

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	IB Docket No. 11-150
DBSD North America, Inc., Debtor-in-Possession;	)	(DA 11-1557)
New DBSD Satellite Services G.P.,	)	
Debtor-in-Possession; Pendrell Corporation;	)	File No. SAT-T/C-20110408-00071
TerreStar Networks Inc., Debtor-in-Possession; and	)	File No. SAT-AMD-20110822-00164
TerreStar License Inc., Debtor-in-Possession;	)	File No. SES-T/C-20110408-00424
	)	File No. SES-AMD-20110822-00990
Transferors,	)	File No. SES-AMD-20110822-00989
	)	File No. SES-AMD-20110822-00987
and	)	File No. SES-AMD-20110822-00988
	)	File No. SES-T/C-20110408-00425
DISH Network Corporation; and Gamma	)	File No. SES-AMD-20110822-00986
Acquisition L.L.C.;	)	File No. SAT-ASG-20110822-00165
	)	File No. SES-ASG-20110822-00993
Transferees	)	File No. SES-ASG-20110822-00994
	)	File No. SES-ASG-20110822-00992
For consent to transfer control of licenses and	)	File No. ITC-ASG-20110822-00279
Authorizations held by transferors	)	
	)	Call Signs: S2651, E080035,
	)	E080070, E070291, E070290,
	)	E070272, S2633, E090061,
	)	E060430, E070098, ITC-214-
	)	20100513-00194, ITC-214-
	)	20100513-00195
	)	

**PETITION OF SPRINT NEXTEL CORPORATION TO CONDITION APPROVAL OR  
TO DENY**

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October 17, 2011

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## SUMMARY

Sprint Nextel supports development of the underused 2 GHz MSS spectrum, as well as the broad competition goals outlined in the proposed acquisition by the DISH Network Corporation of the two MSS systems currently licensed in that spectrum. However, the Commission must first condition its consent to the proposed transfers of control on DISH's fulfillment of its reimbursement obligations to Sprint Nextel under the *Emerging Technologies* doctrine to ensure that the transaction yields public benefits.

Under the *Emerging Technologies* doctrine, and as specifically applied to these proceedings, Sprint Nextel is entitled to reimbursement payments by subsequently entering MSS licensees for their *pro rata* share of the relocation costs. Sprint Nextel finished clearing the 2 GHz MSS spectrum on July 15, 2010, but has not received any reimbursement payments by either MSS licensee to date.

The Commission has specifically held that assignees of the 2 GHz licenses such as DISH are new entrants to the band, and will be considered jointly and severally liable for unpaid incumbent relocation cost sharing associated with the spectrum. In addition, the Commission has conditioned the licenses DISH seeks to acquire on fulfillment of the reimbursement obligations to Sprint. DISH is also independently subject to the reimbursement obligations on other grounds, including enterprise liability. Given the history of the 2 GHz MSS licensees with respect to their BAS reimbursement obligations, conditioning approval of the proposed transactions on DISH's complete fulfillment of its outstanding reimbursement obligations to Sprint Nextel is entirely consistent with precedent and the public interest.

Requiring that Sprint Nextel be reimbursed before these proposed license transfers are consummated is necessary to prevent further significant and foreseeable harm to Sprint Nextel and to maintain the Commission's *Emerging Technologies* doctrine for future spectrum

reallocations and associated incumbent licensee relocations. Permitting DISH to acquire the 2 GHz MSS licenses without first paying its fair share of its spectrum-clearing costs would thwart the Commission's longstanding goal of encouraging the reconfiguration of encumbered spectrum for broadband use. This course of action would irreparably harm the Commission's efforts to promote band-clearing at precisely the time when the Commission needs to encourage the private sector to clear more spectrum of incumbent users to make way for new broadband operations. The Commission itself has anticipated that, absent defense of its doctrine, licensees in future rebanding efforts would be unwilling or unable to assume the burden and cost of clearing spectrum if they were unsure of the likelihood that they will be reimbursed by other new entrants. Making DISH's reimbursement of Sprint Nextel a condition precedent to Commission consent to the proposed license transfers will serve the public interest, enforce the *Emerging Technologies* doctrine, assure that these policies are viable and effective for effectuating the National Broadband Plan, and bring closure to this aspect of the BAS relocation proceeding.

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**PETITION OF SPRINT NEXTEL CORPORATION TO CONDITION APPROVAL OR  
TO DENY**

Sprint Nextel Corporation (“Sprint Nextel”), by counsel and pursuant to the Commission’s Public Notice of September 15, 2011, DA 11-1557 (the “Public Notice”)<sup>1</sup>, hereby submits its Petition to Condition Approval or to Deny the Applications (“Petition”) in the

<sup>1</sup> 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, Public Notice, DA 11-1557 (rel. Sept. 15, 2011).

captioned proceeding.<sup>2</sup> The above-captioned applications (the “Applications”) seek Commission approval for the transfer of control of the licenses and authorizations held by New DBSD Satellite Services G.P., Debtor-In-Possession (“New DBSD DIP”) to DISH Network Corporation (“DISH”), and approval for the transfer of control of the licenses and authorizations held by TerreStar License Inc., Debtor-in-Possession (“TSL DIP”), a wholly owned, direct subsidiary of TerreStar Networks Inc., Debtor-in-Possession (“TSN DIP”) to Gamma Acquisition L.L.C. (“Gamma”), a wholly owned, direct subsidiary of DISH.<sup>3</sup> New DBSD DIP and TSL DIP have also submitted applications requesting the Commission waive certain technical requirements and approve license modifications in connection with the ancillary terrestrial component authority (“ATC”) held by the licensees.<sup>4</sup>

Under the proposed transactions, DISH, through its subsidiary Gamma, will obtain substantially all of the assets of TSL DIP, TSN DIP, and certain of their affiliates.<sup>5</sup> DISH will also acquire control of DBSD North America, Debtor-in-Possession (“DBSD NA DIP”) and its

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<sup>2</sup> Sprint Nextel’s Petition is also submitted pursuant to 47 U.S.C. § 309(d) and 47 C.F.R. § 25.154.

<sup>3</sup> 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) (the “DBSD Consolidated Application”); 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) (the “TerreStar Consolidated Application”). The DBSD Consolidated Application was subsequently amended to reflect the transaction proposed in the TerreStar Consolidated Application. 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) (the “DBSD Amendment”).

