 2020-2025 MHz is adjacent to the MSS band at 2000-2020 MHz and at 2175-2180 MHz to the MSS band at 2180-2200 MHz. The Commission has proposed service and technical rules for the paired "J" block. Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket 04-356, WT Docket 03-353, *Notice of Proposed Rulemaking*, 19 FCC Rcd 19263 (2004); Services Rules for Advanced Wireless Services in the 2155-2175 MHz Band, WT Docket Nos. 07-195, 04-356, *Further Notice of Proposed Rulemaking*, 23 FCC Rcd 9859 (2008). In the instant proceeding, we do not seek comment on the issues pending in WT Dockets 03-353 and 04-356.

⁸³ See generally *National Broadband Plan*, Recommendation 5.3, pp. 81-83 ("Expanding Incentives and Mechanisms to Reallocate or Repurpose Spectrum") (discussing various incentives, including incentive auctions, spectrum fees, and secondary market incentives).

32. As part of this inquiry, we also consider deployment of satellite and terrestrial services in the MSS bands, both within the U.S. and internationally. Do parties anticipate or plan to offer satellite and terrestrial services independent of each other or as part of combined, integrated network offerings? What is happening in other countries with respect to investment in the 2 GHz, Big LEO and L-bands?

33. We note the importance of maintaining MSS to provide services, for example, to public safety and Federal government agencies, to rural areas, and during natural disasters. How should the Commission assess the current and future spectrum needs for MSS so that it can assure those needs continue to be met? How many users depend on such services today? Where are they located? Are there, for example, certain remote or rural areas that appear to be more suitable than other areas for the use of such services? What are the characteristics of those areas (e.g., population size, income of residents, topography) that make them more suitable? Which particular services do they rely upon most? Are these services specific to a particular provider or band or can they be substituted by other MSS or FSS providers? To what extent can such services coexist with terrestrial uses in areas that do not rely as heavily upon MSS?

34. How can we ensure that the United States continues to have market-wide MSS capabilities, even as we take targeted actions to create opportunities for terrestrial use in specific MSS bands? Is it necessary to continue to support the capability of providing MSS in all three bands, or can we meet future needs with less allocated spectrum in some or all of the bands? If so, which band(s) are best suited for MSS?

V. PROCEDURAL MATTERS

A. Filing Requirements

35. *Ex Parte Rules.* The *Notice of Proposed Rulemaking* in this proceeding will be treated as a "permit-but-disclose" subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Rules.⁸⁴ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁸⁵ Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

36. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.⁸⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

⁸⁴ See 47 C.F.R. § 1.1206(b).

⁸⁵ See *id.* § 1.1206(b)(2).

⁸⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

37. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

38. Further Information: For further information, contact Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636, or via the Internet at Nicholas.Oros@fcc.gov.

B. Initial Regulatory Flexibility Analysis

39. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. An Initial Regulatory Flexibility Analysis is included in Appendix B.

40. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

VI. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i), 301, 303(c), 303(f), 303(r), 303(y), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, this Notice of Proposed Rulemaking and Notice of Inquiry IS ADOPTED.

42. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rule Making, and Notice of Inquiry, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-13061-reg

-----x

In the Matter of:

DBSD NORTH AMERICA, INC., et al.,

Debtors.

-----x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

September 22, 2009
9:15 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

1 Q. Okay. So to put a point on that, there's a reference in
2 the disclosure statement to the build-out of an ATC portion of
3 a hybrid MSS ATC network, right?

4 A. Yes.

5 Q. And ATC refers to what would be the terrestrial component
6 of a hybrid MSS ATC system, right?

7 A. Yes.

8 Q. And it essentially consists of land-based repeaters that
9 would amplify signals from a satellite, correct?

10 A. Not necessarily from the satellite. I mean, it could also
11 be just terrestrial to terrestrial. But it would enable
12 utilization of terminals terrestrially to carry signal.

13 Q. Okay. And fundamentally, in a hybrid MSS ATC system the
14 reason you have the ATC system is to improve the service that
15 you can offer as opposed to if you were just using the
16 satellite alone, right?

17 A. That's correct.

18 Q. Okay. And it would cost between 300 and 800 million
19 dollars to build out that ATC portion of the network, right?

20 A. If a service were enabled that required an ATC component,
21 yes that's the cost estimate.

22 Q. Okay. And the debtors, I take it, currently do not have
23 300 to 800 million dollars in financing to build an ATC
24 component of an MSS ATC network, right?

25 A. Not at this time, no.

- 1 Q. Okay. And the debtors currently do not intend to build
2 out an ATC network, right?
- 3 A. That's not what's contemplated in the current plan.
- 4 Q. There's also something in the plan and disclosure
5 statement that's referred to as the MIM, or M-I-M plan, is that
6 right?
- 7 A. Yes.
- 8 Q. And if I call it the MIM plan you'll understand what I'm
9 talking about?
- 10 A. Yes.
- 11 Q. Okay. And the cost to build out the MIM system is
12 estimated by the debtors to be approximately 1.5 billion
13 dollars, with a B, right?
- 14 A. Yes, that's correct.
- 15 Q. Okay. And I take it we can agree that the debtors
16 currently don't have 1.5 billion dollars to build a MIM system,
17 right?
- 18 A. Not currently, no.
- 19 Q. And you would, I think, agree with me that the debtors
20 have no prospect of obtaining 1.5 billion dollars in the next
21 four years, right?
- 22 A. I think the prospects are determined by strategic
23 partnering. So as far as raising financing on a standalone
24 basis to launch the MIM plan, at this time that's -- that's not
25 something that we're contemplating. However, a strategic

1 A. Given the current status of the debtors at this time, no
2 we're not in a position to do that today, no.

3 Q. In fact you just told us that you're not intending, the
4 debtors are not intending actually to build out either the MIM
5 system or the ATC portion of the MSS ATC network, correct?

6 A. The current plan that's been put forward does not
7 contemplate that, no.

8 Q. Okay. Mr. Corkery, in your -- do you recall filing a
9 reply affidavit in this case?

10 A. Yes. And in that affidavit do you recall referring to
11 certain options by which the debtors could potentially derive
12 revenue from their satellite?

13 A. Yes.

14 Q. None of those alternatives have been implemented, correct?

15 A. At this point, no, none of those alternatives are in
16 place.

17 Q. Okay.

18 A. Certain capabilities to enable them are in place but those
19 alternatives are not firmly in place today.

20 Q. Right. So for example, one of the things you referred to
21 is leasing the debtors' spectrum to some third party, correct?

22 A. Yes, that's correct.

23 Q. Okay. And the debtors don't have any deals in place to do
24 that, right?

25 A. We currently don't have a signed spectrum lease deal in

1 Q. Of any nature?

2 A. We've talked to AT&T and others in the wireless community
3 about our spectrum position. So, you know, we've had a variety
4 of different conversations. But we haven't sought a roaming
5 arrangement similar to what TerreStar has entered into.

6 Q. I don't mean to ask just about a roaming arrangement.
7 Part of your plan is you need either financing or a strategic
8 partner. You've been seeking strategic partners, right?

9 A. Yes.

10 Q. That's what the twenty-five million dollars per year is
11 going to do. It's to persuade lenders and potential strategic
12 partners that you're a good investment, right?

13 A. In part, yes.

14 Q. To date, have the debtors entered into any strategic
15 partnerships with strategic investors?

16 A. Not to this point, no.

17 Q. And it's not for lack of trying, right?

18 A. I mean, we have talked to a number of parties over time.
19 Again, I think there's substantial operational risk retirement
20 that's occurred over the last eighteen months through launching
21 the satellite, receiving our spectrum license, testing our
22 satellite and getting our ATC authorization, that's continued
23 to advance the ball for the company, that clearly will assist
24 in those discussions.

25 Q. Right. And in terms of the discussions that have already

EXHIBIT D

Sprint



Together with NEXTEL

Sprint Nextel

900 7th Street, N.W., Suite 700
Washington, DC 20001
Office: (703) 433-4140 Fax: (202) 585-1940

Lawrence R. Krevor
Vice President

July 14, 2010

Mindel De La Torre
Chief, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: 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. De La Torre:

Sprint Nextel Corporation ("Sprint Nextel") provides this brief response to a letter submitted by New DBSD Satellite Services G.P., Debtor-in-Possession ("DBSD") on July 13, 2010 (the "DBSD Letter") regarding the above-referenced transfer of control applications (the "Applications"). Although we believe the DBSD Letter to be procedurally improper because it attempts to argue matters already fully briefed with respect to Sprint Nextel's Petition to Deny the Applications,¹ we feel compelled to provide this response because DBSD apparently misunderstands Sprint Nextel's position.

First and foremost, at no point has Sprint Nextel ever contended that the Applications should be denied because DBSD has filed for bankruptcy or is attempting to discharge its obligations as part of its bankruptcy case. To the contrary, the Petition to Deny filed by Sprint Nextel states as follows:

At the outset, Sprint Nextel would like to clarify that it does not contend that the Applications should be denied because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel as part of that process.²

Counsel for Sprint Nextel made this identical statement at the opening of his remarks during the meeting on July 1, 2010.

¹ *Petition to Deny of Sprint Nextel Corporation*, File Nos. SES-T/C-20091211-01575, *et al* (Jan. 14, 2010) (the "Petition to Deny").

