

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

In the Matter of)	
)	
New DBSD Satellite Services G.P., Debtor-in-Possession, Transferor,)	File No. SES-T/C-20091211-01575
)	Call Sign: E070272
)	File No. SES-T/C-20091211-01576
New DBSD Satellite Services G.P., Transferee)	Call Signs: E070290; E070291; E080035;
)	E080070
Transfer of Control of Earth Station and Ancillary Terrestrial Component Licenses and Conforming Modifications to Commission Records)	File No. SAT-T/C-20091211-00144
)	Call Sign: S2651

ORDER

Adopted: September 29, 2010

Released: September 29, 2010

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant New DBSD Satellite Services G.P., Debtor-in-Possession's (New DBSD DIP) request to transfer the above-referenced earth station licenses to New DBSD Satellite Services G.P. (New DBSD). This action will allow New DBSD to emerge from bankruptcy, pursuant to a reorganization plan that has been approved by the Bankruptcy Court.

II. BACKGROUND

2. New DBSD DIP is a debtor-in-possession in bankruptcy under Chapter 11 of the United States Bankruptcy Code. On December 11, 2009, New DBSD DIP filed applications to transfer control of earth station licenses for operations of its 2 GHz mobile satellite service system to New DBSD.¹ The licenses include an authorization for an ancillary terrestrial component (ATC). The bankruptcy-related reorganization plan was approved by the U.S. Bankruptcy Court for the Southern District of New York in December 2009 and would result in a change of ownership of New DBSD's parent company, DBSD North America, Inc., formally known as ICO North America, Inc.² On December 16, 2009, the applications concerning the earth stations were placed on public notice.³

¹ File Nos. SES-T/C-20091211-01575 and SES-T/C-20091211-01576. New DBSD DIP also filed a request for authority to transfer control of a "spectrum reservation" in IBFS File No. SAT-T/C-20091211-00144.

² *In re DBSD N. Am., Inc.*, 421 B.R. 133 (Bankr. S.D.N.Y., Nov. 23, 2009)(NO. 09-13061)(REG), *aff'd* Memo. and Order, *In re DBSD N. Am., Inc.*, Case Nos. 09-10156, 09-10372, 09-10373 (S.D.N.Y. Mar. 24, 2010). Sprint sought and was denied a stay of the Confirmation Order from both the District Court and the Bankruptcy Court *See* Memo. and Order, *In re DBSD N. Am., Inc.*, Case Nos. 09-10156 (S.D.N.Y. May 7, 2010); *In re DBSD N. Am., Inc.*, Case No. 09-13061 (Bankr. S.D.N.Y. May 18, 2010), *appeal pending*, *In re: DBSD North America, Inc.*, Case No. 10-1352 (2d Cir.).

³ *See* Policy Branch Information, Actions Taken, *Public Notice*, Report No. SES-01202, rel. Dec. 16, 2009. The filing concerning the "spectrum reservation," File No. SAT-T/C-20091211-00144, was not placed on public notice. The spectrum reservation filing and its substantive and procedural status are discussed *infra*. at ¶ 7.

III. DISCUSSION

A. Preliminary Matters

5. *Sprint Nextel as a party in interest.* In its Opposition, New DBSD DIP argues that Sprint Nextel lacks standing to oppose the transfer of control applications because they have not demonstrated a direct injury or a causal link between any claimed injury and a grant of the transfer of control applications.¹¹ New DBSD DIP also claims that Sprint Nextel's arguments about the separate dispute over relocation reimbursements cannot confer Sprint Nextel with standing in this proceeding because it is