<sup>4</sup> Sprint Nextel concurrently addresses those petitions by separate filing in IB Docket 11-149. See *In the Matter of New DBSD Satellite Services G.P., Debtor-in-Possession, and TerreStar License Inc., Debtor-in-Possession; Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority*, IB Docket 11-149, Petition of Sprint Nextel to Condition Approval (filed Oct. 17, 2011).

<sup>5</sup> TerreStar Consolidated Application, at 2. Those entities are collectively referred to herein as “TerreStar.”

subsidiaries, including New DBSD DIP.<sup>6</sup> As a consequence, DISH would acquire control of the facilities, satellites and licenses for the U.S. operations of both existing MSS satellite systems in the 2 GHz band, encompassing all 40 MHz of spectrum available for MSS operations.<sup>7</sup>

## **I. INTRODUCTION AND STATEMENT OF FACTS**

The 2 GHz MSS spectrum occupied by DBSD and TerreStar has long been underused. DBSD does not currently provide commercial MSS, and TerreStar's services are still in the early stages.<sup>8</sup> Sprint Nextel supports increased development of the 2 GHz MSS spectrum, enhanced competition, and service to the public, provided that all of the Commission's longstanding policies, conditions, and orders with respect to that spectrum and the related licenses continue to be upheld and enforced.

In particular, should the Applications be granted, DISH will be a new entrant to the cleared 2 GHz MSS spectrum, and will have direct reimbursement obligations to Sprint Nextel for Sprint Nextel's expenses for completely clearing then-incumbent Broadcast Auxiliary Service ("BAS") licensees from that spectrum. Moreover, the licenses DISH seeks to acquire are already conditioned upon fulfillment of those reimbursement obligations to Sprint Nextel. Consequently, Sprint Nextel respectfully requests that DISH be required to fulfill the 2 GHz MSS licensees' reimbursement obligations to Sprint Nextel prior to any grant of the Applications. Absent fulfillment of those conditions, the Applications should be denied as contrary to the public interest due to the irreparable harm such a grant would cause to the

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<sup>6</sup> DBSD Consolidated Application, Corporate Structure Post-Transaction Attachment. Those entities are collectively referred to herein as "DBSD." DISH will also pay Pendrell Corporation ("Pendrell"), formerly ICO Global Communications (Holdings) Limited, approximately \$325 million for various rights and services provided by Pendrell, including transitional services, intellectual property rights, and various agreements. *Id.* at 7-8.

<sup>7</sup> *See, e.g.*, Public Notice, at 1; DBSD Amendment, at 9.

<sup>8</sup> TerreStar Consolidated Application, at 31.

Commission's longstanding cost-sharing and band-clearing policies, as well as the damage Sprint Nextel would unfairly suffer.

**A. Sprint Nextel's Completion of the BAS Relocation**

The MSS spectrum that DISH seeks to utilize was initially occupied by BAS incumbents. Pursuant to the spectrum reallocation and band-clearance policies articulated in its *Emerging Technologies Proceeding*, the Commission held that any entity that was going to utilize the S-Band had to bear the relocation costs of moving the BAS incumbents to their new band.<sup>9</sup> As a condition of their licenses, all MSS entrants were required to pay their *pro rata* share of the relocation costs.<sup>10</sup> Thus, the first MSS system to enter the band would be able to recover a portion of its band-clearing expenses from subsequent entrants.<sup>11</sup>

Following years of MSS inactivity as to clearing BAS incumbents, in 2004 Sprint Nextel agreed to undertake the BAS Relocation as part of its acceptance of the Commission's 800 MHz Reconfiguration Decision.<sup>12</sup> Consistent with its earlier MSS orders and the longstanding cost-

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<sup>9</sup> The FCC's *Emerging Technologies* doctrine was originally adopted in the early 1990s as a policy for clearing spectrum for advanced technologies. See *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, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd. 26338, 26344-55, ¶¶ 7-10 (2003) (noting that the BAS Relocation was intended to follow principles embodied in the *Emerging Technologies* proceeding). See also *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 (1992); Second Report and Order, 8 FCC Rcd. 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797 (1994); *aff'd Ass'n of Public Safety Commc'ns Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, "*Emerging Technologies Proceeding*").

<sup>10</sup> 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, ET Docket No. 95-18, 15 FCC Rcd. 12315, 12337-78, ¶¶ 67, 69 (2000).

<sup>11</sup> *Id.*

<sup>12</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969 (2004) ("800 MHz Reconfiguration Decision"). The 800 MHz Reconfiguration Decision also obligated Sprint Nextel to make an "anti-windfall" payment to the U.S. Treasury if the value of the spectrum received by Sprint Nextel exceeded the costs associated with the 800 MHz realignment and the BAS transition. *Id.* at 15081, ¶ 212.

sharing principles of the *Emerging Technologies Proceeding*, the Commission determined that Sprint Nextel was entitled, as the first new entrant to clear the former BAS 1.9 GHz spectrum, to seek reimbursement from the later-entering MSS licensees on a *pro rata* basis for the costs Sprint Nextel incurred in clearing that spectrum.<sup>13</sup> At the same time, the Commission reaffirmed and maintained the existing independent obligation of MSS entrants to relocate then-incumbent BAS licensees.<sup>14</sup> Sprint Nextel successfully completed the BAS Relocation on July 15, 2010.<sup>15</sup>

### **B. Reimbursement Obligations to Sprint Nextel**

The Commission has correctly observed that despite the independent obligation of each MSS licensee to relocate BAS incumbents from the reallocated 1.9 GHz spectrum designated for future MSS use, Sprint Nextel “shouldered the entire cost of this relocation.”<sup>16</sup> All told, Sprint Nextel incurred approximately \$750 million in costs associated with the entire BAS Relocation, even though Sprint Nextel would only occupy approximately 14 percent (14%) of cleared spectrum.<sup>17</sup> The *pro rata* share of costs attributable to each MSS entrant is approximately \$104 million, or a combined \$208 million for the 40 MHz of cleared MSS 2 GHz spectrum.