² *See Petition to Deny*, at p. 5.

As this statement makes clear, Sprint Nextel does not seek an order requiring DBSD to reimburse its portion of the BAS relocation expenses, and Sprint Nextel's opposition to the Applications is not based upon any "windfall" that DBSD may receive.³ Instead, Sprint Nextel contends that the Applications should not be granted unless ICO Global Communications (Holdings) Limited ("ICO Global") affirms its own obligation to reimburse Sprint Nextel for its *pro rata* share of the BAS relocation costs.⁴ Otherwise, ICO Global will receive a windfall by retaining an interest in the spectrum cleared by Sprint Nextel.⁵

It is well within the Commission's authority to affirm that ICO Global is jointly and severally liable for the reimbursement obligation, and such a determination does not run afoul of the Bankruptcy Code or any other federal law. With respect to DBSD's claim that Sprint Nextel's opposition to the Application violates the automatic stay provided by the Bankruptcy Code, Sprint Nextel has stated previously as follows:

Sprint Nextel recognizes that it is currently prohibited by the automatic stay imposed by the Bankruptcy Code from seeking reimbursement of costs owed by DBSD. Accordingly, Sprint Nextel wants to make clear that it is not requesting that the Commission now require that DBSD DIP reimburse Sprint Nextel as a condition of any license transfer. However, 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.⁶

Similarly, as discussed by Sprint Nextel in its prior papers in opposition to the Applications, a recognition of ICO Global's direct liability to Sprint does not violate Section 525 of the Bankruptcy Code.⁷ Accordingly, DBSD's arguments that Sprint's opposition to the

³ DBSD erroneously states that Sprint Nextel argued that DBSD will enjoy a windfall as a result of its bankruptcy discharge. See DBSD Letter, at p. 2.

⁴ See *Petition to Deny*, at 19 ("the subject Applications should not be granted unless approval is conditioned upon ICO Global also being responsible for reimbursing Sprint Nextel for its *pro rata* share of the band clearing costs."); see also *Reply of Sprint Nextel Corporation to Opposition of New DBSD Satellite Services G.P. to Petition to Deny*, File Nos. SES-T/C-20091211-01575, et al (Feb. 3, 2010) (the "Sprint Reply"), at pp. 12-14 (explaining that Sprint Nextel does not contend that ICO Global is responsible for a debt owed by DBSD but, instead, that ICO Global is itself directly liable for the reimbursement obligation).

⁵ Sprint has never complained of any windfall that DBSD may receive as a result of its bankruptcy discharge and, instead, has consistently stated that it is inappropriate for ICO Global to retain an interest in the spectrum unless it reimburses Sprint Nextel its *pro rata* share of the costs to clear that spectrum. The interest retained by ICO Global is indisputably worth at least \$28.5 million and may be worth as much as \$270 million. See *Petition to Deny*, at pp. 19-20.

⁶ See *Petition to Deny*, at p. 18 n. 38.

⁷ See *Sprint Reply*, at pp. 14-16.

Applications violates the Bankruptcy Code are all based on a fundamental misunderstanding by DBSD. Sprint Nextel is not seeking to impose liability upon DBSD but, instead, requests that the Commission affirm that ICO Global, an entity that is not under bankruptcy protection, is obligated to reimburse Sprint Nextel.

The other arguments asserted in the DBSD Letter simply repeat issues that have previously been discussed in the papers submitted in connection with the Applications and the Petition to Deny filed by Sprint Nextel. For that reason, Sprint Nextel does not believe it to be necessary or appropriate to provide a specific response to each of the additional arguments asserted in the DBSD Letter. It is important to note, however, that nowhere in the DBSD Letter does DBSD refute the fundamental point raised by Sprint Nextel in its Petition to Deny. DBSD has no current plans to provide service, nor does it have the funds to do so. Instead, DBSD intends to do nothing more than hold the spectrum until it is able to enter into a strategic transaction that will maximize the returns to the hedge funds that will obtain control of DBSD if the Applications are approved. DBSD has failed to provide any evidence that approval of the Applications will lead to the provision of service at any point in the near future, and for that reason, DBSD has failed to carry its burden of proof to show that approval of the Applications is in the public interest.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence R. Krevor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lawrence R. Krevor
Vice President

Mindel De La Torre, Federal Communications Commission
July 14, 2010
Page 4

CERTIFICATE OF SERVICE

I, Peter W. Denton, hereby certify that on this 14th day of July, 2010, copies of the foregoing letter to Mindel De La Torre, Federal Communications Commission, were also served upon the following:

New DBSD Satellite Services G.P., Debtor-in-Possession
11700 Plaza America Drive
Suite 1010
Reston, VA 20190
Attn: Stephen M. DeWees

Suzanne Hutchings Malloy
Senior Vice President, Regulatory Affairs
Peter A. Corea
Senior Regulatory Counsel
11700 Plaza America Drive, Suite 1010
Reston, VA 20190

/s/ Peter W. Denton
Peter W. Denton

EXHIBIT E

September 3, 2010

John H. Culver III
D 704.331.7453
F 704.353.3153
john.culver@klgates.com

Via E-Mail yosef.riemer@kirkland.com

Yosef J. Riemer
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, New York 10022

Re: In re DBSD North America, Inc.

Dear Yosef:

I write in response to your letter of September 1, 2010.

Your letter repeatedly misrepresents the positions of Sprint Nextel Corporation ("Sprint Nextel") in the various matters that are pending before the Federal Communications Commission ("FCC").¹ Although I can only speculate as to your motivation for misrepresenting Sprint Nextel's positions, the misrepresentations appear designed to create the appearance of violations of the Bankruptcy Code where none exist.

This is not the first time that your client has attempted to misrepresent Sprint Nextel's position. In a filing shortly after the July 1, 2010 meeting with the FCC, your client submitted a letter to Mindel De La Torre, Chief, International Bureau of the FCC, in which it made similar false statements and argued that Sprint Nextel's conduct somehow violated section 362 of the Bankruptcy Code.² To clarify the record, Sprint Nextel immediately responded to those false statements as follows:

First and foremost, at no point has Sprint Nextel ever contended that the Applications should be denied because DBSD has filed for bankruptcy or is attempting to discharge its obligations as part of its bankruptcy case. . . . Instead Sprint Nextel contends that the Applications should not be granted unless ICO Global Communications (Holdings)

¹ There are three DBSD transfer of control proceedings before the FCC: *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-20091211-01576; SAT-T/C-20091211-00144 (together the "Transfer Proceedings"). There is also an additional, related pending rulemaking proceeding before the FCC: *Improving Public Safety Communications in the 800 MHz Band, et al*, WT Docket No. 02-55, ET Dockets No. 00-258, 95-18 (the "Rulemaking").

² Letter from Peter A. Coreia, DBSD Satellite Services, G.P. dated July 13, 2010, at 1-2.

Yosef J. Riemer
September 3, 2010
Page 2

Limited ("ICO Global") affirms its own obligation to reimburse Sprint Nextel for its pro rata share of the BAS relocation costs.³

A similar statement was made by Sprint Nextel in the initial Petition to Deny that Sprint Nextel filed in the Transfer Proceedings. Sprint Nextel explicitly stated at the outset of that filing that Sprint Nextel does not contend that the transfer applications should be denied because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel as part of the bankruptcy process. Furthermore, I made the exact same statement to the FCC during the meeting on July 1, 2010, which was convened at your client's request.

To ensure that there is no further confusion on this point, please let me reiterate: **Sprint Nextel is not asking, nor has it ever asked, the FCC to require that DBSD pay anything to Sprint Nextel as a condition to the FCC's approval of the pending applications, nor has Sprint Nextel requested that the FCC deny the applications because DBSD filed for bankruptcy and is attempting to discharge debts owed to Sprint Nextel.**

It is true, of course, that Sprint Nextel has requested that the FCC make a determination that ICO Global Communications (Holdings) Limited ("ICO Global") is directly liable to Sprint Nextel for its *pro rata* share of the band-clearing costs incurred by Sprint Nextel. However, as your bankruptcy colleagues can confirm, the automatic stay provided by section 362 of the Bankruptcy Code applies only to debtors that have filed for bankruptcy. ICO Global has not filed for bankruptcy, and therefore, the automatic stay has no application to Sprint Nextel's attempt to collect from ICO Global.

Your argument that Sprint Nextel has somehow violated section 525 of the Bankruptcy Code is similarly misguided. For instance, on page 2 of your letter, you state that section 525 has been violated because the discharge of Sprint Nextel's claims against the Debtors is not a permissible basis for the transfer applications to be denied. As discussed above, however, **Sprint Nextel has never argued that the transfer applications should be denied because its claims may ultimately be discharged in DBSD's bankruptcy case.** Thus, your stated reason for a section 525 violation simply does not exist.

Your argument that Sprint Nextel is asking the FCC to "invade the Bankruptcy Court's jurisdiction" is similarly flawed. Your client has known (and in fact acknowledged) from the outset that it would need FCC approval to consummate its plan of reorganization, and the plan contains an express condition that it cannot become effective until that approval

³ Letter from Lawrence R. Krevor, Sprint Nextel, dated July 14, 2010, at 1-2.

