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Federal Communications Commission
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DA 11-1557

September 15, 2011

DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held By New DBSD Satellite Services G.P, Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession

IB Docket No. 11-150

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: October 17, 2011

Oppositions Due: October 27, 2011

Replies Due: November 3, 2011

I. INTRODUCTION

DISH Network Corporation (DISH) seeks approval to acquire control of the licenses for the U.S. operations of two satellite systems – TerreStar 1 and DBSD G1. The relevant licensees, both debtors in possession in connection with bankruptcy proceedings, are New DBSD Satellite Service G.P., Debtor-in-Possession (New DBSD DIP) and TerreStar License, Inc., Debtor-in-Possession (TSL DIP). The licensees both hold licenses for gateway earth stations, mobile earth terminals (METs), and an ancillary terrestrial component (ATC). The MET and ATC licenses are for operations in the 2 GHz band, and together authorize operations throughout the entire 40 MHz of spectrum available for mobile satellite service (MSS) operations in the 2 GHz band (2000-2020 MHz uplink and 2180-2200 MHz downlink).

The DBSD transaction is described in applications filed on April 8, 2011 (collectively, the DBSD Consolidated Application), in which New DBSD DIP and DISH seek approval to transfer control of New DBSD DIP to DISH.¹ The TerreStar transaction is described in applications filed on August 22, 2011 (collectively the TerreStar Consolidated Application), in which TSL DIP, DISH and Gamma Acquisition L.L.C. (Gamma) seek approval to transfer control of the authorizations held by TSL DIP to Gamma (a wholly owned subsidiary of DISH).² Concurrently with the filing of the TerreStar Consolidated Application, New DBSD DIP and DISH filed an Amendment to their application to reflect the

¹ See ICO Global Communications (Holdings) Limited; DBSD North America, Inc. Debtor-in-Possession; New DBSD Satellite Services G.P. Debtor-in-Possession, Transferors, and DISH Network Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Narrative, IBFS File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424 and -00425 (filed Apr. 8, 2011) (DBSD Consolidated Application).

² See TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession, Transferors, and DISH Network Corporation and Gamma Acquisition L.L.C., Transferees, Consolidated Application for Transfer of Authorizations, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011) (TerreStar Consolidated Application).

complementary transaction proposed by TerreStar and DISH.³ The parties to both sets of applications requested that the DBSD Consolidated Application, the DBSD Amendment and the TerreStar Consolidated Application be considered as a consolidated proceeding.⁴

II. THE DISH/DBSD TRANSACTION

A. The Parties

1. New DBSD Satellite Services G.P, Debtor-in-Possession

Pendrell Corporation (Pendrell), a Delaware corporation, formerly ICO Global Communications (Holdings) Limited, is the parent of DBSD North America, Inc. debtor-in-possession (DBSD NA DIP), a Delaware corporation. DBSD NA DIP is an indirect parent of DBSD Satellite Services GP, a Delaware corporation, which owns 99.9% of New DBSD DIP, also a Delaware corporation.⁵

2. The Transferee – DISH Network Corporation

DISH, a publicly traded company organized under the laws of Nevada, operates a subscription satellite television service.⁶ DISH provides entertainment programming and retransmits local-into-local television stations into all of the nation's markets. Charles W. Ergen is the controlling shareholder of DISH through stockholdings which give him a 90.5% voting interest and a 53.6% equity interest.⁷ Mr. Ergen also controls EchoStar Corporation (EchoStar), which designs, develops and distributes digital set-top boxes. EchoStar also provides digital broadcast operations to DISH and is DISH's sole supplier of digital set-top boxes for the DISH DBS service. Currently, DISH owns six satellites and leases capacity on seven additional satellites.⁸

B. The Transaction

DISH proposes to acquire control of DBSD NA DIP and its subsidiaries by purchasing all of its reissued stock upon emergence from bankruptcy, offering to purchase some of the DBSD entities' debts and providing \$87.5 million to support continued operations before emerging from bankruptcy.⁹ DISH

³ See DBSD North America, Inc., Debtor-in-Possession; New DBSD; Satellite Services G.P., Debtor-in-Possession; and Pendrell Corporation, Transferors, and DISH Network Corporation, Transferee, Amendment to Application for Transfer of Control, IBFS File Nos. SAT-AMD-20110822-00164, SES-AMD-20110822-00986, -00987, -00988, -00989, -00990 (filed Aug. 22, 2011) (DBSD Amendment).

⁴ DBSD Amendment at 2; TerreStar Consolidated Application at 50.

⁵ DBSD Consolidated Application at 4, and Attachment 1 at 3. SSG UK Ltd. DIP owns .01% of New DBSD DIP.