Notwithstanding the Commission’s clear and consistent requirement and conditions that MSS licensees must pay their *pro rata* share of the BAS Relocation costs, the MSS entrants have systematically resisted their reimbursement obligations to Sprint Nextel. As the Commission has

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<sup>13</sup> See 800 MHz Reconfiguration Decision, 19 FCC Rcd. at 15099, ¶ 261.

<sup>14</sup> See *Improving Public Safety Communications in the 800 MHz Band, et al*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket 95-18, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 7904, 7909, ¶ 11 (2009) (the “2009 BAS Report & Order”); see also *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket 95-18, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd. 13874, 13884, ¶ 5 (2010) (“The MSS entrants’ obligation to relocate BAS incumbents has been in place since 2000.”) (the “2010 Declaratory Ruling”).

<sup>15</sup> Completion Letter, at 1; see also 2010 Declaratory Ruling, 25 FCC Rcd. at 13875, ¶ 1.

<sup>16</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13875, ¶ 1.

<sup>17</sup> See *id.* at 13884, ¶ 26. The FCC has recognized that the BAS relocation costs, along with eligible 800 MHz reconfiguration costs, are so large that Sprint Nextel does not expect to make an anti-windfall payment. *Id.* at 13877, ¶ 7.

recognized, the MSS licensees' reimbursement recalcitrance has forced Sprint Nextel to needlessly divert valuable personnel and expend significant resources over several years in the course of pursuing its reimbursement rights against the MSS entrants in numerous forums, often simultaneously.<sup>18</sup>

Despite the Commission's 2010 Declaratory Ruling rejecting the MSS licensee's arguments for not reimbursing Sprint Nextel, and clarifying that assignees or transferees of the MSS licensees would be treated as new entrants for reimbursement purposes, Sprint Nextel still has not received any reimbursement for clearing the 2 GHz MSS spectrum DISH now seeks to occupy as both a new entrant, and as a successor to DBSD and TerreStar.<sup>19</sup> Accordingly, Sprint Nextel respectfully requests that the Commission also enforce DISH's payment of the 2 GHz MSS *pro rata* share of the BAS clearing costs incurred by Sprint Nextel pursuant to the terms of the 2010 Declaratory Ruling.<sup>20</sup> Enforcement of these existing obligations prior to consummation of the proposed transaction will be wholly consistent with the Commission's past orders, including the 2010 Declaratory Ruling; will minimize future harms to Sprint Nextel; and will ensure that the Commission's important *Emerging Technologies* doctrine is enforced and that it remains applicable and viable for future spectrum reallocation and incumbent relocation

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<sup>18</sup> *Id.*, at 13878, ¶ 8 (noting that “no cost sharing payments have been made to date” and that Sprint Nextel and the MSS entrants have “disputed, in multiple forums, their respective cost-sharing responsibilities.”).

<sup>19</sup> The 2010 Declaratory Ruling also established the procedures to be followed and the burdens of proof to be applied to resolve any further disputes over the amount of the claim. The 2010 Declaratory Ruling required that once Sprint Nextel provided the information specified in the order to support its claim, the MSS entrant was not entitled to further dispute the amount of the claim and overcome the presumption afforded by the audited information supplied by Sprint Nextel unless they provide “an independent estimate of the relocation costs in question.” 2010 Declaratory Ruling, 25 FCC Rcd. at 13902-03, ¶ 69. Sprint Nextel subsequently tendered the required information to support its claims.

<sup>20</sup> Both DBSD and TerreStar contend that the 2010 Declaratory Ruling is impermissibly retroactive as it applies to them. Although Sprint Nextel believes that argument has no merit, the Commission can remove any uncertainty on this issue by expressly requiring DISH, as a new assignee of the licenses, to comply with the 2010 Declaratory Ruling. The 2010 Declaratory Ruling was adopted before DISH made its offers to purchase DBSD and TerreStar, and therefore retroactivity arguments have no relevance with respect to DISH.

efforts.<sup>21</sup> Absent such a requirement, grant of the Applications would be contrary to the public interest.

## II. STANDING

Sprint Nextel is a party in interest to these proceedings. As a threshold matter, the Commission takes a “rather generous attitude” towards standing with respect to transfer and assignment applications.<sup>22</sup> In particular, as reflected above, Sprint Nextel will suffer new, direct, and cognizable economic injuries should DISH be permitted to operate in the spectrum Sprint Nextel cleared without providing the required reimbursement payments to Sprint Nextel. Courts have long made clear that such direct economic injuries are a sufficient basis for standing under 47 U.S.C. § 309(d).<sup>23</sup> Moreover, Sprint Nextel’s injuries can and should be redressed if the Commission takes the appropriate step of expressly conditioning any approval of the transfer of control applications on DISH first making Sprint Nextel whole as required under the Commission’s standing orders and as conditions on the transferred licenses.

The Applicants acknowledge that competitive pressures exist between MSS services and terrestrial Commercial Mobile Radio Service (“CMRS”).<sup>24</sup> DISH “believes it can launch a viable service capable of being at least a partial competitive substitute for services offered by [CMRS]” through the combination of the two 2 GHz MSS spectrum assignments.<sup>25</sup> These

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<sup>21</sup> Sprint Nextel has been seeking enforcement and reimbursement of its relocation costs since 2008. DISH, as a new entrant, now seeks to acquire and monetize the cleared spectrum. At a minimum, expressly conditioning approval of DISH’s application on payment of its *pro rata* share of BAS clearing costs subject to a definitive payment deadline should ensure that the Commission’s policies are upheld.

<sup>22</sup> *In the Matter of New DBSD Satellite Services G.P., Debtor-in-Possession, Transferor, New DBSD Satellite Services G.P., Transferee, Transfer of Control of Earth Station and Ancillary Terrestrial Component Licenses and Conforming Modifications to Commission Records*, Order, DA 10-1881, ¶ 6 (September 29, 2010) (citing *Broad Enters., Inc. v. FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968)).

<sup>23</sup> See, e.g., *WLVA, Inc. v. FCC*, 459 F.2d 1286, 1298 (D.C. Cir. 1972).

<sup>24</sup> DBSD Consolidated Application, at 17 & n.39.

