UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF JOHN P. MADDEN OF CHANIN CAPITAL PARTNERS IN SUPPORT OF THE JOINT OBJECTION OF (I) WELLS FARGO BANK, N.A. IN ITS CAPACITY AS THE ADMINISTRATIVE AGENT UNDER THE FIRST LIEN CREDIT AGREEMENT AND (II) FIRST LIEN LENDERS TO THE DEBTORS' MOTION FOR APPROVAL OF DEBTORS' DISCLOSURE STATEMENT IN SUPPORT OF THE PLAN

John P. Madden, pursuant to 28 U.S.C. § 1746 hereby declares[1]:

1. I am a Director in the New York office of Chanin Capital Partners ("Chanin"), which has been engaged by the First Lien Administrative Agent and the First Lien Lenders to advise them in connection with the obligations owed to them by the Debtors. I make this Declaration in support of the Joint Objection of (I) Wells Fargo Bank, N.A. in its Capacity as the Administrative Agent under the First Lien Credit Agreement and (II) First Lien Lenders to the Debtors' Motion for Approval of Debtors' Disclosure Statement in Support of the Plan (the "Disclosure Statement Objection").[2]

2. Except where otherwise stated, I have personal knowledge of the matters set forth in this Declaration. If I were called to testify at the hearing on the Disclosure Statement, I would testify as follows:

[1] I am currently traveling and have no access to a Notary Public. I will reexecute this Declaration before a Notary Public as a sworn Affidavit as soon as I return to New York on July 10th.

[2] Capitalized terms used herein that are not defined have the meanings assigned to them in the Disclosure Statement Objection.

a) I am one of the primary persons responsible for this engagement at Chanin.

b) I am a Director in the New York office of Chanin specializing in all phases and types of in-court and out-of-court restructurings. Chanin is a wholly-owned subsidiary of Duff & Phelps. The firm specializes in providing the following financial services: Financial Restructurings, Mergers and Acquisitions, Corporate Finance and Private Placements, Valuations and Fairness and Solvency Opinions.

c) I have a Bachelor of Science degree in Business Administration from Georgetown University. I am a Certified Insolvency and Restructuring Advisor (CIRA) and a Certified Public Accountant. I am registered with FINRA and hold Series 7 & 63 licenses.

d) Prior to joining Chanin in 2004, I was employed by Kroll Zolfo Cooper, where I held positions of increasing responsibility for more than 5 years culminating in the position of Director. Prior to Kroll Zolfo Cooper, I was employed as an accountant by Arthur Andersen LLP in various audit engagement, working in a variety of industries.

e) Over the last eleven years of my career I have focused on advising debtors and creditors in chapter 11 restructurings and out-of-court workouts. At Chanin I have advised parties on many restructurings including, but not limited to, The Star Tribune Company (creditors' committee), Philadelphia Newspapers LLC (creditors' committee), Birch Telecom (creditors' committee), WHX Corp. (equity committee), Delphi (union employees), Granite Broadcasting (equity committee), Owens Corning (equity committee),

WorldSpace, Inc. (secured creditors), Motor Coach Industries Inc. (creditors' committee) and Hayes Lemmerz (creditors' committee). While at Kroll Zolfo Cooper, among other engagements, I worked on the interim senior management team involved in the restructuring of Enron, as a Director in the Restructuring Group; I advised Washington Group International, Inc. and Golden Ocean in their chapter 11 cases; and, I advised Party City Corporation and Prison Realty Trust / Corrections Corporation of America in out-of-court workouts.

f) In connection with Chanin's engagement by the First Lien Administrative Agent and the First Lien Lenders, I have reviewed and analyzed, and, in making this Declaration, rely on the following documents: (i) the Disclosure Statement for the Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code dated as of June 26, 2009 (the "First Amended Disclosure Statement"), including the financial projections and liquidation analysis attached as exhibits thereto, (ii) the Debtors' First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code dated as of June 26, 2009 (the "First Amended Plan"), (iii) the Debtors' Year 2008 Annual Report, and (iv) certain other pleadings filed by the Debtors in their chapter 11 cases.

g) Based on my review and analysis of these documents, it is my conclusion and testimony that the First Amended Plan is not feasible and that the Plan will not give the First Lien Lenders the present value of their claims as of the effective date of the Plan.