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J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Aug. 26, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Aug. 26, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Aug. 27, 2010); Letter from Cheryl Tritt, Counsel for New DBSD, to Marlene H. Dortch, FCC (Aug. 27, 2010); Letter from Peter A. Corea, Counsel for New DBSD, to Marlene H. Dortch, FCC (Aug. 27, 2010); Letter from Marc S. Martin, Counsel to Sprint, to Marlene H. Dortch, FCC (Aug. 30, 2010)(regarding teleconference with advisor to Cmm'r Clyburn); Letter from Marc S. Martin, Counsel to Sprint, to Marlene H. Dortch, FCC (Aug. 30, 2010)(regarding teleconference with advisor to Cmm'r McDowell); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 1, 2010); Letter from Andrew M. LeBlanc, Counsel to Highland Capital, to Marlene H. Dortch, FCC (Sept. 1, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 1, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 2, 2010)(regarding meeting with Austin Schlick); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 2, 2010)(regarding meeting with John Giusti); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 2, 2010)(regarding separate teleconferences with Commissioners McDowell and Copps); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 3, 2010)(submitting letters exchanged between John Culver and Yosef Riemer); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 3, 2010)(responding to ICO Global's Sept. 1 *ex parte* communication); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 3, 2010); Letter from Yosef Riemer, Counsel for New DBSD, to Marlene H. Dortch, FCC (Sept. 3, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 9, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 10, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 10, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 13, 2010)(regarding meeting with Legal Advisor to Commissioner Baker); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 13, 2010)(regarding meeting with Legal Advisor to Commissioner Clyburn); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 14, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 14, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 15, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 16, 2010); Letter from Phuong N. Pham, Counsel for New DBSD, to Marlene H. Dortch, FCC (Sept. 16, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 17, 2010)(responding to ICO Global's Sept. 14 *ex parte* communication); Letter from Joseph D. Weinstein to Howard J. Symons, Counsel for ICO Global (Sept. 17, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 17, 2010)(responding to Sprint's Sept. 10 *ex parte* communication); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 17, 2010)(submitting extension of debtor-in-possession financing for New DBSD); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 21, 2010)(responding to ICO Global's Sept. 17 *ex parte* communication); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 21, 2010)(submitting a Motion filed by DBSD in the U.S. Bankr. Ct., SDNY); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 22, 2010); Letter from Howard J. Symons, Counsel for ICO Global, to Marlene H. Dortch, FCC (Sept. 22, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Sept. 24, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (September 27, 2010); Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (September 27, 2010)(transmitting pleading Sprint Nextel submitted to the Bankruptcy Court, Southern District of New York).

¹¹ New DBSD Opposition at 3-4.

the subject of another proceeding.¹² In response, Sprint Nextel claims that it does have standing because the reimbursement obligations on MSS entrants are inextricably tied to the licenses in question.¹³

6. We take a “rather generous attitude” toward standing in opposition to transfer and assignment applications in order to enable interested parties to bring to the Commission’s attention matters bearing upon the public interest of which the Commission might not be otherwise aware.¹⁴ To that end, whether we conclude that Sprint Nextel has “standing,” or whether we treat the Petition to Deny as an informal objection,¹⁵ we believe that the issues raised in Sprint Nextel’s filings are of sufficient public importance that they should be considered on their merits, rather than summarily rejected without review.¹⁶

7. Ripeness of the Spectrum Reservation Filing. In an *ex parte* filing, Sprint Nextel notes that only two of New DBSD DIP’s three applications appear ripe for action, because only two have been placed on public notice.¹⁷ The third application involves the letter of intent filing, and the Commission’s decision in response to that filing to reserve spectrum for eventual use by the ICO/New DBSD system.¹⁸ We disagree with Sprint Nextel’s argument that the third application must be placed on public notice prior to action. The instruments involved in that application are not construction permits or licenses subject to the notice and prior transfer approval requirements of Section 309(b) and 310(d) of the Communications Act.¹⁹ The public notices regarding the earth stations have provided an adequate opportunity for raising any public interest concerns with respect to the transaction. Concurrently with action on New DBSD DIP’s earth station license transfers, we will take the administrative action of

¹² *Id.* at 4.

¹³ Sprint Nextel Reply at 17-19.

¹⁴ See *Broadcast Enterprises, Inc. v. FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968).