<sup>25</sup> DBSD Amendment, at 3.

competitive implications between CMRS and DISH's planned services further provide a separate and equally sufficient basis for Sprint Nextel's standing as a CMRS competitor.<sup>26</sup>

## DISCUSSION

### II. THE COMMISSION SHOULD CONDITION ANY GRANT OF THE APPLICATIONS ON DISH MEETING ITS REIMBURSEMENT OBLIGATIONS TO SPRINT NEXTEL

#### A. The Commission Has Already Determined that DISH Will Be Directly Liable To Sprint Nextel As A New Entrant

Should the Applications be approved, DISH's reimbursement obligations to Sprint under the 2010 Declaratory Ruling will be undeniable. In that order, the Commission anticipated that "multiple new entrants may have an interest in the same portion of the relocated BAS spectrum because, for example, entrants change business structure or assign their licenses."<sup>27</sup> As a result, the Commission expressly stated that an assignee such as DISH "would be considered a new entrant and is responsible for unpaid cost sharing associated with a particular portion of the spectrum."<sup>28</sup> Specifically, "[t]he assignee would be considered a new entrant and jointly and severally liable for unpaid cost sharing associated with a particular portion of the spectrum."<sup>29</sup>

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<sup>26</sup> See, e.g., *Am. Mobilphone, Inc. and Ram Techs., Inc.*, Order, 10 FCC Rcd. 12297, 12298 (1995) (as a competitor, a petitioner "does not need to demonstrate that it will suffer a direct injury from the grant of the assignment application or that a denial of the application will prevent some economic harm ... [n]or must it demonstrate, or even allege ... that it will be subjected to increased or materially different competition as a result of the proposed assignment.").

<sup>27</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13900, ¶ 63.

<sup>28</sup> *Id.* (emphasis added); see also *id.* at 13892, ¶ 41 (One of the "important underlying principles of the relocation policy is that licensees that ultimately benefit from the spectrum cleared by the first entrant shall bear the cost of reimbursing the first entrant for the accrual of the benefit.") (emphasis added); 47 C.F.R. § 74.690 (new entrants are collectively defined to include "those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000-2020 MHz band").

<sup>29</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13900, ¶ 63, n.153 (emphasis added). Although the assignment alone is sufficient to establish the assignee as a new entrant, DISH would also be considered a new entrant under the Commission's clarification of band entry. *Id.* at 13892, ¶ 49 ("... an MSS entrant will 'enter the band' and therefore incur a cost sharing obligation when it certifies that its satellite is operational for purposes of meeting its operational milestone.") The MSS systems that DISH is acquiring have already entered the band by meeting their operational milestones, and DISH's planned "hybrid satellite and terrestrial mobile and fixed broadband network" in the 40 MHz of 2 GHz MSS spectrum will utilize both TerreStar's T-1 and DBSD's G-1 satellites. TerreStar Consolidated Application, at 3, 25; see also Public Notice, at 1 ("[DISH] seeks approval to acquire control of the licenses for the

This determination was based on principles of “fairness as well as our well-established cost sharing principles dictate that all of the new entrants should bear the burden of the increased cost and complexity of the BAS transition and not just Sprint Nextel.”<sup>30</sup>

DISH has no legitimate basis to deny or resist its reimbursement obligations as a new entrant. While DISH might enter into private agreements with DBSD, TerreStar, or other parties regarding those obligations, any agreements the assignee may enter into with third parties “will not preclude Sprint Nextel from seeking to collect the appropriate reimbursement from the parties or in any way limit the Commission’s authority to take appropriate enforcement action against the parties for failure to timely pay their reimbursement obligation.”<sup>31</sup>

Moreover, the bankruptcy status of DBSD and TerreStar provides no basis on which DISH can avoid its own liability as a new entrant pursuant to the 2010 Declaratory Ruling (or as the transferee of the subject licenses, as discussed below).<sup>32</sup> The order that confirmed DBSD’s confirmation plan states as follows:

The Plan leaves unaltered the legal, equitable, and contractual rights to which the Sprint Claim entitles Sprint Nextel.<sup>33</sup>

Similarly, the order approving the sale of TerreStar’s assets provides that:

Nothing in this Order or the Agreement shall prohibit Sprint Nextel Corporation (“Sprint Nextel”) from participating in any FCC proceedings regarding the FCC Approval, opposing any application for FCC Approval, or requesting any kind of relief to

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U.S. operations of two satellite systems – TerreStar 1 and DBSD G1.”).

<sup>30</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13884-85, ¶ 27 (emphasis added).

<sup>31</sup> *Id.* at ¶ 63 n. 153. Sprint Nextel may also make payment requests on new entrants until the December 9, 2013 sunset date, in which case “the sunset date will not serve to extinguish the new entrant’s payment obligation ...” *Id.* at 13901, ¶ 65 & n. 156.

<sup>32</sup> In the 2010 Declaratory Ruling, the Commission reserved the issue of whether the liability of a new entrant might need to be modified in a particular case to comply with the Bankruptcy Code. *Id.* at ¶ 63, n. 153.

<sup>33</sup> *See* Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code, *In re DBSD North America, Inc., et al, Debtors*, Case No. 09-13061, ¶ 81 (Bankr. S.D.N.Y. July 5, 2011) (excerpt attached hereto as Exhibit A).

the extent that Sprint Nextel is entitled to do so by virtue of otherwise applicable law in such proceedings.<sup>34</sup>

In addition, the asset purchase agreement for the sale of TerreStar's assets provides that the licenses currently held by TerreStar are being transferred subject to all existing conditions imposed by the Commission.<sup>35</sup> For each of these reasons, the bankruptcy cases of DBSD and TerreStar have no impact upon DISH's own liability.

For these reasons, the Commission must require DISH to satisfy its reimbursement obligations to Sprint Nextel prior to consummating the proposed transaction.<sup>36</sup> Enforcing these obligations will finally bring closure to a central aspect of the BAS Relocation. As discussed below, it will also implement the Commission's important *Emerging Technologies* doctrine and ensure it remains effective for future spectrum reallocations and incumbent licensee relocations.

**B. Reimbursement Obligations to Sprint Nextel Are Also a Condition of the Subject Licenses**

If the Commission approves the Applications, DISH will also have reimbursement obligations to Sprint Nextel due to conditions that already exist on the subject licenses themselves. Pursuant to longstanding cost-sharing principles, the Commission held in 2000 that under the MSS plan for BAS relocation, new entrants subsequently entering a cleared band would be required to compensate earlier entrants for costs incurred in clearing the spectrum on

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<sup>34</sup> See Sale Order, *In re TerreStar Networks, Inc., et al., Debtors*, Case No. 10-15446, ¶ 36 (Bankr. S.D.N.Y. July 7, 2011) (excerpt attached hereto as Exhibit B).