Yosef J. Riemer
September 3, 2010
Page 3

is obtained. It seems obvious that the only body with jurisdiction to determine whether that approval should be granted is the FCC, and the FCC's consideration of that issue in no way "invades" the jurisdiction of the Bankruptcy Court. To the extent that there was ever any question regarding this obvious proposition, it was put to rest as a result of the negotiations that partially resolved Sprint Nextel's objection to the plan. As you may recall, one of Sprint Nextel's objections to the plan was that the retention of jurisdiction provisions contained in the plan were overly broad and had the potential to divest the FCC of matters within its primary jurisdiction. To resolve that objection, the retention of jurisdiction provisions in the plan were revised to confirm that the plan did not expand the jurisdiction of the Bankruptcy Court beyond the scope allowed by applicable law. To further address this point, the order confirming the plan was revised at Sprint Nextel's request to include paragraph 98 which states as follows:

Notwithstanding any other provision in the Plan or this Confirmation Order, no transfer of control and/or assignment of any rights and interests of the Debtors in any federal license issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such transfer of control and/or assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

Accordingly, there is no "invasion" of the Bankruptcy Court's jurisdiction. The Confirmation Order expressly recognizes that the issue of whether the proposed transfers are appropriate pursuant to applicable communications law is an issue that is exclusively within the FCC's jurisdiction.

When exercising its jurisdiction to determine whether any transfer of control application should be approved, the Commission is required to "weigh the potential public interest harms against the potential public interest benefits to ensure that, on balance, the proposed transaction will serve the public interest, convenience, and necessities."⁴ This public interest inquiry is completely separate from any determination made by the Bankruptcy Court, and the fact that the Bankruptcy Court concluded that DBSD satisfied the bankruptcy requirements for confirmation of a plan does not mean that DBSD has satisfied the public interest standard required under applicable communications law. If that were the standard, then there would have been no need for DBSD to file transfer applications with the FCC because the Confirmation Order would have been dispositive of the issue. As noted above, however, the Confirmation Order correctly left it to the FCC to decide whether

⁴ *In Re Application of Orbital Communications Corporation and ORBCOMM Global, L.P.*, Order and Authorization, ¶ 11, 17 FCC Rcd. 4496, 4502, 2002 WL372495, *4 (Mar. 11, 2002).

Yosef J. Riemer
September 3, 2010
Page 4

approval of the transfers is appropriate under applicable communications law. Thus, any finding by the Bankruptcy Court regarding feasibility or good faith for bankruptcy purposes has no bearing on the public interest inquiry currently being conducted by the FCC.

In accordance with the applicable standard, the basis of Sprint Nextel's objection to the transfer applications is that the public interest is not satisfied. DBSD does not currently have the ability, resources, or intention of building out its ATC network or providing any commercial services. Instead, it is DBSD's hope that it will be able to enter into some kind of strategic transaction that will enable it to accomplish those goals. Given these circumstances, Sprint Nextel believes that it is consistent with the public interest to deny, or at least defer consideration of, the applications until such time as DBSD is able to locate a strategic partner that will enable it to provide service. That will motivate DBSD to find a strategic partner sooner rather than later whereas, under the plan as proposed, DBSD is apparently content to let the spectrum lie unused until 2014 at the earliest. Thus, Sprint Nextel's position completely undercuts your unfounded assertion that Sprint Nextel's goal in this case is to eliminate the Debtors as business competitors. The Debtors are currently providing no competition to any of Sprint Nextel's services and have no intention to do so. If Sprint Nextel's goal was to prevent competition, then it would not be opposing the applications so that DBSD could continue to let the spectrum lie fallow.

You are also incorrect when you state that the Rulemaking, which addresses a number of issues including the direct liability of ICO Global, bears no relationship to the transfer of control applications. The FCC's *Emerging Technologies* doctrine establishes that it is in the public interest for subsequent users of spectrum to reimburse those parties that are responsible for clearing the spectrum being used. Sprint Nextel opposition to the transfer application is based (among other things) on a straightforward application of this doctrine to ICO Global. Sprint Nextel recognizes of course that DBSD has discharged its reimbursement obligation through the bankruptcy case, and Sprint Nextel is not requesting that the FCC impose that reimbursement obligation upon DBSD. ICO Global has not sought bankruptcy relief, and is not protected by the stay. It will continue to retain an interest in the spectrum. **It is inconsistent with FCC policy, and contrary to the public interest, to allow ICO Global to retain an interest in the spectrum cleared by Sprint Nextel unless it is willing to satisfy that reimbursement obligation. Thus, the pending rulemaking regarding ICO Global's liability is directly related to the pending transfer applications.**

The final argument set forth in your letter is that Sprint Nextel's request that the FCC delay its consideration of the transfer application until the United States Court of Appeals for the Second Circuit has rendered a decision in the pending appeal somehow violates Rule 8005 of the Federal Rules of Bankruptcy Procedure. Federal Rules of Bankruptcy Procedure are inapplicable to proceedings before the FCC and cannot prohibit the FCC from exercising

Yosef J. Riemer
September 3, 2010
Page 5

its authority.⁵ By suggesting otherwise, you are again attempting to impose upon the FCC rulings made by the Bankruptcy Court in a different context. The public interest inquiry being conducted by the FCC is governed by a separate standard from the inquiry conducted by the Bankruptcy Court, and the FCC has exclusive jurisdiction to determine whether and when the public interest warrants approval of the transfer applications. In the past, the Commission has explicitly considered whether transfers of control would help resolve bankruptcies as part of its public interest analysis.⁶

In the final paragraphs of your letter, you suggest that Sprint Nextel has no basis to continue its opposition to the transfer applications because of your client's commitment that it will not consummate the plan until four business days following receipt of FCC approval. Your suggestion is misguided and based upon your incorrect assumption that Sprint Nextel is opposing the transfer applications as a means to prevent consummation of the plan pending resolution of the appeal before the Second Circuit.⁷ As discussed above, however, Sprint Nextel believes the proposed transfers are not in the public interest and should be denied for that reason. Your client's commitment fails to address the fundamental basis of Sprint Nextel's objection.

In any event, the assurances provided by DBSD are illusory. As you well know, it is highly unlikely that any court would be able to fully address any stay motion that may be filed in a period of only three business days. If your client is truly amenable to permitting the stay issue to be fully briefed and adequately presented to a court for determination, then your client should be willing to agree that any stay motion be heard on an expedited basis and that your client would not consummate the plan until any stay application presented by Sprint Nextel is considered and resolved. Anything less is simply more posturing in an attempt to position your client to claim that the appeal is moot. If your client is willing to make those assurances, Sprint Nextel would commit to file any stay application no later than two business days after receipt of notice of any approval from the FCC, and would further commit to whatever expedited procedure your client would reasonably request.

⁵ Fed. R. Bankr. P. 1001 ("The Bankruptcy Rules and Forms govern procedure in cases under Title 11 of the United States Code.")

⁶ See, e.g., *In The Matter of Wireless Telecommunications, Inc.*, Memorandum of Opinion and Order, ¶ 1, 24 FCC Rcd. 3162, 3162, 2009 WL690095, *1 (Mar. 16, 2009).

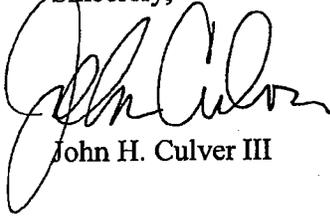
⁷ The true state of affairs is that your client is seeking to expedite the transfer application process so as to moot the Second Circuit's consideration of the important issues raised by Sprint Nextel's appeal. Your colleagues have admitted as much, and the pressure that your client and others is bringing to bear on the FCC is transparently designed to accomplish that goal.

K&L|GATES

Yosef J. Riemer
September 3, 2010
Page 6

I look forward to hearing from you as to my proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "John H. Culver III". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John H. Culver III

EXHIBIT F

July 27, 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 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-20091211-1576, SAT-T/C-
0091211-00144.**

Dear Ms. Dortch:

Yesterday, July 26, 2010, representatives of Sprint Nextel Corporation (“Sprint Nextel”) and its outside counsel met with Commission staff regarding the above-captioned proceedings. In attendance were Lawrence Krevor and Trey Hanbury of Sprint Nextel; Marc Martin, John Culver, and Felton Parrish of K&L Gates LLP, and Buck Logan of Lawler, Metzger, Keeney & Logan, LLC; Austin Schlick, Stewart Block, David Horowitz, Andrea Kearney, Sally Stone, and Julie Veach of the Office of General Counsel; Gardner Foster and Karl Kensinger of the International Bureau; and Geraldine Matise of the Office of Engineering and Technology.

Sprint Nextel representatives distributed copies of the attached presentation and recounted the history of the 2 GHz Mobile Satellite Service (“MSS”) licensing process. Sprint Nextel addressed a number of arguments made by ICO Global Communications (Holdings) Limited (“ICO Global”) in its July 19, 2010 Notice of Ex Parte Presentation and other filings in the above-captioned proceedings. These include false allegations that Sprint Nextel purposefully delayed the Broadcast Auxiliary Service (“BAS”) relocation and that re-affirming ICO Global’s longstanding obligation to reimburse Sprint Nextel a portion of the cost associated with clearing the MSS spectrum somehow amounts to a “windfall” for Sprint Nextel.