The First Amended Plan

h) As set forth below and in the Disclosure Statement Objection, the First Amended Plan and supporting First Amended Disclosure Statement propose a "plan" that is doomed to fail due to lack of financing, overwhelming debt and inability to move the company from the developmental (non-revenue producing) stage into an operating, revenue producing one.

i) The First Amended Plan seeks to put the Debtors in a holding pattern in the hope that the capital markets will become more accessible in the future. During this time, the Debtors have no intention of furthering their business, which will result in the deterioration and depletion of the Debtors assets, while at the same time, their debt burden will continue to grow due to accruing interest being paid in kind. This is the antithesis of a "reorganization." This is simply a recipe for a second bankruptcy filing in the not-too-distant future. Because the Plan is not feasible, and therefore (I am informed) not confirmable, it would only waste time and expense to go through the process of soliciting votes on it.

j) Furthermore, the proposed terms of the Amended Facility Agreement to restructure the Lenders' claims exposes lenders to substantial risks that, among other things, does not remotely give the Lenders' the present value of their claims.

The Plan is not Feasible Based on the Projections

k) The Debtors admit, and the Debtors' Projections annexed to the First Amended Disclosure Statement as Exhibit D demonstrate that at least until December 31, 2013 (the last date covered by the Projections), the Debtors:

- will not generate any revenue and will have no operations and no business,
- will not have commenced construction of the ATC portion (i.e. the terrestrial portion) of their contemplated MSS/ATC Hybrid Network, and
- will not have completed the MSS network (which the Debtors admit cannot be operated profitability).

l) The Debtors project negative cash flow[3] in the amount of (i) $28,696,000 for the year ending December 31, 2010, (ii) $24,086,000 for the year ending December 31, 2011, (iii) $24,861,000 for the year ending December 31, 2012 and (iv) $25,705,000 for the year ending December 31, 2013, for an aggregate negative cash flow of $103,340,000.

m) Despite the obvious need for capital demonstrated by these projections, the Debtors do not have firm commitments for even the first $30,000,000 contemplated to be provided by the New Credit Facility.

n) In addition to the as yet uncommitted New Credit Facility, the Debtors project that they will need to raise $30,000,000 in the year 2011, $25,000,000 in the year 2012 and $25,000,000 in the year 2013 (collectively, the "**Additional Required Facilities**"), in each case, just to pay the minimal costs and expenses of maintaining their dormant network (but not interest on any of

[3] These amounts exclude the negative cash flow projected for 2009, which amounts are not disclosed in the First Amended Disclosure Statement.

their restructured or new debt).[4] Absent timely receipt of the funds contemplated by the Additional Required Facilities, the Debtors will simply run out of money and need to seek the protection of this Court once again.

o) At the same time, by December 31, 2013, the Debtors outstanding debt obligations will increase from $49,967,000 to $73,824,000 (due to the accrual of PIK interest) under the proposed Amended Facility Agreement and from $30,000,000 to $172,847,000 (due to the accrual of PIK interest, the incurrence of amounts required under the Additional Required Facilities and PIK interest on those amounts) under the proposed New Credit Facility.

p) Moreover, it should be noted that pursuant to the First Amended Plan, the Debtors are proposing that the Amended Facility Agreement (i.e., the restructured First Lien Loans) would have a maturity of four years after the effective date -- which is at least two years after the Debtors cash will run out unless all of the financing needs contemplated by the New Credit Facility and the Additional Required Facilities are met (which is extremely unlikely).