<sup>35</sup> DISH's Asset Purchase Agreement with TerreStar states that, among other assets, DISH acquired "all rights to ... fully utilize the FCC Licenses and Industry Canada Licenses in accordance with the conditions set out therein." See Asset Purchase Agreement, § 2.1(i) (June 14, 2011) (excerpt attached hereto as Exhibit C).

<sup>36</sup> In addition to its direct liability as an assignee, DISH would also meet the Commission's test for enterprise liability related to its acquisition of substantially all of the assets of TSL DIP, TSN DIP, and certain of their affiliates, and of DSBD NA DIP and its subsidiaries, including New DBSD DIP. Among other factors, under the proposed transactions DISH and these various affiliates and subsidiaries will act on behalf of one another in furtherance of their common regulatory goal of entering the 2 GHz MSS band, they will hold different assets and provide different services that are necessary to that goal, DISH will coordinate and direct those relationships and operations, and in all likelihood following the transactions DISH and these entities would present themselves to the Commission and the public as a unified entity. See 2010 Declaratory Ruling, 25 FCC Rcd. at 13889-90, ¶ 35.

their behalf. This obligation was imposed both under the FCC’s orders and as a condition of their licenses. The Commission’s statement on this matter could not be more unequivocal:

[W]e will require subsequently entering MSS licensees . . . to pay the earlier licensees a proportional share of the earlier MSS licensee’s costs in clearing the BAS spectrum, on a *pro rata* basis according to the amount each licensee is assigned. . . . All MSS licensees who benefit from relocation of BAS are responsible for contributing, as a condition of their licenses.<sup>37</sup>

That obligation continues to this day with respect to Sprint Nextel’s 2 GHz band-clearing efforts on behalf of MSS entrants, and is inextricably tied to the license regardless of any transfers. The Commission has also consistently extended these conditions to related licenses and authorizations.

For example, both TerreStar’s and DBSD’s recent ATC authorizations are expressly conditioned on compliance with the Commission’s actions in proceedings related to the BAS Relocation. An express condition on TerreStar’s January 2010 ATC authorization was that “[o]peration under this authorization is conditioned upon and subject to compliance with any action taken in further proceedings in ET Docket 95-18, ET Docket 00-258, and WT Docket 02-55, and any related proceedings[.]”<sup>38</sup> In establishing that condition, the International Bureau explained that it expected the Commission to resolve issues concerning the BAS Relocation reimbursements in the proceeding following the 2009 BAS Report & Order, and that it was “conditioning TerreStar’s ATC authorization on full compliance with the action taken by the Commission in that proceeding.”<sup>39</sup> The same holds true for DBSD’s ATC authorization, which

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<sup>37</sup> 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, ET Docket No. 95-18, 15 FCC Rcd. 12315, 12338, ¶¶ 67, 69 (2000); see also *id.* at 12338-39, ¶ 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.”) (emphasis added).

<sup>38</sup> *In re TerreStar Networks Inc.*, File Nos. SES-LIC-20061206-02100, *et al.*, 25 FCC Rcd. 228, 239, ¶ 34 (Int’l Bur. 2010).

<sup>39</sup> *Id.* at 234, ¶ 18.

is also “conditioned upon the outcome of ET Docket 95-18, ET Docket 00-258, and WT Docket 02-55, and any related proceedings.”<sup>40</sup> Again, the International Bureau explained that it was issuing DBSD’s ATC authorization “subject to the outcome of this [reimbursement] dispute, the resolution of which will occur in another proceeding.”<sup>41</sup> The subsequent outcome of those proceedings was, of course, the 2010 Declaratory Ruling. As discussed, that order unequivocally establishes DISH’s direct reimbursement obligations to Sprint Nextel as a new entrant.<sup>42</sup>

Thus, the licenses and authorizations DISH seeks to acquire consistently and independently require DISH to meet the outstanding reimbursement obligations to Sprint Nextel.<sup>43</sup> Holding DISH to the conditions on the licenses and authorizations prior to consummation of the proposed transaction is fully consistent with the Commission’s orders, and minimizes the risk that DISH would attempt to avoid or delay compliance with those conditions.

### **III. ABSENT FULFILLMENT OF DISH’S REIMBURSEMENT OBLIGATIONS, THE COMMISSION SHOULD DENY THE APPLICATIONS AS NOT IN THE PUBLIC INTEREST**

Enforcing the explicit conditions precedent requiring DISH to reimburse Sprint Nextel for its *pro rata* share of Sprint Nextel’s BAS Relocation efforts is also necessary to ensure the transactions on balance will have public benefits. The Commission must determine whether the

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<sup>40</sup> *In re New ICO Satellite Services G.P.*, File Nos. SES-LIC-20071203-01646, *et al.*, 24 FCC Rcd. 171, 197, ¶ 69 (Int’l Bur. 2009).

<sup>41</sup> *Id.* at 183, ¶ 34.

<sup>42</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13900, ¶ 63 & n.153. The existence of DBSD’s and Pendrell Corporation’s appeal of the 2010 Declaratory Ruling has no effect on this result. No party has sought or obtained a stay of the 2010 Declaratory Ruling, and it remains valid and in effect. It is Sprint Nextel’s view that the appellants are unlikely to prevail in their appeal, but even if appellants were to succeed on their arguments, alleged retroactivity challenges would have no relevance to DISH’s liabilities under the 2010 Declaratory Ruling and the Commission’s prior orders. The 2010 Declaratory Ruling only has prospective effect on DISH, which seeks approval of the Applications and related license obligations with full knowledge of the 2010 Declaratory Ruling and related precedent. There is no basis to not rely on this aspect of the 2010 Declaratory Ruling or withhold new conditions on DISH due to the pendency of the appeal.

<sup>43</sup> Consideration of the Applications under 47 U.S.C. § 310(d) also requires the Commission to dispose of them as if the transferee, DISH, were the direct license holder.