¹⁵ See, e.g., In the Matter of DirecTV Enterprises, LLC, *Order*, DA 10-113, 25 FCC Rcd 440, 442, ¶ 5 (Sat. Div., Int’l. Bur. 2010) (noting that there is no standing requirement for informal objections, and that the Commission has discretion to consider such objections).

¹⁶ To support its claim that Sprint Nextel lacks standing, New DBSD DIP cites *In re Applications to Assign Wireless Licenses from WorldCom, Inc.(Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., Memorandum Opinion and Order*, 19 FCC Rcd 6232, 2004 WL 718999 (Apr. 2, 2004), where the Commission rejected a petition to deny on both standing and mootness grounds. There, however, the objection was based on a refusal to extend an unrelated facilities agreement, and claims that the applicant had violated unrelated procedural rules (¶¶ 9-10), and the Commission noted that it had already resolved the issues in another proceeding (¶ 21). Here, in contrast, Sprint Nextel makes a claim of direct injury in fact, the matters at issue are pending in unresolved administrative and judicial proceedings, and Sprint Nextel seeks to protect its position in those proceedings through its Petition to Deny.

¹⁷ Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (August 9, 2010), at 2.

¹⁸ The letter of intent/spectrum reservation mechanism was developed to facilitate the participation of non-U.S. licensed satellite systems in the FCC licensing process, even though such systems were not seeking a U.S. space station license. As such, favorable action on a letter of intent filing is in the nature of a policy statement or declaratory ruling with respect to the availability of spectrum for future licensing of U.S. earth stations that would operate with the non-U.S. licensed space station. See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094, 24173 (para. 184). Once an earth station license is issued, however, our practice is to maintain the Letter of Intent file for informational purposes, as it contains satellite technical information that aids in the evaluation of earth station license applications.

¹⁹ 47 U.S.C. §§ 309(b), 310(d).

modifying the company name in which the files for the letter of intent/spectrum reservation documents are listed.

B. Grant of New DBSD's applications serves the public interest

8. In its Petition to Deny, Sprint Nextel argues that a grant of the transfer of control applications would not serve the public interest and would offer no public benefit. Sprint Nextel contends that during the bankruptcy proceeding, New DBSD DIP confirmed that it had no plans to provide commercial service until 2014 at the earliest and does not have the financial ability to complete construction of the ATC component of their network.²⁰ Sprint Nextel argues that the lack of financial resources would result in effectively mothballing the MSS/ATC system since New DBSD would not have the financial capability to complete it.²¹ Sprint Nextel also cites to New DBSD's lack of success in finding a strategic partner as another reason that granting the transfer of control applications would not be in the public interest.²²

9. In response, New DBSD DIP argues that a grant of its applications will serve the public interest because New DBSD's satellite system had been successfully launched and tested before gaining full access to the MSS spectrum.²³ New DBSD DIP further states that grant of the applications will serve the public interest by enabling them to emerge from bankruptcy protection and be better able to attract strategic partners and their current financial resources are not indicative of whether it will be able to fully implement its system.²⁴

10. We believe that granting New DBSD DIP's transfer of control applications will serve the public interest. Although we must make our own public interest determination under the mandate of the Communications Act, the Commission seeks, where possible within the framework of the requirements of the Communications Act, to accommodate the policies of the Bankruptcy Code and the findings of bankruptcy courts.²⁵ The Commission has held in the past that allowing a company to consummate its court-approved bankruptcy reorganization plan will "serve the public interest by furthering the equitable purposes of the Federal Bankruptcy Act."²⁶ Further, the Commission recognizes that as a general matter approving transfer of control or assignment applications for purposes of post-bankruptcy restructuring will strengthen the commercial viability of the applicant in the provision of service.²⁷

11. With respect to Sprint Nextel's specific assertions that New DBSD DIP is not financially qualified to hold a Commission license, the Commission's rules do not require any specific showing of financial qualifications on an application to transfer control.²⁸ Further, Sprint Nextel has not presented

²⁰ Sprint Nextel Petition to Deny, at 10-11.