The Projections Do Not Include Expenses Due in 2009

q) On the Petition Date, the Debtors had four distinct groups of assets (a) approximately $4 million in cash on hand, (b) ARS having par value of approximately $63.9 million,[5] (c) the DBSD G-1 Satellite, and (d) the FCC

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4 The First Amended Disclosure Statement provides no information as to why the Debtors believe that the capital required under the Additional Required Facilities will be available at the times, in the amounts and on terms that will meet the Debtors' needs. Given the extraordinary terms contemplated for the New Credit Facility (particularly the interest rates and fees, as discussed below), any suggestion that the Additional Required Facilities will be available is pure speculation and conjecture.

5 The ARS clearly are not worth "par value," although the Debtors may obtain par value for certain of the ARS assuming they can wait to benefit from the UBS settlement in 2010. On June 15, 2009 this Court entered an order (electronic case filing ("**ECF**") docket no. 112) authorizing the Debtors to sell some of their ARS (the "**ARS Sale Order**") such that the Debtors could generate cash necessary to pay ongoing costs and expenses, including the

spectrum license. Prior to the hearing on the approval of the First Amended Disclosure Statement, the Debtors' Projections show that they will have used all cash on hand as well as several million dollars representing proceeds from the sale of ARS (i.e., approximately $6,700,000 in aggregate cash costs since the Petition Date). Assuming *arguendo* the Court approves the First Amended Disclosure Statement, the Debtors anticipate spending another $2-$3 million in ARS proceeds prior to the confirmation hearing.[6] These assets are clearly insufficient to meet the immense immediate cash flow needs of the Debtors without a substantial infusion of new capital. However, the Debtors contemplate raising only $30 million in exit financing. This amount is woefully inadequate.

r) The Projections fail to take into account, among other things, substantial additional costs and expenses, including, (a) the cure costs that the Debtors must pay on the effective date, (b) Sprint Nextel Corporation's ("**Sprint**") $211 million claim, (c) the required minimum payments to be made by the Debtors on their vendor contracts, (d) additional spectrum clearance costs that the Debtors may incur, and (e) professional fees and expenses to be incurred, or already incurred, during these chapter 11 cases.

s) A review of the Annual Report indicates that the Debtors have vital contracts with Hughes Network Systems, LLC ("**Hughes**"), Lucent Technologies, Inc.

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administrative expense of these cases (since the Debtors have no operations). The ARS Sale Order permits the Debtors to sell ARS to generate $5,000,000 in cash at a price not less than 55% of the par value of the ARS to be sold.

[6] If the First Amended Plan is confirmed, the Debtors intend to use the proceeds from the remaining ARS, as well as the proceeds from the New Credit Facility, to fund cash amounts required under the First Amended Plan.

("**Alcatel-Lucent**"), Space Systems/Loral, Inc. ("**Loral**"), Delphi Automotive Systems LLC ("**Delphi**"), Qualcomm Incorporated ("**Qualcomm**") and Intelsat, Ltd. ("**Intelsat**") and likely will be required to make substantial cure payments in connection with the assumption of them. The Debtors have also failed to account for the approximately $211 million that Sprint has claimed that the Debtors owe to it for spectrum clearance costs. No information is provided with respect to any such cure obligations.

t) The Annual Report also reveals that for the year 2009 alone the Debtors have ordinary course minimum payment obligations under their vendor contracts in excess of $60 million. *See Exhibit A to the Disclosure Statement Objection*, 00078 - 00080 (all references to page numbers in Exhibit A are to bates range). The Projections do not appear to include any such obligations and there is no disclosure that would allow a creditor or other party interest to understand what payments, if any, are required going forward.

u) Finally, a review of other available materials indicates that the Debtors' estates will incur professional fees and expenses during the duration of these cases in excess of several million dollars, all of which will have to be paid in cash upon the effective date of any plan.[7]

v) All of the foregoing payments will be due in the near term and will easily aggregate into the hundreds of millions of dollars - far in excess of the aggregate value of contemplated $30 million in exit financing and the ARS

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[7] In a balance sheet accompanying their Projections, the Debtors submit that on December 31, 2009 they will have current assets of approximately $22,729,000 and the following liabilities (not including amounts owed under the First Lien Facility and the Junior Lien Facility): (a) $16,300,000 in accounts payable; (b) $10,390,000 in deferred satellite performance incentives; (c) $3,315,000 in other current liabilities and (e) $3,200,000 in other liabilities. The nature and treatment of such liabilities is unclear.

that will remain upon the Debtors' emergence from chapter 11. Yet, the Debtors not only fail to disclose these obligations, they also provide no clue as to how the Debtors will be able to satisfy them.