Applicants have demonstrated that the proposed assignment and transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.<sup>44</sup> If the transaction does not violate a statute or rule, the Commission next considers whether it could result in public interest harms by “substantially frustrating or impairing the objectives of the Communications Act or related statutes.”<sup>45</sup> The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>46</sup>

**A. The *Emerging Technologies* Cost Sharing Doctrine Is A Key Commission Policy and Must Be Enforced**

The Commission’s *Emerging Technologies* principles “have been a fundamental part of the Commission’s past efforts to unlock value and promote investment through the relocation process.”<sup>47</sup> In fact, the *Emerging Technologies* doctrine has been successfully employed in similar forms in numerous spectrum relocation initiatives, and important industry participants routinely advocate its use, including equitable cost sharing requirements.<sup>48</sup>

The Commission’s consistent adherence throughout the BAS Relocation to *Emerging Technologies* policies regarding cost reimbursements is equitable in guaranteeing that subsequent band entrants are not free riders, and also ensures that the *Emerging Technologies* doctrine remains viable and available for future relocation efforts. In the 2010 Declaratory Ruling, the Commission explained that “[w]e are concerned that were we to stray from the traditional

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<sup>44</sup> 47 U.S.C. § 310(d); *see also* 47 U.S.C. § 214(a).

<sup>45</sup> *See, e.g., In re Applications of AT&T and Cellco Partnership d/b/a Verizon Wireless*, WT Docket No. 09-104, 25 FCC Rcd. 8704, 8716, ¶ 22 (2010).

<sup>46</sup> *Id.*

<sup>47</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13875, ¶ 2.

<sup>48</sup> *See, e.g., Comments of CTIA – The Wireless Association®, In re Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, at 14 (November 25, 2005) (“...CTIA broadly supports the use of cost sharing, consistent with the prior 1.9 GHz rules, in the 2.1 GHz band. More specifically, all those that benefit from the relocation of BRS incumbents should be required to pay a proportional share of the costs of relocation.”) (emphasis added).

application of the *Emerging Technologies* relocation policy, future licensees might be unwilling or unable to assume the burden and cost of clearing spectrum quickly if they were unsure of the likelihood that they will be reimbursed by other new entrants.”<sup>49</sup>

These policy concerns are critically important to the Commission’s public interest evaluation of the Applications. The Commission’s public interest analysis “necessarily encompasses the ‘broad aims of the Communications Act,’” including “accelerating private sector deployment of advanced services.”<sup>50</sup> Explicit or implicit departure from the *Emerging Technologies* doctrine by allowing future entrants to avoid their reimbursement obligations would incentivize precisely the opposite of the behavior necessary to actually accomplish important spectrum rebanding initiatives, and will significantly reduce or entirely halt future rebanding efforts and any related service deployments. This would be a serious mistake at a time when the Commission is working to bring additional spectrum to market as called for in the National Broadband Plan.

**B. Absent the Requested Conditions, Any Public Benefits Would Be Outweighed By Significant Public Harms**

Setting aside the merits of timely and complete reimbursement of the funds spent clearing the 2 GHz MSS band that DISH intends to use, ensuring that all beneficiaries of a spectrum relocation pay their fair share is essential to advancing the deployment of broadband services in the United States. For example, a key feature and specific enumerated goal of the Commission’s National Broadband Plan is to make 500 MHz of spectrum newly available for wireless broadband within the next 10 years, with a benchmark of making 300 MHz between 225 MHz

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<sup>49</sup> 2010 Declaratory Ruling, 25 FCC Rcd. at 13892, ¶ 41.

<sup>50</sup> *See In re Applications of AT&T and Cellco Partnership d/b/a Verizon Wireless*, WT Docket No. 09-104, 25 FCC Rcd. 8704, 8716, ¶ 23 (2010).

and 3.7 GHz available by 2015.<sup>51</sup> Meeting these policy goals will prove nearly impossible without a viable *Emerging Technologies* cost-sharing doctrine that encourages and supports private sector rebanding efforts. Failure to require DISH to satisfy its prospective BAS reimbursement obligations as a condition precedent to Commission consent to transfer of control of the subject licenses would undermine the Commission's National Broadband Plan objectives and retard the deployment of competitive wireless broadband communications services.

### CONCLUSION

For the foregoing reasons, Sprint Nextel respectfully requests that the Commission ensure that DISH reimburses Sprint Nextel for its *pro rata* share of the cost of clearing the 2 GHz MSS spectrum prior to consummating the proposed transaction. Absent such a requirement, the Applications should be denied due to the significant public harms that would result, including irreparable injury to the Commission's ability under the *Emerging Technologies* policies to ensure that new entrants have the incentive to clear incumbents from new spectrum designated for broadband use in the future.

---

<sup>51</sup> Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 75-76 (2010).

Respectfully submitted,

Sprint Nextel Corporation

By: 

Marc S. Martin  
Brendon P. Fowler  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006-1600

October 17, 2011

**AFFIDAVIT**

DISTRICT OF COLUMBIA                    )  
  )        SS:  
CITY OF WASHINGTON                    )

Trey Hanbury, being duly sworn, deposes and says:

1. I am a Director of Government Affairs of Sprint Nextel Corporation.
2. I have read the foregoing Petition to Condition Approval or to Deny the applications for transfer of control of various licenses and authorizations to DISH Network Corporation and its wholly owned, direct subsidiary Gamma Acquisition L.L.C.
3. I have personal knowledge of the facts stated therein sufficient to demonstrate that Sprint Nextel Corporation is a party in interest and sufficient to demonstrate that any approval of those applications should be conditioned on the fulfillment of reimbursement obligations by DISH Network Corporation and its related entities, and that absent such conditions the grant of the applications would be inconsistent with the public interest.
4. The facts as set forth in the Petition, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.
5. I declare under penalty of perjury that the foregoing is true and correct.

**[SIGNATURE PAGE FOLLOWS]**

By: 

Trey Hanbury  
Sprint Nextel Corporation

October 17, 2011

District of Columbia:

Subscribed to and affirmed by Trey Hanbury before me this 17 day of October, 2011.