²¹ *Id.* at 15-16.

²² *Id.* at 8-9.

²³ New DBSD Opposition at 5.

²⁴ *Id.* at 6.

²⁵ See *LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974).

²⁶ Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, *Memorandum Opinion and Order*, 17 FCC Rcd 2271, 2289 (2002).

²⁷ International Authorizations, Public Notice, 19 FCC Rcd 4079 (2004) (granting the assignment or transfer of control of Commission licenses relating to the operation of the Globalstar MSS system from Globalstar LP, Debtor-in-Possession to L/Q Licensee, Inc.).

²⁸ Section 25.119 of the Commission's rules, 47 C.F.R. § 25.119, spells out the requirements for satellite license transfers of control, and makes no mention of a required financial showing. Section 25.165 of the Commission's

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any evidence or arguments regarding the future financial stability of New DBSD DIP that were not also presented to the bankruptcy court in connection with the confirmation of New DBSD DIP's reorganization plan. The bankruptcy court was required under the Bankruptcy Code to make a finding that the proposed plan was feasible and that the proposed plan is not likely to be followed by liquidation or need for further financial reorganization of the debtor or successor of the debtor under the plan.²⁹ The bankruptcy court reviewed the contested evidence on feasibility that was presented by Sprint Nextel and other parties and made specific findings that the proposed plan met these requirements, noting that New DBSD DIP had firm financing commitments for two years of operations and that upon exit from bankruptcy, New DBSD DIP would be in a better position to attract new investments and strategic partners.³⁰ Consistent with our general respect for bankruptcy proceedings and because the bankruptcy court's findings are consistent with the record here, we likewise reject Sprint Nextel's arguments concerning New DBSD DIP's financial capability.

C. Sprint Nextel's request that the transfer order be conditioned on payment of relocation reimbursements to Sprint Nextel by ICO Global

12. Sprint Nextel asks that, should the Commission grant the pending transfer of control applications, the grant should be conditioned on the payment of relocation reimbursement costs incurred by Sprint Nextel.³¹ Sprint Nextel recognizes that the licensee, New DBSD DIP and various affiliates are in bankruptcy, and that the automatic stay imposed by the Bankruptcy Code prohibits Sprint Nextel from seeking reimbursement of costs directly from New DBSD DIP outside of the bankruptcy claims process.³² Sprint Nextel asserts, however, that ICO Global is also liable for payment of the relocation reimbursements to Sprint Nextel.³³ ICO Global is not a party to the pending New DBSD DIP bankruptcy case and Sprint Nextel asserts that ICO Global, therefore, is not protected by the Bankruptcy Code's automatic stay.³⁴ Accordingly, Sprint Nextel requests that we impose, as a condition for the out of bankruptcy transfer, a requirement that ICO Global pay the relevant relocation reimbursements to Sprint Nextel.³⁵ ICO Global's potential liability to Sprint Nextel is addressed in a separate *Order* in the *BAS Relocation Proceeding* and we will not revisit the issue here.³⁶

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rules, 47 C.F.R. §25.165(a), which imposes a bond requirement on the grant of new satellite licenses, makes no mention of transfers of control.

²⁹ 11 U.S.C. § 1129(a)(11).

³⁰ *In re DBSD North America*, et al., Case No. 09-13061 (REG) (Jointly Administered) (Bankr. S.D.N.Y., October 26, 2009) at 12-21.

³¹ See Sprint Nextel Petition to Deny at 17-21.

³² See Sprint Nextel Petition to Deny at 18 n. 38.

³³ *Id.* at 19.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, ET Docket No. 00-258 and ET Docket No. 95-18, *Fifth Report and Order*, *Eleventh Report and Order*, *Sixth Report and Order*, and *Declaratory Ruling*, FCC 10-179 (released September 29, 2010).