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Sprint Nextel explained that, as the Commission repeatedly held when extending BAS deadlines, the causes of delay in the BAS relocation were beyond the control of Sprint Nextel (and any other entity), and that Sprint Nextel had every incentive, financial and otherwise, to complete the BAS relocation as quickly as possible.¹ Sprint Nextel undertook the BAS relocation on the reasonable expectation, based on Commission directives, of complete and timely reimbursement by the MSS operators for their *pro rata* share of Sprint Nextel's band clearance costs.² To date, Sprint Nextel has relied to its detriment on the reasonable expectation that the MSS operators would comply with the Commission's well established *Emerging Technologies* doctrine.³ Sprint Nextel's reasonable expectation of ICO Global's compliance with well-established FCC rules, decisions and policies hardly constitutes a "windfall" for Sprint Nextel.

¹ See e.g., *Improving Public Safety Communications in the 800 MHz Band, et al*, 25 FCC Rcd 1294, 1296 ¶ 4 (2010) ("[t]wo themes have emerged throughout the BAS relocation process: the transition has proven to be far more complicated than was first anticipated, and Sprint Nextel has made continued progress in its efforts to relocate the BAS markets.").

² See e.g., *Improving Public Safety Communications in the 800 MHz Band, et al*, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 7904, 7909, ¶ 11 (2009) ("*Report and Order and Further Notice*") ("When Sprint Nextel undertook its commitment to relocate the BAS licensees, the Commission did not remove either the obligation previously placed on the MSS entrants to relocate the BAS licensees, or the procedures that had already been put in place for doing so."); *Improving Public Safety Communications in the 800 MHz Band, et al*, Report and Order, Fifth Report and Order, Fourth Memorandum and Order, and Order, 19 FCC Rcd 14969, ¶ 261 (2004), *as amended* by Erratum, WT Docket No. 02-55 (rel. Sept. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); *accord* *Improving Public Safety Communications in the 800 MHz Band, et al*, Memorandum Opinion and Order, 20 FCC Rcd. 16015, ¶ 11 (2005) ("Nextel, as the first entrant, is entitled to seek pro rata reimbursement or eligible clearing costs from subsequent entrants, including MSS licensees.").

³ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (Oct. 16, 1992); Second Report and Order, 8 FCC Rcd 6495 (Aug. 13, 1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (Aug. 13, 1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (Mar. 31, 1994); Second Memorandum Opinion and Order, 9 FCC Rcd 7797 (Dec. 2, 1994); *aff'd Ass'n of Pub. Safety Commc'n Officials-Int'l, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996).

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Sprint Nextel also explained that the doctrine of “issue preclusion” – which generally bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment – cannot prevent the Commission from interpreting the Communications Act of 1934 (the “Act”), and its rules and policies adopted thereunder, in a rulemaking proceeding in its discretion as the expert agency, as Congress empowered it to do. Sprint Nextel discussed applicable Supreme Court and other case law supporting the principle that federal agencies may adopt interpretative rules arising under their organic statutes at variance with prior interpretations of the same issue by federal courts.

For example, in *Brand X*, the Supreme Court held that the Commission was not bound by the 9th Circuit’s own prior interpretation of the Act, and that finding otherwise would impermissibly “allow[] judicial precedent to foreclose an agency from interpreting an ambiguous statute,” and that a “contrary rule would produce hazardous results” and “lead to the ossification of large portions of our statutory law.”⁴ Because the Bankruptcy Court implicitly acknowledged ambiguities in the Orders,⁵ the Commission is not bound by the Court’s interpretation and may interpret such ambiguities in a manner the Commission believes correctly reflects its own interpretation as the expert agency.

In light of this interpretive authority, Sprint Nextel reiterated its request that the Commission affirm the direct (*i.e.*, joint and several) reimbursement responsibility of corporate entities that constitute a single MSS system through the above-captioned rulemaking proceedings prior to taking action on the above-captioned DBSD transfer of control applications.⁶ Deciding the DBSD transfer of control applications first, without the

⁴ *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Services*, 545 U.S. 967, 982-83 (2005) (“*Brand X*”) (quotations omitted). See also *Levy v. Sterling*, 544 F.3d 493 (3rd Cir. 2008); *Nat’l Org. of Veterans Advocates, Inc. v. Sec. of Vet. Affairs*, 260 F.3d 1365 (Fed. Cir. 2001).

⁵ See *Bench Decision on Debtors’ Objection to Proofs of Claim Filed by Sprint Nextel Corporation*, at pp. 6-7, Case No. 09-13061 (Bankr. S.D.N.Y., Sept. 30, 2009) (recognizing that the Commission’s prior orders did not expressly define what “entrants” means, which left open for interpretation the issue of whether “entrants” means only the licensees or each individual entity involved in satellite operations).

⁶ See *Report and Order and Further Notice*, 24 FCC Rcd at 7937-38, ¶ 87. This request was first made by Sprint Nextel in the reply comments it filed on July 24, 2009 in this rulemaking (the “Reply Comments”). Applying joint and several liability to all MSS operators through the rulemaking proceeding properly keeps the focus on the full and

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benefit of the Commission's interpretive rulemaking, might result in one MSS operator being treated differently than another. The Commission can avoid issues of confusion, uncertainty and disparate treatment by acting consistently with well established decisions and practice to first affirm the joint and several reimbursement responsibilities of each entity that is a part of an MSS system, operation, or enterprise.⁷

Sprint Nextel further discussed issues consistent with its filings in the above-captioned proceedings,⁸ including that any Commission affirmation of joint and several reimbursement responsibility would not constitute an "impermissible retroactive rulemaking," and would not upset any settled expectations. Sprint Nextel noted that the Commission has broad discretion pursuant to provisions of the Act, such as Sections 303, 309(j), 310(b) and 310(d), to look through the corporate form of a licensee to find a party other than the actual licensee directly liable for compliance with the Commission's Rules and policies.

Sprint Nextel referred to its Reply Comments for a discussion of case law demonstrating that the proposals before the Commission in the rulemaking proceeding would not constitute impermissible retroactive rulemaking. Sprint Nextel noted that the discussion in the Reply Comments applies with equal force to any Commission interpretation in the subject rulemaking regarding the Commission's authority to look through the corporate form of an MSS licensee and find its corporate parent directly liable for the MSS operators' *pro rata* share of the relocation costs pursuant to the Commission's authority under the Act and decades of related Commission and case law precedents.

Finally, Sprint Nextel pointed out that the Commission has already rejected the ICO Global and TerreStar argument that their reimbursement obligations expired on June 26, 2008, the original benchmark for completing 800 MHz band reconfiguration. In its 2009 *Report and Order and Further Notice*, the Commission stated that such arguments ignore "the stated purposes and structure of the cost-sharing principles set forth in the 800 MHz

complete reimbursement of Sprint Nextel's band clearance costs, by ensuring that Sprint Nextel will be able to obtain full reimbursement from the collective group of MSS operators.

⁷ Deferring the decision on the DBSD applications until the appeal of the Bankruptcy Court decision in the 2nd Circuit is completed also ensures that the Commission conserves its resources and acts at a procedurally appropriate time.

⁸ See, e.g., *Improving Public Safety Communications in the 800 MHz Band, et al*, WT Docket No. 02-55, Comments of Sprint Nextel Corporation (July 14, 2009); Reply Comments; Opposition of Sprint Nextel Corporation to the Petition for Stay Filed by New DBSD Satellite Services G.P. (July 24, 2009).

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R&O and other decisions regarding the shared responsibilities of new entrants for BAS relocation.”⁹ The Commission further found that:

Nothing in the text of the relevant orders suggests that the Commission limited the time in which Sprint Nextel could seek reimbursements from MSS entrants to provide an independent benefit to MSS entrants, e.g., to subsidize them or provide them certainty about their business costs. Thus, *we find that the MSS entrants’ cost sharing obligations must be interpreted in light of the unanticipated changed circumstances, and these obligations should not be tied to a deadline that is no longer relevant.* In short, MSS entrants should pay a *pro rata* share of the BAS relocation costs unless doing so would allow Sprint Nextel to be reimbursed twice (by both the Treasury and the MSS and AWS-2 licensees).¹⁰

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.¹¹ If you have any questions, please feel free to contact me at (202) 778-9859.

Sincerely,

/s/ Marc S. Martin
Marc S. Martin

cc: Austin Schlick
Stewart Block
David Horowitz

⁹ *Report and Order and Further Notice*, 24 FCC Rcd at 7935, ¶ 77.

¹⁰ *Id.*, 24 FCC Rcd at 7935-36, ¶ 80 (emphasis added). Although the *Report and Order and Further Notice* sought comment on a number of issues for implementing MSS licensee reimbursement obligations in light of the “unanticipated changed circumstances,” it dispelled, once and for all, any notion that the original June 26, 2008 benchmark has any relevance to those obligations.

¹¹ Sprint Nextel will, under separate cover, expeditiously provide the Commission with the results of some additional research.

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Andrea Kearney
Sally Stone
Julie Veach
Gardner Foster
Karl Kensinger
Geraldine Matisse

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Chronology of MSS Licensee Reimbursement Obligation

The following is a chronology of key FCC decisions and developments related to the obligation of TerreStar Networks Inc. (TerreStar) and ICO Global Communications (Holdings) Limited (ICO) to reimburse Sprint Nextel Corporation (Sprint Nextel) for their *pro rata* share of the cost of clearing Broadcast Auxiliary Service (BAS) licenses from the 1990-2025 MHz band.