  
Notary Public

My Commission Expires:

**My Commission Expires**  
June 14, 2012

**CERTIFICATE OF SERVICE**

I, J. Bradford Currier, hereby certify that on this 17th day of October, 2011, copies of the foregoing Petition to Condition Approval or to Deny of Sprint Nextel Corporation were also served upon the following parties:

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License Inc., Debtor-in-Possession*



J. Bradford Currier

# **EXHIBIT A**

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

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

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER CONFIRMING DEBTORS' JOINT PLAN OF REORGANIZATION  
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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DBSD North America, Inc. and its direct and indirect subsidiaries as debtors and debtors in possession (collectively, the “**Debtors**”) having:<sup>1</sup>

- (a) on May 15, 2009 (the “**Petition Date**”), commenced chapter 11 cases (collectively, the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”);
- (b) continued to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- (c) filed, on April 13, 2011, the *Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 1060], the *Disclosure Statement for the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* [Docket No. 1059] (as subsequently modified, supplemented, and amended, the “**Disclosure Statement**”), and the *Debtors’ Motion for Entry of an Order Approving (A) the Adequacy of the Disclosure Statement and (B) Related Dates, Deadlines and Voting Procedures* [Docket No. 1061];
- (d) filed, on May 18, 2011, modified versions of the *Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*

---

<sup>1</sup> Unless otherwise noted, capitalized terms not defined in the Findings of Fact, Conclusions of Law, and Order Confirming the Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Confirmation Order**”) shall have the meanings ascribed to them in the *Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code*, attached hereto as **Exhibit A** (as the same may have been subsequently modified, supplemented, and amended, the “**Plan**”). The rules of interpretation set forth in Article I.B of the Plan shall apply to the Confirmation Order.

or Interests be entitled to setoff any Claim or Interest against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such Holder has Filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

**(x) Recoupment.**

In no event shall any Holder of Claims against or Interests in the Debtors be entitled to recoup any such Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or proof of Interest or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

**(xi) Release of Liens.**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of an Other Secured Claim, satisfaction in full of the portion of the Other Secured Claim that is Allowed, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

81. Sprint Nextel Corporation (“**Sprint Nextel**”) has asserted and filed a claim (the “**Sprint Claim**”) against New DBSD Satellite Services G.P. The Sprint Claim is Unimpaired by the Plan. The Plan leaves unaltered the legal, equitable, and contractual rights to which the Sprint Claim entitles Sprint Nextel. The Court does not now determine the nature, extent, or monetary entitlement, if any, resulting from those rights, which will be determined later in the claims allowance process. For the avoidance of doubt, it is only the Sprint Claim that is Unimpaired and any other claims that Sprint Nextel might assert are discharged.

82. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the discharge of any Claim, Interest, or Cause of Action of the Federal Communications

# **EXHIBIT B**

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

---

In re: )  
 ) Chapter 11  
 )  
TERRESTAR NETWORKS INC., *et al.*,<sup>1</sup> ) Case No. 10-15446 (SHL)  
 )  
Debtors. ) Jointly Administered  
 )

---

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF ASSETS OF DEBTOR OUTSIDE THE ORDINARY COURSE OF BUSINESS; (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; (C) AUTHORIZING THE ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “*Sale Motion*”)<sup>2</sup> dated April 15, 2011 [Docket No. 533] of the above captioned debtors and debtors in possession (collectively the “*Debtors*”) pursuant to sections 105, 363, 364, 365, 503 and 507 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 4001, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), for entry of: (I) an order (A) approving bid procedures in connection with the sale of substantially all of the Debtors’ assets (the “*Assets*”), (B) approving procedures for the assumption and assignment of certain contracts and leases; (C) scheduling the Sale Hearing (defined below); and (D) approving the form and manner of notice of the proposed sale, the Auction and the Sale Hearing; and a cure notice with respect to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction (as hereinafter defined); and (II) an order approving (A) the sale of substantially all of the Assets

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer identification number, are: TerreStar Networks Inc. (3931); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766); and 0887729 B.C. Ltd. (1345).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Sale Motion and the Agreement (as defined herein below).

Networks Inc, et al. v. U.S. Bank Nat' Assoc., Adv. Pro. No. 11-01268 (SHL), or (ii) any party's right to object to payment of the "make-whole" premium on the Senior Secured Notes asserted in Claim No. 83, filed by U.S. Bank National Association as Indenture Trustee and Collateral Agent for the Senior Secured Notes (collectively, the "***Preserved Actions***"), notwithstanding the fact that one or more Released Parties may hold securities that are subject to such Preserved Actions.

35. Notwithstanding any other provision of this Order, the Agreement or any other Order of this Court, no assignment of any rights and interests of the Debtors in any federal license or authorization issued by the Federal Communications Commission ("***FCC***") shall take place prior to the issuance of FCC regulatory approval for such assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such assignments and setting any regulatory fines or forfeitures, are fully preserved notwithstanding this Order, and nothing in this Order shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

36. Nothing in this Order or the Agreement shall prohibit Sprint Nextel Corporation ("***Sprint Nextel***") from participating in any FCC proceedings regarding the FCC Approval, opposing any application for FCC Approval, or requesting any kind of relief to the extent that Sprint Nextel is entitled to do so by virtue of otherwise applicable law in such proceedings. Nothing herein shall be deemed to be an acknowledgement or agreement by any party that Sprint has standing or the right to participate in any such proceedings or to request any kind of relief.

# **EXHIBIT C**

---

**PURCHASE AGREEMENT**

**by and among**

**TERRESTAR NETWORKS INC.,**

**TERRESTAR LICENSE INC.,**

**TERRESTAR NATIONAL SERVICES INC.,**

**TERRESTAR NETWORKS HOLDINGS (CANADA) INC.,**

**TERRESTAR NETWORKS (CANADA) INC.,**

**0887729 B.C. LTD.,**

**and**

**GAMMA ACQUISITION L.L.C.**

**and (solely with respect to Section 6.19 hereof)**

**DISH NETWORK CORPORATION**

**dated as of June 14, 2011**

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Exhibit F	Form of Sale Order
Exhibit G	Operating Budget

<sup>1</sup> Draft to be provided at a later date.

<sup>2</sup> Draft to be provided at a later date.

<sup>3</sup> Draft to be provided at a later date.