The Debtors have Not Demonstrated the Ability to Raise Cash Needed to Stem the Projected Cash Losses

w) The Plan assumes a new credit facility in the amount of $30 million - yet, although the Debtors have contacted over 25 potential investors, they have no commitment for this funding despite the unsubstantiated statement that some portion of the Junior Noteholders will issue a backstop commitment for some portion of the $30 million.

x) Furthermore, even if the exit financing could be raised, the Debtors will have substantial cash-flow shortfalls both pending and post-confirmation of the First Amended Plan, and have not demonstrated the ability to raise the cash needed to confirm the First Amended Plan and to fund future expenses.

y) As the following table setting forth the Debtors' projected sources and uses of cash for the period from January 1, 2010 to December 31, 2013 demonstrates, the Debtors simply do not have the funds necessary to even maintain their dormant status without the payment of any interest on their debt - - let alone become operational:[8]

Year Ended	Projected Operating Expenses	Required Third-Party Financing	Commitments For Required Third-Party Financing	Projected Revenue
December 31, 2010	$28,446,000	$30,000,000[9]	None	$0

[8] This information is obtained from the Debtors' Projections.

[9] The proposed New Credit Facility.

December 31, 2011	$24,787,000	$30,000,000	None	$0
December 31, 2012	$25,725,000	$25,000,000	None	$0
December 31, 2013	$26,611,000	$25,000,000	None	$0
Total:	*$105,569,000*	*$110,000,000*		*$0*

z) Despite the fact that the Debtors have been unable to obtain commitments for even the $30 million New Credit Facility, the Projections (without any support whatsoever) contemplate that the Debtors will be able to raise the Additional Required Facilities, as follows: $30 million in 2011, $25 million in 2012 and $25 million in 2013. Absent from the First Amended Disclosure Statement is any information or detail on how, when, the terms and from whom such funding commitments may be procured. The Projections also fail to make any provision for the costs, fees and expenses associated with these subsequent funding requirements.

aa) This new money, if it is available at all (which I doubt) will be extraordinarily expensive. The term sheet for the proposed $30 million New Credit Facility reveals that the Debtors propose to pay to the as yet unidentified-lenders under the New Credit Facility interest at a rate 7.5% higher than the rate of interest under the Amended Credit Facility (i.e. as proposed by the Debtors, such interest rate would be 17.5%). In addition the lenders under the New Credit Facility will receive: (a) a 2% commitment fee; (b) 5% - 10% of the New Common Stock, and (c) a lien on all assets that are subject to the First Lien Lenders' liens. The Debtors estimate their Reorganized Value at approximately $463 million to $663 million. *See Disclosure Statement*, Art.

VI, A. (pgs. 53 - 54). Accordingly, the value of the 5% - 10% of equity to be given to the lenders under the proposed $30 million New Credit Facility, based upon such Reorganized Value, is between $23.15 million and $66.3 million. So, in addition to the per annum interest rate of 17.5% and a 2% up front commitment fee, the Debtors must pay between $23.15 million and $66.3 million[10] in present value to procure the first $30 million of the $110 million of new money that is required under the Debtors' own Projections.

bb) Given the foregoing (which are terms for debt being provided by highly motivated parties with existing substantial investments), it is difficult -- if not impossible -- to imagine the terms and conditions that a true third party would require to provide the $80 million of additional financing contemplated by the First Amended Plan -- particularly when there is no defined strategy for repaying such debt other than some amorphous and undefined capital markets transaction sometime in the future.