One Consistent, Overarching Principle Throughout This Chronology

TerreStar and ICO's reimbursement obligation derives from a principle that has remained consistent throughout the time period covered by this chronology, and which has been emphasized by both the FCC and the federal courts:

“A guiding principle for relocation is that those entrants that benefit from cleared spectrum have an obligation to shoulder their portion of the costs to relocate incumbent operations. We fully intend to apply that principle [to TerreStar and ICO].” (FCC 2009 Order and Further¹)

“From a non-legal, just a very simple, old-fashioned approach, putting aside all the requirements and technicalities of the law, if Sprint has paid out hundreds of millions of dollars to clear this bandwidth from which the two defendants will ultimately . . . benefit and if the basic principle within the FCC is that there is a concept of fair reimbursement when subsequent licensees first enter into bandwidth that somebody else has cleared for them, then just from a basic what's fair and what's right standpoint, there ought to be some way of coming to some practical resolution.” (U.S. District Judge Leonie M. Brinkema, U.S. District Court for the Eastern District of Virginia, Aug. 29, 2008²)

1990s to Present: Cost Sharing Established and Consistently Applied

In its *Emerging Technologies* proceedings in the 1990s, the FCC establishes the “cost sharing principle that the licensees that ultimately benefit from the spectrum cleared by the first entrant shall bear the cost of reimbursing the first entrant for that benefit.”³ The FCC consistently applies this principle to every incumbent relocation, including the clearing of the PCS and AWS-1 bands. The FCC also applies traditional cost-sharing principles to the BAS relocation.⁴

March 14, 1997: MSS Allocation and BAS Relocation Responsibility

The FCC adopts Mobile Satellite Service (MSS) allocation for the United States and requires that BAS be relocated. The FCC states that the “cost of all steps necessary for clearing the 1990-2025 MHz band for MSS operators will be borne by MSS operators.”⁵

1998-2000: FCC Imposes BAS Relocation and Reimbursement Obligations on MSS Licensees

On November 25, 1998, the FCC affirms the MSS allocation and seeks comment on proposed rules to require MSS to relocate BAS facilities consistent with the FCC’s *Emerging Technologies* policies, under which every operator in the band shares spectrum clearing costs on a *pro rata* basis.⁶ On July 3, 2000, the FCC establishes the 2 GHz MSS licensee obligation to relocate BAS and also establishes the requirement that new entrants share the cost of relocating BAS incumbents.⁷

In these proceedings, ICO states that requiring the first new entrant to pay “full relocation costs without any reimbursement from later entering MSS providers” would “unfairly punish” the first new entrant.⁸ Similarly, TerreStar’s predecessor, TMI, states that “equity requires” that entities that benefit from the clearing of BAS licensees “should . . . share in the financial burdens of the relocation of [these] licensees.”⁹

July 17, 2001: ICO and TerreStar Obtain MSS Authorizations Conditioned on BAS Relocation and Reimbursement Obligations

The FCC authorizes ICO and TerreStar to construct, launch and operate MSS systems on the condition that they comply with BAS relocation and cost-sharing obligations.¹⁰

July 2001 to Present: ICO and TerreStar Take No Steps to Relocate BAS Incumbents

In 2002, the broadcast industry reports that, well into the MSS – BAS mandatory negotiation period, “there have been no substantive relocation negotiations undertaken by any MSS licensee.”¹¹

In subsequent years, the FCC twice finds “no evidence that any meaningful relocation negotiations” took place between MSS and BAS licensees.¹²

August 6, 2004: FCC Adopts Sprint Nextel – BAS Relocation Plan While Reiterating MSS Relocation and Reimbursement Obligations

The FCC adopts its *800 MHz Order*, including a joint Sprint Nextel – broadcast industry plan to relocate BAS licensees. The order makes clear that ICO and TerreStar have a continuing, independent obligation to relocate BAS licenses. The order also establishes that, to the extent Sprint Nextel takes the lead in the relocation, it is entitled to seek reimbursement from MSS licensees entering the band prior to the conclusion of 800 MHz reconfiguration for their *pro rata* share of the cost of relocating fixed and mobile BAS in the Top 30 markets and all fixed links in all markets.¹³

August 2004 to Present – Sprint Nextel Works Diligently with Broadcasters to Relocate BAS Licensees – With No Help From ICO and TerreStar

Following the *800 MHz Order*, Sprint Nextel works closely with the broadcast industry to relocate approximately 1000 BAS incumbents to the new 2 GHz band plan without disrupting broadcaster news operations. Sprint Nextel dedicates enormous resources to the task, with dozens of Sprint Nextel employees and hundreds of outside vendors working on outreach, the equipment inventory process, negotiating relocation agreements, the purchase order process, the installation of new BAS equipment, change orders, and a myriad of other complex tasks and challenges. Scores of broadcaster station employees also work in good faith in tackling these challenges.

Throughout this time, ICO and TerreStar decline to assist the relocation process in any fashion, notwithstanding their independent obligation to relocate BAS licensees. For example, in the fall of 2007, Sprint Nextel invite ICO and TerreStar to participate in the relocation process by providing their own negotiators, lawyers, and engineers within the existing BAS relocation structure developed by Sprint Nextel, but ICO and TerreStar decline.

In July 2009, the broadcast industry states:

All of [the] progress [broadcasters and Sprint Nextel have made] has occurred in the face of the ongoing refusal of the two MSS entrants, TerreStar and ICO, to make *any* contribution – whether in the form of labor, planning, technical expertise, or financial reimbursement – to the BAS relocation. As far as the BAS relocation is concerned, TerreStar’s and ICO’s sole involvement has been to file comments and make *ex parte* presentations . . . in which they have lobbied the Commission repeatedly for rule changes that would excuse them from paying their fair share of BAS relocation costs prior to commencing operations.¹⁴

Oct. 5, 2005: FCC Reaffirms MSS Cost-Sharing and Relocation Obligations

In an order released on October 5, 2005, the FCC reiterates that, “[u]nder the equitable reimbursement calculus, Nextel, as the first entrant, is entitled to seek *pro rata* reimbursement of eligible clearing costs from subsequent entrants, including MSS licensees.”¹⁵ The FCC also states that “MSS licensees retain the option of accelerating the clearing of [the top 30 markets] so that they could begin operations before Nextel has completed nationwide clearing.”¹⁶

March 7, 2006: Sprint Nextel Seeks Reimbursement from ICO and TerreStar

Consistent with the terms of the *800 MHz Order*, Sprint Nextel notifies the FCC, ICO, and TerreStar of its intention to seek reimbursement from the MSS licensees for their share of the BAS relocation costs.¹⁷

November 27, 2007: Sprint Nextel Agrees to Accommodate MSS Market-Prioritization Requests

At the insistence of ICO and TerreStar, Sprint Nextel agrees to accelerate the transition of 25 markets because MSS licensees identified these areas as high priorities for MSS operations. As agreed, Sprint Nextel completes the transition in these markets by no later than the summer of 2008. Accommodating these requests diverts resources from other markets and disrupts the most efficient allocation of band-clearing efforts, delaying the overall completion of BAS relocation. Accommodating the MSS licensee requests ultimately is all for naught, however, as ICO and TerreStar subsequently delay commencing their commercial operations.

February 4, 2008: FCC Reiterates ICO and TerreStar Relocation Obligations

In a February 4, 2008 order, the FCC reiterates that both “Sprint Nextel and 2 GHz MSS licensees have equal obligations to relocate the 1.9 GHz BAS incumbents.”¹⁸

May 9, 2008: ICO MSS System Becomes Fully Operational

ICO certifies that its MSS system is fully operational on May 9, 2008.¹⁹ ICO consequently incurs its reimbursement obligation to Sprint Nextel on that date under the tentative conclusion set forth in the Commission’s *2009 Order and Further Notice*.²⁰

June 25, 2008: Sprint Nextel Files Suit

Sprint Nextel files suit in U.S. District Court for the Eastern District of Virginia against ICO and TerreStar to enforce the *800 MHz Order* and to recover from ICO and TerreStar a *pro rata* share of Sprint Nextel's BAS relocation costs

August 29, 2008: Court Refers Issue to FCC and Notes Equities in Favor of Sprint Nextel

U.S. District Judge Leonie M. Brinkema denies ICO's and TerreStar's motions to dismiss Sprint Nextel's lawsuit, but refers the case back to the FCC for further resolution. Judge Brinkema notes the equities in favor of "fair reimbursement" for Sprint Nextel (see quote on page 1).