## PURCHASE AGREEMENT

This Purchase Agreement, dated as of June 14, 2011, is made and entered into by and among (i) TerreStar Networks Inc., a Delaware corporation (“TerreStar Networks”), TerreStar License Inc., a Delaware corporation, TerreStar National Services Inc., a Delaware corporation, TerreStar Networks Holdings (Canada) Inc., an Ontario corporation, TerreStar Networks (Canada) Inc., an Ontario corporation, and 0887729 B.C. Ltd., a British Columbia corporation (each, a “Seller” and collectively, “Sellers”), (ii) Gamma Acquisition L.L.C., a Colorado limited liability company (“Purchaser”), and (iii) solely with respect to Section 6.19 of this Agreement, DISH Network Corporation, a Nevada corporation (“Parent”).

### RECITALS

WHEREAS, Sellers are engaged in the business of operating a mobile wireless communications system based on integrated satellite and ground-based technology to provide mobile coverage throughout the United States and Canada (the “Business”);

WHEREAS, on October 19, 2010, Sellers filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), which cases are being jointly administered under Case No. 10-15446 (the “Bankruptcy Cases”);

WHEREAS, on October 21, 2010, the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and the proceeding before the Canadian Court, the “CCAA Recognition Proceeding”) granted orders under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36 that, among other things, recognized the Bankruptcy Cases as the “foreign main proceedings” of Sellers;

WHEREAS, Purchaser desires to purchase and acquire from Sellers certain assets and rights used in the operation of the Business, and Sellers desire to sell, convey, assign and transfer such assets and rights to Purchaser, in the manner and subject to the terms and conditions set forth herein and as authorized under sections 105, 363 and 365 of the Bankruptcy Code; and

WHEREAS, Sellers desire to assign to Purchaser, and Purchaser desires to assume from Sellers, certain liabilities, in the manner and subject to the terms and conditions set forth herein and as authorized under sections 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

The terms defined or referenced in Section 9.15, whenever used herein, shall have the meanings set forth therein for all purposes of this Agreement.

## ARTICLE II.

### PURCHASE AND SALE OF ASSETS

Section 2.1 Sale and Transfer of Assets. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Sellers shall unconditionally Transfer to Purchaser and/or one or more of Purchaser's Affiliates or Subsidiaries, as designated by Purchaser, and Purchaser and/or one or more of its Affiliates or Subsidiaries, as applicable, shall purchase, acquire, assume and accept from Sellers, free and clear of all Seller Liabilities, Liens, Claims and Interests (except for Liens created by Purchaser and any Assumed Permitted Liens and Assumed Liabilities), all of Sellers' right, title and interest in and to all of their Assets, other than the Retained Assets (collectively, the "Acquired Assets"), including (except as listed in Section 2.2):

- (a) the shares of capital in TerreStar Solutions Inc. ("Solutions") listed on Section 4.24(c) of the Disclosure Letter;
- (b) all Intellectual Property of the Sellers, including the items listed on Section 2.1(b) of the Disclosure Letter;
- (c) all Contracts set forth on Section 2.1(c) of the Disclosure Letter (which Purchaser has the right to revise in its discretion in accordance with Section 6.11 hereof) (collectively, the "Designated Contracts");
- (d) the Real Property and personal property of Sellers, including the Leased Real Property (to the extent the applicable lease is a Designated Contract), all easements and rights of way and all buildings, fixtures and improvements erected on the Real Property;
- (e) all books, files, data, customer and supplier lists, cost and pricing information, business plans, quality control records and manuals, blueprints, research and development files, personnel records of Transferred Employees to the extent the Transfer of such items is permitted under Applicable Law (excluding personnel files for employees who are not Transferred Employees) and related books and records for the Acquired Assets and all other records of Sellers;
- (f) all computer systems, computer hardware and Software of Sellers;
- (g) all inventory, supplies, finished goods, works in process, goods-in-transit, packaging materials and other consumables of Sellers (the "Inventory");

- (h) all Transferable Permits of any Seller, including all letters of intent, reservations of spectrum and Permits issued by the FCC and Industry Canada listed on Section 2.1(h) of the Disclosure Letter;
- (i) the mobile satellite service system owned or operated by Sellers (including Sellers' rights or rights of use with respect to T1 and T2, gateway earth stations, calibration earth stations, mobile earth stations (to the extent that the Sellers hold legal title to such mobile earth stations), and other facilities and equipment related thereto, collectively, the "Mobile Satellite System"), including all rights to (A) own, operate and control the Mobile Satellite System, (B) own, operate and control the Ancillary Terrestrial Component service, in the United States using the radio frequencies 2000-2010 and 2190-2200 MHz, (C) construct and operate terrestrial wireless facilities in the United States utilizing the spectrum referenced in (B), and (D) fully utilize the FCC Licenses and the Industry Canada Licenses in accordance with the conditions set out therein;
- (j) all machinery, vehicles, tools, equipment, furnishings, office equipment, fixtures, furniture, spare parts and other fixed Assets which are owned by Sellers (and Sellers' right, title and interest in any leases relating to the same to the extent the applicable lease is a Designated Contract), including all of Sellers' right, title and interest in or to all ground infrastructure, towers, transmission lines, antennas, microwave facilities, transmitters and related equipment ("System Equipment") (all of the foregoing, collectively, "Equipment");
- (k) all advertising or promotional materials of Sellers to the extent related to the other Acquired Assets set forth in this Section 2.1;
- (l) all manufacturer's warranties to the extent related to the Acquired Assets and all claims under such warranties;
- (m) to the extent Transferable under Applicable Law, all rights to the telephone numbers (and related directory listings), Internet domain names, Internet sites and other electronic addresses used by, assigned or allocated to Sellers;
- (n) all prepaid expenses (excluding prepaid expenses related to Taxes) of Sellers relating to any portion of the Acquired Assets;
- (o) all advances or similar prepayments relating to Transferred Employees;
- (p) cash held in any security deposits, earnest deposits, customer deposits and other deposits and all other forms of security placed with Sellers for the performance of a contract or agreement which otherwise constitutes a portion of the Acquired Assets ("Third Party Deposits");
- (q) all Investments and any and all Cash and Cash Equivalents or revenues received by the Sellers after the Funding Date in respect of the Acquired Assets;
- (r) proceeds received after the Funding Date under insurance policies of Sellers to the extent received or receivable with respect to the Business or the Acquired Assets and, to the extent contractually and legally permissible, all rights of every nature and description under or