D. Sprint Nextel's request that the Commission delay approval of the transfer applications until resolution of its pending appeal of the confirmation order

13. Sprint Nextel requests that the Commission defer ruling on the applications until the Sprint Nextel's pending judicial appeal of the confirmation order has been resolved.³⁷ Responding to Sprint Nextel, New DBSD DIP has made several ex parte requests urging the Commission to decide the pending applications as quickly as possible.³⁸ Sprint Nextel also requests in the alternative that the Commission defer the effective date of the order granting the transfer applications to give Sprint Nextel an opportunity to seek a stay of the bankruptcy confirmation order from the United States Court of Appeals for the Second Circuit, where Sprint Nextel's appeal of the confirmation order is pending.³⁹ The grant of the pending applications is a condition precedent to the effective date of confirmation under the reorganization plan.⁴⁰ Sprint Nextel argues that granting the transfer applications will trigger the effective date in the reorganization plan, which raises the potential for prudential mootness preventing the Court of Appeals from deciding the pending bankruptcy appeal.⁴¹ The appeal has now been fully briefed and argued and is awaiting decision by the Court of Appeals.⁴²

14. We do not believe that the public interest will be served by delaying the pending transfer applications until the Second Circuit rules on the merits. However, we also do not intend our grant of the applications to interfere with the ability of the Court of Appeals to decide the pending case or to consider a timely stay request filed by Sprint Nextel. New DBSD DIP has taken steps to assure the Commission that it will not interfere with the filing of a timely stay request by Sprint Nextel. New DBSD DIP has committed to the Commission that it will not consummate the plan of reorganization earlier than four business days after release of the Order approving the transfer applications.⁴³ Building on these assurances from New DBSD DIP, and to ensure Sprint Nextel an adequate opportunity to present its request for a stay to the Second Circuit and receive a ruling on the stay request prior to the closing of the exit financing and the consummation of the Plan, we will defer the effective date of this Order for seven calendar days after its release. This will ensure Sprint Nextel an opportunity to be heard by the Court of Appeals while imposing only a minimal additional burden on Sprint Nextel, if any: New DBSD DIP's commitment not to close for four business days after the release of this Order would amount to a waiting period of between four and seven calendar days, depending on intervening weekends and holidays.

³⁷ See Sprint Nextel Petition to Deny at 21; Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Aug. 10, 2010) at 6.

³⁸ See Letter from Cheryl A. Tritt, Counsel to New DBSD DIP, to Marlene H. Dortch, FCC (Aug. 5, 2010) at 2.

³⁹ See Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Aug. 17, 2010), at 2.

⁴⁰ *In re: DBSD North America, Inc.*, Case No. 09-13061(REG) (Jointly Administered) (Bankr. S.D.N.Y., Nov. 23, 2009) (Findings of Fact and Conclusions of Law and Order Confirming Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code), Attachment B -- Plan of Reorganization, Article X.A.5 at p.46 ("Reorganization Plan").

⁴¹ See Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Aug. 17, 2010), at 2.

⁴² See Letter from Marc S. Martin, Counsel to Sprint Nextel, to Marlene H. Dortch, FCC (Aug. 9, 2010)(*transmitting* appeals court oral argument transcript), at Attachment A.

⁴³ Letter from Peter A. Corea, counsel for New DBSD, to Marlene H. Dortch, FCC (Aug. 27, 2010) at 2-3.

IV. ORDERING CLAUSES

15. Accordingly, the applications of New DBSD Satellite Services G.P., Debtor-in-Possession, IBFS File Nos. SES-T/C-20091211-01575 and SES-T/C-20091211-01576, ARE GRANTED.

16. IT IS FURTHER ORDERED, that application File No. SAT-T/C-2009121-00144 IS GRANTED to the extent of modifying the name in which the records associated with Call Sign S2615 are listed in the International Bureau Filing System.

17. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective seven (7) calendar days following release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Rodrigo H. Torres", is written over the typed name.

Mindel De La Torre *for MD*
Chief
International Bureau