June 12, 2009: FCC Reaffirms ICO and TerreStar Obligation to Reimburse Sprint Nextel and Seeks Comment on Implementation Issues

The FCC releases its *2009 Order and Further Notice*, making the following findings:

- "Successful completion of [BAS relocation] does not rest with any one party but requires the cooperation of the incumbents and all new entrants, acting in good faith, to assume responsibility for the relocation process so that all may benefit."²¹
- "When the decision was made to permit Sprint Nextel to use the 1990-1995 MHz band, no BAS licensees had yet been relocated and there was no evidence that any meaningful relocation negotiations had taken place between BAS licensees and MSS entrants. ... Sprint Nextel remains the sole entity actively undertaking [BAS] relocations."²²
- "Sprint Nextel has made considerable progress in the BAS relocation process that has proven to be a more complex undertaking than any party may have initially anticipated."²³
- The FCC rejects MSS licensee arguments that their reimbursement obligations arbitrarily terminated on June 26, 2008 (the originally anticipated benchmark for completing 800 MHz reconfiguration), stating such arguments ignore "the stated purposes and structure of the cost-sharing principles set forth in the *800 MHz R&O* and other decisions regarding the shared responsibilities of new entrants for BAS relocation."²⁴
- "Nothing in the text of the relevant orders suggests that the Commission limited the time in which Sprint Nextel could seek reimbursements from MSS entrants to provide an independent benefit to MSS entrants, *e.g.*, to subsidize them or provide them certainty about their business costs. Thus, we find that the MSS entrants'

cost sharing obligations must be interpreted in light of the unanticipated changed circumstances, and these obligations should not be tied to a deadline that is no longer relevant. In short, MSS entrants should pay a *pro rata* share of the BAS relocation costs unless doing so would allow Sprint Nextel to be reimbursed twice (by both the Treasury and the MSS and AWS-2 licensees).²⁵

The *2009 Order and Further Notice* makes clear the Commission's intent to enforce ICO and TerreStar's cost-sharing obligations, and seeks comment on the specific procedures and requirements for implementing these obligations. The FCC tentatively concludes that "an MSS entrant will have entered the band and incurred a cost-sharing obligation when it certifies that its satellite is operational for purposes of meeting its operational milestone."²⁶

The *Further Notice*'s comment cycle closes in July 2009.

July 20, 2009: TerreStar Certifies Compliance with Operational Milestone

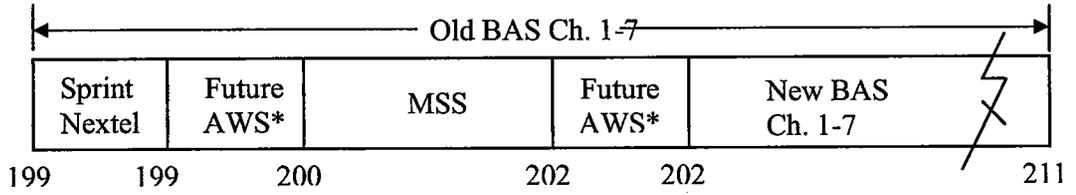
On August 30, 2009, TerreStar certifies that its satellite had become operational and thus incurs its reimbursement obligation to Sprint Nextel under the FCC's tentative conclusion in the *2009 Order and Further Notice*.²⁷

July 2010: Sprint Nextel and Broadcasters Complete the BAS Relocation

Sprint Nextel and the broadcast industry relocate the last market (Anchorage) in July 2010, completing the BAS relocation throughout the country without disruption to broadcaster news operations. Overall, the process involved relocating about 1000 BAS licensees and replacing approximately 100,000 pieces of television transmission equipment. Sprint Nextel and the broadcast industry overcame numerous complexities and challenges to complete the relocation, including complex tax considerations, natural disasters and severe weather, and limited BAS equipment production lines. Although the relocation took longer than initially anticipated, the FCC issued orders extending the relocation deadline, finding "compelling" reasons for the extension and that Sprint Nextel had acted in good faith and taken all steps within its control to meet the FCC's deadlines.²⁸

Sprint Nextel ends up spending approximately \$750 million to complete the BAS relocation.

As a result of Sprint Nextel's efforts, 35 megahertz of spectrum in the 1990-2025 MHz band is now clear for new services. Sprint Nextel has been assigned 5 megahertz – 15% of the total cleared spectrum – while ICO and TerreStar have been assigned 20 MHz – or 57% of the total cleared spectrum. The remaining 10 megahertz – 28% of the total – is allocated to AWS. The following chart depicts the respective allocations.



*AWS = Advanced Wireless

Endnotes

- ¹ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 7904, ¶ 46 (2009) (*Order and Further Notice*).
- ² *Sprint Nextel Corp. v. New ICO Satellite Services G.P., et al.*, No. 1:08cv651 (E.D. Va. Aug. 29, 2008).
- ³ *2009 Order and Further Notice* ¶ 79.
- ⁴ *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 4393, ¶ 15 (2008).
- ⁵ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum At 2 GHz for Use By The Mobile-Satellite Service*, 12 FCC Rcd 7388, ¶ 33 (1997).
- ⁶ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum At 2 GHz for Use By The Mobile-Satellite Service*, Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order, 13 FCC Rcd 23949 (1998).
- ⁷ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315 (2000) (*2000 MSS Order*).
- ⁸ Comments of ICO Services Limited, ET Docket No. 95-18, at 14 (Feb. 3, 1999).
- ⁹ Comments of TMI Communications and Company, ET Docket No. 95-18, at 2, 7 (Feb. 3, 1999).
- ¹⁰ *See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz For Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 19403, ¶¶ 67, 69, 71 (2000) (“All MSS licensees who benefit from relocation of BAS are responsible for contributing, as a condition of their licenses.”); *2000 MSS Order* ¶ 71 (“Subsequently entering MSS licensees . . . will, as a condition of their licenses, compensate the first entrant on a *pro rata* basis, according to the amount of spectrum the subsequently entering licensees are authorized to use.”).
- ¹¹ Letter from Edward O. Fritts, National Association of Broadcasters, and David L. Donovan, Association for Maximum Service Television, Inc., to FCC Chairman Michael Powell, ET Docket No. 95-18, at 2 (June 6, 2002).
- ¹² *2009 Order and Further Notice* ¶ 10; *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 4393, ¶ 31 (2008).
- ¹³ *Improving Public Safety Communications in the 800 MHz Band*, *WT Docket 02-55*, *ET Docket 00-258*, *Report and Order*, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 ¶¶ 8-12 (2004) (*800 Order*).
- ¹⁴ Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, *WT Docket No. 02-55*, at 3 (July 14, 2009).
- ¹⁵ *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd. 18970, ¶ 111 (2005).
- ¹⁶ *Id.* ¶ 114.
- ¹⁷ *See* March 7, 2006 Letter from Lawrence R. Krevor, Sprint Nextel Corporation, to Marlene H. Dortch, FCC Secretary, *WT Docket No. 02-55*, *et al.*, at 1 (“Sprint Nextel Corporation . . . hereby informs the Federal Communications Commission . . . and Mobile Satellite Service (‘MSS’) licensees that it will seek reimbursement from MSS licensees for eligible costs Sprint Nextel incurs in clearing the 1990 – 2025 MHz band, as provided in paragraphs 261 and 352 of the [*800 MHz Order*] Sprint Nextel is providing this notice to the two remaining MSS licensees at 2 GHz, New ICO Satellite Service G.P. and TMI Communications and Company L.P. . . .”).

¹⁸ *Improving Public Safety Communications in the 800 MHz Band*, Order, 23 FCC Rcd 2423, ¶ 2 (2008).

¹⁹ On May 9, 2008, ICO certified to the Commission that “the entire ICO 2 GHz mobile satellite service system is operational” and that it has conducted two-way voice and data sessions in the 2 GHz band. Letter from Suzanne Hutchings Malloy, New ICO Satellite Services G.P., to Marlene H. Dortch, FCC Secretary, File No. SAT-LOI-19970926-00163, Final Milestone Certification and Selected Assignment Notification for Call Sign S2651, and attached Certification of Dennis Schmitt, ICO Global Communications (Holdings) Limited (May 9, 2008); *see also* 2009 Order and Further Notice ¶ 91 n.201.

²⁰ In the 2009 Order and Further Notice, ¶ 91, the FCC tentatively concluded that “an MSS entrant will have entered the band and incurred a cost-sharing obligation when it certifies that its satellite is operational for purposes of meeting its operational milestone.”

²¹ 2009 Order and Further Notice ¶ 4.

²² *Id.* ¶¶ 10, 28.

²³ *Id.* ¶ 29.

²⁴ *Id.* ¶ 77.

²⁵ *Id.* ¶ 80.

²⁶ *Id.* ¶ 91.

²⁷ *See* Letter from Joseph Godles, Counsel to TerreStar License Inc., to Marlene Dortch, FCC Secretary (July 20, 2009); Public Notice, Policy Branch Information: Actions Taken, Report No. SAT-00619 (released July 24, 2009); *see also, supra*, note 20.

²⁸ 2009 Order and Further Notice ¶ 17.

EXHIBIT G

Telecommunications Reports presents....

TRDaily

September 24, 2010

For a Web version of today's TRDaily, go to

<http://www.tr.com/online/trd/2010/td092410/index.htm>

DRAFT FCC BAS ORDER ELIMINATES

CONCLUSION ON ICO LIABILITY

FCC Commissioners have received a new version of a draft order concerning obligations entities have to reimburse Sprint Nextel Corp. for a pro rata share of the costs of relocating BAS (broadcast auxiliary service) licensees, an agency source said today.

The new version backs away from the conclusion in an earlier draft circulated last month that said ICO Global Communications (Holdings) Ltd. is a corporate affiliate of New DBSD Satellite Services G.P. and thus shares an obligation to reimburse Sprint Nextel for a share of the relocation costs (TRDaily, Aug. 27), the source said. Instead, the latest draft indicates the record does not support such a conclusion.