<u>The Plan is a High Risk and the Only Party that Stands to Benefit are the Noteholders</u>.

cc) The First Amended Plan seeks to accomplish nothing more than to buy time and hope that a sale outside of bankruptcy can be done down the road. This is not a "Plan". Lenders are not being compensated for the risk that this gamble will fail. ARS will be depleted - eliminating the Lenders' only form of liquid collateral. Furthermore, the satellite's useful life is being exhausted while in orbit. The satellite's useful life is estimated to be 15 years; given that the Debtors do not project when, if ever, they will be able to operate the satellite,

[10] Calculated as 5% of $463 million, the lowest Reorganized Value and 10% of $663 million, the highest Reorganized Value.

it is entirely possible that the satellite will no longer be useable if the Debtors' business ever becomes operational.

dd) Based on my experience with the credit markets, in the current environment and based on the Debtors' speculative business plan (as discussed in the Affidavit of Robert Nabholz dated July 8, 2009), the Debtors will not be able to raise the needed cash on terms and conditions that would be affordable or sustainable based on the Debtors lack of operations or revenues. The Debtors do not know what the likelihood of receiving the approvals is, or the timing of the decision.

<u>The Plan Does Not Provide Acceptable Treatment of the Lenders' Claims</u>

ee) I am informed that a Plan may only be confirmed when an impaired class does not accept the plan if the members of the rejecting class will "receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property."

ff) The fully secured First Lien Lenders hold a claim against the Debtors for a prepetition obligation that matured prepetition, and yet the Debtors propose a plan that provides a distribution to junior creditors (including a distribution to deeply out of the money equity) while providing the fully secured First Lien Lenders only with a four year note (a) issued by a company in its development stage with no projected revenue or other guaranteed sources of capital for the duration of the note, (b) that does not provide any principal payments until

maturity, (c) at an interest rate and other terms far less generous than the terms being offered to the lenders under the New Credit Facility, who as the new equity holders are otherwise motivated to provide financing, and (d) that will share collateral with the new facility on unspecified terms. In short, the proposed treatment of the fully secured First Lien Lenders amounts to a forced investment with equity risk that does not provide them with the present value of their claim.

gg) As illustrated by the Plan itself, the Lenders will not be receiving market-rate compensation for the risk that the Plan seeks to foist on them. The junior lenders, who are highly motivated, will receive no less than 17.5% interest on their new financing in addition to tens of millions of dollars in new equity; in contrast, the Plan proposes to give the Lenders only 10% interest on a PIK basis for four years, with no plan as to how the Debtors will ever be able to raise the financing necessary to enable them to produce revenue or obtain substitute financing necessary to pay the Lenders the value of their claims.

hh) The First Lien Credit Agreement, which matured prior to the commencement of the Debtors' chapter 11 cases, was only intended to provide the Debtors with a one year loan, the principal amount of which was oversecured by the value of the ARS alone. Yet, the Debtors propose to extend this term for another 4 years at a reduced interest rate and with substantially less collateral due to the depletion of the ARS. The non-default rate of interest under the First Lien Credit Agreement was 12.5%, which increased to 14.5% upon the occurrence of an event of default. Yet, for the extended term proposed by the

Debtors the offered interest rate is 10%. As of the closing of the First Lien Credit Agreement, the par value of the ARS was approximately $97 million; it is projected that the par value of ARS remaining upon confirmation of the First Amended Plan would be $21 million and these remaining securities would be liquidated within six months of confirmation. The Debtors also have declined to indicate what priority lien the New Facility Agreement will have against the reorganized debtors' assets. To the extent the Debtors seek to grant the lenders under the New Facility Agreement a *pari passu* lien, this will further diminish the value of the collateral securing the Amended Facility Agreement.

ii) Given the lack of detail provided by the Debtor, it is impossible to quantify the reduction of present value; however, it is clear that each of these changes (i.e., lower interest rate, longer maturity, less collateral, and potential for collateral sharing) will have a material adverse effect on the present value of the Lenders claim.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Detroit, Michigan on July 8, 2009.

John P. Madden