⁶ *Id.* at 4.

⁷ *Id.*, Declaration of Thomas Cullen at 3, *see also* Attachment 1 at 1.

⁸ Annual Satellite Report of DISH Operating L.L.C. (filed Jun. 30, 2010). DISH owns EchoStar I, EchoStar VII, EchoStar X, EchoStar XI, EchoStar XIV and EchoStar XV. It leases capacity on five satellites from EchoStar-EchoStar VI, EchoStar VIII, EchoStar IX, EchoStar XII, and Nimiq 5, and two from other parties – Anik F3 and Ciel II. DISH has leased capacity on two other space stations that are being constructed – QuetzSat-1 and EchoStar XVI.

⁹ DBSD Consolidated Application at 6.

will also pay Pendrell approximately \$325 million for certain rights and services.¹⁰ Upon consummation of the transaction, New DBSD Satellite Services GP, together with DBSD NA and the debtor entities owned directly or indirectly by it, will emerge as subsidiaries of DISH.¹¹ DISH will acquire indirect control over the five earth station licenses.¹² The United States Bankruptcy Court for the Southern District of New York approved an Investment Agreement detailing the transaction on March 15, 2011, and approved the plan of reorganization for emerging from bankruptcy on July 5, 2011.¹³

Sprint Nextel Corporation (Sprint) has asserted pre-petition claims against DBSD, DBSD North America, and certain subsidiaries of DBSD North America (collectively, Debtors).¹⁴ Sprint seeks reimbursement of costs arising from the relocation of Broadcast Auxiliary Service facilities from the 2 GHz bands.¹⁵ DISH has offered to pay Sprint \$40 million in satisfaction of its pre-petition claims if Sprint agrees to tender its claims.¹⁶ If Sprint does not agree to tender its claims, DISH and DBSD have agreed to pay Sprint the amount allowed as adjudicated by the Bankruptcy Court.¹⁷

C. Part 25 - Satellite Earth Station and Space Station Applications

The Application seeks consent to transfer control of the following authorizations:

Space Station Application:

<u>File Nos.</u>	<u>File Name:</u>	<u>Call Signs:</u>
SAT-T/C-20110408-00071	New DBSD Satellite Services	S2651
SAT-AMD-20110822-00164	G.P., Debtor-in-Possession	

Earth Station Licenses:

<u>File Nos.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SES-T/C-20110408-00424	New DBSD Satellite Services	E080035
SES-AMD-20110822-00990	G.P., Debtor-in-Possession	
SES-T/C-20110408-00424	New DBSD Satellite Services	E080070
SES-AMD-20110822-00989	G.P., Debtor-in-Possession	
SES-T/C-20110408-00424	New DBSD Satellite Services	E070291

¹⁰ *Id.* at 7. The rights include acquisition by DISH of a call right to acquire Pendrell's stock in DBSD NA DIP. The applicants, while noting that this right is unlikely to be exercised, specifically seek approval for its potential exercise. *Id.* at 8, n.16.

¹¹ DBSD Consolidated Application, DBSD North America, Inc. – Corporate Structure Post-Transaction Attachment.

¹² DBSD Consolidated Application at 9. DISH has also filed an application for informational purposes to facilitate the updating of Commission records with respect to the Letter of Intent grant for DBSD G1. *See id.* at 8, n. 17.

¹³ Letter from Peter Corea, DBSD Satellite Services G.P., to Marlene Dortch, Secretary, Federal Communications Commission, July 28, 2011.

¹⁴ DBSD Consolidated Application at 5, 7.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.*

SES-AMD-20110822-00987	G.P., Debtor-in-Possession	
SES-T/C-20110408-00424	New DBSD Satellite Services	E070290
SES-AMD-20110822-00988	G.P., Debtor-in-Possession	
SES-T/C-20110408-00425	New DBSD Satellite Services	E070272
SES-AMD-20110822-00986	G.P., Debtor-in-Possession	

III. THE DISH/TERRESTAR TRANSACTION

A. The Parties

1. TerreStar License Inc., Debtor-in-Possession

TSL DIP, a corporation organized under the laws of Delaware, is a wholly owned, direct subsidiary of TSN DIP, which is also organized under the laws of Delaware.¹⁸ TerreStar offers a next-generation mobile broadband network through a combination of the TerreStar-1 satellite, an all-Internet Protocol core network, and the GENUS handset, an integrated satellite/cellular smartphone.¹⁹

2. The Transferee - Gamma Acquisition L.L.C.

Gamma is a Limited Liability Company organized under the laws of Colorado. Gamma is a wholly owned, direct subsidiary of DISH, and was formed with the purpose of acquiring TerreStar Debtors' assets.²⁰