However, additional general language was added that says entities that aren't a licensee can be considered entrants into a band - and thus liable for a share a relocation costs - while not making that conclusion for ICO specifically. "It basically really clarifies policy on the issue, without actually reaching a conclusion" concerning ICO, the agency source said.

The item continues to conclude that MSS (mobile satellite service) licensees New DBSD and TerreStar Networks, Inc., would be obligated to reimburse Sprint Nextel, but New DBSD is in bankruptcy proceedings, so it would be unlikely Sprint Nextel could recover any money from the company.

In recent weeks, Sprint Nextel and ICO have been lobbying the Commission heavily about whether ICO is liable for relocation costs. Sprint Nextel said ICO should be held liable, while ICO said it is a separate entity and shouldn't.

For example, in an ex parte filing Wednesday in Wireless Telecommunications docket 02-55 and Engineering and Technology dockets 00-258 and 95-18, Sprint Nextel said an expert it retained concluded that a 2005 debt financing did not result in DBSD becoming a separate entity and instead transaction documents "provide clear evidence of ICO Global's continued and uninterrupted control and direct involvement in the MSS system operations after the 2005 Transaction."

In its own ex parte filing Wednesday, ICO said that while it is "the majority shareholder" in DBSD North America, Inc., the parent of New DBSD, it added that "ICO Global and DBSD are separate and distinct in both form and substance." It added that DBSD "became independent as a result of the 2005 Transaction" and that "it would be unlawful and improper to impose DBSD's cost-sharing obligations on ICO Global."

Also circulated among FCC Commissioners is an item concerning amendment of parts 13 and 80 rules governing the aviation radio

service, according to the weekly list of circulated items.
09/21/2010 OMD Also now on circulation is a notice of
proposed rulemaking concerning amending the FCC's CORES
registration system. - Paul Kirby, paul.kirby@wolterskluwer.com

EXHIBIT H



Federal Communications Commission

INTERNATIONAL BUREAU

FCC

File Number = SATT/C2009121100144

Item Type	Date Filed	Commenter Name	Description	Document Link (if available)
DECISION	07/22/2010	IB,FCC	G	New DBSD-Sprint Next
LETTER	06/01/2010	Sprint Nextel Corporation	Sprint Nextel - Letter	2010.06.01 - Sprint
LETTER	07/14/2010	Sprint Nextel Corporation	Sprint Nextel - Letter	2010.07.14 - Sprint
LETTER	05/27/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Letter	DBSD Letter 5-27-10.
LETTER	08/05/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Ex Parte	Ex Parte - DBSD 8-5
LETTER	07/13/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	New DBSD Letter	DBSD Letter.pdf
PETITION	01/14/2010	Sprint Nextel Corporation	Sprint Nextel Corp. - Petition to Deny	Sprint Nextel Corp.
LETTER	07/28/2010	Sprint Nextel Corporation	Sprint Nextel - Written Ex Parte Presentation	2010.07.28 - Sprint
LETTER	09/01/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Ex Parte Letter	2010-09-01 DBSD Ex P
LETTER	09/03/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Ex Parte Letter	FCC Letter re Applic
REPLY	02/22/2010	Sprint Nextel Corporation	Sprint Nextel Corp. - Reply to DBSD Opposition	SprintNextelReplyToD
REPLY	02/03/2010	Sprint Nextel Corporation	Sprint Nextel Corp. - Reply to Opposition of DBSD	Sprint Nextel Corp.
REQUEST	02/03/2010	Sprint Nextel Corporation	Sprint Nextel - Request to Modify Ex Parte Status	Sprint Nextel Corp.
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	ICO Global Communications (Holdings) Limited	Letter	ICOG Letter to Schli
Ex PARTE PRESENTATION NOTIFICATION LETTER	07/30/2010	Sprint Nextel Corporation	Sprint Nextel Ex Parte Notice	Sprint Ex Parte FINA
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 4	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 7	ICO Global -- Attach

Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1A	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1B	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1C	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1D	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1E	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1F	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 1G	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 2A	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 2B	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 6A	<u>ICO Global -- Attach</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/04/2010	ICO Global Communications (Holdings) Limited	Ex Parte Letter	<u>ICO Global Ex Parte</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	ICO Global Communications (Holdings) Limited	Document Index	<u>ICOG Document Index.</u>
Section 1.65 Notification	03/19/2010	New DBSD Satellite Services, G.P., Debtor-in-Possession	Notification Letter	<u>Letter to FCC re Pla</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 3A-1	<u>ICO Global -- Attach</u>
Ex PARTE				

PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 3A-2	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 3B-1	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 3B-2	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 6B-1	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Attachment 6B-2	ICO Global -- Attach
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/04/2010	ICO Global Communications (Holdings) Limited	Notice of Meeting	Notice of August 3 M
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	ICO Global Communications (Holdings) Limited	Documents A.1-A.4	FCC submission_9-3-2
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	ICO Global Communications (Holdings) Limited	Documents C.1-C.3	FCC submission_9-3-2
OPPOSITION	01/25/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	New DBSD Opposition to Petition to Deny	New DBSD Opposition
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/10/2010	Sprint Nextel Corporation	Sprint Nextel - Ex Parte Communication	2010.08.10 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	ICO Global Communications (Holdings) Limited	Documents B.1-B.21	FCC submission_9-3-2
Section 1.65 Notification	06/18/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Section 1.65 Notification	2010-06-18 DBSD Lett
Ex PARTE PRESENTATION NOTIFICATION LETTER	04/20/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	DBSD Letter	DBSD Letter to IB 4
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/02/2010	ICO Global Communications (Holdings) Limited	Ex Parte Presentation	ICO Global Ex Parte
Ex PARTE PRESENTATION NOTIFICATION	08/04/2010	New DBSD Satellite Services G.P.,	Ex Parte Letter	DBSD Letter.pdf

LETTER		Debtor-in-Possession		
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/10/2010	Sprint Nextel Corporation	Sprint Nextel Corporation Ex Parte Notice	Sprint Nextel Ex Par
Ex PARTE PRESENTATION NOTIFICATION LETTER	07/28/2010	Sprint Nextel Corporation	Sprint Nextel Corporation - Ex Parte Notice	Sprint Ex Parte FINA
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/06/2010	Sprint Nextel Corporation	Sprint Nextel - Written Ex Parte Presentation	2010.08.06 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	07/30/2010	ICO Global Communications (Holdings) Limited	Notice of Ex Parte Meeting	Ex Parte July 29 Mee
Item Type	Date Filed	Commenter Name	Description	Document Link (if available)
OPPOSITION	02/12/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Opposition to Request to Modify Ex Parte Status	DBSD Opposition to e
Ex PARTE PRESENTATION NOTIFICATION LETTER	07/27/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Presentation	2010.07.27 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/09/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Presentation	2010.08.09 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/09/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Presentation	2010.08.09 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/11/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Presentation	2010.08.10 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/26/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Presentation	2010.08.26 - Notice
OPPOSITION	02/12/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Opposition to Request to Modify Ex Parte Request	DBSD Opposition to R
WITHDRAWAL	07/21/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	Withdrawal of Opp. to Request to Modify Ex Parte	DBSD withdrawal Oppo
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/17/2010	Sprint Nextel Corporation	2010.08.17 - Sprint Nextel Ex Parte Presentation	2010.08.17 - Sprint
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/30/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	2010.08.30 - Sprint

Ex PARTE PRESENTATION NOTIFICATION LETTER	08/30/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.08.30 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/01/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.01 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/02/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.02 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/02/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.02 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/02/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.02 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.03 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/03/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.03 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/10/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.10 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/13/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.13 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/13/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.13 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.14 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/15/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.15 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/16/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.16 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/17/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.17 - Sprint</u>

Ex PARTE PRESENTATION NOTIFICATION LETTER	09/17/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.17 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/22/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.22 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/24/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication	<u>2010.09.24 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/21/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication 1	<u>2010.09.21 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/21/2010	Sprint Nextel Corporation	Sprint Nextel - Notice of Ex Parte Communication 2	<u>2010.09.21 - Sprint</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/01/2010	ICO Global Communications (Holdings) Limited	ICO Global Ex Parte Letter 9-1-10	<u>ICO Global Ex Parte</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/26/2010	ICO Global Communications (Holdings) Limited	Ico Global -- Aug. 26, 2010 Ex Parte	<u>Ico Global Communica</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/27/2010	ICO Global Communications (Holdings) Limited	Ico Global -- Aug. 27, 2010 Ex Parte	<u>ICO Global -- Aug. 2</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/10/2010	Ico Global Communications (Holdings) Limited	ICO Global -- September 9-10 Ex Parte	<u>ICO Global -- Septem</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/14/2010	ICO Global Communications (Holdings) Limited	Ico Global -- Sept. 14, 2010 Ex Parte	<u>ICO Global -- Ex Par</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/27/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	2010-08-27 New DBSD Ex Parte	<u>2010-08-27 DBSD Ex P</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/23/2010	ICO Global Communications (Holdings) Limited	ICO Global -- Ex Parte -- Aug. 23, 2010	<u>ICO Global -- Ex Par</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/12/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	08-12-2010 DBSD Ex Parte Letter	<u>08-12-2010 DBSD Ex P</u>
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/17/2010	ICO Global Communications (Holdings) Limited	ICO Global -- Weinstein Letter dated Sept. 17	<u>ICO Global -- Weinst</u>

Ex PARTE PRESENTATION NOTIFICATION LETTER	09/09/2010	Ico Global Communications (Holdings) Limited	ICO Global -- Attachment to September 8 Meetings	Attachment to Ex Par
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/16/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	New DBSD - Notice of Ex Parte Presentation	DBSD Ex Parte.pdf
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/22/2010	ICO Global Communications (Holdings) Limited	ICO Global - Response to Sprint Sept. 17 Ex Parte	ICO Global - Respons
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/09/2010	Ico Global Communications (Holdings) Limited	ICO Global -- September 8 Meetings Ex Parte Notice	Ex Parte - September
Ex PARTE PRESENTATION NOTIFICATION LETTER	09/17/2010	ICO Global Communications (Holdings) Limited	ICO Global -- Response to Sprint Sept. 10 Ex Parte	ICO Global -- Respon
Ex PARTE PRESENTATION NOTIFICATION LETTER	08/27/2010	New DBSD Satellite Services G.P., Debtor-in-Possession	New DBSD - Notice of Ex Parte Presentation	8-27-2010 DBSD Ltr.p

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FCC - Federal Communications Commission - IBFS Internet Reports -

EXHIBIT I

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 1, 2010

FILED ELECTRONICALLY

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

Re: Notice of Ex Parte Presentation
WT Docket No. 02-55
ET Docket Nos. 00-258 and 95-18
New DBSD Satellite Services G.P., Applications for Transfer of Control
File Nos. SAT-T/C-20091211-00144, et al.

Dear Ms. Dortch:

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

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

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

September 1, 2010

Page 2

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

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

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

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

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

September 1, 2010

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

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

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

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

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

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

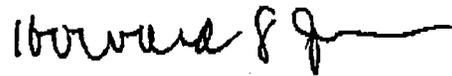
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

September 1, 2010

Page 4

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

Sincerely,

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

Howard J. Symons

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

EXHIBIT J

**THERE ARE NO GROUNDS FOR IMPOSING BAS RELOCATION
REIMBURSEMENT LIABILITY ON ICO GLOBAL**

Overview

- Imposing reimbursement liability on ICO Global would be legally tenuous and inequitable.
- In 2005, DBSD (then known as ICO North America) acquired all of ICO Global's North American satellite assets and business and was separately funded by third party investors. ICO Global was an investor in DBSD but no longer had any involvement with U.S. MSS operations.
- To impose liability here would 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.
- A critical element of attracting investors is ensuring that they can remain separate from the legal liabilities of the entities in which they invest.

ICO Global History

- Prior to 2005, ICO Global lost billions in its effort to construct, launch and operate a global MEO satellite system – a system that bears no relationship to the DBSD GEO satellite. A dispute with ICO Global's satellite manufacturer taxed ICO Global's financial resources.
- Without adequate resources to continue in both the U.S. and globally, ICO Global identified investors to form a new, separate entity to pursue the GEO opportunity in the U.S. that had arisen as a result of recently adopted ATC rules. The investors provided the new entity, New ICO North America (now known as DBSD), with \$650 million in financing.
- ICO Global transferred its U.S. license, employees and operations to DBSD, retaining a 56% fully diluted interest in DBSD.
- DBSD's investors and ICO Global insisted on arms' length separation between the two entities as a condition of funding DBSD.
- Post transfer, ICO Global no longer had any rights to or responsibility for the North America MSS business.
- ICO Global never provided or received funding between the companies – and ultimately ICO Global lost even its 56% interest in the DBSD bankruptcy. The maximum ICO Global will receive in the newly reorganized post-bankruptcy DBSD is 4%, and Sprint is attempting to reduce that to zero through the court of appeals process.

- Ignoring the separation of the businesses would effectively impose the licensee's obligations on an investor, chilling investment in regulated entities.

Corporate Structure; Investor Rights; Separate Operations

- ICO Global and DBSD are in two different businesses and have no involvement in each others' businesses.
- Since 2005, DBSD has been separately funded and has relied on its own resources to construct, launch and operate its GEO satellite without any assistance from ICO Global. ICO Global employees with MSS expertise became and remain DBSD employees.
- DBSD's investors and the ICO Global board insisted on arms' length separation between DBSD and ICO Global as a condition of funding DBSD.
- The related costs of the MSS operation, including the costs of relocating BAS licensees, were and are a liability of DBSD, and were disclosed to DBSD's outside investors in the documentation associated with their investment in 2005.

Clearwire Analogy

- Sprint's claim that ICO Global has engaged in "misdirection" and its CEO's statement that ICO Global is playing "corporate shell games" are particularly ironic – and galling – given that Sprint itself has structured its relationship with Clearwire in essentially the same manner as ICO Global and DBSD.
- Just as ICO Global 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. At the same time, Sprint and Sprint's CEO routinely refer to New Clearwire's 4G Network as "our," *i.e.*, Sprint's, network. Clearwire and Sprint even have common directors, with Sprint officers and directors serving on the Clearwire board. Yet Sprint refuses to take any responsibility for Clearwire's obligations, as evidenced by the fact that Sprint doesn't even consolidate Clearwire financial statements in its public reporting. No one is arguing that Sprint is responsible for Clearwire's obligations or that Sprint's treatment of its Clearwire investment constitutes a "corporate shell game."

Extending Liability to ICO Global Would Be Unlawful

- 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.

- DBSD (established in 2005 as ICO North America) is not a “façade” or sham. It has its own assets, liabilities and business operations.
- ICO Global likewise has assets, liabilities and business operations that are separate from DBSD’s.
- DBSD was not created to avoid FCC obligations or policies.
- ICO Global and DBSD are not a “common enterprise” or a joint “MSS entrant.”
- Extending an MSS licensee’s liability for relocation reimbursement costs to a shareholder of or investor in the licensee would be impermissible retroactive rulemaking. Sprint itself acknowledged that the liability was solely the responsibility of the licensee when it brought an action in Federal District Court to “enforce” the Commission’s reimbursement rules, telling the court that those rules imposed liability on “MSS licensees” and suing DBSD and not ICO Global.

Extending Liability to ICO Global Would Be Inequitable

- Not only would it be legally impermissible to impose liability for relocation costs on ICO Global, it would be grossly unfair.
- Sprint received an extraordinary grant of 10 MHz of prime spectrum. In exchange, it spent significant sums to clear the MSS spectrum knowing that it might 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 ICO Global.
- ICO Global (even prior to the formation of DBSD in 2005) never utilized the BAS spectrum or received any benefit from Sprint’s delayed and inexplicably expensive band clearing activities, and it never will now that it has lost all but a minimal interest in DBSD following DBSD’s exit from bankruptcy.

EXHIBIT K

WILKINSON) BARKER) KNAUER) LLP

2300 N STREET, NW
SUITE 700
WASHINGTON, DC 20037
TEL 202.783.4141
FAX 202.783.5851
www.wbklaw.com

CHERYL A. TRITT
(202) 383-3385
CTritt@wbklaw.com

August 5, 2010

Via Electronic Filing

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

Re: **EX PARTE**
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-20091211-01576 &
SAT-T/C-20091211-00144

Dear Ms. Dortch:

Yesterday, August 4, 2010, Bryan Tramont of Wilkinson Barker Knauer, LLP (“WBK”), on behalf of New DBSD Satellite Services G.P., debtor-in-possession (with its debtor-affiliates, (“DBSD”), had a teleconference with FCC General Counsel Austin Schlick regarding the above-captioned proceedings. The undersigned of WBK, also on behalf of DBSD, had a telephone conversation with John Giusti, senior legal advisor to Commissioner Michael Copps regarding the proceeding.

Today, August 5, Mr. Tramont left voice-mail messages for Rick Kaplan, chief counsel and senior legal advisor, and Zac Katz, legal advisor, to Chairman Julius Genachowski, and had a telephone conversation with Charles Mathias, senior legal advisor to Commissioner Meredith Baker, and I had telephone conversations with Louis Peraertz, acting legal advisor to Commissioner Mignon Clyburn, and Angela Giancarlo, senior legal advisor to Commissioner Robert McDowell, and left a voice-mail message for Mindel de la Torre, chief of the International Bureau regarding the above-captioned proceeding.

Marlene H. Dortch
Federal Communications Commission
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During the conversations, DBSD renewed its request for prompt action on the above-referenced applications for transfer of control of DBSD's licenses and authorizations, which were filed on December 11, 2009, and reiterated points that it has raised in various Commission filings made in connection with the pending application review. In particular, DBSD emphasized that it is being seriously harmed by the unusual delay in the Commission's review of a bankruptcy-related transfer application. Finally, DBSD explained that the license transfer should proceed without awaiting the outcome of any other regulatory proceedings.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically with your office.

Respectfully submitted,

/s/Cheryl A. Tritt
Cheryl A. Tritt
Counsel to New DBSD Satellite Services G.P.

cc: Austin Schlick
Rick Kaplan
Zac Katz
John Giusti
Angela Giancarlo
Charles Mathias
Louis Peraertz
Mindel de la Torre