B. The Transaction

Gamma proposes to acquire substantially all of the assets of TerreStar Networks, Debtor-in-Possession (TSN DIP), TSL DIP and the other TerreStar Debtors for \$1.375 billion.²¹ On June 14, 2011, DISH, Gamma and the TerreStar Debtors entered into a Purchase Agreement, in which Gamma agreed to purchase substantially all of the assets of the TerreStar Debtors including the TSL DIP's authorizations granted by the Commission.²² The United States Bankruptcy Court for the Southern District of New York approved the Purchase Agreement on July 7, 2011.²³ The applicants state that this transaction will allow the TerreStar Debtors to emerge from bankruptcy and together with the DISH-DBSD transaction, allow DISH to launch a hybrid satellite and terrestrial mobile and fixed-broadband network (MSS/ATC) to provide mobile broadband services.²⁴

¹⁸ TerreStar Consolidated Application, Attachment 3, Section 63.18 Disclosures.

¹⁹ TerreStar Consolidated Application at 12.

²⁰ *Id.* at 10. The TerreStar Debtors are TSN DIP, TSO DIP, TerreStar National Services, Inc., TerreStar Network Holdings (Canada) Inc., TerreStar Networks (Canada) Inc., and 0887729 B.B. Ltd. *Id.* at n.3.

²¹ TerreStar Consolidated Application at 2.

²² *Id.*

²³ *Id.* at 2-3.

²⁴ *Id.* at 3.

C. Part 25 - Satellite Earth Station and Space Station Applications

Space Station Application:

<u>File No.</u>	<u>File Name:</u>	<u>Call Signs:</u>
SAT-ASG-20110822-00165	TerreStar License Inc., Debtor-in-Possession	S2633

Earth Station Licenses:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
SES-ASG-20110822-00993	TerreStar License Inc., Debtor-in-Possession	E090061
SES-ASG-20110822-00994	TerreStar License Inc., Debtor-in-Possession	E060430
SES-ASG-20110822-00992	TerreStar License Inc., Debtor-in-Possession	E070098

Section 214 Authorizations:

<u>File No.</u>	<u>Licensee:</u>	<u>Call Signs:</u>
ITC-ASG-20110822-00279	TerreStar License Inc., Debtor-in-Possession	ITC-214-20100513-00194 ITC-214-20100513-00195

IV. RELATED MATTER: APPLICATIONS SEEKING WAIVER OF ATC GATING CRITERIA AND TECHNICAL RULES

Concurrently with the filing of the TerreStar Consolidated Application and the DBSD Amendment, TSL DIP and New DBSD DIP filed applications that request a waiver of certain ATC gating criteria and technical rules. These applications are the subject of a separate docket file, established by a Public Notice issued concurrently with the issuance of this Public Notice.

V. EX PARTE STATUS OF THIS PROCEEDING

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them

²⁵ 47 C.F.R. §§ 1.1200 *et seq.*

in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

VI. GENERAL INFORMATION

This Application has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective or not in conformance with the Commission's rules or policies. Final action on this Application will not be taken earlier than thirty-one (31) days following the date of this Public Notice.²⁶

Interested parties must file petitions to deny or comments no later than **October 17, 2011**. Responses or oppositions to comments and petitions must be filed no later than **October 27, 2011**. Replies to such pleadings must be filed no later than **November 3, 2011**. All filings concerning matters referenced in this Public Notice should refer to **DA 11-1557, IB Docket No. 11-150**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²⁷ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.²⁸

Under the Commission's procedures for the submission of filings and other documents,²⁹ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- Electronic Filers:³⁰ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include

²⁶ See 47 U.S.C. § 309(b).

²⁷ See 47 C.F.R. §1.45(c).

²⁸ See 47 C.F.R. §1.45(c).

²⁹ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, DA 03-2730, 18 FCC Rcd 16705 (2003).

³⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

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

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location 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 should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile).

Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

- (1) Lynne Montgomery, Satellite Division, International Bureau, at Lynne.Montgomery@fcc.gov or (202) 418-0748 (facsimile);
- (2) Marilyn Simon, Satellite Division, International Bureau, at Marilyn.Simon@fcc.gov or (202) 418-0748 (facsimile);
- (3) Jim Bird, Office of General Counsel, at Jim.Bird@fcc.gov or (202) 418-2822 (facsimile);
- (4) Neil Dellar, Transaction Team, Office of General Counsel, at Neil.Dellar@fcc.gov or (202) 418-2822 (facsimile);
- (5) David Krech, Policy Division, International Bureau, at David.Krech@fcc.gov or (202) 418-2824 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C.

20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Lynne Montgomery, Satellite Division, International Bureau, at 202-418-2229.